



U.S. Department of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

April 2, 2020

Jeff Norris
Inquiry Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament of Australia
Parliament House
Canberra ACT 2600

Dear Mr. Norris,

It was a pleasure to meet with Committee Chair Andrew Hastie MP, the Shadow Minister for Home Affairs Senator the Hon. Kristina Keneally, and Members of the Committee in February in Sydney. We are pleased to be in discussions with your government regarding the conclusion of an agreement to improve cross-border access to electronic evidence, and we hope that we can continue to make progress despite the strained circumstances caused by the COVID-19 pandemic.

Thank you for your letter of 26 February 2020, in which the Committee invited a submission from the U.S. Department of Justice on the possible impact of Australia's Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 on the conclusion of an agreement with the United States as authorized by the U.S. Clarifying Lawful Overseas Use of Data Act ("CLOUD Act").

As I discussed at the February meeting, the CLOUD Act requires that the agreements it authorizes be "encryption neutral." The statute provides that CLOUD Act agreements "shall not create any obligation that providers be capable of decrypting data or limitation that prevents providers from decrypting data." 18 U.S.C. 2523(b)(3). This means that CLOUD Act agreements may not create any new requirement on service providers to decrypt communications, nor may CLOUD Act agreements prevent or limit service providers from assisting in decryption. In short, CLOUD Act agreements may not prevent partner countries from addressing encryption requirements in their own domestic laws.

This neutrality allows for encryption issues to be discussed and addressed separately among governments, companies, and other stakeholders pursuant to domestic law and policy, and addressing such requirements in domestic law does not affect a country's eligibility for a CLOUD Act agreement. Accordingly, it is the view of the U.S. Department of Justice that there is nothing in Australia's Assistance and Access Act that would preclude or prevent the conclusion of a CLOUD Act agreement between our governments.

I hope that this information assists the Committee in its deliberations. Please let me know if I

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can be of any further assistance.

Sincerely,

A solid black rectangular box used to redact the signature of Richard W. Downing.

Richard W. Downing
Deputy Assistant Attorney General