Submission No 225

Inquiry into potential reforms of National Security Legislation

Organisation: **Australian Taxation Office**

JOINT SELECT COMMITTEE ON INTELLIGENCE AND SECURITY

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Potential reforms of national security legislation

14 September 2012

Topic: **ATO access to requested data**

Hansard Page: **4**

Question: **1**

Senator MARK BISHOP: Thank you, gentlemen, for your assistance this morning. I just want to walk you through three or four paragraphs of your opening comments and ask you for some clarification. In paragraph 10, you seek the ability to access this information in certain limited circumstances. Can you either given us those circumstances now or take it on notice and provide us with the detail of those certain limited circumstances? Secondly, you refer to material lawfully collected by interception agencies such as the AFP and the Australian Crime Commission. Does your intent there extend to information lawfully collected by other interception agencies such as those created by state governments under state statute? In particular, I refer to organisations like official corruption commissions and official crime commissions however titled in the various states. Thirdly, arising out of that, you repeatedly use in your opening remarks the phrase 'serious and organised crime'. When you were responding to Senator Faulkner, you extended that to the word 'fraud'. I used to sit on the Australian Crime Commission Committee and the like committee. Do you distinguish in your attitude between serious and organised crime and fraud? Then, arising out of that, do you also seek to access information lawfully collected by those other state agencies around the activities, possibly of a fraudulent or corrupt nature, engaged in by public servants but not of a serious and organised crime nature?

Answer:

Recommendation 7 from the *Parliamentary Joint Committee on Law Enforcement's inquiry into Commonwealth unexplained wealth legislation and arrangements report* notes:

> 3.121 The committee recommends amending the *Telecommunications (Interception and Access) Act 1979* so as to allow the Australian Taxation Office to use information gained through telecommunications interception, in the course of joint investigations by taskforces prescribed under the *Taxation Administration Act 1953*, for the purpose of the protection of public finances.

Since that recommendation was made in March 2012, the ATO has been liaising with the Attorney-General's Department (AGD), in conjunction with the Australian Crime Commission (ACC) and Australian Federal Police (AFP), to provide further detail about how this reform could be implemented and how it would work in practice.

If this reform were implemented, the ATO would not become an interception agency.

Telecommunications interception warrants would continue to only be able to be sought by interception agencies and only to assist them with the investigation of serious offences, as defined in the *Telecommunications (Interception and Access) Act 1979 (TIA Act)*. The existing safeguards and controls relating to applications for warrants would continue. The limited circumstances under which the ATO would seek to be able to access intercepted information would be where:

- the intercepted information has been previously obtained by an interception agency, and
- the ATO is a member of a joint taskforce with the interception agency, and
- one of the purposes of the joint taskforce is for the protection of public finances, and
- the interception agency has determined it appropriate to disclose the information to the ATO.

As the ATO would have no knowledge of intercept material prior to receiving it, we would be unable to initiate a process to access this information from the interception agency.

The ATO has held discussions with the AGD, ACC and AFP. Prior to any disclosure being made to the ATO, a risk assessment would be carried out by the interception agency to ensure that there would be no risk to any ongoing criminal investigations being carried out by the relevant interception agency.

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Topic: **Use of lawfully collected information.**

Hansard Page: **4**

Question: **2**

Senator MARK BISHOP: Thank you, gentlemen, for your assistance this morning. I just want to walk you through three or four paragraphs of your opening comments and ask you for some clarification. In paragraph 10, you seek the ability to access this information in certain limited circumstances. Can you either given us those circumstances now or take it on notice and provide us with the detail of those certain limited circumstances? Secondly, you refer to material lawfully collected by interception agencies such as the AFP and the Australian Crime Commission. Does your intent there extend to information lawfully collected by other interception agencies such as those created by state governments under state statute? In particular, I refer to organisations like official corruption commissions and official crime commissions however titled in the various states. Thirdly, arising out of that, you repeatedly use in your opening remarks the phrase 'serious and organised crime'. When you were responding to Senator Faulkner, you extended that to the word 'fraud'. I used to sit on the Australian Crime Commission Committee and the like committee. Do you distinguish in your attitude between serious and organised crime and fraud? Then, arising out of that, do you also seek to access information lawfully collected by those other state agencies around the activities, possibly of a fraudulent or corrupt nature, engaged in by public servants but not of a serious and organised crime nature?

Answer:

In accordance with recommendation 7 from the *Parliamentary Joint Committee on Law Enforcement's inquiry into Commonwealth unexplained wealth legislation and arrangements report*, if this reform were implemented the ATO would be eligible to receive existing intercepted information from any 'interception agency' that is involved in a joint taskforce with the ATO.

Agencies that currently fall under the definition of an 'interception agency' pursuant to section 5(1) of the *Telecommunications (Interception and Access) Act 1979* extend beyond the Australian Crime Commission (ACC), Australian Federal Police (AFP) and state police agencies, to cover a number of state crime commission and anti-corruption agencies. Therefore, under the proposed reform the ATO could access information from interception agencies created by state governments where the ATO was involved in a joint task force with the agency.

While the ATO is currently a member of 29 joint taskforces aimed at combating serious and organised crime, it should be noted that none of these taskforces currently have a member that is a state crime commission or anti-corruption agency.

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Topic:	**Access to information around activities relating to fraud and corruption.**
Hansard Page:	**4/5**
Question:	**3**

Senator MARK BISHOP: Thank you, gentlemen, for your assistance this morning. I just want to walk you through three or four paragraphs of your opening comments and ask you for some clarification. In paragraph 10, you seek the ability to access this information in certain limited circumstances. Can you either given us those circumstances now or take it on notice and provide us with the detail of those certain limited circumstances? Secondly, you refer to material lawfully collected by interception agencies such as the AFP and the Australian Crime Commission. Does your intent there extend to information lawfully collected by other interception agencies such as those created by state governments under state statute? In particular, I refer to organisations like official corruption commissions and official crime commissions however titled in the various states. Thirdly, arising out of that, you repeatedly use in your opening remarks the phrase 'serious and organised crime'. When you were responding to Senator Faulkner, you extended that to the word 'fraud'. I used to sit on the Australian Crime Commission Committee and the like committee. Do you distinguish in your attitude between serious and organised crime and fraud? Then, arising out of that, do you also seek to access information lawfully collected by those other state agencies around the activities, possibly of a fraudulent or corrupt nature, engaged in by public servants but not of a serious and organised crime nature?

Answer:

The ATO did not distinguish between 'serious and organised crime' and 'fraud' either in its submission or opening statement to this inquiry. There is a range of criminal offences arising from fraudulent behaviour that the ATO investigates that attract a maximum of 10 years imprisonment. Two relevant offences from the *Criminal Code Act 1995* are obtaining property by deception (subsection 134.1(1)), and conspiracy to defraud by obtaining a gain (subsection 135.4(1)). Further, there are a number of offences relevant to fraudulent behaviour that satisfy the definition of being a 'serious offence' pursuant to the *Crimes Act 1914* as they attract a minimum of two years imprisonment (for instance 'causing a loss, or a risk of a loss' under subsection 135.1(5) of the *Criminal Code Act 1995*). Criminal behaviour that the ATO investigates and that attracts these types of penalties, would commonly be classified as 'fraud' or 'serious fraud' and may also be encapsulated in the term 'serious and organised crime' depending on the individual facts and circumstances.

Section 4 of the *Australian Crime Commission Act 2002* (*ACC Act*) defines serious and organised crime as crimes that involve two or more offenders, substantial planning and organisation, sophisticated methods and techniques and crimes that are generally committed in conjunction with other, similar crimes. It includes the 20 'serious offences' listed under the *Proceeds of Crime Act 2002,* which range from money laundering and illegal drug dealings, to fraud, cyber crime, structuring offences under the *Financial Transactions Reports Act 1988* and firearms offences.

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The ATO is seeking to access information lawfully collected by the other state agencies, in certain limited circumstances, for example where the agency is a member of a joint taskforce with the ATO with one of the purposes of the relevant taskforce being the protection of public finances. Whether the information also related to 'serious and organised crime' pursuant to its legal definition in section 4 of the *ACC Act*, or to internal fraud by public servants, it would remain a decision for the interception agency as to whether to disclose the information to the ATO.

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Topic: **Deficiencies with regard to various regimes**

Hansard Page: **5**

Question: **4**

Over to paragraph 23, the various states and the Commonwealth have extant legislation going to the forgoing of proceeds of crime. I regularly see press releases from Commonwealth ministers and state ministers saying that $5 million here or $10 million there has been collected and allocated to the particular program the government thinks is appropriate. I am particularly aware that there are various breadths of ability to recover moneys from criminal activities in the various states. For example, in Western Australia I am aware that it is particularly wide and that state raises large amounts of money which the government uses for whatever purpose it thinks appropriate. Do you identify deficiencies in those regimes that you seek to overcome?

Answer:

The ATO has not identified any deficiencies in state based proceeds of crime regimes.

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Topic: **Activities outside of organised and serious crime**

Hansard Page: **5**

Question: **5**

Finally, does this information you seek to gain in certain limited circumstances from state agencies, lawfully collected under their statute, apply to any activities outside of what we comprehend to be that of organised and serious crime? I think it is probably better if you take those questions on notice and give us your mature consideration. The reason I raise such information with my colleagues is that those are the sorts of issues that I am now facing from community people lobbying me or writing to me and I do not know the answers, because we have not received any advice from our government as to its intent in that respect.

Answer:

There is a range of offences that fall outside the *Australian Crime Commission Act 2002* definition of 'serious and organised crime', but are considered to be serious crimes or frauds by their nature and maximum imprisonment terms.

The decision to disclose information relating to these offences to the ATO, for the purpose of protecting public finances, would rest with the relevant interception agency.

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Topic: **Logistical demands on telecommunications companies.**

Hansard Page: **5**

Question: **6**

Senator STEPHENS: Perhaps that is something you might like to think about, because one of the concerns of the telecommunications companies is about what demands these kinds of requests would place on them and the resources required.
Mr Williams: We will take that one on notice.

Answer:

The authority to access real-time content already exists for a number of agencies. The ATO proposal to be able to access real-time content (referred to as 'prospective telecommunications data' in the *Telecommunications Interception and Access Act 1979 (TIA Act)*) would therefore not require telecommunications companies to store any extra data. Under the proposal, the ATO would be an additional agency that would have the authority to access this content from telecommunications providers, pursuant to and governed by section 180 of the TIA Act.

The proposal is for the ATO to be prescribed, pursuant to the Telecommunications (Interception and Access) Regulations 1987 (TIA regulations), as an authority in accordance with paragraph (k) of the definition of enforcement agency in subsection 5(1) of the TIA Act. This prescription would enable the ATO to access prospective / real-time content (that is, data that is collected as it is created and forwarded to the agency in near real time) during the 45 day period of the authorisation. As detailed in our submission, the ATO is currently only able to access historical data pursuant to the TIA Act, which has led to crucial delays in accessing key information in a number of investigations into large scale refund fraud.

The 17 agencies that are currently authorised to access real-time content have functions that relate to combating serious crime, investigating police integrity, anti-corruption and serious and organised crime. In the same way as the Australian Customs and Border Protection Service, the ATO seeks prescription as an enforcement agency pursuant to the TIA regulations. The ATO seeks this prescription to enable it to access real-time content to defend Australia's electronic lodgment and processing systems from continued criminal threats.

The ATO would ensure that the power to access real-time content is used judiciously in those cases involving threats to Australia's tax and superannuation systems.

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Topic: **Assistance from Australian agencies that operate overseas**

Hansard Page: **7**

Question: **7**

Mr WILKIE: Do you need more assistance from Australian agencies that operate overseas?
Mr Williams: We will take that on notice.

Answer:

Based on the ATO's limited interaction with relevant agencies, we do not presently envisage the need for an increased level of assistance from Australian agencies that operate overseas.

In conjunction with partner law enforcement agencies, the ATO will continue to monitor and manage risks associated with foreign-based attacks on Australia's electronic lodgment and processing systems.