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Parliamentary Joint Committee on Intelligence and Security
Review of the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020
Office of the Inspector-General of Intelligence and Security

Subject: Technical expertise in the execution of warrants

Dr Anne Aly asked the following question on 10 March 2021:

Dr ALY: I have a follow-up question along the lines of Mr Wilson's questions around technical capability. I don't know if any of the current witnesses were listening to the previous witness, who put in a suggestion that there would be some form of independent technical advice as a form of consultation in the execution of warrants. I was wondering if the current witnesses had any input into that recommendation that was made by the previous witnesses.

Dr Jessup: Would you repeat the last part of that question. It related to the recommendation made by the Richardson review?

Dr ALY: No, it was the recommendation made by the previous witnesses, the Communications Alliance. They recommended an independent process by which technical expertise could be sought in the execution of a warrant, along with consultation of the platform providers.

...

Dr ALY: So you maintain that your technical capabilities in house are currently adequate to deal with what the bill is proposing?

Response:

The recommendation of the Communications Alliance, as reflected in its oral and written submissions, concerned the provision of independent technical advice to the warrant issuing authority. In the case of network activity warrants in the Bill (over which it is proposed that the Inspector-General of Intelligence and Security (IGIS) will oversight) the issuing authority would be an eligible judge or nominated member of the Administrative Appeals Tribunal, and IGIS would not be involved in the application for, or execution of, warrants. As an oversight body, IGIS's role would be to review the applications by AFP and/or ACIC for network activity warrants after execution of the warrant and activities conducted under those warrants.

More generally, as an independent oversight body, IGIS regularly engages with agencies within its jurisdiction to gain a deeper appreciation of the complex technologies used in intelligence operations. IGIS anticipates similar engagement with AFP and ACIC in relation to the technologies that may be used under the proposed network activity warrant framework in the Bill. In IGIS's view, effective oversight is served by an informed understanding of both the operational environment and the technologies which are used.

In recognition of the increasing technical complexity in intelligence operations, the Comprehensive Review of the Legal Framework of the National Intelligence Community (Comprehensive Review) recommended that an independent panel should be established to provide technical expertise and

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assistance to the IGIS (Recommendation 173¹). The Government accepted this recommendation in its response to the Comprehensive Review. In conjunction with the Attorney-General's Department and others, IGIS is considering various options for the implementation of this recommendation.

¹ Comprehensive Review of the Legal Framework of the National Intelligence Community, Volume 3 (unclassified version), paras 41.29 – 41.41, [<https://www.ag.gov.au/system/files/2020-12/volume-3-information-technology-powers-and-oversight.PDF>]