

Introduction

Referral and conduct of the Inquiry

- 1.1 In March 2013, the Australian Securities and Investments Commission (ASIC) used powers available under s.313 of the Telecommunications Act 1997 to disrupt websites perpetrating financial fraud against Australians. This action led to the inadvertent disruption of a number of online services and raised questions regarding the transparency and accountability of the use of s.313 by government agencies to disrupt illegal online services.
- 1.2 In particular, concerns were raised that website owners and users were generally unaware that:
 - an illegal online service had been disrupted;
 - why it had been disrupted;
 - who requested the action taken; and
 - who could be contacted to appeal the decision.
- 1.3 With this in view, on 14 July 2014 the Minister for Communications, the Hon Malcolm Turnbull MP, referred the use of s.313(3) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services to the Committee for inquiry and report.
- 1.4 The Committee was asked to consider:
 - (a) which government agencies should be permitted to make requests pursuant to section 313 to disrupt online services potentially in breach of Australian law from providing these services to Australians
 - (b) what level of authority should such agencies have in order to make such a request

- (c) the characteristics of illegal or potentially illegal online services which should be subject to such requests, and
 - (d) what are the most appropriate transparency and accountability measures that should accompany such requests, taking into account the nature of the online service being dealt with, and what is the best/appropriate method for implementing such measures:
 - a. Legislation
 - b. Regulations, or
 - c. Government policy.
- 1.5 The Committee was tasked to provide its final report by 1 July 2015.
- 1.6 Over the course of the Inquiry, the Committee received 21 submissions from organisations, government agencies and individuals. A list of submissions is at Appendix B. In addition, between October 2014 and March 2015, the Committee undertook six public hearings in Canberra and Sydney. Details of the public hearings, including a list of witnesses, are at Appendix C.

Brief overview of section 313

- 1.7 Section 313 provides Australian government agencies (including state government agencies) with the ability to obtain assistance from the telecommunications industry when upholding Australian laws. Amongst other things, it enables government agencies to request Internet Service Providers (ISPs) to provide such help as is reasonably necessary to disrupt the operation of illegal online services by blocking access to websites. Requests for assistance are not covered by warrants or court orders but rather the broader obligation of industry to comply with the law. This gives ISPs some flexibility in their response.
- 1.8 The Australian Federal Police (AFP) administers the Access Limitation Scheme which uses s.313 to block domains (websites) which contain the most severe child sexual abuse and exploitation material using the INTERPOL 'Worst of' child abuse list. When a user seeks to access one of these sites, they are provided a block page that displays certain information, including reasons for the block and a link to INTERPOL where any dispute arises over the inclusion of the site on the INTERPOL list. Other Commonwealth agencies have also in the past used s.313 to prevent the continuing operation of online services in breach or potentially in breach of Australian law (e.g. sites seeking to perpetrate financial fraud).

- 1.9 Section 313 deals with the obligations of carriers and carriage service providers. Subsections 1 and 2 deal with preventing the use of telecommunications networks in the commission of offences. Subsections 3 and 4 concern the giving of assistance to government agencies. Subsections 5 and 6 provide protection for carriers and carriage service providers, and their employees, from liability for actions undertaken under s.313. Subsection 7 refers to the giving of help under certain circumstances. For the provisions of s.313 see Appendix A.
- 1.10 With regard to the disruption of illegal online services, subsection 3 is the operative provision. It states:
- (3) A carrier or carriage service provider must, in connection with:
 - (a) the operation by the carrier or provider of telecommunications networks or facilities; or
 - (b) the supply by the carrier or provider of carriage services; give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary for the following purposes:
 - (c) enforcing the criminal law and laws imposing pecuniary penalties;
 - (ca) assisting the enforcement of the criminal laws in force in a foreign country;
 - (d) protecting the public revenue;
 - (e) safeguarding national security.

Structure of the report

- 1.11 Chapter 2 of the report focusses upon the use of s.313 by government agencies. It examines the need for s.313, its use by government agencies to date, the need for compulsion in enforcing requests for assistance, and various criteria for more strictly defining the use of s.313 – which agencies can use it, what offences it can be used against, and what level of authority should authorise requests. The chapter also briefly examines the ASIC incident and its impact.
- 1.12 Chapter 3 examines a range of issues surrounding transparency and accountability surrounding the use of s.313, including the use or otherwise of warrants and judicial oversight, the use of block pages, review and appeal mechanisms, reporting and oversight.

- 1.13 Chapter 4 considers the technical issues surrounding the use of s.313, including the technical limits of disrupting online activity and means of avoiding the disruption of non-target websites.
- 1.14 Chapter 5 discusses the relative merits of using legislation, regulation or policy to improve/amend the operation of s.313, including questions surrounding the applicability of s.313 for requesting the disruption of websites and the proposal put forward by the Department of Communications for the development of whole-of-government guidelines for the use of s.313.