

*New South Wales Police Force submission to the PJCIS. Review of the
Telecommunications Legislation Amendment (International Production Orders)
Bill 2020*



26 March 2020

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

Dear Committee Secretary,

PUBLIC SUBMISSION BY THE NEW SOUTH WALES POLICE FORCE

TO THE PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

**'PUBLIC SUBMISSION REGARDING INTRODUCTION OF THE TELECOMMUNICATIONS LEGISLATION
AMENDMENT (INTERNATIONAL PRODUCTION ORDERS) BILL 2020'**

The New South Wales Police Force welcomes the invitation to respond to the Parliamentary Joint Committee on Intelligence and Security ('PJCIS') into the review of the Telecommunications Legislation Amendment (*International Production Orders*) Bill 2020 (herein called the '*IPO Bill*').

By way of introduction, the Telecommunications (*Interception and Access*) Act 1979 (herein called the '*TIA Act*') facilitates the lawful interception of telecommunications services¹; the lawful access to stored communications²; and gaining access to telecommunications data held by local carriers³.

The use of this regime cannot be understated as an effective covert evidence gathering technique used by the NSWPF for serious criminal investigations or other functions permitted by the '*TIA Act*'.

An example of the effectiveness of the regime from the period 2018 to 2019. Use of the legislation led to the arrest of 1,218 persons from Interception⁴ and 383 persons derived from stored communications⁵.

Telecommunications data is an important investigative tool. It often provides corroborative evidence of the presence of suspects at or near the crime scene. Equally, it may provide information to exclude persons otherwise suspected of committing serious offences.

¹ Chapter 2, Part 2-5 Telecommunications (*Interception and Access*) Act 1979

² Chapter 3, Part 3-3 Telecommunications (*Interception and Access*) Act 1979

³ Chapter 4, Part 4-1 T Telecommunications (*Interception and Access*) Act 1979

⁴ Telecommunications (Interception and Access) Act 1979 Annual Report. Page 18.

<https://www.homeaffairs.gov.au/nat-security/files/telecommunications-interception-access-act-1979-annual-report-18-19.pdf>

⁵ Telecommunications (Interception and Access) Act 1979 Annual Report. Page 48

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The Telecommunications Legislation Amendment (*International Production Orders*) Bill 2020 will complement this local regime by allowing NSWPF to seek assistance from overseas service providers.

Increasingly, people who reside in Australia use telecommunications related applications or products which are subscribed and maintained overseas.

If relevant information held overseas can be secured, it is likely to assist the investigation of serious crime in the same way as the local experience referred to above.

Matters such as domestic violence, terrorism, drug importation, cybercrime including child pornography and homicide investigations will benefit from the international access regime.

The NSWPF considers the timely acquisition of critical data and resultant investigative opportunities from the introduction of the 'IPO Bill' will be to the benefit and protection of the community.

Currently, the Mutual Legal Assistance Treaty (herein called 'MLAT'), is the main vehicle to acquire information for investigations from overseas countries. Requests take months or even years before they are answered which has led to prosecutions being dropped. A more efficient process is overdue.

The NSWPF understand the reciprocal nature of the new legislation with partner countries.

The introduction of the '*IPO Bill*' will be the key to the timely receipt of information from overseas for matters connected to serious crime in a rapidly changing technological environment.

The NSWPF acknowledge that requests for interception, stored communications or metadata will require an '*International Production Order*' issued by a judicial officer such as a Federal Circuit Court Judge. Sworn affidavits will be supplied by NSWPF in support of applications.

Consideration of the interference of the privacy of affected persons will be necessary. The NSWPF are supportive of the appropriate balancing tests incorporated within the '*IPO Bill*'.

On 5 March 2020, Alan TUDGE, MP gave the 2nd Reading Speech in relation to the '*IPO Bill*' before the House of Representatives, Commonwealth Parliament. NSWPF agree in principle with its contents and its application to the NSWPF.

The NSWPF are also supportive of oversight bodies such as the Commonwealth Ombudsman's Office and the Law Enforcement Conduct Commission (NSW), in so far as their respective oversight of statutory compliance by NSWPF is concerned.

Yours faithfully,



Michael Fitzgerald APM
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