



Digital Rights Watch

Submission to the Inquiry into the  
National Security Legislation  
Amendment (Espionage and Foreign  
Interference) Bill 2017

15 February 2018

## Who is Digital Rights Watch?

Digital Rights Watch (DRW) is an Australian non-profit charity that supports, fosters, promotes and highlights the work of Australians standing up for their digital rights.

<http://digitalrightswatch.org.au>

For more information about this submission please contact Elizabeth O'Shea, Board Member of Digital Rights Watch - [lizzie@digitalrightswatch.org.au](mailto:lizzie@digitalrightswatch.org.au)

## The context of the proposed reforms

Digital Rights Watch (DRW) is concerned about some of the proposed reforms contained within this Bill, in particular the broad interpretations that could result from these changes.

Some of the best knowledge we have about the ways in which our human rights in digital spaces are respected and infringed has come from whistle blowers. Most obviously, Edward Snowden changed the global discussion about surveillance and democracy when he made disclosures in the public interest about the activities of the National Security Agency. Without Snowden's disclosures, we would most likely be unaware of the nature and extent of government surveillance in the digital world.

Whistle blowers are therefore a critical force in holding government accountable for over-reach and wrongdoing. Ironically in the context of this bill, whistle blowers have historically in international contexts served to assist with identifying risks to national security by highlighting poor government practice and the presence corruption. With proper processes for making disclosures in the public interest, whistle blowers can form an important component of a healthy democracy. The proposed reforms undermine this significantly.

DRW is also of the view that national security agencies already have significant powers to deal with threats to national security, and that this Bill fails to take into account the balance between freedom of speech and protecting Australia's citizens.

## The proposed reforms

DRW is particularly concerned about the proposed reforms at Part 5.6 – Secrecy of Information. DRW shares concerns with other human rights organisations, such as Human Rights Watch and the Human Rights Law Centre, that the provisions contained in this part are overly broad and infringe upon basic human rights.

In particular, DRW is concerned that the definition of ‘cause harm to Australia’s interests’ and ‘inherently harmful information’ are both far too broad, and can be interpreted in a myriad of ways, making it very difficult to determine the scope of the provision. The individuals likely covered by the definition of ‘Commonwealth officer’ is similarly expansive, covering contracted service providers ranging from technology professionals in Canberra to social workers in offshore immigration detention centres.

The offences under Part 5.6 are also wide reaching, with application to any person who communicates or deals with information even if they are a mere recipient of this information and not themselves a Commonwealth officer or contracted service provider.

DRW is of the view that national security agencies already have significant powers to deal with threats to national security. This bill forms a wasted opportunity to make necessary and overdue reforms the *Crimes Act* in the public interest, and falls back on spurious and disappointing logic that equates greater sanctions on freedom of speech with protection Australia’s national security.

The imposition of criminal offences for the disclosure of certain kinds of information poses a significant threat to Australia’s democracy. The absence of any requirement that the disclosure cause harm makes the provision unfit for the stated purpose of protecting against threats to Australia’s national security. The effect of the provision will be to undermine the ability of journalists to report on national security matters and human rights activists to hold governments accountable. Perhaps most obviously in the context of digital rights, the provision will serve as a significant disincentive for whistle blowers who seek to expose wrongdoing.

It is DRW’s request that the Committee recognise the broader implications of these reforms when considering this Bill. We endorse the recommendations already put forward to the Committee from other civil rights groups who share similar concerns to our own, in particular the Human Rights Law Centre, Human Rights Watch and the Australian Human Rights Commission.