



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**PROOF**

**BILLS**

**Telecommunications (Interception and Access)  
Amendment (Data Retention) Bill 2015**

**Second Reading**

**SPEECH**

**Tuesday, 24 March 2015**

BY AUTHORITY OF THE SENATE

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## SPEECH

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**Senator LAMBIE** (Tasmania) (19:49): I rise to briefly contribute to the debate on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. It is commonly known as the government bill which introduces the new metadata laws. I oppose this bill. The government has used the threat of a terrorist attack from Islamic State to grossly invade the privacy of every Australian. In an opinion piece in the *Mercury* newspaper Bruce Felmingham, the principal of a Tasmanian economic consulting firm, wrote:

There must be an exceptionally powerful argument for introducing such draconian laws in a pluralist, democratic society such as our own.

I agree with Mr Felmingham—and it is my view that the government has failed to make the argument for introduction of these draconian laws. It is my strong view that the government is misleading the Australian public over the government's capacity to respond to the threat posed by ISIS sympathisers and ISIS soldiers. This government already has the laws and the capacity to crack down on ISIS supporters if it chooses, and those laws are called sedition and treason. It is just that this government has chosen not to use existing laws to charge and put behind bars every Australian who assists in any way whatsoever our enemy the Islamic State and its members.

Why should the majority of law abiding Australians have their privacy invaded because a minority of our citizens have decided that their loyalties lay with a different country—with a different people? Why should the civil rights of law abiding Australians be lessened because some of our citizens decide to betray their country and give support and assistance to foreign powers that would do us harm? Instead of passing these laws, I am calling on this government to use the existing laws of sedition and treason to tackle terrorism—which I will turn to shortly.

I am also calling on this government, politicians and indeed all Australians to discriminate. My call to discriminate may alarm some, especially those who pride themselves on their level of political correctness, but the time has now come in Australia to discriminate against those whose loyalty is not 100 per cent to Australia. While I acknowledge that in Australia, by our law, you are not allowed to discriminate against anyone for his or her race, religion, ethnicity, sexuality and disabilities, it is a little known fact that Australian law—our Constitution—demands that we discriminate against citizens who are not 100 per cent loyal to this country. *Senate Practice* refers to section 44 of our Constitution, which indicates that anyone who has an allegiance to a foreign power—either formal or informal—is disqualified from standing for election to this place. Clearly, our Constitution and laws demand that even if your loyalty is divided between Australia and a friendly foreign power you are still legally discriminated against and you, correctly, are not allowed to stand for election in this place.

In order to stop the terrorist rot that has set into Australia it is time, firstly, to educate Australians. Rule No. 1: if you do not have 100 per cent loyalty to Australia and our democratic freedoms, rights and privileges then I will say it—and I will continue to say it—get out! As the Australian Constitution states, if you have an allegiance or loyalty to a foreign power not only should you be disqualified from standing for election to this parliament but also you should not be able to vote or to receive government benefits. If your allegiance happens to be with a hostile or foreign power—as is the allegiance of thousands, perhaps tens of thousands, of Islamic Australians—then you should be charged with the high crimes of sedition and/or treason, depending on your level of support for our country's enemies. If the government were serious about stopping terrorist attacks on peace-loving, loyal Australians instead of introducing laws to take away our civil rights, then the government, through the Attorney-General, should enforce that every citizen who in any way assists the ISIS forces fighting our troops should face at least seven years maximum jail sentence for sedition.

I know this government is negligent by failing to use existing laws of sedition and treason. If you have the evidence to deny our citizens passports and travel, then you have the evidence to lay charges, at least, of sedition, which carries a maximum sentence of seven years in jail. If some of these young people who are running off to fight and assist ISIS were caught and made to face a serious charge, which carried a seven-year jail sentence, and they, their families and the communities they came from were made to think about the concept of 100 per cent

loyalty to our country—a secular constitution and democratic government—then maybe we would be building a more tolerant, safe and free Australia for our children and grandchildren. That is the reverse of what this legislation is doing, which is taking away democratic civil rights and privileges and making us less safe from future home-grown tyrants.

The loyalty or not of citizens of Australia is an important part of the legislative and constitutional foundation of this nation. Those citizens with loyalties divided between Australia and foreign powers that are our enemies are a direct threat to our nation's peace and long-term survival. It is important to know that, in my view, you cannot be a 100 per cent loyal Australian with undivided loyalty if you support sharia law. If you support sharia law it is clear that your allegiance is, at the very least, with a foreign power—namely an overseas religious figure that exercises the powers of both state and church. At the very worst, if you support sharia law it is likely that your allegiance and loyalty is with an overseas religious figure who has declared war on Australia and every other Western democracy, simply because he wants to impose by force his religious rules and rules of state.

If you do not believe me, just use your reason and look to countries which are ruled by sharia law. They are some of the most backward, violent, aggressive countries in the world, which have failed to separate church and state. They are ruled by religious dictators who promote the death penalty for crimes such as book burning, adultery, being gay and changing your religion. Some of those sharia governed countries may try and put up a window dressing of democracy. Countries like Iran might hold elections, but the reality is that all power—religious, state and military—rests in that one religious dictator who personally chooses all the candidates for the country's election. And God help the world if that Iranian leader is ever allowed to get his finger on a nuclear trigger! Confronting and admitting to ourselves the plain truth of the sharia ideology we are fighting will do more to make us and our children safe than will passing laws like this that will undermine the civil rights of all law-abiding Australians.

Introducing laws which reinstate the death penalty for terrorism and traitors who kill during their attacks will do more to prevent attacks against us from our enemies than this piece of rubbish legislation. If you disagree with that argument, I ask that you think about what would have happened if the Sydney ISIS terrorist had survived the Lindt Cafe siege after killing hostages. The worst our current legal system could have done is to have put him behind bars for life—a sentence he would have welcomed, I am sure, clapping gracefully. He would have been able to turn his jail cell into a terrorist-recruiting cell. Imposing the death penalty on terrorists and traitors who kill during their attacks on Australia will do more to protect the national security of Australia than this legislation will ever do. This legislation and the establishment of the capital equipment that stores the metadata will also cost the Australian taxpayer, and an unknown amount of money at that. Some people are saying it will be \$400 million, but that does not appear to take into account the charges that will be levied on all Australian telecommunication users.

I have had community feedback and hundreds of people have contacted my office and expressed their opposition to this legislation. The following is an example of that opposition: 'Given that law-enforcement agencies are already able to apply for a warrant to access metadata for known suspects, I am curious to know just how mandatory data retention will be used.'

Option 1: will the AFP or state police conduct random audits on Australian residents and citizens' metadata on the off-chance they find something suspicious? This clearly represents an unacceptable intrusion on the right to privacy and does not accord with a free and democratic country. It would be unacceptable to allow the police unfettered access to the metadata of people who are not engaged in or planning any criminal activity.

Option 2: will the Australian federal police racially, religiously or culturally profile groups of people who they believe may be more likely to engage in terrorist-type activities or other criminal activities or people who are socially undesirable, and do regular checks on their metadata? All Australians, regardless of background and country of origin, should have a right to privacy. I would hope that the AFP and-or police would not engage in this kind of behaviour, but history has shown it to be inevitable.

There are many examples of the police profiling groups of people based on who they are or their background and treating them unfavourably. For example, Indigenous people and those of ethnic origin are often treated worse than other Australians by the police, resulting in discrimination. If the coalition's proposed laws are passed, this will be a very real outcome of how the metadata will be used, leading to greater disunity in the community and

further disenfranchising groups. Those who intend committing atrocities will find other ways to communicate or source information to get around any law change, and I fear that only innocent people will be affected.

Option 3: will the metadata be stored, at a huge cost to industry, until a suspect is identified and then that person's history for the past two years checked? This is the only option that I believe provides an acceptable use of the metadata. This option is already covered by existing laws. The Australian Federal Police and state police simply need to apply for a warrant before accessing the data.

I am struggling to think of any other ways that metadata may be used for law enforcement purposes. It may be noted that, internationally, mandatory data retention has not worked and no compelling arguments or evidence have been provided by the government as to why it would work in Australia. I would like to note that I find any act of terrorism devastating and fully support efforts to combat terrorist activities. However, any law change, particularly that which infringes on the rights of innocent people, must be backed up by evidence that it will actually bloody work. In the case of mandatory data retention, that is not the case.

In closing, it must be said that the mass storage of the metadata of all Australians is a huge invasion of the privacy of every Australian citizen. It is open to misuse and abuse, with no systems to monitor it or monitor whether other countries are hacking into storage facilities and using the data to spy on high-profile Australians and, even, the Australian government itself for both commercial and God knows what other reasons. This level of invasion of privacy, which will be committed on every Australian who uses online phone services, is completely over the top to achieve the purpose the government claims it will achieve. In order to catch a few hundred or thousand terrorists it wants essentially to search every Australian household in this nation via electronic devices.

Giving away this level of privacy of every Australian to that level of invasion by the government and its agencies no longer makes us a free society in my view and in the view of many courts and respected privacy advocates throughout the free world. I say this: I have a very, very strong suspicion that this is going to come back and bite the coalition. When it does there will be a few of us on this side standing up to say, 'I told you so!' I will be looking forward to that. I oppose this legislation.