



Submission No 83

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

**Organisation:** Australian Society of Archivists

## **Submission by the Australian Society of Archivists on the Joint Parliamentary Committee on Intelligence and Security's Inquiry into potential reforms of National Security Legislation**

The Australian Society of Archivists (ASA) is Australia's peak professional body for archivists. Our mission is to:

- advocate for the best interests of the archival and recordkeeping profession, and widely promote the value of archives and records;
- uphold quality and ethical standards of archival and recordkeeping practice; and
- support and promote progressive research and enquiry into archival and recordkeeping theory and application.

It is the view of the ASA that the surveillance of and collection of data on Australian citizens by law enforcement and intelligence must have a high degree of accountability for those agencies involved, at all levels of government.

### **Recordkeeping requirements**

The Inquiry's discussion paper, *Equipping Australia against emerging and evolving threats* (2012) notes that requirements to keep appropriate records of the exercise of such powers reflect 'historical concerns about corruption and the misuse of covert powers', and that they therefore 'do not reflect the current governance and accountability frameworks within which the agencies operate'. The ASA's position is that accountability measures such as good recordkeeping remain and will always be an essential component of the exercise of covert powers by governments. The argument that concerns about the misuse of such powers are 'historical' is, in our opinion, misguided. It is only by being wholly accountable for such activities that the public can continue to have any confidence that there is probity in the way these powers are exercised.

The notion expressed in the discussion paper that 'current governance and accountability' frameworks negate the need for specific recordkeeping requirements around surveillance and data collection activities in the relevant laws is, in our view, incorrect. It is necessary to have both broad frameworks for good recordkeeping across a jurisdiction as well as specific requirements on agencies to keep certain records; whether these be records of the registration of drivers, the specifications for bridges or the authorisations under which surveillance activities are performed. Particularly sensitive government activity mandated in law should not have to rely solely on broad requirements for recordkeeping under records or archives legislation or some other high level accountability framework. Therefore the ASA would argue in favour of retaining (with minor amendments as required) clauses designed to specify the records to be made and kept of interception, surveillance and data collection and retention, such as section 151 of the *Telecommunications (Interception and Access) Act 1979*.

### **Records destruction**

Recordkeeping requirements can be as much about the destruction of records as their creation. The current laws relating to the collection and retention of data on individuals include provision for the timely destruction of such data and other records. For example, the *Telecommunications (Interception and Access) Act 1979* requires, under section 150, that providing it is not required for an investigation, a record of an interception must be destroyed. Such requirements directing the destruction of records and data should, in the ASA's view, be specifically included in any legislation empowering agencies to carry out surveillance and interception activities. Australia

has a robust set of privacy laws, and to permit the retention without cause of surveillance and interception data and records by government - in the absence of any formal investigation - would directly contravene both the principles articulated in these laws and citizens' proper expectations for privacy. We would also note the importance of legislated accountability in the actual destruction of records / data, to ensure that it is timely, linked to a specific authority and fully documented.

### **Outsourcing of government business: recordkeeping and accountability**

The discussion paper notes in section 3.3 'Clarify ASIO's ability to cooperate with the private sector' that 'it is conducive to ASIO's functions to cooperate with the private sector.' As governments outsource more of their business to private sector organisations, it is imperative that recordkeeping and accountability standards are included in contractual arrangements with such providers, particularly in the sensitive area of intelligence gathering. Neither such outsourcing arrangements, nor ASIO's exemptions from both Freedom of Information and Archives laws, should have the effect of reducing or limiting the keeping of full and accurate records, and the timely destruction of personal data, by both it and any organisations to whom it outsources its activities.

Pat Jackson  
President

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