



Submission No 196

**Inquiry into potential reforms of National Security Legislation**

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## **Trust of Authorities, An essential requirement if a security agency is to become an effective protective entity, twelve years on...**

One year prior to 9/11 as a result of a public invitation from the Australian Senate, I wrote a submission which formed one of twenty in relation to proposed powers that should be granted to ASIO and other intelligence agencies with connections to our military.

Of interest, was the lack of interest in the subject matter by the general public a number of twenty probably representing 60 percent of the submission submitted with the balance coming from members of the Intelligence Community and other Government institutions? Today there are numerous submissions for the present Committee to ponder and many are from members of the public.

Looking back it would seem that we are considering at the same proposed powers presented in lesser detail over a decade ago with some very specific requests related to using the emerging telecommunications technologies and to tap into the data sets of Telcos and other communication providers.

My concluding remarks of my submission 12 years ago approximate the central concern that is a common theme of many of the submission made by the public today.

That conclusion was:

Regarding if [We] should allow ASIO the power to hack computers, turn sound cards and web cams on and never have to tell the subject of their inquiries. *You're joking right, aren't you?*

Power corrupts and absolute power corrupts absolutely.

In the introduction of the recent publication titled, *'Equipping Australia Against Emerging and Evolving Threats'* (EAAEET) the reasons put forward for the revisited but more extensive telecommunications interrogation and computer hacking powers are:

Just as technology and methodology employed by terrorists, agents of espionage and organised criminals adapts and advances so too must the capabilities and powers of our law enforcement and security agencies. In the absence of action, significant intelligence and evidence collection capabilities will be lost providing criminal elements with a technological upper hand.

It is undeniable that the capacity in relation to the surveillance of the masses has significantly increased and it is reasonable to say that this is an irresistible must have 'Power' wielded by many intelligence agencies around the world as open knowledge with underlying legislation or in secret but suspected by many.

After reading EAAEET it is fairly obvious that our Intelligence Agencies wish to adopt the proposed UK system of things with respect to spying on British Citizens.

This report from the Courier Mail dated the 2nd April 2012 summaries what those powers are and what has been the past response of the UK public:

LONDON: Ministers are preparing a major expansion of the British Government's powers to MONITOR the email exchanges and website visits of EVERY PERSON in the UK. Under the legislation expected in next month's Queen's speech, internet companies will be instructed to install hardware enabling GCHQ – the Government's electronic 'listening' agency – to examine 'on demand' any phone call made, text message and email sent and website accessed in 'real time', The Sunday Times reported. A previous attempt to introduce a similar law was **abandoned** by the former Labour Government in **2006 in the face of fierce opposition**.

Has there been or is there currently fierce opposition by the public of Australia in relation to the same proposed powers?

On the 28<sup>th</sup> February 2012 the Director-General of Security said during a speech:

*This question of accountability and the role of security intelligence in a modern 21st century democracy continues to be utterly relevant, albeit complex and sometimes inflaming passions on both sides of the debate. But, allowing for the place of constructive disagreement within our civic life, I believe that the vast majority of Australians recognize the need for a properly regulated and monitored security service in our democracy. Indeed, if we want to express the case for our role today in the language of individual rights, Article 3 of the UN Universal Declaration of Human Rights states that everyone has the basic right to life, liberty and the security of person.*

*With this in mind, I continue to believe that the majority of Australians expect their governments to take all necessary action to protect the community and further the national interest, that the governments will use their intelligence services wisely and effectively and that they will strike an appropriate balance between the civil rights of the community and those of the individual – and put in place an effective accountability regime.*

*How then to achieve that balance?*

[...]

However, a uniquely Australian framework for ensuring accountability within the AIC, and for ASIO in particular was not fully achieved until the late 1970s and 1980s, following the recommendations of two Royal Commissions conducted by the New South Wales jurist Robert Marsden Hope.

Justice Hope thought hard about the appropriate balance between the responsibilities of the state to protect national security and the protection of civil liberties and individual rights – between two sides of the one democratic coin. Hope himself was a committed civil libertarian and brought to bear a very considerable intellect to what he admitted was a difficult task.<sup>1</sup>

How to achieve that balance is a very good question and answer given by the Director-General of Security makes reference to two Royal Commissions conducted by the New South Wales that involved Barrister Robert Marsden Hope.

Justice Hope thought hard about the appropriate balance between the responsibilities of the state to protect national security and the protection of civil liberties and individual rights. So who was he and what did he believe in?

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<sup>1</sup> <http://asio.gov.au/Publications/Public-Statements/2012/28-February-2012-IPAA.html>

Probably the best publication to review his beliefs and excuse the pun, his Hope for the future would be to read 'Robert Marsden Hope and Australian Public Policy' which can be downloaded at:

<http://www.ona.gov.au/media/33044/robert-marsden-hope-and-australian-public-policy.pdf>

It is said that this man displayed liberal instincts and broad interests. In his last years as a senior Barrister, he served as President of the NSW Council of Civil Liberties. These were the years of growing protest movements over conscription and the Vietnam War, the civil rights of Indigenous Australians, and censorship.

Hope not only helped to organise peaceful protests but also took a close interest in the way in which the NSW Police handled student protesters. He wrote a booklet on **The Right of Peaceful Assembly**, to advise those arrested on their rights.

At the first Australian convention of councils of civil liberties in 1968, Justice Hope presented a paper calling for a constitutional guarantee of basic human rights – **a concept still being debated more than forty years later.**

Recently I listened to radio news broadcasts that contained a sound bit of particular relevance to the present inquiry. A National Security representative said he was concerned that protestors may interrupt the energy supply of coal-powered stations and therefore his agency had the **right** to put them under surveillance.

I have highlighted the word 'right' because I was very surprised he used the word in place of 'power', because in more appropriate words, his belief was 'they had the power to put them under surveillance'.

Authorities do not have rights; they have powers granted to them by the people.

What should be read between the lines of this sound bit is that the colour of law is often enough justification for some in Authority to work within the grey areas of the law to do what they feel is right but in many instances from the perspective of the public is often very wrong. It is not necessary corruption but it is what powers do to some people that do not have the life experiences to comprehend what is the difference between the spirit of the law and colour of the law.

Australia for the most part compared to the rest of the world is over regulated, however in some situations it is those regulations that allows our society to function as it does. Rules are for children and parameters are for adults.

So what rules does our intelligence community wish to work within?

In other words we have an immature intelligence community still finding its feet in the world and based on past newspaper advertisements its ranks are filled with lots of young smart people with degrees in one thing or another with a smattering of life experiences, and probably very understanding of the real world of organised crime and its indirect connections to terrorism as a causation of mistrust and contempt for the prevailing super power which has become the bane of our existences as it drags us into one war after the other, with perhaps another war on the horizon with Iran.

Director-General of Security was asking the right question, "How best to achieve this balance?" and he was also on the correct in mentioning the work of Justice Hope.

So the balance may not be that there are the checks and balances, because we already know there will be abuses of powers and a time lag between recognising those abuses and learning how to best manage the powers granted to our intelligence community.

It is my suggestion akin to Justice Hope that we balance power by giving the people something in return other than promises of temporary security for giving up certain rights. Noting that the wisdom of Benjamin Franklin in his 1722 essay was: ***"They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety."***

ASIO and its partners want these powers and are putting up a argument to get them; the people want something in return and that is perhaps why there has been so much suspicion and fierce opposition to these emerging spying laws with rules.

So to repeat the aforementioned:

In 1968, Justice Hope presented a paper calling for a constitutional guarantee of basic human rights – **a concept still being debated more than forty years later.**

I respectfully submit that the time has come for Australia to have a stand strong together Constitutional Guarantee of Basic Human Rights inclusive of the Right of Peaceful Assembly.

In support of my submission I offer the following information as to why we need to have a Stand Strong Together Constitutional Guarantee of Basic Human Rights as a counter balance to the emerging invasive intelligence powers not only in Australia but elsewhere around the world.

John Patrick "Jack" Ryan, Sr. the fictional character created by Tom Clancy is based on the real life Dr. Steve R. Pieczenik who was a psychiatrist that treated C.I.A. employees and who was a Psyops Operative who served at the highest-level three different American Presidents. Pieczenik believes that the problem with the present day 'Company', which uses the outdated security construct 'Level' which other intelligence agencies seem to be basing their systems upon today, is:

They and their associates are starting wars in one place and another, murdering that person and another, trading in drugs, and sending arms to places with unfamiliar names, supporting al-Qaeda one day and fighting with them the next, pitting one against the other all in the hope of restoring order out of chaos to their particular liking while deceiving the general public as to what is actually going, and misleading the honest politicians that can not be corrupted or murdered in a purposive accident or false flag event?

If anyone has any doubts about the lengths that the Company and other agencies like them will go to on the basis of a decision made by someone having a significant 'Level' of position within these organisations, the following from my first submission in 2000 will clarify the situation in their language by someone that considers himself above the natural laws:

*Consider for a moment the comments of George Young, a former MI6 deputy chief during a recent BBC interview.*

*Young stated he had few qualms about ordering someone **killed** in peacetime if he felt it was in the national interest. "It is the spy who has been called upon to remedy the situation caused by deficiencies of ministers, diplomats, generals and priests," he said. "We do not have to develop... the ability to produce the ready phase, the smart reply and the flashing smile. And so it is not surprising these days that the spy finds himself the main guardian of intellectual integrity (The Weekend Australian 22 July 2000)."*

*It is my opinion that intellectual integrity is the stated claim of mind, of those that assassinate, lead coups, and resort to violence as a means to an end.*

So what are these natural laws and could they be the basis of a Constitutional Guarantee?

Aristotle wrote:

The best division of right, one kind to be natural, and the other voluntary calls it a lawful right in the strictest sense of the word law, and sometimes an instituted right. Of this kind is the evil of certain actions compared with the nature of a reasonable being.

So what is happening the world that could be considered an instituted right of a kind that is evil compared with the nature of a reasonable being?

In November 2011 Senator Ran Paul (son of presidential candidate Ron Paul) warned the public and co-Senators from the floor of the US Senate about the impacts of the US National Defense Authorization Act<sup>2</sup> (NDAA).

In summary, their Fifth Amendment of the US Constitution provides that the People have a right to be free from deprivation of life, liberty, or property, without Due Process of law. In other words, as is the case for an Australian citizen, one must be first charged with a crime, held or bailed, then to go to court and if found guilty by a Jury of their Peers may be sentenced to prison or another punishment by the presiding Judge in accordance with what is allowed as a penalty set down in law. One would have to consider this being reasonable

This is no longer the case in many countries around the world including more recently in the United States.

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<sup>2</sup> [http://www.youtube.com/watch?v=anjVgWNzQnk&feature=player\\_embedded](http://www.youtube.com/watch?v=anjVgWNzQnk&feature=player_embedded)

Not only US citizens are subject to this intelligence law but also anyone on the planet including Australian citizens that may find themselves in an embassy of a foreign country avoiding extradition to Sweden for failing to wear a condom during consensual sex with someone other than their wife could be picked up under the provisions of the NDAA if someone of sufficient Level in the US Intelligence Community suspected them of being a terrorists or associating with terrorists.

To paint the picture in an operational procedure thumbprint, an Intelligence Agent of the US can put a bag over the suspect's head and take them from a public street in any country by stealth to a military prison or perhaps a torture shop somewhere in Europe where waterboarding can subsequently take place.

No Judge, no Jury, no Charges just Prison or from a place from which that person may never return.

In 2005, when the Washington Post caught the scent of CIA secret flights and "black site" prisons for terrorism suspects in Eastern Europe, the Bush Administration managed to intimidate the paper into keeping the names of the host countries out of its stories. Now, thanks to a report from the Council of Europe, we know why: not national security but sordid criminality. In exchange for increased influence in NATO, Washington persuaded the "highest state authorities" in Poland and Romania to turn over detention facilities to US operatives who established what can only be described as torture shops: Prisoners were kept naked for weeks, chained to walls and often kept in "solitary confinement and extreme sensory deprivation in cramped cells, shackled and handcuffed at all times," sometimes at temperature extremes "so hot one would gasp for breath, sometimes freezing cold." The report confirms the CIA's reliance on "enhanced interrogation techniques"—a k a waterboarding, sleep deprivation and other tactics condemned as torture by human rights organizations as well as the United Nations.

The following are extracts from information that I have gained as result of research into the validity of what the NDAA represents and what we need to avoid here.

Utah has become the latest state to revolt against the indefinite detention provision of the National Defense Authorization Act (NDAA), introducing a resolution urging Congress to repeal the law that allows Americans to be incarcerated without trial for an indefinite duration.

The anti-NDAA resolution, which is currently making its way through the Utah House, appears to be the precursor for legislation along similar lines to the bill passed in Virginia last month. There are now **nine** US States that have issued a resolution and the media are calling it the Liberty Preservation Resolution and the States have a draft of their proposed law for use by other States as follows:

*"The Legislature finds that the enactment into law by the United States Congress of Sections 1021 and 1022 of the National Defense Authorization Act of 2012, Public Law Number 112-81, is inimical to the liberty, security and well-being of the people of (STATE), and was adopted by the United States Congress in violation of the limits of federal power in United States Constitution".*

In the Salt Lake Tribune the following statement was made:

“Our concern is in the definition of ‘terrorist,’ ” the Eagle’s Forum’s Dalane England told the Salt Lake Tribune. **“Our current administration has already called people pushing back against the current administration terrorists.”**

The Obama administration, the FBI, the Department of Homeland Security, and the National Counterterrorism Center have jointly identified those described as “homegrown violent extremists” by characterizing criticism of government as an indication of terrorism.

Returning to the balance of power between intelligence communities and the people than perhaps the most obvious step forward is to begin working on an Australian Constitutional Guarantee beginning with talking openly about the Assange Intelligence Laws (as they have been called within the intelligence community) with a view to ensuring that the NDAA and laws like it will be rebutted to ensure that any decisions about the fate of Julian Assange and Australian citizens like him are made here in Australia and not in a Foreign country.

A stand strong together Constitutional Guarantee of Basic Human Rights inclusive of the Right of Peaceful Assembly and the Freedom of Speech in so far as that the intent is to reveal corruption and abuse of power and not secrets that are essential to our National Security.

I respectfully submit my submission in the hope that it will receive the favourable consideration of the Australian Government and the people its serves.

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Witness 51 –Royal Commission (Fitzgerald) Inquiry