



Submission No 66

Inquiry into potential reforms of National Security Legislation

Organisation: Mr Andrew Bettison

Sent: Friday, 17 August 2012 3:55 PM
To: Committee, PJCIS (REPS)
Subject: RE: Inquiry into potential reforms of National Security Legislation

Dear Mr Secretary,

The Committee's Inquiry into reforming the National Security Legislation has made some proposals with extraordinarily grave implications for the freedom and safety of Australian society. As such, they deserve far greater consultation with the public than thus far.

To date Australia has affirmed at least two charters of human rights which assert that citizens must have the same rights and protections with regard to their electronic communication and data as they enjoy in their physical lives.

The following two proposals clearly violate those charters:

(1) "Tailored ISP data retention for up to 2 years."

The government does not currently track and record the physical movements, consumption of books and media, or private communications of any Australian citizen. It would be technically impossible to do so, but that is beside the point. The point is, that Australian citizens currently enjoy a certain level of privacy, anonymity and freedom from intrusion, which is protected our current system of laws, institutions and sheer technical impossibility.

Nevertheless, heavy surveillance of selected individuals is sometimes necessary for national security and law enforcement, so our laws provide a system of warrants to authorise such surveillance and at the same time safeguard it from abuse.

In contrast, it is technically possible to capture and retain the Internet activity of all citizens (although certainly much more costly than the Committee anticipates). The very nature of electronic data that makes this possible also makes it far more easily abused: retained data may easily be copied or altered leaving no trace.

Thus, the proposal for two-year retention of all Internet activity of all citizens presents a very grave threat to our rights and freedoms as citizens.

Just because something is technically possible does not mean it should be done. For example, we have decided not to issue semi-automatic weapons to all police officers or add lead to fuel to extend engine life. Like those examples, this proposal ought to either be scrapped or vigorously promoted and debated by the Australian community.

(2) "Establish an offence for failure to assist in the decryption of communications."

This proposal goes directly against the common law privilege against self-incrimination. The proposal ought to either be scrapped or amended to give full force to the rights arising from the uniform Evidence Acts.

This proposal will also retard economic progress in Australia by making it unsafe to distribute sensitive information under cryptographic lock, which is the basis for many kinds of technologies that enable collaborative ventures and flexible work practices.

In addition to the above objections, it is misleading for the government to claim that the regime under the Telecommunications Interception Act is out of date. It has been amended 45 times since 2001, and the ASIO Act has been amended 25 times since 2001.

Sincerely,

Andrew Bettison