

# Stronger checks needed for boosted spying powers

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Australia's national security agencies have secured very significant powers in recent years to meet new threats such as foreign political interference as well as help fight the older problems of terrorism and espionage.

There is no doubt these threats — old and new — are very serious, particularly at a time when traditional alliances and rules-based orders are at risk.

But that does not mean Australia should shy away from a very robust debate on whether the new powers strike the right balance between protecting civil liberties and protecting citizens. Two examples that emphasise the fundamental point have come to light in the past week.

First, in a long-awaited report released on Friday, now-retired Independent National Security Legislation Monitor [James Renwick recommended much stronger checks and balances](#) on the power to access encrypted messages that was rushed through in a bill before the last federal election. He said it should not be left up to agency heads or the Attorney-General to decide who to hack or if hacking is technically possible. He recommended that intrusive surveillance of the digital world should require a warrant issued by a judge.

Second, there are concerns about a bill before Parliament which would give the Australian Security Intelligence Organisation a range of new powers including lowering the minimum age for compulsory interrogation of detainees from 16 to 14. ASIO could also limit the right to legal representation in cases where lawyers “unduly disrupt” questioning. They could continue questioning detainees after they have been charged, potentially undermining the privilege against self-incrimination and the right to remain silent. ASIO's interrogation powers will be extended to cover foreign political interference and political violence, raising concerns about whether they can be used as a political weapon.

At a hearing, David Neal, co-chair of the Law Society's national criminal law committee, said that the bill went too far in all these areas. He said that in some respects the powers in the new bill were wider than under the internal security bill which China has just passed to crack down on the pro-democracy movement in Hong Kong. The claim drew a strong response from ASIO boss Mike Burgess.

"It's an offence to the men and women of my organisation ... some of them who put their lives on the line to protect Australians from serious security threats," he said.

Mr Burgess has every right to strongly disagree with a highly provocative analogy. But he should also accept that it is entirely right for informed citizens such as Mr Neal to be concerned about handing too much power to ASIO and other security agencies.

He is right that the vast majority of national security agents are brave patriotic public servants. But what separates Australia from the Chinese Communist regime is our democratic

system of oversight which imposes checks and balances and ensures our secret agencies stay within the law.

Australian security agencies and their political masters have at times made huge mistakes. One high-profile case is the illegal bugging of the offices of the East Timorese government during negotiations over oil rights in the Timor Sea. It is deeply concerning that the whistleblowers (Bernard Collaery and Witness K) who brought this to light are facing trial in secret without any investigation into the illegal bugging itself.

The Witness K case reminds us that while Australia's national security agencies perform a critical job well in the main, they need to be accountable — particularly in the midst of a debate about whether it is fair to interrogate a 14-year old in secret.