

22 September 2025

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security

PO Box 6021
Parliament House
Canberra ACT 2600

By submission:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/TOLABill2025

RE: Review of the Telecommunications and Other Legislation Amendment Bill 2025

The Internet Association of Australia Ltd (**IAA**) thanks the Parliamentary Joint Committee on Intelligence and Security (**Committee**) for the opportunity to respond to its review of the *Telecommunications and Other Legislation Amendment Bill 2025* (**TOLA Bill**).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers, many of which also provide other telecommunications services and would be affected by the changes proposed under the TOLA Bill as it pertains to the lawful interception and electronic surveillance regimes. In addition, as a not-for-profit association that advocates for an open and trustworthy public Internet, we are also writing in representation of the public benefit of the Internet and the overall telecommunications sector.

From the outset, IAA and our members express our commitment to working with and assisting Government and law enforcement to counter serious crimes that harm Australians. We understand the important role of telecommunications in this role and are prepared to play our part. Equally, we hold the values of privacy and individual liberties as central to the trust that Australians have in telecommunications.

We are therefore highly concerned about any expansion of surveillance powers such as those proposed in the TOLA Bill and it is our view that any such expansion must be thoroughly scrutinised for potential adverse consequences prior to its implementation. We strongly believe that such scrutiny has not been facilitated, and that normal processes of consultation and impact analysis should be undertaken before it proceeds, as further detailed below.

PROCESS AND OVERSIGHT GAPS

Overall, IAA is highly concerned with the legislative process via which the TOLA Bill has been developed and introduced to Parliament without public consultation. To the best of our knowledge, the Department of Home Affairs has not consulted with the telecommunications industry, the legal sector nor the general public despite many of the amendments representing substantial shifts in

the use of extraordinary powers by law enforcement and intelligence agencies. Similarly, it does not seem that a regulatory impact analysis has been conducted.

We reject the framing of the TOLA Bill as being primarily technical or administrative corrections in nature as suggested in the Explanatory Memorandum. As will be further detailed below, in particular, Schedules 1 and 3 represent a function creep by expanding the admissibility of information gained via extraordinary electronic surveillance powers, and expanding the scope of stored communications access. Such changes have the potential to greatly affect both compliance obligations for the telecommunications industry and introduce privacy risks and encroachments to individual freedoms for the general public. Thus, the failure to consult stakeholders nor analyse the regulatory impact is highly problematic. We consider at minimum, there should be a joint consultation led by the Department of Home Affairs and the Attorney General's department given the nature of the proposed amendments to properly assess the potential implications of the changes.

We are furthermore not convinced that the TOLA Bill amendments will have no financial impact as stated in the Explanatory Memorandum. Due to the limited time to consider the proposed changes and lack of consultation, it is unclear what the extent of the impact will be for industry but we consider it likely there will be compliance costs due to the expansion of interception laws and handling of stored communications. At the least, these changes will result in more complex legal processes that industry should be kept abreast of to ensure comprehensive understanding and training of staff. Smaller telecommunications providers that lack resources to navigate complex regulatory frameworks and in-house compliance teams will be particularly burdened. Thus, consultation is highly necessary.

IAA strongly recommends the Committee to recommend to Parliament that the TOLA Bill not be passed until a full public consultation process and Regulatory Impact Statement has been completed. At the least, the TOLA Bill should be split so that only the administrative adjustments proposed under Schedule 2 are passed, while Schedules 1-3 and 4-5 to the TOLA Bill are delayed for further consultation and scrutiny.

We further note that the electronic surveillance legislative framework is currently subject to a major review by the Department of Home Affairs. It is thus concerning that there are changes being proposed by the TOLA Bill seemingly without reference to the ongoing work. Indeed, the Explanatory Memorandum does not state how the TOLA Bill aligns with the overall electronic surveillance framework reform. It is thus our view that this approach is inconsistent with the objective of the reform as stated by the Department on its review website to develop a single Act that:

- *better protects individuals' information and data, including by reflecting what it means to communicate in the 21st century,*
- *is clear, transparent and usable for operational agencies and oversight bodies, as well as industry who need to comply with the obligations of the framework,*
- *is modernised, streamlined and as technology-neutral as possible, by updating key concepts and clearly identifying the agencies that can seek access to this information,*
- *contains appropriate thresholds and robust, effective and consistent controls, limits, safeguards and oversight of the use of these intrusive powers, and*

- *ensures that law enforcement and security agencies have adequate and proportionate powers that enable them to identify, disrupt and investigate serious crimes and threats to security.*

IAA recommends that the Committee instruct the Department to demonstrate alignment of the TOLA Bill with the wider electronic surveillance reform agenda.

In addition, the Independent National Security Legislation Monitor (the **INSLM**) recently conducted a review of the extraordinary powers for the Australian Federal Police and Australian Criminal Intelligence Commission under the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* (Cth) (**SLAID Act**), with the INSLM's report tabled in Parliament very recently on 1 September 2025.¹ It is unclear whether the Department has considered the INSLM's review and its findings, despite the review's relevance to the contents of the TOLA Bill, especially as it pertains to the use of network activity warrant information. It is our view that it has likely not had the chance to do so, given the timeframe between the TOLA Bill and INSLM report being respectively tabled in Parliament.

However, we consider it crucial that the outcomes and findings of the review inform any amendment to Australia's electronic surveillance legislation. The INSLM report made many recommendations to ensure the use of powers under the SLAID Act is fit-for-purpose and better balances providing agencies with the legal authority to combat serious crimes while also upholding core democratic principles. With many of the recommendations pertaining to bolstering the safeguard and oversight mechanisms, we are highly concerned that the TOLA Bill seeks to increase powers without regard to the INSLM's call for corresponding safeguard measures.

IAA strongly recommends that the Committee recommends the TOLA Bill not be passed until the INSLM report has been thoroughly reviewed and considered by Parliament, and the Department.

SCHEDULE 1 – NETWORK ACTIVITY WARRANTS

We consider the amendments proposed in relation to network activity warrants particularly concerning. These Schedule 1 changes would in fact represent an expansion of the use of information gathered via what is considered an extraordinary power due to the infringements of individual liberties and privacy. The admission of network activity warrant information in evidence and disclosures to meet disclosure obligations has wide reaching implications for privacy and civil liberties as it blurs the line between intelligence and prosecution functions. Indeed, the INSLM report emphasised the importance of appropriate oversight and safeguards that must be enhanced in the event of any expansion of the use of network activity warrant powers.

Thus again, we reiterate the need for further scrutiny and multistakeholder consultation, as well as the need to consult the INSLM review to ensure any expansion of the powers are proportionate and measured with robust safeguards that uphold democratic principles.

¹ Independent National Security Legislation Monitor, *Data Disruption, Network Activity and Account Takeover Powers – Review of Security Legislation Amendment (Identify and Disrupt) Act 2021*, September 2025.

IAA recommends Schedule 1 to the TOLA Bill must not be passed and should be amended to include robust safeguards that correspond to the level of risk posed by the expansion of the network activity warrant powers.

SCHEDULE 3 – ACCESS TO STORED COMMUNICATIONS

We understand that the Schedule 3 amendments are intended to rectify technical gaps in the *Telecommunications (Interception and Access) Act 1979 (TIA Act)* to give effect to the legislative intent and allow agencies to conduct development and testing activities in a practical manner. In principle, we support this amendment. Furthermore, we appreciate that corresponding amendments have been made such as to definitions of key terms, and with respect to the Attorney-General's authorisation of interception to ensure that stored communications will also be subject to stringent use and disclosure safeguards given the proposed expansion of the Part 2-6 powers.

However, we are concerned that these safeguards are not sufficient, particularly as it relates to ensuring the appropriate and timely destruction of stored communications that have been intercepted for the purposes of testing and development of technologies. Ensuring clear lifecycle controls over data collection, retention and destruction was another key component of the INSLM report, that should be heeded prior to the progression of the TOLA Bill. We note that the INSLM report also recommended stronger issuing safeguards and clarity at the authorisation stage.

In addition, we reiterate the lack of clarity on the extent these changes will affect industry with respect to their lawful interception compliance obligations due to there having been no consultation on the changes. While we do not anticipate the amendments will require technical redesigns for industry, further assessment will be needed.

SCHEDULE 4 – INTERNATIONAL PRODUCTION ORDERS

IAA understands that the changes to the TIA Act as per Schedule 4 of the TOLA Bill represents another primarily technical adjustment intended to give practical effect to the legislative intent of the International Production Orders. However, similar to the concerns raised in respect of the Schedule 3 changes, we are concerned about the regulatory impact this would have for industry.

Given the cross-border component, industry will likely face greater compliance challenges as it pertains to ensuring privacy and legal frameworks surrounding data. Thus, it is again highly concerning that there has been no consultation with industry who will need greater time to consider the privacy implications and potential conflicts with other obligations relating to cross-border data flows. We therefore reiterate our recommendation that the TOLA Bill should not be passed until such consultations occur.

SCHEDULE 5 – CONTROLLED OPERATIONS

We defer review of the Schedule 5 amendments to legal professionals and other stakeholders as it is our opinion they would have limited effect on telecommunications providers. However, we do reiterate that these changes do not seem minor and while we - in principle - support the legislative intent of clarifying the threshold for authorising controlled operations, we are of the view that such changes should not be made without further analysis and review via robust public consultation processes.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Parliamentary Joint Committee on Intelligence and Security for the opportunity to respond to its review of the *Telecommunications and Other Legislation Amendment Bill 2025*. While IAA and our members are keen on proactively working with Government and law enforcement and intelligence agencies to protect Australians from serious crime, we note that the legislative framework that supports electronic surveillance activities must be carefully developed. To that end, we are not convinced that the TOLA Bill is fit-for-purpose, nor has it undergone the requisite level of scrutiny given the broad reaching implications of its proposed changes. We therefore reiterate that the Committee recommends that the TOLA Bill is withdrawn and redrafted following a full public consultation, completion of a regulatory impact analysis and with consideration of the INSLM report. We look forward to collaborating with Government, industry and other stakeholders to reform Australia's legislative electronic surveillance framework.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a not-for-profit member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IAA is also a licenced telecommunications carrier and provides the IX-Australia service to Corporate and Affiliate members on a not-for-profit basis. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

Yours faithfully,
Internet Association of Australia