

s. 42(1)

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10 Jul 2019

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10 JUL 2019

Correspondence No: 1170

PRESS FREEDOM

Home Affairs dragging its feet on obligations

Bevan Shields
 Federal editor

The super department with overall responsibility for Australia's metadata retention regime is dragging its feet on meeting a legal obligation to tell the public how many times powerful new laws are being used to intercept the communications of Australians, including journalists.

The Department of Home Affairs has also failed to meet the deadline for lodging a submission with a major parliamentary review of the Abbott-era metadata scheme, which is under fire following revelations the Australian Federal Police used it to access the phone and internet records of reporters nearly 60 times in just one year.

Amid the fallout from police raids on the ABC's Sydney headquarters and the Canberra home of a News Corp journalist, Foreign Minister Marise Payne flew to London yesterday to assure the global community that Australia is committed to "striking the right balance" between national security and press freedom. "Press freedom has recently been the focus of na-

tional discussion in Australia," Senator Payne will tell the Global Conference for Media Freedom.

"While Australia ranks relatively highly on the World Press Freedom Index, we recognise that a sensible balance needs to be reached between protecting our national interest in the face of ever-evolving security challenges and upholding the public's right to know."

The *Sydney Morning Herald* this week revealed federal police asked Qantas in March to hand over the private travel records of a senior ABC reporter, and in the previous financial year had accessed the metadata of journalists 58 times.

The AFP is one of about 20 federal and state law enforcement agencies able to access phone and internet records that telecommunications companies are required to retain for two years.

The Department of Home Affairs is required by law to prepare an annual report telling the public the total number of times the metadata laws have been used by all the agencies, but has failed to finish a report for the 2017-18 financial year - which finished more than a year ago.

A spokesperson said the report is "in the process of being prepared for tabling in Parliament."

The report is meant to name the agencies that intercepted or accessed communications, the type of warrants applied for, and how many prosecutions of convictions resulted from intercepted information or surveillance devices.

The spokesperson also said the department "anticipates" lodging its submission to a five-yearly review of the metadata regime "shortly", however the parliamentary committee conducting the review had asked for submissions to be lodged by July 1.

The Home Affairs submission will include the views of the AFP, which is the biggest user of the metadata laws and will argue that no changes are needed.

The laws were rushed through Parliament in 2015 and amended at the last minute to require agencies to obtain a warrant before accessing data that risks identifying a journalist's source.

The AFP would not say yesterday how many times it had accessed journalist information in the financial year just gone.

What is the legal requirement?

MP

10/07/2019

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Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number MS19-001525

To Minister for Home Affairs

Subject *Telecommunications (Interception and Access) Act 1979 and Surveillance Devices Act 2004 Annual Reports 2017–18*

Timing These Annual Reports should be tabled in Parliament 15 sitting days after you receive them, or as soon as practicable noting they are overdue. The Department's statement explaining why the reports were not furnished within statutory deadlines must be laid before each House of Parliament within three sitting days after you receive it.

Recommendations

That you:

1. Note the Annual Reports at Attachment A and Attachment B. noted / please discuss
2. Agree to the tabling of these reports in both houses of the Australian Parliament. agreed / not agreed
3. If you wish to table these reports out of session in the Senate sign the transmittal letter at Attachment C. signed / not signed
4. Note the Department of Home Affairs statement explaining why the reports were not furnished within statutory deadlines at Attachment D. noted / please discuss
5. Note that the Department will make arrangements for a copy of this statement to be laid before each House of the Parliament. noted / please discuss

Minister for Home Affairs

Signature.....

Date: 03/07/2019

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- As the responsible Minister for the *Telecommunications (Interception and Access) Act 1979* (the Telecommunications Interception Act), you are required to table an annual report in the Parliament for each financial year. The statutory timeframe for the report to be provided to you within six months after each 30 June. You must then cause the report to be laid in each House of the Parliament within 15 sitting days from when you receive the report, or when the report is prepared, as the case may be.
- The *Telecommunications (Interception and Access) Act 1979 Annual Report 2017–18* at **Attachment A** (the Telecommunications Interception Act Report) sets out the extent and circumstances in which eligible Commonwealth, State, and Territory government agencies have used the powers available under the Telecommunications Interception Act between 1 July 2017 and 30 June 2018 (the reporting period).
- Key findings in the Telecommunications Interception Act Report include:
 - A total of 3,524 interception warrants were issued.
 - Information obtained under interception warrants was used in:
 - 2,429 arrests;
 - 5,415 prosecutions; and
 - 3,516 convictions.
 - Enforcement agencies made 301,113 authorisations for the disclosure of historical telecommunications data – an increase of 889 authorisations from the previous reporting period. Of these, 295,779 were made to enforce a criminal law.
 - The majority of offences for which historical data was requested were illicit drug offences (67,621 requests) followed by 33,261 requests for homicide and related offences, and 21,305 for fraud.
 - Information obtained under stored communications warrants was used in:
 - 412 arrests;
 - 611 proceedings; and
 - 356 convictions.

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4. As the responsible Minister for the *Surveillance Devices Act 2004* (Surveillance Devices Act), you are also required to table an annual report in the Parliament for each financial year. The report must be submitted to the Minister within 3 months after the end of each financial year. You must then cause the report to be laid in each House of the Parliament within 15 sitting days from when you receive the report. Agencies have submitted this information and the Department has consolidated it into the *Surveillance Devices Act 2004 Annual Report 2017–18* at **Attachment B** (the Surveillance Devices Act Report) which we recommend you table within 15 sitting days.
5. The Surveillance Devices Act Report sets out the extent and circumstances in which eligible Commonwealth, State, and Territory government agencies have used the powers available under the Surveillance Devices Act between 1 July 2017 to 30 June 2018 (the reporting period).
6. Key findings in the Surveillance Devices Act Report include:
 - The use of surveillance devices contributed to 173 arrests, 109 prosecutions, and 37 convictions.
 - Law enforcement agencies applied for 805 warrants – a decrease of 308 applications from 1,113 in 2016–17. Three of these applications were refused by issuing authorities due to insufficient supporting evidence.
 - The number of tracking device authorisations increased from 51 to 54 and there was one tracking device retrieval.
 - The number of applications made to extend surveillance device warrants decreased from 225 to 187. Applications to extend warrants are often due to the prolonged nature of investigations for complex and serious crime (where evidence gathering may not have been completed within the prescribed period of 90 days).
7. Should you wish to table the reports out of session in the Senate, the Department has developed a transmittal letter at **Attachment C** for you to sign.
8. As the statutory deadlines for the tabling in Parliament of both Annual Reports have now lapsed, we have prepared a statement at **Attachment D**, explaining why the Reports were not furnished as required. The department will make arrangements for a copy of the statement to be laid before each House of the Parliament within three sitting days of you receiving this statement, as required by section 34C of the *Acts Interpretation Act 1901*.

Background

Telecommunications Interception Act

9. The primary function of the Telecommunications Interception Act is to allow lawful access to communications and data for law enforcement and national security purposes, in a way that protects the privacy of people who use the Australian telecommunications network. Serious and organised criminals seeking to harm Australia's national security routinely use telecommunications services and communications technology to plan and carry out their activities.

10. The Telecommunications Interception Act provides a legal framework for national security and law enforcement agencies to access the information held by communications providers that agencies need to investigate criminal offences and other activities that threaten safety and security. The access that may be sought under the Telecommunications Interception Act includes access to telecommunications data, stored communications that already exist, or the interception of communications in real time. The use of warrants related to these powers is independently overseen by the Commonwealth Ombudsman and equivalent state bodies.

Surveillance Devices Act

11. The Surveillance Devices Act is intended to facilitate cross-border investigations and information sharing between Australian law enforcement agencies, and complements state and territory surveillance devices laws. It does not place constraints on the use of surveillance devices by the general public. Rather, it authorises the use of surveillance devices by law enforcement agencies for the investigation of Commonwealth offences and State offences with a federal aspect.
12. The Surveillance Devices Act:
- provides a single legislative regime for Commonwealth agencies to use surveillance powers; and
 - authorises state and territory law enforcement agencies to use surveillance devices under the Commonwealth regime in defined circumstances.
13. The Surveillance Devices Act also operates to restrict the use, communication, and publication of information that is obtained through the use of surveillance devices by law enforcement agencies.

Consultation – internal/external

14. External: The Department sought figures and input from relevant Commonwealth, State and Territory agencies who use the powers under the Telecommunications Interception Act and Surveillance Devices Act. The Department also consulted the Attorney-General's Department (and, via this department, federal courts and the Administrative Appeals Tribunal) and the Commonwealth Ombudsman in the course of preparing the annual reports.
15. Internal: Legal Division and Media and Communications Division were consulted on this submission.

Consultation – Secretary

16. The Secretary was not consulted on the approach in the submission.

Client service implications

17. N/A.

Sensitivities

18. There will likely be comment on the fact these Annual Reports are being tabled a year after 30 June 2018, particularly noting that they form part of the accountability framework and detail the use of powers under electronic surveillance laws.

19. We note that the past two sets of Annual Reports on the Telecommunications Interception Act and the Surveillance Devices Act have also been tabled over a year after the end of each respective financial year on 15 August 2018 and 14 August 2017 respectively.
20. These two reports take a considerable effort to compile. They require consultation with all interception agencies in every jurisdiction in Australia including the Australian Federal Police, the Australian Criminal Intelligence Commission, the Australian Commission for Law Enforcement Integrity, every State and Territory police force and integrity agencies. The Department is finishing these reports some months late given the need to conduct significant data cleansing from jurisdictions. The Department has now built strong relationships with every jurisdiction and will aim to complete the 18-19 Annual Reports by the end of the calendar year.
21. The tabling of these Annual Reports will occur at a time of heightened community awareness and debate around the access of telecommunications content and non-content data, noting:
- passage of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* in December 2018, and ongoing inquiries into this legislation by the Parliamentary Joint Committee on Intelligence and Security and the Independent National Security Legislation Monitor, and
 - statutory review by the Parliamentary Joint Committee on Intelligence and Security of the Data Retention obligations.
22. The 2017-18 *Telecommunications Interception Act* Annual Report will disclose that the Australian Federal Police were issued two Journalist Information Warrants in the 2017-18 reporting period under which they made 58 authorisations for telecommunications data. Publication of this information has the potential to revive recent public debate surrounding press freedoms.

Financial/systems/legislation/deregulation/media implications

23. The information contained in this submission is classified and should not be publicly released without the authority of the Department of Home Affairs. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – media@homeaffairs.gov.au.

Attachments

Attachment A *Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18*

Attachment B *Surveillance Devices Act 2004 Annual Report 2017-18*

Attachment C Draft transmittal letter

Attachment D Statement pursuant to s 34C regarding late tabling of the Annual Reports

Authorising Officer
Cleared by:
Marc Ablong PSM Deputy Secretary Policy Policy Group
Date: 27 June 2019 Ph: s. 22(1)(a)(ii)

Contact Officer Andrew Warnes, Assistant Secretary, National Security Policy Branch, Ph: s. 22(1)(a)(ii)

Through Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy Division.

CC Secretary
Deputy Secretary Corporate and Enabling
ABF Commissioner
General Counsel

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s. 22(1)(a)(ii)

From: Andrew WARNES
Sent: Tuesday, 25 June 2019 9:09 PM
To: s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: Re: Annual Report Timeline of Issues [DLM=For-Official-Use-Only]

For Official Use Only

Thanks s. 22(1)(a)(ii), very useful

Sent by Email+

For Official Use Only

From: s. 22(1)(a)(ii)
Date: Tuesday, 25 June 2019 at 11:44:48 am
To: "Andrew WARNES" s. 22(1)(a)(ii)
Cc: s. 22(1)(a)(ii)
Subject: Annual Report Timeline of Issues [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hey Andrew,

As requested, here's a timeline of the TIA & SD Act Annual Reports and issues we encountered along the way.

- **18 July 2018** – Questionnaires emailed to enforcement agencies
- **30 August 2018** – Initial deadline for agencies to respond to questionnaire. Most agencies have responded by this date.
- **16 October 2018** – ICT Division reach out to ESS to migrate the TIASAR website that consolidates the figures from agency questionnaires from AGD to Home Affairs
- **19 December 2018** – ESS provide ICT with final essential information to progress the build of TIASAR.
- **January 2019** – Home Affairs receives questionnaires from remaining agencies – ICAC NSW, TAS Police & the ACCC.
- **5-12 February 2019** – User acceptance testing on TIASAR
- **18 February 2019** – Production verification testing on TIASAR
- **19 February 2019** – TIASAR goes live
- **March 2019** – Agency figures are uploaded to TIASAR and the process to compile Annual Report figures begins.
- **April / May 2019** – TIASAR was unfortunately not perfect, and spot checking done by ESS revealed several errors the website was making pulling data from agency questionnaires. ICT fixed some issues, but I ended up going back to the questionnaires for a number of reporting requirements as the website was unreliable and asking ICT to fix the website would have delayed the report further. This significantly increased the time taken before we could ask agencies to re-confirm their figures as ESS had to perform its own analysis to confirm what we were sending back out was in harmony with the original questionnaires.
- **13 May 2019** – ESS finish collating agency figures from questionnaires and send back to agencies to confirm.
- **24 May 2019** – Initial deadline for agencies to confirm their Annual Report figures. ESS starts analysing final figures from agencies to identify discrepancies or figures worth questioning.
- **6 June 2019** – Last enforcement agency confirms their Annual Report figures.

- May / June 2019 – ESS continue to check and verify figures with several agencies.
- 21 June 2019 – The AFP supply us with the last outstanding figures required.

Please let me know if you would like any more detail on any of these points.

Thanks,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Policy Officer | Electronic Surveillance Section

National Security Policy Branch | National Security & Law Enforcement Policy Division

Department of Home Affairs

P: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)

For-Official-Use-Only

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Thursday, 8 August 2019 12:22 PM
To: s. 22(1)(a)(ii)
Subject: RE: TIASAR Timeline [DLM=For-Official-Use-Only]

For-Official-Use-Only

Thank you for this s. 22(1)(a)(i),

s. 22(1)(a)(ii)

Thanks,

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)
Policy Officer | Electronic Surveillance Section
National Security Policy Branch | National Security & Law Enforcement Policy Division
Policy Group
Department of Home Affairs
P: s. 22(1)(a)(ii)
E: s. 22(1)(a)(ii)

For-Official-Use-Only

From: s. 22(1)(a)(ii)
Sent: Wednesday, 7 August 2019 4:02 PM
To: s. 22(1)(a)(ii) R
s. 22(1)(a)(ii)
Subject: RE: TIASAR Timeline [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s. 22(1),

s. 22(1)(a)(ii)

However, I can provide insights to the Migration Project and timelines.

Planning, Initiating and Requirements Gathering: 13/11/18 – 27/11/2018
Development: 19/11/2018 – 01/02/2019

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Document #4

UAT Testing: 06/02/2019 – 12/02/2019 (originally set to start 05/02 but encountered a delay of 1 day)

Cutover: 15/02/2019 – 18/02/2019

Post-Cutover Verification Testing: 18/02/2019

Regarding the Software component. The previous version of the TIASAR Application was based on a platform called “AppMan”. This platform was unsupported within Home Affairs as it did not align with Home Affairs’ Enterprise Security Patterns.

s. 22(1)(a)(ii)

Cheers,

s. 22(1)(a)(ii)

ICT Project Manager

Technology Operations & Support Branch

Department of Home Affairs

P: s. 22(1)(a)(ii) | M: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)

For-Official-Use-Only

From: s. 22(1)(a)(ii)

Sent: Tuesday, 6 August 2019 12:39 PM

To: s. 22(1)(a)(ii)

Cc: s. 22(1)(a)(ii)

Subject: TIASAR Timeline [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s. 22(1)(a)(ii),

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s. 22(1)(a)(ii)

s.
22(1)

s. 22(1)(a)(ii)

Policy Officer | Electronic Surveillance Section

National Security Policy Branch | National Security & Law Enforcement Policy Division

Policy Group

Department of Home Affairs

P: s. 22(1)(a)(ii)

E: s. 22(1)(a)(ii)

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TALKING POINTS

Subject	TIA Act Annual Report		
Date	23 July 2019		
Type	Agency		
Media Officer:	s. 22(1)(a)(ii)	Media Ph:	s. 22(1)(a)(ii)

ISSUE

[From Jacob McMahon] The Secretary would like to see evidence that outlines how the tabling of the TIA Annual report is historically always late (including reasons why). Can you please craft up a para or two that we can use in his opening statement for estimates. It will need to outline that AGD too have always tabled the report a year or so late, meaning that the delay is not a result of the function now being in Home Affairs.

TALKING POINTS UNCLASSIFIED

- The *Telecommunications (Interception and Access) Act 1979* (TIA Act) annual report sets out information relating to the interception of communications, access to stored communications, Journalist Information Warrants and the number of authorisations made by enforcement agencies for the disclosure of telecommunications data.
- The report requires the preparation of complex data in consultation with over 20 agencies in every jurisdiction in Australia.
- The report has been a statutory requirement for a number of years, dating back to when responsibility for the TIA Act sat within the Attorney-General's Department. Two annual reports have been issued since the creation of the Department of Home Affairs in December 2017.
- The TIA Act annual reports for the last five years [from 2013/14 to 2017/18] were tabled in Parliament on average 11 months after the financial year to which the data relates.
- The Department provided a statement to the Minister, tabled in Parliament, explaining the delay in preparing the 2017/18 report. Even though the Department provided the report to the Minister late, the report was tabled on the 15th sitting day after the report should have been provided to the Minister (23 July 2019). The statutory timeframe for tabling of the report was met.
- The Department will work to provide future reports to the Minister within statutory timeframes.

CLEARANCE

Drafted by	Title	Time/Date drafted
s. 22(1)(a)(ii) [REDACTED]	Director, Electronic Surveillance Section	2pm 23 July 2019

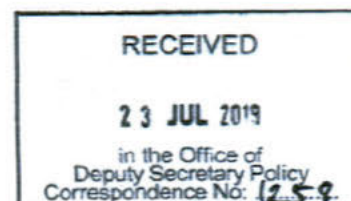
Cleared by	Title	Time/Date cleared
Andrew Warnes	Assistant Secretary National Security Policy Branch	4pm 23 July 2019
s. 22(1)(a)(ii) [REDACTED]	Director, National Security and Crisis Media,	5.30pm 23 July 2019

MO noted	Sent to MO	Noted by MO
Full Name	Time DD Month 2018	Time DD Month 2018

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Australian Government
Department of Home Affairs



Policy Group

Date: 23/07/2019

Secretary Correspondence No: 1298

Why were the 2017-18 Annual Reports for the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004* provided to the Minister late?

Response

As noted in the Department's letter to the Minister, tabled in Parliament on 4 July 2019 [Attachment A], these annual reports were not provided to the Minister within the statutory timeframes due to the considerable effort they take to compile. They require consultation with all interception agencies in every jurisdiction in Australia including the Australian Federal Police, the Australian Criminal Intelligence Commission, the Australian Commission for Law Enforcement Integrity, every State and Territory police force and integrity agencies. The Department finalised these reports some months late given the need to conduct significant data cleansing from jurisdictions.

The Department provided the *Telecommunications (Interception and Access) Act 1979* annual report to the Minister on 1 July 2019 – after the statutory deadline for provision of the report to the Minister (31 December 2018). Even though the Department provided the report to the Minister late, the report is being tabled on the 15th sitting day – today – after the report should have been provided to the Minister. The statutory timeframe for tabling of the report is being met.

The Department provided the *Surveillance Devices Act 2004* annual report to the Minister on 1 July 2019. The Minister will also table this report on 23 July 2019, within 15 sitting days of receiving the consolidated report from the Department.

When the Attorney-General's Department was responsible for these annual reports, they were tabled over a year after the end of each respective financial year on 15 August 2018 and 14 August 2017 respectively. The Department will work to provide future reports to the Minister within statutory timeframes.

Author:	s. 22(1)(a)(ii) [redacted] Director: Electronic Surveillance Section, s. 22(1)(a)(ii) [redacted]
SES Clearance:	Hamish Hansford, First Assistant Secretary: National Security and Law Enforcement Policy Division, s. 22(1)(a)(ii) [redacted]
Through:	Marc Ablong PSM, Deputy Secretary Policy s. 22(1)(a)(ii) [redacted]
Consultation:	Legal Division
Attachment A	Statement pursuant to s34C(7) of the <i>Acts Interpretation Act 1901</i>

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Australian Government
Department of Home Affairs

Statement pursuant to subsection 34C(7) of the *Acts Interpretation Act 1901* (Cth)

The Hon Peter Dutton MP
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Was this letter
copied to me?

MP

Dear Minister

25/07/2019

I write to advise you of the circumstances surrounding the delay in furnishing you with a copy of the *Surveillance Devices Act 2004 Annual Report 2017-18* (Surveillance Devices Act Report) and the *Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18* (Telecommunications Interception Act Report) by the required dates.

Relevant legislation

Subsection 104(3) of the *Telecommunications (Interception and Access) Act 1979* (Telecommunications Interception Act) provides that the Telecommunications Interception Act Report is a periodic report for the purposes of section 34C of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). Subsection 34C(2) of the Acts Interpretation Act states that where no time period is expressly stated, then the periodic report must be given to the Minister within six months after the end of the reporting period (being the end of the financial year). This means the Telecommunications Interception Act Report should have been provided to you by 31 December 2018.

The *Surveillance Devices Act 2004* (Surveillance Devices Act) requires law enforcement agencies to provide you with a report within three months of the end of the financial year (subsection 50(3)), here being 30 September 2018. You are then obliged to cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after you receive it. As a matter of practice, law enforcement agencies have provided their reports to the Attorney-General's Department and now the Department of Home Affairs which then provides you with a consolidated Surveillance Devices Act report.

Pursuant to subsection 34C(7) of the Acts Interpretation Act, having missed the dates by which the Department should have provided you with the Surveillance Devices Act Report and the Telecommunications Interception Act Report, the Department is required to provide you with a statement in writing explaining why the reports were not furnished to you as required. The Acts Interpretation Act further requires you to cause a copy of the statement to be laid before each House of the Parliament within three sitting days of that House after the day on which you receive it.

Reason for delay

The reason why these reports were not furnished within the requisite timeframes is due to the considerable effort they take to compile. They require consultation with all interception agencies in every jurisdiction in Australia including the Australian Federal Police, the Australian Criminal Intelligence Commission, the Australian Commission for Law Enforcement Integrity, every State and Territory police force and integrity agencies. The Department is finishing these reports some months late given the need to conduct significant data cleansing from jurisdictions.

We note that the past two sets of these Annual Reports have previously been tabled over a year after the end of each respective financial year on 15 August 2018 and 14 August 2017 respectively.

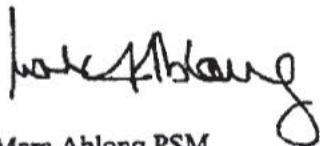
The Department has strong relationships with every jurisdiction and will work to complete future reports within the statutorily required timeframes.

Meeting of tabling obligations

The Department will ensure the Annual Reports are presented for tabling before each House of the Parliament within 15 sitting days of your receipt of them, in accordance with the Acts Interpretation Act.

Also, in compliance with the Acts Interpretation Act, we will arrange for copies of this correspondence to be presented to the House of Representatives Table office and Senate Table Office for tabling in Parliament, within three days of the next sitting, on your behalf.

Yours sincerely



Marc Ablong PSM
Deputy Secretary Policy
Department of Home Affairs

27 June 2019



TALKING POINTS

Subject	Tabling of the <i>Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18</i> and the <i>Surveillance Devices Act 2004 Annual Report 2017-18</i>		
Date	22 July 2019		
Type	Ministerial		
Media Officer:	s. 22(1)(a)(ii)	Media Ph:	s. 22(1)(a)(ii)

ISSUE

The Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18 and Surveillance Devices Act 2004 Annual Report 2017-18 is scheduled to be tabled on 23 July 2019, having been approved by the Minister. The reports are being tabled over a year after the end of the 2017-18 reporting period.. This has provoked criticism in the media and from industry. Previous annual reports have also been tabled over a year after the end of the reporting period.

TALKING POINTS UNCLASSIFIED

- The *Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18* and *Surveillance Devices Act 2004 Annual Report 2017-18* have been tabled and are published for public scrutiny.
- These reports are part of the Government's ongoing commitment to transparency and accountability.

Telecommunications (Interception and Access) Act 1979 Annual Report 2017-18

- The *Telecommunications (Interception and Access) Act 1979* (TIA Act) protects the privacy of Australian citizens by prohibiting the interception of communications and access to stored communications.
 - The *Telecommunications Act 1997* also prohibits the disclosure of telecommunications data.
- The TIA Act provides important exceptions for law enforcement, integrity and security agencies to access information held by communication providers to investigate criminal offences and threats to safety and security.
- The TIA Act annual report sets out information relating to the interception of communications, access to stored communications, and the number of authorisations made by enforcement agencies for the disclosure of telecommunications data.
- The utility of these powers is underlined by the fact that in 2017-18 the use of interception contributed to 2,429 arrests, 5,415 prosecutions, and 3,516 convictions.
 - Access to stored communications resulted in 412 arrests, 611 proceedings, and 356 convictions during the reporting period.

Surveillance Devices Act 2004 Annual Report 2017-18

- The *Surveillance Devices Act 2004* (SD Act) provides a legislative regime for Commonwealth agencies to use surveillance devices and authorises state and territory law enforcement agencies to use surveillance devices under the Commonwealth regime in defined circumstances.
- The SD Act annual report sets out information relating to agencies' use of surveillance devices during the reporting period.
- The utility of these powers is underlined by the fact that in 2017-18 the use of surveillance devices contributed to 173 arrests, 109 prosecutions and 37 convictions.

If asked – Why have the reports been published so late?

- These reports require the preparation of complex data in consultation with over 20 agencies in every jurisdiction in Australia.
- The Department has provided a statement to the Parliament explaining the delay in preparing the reports for the Minister.
 - The Department provided the TIA Act annual report to the Minister on 1 July 2019 – after the statutory deadline for provision of the report to the Minister (31 December 2018).
 - The Minister tabled the TIA Act annual report on 23 July 2019. This is 15 sitting days from the date the Department should have provided the TIA Act annual report to the Minister (31 December 2018).
- The Department provided the SD Act annual report to the Minister on 1 July 2019. This Minister also tabled this report on 23 July 2019, within 15 sitting days of receiving the consolidated report from the Department.
- The Department will work to provide future reports to the Minister within statutory timeframes.

If asked – How many Journalist Information Warrants have been granted since the amendments to the TIA Act were passed in 2015 and what were they for?

- Journalist Information Warrants were introduced under reforms to the TIA Act in 2015, in recognition of the public interest in protecting journalists' sources, while ensuring agencies have the investigative tools necessary to protect the community.
- The number of these warrants is contained in the TIA annual reports published since their introduction, which are publicly available on the Home Affairs website.
[\[www.homeaffairs.gov.au/about-us/our-portfolios/national-security/lawful-access-telecommunications/telecommunications-interception-and-surveillance#content-index-1\]](http://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/lawful-access-telecommunications/telecommunications-interception-and-surveillance#content-index-1)]

If asked – Will future reports contain statistics on the use of the industry assistance regime under the Assistance and Access legislation?

- Future TIA Act annual reports will provide information and statistics on the use of technical assistance requests, technical assistance notices, and technical capability notices.
 - Law enforcement and national security agencies were granted the power to use this industry assistance framework with the commencement of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* on 9 December 2018.

BACKGROUND NOT FOR PUBLIC RELEASE

There has been recent media interest in Journalist Information Warrants. None were issued in 2016/17 and two were issued in 2017/18. 58 authorisations for telecommunications data were made under the two Journalist Information Warrants issued in 2017/18.

With regard to the delay in publishing the report, further background is provided in the accompanying submission MS19-001525.

CLEARANCE

Drafted by	Title	Time/Date drafted
s. 22(1)(a)(ii)	Public Affairs Officer, National Security and Crisis Media	10:25am 3 July 2019

Cleared by	Title	Time/Date cleared
Andrew Warnes	AS, National Security Policy	9:00pm 22 July 2019
s. 22(1)(a)(ii)	Director, National Security and Crisis Media	

MO noted	Sent to MO	Noted by MO