

Parliamentary Joint Committee on Intelligence and Security

Attorney-General's Department

Hearing date: 18 November 2022

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James Paterson asked the following question:

Ms Atkinson: It's very difficult for us to make that assessment in the absence of lived experience, but let's look, at a really general level, at the experience of the Australian Commission for Law Enforcement Integrity, which is the existing Commonwealth-level anticorruption agency. Over the past three years, ACLEI have made two applications for stored communications warrants, 831 applications for disclosure of telecommunications data and 162 authorisations for the disclosure of prospective telecommunications data. ACLEI's jurisdiction is obviously much more limited than the National Anti-Corruption Commission's jurisdiction would be, so we would anticipate that the volume of the use of these powers would be significantly larger for the commission.

Senator PATERSON: Were those annual figures?

Ms Atkinson: They were over the past three years, and those figures are in ACLEI's submission to the committee.

Senator PATERSON: What are the annual figures?

Ms Atkinson: I don't have the annual figures to hand, but we can provide those on notice.

The response to the honourable senator's question is as follows:

The table below provides a breakdown of the use of stored communication and telecommunication data powers by ACLEI from 1 July 2019 until 17 October 2022, by financial year. The information in the table for the 2018-19 to 2020-21 financial years is collated from *Telecommunications (Interception and Access) Act 1979* annual reports prepared by the Department of Home Affairs. The information for the 2021-22 financial year is taken from the ACLEI's submission to the PJCIS.

The department notes that the figures below do not include warrants issued to the Australian Federal Police or other agencies in the course of investigations conducted jointly with ACLEI.

ACLEI	18/19	19/20	20/21	21/22
Applications for stored communications warrants	0	2	0	1
Authorisations for disclosure of telecommunications data	393	263	175	265
Authorisations for the disclosure of prospective telecommunications data	88	34	40	75
Applications for telecommunications interception warrants	11	3	0	N/A

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James Paterson asked the following question:

Senator PATERSON: When do you think the [electronic surveillance reform] process will be concluded? Ms Atkinson: I think we might need to take that on notice. I understand that the process is well advanced and that the aim is to have draft legislation available for public consultation prior to going into parliament next year.

The response to the question is as follows:

The Government is continuing to consider holistic reform to Australia's electronic surveillance legislative framework, taking into account the recommendations from the Report of the Comprehensive Review of the Legal Framework of the National Intelligence Community and ongoing engagement with relevant stakeholders.

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James Paterson asked the following question:

Senator PATERSON: And the only minimum requirements for the Attorney-General to designate a member of the AAT to be able to issue a warrant under the TIA Act is that they are a lawyer and they have five years of service?

Mr Reeve: I believe that's correct.

Senator PATERSON: So it wouldn't prevent the Attorney-General designating an ordinary member of the AAT—that is, not a senior member, not a deputy president, not a president. An ordinary member of the AAT can be designated, provided they are a lawyer and have five years legal experience.

Mr Reeve: That is correct.

Senator PATERSON: Thank you. Before the other inquiry, when this was an issue, some witnesses asserted that it had to be a senior member of the AAT, but I don't see that on the evidence of the legislation.

Ms Atkinson: We can check that and, if required, we can provide alternative information on notice, but I think we're in agreement with you.

The response to the question is as follows:

An ordinary member of the AAT can be designated to issue warrants under the TIA Act, provided they are a lawyer and have five years legal experience.

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James Paterson asked the following question:

Senator PATERSON: Speaking for myself, I don't want to see the NACC use a trial and error process to determine how they handle classified or sensitive information. That would not be adequate. Chair, they're my only questions for Dr Stoltz. But I forgot to put on the record earlier some questions on notice to the Attorney-General's Department. As Mr Dreyfus did when he was a member of this committee, I wonder if the Attorney-General's Department could come back on notice in relation to the specific recommendations made by the Law Council and whether there would be any adverse consequences for the committee recommending any of those recommendations.

The response to the question is as follows:

Recommendations made by the Law Council of Australia in relation to the *Telecommunications (Interception and Access) Act 1979* (TIA Act) (limiting issuing authorities, expanding the role of the Commonwealth Ombudsman, including a separate necessity and proportionality test, and raising thresholds) are being considered as part of holistic reform to Australia's electronic surveillance legislative framework.