



Submission No 178

Inquiry into potential reforms of National Security Legislation

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Background

The Inquiry materials are not structured in the usual tight manner that would have allowed a point by point analysis, and citation of support materials etc, and so it is not possible to provide a formal response in the usual tight format.

The Inquiry is not a stand alone event. The large volume of National Security legislation is widely recognised, by those who have read it all, as a substantial over reach already: as Professor G Williams points out, most countries have drawn back to at least some extent from the excesses post 9/11. This has not occurred in Australia.

The Australian Constitution lacks many of the safeguards in other countries including those who have drawn back from their (now recognised as) legislative excesses post 9/11, and there is no Federal Human Rights Legislation in Australia and thus no enactment of the international agreements on human rights to which Australia is signatory.

The context in which this Inquiry takes place must also be considered further. The secret TPP and ACTA negotiations contain many measures that would amplify the impacts and usage and quite predictable drift and expansion of the use of the extensive powers sought as transparency and accountability - and even the presumption of innocence- are all casualties in the apparent set of the powers sought.

It might not be immediately apparent, but complete real time location would inherently form a key part of this data retention process - and this would be an irresistible resource for civil enforcement and real time surveillance. See the CRIMTRAC initiatives with driver licences and ANPR as examples of such drifts in application and use.

These minor examples illustrate the great reach and information powers already held by National Security bodies (and increasingly through their broader involvements inside Australia with civil enforcement bodies), and the rapid growth of non transparency as a basic mode of operation in a wider scope that discussed in the Inquiry papers, yet tightly linked to them.

The National Security Inquiry is so extensive and wide ranging, and the time for submission so inappropriately abbreviated, that I can only pick on a very small number of points to raise.

All of which I have endeavored to discuss with my local MP via email, with no two-communication proving to be possible to secure over the entire term of the consultation period and am now forced due the time deadlines to submit this to

the Inquiry as a hurried and as yet still only partly informed submission

1. The criminalisation of not being able to provide passwords/de-encryption is a massive overreach as it affects not only the person concerned but all the other affected parties involved is a massively damaging way using the most damaging label one can now get in society-a near ineradicable criminal record.. Yet over 50% of all help desk calls are for forgotten or failed passwords, often due to automated changes imposed by the service involved, and frequently due to sheer memory issues... I have had to recreate PGP signatures many times as I simply could not rediscover what i had used as a passphrase! I lost all that I had had under that PGP signature.. and that is not unusual. Let alone the many many times I have found a password not working any more or just forgotten. This proposal (now that intelligence and civil enforcement seem to exchange data all too often) is a massive over reach and uses excessive state powers over individuals to do so. Any measure that places individuals at the mercy of full state power without any presumption of innocence as this does is a measure that requires a full Inquiry of its own, instead of being buried in the body of a massive collection of state over-reach bids as this is.

2. Data retention of every keystroke, secure login, banking, purchase, communication and message exchanges and URLs accessed (by anyone or several people using any computer) is another massive over reach placing the whole community at risk. The ISP databases containing these materials will be a honeypot like no other, and breaches inevitable... with all the passwords and other security protocols undermined thereby. From a political point of view these records will be an irresistible honey pot as well. (See the records of Victorian LEAP database leaks and political exploitation of these in elections and otherwise as just a minor example)

3. The authorisation of ASIO et al to make intrusive changes to private computers is also a proven means of capturing all keystrokes, video and voice communications...(leaving aside the effective means it provides of inducing a criminal conviction on people whose passwords have thereby been changed of course, see above) so why have the data retention initiative? Is it just to allow copyright agencies (who already have lobbied to make the most minor or unintentional civil copyright possible violation a criminal affair)? We are aware of the immense pressure being applied by such parties in TPP and ACTA, and this cannot be divorced from the current inquiry. Or is the data retention initiative designed from mass real time surveillance of the population? It certainly appears to be designed for this purpose when the Inquiry framing is taken as a whole)

4. The huge, virtually complete, acquisition of state information power comprised in the access to such databases imbalances the state information powers to such an extent that the intrusive, unverified and secret databases held by politicians and political parties MUST be made open to verification and FOI as the most minimal balancing factor... as the points made above make clear, this would be

needed to protect politicians and the community. (Perhaps it's worth noting that the ASIO powers sought would also make politicians as vulnerable as the rest of us as well.

The entire document on which we are asked to comment is not tightly written, vague and appears to be a catch all effort to secure yet more general powers for the government, and is very light indeed on the aspects of civil rights, innocence presumption, and many of the other prices that would be paid. There are inconsistencies between the various documents on the website(see data retention proposals)

1. It is a matter of great regret that a proper transparency and impact assessment forms no part of this inquiry.

2. The omission of civil society from the consultations claimed to have been undertaken is a fatal flaw of these wide reaching change to civil liberties, privacy and civil rights. They must be included in any serious movement on these issues. They have not been

Both are essential

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