



Submission No 8

Inquiry into potential reforms of National Security Legislation

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Organisation: Private capacity

Submission to the Inquiry into potential reforms of National Security Legislation

Submitter:
Mr. James Archer

To Whom it May Concern,

I wish to write a brief submission pertaining to the changing of Security and Telecommunications laws. Overall, I believe the modernising of these laws is essential. Many warrants and similar issued law enforcement/security requirements are still paper and require paper signatures, which is ridiculous in a modern digital world.

I believe the increased powers given by the changes of these pieces of legislature are somewhat necessary in today's world, however, the following proposals need DIRECT and EXTREMELY close oversight:

Telecommunications (Interception and Access) Act 1979

1. Strengthening the safeguards and privacy protections under the lawful access to communications regime in the Telecommunications (Interception and Access) Act 1979 (the TIA Act). This would include the examination of:

- a - the legislation's privacy protection objective*
- b - the proportionality tests for issuing of warrants*
- c - mandatory record-keeping standards*

AND

Telecommunications (Interception and Access) Act 1979

8. Streamlining and reducing complexity in the lawful access to communications regime – this would include:

- a - Creating a single warrant with multiple TI powers*

AND

11. Amending the ASIO Act to modernise and streamline ASIO's warrant provisions

to:

- a. Establish a named person warrant enabling ASIO to request a single warrant specifying multiple (existing) powers against a single target instead of requesting multiple warrants against a single target.*
- b. Align surveillance device provisions with the Surveillance Devices Act 2007*
- c. Enable the disruption of a target computer for the purposes of a computer access warrant*
- d. Enable person searches to be undertaken independently of a premises search*
- e. Establish classes of persons able to execute warrants*

(Particularly in respects to d & e)

AND

Telecommunications (Interception and Access) Act 1979

14. Reforming the Lawful Access Regime

- a - expanding the basis of interception activities*

AND

Australian Security Intelligence Organisation Act 1979

17. Amending the ASIO Act to modernise and streamline ASIO's warrant provisions by:

- a. Using third party computers and communications in transit to access a target computer under a computer access warrant.*
- b. Clarifying that the incidental power in the search warrant provision authorises access to third party premises to execute a warrant*
- c. Clarifying that reasonable force may be used at any time during the execution of a warrant, not just on entry.*

(Particularly in regards to c)

These proposals can QUICKLY lead to situations like that of Chris Illingworth:

<http://www.news.com.au/technology/man-faces-court-over-baby-swinging-video/story-e6frfro0-1111118357081>

<http://www.smh.com.au/technology/technology-news/babyswinging-video-charges-dropped-20090909-fh33.html>

It was found Mr. Illingworth had NO involvement with this video, was NOT advocating OR publicising it as right or even moral AND was in fact advocating AGAINST its' premise and was asking for information about where the video was taken and how to express his dismay to these people at its' actions.

Without STRICT oversight, increasing the powers, the abilities and the lowering of consequences of actions of security and law enforcements officers can lead to situations such as this, where innocent citizens are wrongly accused.

Data-retention ALSO needs close oversight to ensure the information is not abused or wrongly used by law enforcement for purposes that are NOT pertaining to national/community security- ie Piracy. Piracy and copyright laws are separate and must BE separate and this data retention CANNOT legally be used to provide law enforcement with the ability to arrest a citizen for such practices. Oversight MUST be in place to ensure the data retained is NOT used for these purposes as a loophole to copyright laws.

Oversight is KEY to all these changes. While I do not inherently dismiss these changes being necessary, I URGE the committee STRONGLY to consider the implications of no proper oversight of these changes and to balance the privacy and protected life of the citizen against the importance of national security, as you have been charged.

Thankyou

Regards

James Archer