



URGENT URGENT URGENT URGENT URGENT URGENT URGENT

ACTION ALERT: NATIONAL SECURITY LEGISLATION

The Legislation

The Government has decided that, owing to the emergence of new technologies of communication, the security agencies do not have sufficient powers to intercept activities that might compromise national security. There are four pieces of legislation that are to be amended to achieve this – the Telecommunications (Interception and Access) Act 1979; the Telecommunications Act 1997; the Australian Security Intelligence Organisation Act 1979; and the Intelligence Services Act 2001.

The Parliamentary Joint Committee on Intelligence and Security is holding an Inquiry into the Potential Reforms of National Security Legislation. In a Discussion Paper prepared for the Committee, the following points are made:

- We have developed significant national security capability against terrorism, espionage and serious crime. Our challenge is to ensure that our capability evolves with high levels of adaptability.
- Law enforcement and intelligence agencies must be equipped with contemporary skills and technologies to meet emerging challenges.
- The amendments are intended to respond to threats from international state and non-state actors, especially in relation to cyber crime.
- Interception is the most important tool in the investigation and prosecution of serious and organised and other technology-enabled crime, and in collecting security intelligence.

The Government has identified three areas in which it seeks the Committee's response:

- (a) Matters the Government wishes to progress – issues around privacy protection, warrants, record-keeping standards, and oversight by the Ombudsman; reducing the number of agencies eligible to access communications information; and increasing co-operation and reducing duplication across agencies.
- (b) Matters the Government is considering – issues around single warrants with multiple powers; industry interception obligations; and extending regulations to ancillary services.



- (c) Matters on which the Government seeks views – issues around expanding the basis of interception; instituting industry response timelines; and applying data retention periods for up to 2 years.

The Committee plans to hold public hearings after its closing date for written submissions – 20 August 2012.

Concerns

The Sydney Morning Herald said in an editorial on 13 July 2012 that “the more than 40 proposals that would see a significant expansion of the powers of the nation’s intelligence and security agencies require close scrutiny”. The editorial continued: “The challenge of this reform is to accurately distinguish between changes that are essentially bureaucratic measures to streamline and formalise that which already happens, and proposals that shift the goalposts too far in favour of intelligence agencies”. The changes would allow ASIO to get search warrants more easily and for longer periods, and to target a person’s computer, telephone and internet service all in one. The foreign intelligence services, ASIS and Defence Signals Directorate (DSD), would be authorised to spy on Australians overseas if they are thought to be involved in intelligence or counter-intelligence activities.

In an article published in *The Canberra Times* on 28 July 2012, Dylan Welch reported that there is particular concern about the provision to require telecommunications companies to store the internet data of all Australians for up to two years. He drew attention to other provisions that would allow the Australian Security Intelligence Service (ASIS) greater power to monitor Australians, and to train others in the use of guns. He said that the Inspector-General of Intelligence and Security, Vivienne Thom, was to advise the Parliamentary Committee especially on whether the proposals contained oversight mechanisms, risks to legality and propriety and whether they protected human rights. She was quoted as saying “I have a particular interest in whether proposed policies place sufficient weight on the privacy of individuals and whether they reflect the concept of proportionality – that is, the means for obtaining the information must be proportionate to the gravity of the threat posed and the likelihood of its occurrence”.

The article went on to point out that the hacker network Anonymous had recently breached security of one of Australia’s biggest service providers, AAPT, and stolen large amounts of user data, to highlight how vulnerable such data are.

To put this in some context, in July 2011 laws were passed rapidly through Parliament to enhance the powers of national security agencies – although those powers had already been greatly expanded after the terrorist attack in September 2001 on New York and Washington. According to



Michael Head (*Drum Opinion*, 18 August 2011), these laws widened the definition of 'foreign intelligence' from the activities of a foreign power to those of people or organisations outside Australia. Any group, eg Wikileaks, regarded as a danger to security or economic wellbeing could be targeted. Michael Head reported on the rapid growth in ASIO's work in visa security assessments, counter-terrorism checks and personnel security assessments.

Quaker Response

In November 2005, Canberra Quakers sent a statement to the Senate Legal and Constitutional Committee that was enquiring into Anti-Terrorism legislation. In that statement, Canberra Quakers expressed the view that the legislation was not justified by the threats facing Australia, and that sufficient laws and powers already existed to meet real threats. Quakers saw the legislation as increasing fear and suspicion in the community, and placing strains on minority groups.

In a submission to the Attorney-General's Department by the Quaker Peace and Legislation Committee in 2007 on the release of a Discussion Paper on Material that Advocates Terrorist Acts, the following points were made:

- Acts of terror are unacceptable and everyone has a responsibility to reject a violent approach to life. This is best done through positive policies that enhance community and build relationships among people of different backgrounds.
- Freedom of expression needs to be maintained in a manner consistent with Australia's international obligations to protect human rights.
- Australian approaches to terrorism should be guided by the framework set by the United Nations, and should pay particular attention to the UN resolutions on ensuring human rights are protected when acting against the threat of terrorist acts.
- An independent reviewer of terrorism should be appointed to monitor the operation of legislation and guidelines and report to Parliament.

The current changes to the legislation appear to be based on a presumption that the intelligence and security agencies can be responsible in the use of their considerable powers. Yet there have been a number of cases where action they have taken has proved to be unfounded and there remains a potential for serious invasions of privacy. The two-year retention of data by telcos, for example, is one year longer than exists in Britain.



Suggested Action

Friends may wish to question Members of Parliament about the legislation and the extent to which it may compromise the human rights of Australians, and whether the extra powers are really needed, given the wide range already available. In addition, the question could be raised whether the increasing allocation of such powers to these agencies tips the balance too far towards the state rather than the individual and places too much emphasis on security at the expense of education and building community harmony. Other points that could be made are that (a) the holding of personal data for as long as two years makes it more vulnerable to hacking and inappropriate use, and (b) regular Parliamentary scrutiny of intelligence and security agencies is essential.

The following are members of the Parliamentary Committee that is conducting the Inquiry:

Anthony Byrne MP (Holt, Vic) – chair
Philip Ruddock MP (Berowra, NSW) – dep. chair
Senator Mark Bishop (WA)
Senator George Brandis (Qld)
Senator John Faulkner (NSW)
Senator David Johnston (WA)
Senator Ursula Stephens (NSW)
Michael Danby MNP (Melbourne Ports, Vic)
John Forrest (Mallee, Vic)
Kevin Rudd MP (Griffith, Qld)
Andrew Wilkie (Denison, Tas)

Further information can be found at:

www.aph.gov.au/Parliamentary_Business/House_of_Representatives_Committees and follow the prompts: Joint Committees and then Intelligence and Security

Canberra, August 2012