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

Submitted electronically at pjcis@aph.gov.au

28 June 2019

To Whom It May Concern

RE: Telecommunication and Other Legislation Amendment (Assistance and Access) Act 2018

StartupAUS welcomes the opportunity to continue to be involved in the ongoing review of the Assistance and Access Act 2018.

I enclose our formal submission to the PJCIS below. As little has changed from a legislative standpoint, it remains largely unchanged from the submission we made in February 2019.

I should note, however, that concern about the Act and its far-reaching impact continues to grow, and businesses continue to be adversely affected. Our initial submission had the backing of some Australian technology leaders, however after it was published we had roughly 500 members of the technology community ask to add their name, which we have done.

The suggested principles of amendment contained in this submission are by design a practical compromise, intended to be actionable without compromising the intent of the Act.

Remove the possibility for TCNs to be issued to individual employees

A significant concern for the technology sector is that a TCN may be issued to an employee of a technology company who is then faced with harsh penalties if they disclose this fact to those with whom they work. Founders and managers are then left unable to have visibility over their own business, and employees are put in an impossible position, unable to inform their employer of their obligations or seek legal advice provided by their employer.

It is our understanding after consultation with Home Affairs that this is not the intention of the Act, yet we believe that removing the possibility from the legislation would do a lot to reassure the tech sector that such action will not occur.

A TCN may only be issued to Designated Communications Providers. [Section 317C](#) contains 15 definitions for this term, which include individuals - eg:

6. The person develops, supplies or updates software used, for use, or likely to be used, in connection with: (a) a listed carriage service; or (b) an electronic service that has one

12. The person: (a) installs or maintains customer equipment in Australia; and (b) does so otherwise than in the capacity of end-user of the equipment

The [Explanatory Memorandum](#) also makes it clear that individuals may be the subject of a TCN.

29. Individuals, as well as body corporates, may be designated communications providers.

We understand that in some cases an individual may be operating alone, and therefore the legislation needs to encompass that possibility. **However, it must be explicitly stated within the legislation that where a company is providing a digital product or service, the company itself must be defined as the Designated Communications Provider, and individual employees may only be engaged internally at the direction of management to assist with a TCN.**

Reduce the breadth of organisations that may be regarded as a Designated Communications Provider.

The Explanatory Memorandum issued by Parliament highlights that a key objective of the Act is to enhance cooperation assistance from key companies in the global communications supply chain. However, the actual definition of designated communications provider is not limited to service providers supporting the communications industry. Rather, the term encompasses any provider of electronic services with one or more end-users in Australia. **Effectively, this includes any technology provider that offers technology designed to connect to the internet, whether or not the service is designed to support communications as a market segment.** This is in stark contrast with the UK's investigatory powers act and laws within the US, which both limit the government's authority to compel such cooperation to service providers whose service specifically supports communications, including technologies displacing traditional telecommunications services (eg, VoIP).

The upshot of this is that companies with products that support business operations, provide entertainment, monitor health and well-being or a myriad of other applications positioned outside of the communications vertical now find themselves bearing the collateral costs of being regulated as though they are doing business in this vertical. Customers entrust sensitive personal and business information to digital service providers when they use these products, and the ability of third parties, including government agencies, to access this information is of paramount concern. In this way, the commercial impact of such a broad application of the Act is unacceptably large.

As it is currently written, the Act effectively applies to anything connected to the internet. **The definition of service providers covered by this Act should be narrowed to reflect the nature of the services the government is most interested in** (ie, communication providers).

Increase oversight and provide limits on use.

The Act has little in the way of substantive appeal or review for situations in which the powers of the act may be applied inappropriately. Unlike other Western countries, Australia lacks a civil rights framework recognising an individual's right to privacy, which would provide a critical check on laws exercised in the name of the national interest. Government authorities in the United States and UK have exercised powers in the name of national security, but those powers are always limited and informed by individual rights to privacy and/or unreasonable search and seizure, as read into the U.S. Constitution vis-a-vis the Bill of Rights or the Charter of Fundamental Human Rights of the European Union in the UK. Without this avenue, as well as the lack of judicial review on the merits of whether a TAR, TAN or TCN is appropriate, individuals are left with little comfort that the power conferred under the Act would not be used sweepingly in the interest of national security.

We recognise the Australian government has introduced terms like "systemic weakness" and "reasonable and proportionate" with the intention of limiting the exercise of their power under the Act. But these limitations are largely toothless, for a number of reasons. Firstly, the terms are not clearly defined within or without the Act itself. Secondly, and as noted earlier, there is no individual standing or right of redress under Australian law - if an individual's data is improperly exposed, there is no framework to inform whether compromise of that individual's right is proportional to the purported national security interest. Thirdly, review of exercise of these powers (including the underlying warrant) does not allow for review of the merits of the decision-making. This significantly limits the accountability of the authorities exercising powers under this Act to ensure administration is consistent and proportional.

The government must include an objective, merits-based review to ensure consistency regarding the exercise of powers under the Act, including further defining key terms that will draw important boundaries around the exercise of powers under the Act and root them in meaningful legal frameworks (e.g., "systemic vulnerability," "reasonable," and "proportionate").

Reduce the broad basis for executing the powers of the Act.

Political discussion of the Act (and its justification in the [Explanatory Memorandum](#)) has focused on national security and the most serious crimes as the target for powers under the Act. Yet a serious offence is defined in [317B](#) as:

Serious Australian offence means an offence against a law of the Commonwealth, a State or a Territory that is punishable by a maximum term of imprisonment of 3 years or more or for life.

Crimes in this category are far more common and less nationally significant than paedophile rings or terrorist actions. Indeed - even the penalty for unauthorised disclosure of information pertaining to this Act is set at a maximum of 5 years, and therefore would qualify as a serious offence.

The result of such a broad definition of serious offence is that rather than the powers under this Act being reserved as a critical measure in times of great need, they will simply fall into regular use as part of the daily toolkit of law enforcement, at significant cost to Australian technology companies, their customers and their products.

In addition, the Act specifies a similar definition for foreign crimes, which may well allow international counterparts to use Australia as a channel to exercising law enforcement power that they do not possess in their native country, further harming Australia's reputation within the technology market.

The definition of 'serious crime' should be restricted only to those crimes which are the stated target of the Act, that pose a genuine and serious threat to Australia and its citizens. Further, the ability to exercise powers in furtherance of other countries' criminal laws should be withdrawn.

This submission has been endorsed by the following members of the Australian technology community:

Daniel Petre, Co-Founder & Partner, Airtree

Mike Cannon-Brookes & Scott Farquhar, Co-CEOs & Co-Founders, Atlassian

Niki Scevak, Partner, Blackbird

Katherine McConnell, CEO & Founder, Brighte

Didier Elzinga, CEO & Founder, Culture Amp

Melanie Perkins, CEO & Co-Founder, **Cliff Obrecht**, COO & Co-Founder, Canva

Matt Barrie, CEO & Founder, Freelancer

Sarah Moran, CEO & Co-Founder, Girl Geek Academy

Luke Anear, CEO & Founder, Safety Culture

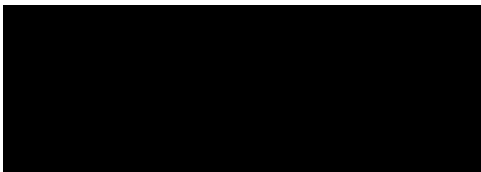
Paul Bassat, CEO & Co-Founder, Square Peg Capital

Bede Moore, Executive Chairman, Tech Sydney

Richard White, CEO & Founder, WiseTech Global

Patrick Llewellyn, CEO, 99designs

Yours faithfully,



Alex McCauley, CEO, StartupAUS

Supplementary submission - additional signatories

Many in the tech community have read the above submission to the committee and wished to publicly add their name in support of its message. Their names have been collected and added below.

NAME	ORGANISATION	NAME	ORGANISATION
Nicholas Crocker	Blackbird	Tim Mort	MHPF
Rob Akscyn	Knowledge Systems	Adam Mills	KoalaSafe
Roland Geitenbeek	Vincent River Pty Ltd	Craig Ojczyk	AgileCraft
Gavin Heaton	Hu-manity.co	Bruno Mattarollo	evergiving.com
Peter Tippet	NOW Functions	David Clark	DCG
Mark Sita	CXi Software	Simon Robilliard	Atlassian
Simone Eyles	365cups.com	Lyndon Maher	Lyndon Maher Consulting
Nick Strybosch	TeamAssurance	Mark Greenwood	Facto PTY Ltd
Kevin Reece	APE Mobile	Tim Johnston	Apollo Capital
Sean Mccreanor	Assignar	Aakanksha Chhikara	MetaCDN Pty. Ltd. (StreamShark)
Stuart Waite	Rockmelon	Adam Hatfield	nib
Simon Cant	Reinventure	James Ferguson	Blake eLearning
Jack Qi	William Buck	Varun Gujjanudu	Google
John Petrovich	Telstra	Michael Wang	Platinum Asset Management
Ted Smillie	Mintrose Computer Services Pty Ltd	Ashby Martin	SAGE Automation
Nick Muldoon	Easy Agile	Will Radford	Canva
Nosh Ghazanfar	Blake Education	Joshua Sherlock	WA Distributors
Timothy Asquith	Red Ronin	Mitchell Brunton	Atticus
Jim Cassidy	Rampersand	Owen Greenwell	Content & Workflow
Rick Baker	Blackbird Ventures	Nathan Luker	Your Call
Georgja Beattie	Mycelia	Simon Joslin	The Voxel Agents
Stuart Coyle	Blake E-Learning	Daniel Reyes	Productify
Ash Weeks	Tessellate Advisory Pty Ltd	William Dunne	Billson Porter
Kurt Mcfarland	Expert360	Matthew Clark	The Voxel Agents
Kevin Jochelson	Workyard	Lucinda Hankin	Grok Ventures
Elena Kelareva	GippsTech	Seb Ruiz	Atlassian
Roger Kermod	Incyzr	Armina Rosenberg	Grok Ventures

Zac Zavos	Shearwater Growth Equity	Sam Izzo	Polyphonic LP Pty Ltd
Chris Quirk	High Earth Orbit Robotics	John Barton	Hecate
Colin Mccririck	Talking data Pty Ltd	Jeremy Kwong-Law	Grok Ventures
Christian Lafrance	MC Saatchi	Matt Symons	Red Marker
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Paul Stovell	Octopus Deploy	Craig O'Donnell	Straight Up PR
Ross Hardy	Adyuvo Pty Ltd	Ryan Wyllie	cryptorecruit
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David Fairfull	Metigy	Ian Dick	Atlassian
Ian Scrivener	cleverHeart	Michael Oates	Atlassian
Craig Davies	Another Challenge Ventures	Adam Schuck	Canva
Gavin Solsky	Healthshare	John Henderson	Airtree
Jack Chen	Assembly Four	Lily Jovic	AtlasTrend
Wendy Fergie	Water Mill Capital	Doug Zipevski	PacByte
Greg Low	SQL Down Under Pty Ltd	Bharat Ramesh	FC Capital
Gavan Farley	Ambercite Pty Ltd	Carl Scarlett	Drawboard
Craig Balmanno	Solar Farmers Pty Ltd	Stuart King	Fierce Ventures
Natalie Cox	-	Michael Mroz	Atlassian
Daniel Callan	Bureau of Do	Athula Bogoda	Melbourne Silicon Beach
Alastair Mccann	The New Pop Pty Ltd	Henry Talbot	RunHunters
Matt Smart	Investment-mortgages	Ken Ray	Aged Care Reviews
Pierre Bergamin	Assignar	Marshall Hughes	Passel
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Gavan Jacob	Shumbies	Nelson Tam	Freelancer.com
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Andrea Gardiner	Jelix Ventures	David Beros	DigitalX
Michael Kimpton	First Rung	Jonathon Carley	DigitalX Ltd
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Josh Sharp	Hello Code	Paul Becker	Art Money

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Andrew Green	Canva	Ben Coombes	Billtrader
Jeremy Cox	AmazingCo	Clare Carvalho	not yet launched
Jeremy Cox	Edrolo	Mark Chatterton	inGenious AI
Evan Tait-Styles	LegalVision	Luke Watson	Home Live
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Daniel Danielli	Fluent Partners	Grant Wilson	Independent contractor
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Shawn O'Neill	Sanswork Pty Ltd	Michelle Sherwood	1 degree
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Geoffrey Pidcock	Jayride limited	Igor Izotov	Microsoft
Vincent Paver	Sharadar	Zac Rowley	Etsz
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Boyd Pederson	Centzable Pty Ltd	Paul Hauck	ICT Strategic Consulting Pty Ltd

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Nicolas Zurstrassen	Belong Here	Jemma Green	Power Ledger
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Erwin Van Der Koogh	Bitgenics	Greta Bradman	Eiris
Shanshan Wang	Roam Technologies	Alex Gilleran	CSIRO Data61
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Tim Purgacz	Chamonix	Nigel Lake	Atomli Inc
Michael Townsley	Griffith University	Evan Davey	Two Bulls
Robert Ferguson	Fuel Games	Diarmuid Mcgann	Brighte
Phillip Horner	Fusion Markets Pty Ltd	David Urbano	D-Link ANZ
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Chris Hood	GO1	Chris Van Raay	Anatomize
Sam Yeats	Orchestrated	Jonathan Murray	GoodHuman
Matt Dickinson	Growth Angels	James Alexander	INCUBATE University of Sydney
Jason Smale	Zendesk	Mac Wang	Stripe
Oliver Jones	CTO - Itty Bitty Apps Pty Ltd	Alan Jones	M8 Ventures
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Christophe Capel	Atlassian	Peter Mcwilliam	Jayride group limited
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