

One more anti-terror tool

GEORGE BRANDIS, *The Australian*, January 12, 2015

AFTER the Martin Place siege and the atrocities in France, no rational person can dispute that the world — and the free and democratic West in particular — faces a profound threat that is likely to be with us for a long time.

There was much debate last year about national security, as the government responded promptly to warnings from ASIO and the other national security agencies that the threat of domestic terrorism was escalating, in particular as a result of the activities of Islamic State and the recruitment of growing numbers of Australian Muslims to fight in Syria and Iraq.

On September 12, acting on the advice of ASIO, the government raised the alert level to high, meaning a terrorist event was likely. The government also announced measures to protect Australians with three principal elements. We increased by \$630 million the resources available to our national security agencies, to upgrade their surveillance capability and expand their counter-radicalisation programs. We have enhanced our engagement with the Muslim community, working with moderate Muslim leaders to identify at-risk youth and to counter the influence of the Islamic State terrorist recruiters. Finally, we have undertaken the most comprehensive rewrite of our national security laws in 30 years.

The government's legislative response comprises four important bills. Three passed, with bipartisan support. One crucial bill, requiring mandatory retention of metadata, is before parliament's intelligence committee. Its passage is an urgent priority.

The National Security Legislation Amendment Act (No 1) became law on October 2. It provides for new powers for the national security agencies including a power for ASIO to undertake "special intelligence operations", similar to the existing powers of the Australian Federal Police and state police forces, to ensure ASIO has appropriate legal protection in undertaking certain covert operations, for instance penetrating a terrorist network or cell.

Because such actions are intrinsically secret and inherently dangerous, it is an offence to jeopardise such an operation. Because of their unusual character, SIOs need the consent of the attorney-general and are subject to a strict safeguards and accountability regime. The act also contains other measures to enhance the efficacy and interoperability of the national security agencies.

The Counter-Terrorism Legislation Amendment (Foreign Fighters) Act, which came into operation on December 1, is the government's response to the dangers presented by Islamic State recruitment and training. It gives the foreign minister the power to gazette a particular locality as a "declared area", so that it is an offence for an Australian to travel to or remain in that area. It also provides exemptions for bona fide family visits, humanitarian work and journalism.

The rationale is that certain localities are hotbeds of terrorist operations and training. One, al-Raqqa, has already been the subject of such a declaration. The provision gives effect to Australia's obligations under UN Security Council Resolution 2178 whereby all nations undertook to take necessary steps to prevent their citizens travelling to participate in the Syrian and northern Iraq conflict. The act also creates a new offence of advocacy, carefully drafted to fill a lacuna, where the existing crime of incitement to violence is insufficient to prosecute advocacy of terrorism.

The Counter-Terrorism Legislation Amendment Act (No 1), the third measure, came into effect three days ago. This provides additional strength and flexibility in the control order

regime. It facilitates obtaining a control order (a court order requiring a terror suspect to submit to additional surveillance) in urgent circumstances and streamlines provisions governing the listing of terrorist organisations.

The remaining measure, the Telecommunications (Interception and Access) Amendment (Data Retention) Bill, provides for mandatory retention of metadata (the details, but not the content, of telecommunications). Access to metadata is vital to investigate terrorism and organised crime. The bill does not propose any additional powers for national security agencies. It requires telecommunications companies to retain information they have routinely kept but which they might not keep in future.

Discussions are being undertaken between the government and industry to deal with the definition of the dataset and cost. Former ASIO director-general David Irvine has described the capacity of agencies to access metadata as “absolutely crucial” in identifying terrorist networks and protecting the public.

Of course, the best-resourced agencies, the sincerest community engagement and the most carefully written laws cannot provide an absolute guarantee against a terrorist outrage — as the events at Martin Place tragically demonstrated — particularly in the case of “lone wolf” actors, who may not be active within a network. Nevertheless, the public can be reassured that the government has taken, and will take, all appropriate steps to protect our safety and freedom.

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