

Legislative tightrope needs constant review

Opinion

Andrew Lynch

The return of the jury verdicts this week in the trial of Abdul Nacer Benbrika and others was correctly described as "the most successful terrorist prosecution that this country has seen" by the Attorney-General, Robert McClelland. But does this mean the laws are now "working"?

Despite the successful prosecution of Benbrika and others, and also the acquittal of some of their associates, the counterproductive role that aspects of our anti-terrorism laws might be playing in national security is still open to question. McClelland refrained from asserting the laws were perfect, but instead remarked that the government examines their operation generally on an "ongoing basis".

That is reassuring, but there is a strong case for a continuing review of the laws that is independent from the government. The Senate Standing Committee on Legal and Constitutional Affairs is hearing from witnesses this week about whether to create an independent reviewer of Australia's terrorism laws. Where has this idea come from, and how would an independent reviewer help?

The Liberal MP Petro Georgiou first called for an independent reviewer in October 2005, suggesting that public alarm over the new laws would be eased by the creation of a sort of terrorism watchdog modelled closely on the office of Independent Reviewer in the United Kingdom.

Earlier this year, he introduced a private member's bill to this end, arguing that "the challenge of protecting security without undermining fundamental rights requires constant vigilance, but the reality is that the machinery of vigilance in Australia is deficient".

This has the support of experts and two bipartisan parliamentary committee reports. But disappointingly both the Howard and now Rudd governments have been cooler in their enthusiasm for the creation of an office of independent reviewer.

When Georgiou introduced his bill in the House of Representatives in March, the new government shut the debate down. The bill was since been brought to the Senate by concerned Liberals.

The commonwealth probably suspects that the reviewer will be a thorn in their side — but this is not at all borne out by experience in the UK.

The reviewer, Alex Carlile, reports annually to the Home Secretary about the operation of terrorism laws, taking into account both their effectiveness and impact upon individuals. Carlile offers opinions on proposed changes to the law and also responds to ad hoc requests for reports from the government or parliament. These reports are used to inform political and public debate.

On the whole, the independent reviewer is regarded as a success in the UK, though there has been concern that the reviewer is not "independent" enough.

There are several lessons for Australia from the UK's experience and the positives are clear. First, continuing and integrated examination of how the complex body of anti-terrorism law works enables early identification of inherent problems. Second, it helps to

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depoliticise the very contentious debates about these laws and their importance overall to national security efforts. Third, it reassures the community that a kind of watchdog exists to report publicly on laws that they fear might be used against them.

To avoid some of the issues that have clouded praise of the UK's reviewer, several independent reviewers should be established as a panel. This allows a range of perspectives and minimises the risk of the office being seen as too accepting of the government's position.

Thankfully, Australia has little history of political violence. But we are overconfident if we think we have perfected our approach to the creation and implementation of laws in this complex area, while a jurisdiction like the UK, with decades of experience of terrorism, sees value in subjecting its laws to continual review.

■ *Andrew Lynch is the director of the Gilbert + Tobin Centre of Public Law, University of NSW, and appeared before the Senate Committee on Legal and Constitutional Affairs yesterday.*