

The Review Team

Review National Arrangements for Protection and Management of Identity Information

By email: <mailto:review.team@homeaffairs.gov.au>

Civil Liberties Australia (CLA) thanks the review team for inviting us to attend a physical “consultation” and to offer our thoughts to the review process. We decline to comment on the substantive issues for the reasons below. This is our formal submission to the review process: we explain and demonstrate why the process should not proceed as planned. We request that you publish this submission, and all other submissions, only suppressing genuinely security-sensitive content.

The review is far too hasty and short to be a proper consultation. Therefore it will not produce widely-considered, balanced and robust outcomes. Mr Wilkins and Prof Lacey do not, by themselves, bring appropriate skills to the identity information review task. Moreover, we believe their independence and detachment from these issues is questionable given their backgrounds – careers involving the reinforcing and protecting of deep security for the state, including internationally (see Notes).

The process needs at least a further three to five identity, privacy and rights experts from civil society to be members of the review panel for it to be appropriately representative and balanced. The extra people must not have been senior government employees in strategic intelligence, security, surveillance or crime positions, but should represent new and emerging technology and privacy and civil liberties-human rights aspects of identity information and privacy.

As well, we are concerned that, regardless of the findings of the unbalanced two-person team, the attitude when any recommendations reach the Minister for Home Affairs is pre-ordained. Mr Peter Dutton is a right-wing ideologue from the conservative side of a ruling government who has made his wish for willy-nilly sharing of identity and privacy information crystal clear since 2002. He wants to drive a steady progress (“a course”) of wholesale, cross-government and law enforcement exchange of people’s details, as well as open access to sharing information, and he personally gives a much-reduced weight to the right of privacy for the individual. He comes down heavily on the side of the state, against the right of the individual. This current review process is apparently part of his sixteen-year (so far) ideologically-driven “course”:

“...we must set ourselves on a course of information sharing between law-enforcement agencies and other government departments, with this end in mind: when does the right of privacy for the individual start to impinge on the common good of society?”^[1]_[SEP]

[– Peter Dutton, first speech to parliament, Wednesday 13 February 2002](#)

Mr Dutton's record of secrecy around boat arrivals and refugee claimants gives no confidence that he properly understands appropriate give-and-take information sharing in a modern, open society. His forming of the armed, black-shirted, paramilitary group of Australian Border Force illustrates the physical dominance approach he takes to problem-solving. The current push to give him power to call out the troops on to the streets of Australia, and for the troops to be able to quiz citizens at gunpoint, demand they show personal ID document(s) at pain of jail, and to arrest and detain people as well as to shoot them dead under a "just obeying orders" exemption to accountability, shows to what dangerous extent Mr Dutton and his ultra-conservative colleagues will push Australia away from freedoms of the individual towards control by the state. No-one can have confidence in his/their personal identity protection approach or the likelihood of their safeguarding personal privacy.

Since Mr Dutton announced himself in 2002, the anti-terror law push by government at the behest of the security, police, military and surveillance entities has stripped citizens of a vast range of traditional Australian legal and social protections for which arguably our Defence Forces have fought for more than a century. Diggers' rights have been un-dug.

Now, with this review, Mr Dutton appears to believe that, as part of the progression of his personally-prescribed "course", it is time to take away even more of the limited protections around identify information and personal privacy in Australia.

For these reasons and more, Mr Dutton and therefore the Department of Home Affairs also are the wrong entities to preside over such an important question as national arrangements for the protection and management of identity information. The two reviewers' first recommendations should be that:

1. The Department of Home Affairs is the wrong place for such an inquiry;
2. The current Minister (Mr Dutton) has exhibited long-term, publicly-stated bias against a balanced outcome in the identity, privacy and information sharing space; and that therefore
3. This process is skewed and slanted, and should be postponed; and
4. If/when resumed, it should be managed by the Australian Human Rights Commission or, failing that, by an organisation that by constitution and membership is balanced in its approach.

There are a number of other significant inquiries and pieces of legislation under way federally which count against any prospect of achieving a balanced outcome now. The 'identity information' question should be incorporated with these other matters, rather than operating as a piecemeal, quick, pick-off issue before important major decisions are made. (Such a tactic has been unfortunately a hallmark of governments in recent decades). Instead, there should one major review of all terror-related issues, which is where the identity/privacy issues lie.

First among the wider matters is the National Intelligence Community review under Mr Dennis Richardson which will rightly take a year to produce a considered and reasoned

outcome. Until the “intelligence community” is decided, it is premature to allocate who shares identity information. The range of other bills before MPs includes one on encryption which cuts precisely across this proposed inquiry. There are also the current issues of police demanding ID at airports, and troops demanding ID on the streets.

Thank you for the opportunity to make the background situation clearer for the review team and panel, and for the chance to explain why the current process is so seriously flawed, and the final outcome will be so slanted towards pre-determined ideology without properly balancing rights and liberties.

In passing, we note also that Mr Dutton would likely perceive any comments from Civil Liberties Australia as coming from a “criminal...operative”. We refer you to Mr Dutton’s same first speech quoted above:

‘The silent majority, the forgotten people—or the aspirational voters of our generation, as some like to term them—are fed up with bodies like the Civil Liberties Council and the Refugee Action Collective, and certainly the dictatorship of the trade union movement. Australians are fed up with the Civil Liberties Council— otherwise known as the criminal lawyers media operative—who appear obsessed with the rights of criminals yet do not utter a word of understanding or compassion for the victims of crime. Their motives are questionable and their hypocrisy breathtaking.’

CLA did not exist when Mr Dutton made his first speech as an MP, but it seems that his negative attitude continues, without discernment, towards many civil society “bodies like” the named civil liberties (and refugee) organisations. We point out that CLA has an exemplary 15-year record of contributing positively and voluntarily to parliamentary inquiries nationally and in all states and territories.

Thank you for the opportunity to make these comments. We would very much like to contribute to any review which did not involve a sham consultation with pre-ordained outcomes as dictated by a biased Minister of closed mind. We have no confidence that the review team and panel are operating on a level playing field, nor would anyone else be who makes any contributions to this current “course”.

Yours truly

Dr Kristine Klugman OAM, President

23 October 2018

Notes: (These are not backgrounds that give civil society confidence in the review team):

Mr Roger Wilkins was deeply involved on behalf of government in security matters when Attorney-General’s Department secretary, and since has presided over an international organisation that “sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats”. <http://tinyurl.com/y8z7bdzg>

Prof David Lacey has served as a senior executive across national law enforcement and national security, maintains active involvement with government committees and boards, and has implemented national law enforcement and intelligence capabilities. <http://tinyurl.com/y8z7bdzg>