

Comments regarding

Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018

Summary

This is horrible legislation, and is easily the worst legislation so far in the government's ceaseless campaign to establish a surveillance state and strip away human rights.

Every single technological device and service will potentially be untrustworthy and compromised. That will of course include the devices and services used by you, because surely you don't imagine that if the Australian government passes such legislation then other governments will not do likewise, or have not already done so.

I wonder what exactly the government thinks it is protecting and preserving, when it seems so ready to discard the essence of our society.

Let me paint a picture for you. Imagine that you have a modern TV in your house. Most likely it is connected to the internet and capable of sending and receiving information on the internet.

This legislation allows the government to direct the manufacturer of that TV to supply the TV with compromised software so that the microphone can be remotely and secretly enabled, thereby turning the TV into an audio surveillance device. (This may *seem* fanciful but we know that the US government is already doing this. The only difference is that it does so by exploiting existing security weaknesses in the TV, rather than simply having the manufacturer insert the security weakness.)

If the TV has a webcam integrated within it or connected to it then this legislation allows the government to direct the manufacturer of that TV to supply the TV with compromised software so that webcam can be remotely and secretly enabled, thereby turning the TV into a video surveillance device.

This legislation might even allow the government to direct the manufacturer to include a microphone and to integrate a webcam and to incorporate internet connectivity in all future models of TV, and to require successful internet connection for it to operate.

There would eventually be the capability of audio/visual surveillance in every house, as part of the TV.

Does that sound familiar to you? If you are a student of literature then you will recognise this as a description of the "telescreen" device from the novel, *Nineteen Eighty-Four*, by George Orwell.

If this legislation passes then '1984' will be so close that you can reach out and touch it.

In some ways this legislation is *worse* than the world envisaged by Orwell, because Orwell was writing in 1949, and at that time electronic computers barely existed, and the idea of a portable computer was incredible. Orwell did not foresee the scope for technological devices to become enmeshed in our lives, and hence for government surveillance and interference to become enmeshed in our lives.

There comes a time when the parliament needs to grow a pair and stand up to the *agences grises*, who in fact seem to be running this country.

Specific Comment

I suspect that no matter what I write here, this Bill will pass more or less unmodified, so I won't spend a lot of time savaging the Bill in detail, and will instead limit myself to one comment.

Like Section 313 of the *Telecommunications Act*, the power that is being granted is

- very broad – too broad – and poorly constrained, almost open-ended
- disproportionate to the problems that can be targeted

On the first bullet point, parliament is abdicating its responsibility by giving the various agencies almost a blank cheque. It may be reasonable to grant specific well-defined powers, and if those powers *prove* to be insufficient then the agencies can come back to the parliament and ask for more powers, and a proper public and parliamentary debate can be held as to whether further powers should be granted.

The proposed legislation also creates an unclear legal position for the target company who receives the demand. The powers are so vague and abstract that a company may obey a directive that it does not need to obey.

On the second bullet point, for example, if the legislation targeted only serious crimes (e.g. those punishable by up to 7 years in jail, or more, or life imprisonment) then you might almost be able to claim a proportionate response. However there is no threshold at all for “seriousness” before assistance can be required.

Conclusion

It is difficult to escape the conclusion that to defeat the surveillance state one should write code, not letters or submissions.