Changes Recommended to Repair Government's Encryption Legislation

Judicial oversight of new surveillance powers and clearly defined limits on agencies' Notices top the list of a raft of changes recommended to the Government's contested encryption legislation, in a new submission from Australia's telecommunications, IT and internet industries.

The recommendations come in a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS). The Committee is inquiring into the Government's *Assistance and Access Act 2018*, which was pushed through the Senate in unusual circumstances on December 6 last year.

As part of a political 'deal' on that day, to have Labor withdraw its proposed amendments to the legislation, the Minister for Finance and Leader of the Government in the Senate, Senator Matthias Cormann, publicly committed the Government to "facilitate consideration of these amendments in the New Year in government business time".

Whilst a broad coalition of industry groups has come together to lodge the submission, which commends the Government and the PJCIS for the changes that have already been incorporated into the Act – assisting in strengthening the Request/Notice scheme and providing additional clarity – the industry groups also recommend the legislation be further amended to (among other things):

- create a warrant-based system to provide judicial consent to Notices issued by security agencies to communications providers under the legislation (as was also recommended in the Labor amendments);
- clearly articulate and narrow the limits of what agencies can request of designated communications providers to reduce the risk of the creation of back-doors by agencies putting national cybersecurity at greater risk;
- raise the threshold of criminal acts that the legislation can be used to combat and thus avoid less serious activities being captured by the new surveillance capabilities;

- close a number of ambiguities and loopholes in the legislation, including one that allows the Government to access the metadata of journalists without obtaining a Special Journalist Warrant;
- reduce the risks flowing from agencies' power to order that surveillance software be installed in devices or services; and
- strengthen the obligation on Government to consult with communications providers before issuing them with Notices requiring them to take anti-encryption measures;
- ensure that providers are not required to comply with the new legislation if doing so would place them in breach with foreign law.

Organisations co-authoring the submission include Communications Alliance, the Australian Industry Group (Ai Group), the Australian Information Industry Association (AIIA), the Australian Mobile Telecommunications Association (AMTA), the Information Technology Professionals Association (ITPA) and Digital Industry Group Inc. (DIGI).

The submission looks at necessary improvements to the Government amendments that were made to the legislation, supports the most useful aspects of the Labor amendments that were proposed and then withdrawn and examines some of the other outstanding problems with the legislation and offers potential solutions.

Communications Alliance CEO, John Stanton, said: "This bill was rushed through Parliament in flawed condition and we look forward to the Government honouring its public commitment to have further amendments considered, in the interests of the cybersecurity of all Australians."

Kishwar Rahman, AIIA General Manager of Policy, commented: "The proposed powers are unprecedented, their remit unnecessarily broad, and whilst the consequences of their use are completely unknown, what is known is that the legislation is likely to cause greater issues than it purports to solve."

Ai Group Chief Executive, Innes Willox, said: "The extent of the impact of this legislation on industry and the broader community remains paradoxically poorly understood. It is urgent to minimise and clarify these impacts through sensible amendments and engagement with the wide range of affected industries."

ITPA Director, Robert Hudson said: "The legislation shows a blatant disregard for and misunderstanding of how the Internet works, how online encryption operates and is used to secure millions of legitimate communications every day, and will almost certainly not prevent a single act of terrorism, child abuse or other serious crime that couldn't have been prevented otherwise.

"Instead, the privacy and security of law-abiding citizens is now almost certain to be compromised for commercial, criminal or other non-legitimate purposes as tools prove to be as useful as a chocolate teapot for the purpose they were developed for, and instead are released or leaked into the hands of those who would do us harm."

About the Associations

Communications Alliance* is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.
Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through Industry self-governance.

The **Australian Industry Group (Ai Group)*** is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, and other industries. The businesses which Ai Group represents employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with more than 50 other employer groups in Australia alone and directly manages a number of those organisations.

The **Australian Information Industry Association (AIIA)*** is Australia's peak representative body and advocacy group for those in the digital ecosystem. AIIA is a not-for-profit organisation that has, since 1978, pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment and drive Australia's social and economic prosperity.
AIIA's members range from start-ups and the incubators that house them, to small and medium-sized businesses including many 'scale-ups', and large Australian and global organisations. While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs.

The **Australian Mobile Telecommunications Association (AMTA)** is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators and carriage service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry.

The **Digital Industry Group Inc (DIGI)** is a not-for-profit industry association representing the digital industry in Australia. DIGI includes representatives from Amazon, Facebook, Google, Oath, and Twitter. DIGI members collectively provide digital services to Australians including Internet search engines, online stores and other digital communications platforms.

The **Information Technology Professionals Association (ITPA)** is a not-for-profit organisation established to advance the understanding of ICT matters within the community, corporate and government sectors in Australia.

IPTA's members are professionals within the IT Industry in Australia and abroad who aim to advance the practice of Information Technology as a profession.
IPTA's vision is for its members to deliver outcomes which enhance and enrich society through the understanding and application of technology in an increasingly online world.

*NOTE: *nbn™ is a member of Communications Alliance, the Ai Group and the AIIA but has not been involved in the preparation of the submission.*

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