



Law Council
OF AUSTRALIA

Office of the President

20 February 2019

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6201
Parliament House
CANBERRA ACT 2600

By email: pjicis@aph.gov.au

Dear Chair

Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (Cth)

1. Thank you for the opportunity for the Law Council to provide an additional written submission to the Parliamentary Joint Committee on Intelligence and Security's (**the Committee**) inquiry into the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (Cth)* (**the Assistance and Access Act**).
2. This submission provides comment on the amendments sought to be introduced by the Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 (**the Miscellaneous Amendments Bill**), as well as the amendments to the Miscellaneous Amendments Bill introduced by the Opposition.
3. The Law Council notes that while the amendments proposed by the Miscellaneous Amendments Bill would be an improvement to the changes to the Telecommunications Act as introduced by the Assistance and Access Act, the amendments do not address all of the matters raised in the Law Council's submission to the Committee dated 23 January 2019 (**preliminary submission**).
4. In particular, the amendments to the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (Cth) (**the Assistance and Access Bill**) introduced in the Senate in December 2018, but never passed, included an amendment to introduce judicial oversight of the issuance of notices under Part 15 of the *Telecommunications Act 1997 (Cth)* (**Telecommunications Act**).¹ However, this amendment has not been included in the amendments to the Miscellaneous Amendments Bill. The Law Council reiterates that the Act should require judicial oversight for the issuance of Schedule 1 industry assistance notices.

¹ Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (Cth) sch 1 items (1)-(12).

The Bill

5. The Miscellaneous Amendments Bill proposes to amend paragraph 6(1D)(b) of the *Independent National Security Legislation Monitor Act 2010* (Cth) to require the Independent National Security Legislation Monitor (**INSLM**) to review the Assistance and Access Act before the end of the 18-month period beginning on the date the Assistance and Access Act received Royal Assent on 8 December 2018.² The Law Council considers that this amendment was required due to the hasty manner in which the Assistance and Access Act was passed in December 2018. Nonetheless, as expressed in the Law Council's preliminary submission, the Law Council supports the review of the Assistance and Access Act by the expert body.³
6. Schedule 2 of the Miscellaneous Amendments Bill proposes to reintroduce the Australian Commission for Law Enforcement Integrity and state and territory independent commissions against corruption to the list of agencies deemed to be an 'interception agency' for the purposes of Part 15 of Telecommunications Act. The Law Council recognises that the exclusion of these agencies from the list of 'interception agency' in the Assistance and Access Act, as passed by both houses in December 2018, was consistent with the Committee's recommendation in its Advisory Report on the Assistance and Access Bill.⁴ The Law Council acknowledges the Committee's statement that the Miscellaneous Amendments Bill proposes to reinclude the above-mentioned agencies in the list of 'interception agency' on its recommendation.⁵ The Law Council does not oppose this amendment.

The Opposition's amendments to the Miscellaneous Amendments Bill

7. On 14 February 2019, amendments introduced by the Opposition to section 317ZG of the Telecommunications Act, and the related definitions in 317B, were passed by the Senate.⁶ The Law Council supports these amendments to 'systemic weakness or systemic vulnerability' in the Telecommunications Act, as was noted in the Law Council's preliminary submission.⁷
8. Further amendments to the Miscellaneous Amendments Bill, yet to be voted on in the Senate, include amendments to limit technical assistance requests (**TAR**) and technical assistance notices (**TAN**) to 'listed acts or things'.⁸ In the Law Council's preliminary submission, the Law Council supported the Government amendments to the Assistance and Access Bill which sought to render the 'listed acts or things' exhaustive.⁹

² Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 sch 1 item 1.

³ Law Council of Australia, Submission No 4 to the Parliamentary Joint Committee on Intelligence and Security, *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (23 January 2019) 27.

⁴ Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Advisory Report on the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018*, December 2018, ix [2.4].

⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 12 February 2019, 76 (Tony Smith).

⁶ Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 sch 3 items 1-6.

⁷ Law Council of Australia, Submission No 4 to the Parliamentary Joint Committee on Intelligence and Security, *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (23 January 2019) 27-31.

⁸ Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 sch 4 items 1-4.

⁹ Law Council of Australia, Submission No 4 to the Parliamentary Joint Committee on Intelligence and Security, *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (23 January 2019) 24.

The proposed amendments to the Miscellaneous Amendments Bill appear to have the same intended effect and are therefore supported by the Law Council.

9. The Law Council supports the proposed amendment to the Miscellaneous Amendments Bill to require the Australian Federal Police Commissioner (**AFP Commissioner**) to apply to the same statutory criteria, and to undertake the same decision-making process, as would apply if the AFP Commissioner were the original issuing authority of the TAN.¹⁰
10. The Law Council supports the proposed amendment to the Miscellaneous Amendments Bill which would not allow the Home Affairs Minister to delete certain information from a report prepared by the Commonwealth Ombudsman before tabling the report in Parliament.¹¹ The Law Council considers that this amendment strengthens the oversight and accountability measures for the operation of Part 15 of the Telecommunications Act.
11. Please contact Dr Natasha Molt, Director of Policy, on (02) 6246 3754 or at natasha.molt@lawcouncil.asn.au in the first instance, if you require further information or clarification.

Yours sincerely



Arthur Moses SC
President

¹⁰ Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 sch 5. See Law Council of Australia, Submission No 4 to the Parliamentary Joint Committee on Intelligence and Security, *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (23 January 2019) 44-5.

¹¹ Telecommunications and Other Legislation Amendment (Miscellaneous Amendments) Bill 2019 sch 7.