

The Rudd government has finally come good on its pre-Christmas promise to create an independent watchdog with power to review Australia's anti-terrorism laws. Last week, the National Security Legislation Monitor Bill was tabled in Parliament by Senator John Faulkner, the newly anointed Minister for Defence.

In 2008, the government blocked the private member's bill introduced by Liberal MP Petro Georgiou that would have established a similar position. Insisting that it would set the agenda, the government said it would act only after the inquiry into the Haneef fiasco concluded.

They need hardly have waited. The idea of a statutory office charged with scrutiny of the many counter-terrorism laws introduced since September 11 is not a new one. Since 2005, three parliamentary and independent inquiries have all strongly endorsed the need for this office.

The United Kingdom's Independent Reviewer of Terrorism Laws since 2001, Lord Alex Carlile QC, has been criticised by British commentators on several fronts. However, the very existence of his office and his annual public reports amount to an important safeguard against authoritarian excess. Given Australia's far greater unfamiliarity with terrorism and anti-terrorism laws, it would be strange if we saw no need for a similar watchdog.

How then does the Rudd government's new National Security Legislation Monitor stack up, particularly when measured against the criticisms levelled against the UK office on which it is based?

The first criticism of the UK regime is that the functions of its Independent Reviewer are not clearly defined. Whilst Carlile views himself as having an expansive brief – including review of the control order regime and even the design of holding cells for terrorism detainees – there is no reason why a future reviewer might not take a more restrictive approach.

The government's Bill avoids this danger by setting out the functions of the Australian Monitor in deliberately broad terms. The Monitor is given the task of reviewing counter-terrorism laws to see, in light of international human rights principles, whether they contain adequate safeguards for protecting the rights of individuals.

Even more importantly, however, the Monitor is not restricted to tinkering around the edges of these laws – he or she is asked to decide the fundamental question whether they 'remain necessary'.

Second, Carlile has been criticised as being rather too accommodating of the government's case for extreme measures. In order to defend his findings, it has been important for Carlile to be able to stress his independence. Replicating this, it is positive that the Australian office will be part-time, enabling the Monitor to engage in other employment and maintain financial independence from the government.

However, further steps might have been taken to ensure the public sees the Monitor as strictly impartial. In particular, to include the word 'independent' in the title of the office and for the Monitor's reports to be presented directly to the Commonwealth Parliament, rather than to the Prime Minister personally.

The Bill's most worrying feature is that the Prime Minister may require the Monitor to provide a *private* progress report on any review before the final report is concluded. That seems an odd way to guarantee true independence.

Lastly, the Australian office will have considerable teeth. The power of the UK's Independent Reviewer over intelligence agencies and individuals depends on nothing more than 'naming and shaming' in the annual reports. By contrast, the Australian Bill makes it a criminal offence (carrying a possible jail term of six months) to fail to assist the Monitor.

The government's new Monitor is welcome, but a true assessment of its value will depend on the contribution its first incumbent makes to discussions on the quality of Australia's national security laws.

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