

OPINION PIECE

Reform must realign roles for our security and justice

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HALF-WAY down the list of legislation considered last week is the bill to repeal the Independent National Security Legislation Monitor Act. On balance, that's sensible: the monitor's role can be mostly covered by others.

But as part of this change, it would also be worth increasing the contestability of proposed and existing national security legislation and oversight by creating separate cabinet-level champions for national security and rights, freedoms and integrity.

Barrister Bret Walker has performed the role of the independent national security legislation monitor ably, impartially and creatively since 2011.

When this role was established, there were concerns about whether counter-terrorism laws had gone too far: for some, there was a concern they had fundamentally compromised our democracy.

So Walker was appointed to advise ministers on the effectiveness and consistency with international obligations of Australia's counter-terrorism and national security legislation. He was also authorised to advise whether the laws contained appropriate safeguards for protecting individual rights.

His reports gave the public and government confidence in the operation of the national security laws, and ideas for improving them, but the government feels the monitor's role is no longer required and is in effect duplicated elsewhere.

Parliamentary secretary Josh Frydenberg listed a range of entities that perform functions that overlap the monitor's. His list includes statutory bodies and parliament, and could be expanded to include ombudsmen and the judiciary itself. The key alternatives to the monitor are the parliamentary committees on law enforcement and intelligence and security. Let's hope they occupy more of this space by conducting compelling reviews of national security legislation.

To do this, they'll need to be valued by government and be willing to challenge cabinet where that's important.

The government should go further. It should realign the responsibilities of the attorney-general and the justice minister and clearly make the former responsible for making laws and overseeing law enforcement and intelligence integrity, and the latter responsible for managing domestic intelligence and law enforcement agencies.

At present, the attorney-general is responsible for drafting and so advocating in cabinet all our criminal and national security laws.

In addition, the attorney-general is responsible for domestic security and has portfolio responsibility in cabinet for criminal intelligence and operational law enforcement agencies.

These operational agencies include the financial transaction reporting centre called AusTrac, the law enforcement information sharing centre known as CrimTrac, the Australian Crime Commission and the Australian Federal Police.

The justice minister is left with "ministerial responsibility" for many agencies, including AusTrac, CrimTrac, ACC and AFP except for the counterterrorism function that's overseen by the attorney-general.

Importantly, the justice minister also has responsibility for the Australian Commission for Law Enforcement Integrity.

This split has, in broad terms, been practised by all recent governments. But it means the attorney-general is responsible in cabinet for the key agencies that promote domestic security in Australia, and for the laws that enable and constrain these same agencies.

If it's desirable to have contestability about the trade-off between individual rights and security and it is then a debate in cabinet by well-informed and expertly supported ministers is essential.

This proposal for change would allow the justice minister to be responsible for all domestic security agencies and argue for intelligence and police powers, and for the attorney-general to focus on oversight, protecting individual rights and delivering effective, consistent law.

Some change would be needed: the ACLEI should go to the attorney-general (and perhaps to the inspector-general of intelligence and security), and all domestic intelligence and law enforcement agencies would go to the justice minister.

New arrangements would mean elevating Justice Minister Michael Keenan to cabinet, but would not require new resources or a new department.

The effective governance of national security requires a range of actors playing different roles. Having one minister responsible for framing the law and another responsible for its enforcement would give the community even more confidence that government is guarding their security and rights.

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