

Inquiry into the gathering and use of criminal intelligence

Parliamentary Joint Committee on Law Enforcement (PJCLE)

Submission by Civil Liberties Australia (CLA): 9 August 2012

CLA thanks the PJCLE for the opportunity to contribute by appearing before its hearing into this matter. We provide the following submission.

1. Role of the ACC

The role of the Australian Crime Commission is changed dramatically from that envisaged when it began in 2003. It is now “a criminal intelligence agency whose primary focus is collection and analysis of criminal intelligence”¹. Thus the ACC has become the CIA.

CLA asks this Committee to consider whether the new description was the role envisaged for the ACC when Parliament approved its enabling Act. CLA notes that subsequent changes to the ACC role have been Executive-driven, and not Parliament-approved. CLA invites the Committee to decide that no further changes should be made, or recommended, to the role of the ACC in relation to intelligence sharing until the completion of other reviews now under way and one into the new role of the ACC.

In fact, the ACC is more like the US Federal Bureau of Investigations than the US CIA, though the ACC contains elements of both internal and external operations. The history of abuse by the CIA and, particularly, the FBI, of secretive intelligence, sometimes against politicians, is a clear cautionary tale for how the ACC is evolving. The ACC appears to be taking over de facto management, by control of information, of the Australian police/security agency environment. The Committee and a further inquiry might consider whether this “Super-ACC” – or SACC role is appropriate.

2. Strategic view of fundamental freedoms c.f. centralized intelligence

CLA notes that the Committee is considering intelligence-sharing issues “within the context of the National Security Framework”. CLA observes that there is a concurrent inquiry now under way, by the Parliamentary Joint Committee on Intelligence and Security (PJCIS), which covers precisely the same area in many of its terms of reference, but particularly in 2.b:

To ensure law enforcement, intelligence and security agencies can meet “the requirements of a modern intelligence and security agency legislative framework, and to enhance cooperation between agencies”.

CLA proposes that this Committee decides that the current PJCLE inquiry be prorogued, and that the Committee asks that its terms of reference be incorporated into the PJCIS inquiry.

3. Absence of evidence or available analysis

¹ Submission by Patrick F Walsh, Charles Sturt University

CLA is especially concerned that proposals come before parliamentary committees, at the instigation of police and security agencies and the Attorney-General's Department (AGD), without evidence being presented of the compelling need for change. For example, we would expect that any request for greater sharing of intelligence would be accompanied by a detailed analysis of an extensive number of cases where the absence of sharing has resulted in a sub-optimal outcome. CLA is not aware of any such evidence to the Committee.

CLA also believes that current deliberations of both the PJCLE and the PJCIS would be enhanced by, and should take into account, the first full report of the Independent National Security Legislation Monitor (INSLM), Mr Bret Walker. Mr Walker presented an interim report in December 2011 after just eight months in the position. We expect his first full report, in the period October-December 2012, to contain a forensic analysis of security and policing matters which would provide a significantly enhanced foundation on which to decide the extremely important issues now before the PJCLE and the PJCIS. We ask this Committee to recommend awaiting consideration of the INSLM 2012 report before finalizing the work of both Committees.

4. Horse before the cart

CLA observes that the process of considering major changes to police/security intelligence sharing is not informed, and counter-balanced, by a set of principles on which Australia should contemplate such matters. The set would include what is meant by the traditional rule of law in Australia, what privacy rights Australians have in relation to their police and security services, and what our fundamental freedoms are as Australians.

We note that the National Security Statement of 2008 required that:

"We must not silently allow an incremental erosion of our fundamental freedoms."

Such freedoms have been eroded, significantly and virtually silently, by changes to ACC and other police/security agency legislation over the past decade, since "9/11".

CLA proposes, and asks this Committee to endorse, an inquiry by the Human Rights Committee of Parliament with terms of reference that involved producing an over-arching statement of the fundamental freedoms of Australians against which proposed changes to intelligence sharing, and other police and security intrusions into the traditional rule of law in Australia, can be assessed, measured and monitored. This inquiry and report should occur before the two current inquiries by the PJCLE and the PJCIS are finalized.

5. No human rights comment by AGD

CLA notes, with sadness, that the AGD submission makes no mention whatsoever of the human rights of Australians. The "impartial" (AGD website) agency responsible for five mission-critical areas, one of which is "protecting and promoting human rights" (Secretary's review, 2010-11 annual report), finds no reason for any mention of the rights and civil liberties of Australians when making a submission on how crime, police and security agencies are to have access to extensive personal and private information of Australians.

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