

Submission to the Parliamentary Joint Standing Committee on Intelligence and Security.

Re: Australian Security Intelligence Organisation Amendment Bill 2020

Preamble:

We have seen this century increasing laws eroding citizens rights, greater surveillance, the growth of Artificial intelligence (AI), secret trials and the increased power of political authorities over the legal. Much of this ignoring basic tenets of our democracy, the separation of powers, the rule of law and open and accountable practice both in law and in the politic. At a time when politicians are increasingly viewed with suspicion they have enshrined greater ministerial powers within the laws they have created and at the same time acted through the bureaucracy in unlawful ways. The robodebt fiasco, pork barrelling for electoral advantage, use of consolidated revenue for party political purposes, unwillingness to take responsibility for decisions, and an inability to understand what is meant by conflict of interest.

It is the responsibility of Parliament to make the laws but not to police or prosecute them. Ministers have in recent times been given greater powers to initiate action, while I accept that there are moments when there is a need for ministerial intervention it should only be used as a final authority in certain circumstances to veto a decision that has been made that can be justified on environmental, humane or fairness grounds. This should, however, never be secret and the decision maker must be accountable not only before the people but also the parliament.

Too often repressive and undemocratic laws are promulgated under the guise of terrorism and to curb lawlessness. Political parties have often resorted to the old "law and order" debate to gain political advantage. Building on fear and spurious argument to simply engender fear. We have seen punitive laws which have lead to the over incarceration of indigenous people and yet broader based laws being ignored such as money laundering by banks. Laws must be about the safety of individuals, but always in the context of a free and democratic process and taking into account matters of humanity.

While accepting that with national security greater secrecy must at times be imposed, when it comes to a nations citizenry great caution needs to be exercised

Compulsory Questioning Framework:

I agree with the removal of questioning and detention warrants. The expansion of questioning warrants to politically motivated violence needs very careful definitions to preclude the possibility of too broad an application. Who is to determine what is politically motivated violence and at what point is this determined?

The removal of an authorising authority raises alarm bells for me. There always needs to be checks and balances to ensure civil rights are maintained.

In this day and age of electronic media there is no reason to allow for verbal authority alone unless there is a post hoc requirement for request to follow immediately in writing. There needs to be a recorded paper trail to ensure accountability and adherence to fair and lawful process.

Reasons for a broader pool of qualified persons needs to be made and justified, otherwise leave it as it is.

Widening police powers re search and seizure needs safeguards as discretion can cause overly aggressive or overly zealous behaviour on the part of interrogators. Removal of dangerous articles is appropriate as is prevention of escape, however, if mobile phones are removed apart from reasons of evidence this can compromise rights, what is the problem with informing about the existence of a warrant?

I have concerns in relation to removal of a legal representative who is disruptive. What is meant by disruptive? This may interfere with the rights of the person under question, too much unaccountable police power, coercion needs to be guarded against. History tells us that some police can become overly aggressive in circumstances where they see themselves as the “good guy” fighting all the “bad guys”.

More support and safeguards need to be put in place for minors. Safeguards need to be spelt out in the legislation. Minors must have a support person present, ideally their legal guardian. If for any reason of security this is not possible someone should be appointed and given the authority without fear to report on the questioning. Records of interview must at all times be required.

Existing Provisions:

Compulsion to answer questions with penalties has always concerned me. This has never been part of any reasonable criminal law. Individuals need to be protected from any possibility of heavy handed coercion. For it to be an offence for non compliance to questions is something I would expect in a police state.

Surveillance:

There are dangers in allowing surveillance devices without a warrant, internal authority without judicial checks again suggests a “police state” approach which is inconsistent with our accepted freedoms and civilian and human rights.

Updating the definition of a tracking device seems sensible.

Summary:

Anything that increases police powers is dangerous. In my life time I have seen the police more heavily armed year by year. We are at the point where continued erosion of basic democratic rights tinged with a degree of inhumanity is becoming the approach to law and order. We need to be careful to ensure that systems of accountability for unacceptable policing behaviour and laws are in place. Once basic principles of freedom are lost it is impossible to regain them. We do not want an oppressive regime of any kind and it is up to our elected representatives to monitor demands from law enforcement agencies that are only about making things easier for them. Human and civil rights must always be protected within the laws of an open and democratic country.

There are concerns at the moment about secret trials surrounding historical events and people facing prosecution and the court without having any clear idea of what it is about and who the accuser is. The Bernard Collaery trial is one such event. This is not the

Australia I want. Openness, accountability and adherence to human and civil rights, fairness and humanity must be the guiding principles of any law.

Brian Wooller
June 17 2020