

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2016 - 2017

**Department/Agency: ASIC**

**Question: BET 330**

**Topic: Requirement by ASIC to report on Telecommunications metadata**

**Reference: Hansard page no 103 – 6 May 2016**

**Senator: David Bushby**

**Question:**

Senator BUSHBY: That is right—the industry funding the activities that are generated because of their activity. I have one question on a completely separate subject, and that is on your use of the metadata in the course of your enforcement activities. I am wondering, since the law went through requiring the retention of metadata, whether you have made use of metadata in enforcing the rules that you cover?

Mr Medcraft: Good question.

Mr Savundra: We continue to use the legislation, but I would prefer to give you a comprehensive answer. If I could take that on notice?

Senator BUSHBY: That would be fine. If you could let us know how many instances?

Mr Savundra: We do consistently use telecommunications and metadata as part of our investigations, as we did before.

Senator BUSHBY: Do you report on the use of that? I know quite a few years ago I challenged ASIC about using some of its powers that it uses, which you now report. I am wondering whether you report on the use of metadata or how many times you access metadata as part of your enforcement?

Mr Tanzer: We certainly reported on that at the time of the debates. You might remember that we had some public submissions to the inquiries into that bill. I cannot remember whether there is an ongoing reporting requirement, but we will certainly check on that.

Senator BUSHBY: There are reporting requirements, but whether ASIC reports that as part of its activities.

Mr Medcraft: It is an interesting discussion. I am sort of wondering whether it is a good thing that we tell people how often we use metadata.

Senator BUSHBY: I think it is required to be reported in the overall sense.

Mr Medcraft: Are we required to report publicly how often we use it?

Mr Tanzer: I have an idea that we do actually report it in our annual report in one of the appendices, but I would rather check.

Senator BUSHBY: I am interested in knowing the extent to which you do.

Mr Medcraft: Why don't we take it on notice. We will take it on notice. I would be interested to hear

**Answer:**

**ASIC's use of the TIA Act**

ASIC is required by the (the *Telecommunications (Interception and Access) Act 1979* (**the TIA Act**)) to report all relevant information annually to the AG. The information is then reported by the AG's department to the Minister and in the AG's annual report on the TIA Act

as referred to above. ASIC's access to and use of the relevant data is also subject to an annual inspection and audit by the Commonwealth Ombudsman. ASIC does not, and is not required to, report on these matters in its own annual reports or otherwise.

ASIC continues to regularly seek access to and use 'telecommunications data' and 'stored communications' under the TIA Act. ASIC will provide details of its use of the TIA Act for the year ending 30 June 2016 once the Attorney General (**the AG**) Telecommunications (Interception and Access) Act 1979 Annual Report for the year ending 30 June 2016 is made public. Data about ASIC's use of the TIA Act for the year ending 30 June 2015 are set out in the annual report published by the AG on its website:

(<https://www.ag.gov.au/NationalSecurity/TelecommunicationsSurveillance/Pages/Annualreports.aspx>).

### **Background information**

ASIC is a "criminal law enforcement agency" under the TIA Act (sections 5 and 110A) and as such can access "telecommunications data" and "stored communications" data as prescribed by the TIA Act. (But *not* intercepted communications.)

"Metadata" is not defined in the TIA Act. See the AG's annual reports for discussion about this.

### ***Telecommunications data***

Telecommunications data is not defined in the TIA Act: refer to the AG's annual reports for discussion and note ASIC may only access this data under authorisations made under sections 178 to 180, which relate to "existing" or "prospective" information or documents and only in connection with the enforcement of criminal law or those relating to laws "imposing a pecuniary penalty or protection of public revenue."

This includes mainly telephone call charge records and subscriber information. It does not include the *content* of any communication.

ASIC must report on the following:

- i. the number of authorisations made to access existing or prospective data;
- ii. the offences the authorisations related to;
- iii. the lengths of time for which the information or documents had been held when the authorisations were made; and
- iv. the number of authorisations made under journalist information warrants.

### ***Stored communications data***

Stored communication is defined in section 5 of the TIA Act and means a communication that is:

- (a) is not passing over a telecommunications system; and
- (b) is held on equipment that is operated by, and is in the possession of, a carrier; and
- (c) cannot be accessed on that equipment, by a person who is not a party to the communication, without the assistance of an employee of the carrier.

This generally relates to SMS message type data, it *does* include the content of the communication and is only available under a warrant (or by not using covert means). ASIC must report on the following:

- i. The number of preservation notices issued to telecommunications carriers (i.e. notices requiring carriers to keep the stored communications data pending an application for a warrant);
- ii. Details about any warrants to access stored communications data (how many applied for and so forth);
- iii. Whether stored communications data accessed under the TIA Act has been used in evidence in enforcement proceedings and/or has led to any person being convicted;
- iv. Whether stored communications data has been destroyed, as it was no longer required for a purpose permitted under the TIA Act.