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## Consultation on ASIC's Access to Telecommunications Intercept Material

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to provide these comments on the *Positions and Consultation Paper 5: ASIC's Access to Telecommunications Intercept Material* (the consultation paper), to the ASIC Enforcement Review Taskforce (the Taskforce).

The Taskforce is considering a proposal to make ASIC a 'recipient agency' under s 68 of the *Telecommunications (Intercept and Access) Act 1979* (the TIA Act). The OAIC understands that this would enable ASIC to receive telecommunications intercept materials from 'interception agencies'<sup>1</sup> to itself investigate and prosecute 'serious offences'.<sup>2</sup>

The existing framework in the TIA for use and disclosure of lawfully intercepted telecommunications intercept material (TI material) is currently subject to safeguards that generally limit access to the TI material to certain prescribed 'interception agencies'.

As the OAIC understand it, currently, TI material may only be shared with ASIC officers who are assisting an interception agency in an investigation that is being carried out by that agency. A proposal to expand the class of recipient agencies potentially raises significant privacy risks relating to telecommunications intercepts under the TIA Act. Some of these privacy risks were canvassed by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in its 2013 'Report of the Inquiry into Potential Reforms of Australia's National Security Legislation'.<sup>3</sup>

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<sup>1</sup> Defined in section 5 of the TIA Act

<sup>2</sup> Defined in section 5D of the TIA Act

<sup>3</sup> For example, the PJCIS Committee noted it was 'concerned about the proliferation of institutions that gather and share information, and the absence of consistent guidelines and sufficient oversight', 'Report of the Inquiry into Potential Reforms of Australia's National Security Legislation' (May 2013), in particular pages 36-41, 'Simplifying the information sharing provisions that allow agencies to cooperate'.

The OAIC welcomes the acknowledgment in the Consultation paper that as telecommunications intercept powers intrude on the privacy of individuals, 'any legislative expansion of the powers needs to be proportionate to the seriousness of the misconduct sought to be addressed and ensure that there are adequate safeguards to protect against unjustified intrusion into personal privacy'.<sup>4</sup>

The OAIC recognises that the protection of individuals' privacy must be balanced with the broader interests of the community in ensuring that entities are able to carry out their legitimate functions and activities. The OAIC also recognises that there is a public interest in allowing agencies to access communications where it is necessary for the prevention of serious and organised crime and threats to Australia's national security. However, as noted in the paper, proposals that require or authorise the collection, use or disclosure of personal information should be reasonable, necessary and proportionate, having regard to the objectives they seek to achieve.

Should the Taskforce move forward with a proposal to expand the class of recipient agencies under the TIA Act, the OAIC recommends that a privacy impact assessment (PIA) be conducted. A PIA is a systematic assessment of a project or proposal that identifies the impact that a proposal might have on the privacy of individuals, and sets out recommendations for managing, minimising or eliminating those impacts. As well as enabling privacy compliance, a PIA can assist to ensure that any proposal that may impact the privacy of individuals, demonstrates that such interference is necessary, reasonable and proportionate to achieving the public policy objective. More information on [undertaking privacy impact assessments](#) is available on our website.

If you would like to discuss any of the comments above or have any questions, please contact Sophie Higgins on (02) 9284 9775 or by email at [sophie.higgins@oaic.gov.au](mailto:sophie.higgins@oaic.gov.au).

Yours sincerely



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<sup>4</sup> Consultation Paper, paragraph (xi)