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INDEPENDENT NATIONAL SECURITY LEGISLATION MONITOR

INDEPENDENT REVIEW OF ENCRYPTION LEGISLATION COMMENCES

Following the delivery of the report on citizenship-loss provisions to the Attorney-General, copied to the Prime Minister, on 15 August 2019, the Independent National Security Legislation Monitor (INSLM), [Dr James Renwick CSC, SC](#), has commenced the public consultation phase of the review of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* ([TOLA Act](#)). The Act was referred to the INSLM by the Parliamentary Joint Committee on Intelligence and Security ([PJCIS](#)), the first such referral in the Committee's history.

The PJCIS has requested the INSLM report to the Committee by **1 March 2020**.

Formally launching the public consultation phase of the Review, Dr Renwick said:

The Assistance and Access Act has attracted considerable public attention, both within Australia and internationally. Governments around the world are facing increasing challenges posed by ubiquitous encryption that mask a variety of illegal activities. However, public consent to intrusive laws depends on public trust. Equally, the public expect that agencies will keep them safe, but not exercise powers that are needlessly intrusive.

As my distinguished UK-counterpart, the Independent Reviewer of Terrorism Legislation, David Anderson QC, now Lord Anderson, said in his report, A Question of Trust, 'in an age where trust depends on verification rather than reputation, trust by proxy is not enough. Hence the importance of clear law, fair procedures, rights compliance and transparency'.

The PJCIS has requested that I specifically consider whether the Act achieves that balance: whether the Act contains appropriate safeguards for protecting the rights of individuals and remains proportionate and necessary.

In conducting this review, I will engage closely with industry, civil society and government agencies through a variety of consultations, publicly and privately. I recognise that industry have legitimate commercial in-confidence concerns and arrangements can be made to preserve those sensitivities.

Through these consultations, I hope to develop a series of recommendations which will assist the PJCIS in its concurrent consideration of the Act.

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Consultations

The INSLM is currently seeking submissions to the Review. Submissions are requested by **Friday, 13 September 2019**, and can be uploaded via the 'Online Submission Form' on the [INSLM website](#) or sent to INSLM@inslm.gov.au.

The INSLM will further consult with interested stakeholders through a series of private meetings and public hearings. Public hearings are expected to be held later this year, and details will be announced closer to the date.

About the Independent National Security Legislation Monitor

The INSLM is an independent officeholder appointed by the Governor-General under the INSLM Act; and is responsible for the ongoing review of the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation. The INSLM has coercive powers, can compel answers to questions and has access to all relevant material, regardless of national security classification. INSLM reports are provided to the Attorney-General, the Prime Minister and the PJCIS and are tabled promptly in Parliament.

Please refer to the [INSLM website](#) for further information.

About the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*

The Act comprises five schedules which introduce measures to better deal with increasingly serious challenges posed by ubiquitous encryption. Although Schedule 1 has received the most public attention, the INSLM is required to examine all five schedules and welcomes submissions on all schedules.

Schedule 1 establishes a suite of 'industry assistance measures' that permits intelligence and law enforcement agencies to both request and compel industry to provide technical assistance to manage these challenges.

Schedule 2 enables federal, state and territory law enforcement agencies to obtain covert computer access warrants when investigating specific Commonwealth offences.

Schedules 3 and 4 amended the search warrant framework under the Crimes and Customs Acts, enabling law enforcement agencies to collect evidence from electronic devices.

Schedule 5 provides for new powers which enable ASIO to compel a person to provide assistance in accessing data held on a device. It also provides that where a person has voluntarily provided ASIO assistance, they may be conferred immunity from civil liability associated with that assistance.

The then Bill was introduced in Parliament on 20 September 2018 and was immediately referred to the PJCIS for review. Following a request from the Minister for Home Affairs for accelerated consideration, the PJCIS presented its report on 5 December 2018. An amended Bill passed both Houses one day later. On passing the Bill, the Senate immediately referred

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the new Act to the PJCIS, which reported to the Parliament on 3 April 2019. During its second review, the PJCIS referred the Act to the INSLM for independent review. The INSLM's review will seek to assist the PJCIS in its third review of the legislation, due for report by 13 April 2020. The PJCIS reports are available from the [Committee's website](#).

FOR ENQUIRIES ON THE INSLM AND THIS REVIEW

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