April 2020

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) review of the amendments made by the Telecommunications Legislation Amendment (International Production Orders) Bill 2020.

While I applaud the intent of this legislation to foster international cooperation in the investigation and collection of evidence in serious criminal matters, I consider that the approach taken by these proposed amendments is unnecessarily complex and overly broad.

Some key requirements for the operation of an International Production Order (IPO) regime must include:

- At a macro level, an IPO must operate within the confines of existing domestic legislation governing enforcement agencies in the target jurisdiction.
- Existing domestic legislation should not require modification to support an IPO framework.
- The IPO framework must not provide any broadening of the powers available within the domestic legislation. They must not be permitted to be used investigate activities which are not serious crimes under existing domestic legislation.
- Authorisation and reporting requirements of existing domestic legislation must be complied with.
- Any penalties for failure to cooperate must only be those defined by domestic legislation.
- This legislation should not list the entities which may be required or permitted to participate in the IPO framework. The entities which may be required to participate in the IPO framework should be negotiated and defined in each bi- or multi- lateral agreement. The list of agreements and their participating entities must be public knowledge (including the agreements in which the security agencies participate).
- Agreements must only be permitted between sovereign nations. It is not practical to implement agreements between (for example) individual states, counties, companies, or individuals within a nation.
- IPO agreements may nominate only recognised law enforcement entities of the participating nations as being able to generate or execute IPOs.
- Foreign entities which may generate an IPO should not need to understand the legal jurisdiction framework which operates domestically, and domestic entities which may generate an IPO should not need to understand the intricacies of foreign jurisdictions. This would indicate that there should be only 2 agencies (in each nation participating in an agreement) nominated to communicate an IPO between participating entities : one for investigations of national security; and one for the rest (serious criminal cases). In Australia, these should probably be the Australian Security and Intelligence Organisation (ASIO), and the Australian Federal Police (AFP). These agencies would effectively be a national clearing house for IPOs issued and received, and would be responsible for reviewing the domestic legality of the IPO, negotiating any necessary amendments with the IPO requester, and forwarding the IPO to a relevant domestic authority for execution.
- A target jurisdiction enforcement agency may refuse, or reduce the scope of an IPO in line with domestic legislation.

- Foreign entities must not be permitted to perform any action or evidence collection within the domestic environment. All actions and material produced by execution of an IPO must be channelled via the domestic authority charged with executing the IPO.
- The target of an IPO (eg. a company) need only respond to IPOs issued by enforcement agencies in the jurisdiction in which the requested material exists. Targets (eg. companies) should not be expected to respond to IPOs issued by enforcement agencies which do not have domestic jurisdiction.
- Receipt of an IPO should not automatically be prioritised over domestic investigations. This would indicate that sufficient resources must be available to domestic agencies to process and execute IPOs in addition to their domestic workload.

**Conclusion**

It is my view that the proposed amendments are unnecessarily complicated and overly broad.

Ideally, the implementation of an IPO framework should not impact domestic legislation. The IPO framework should be established by a stand-alone legislative bill. Any actions permitted under an IPO should operate wholly within the framework of domestic legislation applicable to the actions being requested.

Further, should (minor) amendments be required to existing domestic legislation, they should be deferred until the committee has ruled on :

- it’s previous reviews of the Telecommunications and Other Legislation (Assistance and Access) Act 2018,
- its’ press freedom review, and
- possibly also until after a review of the meta-data retention and access legislation;

  all of which will potentially impact the same legislation.

Only once our domestic legislation in these areas is settled following those earlier reviews should consideration be given to any further amendments to it to support an IPO framework.

Regards,

Peter Jardine.
(Software Engineer - retired)