

# A submission to the public consultation on the Assistance and Access Bill

The proposed Assistance and Access Bill supposedly takes steps to move Australia into the electronic future, but it takes an incredibly narrow and single-minded approach towards doing so. Australia used to rely on judicial oversight to ensure that the rights of Australians are not trodden upon, but the new bill diminishes the effect the judiciary can have. The scope of warrants has been increased, and a common inclusion in such warrants is the phrase "any other thing reasonably incidental". This appears to be a catch-all phrase that allows law enforcement to do as they please, including the power to (and I quote)

use any other computer or a communication in transit to do those things;

I see no reason, beyond the elimination of judicial oversight, to grant such blanket powers to any agency which obtains such a warrant. This is not the lone occurrence, I also note that the issuance of technical assistance requests, notices, or technical capability notices also only require that one person, not of the judiciary, be satisfied that the requirements are "reasonable and proportionate". Again, we see that there is a distinct lack of oversight. No reasoning is given for why such matters are not presented for the judiciary.

A nod is given to recent backlash against the "War on Mathematics" here in Australia, coined when former PM Malcolm Turnbull suggested that the laws of Australia trump the laws of Mathematics in this country. I do note that there is a specific mention that technical assistance notices or capabilities cannot require the implementation of a systemic weakness or vulnerability. This is promising, but still falls far short. This bill offers a number of scenarios in which the addition, deletion or alteration of data is allowed. However, at no point in this bill is there a requirement that any user of said data be informed of these changes. A fair trial would be predicated upon the defendant knowing that their data had been tampered with, and even worse if no charges are ever laid, there is now the possibility that ordinary Australians will have their data tampered with and never even be told that it had been tampered with.

More dangerously, I note that there is a significant change to the powers granted to ASIO. To begin with, the bill would allow the granting of broad exceptions to civil liability to people engaging in

"conduct", without any real definition of what such conduct would be. This whole section of the bill talks about the sharing data with ASIO, and given the specific wording it would appear that the goal is to ensure that a person is allowed to share data with ASIO on any matter without being liable to civil suits. This, at a time where new bills are being enacted to specifically reduce the legal ability of journalists to engage in true reporting of the doings of the government (see e.g. the trial of Witness K, the introduction of specified "journalist information warrants", or the Espionage and Foreign Interference Bill). When combined with these other actions of the Australian government, the message being sent is that the Government is allowed to do as it pleases, but Australians had better not speak up about injustices or they will be put away.

In summary, the new bill grants extraordinary powers to law enforcement agencies, removes the immediacy of the judicial system, hides the actions of law enforcement and at the same time encourages Australians to share information with ASIO while discouraging the open debate of the actions of the Australian government. If I'd only read this summary, I'd expect this to be the clue to an eight letter word, not a description of a new bill being introduced in Australia.

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