



10 March 2020

Dr James Renwick SC
Independent National Security Legislation Monitor
3-5 National Circuit
Barton ACT 2600

BSA RESPONSE TO QUESTION ON NOTICE FROM BSA TESTIMONY TO THE REVIEW OF THE TELECOMMUNICATIONS AND OTHER LEGISLATION AMENDMENT ACT 2018

Dear Dr Renwick SC

On behalf of BSA | The Software Alliance (BSA) and our members,¹ I wish to express our sincere gratitude for the opportunity to provide our comments and recommendations to the INSLM Review of the *Telecommunications and other Legislation Amendment (Assistance & Access) Act 2018*. I appreciate being able to discuss via the telephone bridge and hope that our comments have helped develop a deeper understanding of some of the concerns of our members.

I write to respond to the question taken on notice regarding our comments regarding the list of Acts and Things referred to in Section 317E as being non-exhaustive. BSA raised this concern in our submission to the Parliamentary Joint Committee on Intelligence and Security (**PJCIS**), dated 12 October 2018, on the *Telecommunications and Other Legislation Amendment (TOLA) (Assistance and Access) Bill, 2018*, introduced to the House of Representatives on 20 September 2018. The concern at the time derived from the interaction of Section 317E with other substantive provisions that relied on it. Specifically:

- s317G(6) and s317JA(9) (for Technical Assistance Requests; or **TARs**);
- s317L(3) and s317Q(9) (for Technical Assistance Notices; or **TANs**); and
- s317T(7) and s317X(3) (for Technical Capability Notices; or **TCNs**).

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

BSA's members include: Adobe, Amazon Web Services, Atlassian, Autodesk, AVEVA, Bentley Systems, Box, Cadence, Cisco, CNC/Mastercam, IBM, Informatca, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Sitecore, Slack, Splunk, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

The above provisions in the Bill stated that:

“The acts or things that **may be specified** in a [[varied] TAR/TAN/TCN] ... **include but are not limited to** listed acts or things.”

In the Act that was eventually passed, the language for sections 317L(3), 317Q(9), 317T(7), and 317X(3) were amended to the following formulation instead:

“The acts or things **specified** in a [[varied] technical assistance notice/technical capability notice] ... **must be** listed acts or things.”

This removed the open-ended applicability of the TCNs and TARs. It should be noted that the “include but are not limited to” language for **TARs** (s317G(6) and s317JA(10)) remain in the Act that was passed. We recommend that it is similarly amended to limit the applicability of TARs to those acts specified in the Act. We note that the proposed amendments to s317G(6) and s317JA9(10) in *Telecommunications Amendment (Repairing Assistance and Access) Bill*, introduced to the Senate on 4 December 2019, would achieve this outcome.

I would like to thank you once again for taking time to discuss this important issue with BSA. Please do not hesitate to contact with any questions or comments which you might have.

Thank you for your time and consideration.

Sincerely,



Jared William Ragland, Ph.D.
Senior Director, Policy – APAC