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HOUSE OF REPRESENTATIVES

BILLS

**Telecommunications (Interception and Access)
Amendment (Data Retention) Bill 2014**

SPEECH

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Questioner
Speaker Bandt, Adam, MP

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Mr BANDT (Melbourne) (10:44): The Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 is a bad law. This law is for smartphone and internet surveillance and it turns every Australian into a suspect. There is a basic principle in this country and in many others that, unless you are suspected of having done something criminally wrong, governments have no right to intrude into your private life and monitor what you do.

This bill trashes that principle and it trashes it in, at least, two respects. This bill treats everyone in this country the same, whether or not they are suspected of having done something wrong. In other words, someone on a train, who is just using their smartphone to browse the web on their way home, is treated exactly the same as someone who is suspected of having committed a crime. The same data is kept about you, is stored and is able to be accessed.

The second way in which it trashes this fundamental principle is that you do not even need a warrant to get access to this information. There are suggestions that an amendment will be moved to give some protection to journalists but, if the protection can be given to journalists, why can it not be given to everyone? In other words, why are we now departing from the principle that says that, if a police officer or an enforcement agency thinks someone has done something wrong, they go to a judge and they convince them that this person is such a suspect that their private life now needs to be intruded upon and looked at by government? The government is saying, 'We don't need that anymore.' In other words, it will be as it is at the moment, as simple as filling in a form to say, 'We want access to this person's metadata.' What is metadata? What is the kind of information that will be captured?

Our Attorney-General tried to explain that to us. And, frankly, watching that interview where Attorney-General Brandis tried to explain what metadata is was like watching my dog try to play chess. He was completely out of his depth—going on national television and saying, 'We really need this power,' and then when the interviewer said, 'What information do you actually want?' he could not explain it. The government tries to hide behind that uncertainty and that obfuscation by saying, 'Don't worry; it's only a little bit of information.'

If you call your doctor from your phone and then jump on a bus to visit your doctor and browse the web while on the bus and then, when you get home from the doctor, use your phone to call your close friends and family, you could, just from that, paint a bit of a picture about what you have been doing just in that afternoon alone. Because when you have enough bits of data, you do not need to listen in on a phone call; you know what someone has been doing. That is exactly what the heads of the national security agencies in the US have said about this. NSA General Counsel Stewart Baker said:

Metadata absolutely tells you everything about somebody's life. If you have enough metadata, you don't really need content—

because you can put together that picture. A former director of the NSA and CIA went on to say, 'That's absolutely correct.' And further:

We kill people based on metadata.

That statement is from a former head of the NSA and CIA. Their view, as security agencies, is that, nowadays, if you can put enough pieces of information together you do not need to listen anymore into the content of calls. We can just put together enough of a picture and know what someone is doing. That is in the context of law enforcement and, potentially, international activity. Now these same laws and principles will be brought to every citizen in this country without safeguards.

There was a suggestion from the previous speaker that this will somehow help us catch tech-savvy criminals. This law applies to Australian service providers. Let us just take email. If you do not want your email metadata to be caught, all you need to do is use Google webmail and then you will not be caught. Wow! I wonder which

tech-savvy supercriminal will not work that out. This law immediately suggests that you can get out of having your email metadata collected by jumping on an online web server that is hosted in another country. But, more than that, there currently exist numerous ways that are legal and freely available to disguise your identity online and to have privacy. And people are now doing that.

Five minutes on the internet will tell you how you can work your way around this law. If this law catches any criminals, it will only catch the dumb criminals, who have not spent five minutes googling to work out that if they just use Google Webmail they will not be caught by this law, they can send whatever they like and you will not be able to catch the metadata. But it will catch everyone else—people who would not think about moving to some virtual private network or shifting from an Australian server to a Google-based international webmail server because they are not suspected of having done anything wrong. Why would they go to the trouble? Those are the ones who will be caught by this bill.

We are told that there will be protection for journalists in this bill. The Labor Party comes in here and says, 'We will give a struggling Prime Minister a leg up on national security and sign up to this.' And no amendment has even been circulated to give protection to journalists. Where is the amendment? We are now debating this legislation and no amendment has been circulated in the chamber, no amendment has been made publicly available and the Labor Party is prepared to take this government on faith. Well, we are not and why should we? Why should this parliament be required to vote on legislation without a chance to properly look through all these amendments? This is complicated legislation and giving people protections from these kinds of laws is complicated and that is exactly why this should not be rushed. But the government comes in here and says, 'We want this done in the next fortnight.' Labor says, 'Yes, we're happy to do it, even though we haven't seen any amendment.' That is not the way for a parliament to behave when we are talking about infringing on people's privacy and taking away rights that they have enjoyed for a long time.

What we also do not know is how much of this information is going to be available in civil suits. We are told: 'Don't worry. You won't be able to be prosecuted if you illegally download *Game of Thrones*.' But what if the media companies want to take you to court for it? What if the media companies, in a civil suit, want to go the government and say, 'I am going to issue a subpoena for all of this information that is available'? This was raised in the committee that oversaw this, and they said, 'This is a serious question, but we don't have an answer to that.' Yet we are being asked to take it on faith.

Potentially, this gives a massive leg up to every large media conglomerate who wants to sue someone for downloading *Game of Thrones*, and the government cannot rule that out. It has been put squarely on notice that that is an issue, and they are ploughing on ahead anyway, with Labor's full support. Although there are some agencies listed in the bill who will have access to this, the Attorney-General can add more agencies as he likes, so that the scope of who has access to this information get broader and broader.

There has not been a compelling case made that there are crimes somehow going unsolved if only we had this information. In fact, the Prime Minister gets up here and tells us about how much metadata so far has assisted in investigations. In other words, the existing laws work. The evidence has been clear that most of the requests for metadata go back only three months or so, but we are going to be required to keep them for two years. So even if you could make out a case for that, no case has being made out as to why we should deviate from the principle that you should get a warrant—absolutely none.

You expect that from the conservatives because they do not care about individual liberties and they are quite happy to take them away with the stroke of a pen. But it is surprising that the Labor opposition also has been prepared to say, 'Instead of fixing the existing system by changing it so that agencies have to get a warrant, we're just going to make sure that they can get whatever they like.' No-one has to get a warrant for anything. You just have to fill out a form to find what an ordinary Australian citizen has been doing and where they have been and who they have been talking to for the last two years, even though they are not suspected of having done anything wrong.

The European Union and the Netherlands do not go down this road, and for good reasons. You have to ask the question: why is the government taking these steps? Why is there such zeal to monitor what people do online? Going online should be a place where you are free to speak, where you are free to organise, where you are free to browse, provided that you do not break the laws of the land that you were in. It should be a place where people, free from government surveillance and are able to share their views, and it is incredibly scary to the

government that such a place exists. So, what do we do? We will make sure that everyone is now subject to ongoing surveillance as if they were a suspect.

In an era where a lot of people's lives are lived online, individuals should have the right to have a digital forgetting of things that they have done in the past. I want to quote from something that the now communications minister said about this a couple of years ago. Malcolm Turnbull said:

Surely as we reflect on the consequences of the digital shift from a default of forgetting to one of perpetual memory we should be seeking to restore as far as possible the individual's right not simply to their privacy but to having the right to delete that which they have created in the same way as can be done in the analogue world.

I agree, and many other people around this country agree. The government is trashing that principle. So I am not prepared to listen to anything this government says about wanting to protect individual rights when they come here with this piece of legislation, because they are utter hypocrites, and Labor, in joining them in turning every citizen into a suspect, are also tarred with the same brush.

In that respect, I move the following amendment:

That all words after "That" be omitted with a view to substituting the following words:

"the House declines to give the Bill a second reading until a review is carried out with particular reference to:

- (1) how civil litigants would be able to access the data collected;
- (2) the adequacy of data destruction requirements for data acquired under the scheme; and
- (3) consider the impacts on, and implications for, journalism and other sensitive professions and their work under the legislation."

This amendment should be supported by everyone in this House because these are issues that were raised during the committee inquiry into this bill. As for those who are not aware, the committee that inquired into this bill was made up just of Labor and Liberal. It is a closed shop. It recommended that the bill be passed, with some amendments, but did say there are some concerns, and these are some of the concerns that have been raised, and they are not addressed in this bill.

We have talked about journalism already. There are supposedly going to be protections for journalists but where is the amendment? We are being asked now to vote for this without any amendment being circulated so that we can test whether it is, in fact, going to do the job. The committee was also put on notice that there are questions about what is going to happen in civil litigation. There will be a mass of information sitting there about who does what and who did what when online or on their smart phone. You can bet your bottom dollar that someone who wants to sue someone else—a big company that wants to sue an individual, a company that wants to sue another company—will want to get access to that. Are they going to be able to? We do not know.

The House should defer consideration of this bill until those issues have been resolved. Anyone who cares about proper process, anyone who cares about an individual's right to some kind of privacy and anyone who does not believe that every individual should be automatically treated as a suspect should support this amendment. But even if you disagree with all of that, if all you do is agree with what the joint committee said, then you should support this amendment. You should not allow this bill to be rushed through this House when there are big question marks over the use in civil litigation. You are potentially exposing people to being sued for downloading *Game of Thrones*. You should not pass this bill until you have worked out what you are going to do about journalists or about data destruction. So I commend the amendment to the House, and this bill should be voted down.

The DEPUTY SPEAKER (Mr Vasta): Is the motion seconded?

Mr Wilkie: I second the motion and reserve my right to speak.