Hasty law-making diminishes public respect for the law itself

Laws made too quickly are substandard outcomes of a substandard process, **ANDREW LYNCH** says

AUSTRALIA has yet more new counter-terrorism laws — this time increasing powers of intelligence agencies to intercept phone and message services of non-suspects. But in what is now a clear trend, the Commonwealth has once again passed the law and then said it will consider its potential problems later.

Attorney-General Philip Ruddock seems to take the view that the important thing is simply to make laws and then address how they will operate and their impact upon the lives of Australians.

The Telecommunications (Interception) Act passed by the Parliament on Thursday is a good example of this. After yet another characteristically brief opportunity to scrutinise the proposed law, the Senate's legal and constitutional legislation committee still managed to raise strong concerns about its possible effect. The committee, which comprises government and opposition members, recommended the exemption of certain communications from surveillance and the imposition of stronger safeguards to protect the privacy of innocent people.

But Ruddock airily sidestepped any responsibility this might place upon him to substantially rethink the amendments he had put up, by saying that the law was needed "urgently". In order to avoid appearing completely contemptuous of a parliamentary committee chaired and staffed by his own colleagues, he promised to consider the committee's report and all recommendations at some future point. That would be after the law has already been enacted.

We have seen before this forcing through of highly suspect laws on the basis that there will be time to give them careful consideration further down the track. When the Government brought forward its anti-terrorism laws last year, the same committee made numerous recommendations but was particularly hostile to the inclusion of new offences of sedition.

In hearings, the Liberal senators in particular were keen to establish that outlawing sedition was not necessarily going to assist national security.

Nevertheless, Ruddock had his way and the law was passed with the provisions criminalising sedition firmly in place. But there was to be a review of those sections to determine their need and likely operation.

True to his word, Ruddock has established this process and submissions may be made until April 10 to the Australian Law Reform Commission's inquiry on sedition.

But the point is that this is extremely poor law-making. Acts should not be passed with question marks hanging over them. There are three reasons against the strategy which the Attorney-General has been using to have his laws enacted.

First, it is a blow to the importance of the very act of law-making itself. When the people's representatives in Parliament legislate for the community that is supposed to be the outcome of thoughtful consideration, careful drafting and, ideally, vigorous scrutiny and debate. In that way the public gets laws that are the best they can possibly be. The idea that key issues remain to be ironed out after a law enters the statute books is nothing but a "near enough is good enough" approach.

Second, this has the effect of diminishing the public's respect for the law. If the law is seen to be created with congenital defects requiring later attention, that can hardly fill any of us with confidence in the wisdom of what now binds us. Why should we be required to observe a law which is the subject of ongoing review? Additionally, we might ask how the public can be expected even to know what their legal obligations and rights are under laws which are so clearly in a state of flux.

Finally, the cumulative effect of the confusion that regular reliance upon a "pass now-review later" approach is to confound full and informed debate on the measures being introduced by the Government to combat terrorism.

No one doubts that strong and effective national security depends in part upon a sound legislative base, but it is important that government powers are kept in proportion to the threat and that safeguards for the essential liberties of individuals are not simply steamrolled.

These are important questions which need the careful and focused attention of all members of the Australian community.

Too often in recent months have we seen "urgency" used to justify laws being enacted after brief and inconclusive debate about their merits. Holding out the prospect of a future review is a strategy which lets some steam out of the process and is clearly designed to string out and obfuscate the debate.

Laws should be passed as we intend them to operate, after having fully considered their features. Laws passed subject to a review are the substandard outcomes of a substandard process.

■ Andrew Lynch is director of the Terrorism and Law Project at the Gilbert and Tobin Centre of Public Law, University of NSW.