



**THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS**

Ref No: MC19-016192

The Hon Elise Archer MP
Attorney-General
Minister for Justice
Minister for Corrections
Minister for Building and Construction
Minister for the Arts
Minister for Racing
State Member for Clark
GPO Box 123
HOBART TAS 7001

Elise

Dear Attorney-General

Thank you for your correspondence of 29 July 2019 to the Attorney-General, the Hon Christian Porter MP, requesting that state and territory Australian Consumer Law (ACL) regulators be declared as 'enforcement agencies' under the *Telecommunications (Interception and Access) Act 1979 (Cth)* (the Act). Your correspondence has been referred to me as the Minister for Home Affairs as the matter falls within my portfolio responsibilities.

This request was initially brought to the attention of the Attorney-General in correspondence in January 2018 from the Minister for Consumer Affairs in Tasmania, the Hon Guy Barnett MP, in his role as the Chair of the Legislative and Governance Forum on Consumer Affairs. As previously noted by the Attorney-General, following recommendations of the Parliamentary Committee on Intelligence and Security of the 44th Parliament, the Commonwealth Government progressed amendments through the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015 (Cth)* to ensure that access to telecommunications data is circumscribed to a prescribed list of agencies in the Act. These amendments reinforced privacy protections by ensuring access to telecommunications data is limited to those agencies with a demonstrated, clear and scrutinised need to access data for their investigatory or operational needs.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

You have asked for ACL regulators to be declared as 'enforcement agencies' under the TIA Act as per the request in Mr Barnett's correspondence to the Attorney-General. As the Minister for Home Affairs, I have the power to declare additional agencies to be 'enforcement agencies' subject to consideration specified criteria in the Act. However, this declaration mechanism is only temporary, with declarations expiring after 40 sitting days of either House of the Federal Parliament. Legislative amendments would be required to create a permanent list of enforcement agencies under the Act, and to include the ACL regulators on this list.

The Department of Home Affairs is currently working with other state and territory agencies who have asked to be added as 'enforcement agencies' by legislative amendment and, in the meantime, to explore the feasibility and suitability of a temporary declaration. The Department can also work with the ACL regulators on your request as part of this broader project.

I would also encourage the ACL regulators to make a joint submission to the current review of the mandatory data retention regime (the Review) by the Parliamentary Joint Committee on Intelligence and Security, which is considering issues surrounding agency access to telecommunications data. As discussed above, the data retention legislation limited the range of agencies permitted to access telecommunications data in accordance with recommendations from a previous review by the Committee.

A submission to the Review would be an opportunity for the ACL regulators to provide the Committee with further details of the importance of telecommunications data to the performance of their investigatory function. Any legislative amendment to create or amend a permanent list of 'enforcement agencies' under the Act would also need to be referred to the Committee for review. A submission from ACL regulators to the Committee's data retention review could be of assistance in this respect.

The Committee is due to hand down its data retention review report in April 2020. Further details regarding the review are available on the Committee's website at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security.

The action officer in the Department in relation to this matter is s22(1)(a)(ii) Director of the Electronic Surveillance Section, who can be contacted at: s22(1)(a)(ii) @homeaffairs.gov.au or on (02) s22(1)(a)(ii).

Thank you for raising this matter.

Yours sincerely



PETER DUTTON