



Industry Assistance: Overview

Does the interception agency require assistance from a designated communications provider (provider)?

Yes

Does the assistance relate to the enforcement of serious offences (3 years imprisonment or more) or, in the case of ASIO, the safeguarding of national security? Alternatively, does the voluntary assistance relate to a relevant objective of ASIS or ASD?

Yes

Does the agency have the appropriate warrant or authorisation? These powers do not replace the need for a warrant or authorisation for such things as accessing content or data.

Yes

A warrant or authorisation is not required.

Consultation is conducted with the provider.

Is the provider currently capable of providing the assistance sought?

Yes

No

Does the provider want to provide assistance voluntarily?

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No

Yes

Yes

No

Is the assistance reasonable, proportionate, practicable and technically feasible? See further decision-making criteria.

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The Attorney-General gives the provider a **consultation notice** setting out the proposal to give a **Technical Capability Notice (TCN)**.

Yes

Yes

A **Technical Assistance Notice (TAN)** is issued (approval of the AFP Commissioner required for S&T police) on a no profit/no loss basis unless otherwise negotiated. Prior consultation required.

A **Technical Assistance Request (TAR)** is issued by the interception agency and the agency and provider may contract for assistance.

Does the provider dispute that the **TCN** should be given?

Yes

No

An assessment process is carried out by an independent technical expert and a retired judge. The Attorney-General must consider the outcome of the assessment in determining to issue the **TCN**.

The agency must advise the provider of their obligations relevant to the notice and their right of complaint to the Commonwealth Ombudsman or IGIS (or S&T oversight body, as the case may be). There is no right of complaint in the case of TARs.

The Commonwealth Ombudsman or IGIS is notified that a **TAR, TAN** or **TCN** has been issued (and must be notified if they are varied, extended or revoked). Any assessment report from an independent panel concerning a **TCN** must also be given to the Commonwealth Ombudsman or IGIS.

Are the **TCN's** requirements reasonable, proportionate, practicable and technically feasible? See further decision-making criteria. Also, has the Attorney-General had regard to any report of an independent panel or a submission by the provider?

Yes

A **TCN** is issued by joint approval of the Attorney-General and Minister for Communications on a no-profit/no-loss basis unless otherwise negotiated.