

Questions on Notice – During Proceedings

Questions 1 and 2 (related):

In March 2019, it was reported in the NSW Financial Review that the NSW Police had not been informed about the particulars of the Assistance and Access Act until the Act was released to the public. Is that correct?

Did the Commonwealth Government hold a forum where the NSW Police were consulted about the Assistance and Access Bill 12 months prior to the Bill becoming law?

In late 2017, NSWPF attended an Interception Consultative Committee Conference in Canberra where the broad policy proposal was discussed.

On 11 July 2018, an 'exposure draft' of the proposed TOLA legislation was received by NSWPF. It was discussed by teleconference on 16 July 2018 between DOHA and other agencies, including NSWPF.

On 26 July 2018, NSWPF received a copy of the draft bill.

On 2 August 2018, DOHA hosted an Interception Consultative Committee Conference in Canberra, attended by NSWPF and other organisations, where the details of the bill were discussed.

In September 2018, the bill was introduced to Parliament.

Question 3:

Many submitters to this and the previous enquiries on this legislation have argued that aspects of this law are very poorly drafted. Do you agree with that?

NSWPF are comfortable with the drafting of the TOLA legislation in its current form.

In relation to Recommendation 8 of the INSLM report, NSWPF do not oppose the deletion of the term 'systematic vulnerability' from the Act to avoid duplication.

NSWPF agree with Department of Home Affairs' position that any clarification or amendment of the term 'systemic weakness' should balance the need for a DCP to keep its customer data secure against the need for law enforcement to access the data to keep Australians safe. An overly restrictive definition could make aspects of the legislation unworkable.

Additional Questions on Notice – Senator Dreyfus

Question 1:

Prior to 6 December 2018, how many times had a designated communications provider (as that term is defined in the Assistance and Access Act) explicitly declined to provide assistance in response to a request from NSW Police? Please provide details.

NSWPF are unable to provide statistics on when Designated Communications Providers (as defined) explicitly declined to provide assistance prior to 6 December 2018 for the following reasons:

- The definition of ‘Designated Communications Provider’ is broad and the providers it encompasses can change from time to time.
- There was previously no formal framework for investigators to request technical assistance. It relied on investigators approaching providers directly for assistance. There is no centralised database of requests and/or success rates.
- There was no centralised unit co-ordinating requests from investigators or recording the outcome of those requests.

The type of assistance sought under some TARs was not previously requested before the TOLA regime. Privacy protections, no profit/no loss costs agreements, and protection from civil liability enabled police to make requests under the TOLA regime they would not previously have made.

Two Australian-based DCPs expressly welcomed the non-disclosure and indemnity components of a TAR. Although these providers assisted NSWPF in the past without the need for a TAR, the amount of information provided, and the extent of the providers’ assistance was greater under a TAR than was traditionally sought or provided.

A further domestic provider was consulted whether they would provide technical assistance under section s.313(3) of the *Telecommunications Act 1997* (Cth) for a particular matter. This provider advised police that due to the type of assistance requested, they would only provide the assistance under a TAR.

Under a TAR, NSWPF engaged an overseas provider to determine its capability to assist police. This request could not have been made outside of the TOLA regime, as the company’s Law Enforcement Guide states an account holder could be informed of requests for their information by law enforcement authorities. The TOLA regime permitted NSWPF to make those enquiries using accompanying non-disclosure provisions. NSWPF was able to obtain information about some of the provider’s capability which was previously not known.

Question 2:

How many different designated communications providers have received a technical assistance requests from NSW Police?

Nine different designated communications providers have received TARs from NSWPF.

Question 3:

Specifically, what offences did the technical assistance requests issued by NSW Police relate to?

- Murder – *s.18(1) Crimes Act 1900* (NSW)
- Conspiracy to murder – *s.26 Crimes Act 1900* (NSW)
- Discharge firearm with intent – *s.33(A)(1) Crimes Act 1900* (NSW)
- Participate in a criminal group – *s.93T(1) Crimes Act 1900* (NSW)
- Attempted robbery whilst armed with a dangerous weapon – *s.344A/97(2) Crimes Act 1900* (NSW)
- Manufacture prohibited drugs – *s.24(1) Drug Misuse and Trafficking Act 1985* (NSW)
- Supply prohibited drugs on an ongoing basis – *s.25A(1) Drug Misuse and Trafficking Act 1985* (NSW)
- Supply prohibited drugs – *s.25(1) Drug Misuse and Trafficking Act 1985* (NSW)
- Supply prohibited drugs (commercial quantity) – *s.25(2) Drug Misuse and Trafficking Act 1985* (NSW)
- Possess unauthorised prohibited firearm – *s.7(1) Firearms Act 1996* (NSW)
- Acquisition of firearms – *s.50A Firearms Act 1996* (NSW)

Question 4:

How many of the technical assistance requests issued by NSW Police have not been fully complied with in every respect? For each example, please provide as much detail as possible.

One Technical Assistance Request has not been complied with in every respect. The provider was only able to provide limited information about their capability during a phone consultation before the TAR was served. NSWPF were requested to submit their request for information and assistance in writing for assessment. A TAR was served on the provider, requesting the provision information that was available to the provider, referenced to times and dates identified during the period of a Telecommunications Interception Warrant. The provider responded they were unable to provide *most* of the requested information as they did not have access to the information sought. The provider indicated they had the capability of providing *some* of the information sought, however, this information would not be provided due to laws within their jurisdiction prohibiting disclosure to overseas authorities.

NSWPF are satisfied that every other Technical Assistance Request was complied with to the extent a provider was capable of doing so. Each provider was consulted prior to the issuing of the request and their capacity to comply with each request was ascertained prior to the request being issued.

Question 5:

How many of the technical assistance requests issued by NSW Police were issued orally?
a. In respect of each oral request, why wasn't it practicable in the circumstances to give the request in writing?

There were no technical assistance requests issued orally.

Question 6:

In respect the eight technical assistance requests that have been issued by NSW Police, please provide the following details:

a. How many of the requests specified an expiry date?

All 14 requests specified an expiry date.

b. For each request that has been revoked or has expired, how long did the request remained in force?

- TAR 19/01 – 63 days
- TAR 19/02 – 27 days
- TAR 19/03 – 63 days
- TAR 19/04 – 48 days
- TAR 19/05 – 78 days
- TAR 19/07 – 22 days
- TAR 19/08 – 71 days
- TAR 19/09 – 82 days
- TAR 19/10 – 77 days

c. For each request that has not been revoked or has not expired, how long had the request been in force as at 12 August 2020?

- TAR 20/01 – 20 days
- TAR 20/03 – 20 days
- TAR 20/05 – 20 days
- TAR 20/06 – 20 days
- TAR 20/08 – Issued 14 August 2020.

d. How many requests have been extended?

No requests have been extended.

e. How many requests have been otherwise varied?

No requests have been varied.

f. Have any of the requests been extended on multiple occasions? If so, please provide details.

No requests have been extended on multiple occasions.

g. Have any of the requests been otherwise varied on multiple occasions? If so, please provide details.

No requests have been varied on multiple occasions.

h. How many of the technical assistance requests included a request that a specified act or thing be done within a specified period?

One TAR included a request that a specified act or thing be done within a specified period.

Question 7:

Since 6 December 2018, how many times has the AFP requested assistance from a carrier or carriage service provider under section 313(3) of the *Telecommunications Act*?

This question is answered on the assumption the question relates the NSWPF, not the AFP.

To the extent that was able to be ascertained, 367 requests were made from a carrier or carriage service provider under section 313(3) of the *Telecommunications Act 1997* (Cth) since 6 December 2018.