

Submission to:

Mr Joshua Lickiss

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Electronic Surveillance Reform Branch

Electronic Surveillance and Law Enforcement Policy Division

Department of Home Affairs

Presented by:


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29 June 2022

Proposed expansion of powers for
corrective services authorities to
access telecommunications data



Disused prison (Presidio Modelo, Cuba) based on Jeremy Bentham's 'Panopticon'



The telescreen is watching in "1984"
(Film: Michael Radford 1984;
Novel: George Orwell 1949)



Balancing safety/security/prevention/operability
and privacy/dignity/freedom/health

Favouring privacy and individual security rights

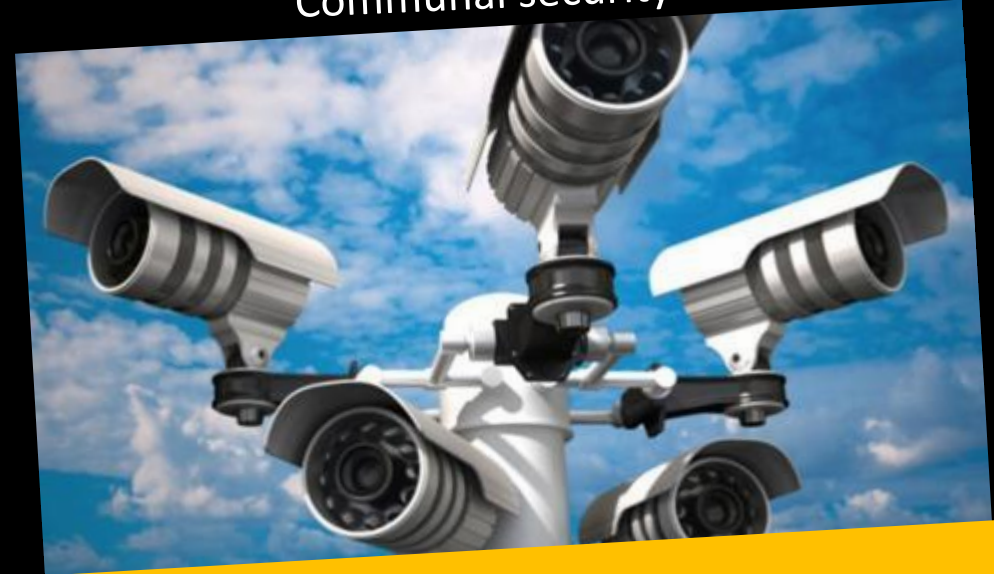
Individual security (Linus of Charles M. Schulz's *Peanuts*)



Individual and communal privacy (Charles M. Schulz's *Peanuts*)



Communal security



Recommendation 78:

‘As part of the development of a new electronic surveillance Act, corrective services authorities should be granted the power to access telecommunications data, if the relevant state or territory government considers it... necessary’



‘Who is the living food for the machines in Metropolis?’



Video phone concept in "Metropolis" (Fritz Lang 1927)

If the 'government considers it... necessary' = VAGUE

- Process for communicating necessity/granting power?
- Does State/Territory Govt need to prove necessity?
- If so, on what basis (e.g. is 'tough on crime' enough?)

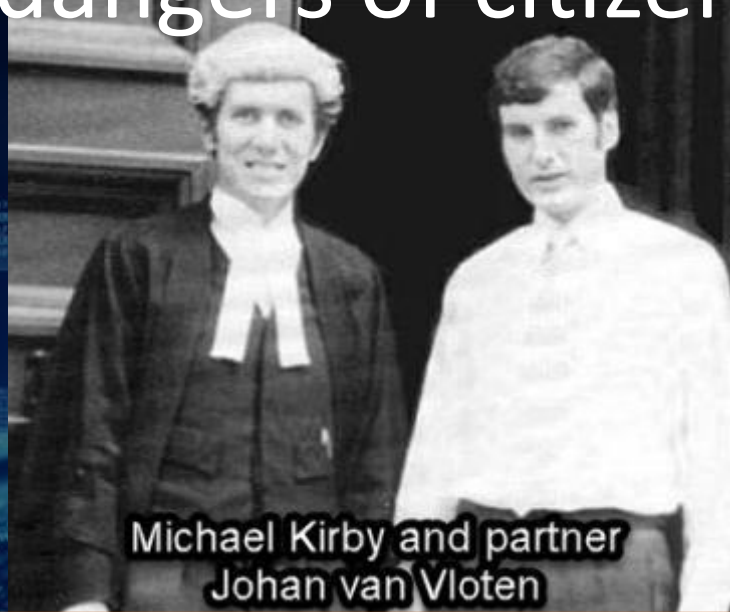
Recommendation:

State/Territory govt.s must prove a 'demonstrated need' to access data.

Any Govt discretion must be strictly defined & limited (as discussed later in 'Our primary recommendations')

How substantive does 'necessity' need to be?

- The Honourable Michael Kirby experienced and understood the dangers of citizen surveillance



Michael Kirby and partner
Johan van Vloten

Recommendation:

The 'demonstrated need' to access data must be substantive, justified in very limited circumstances



Reality in "The Truman Show" (Peter Weir 1998)



... and our escape from observed reality

The possibility of suppression for unknown or hidden reason



Anthony Perkins as Josef K in 'The Trial'
Director: Orson Welles (1962); Author: Franz Kafka (1925)



Jeremy Irons as Kafka in Steven Soderbergh's 'Kafka', 1991



ID glitch locked in for Mr Buttle in Terry Gilliam's 'Brazil' (1985)

Kirby's 'effective controls' and the PJCIS:

- Review by a member of the judiciary of how big data is collected would be constructive, but...

Recommendation:

That the PCJIS not be replaced with a body independent of the 3 branches of Govt...

Instead achieve balance between: (a) Senators & Reps; (b) both major parties; (c) greater input from cross-benches

Greater power to provide effective oversight

Definition of 'telecommunications data':

- Not defined in current legislation
- Understood to be metadata (but not the content)

Recommendation:

That 'telecommunications data' be defined in the new Electronic Surveillance Act to avoid uncertainty and loopholes, but in such a way that the legislation remains technology-neutral

Govt Response to Recommendation 78: Just said 'Agreed'

Govt discussion paper: 'Agencies will only be able to use electronic surveillance powers where those powers are needed to perform their functions.'

Govt may add to agency's electronic surveillance powers where it makes a 'clear and compelling case'



Australia engages in its own version of pre-crime law enforcement... Restrictions on the use of telecommunications and association are placed on people who may well be innocent or reformed, simply on the basis of who their family and friends are

Accessing data of free people



Our Recommendation:

That laws allowing 'lawful illegality' be repealed, instead sanctioning people who actually break the law



Robotic Monitoring System
機械人監察系統



Technological
alternatives to
incarceration



Forced telecommunications device for released sex offenders



Our Recommendation:

That the *Serious Offenders Act 2018 (Vic)* be repealed, which would tend to increase sentences for serious sexual and violent crimes, even though the non-parole period would tend to remain the same. Any ankle bracelets and sensors could then be parole conditions if considered necessary



Our Recommendation:

If expanding the powers, that model Federal legislation be developed with State & Territory input, then each jurisdiction pass their own legislation

Primary recommendations

Correctives Services do not need extra power to access data (they can record content now, and if they need access to metadata, they can apply for it through police anyway)

A is ideal... or B...



Prove with a 'clear & compelling case' a 'demonstrated need' to access the data before being listed under s.101A TIA Act (or new Act).

Specific requirements for CS in new Act re: Each data access being needed to perform its functions, keeping & deleting records, reporting, privacy, human rights, transparency, oversight, warrants and accountability



**Thank you for
listening**

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