



## Australian security and counter-terrorism

# Australian powers to spy on cybercrime suspects given green light

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A government bill to create new police powers to spy on criminal suspects online, disrupt their data and take over their accounts has been passed with the support of Labor.

The identify and disrupt bill passed the Senate on Wednesday, despite concerns about the low bar of who can authorise a warrant, and that the government failed to implement all the safeguards recommended by the bipartisan joint committee on intelligence and security.

The bill **creates three new types of warrants** to enable the AFP and Australian Criminal Intelligence Commission to modify and delete data, take over accounts and spy on Australians in networks suspected of committing crimes.

Earlier in August, the parliamentary joint committee on intelligence and security - (PJCIS) chaired by the Liberal senator James Paterson - made a series of recommendations to improve oversight and safeguards.

On Tuesday, the home affairs minister, Karen Andrews, introduced amendments to implement some of the proposed safeguards, including a sunset clause so the new powers would expire after five years and stronger criteria to issue warrants.

Andrews said the amendments would mean data disruption warrants would need to be “reasonably necessary and proportionate” and data disruption and account takeover warrants would need to specify the types of activities proposed to be carried out.

The media would also gain some extra protection, with the addition of a “public interest test for data disruption warrants, network activity warrants and account takeover warrants where an investigation of an unauthorised disclosure offence is in relation to a person working in a professional capacity as a journalist”, she said.

The Independent National Security Legislation Monitor will review the bill after three years and the PJCIS can review the bill after four.

The Labor MP Andrew Giles told the lower house on Tuesday the opposition supported the bill because “the cyber-capabilities of criminal networks have expanded, and we know that they are using the dark web and anonymising technology to facilitate serious crime, which is creating significant challenges for law enforcement”.

Giles noted that Labor had called to raise the bar for the types of crimes that trigger the new powers from the current “all commonwealth offences punishable by a maximum term of three years or more trigger the powers”.

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Giles warned this meant “tax offences, trademark infringements and a range of other offences” would enliven the powers, not just the offences of “child abuse and exploitation, and terrorism” the [Coalition](#) used to justify the bill.

In August 2020 the then home affairs minister [Peter Dutton claimed the new powers would target terrorists, paedophiles and drug traffickers](#) operating online, such as on the dark web, and would apply “to those people and those people only”.

In the Senate the Greens and Rex Patrick resisted the bill, moving amendments to implement the other PJCIS recommendations, including to require that magistrates or judges would have to sign off on warrants, not just members of the administrative appeals tribunal.

The attorney general, Michaelia Cash, rejected this proposal, arguing it would be a “departure from longstanding government policy”, “likely result in operational delays” and was inconsistent with other warrant powers.

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In a second reading amendment, the Greens noted the bill “rejects a core recommendation of the Richardson review” of the legal framework for the intelligence community, which had found “law enforcement agencies should not be given specific cyber-disruption powers”.

The amendments were defeated, and the bill passed easily due to Labor’s support.

The Law Council president, Jacoba Brasch, said the “[failure] to implement the committee’s recommendation that there be judicial issuing of the new, extraordinary warrants is particularly disappointing”.

“The Law Council believes the significant breadth and intrusive scope of these warrants demands consideration by judicial officers, as the PJCIS recommended.”

Kieran Pender, the senior lawyer at the Human Rights Law Centre, told Guardian Australia given the bill’s powers “are unprecedented and extraordinarily intrusive, they should have been narrowed to what is strictly necessary and subject to robust safeguards”.

Despite the “significant changes” recommended by the committee, the HRLC believes that about half were either rejected or only partially adopted.

“It is alarming that, instead of accepting the committee’s recommendations and allowing time for scrutiny of subsequent amendments, the Morrison government rushed these laws through parliament in less than 24 hours,” Pender said.

“While the safeguards for journalists and whistleblowers are welcome, they highlight the lack of wider entrenched safeguards for press freedom and free speech in Australia.”

Andrews said [the arrest of more than 290 people in Operation Ironside](#) “confirmed the persistent and ever evolving threat of transnational, serious and organised crime - and the reliance of these networks on the dark web and anonymising technology to conceal their offending”.

“In Operation Ironside, ingenuity and world-class capability gave our law enforcement an edge,” she said.

“This bill is just one more step the government is taking to ensure our agencies maintain that edge.”

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