

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2016 - 2017

Agency - Fair Work Building and Construction

Department of Employment Question No. EMSQ16-000819

Senator Cameron provided in writing.

Question

FWBC - FWBC request for warrantless access to metadata

In relation to FWBC request to the Attorney-General for a declaration of FWBC as an enforcement agency for the purposes of the Telecommunications (Interception and Access) Act 1979 – 12 June 2015:

1. Has FWBC been granted warrantless access to metadata, on either a permanent or temporary basis?
2. Does the Director stand by the statement in the request that, “Subpoenas ... are inherently unreliable as they depend on judicial discretion”; the inference being that FWBC believes judges that might not exercise their discretion in FWBC’s favour are unreliable?
3. Does the Director stand by the statement in the request that, “Also, subpoenas require leave of the court, making their availability unreliable. Broadly speaking, the cases on contested subpoena applications show that the court will consider whether the applicant has demonstrated that the subpoena for production of documents has a legitimate forensic purpose to the issues in the pleadings, and whether the subpoena will cause prejudice or oppression to a party. This means that the issuing of a subpoena is discretionary and requires ‘an exercise of judgement’, which may result in leave being refused”; the inference being that the Courts are unreliable, FWBC shouldn’t have to demonstrate to a Court a legitimate forensic purpose for a warrant application, and that FWBC shouldn’t have to submit to a Court exercising discretion in which procedural fairness, natural justice and avoidance of oppression or prejudice to a party would be elements?

Answer

1. No.
2. No such inference can be drawn from the request.
3. No such inference can be drawn from the request.