

## Home affairs decision at risk of quickly becoming a mistake



Not happy: George Brandis, left, and Michael Keenan.

[Greg Sheridan](#), The Australian, 12:00AM July 22, 2017

The decision by the Turnbull government to establish an omnibus, security-focused department of home affairs, with Peter Dutton leading the new ministry, changes the Prime Minister has described as the most important to the organisation of national security in 40 years, never once went to a full cabinet meeting for consideration.

When it was finally spoken about at a meeting of the cabinet national security committee on Tuesday, it was not taken there for any deliberation or evaluation. It was presented as a fait accompli by Malcolm Turnbull. Further, neither Foreign Minister Julie Bishop nor Defence Minister Marise Payne was able to attend Tuesday's NSC meeting.

Given that there was no operational or procedural urgency about the decision, seasoned Canberra observers are astonished that the government proceeded to handle such a matter in the absence of two of the most senior national security portfolio ministers. Further, the changes were opposed by Attorney-General George Brandis and Justice Minister Michael Keenan, as well as Bishop and Payne.

When the matter was previously considered exhaustively under the Abbott government, there were discussions at the NSC. Not only that, the Department of Prime Minister and Cabinet conducted lengthy consultations with all the affected agencies and ministers, who also had lengthy discussions with Tony Abbott and the relevant people in his office. ASIO and the Australian Federal Police hated the idea. The proposal, strongly backed by then immigration minister Scott Morrison, was rejected by Abbott.

ASIO and the AFP opposed the move this time, too, though naturally they will now support government policy publicly. Taken altogether, this has been shockingly bad process.

That even key ministers were kept in the dark is evident in Keenan giving a television interview as late as Monday in which he stressed how well the present arrangements were working and played down any change. Some of the heads of agencies that will be transferred from one ministry to another knew nothing of it until the Prime Minister's press conference on Tuesday.

The decision's defenders point out that the Prime Minister has been talking about it, especially to foreign heads of government and intelligence figures, among Australia's closest allies, for some time. He got the national security division of his department, under Allan McKinnon, to look into it. But this was not remotely the serious, comprehensive, inter-agency study that such a big change demands.

The administrative arrangements of government are formally the prerogative of the Prime Minister rather than the cabinet. However, for upheaval as dramatic as this, which was opposed by all the most relevant ministers except the Immigration Minister, it is astonishing that there was not a substantial and rigorous inquiry and a big, deliberative decision-making process.

The government has also created the truly weird circumstance where it has effectively announced a big ministerial reshuffle, with some ministers losing out, others gaining a lot, portfolio names changing, which is not to take place for another 12 months.

The Daily Telegraph's Sharri Markson cruelly referred to Attorney-General Brandis as having been politically castrated. This is unfair. But Brandis and Keenan now have the air of lame ducks. Everyone will expect Dutton to take responsibility — and he will surely bear, with Turnbull, political responsibility if, god forbid, anything goes wrong — while as yet he has no formal power over the relevant agencies.

This is an astounding way to run a government. Why not do the study first, then make the decision and announcement? Most senior ministers, until the end of last week, did not believe this was going to happen.

The government also released this week the review of Australia's intelligence agencies, headed by the former head of the Department of Foreign Affairs and Trade, Michael - L'Estrange. It is, as you would expect from L'Estrange, a solid piece of work. Yet, bizarrely, L'Estrange was not asked to look at whether shoving all the agencies together into a new department would be a good idea, or even how it should be done. It is true that several of the agencies under the purview of his review are located in the defence or foreign affairs portfolios and will stay where they are.

But ASIO, the Australian Criminal Intelligence Commission, AUSTRAC, the Office of Transport Security and the Australian Federal Police, which includes intelligence functions, are all to be moved. Why on earth would you not subject all this to serious, systematic evaluation first?

Similarly, the government has decided to move the Inspector-General for Intelligence and Security from the PM's department to the Attorney-General's department. This, I think, is a mistake because part of the standing of IGIS, which has in effect the powers of an ongoing royal commission, comes from the fact it reports directly to the Prime Minister, although in the scheme of things it would take up very little of the PM's time.

But the point about the incoherence of the process is that L'Estrange had quite a lot to say about IGIS in his intelligence review. He was examining the place and role of IGIS in the intelligence ecosystem. Whether IGIS is in the PM's department or the AG's department is centrally relevant to this. It would surely have been sensible to get L'Estrange to consider the threshold question of where IGIS should be.

Given how often the home affairs ministry idea has been considered and comprehensively rejected in the past, one reasonable suspicion, and it's nothing more than a suspicion, is that the PM didn't seek systematic work on this proposal, or proper wide-ranging consultation, because he knew how much pushback it was going to get.

L'Estrange made two other important recommendations. One was to establish the Australian Signals Directorate, which now sits within the Defence Department, as a statutory body within the defence portfolio but outside the department, and to give it overall leadership of all cybersecurity matters. Given the quality and growing importance of ASD, this is a perfectly good idea.

Less clearly beneficial is subsuming the Office of National Assessments into a new Office of National Intelligence, within the PM's portfolio. These finicky reviews are always wanting to change agencies' names. ONA is a good organisation, with its own institutional esprit and a good reputation in Canberra and internationally. It's damaging to throw away a brand, to get rid of institutional pride.

More important, L'Estrange recommends that a director of national intelligence be appointed, with a big increase in the old ONA resources, and given the main role in co-ordinating the intelligence community. There are two disadvantages to this, which, though a reasonable proposal, is overall, I think, misguided. One is ONA already has a co-ordination role. The extra co-ordination is not needed, partly because there are good consultative mechanisms among the agencies already and because Australia has a strong system of cabinet government. That means you'll get an extra layer of bureaucracy for little or no benefit.

Second, the main focus of the ONI could well become co-ordination rather than assessment. ONA is valuable to government mainly because it is the one institution that can provide the PM, and the government generally, assessments that are not in any way influenced by the policy proposals and commitments of the various departments.

The ONI is a straight and mistaken copy of the US Director of National Intelligence, which even in the US has not been particularly effective. But at least in America the DNI can be a cabinet-level appointment. In our Westminster system, that's not possible.

Similarly the home affairs ministry is a slavish copy of the British system. But Australia is not the US and it is not Britain. It is impossible to argue that either of those countries has been more effective than Australia in counter-terrorism.

Our own traditions are important partly because they are effective. Because of the controversies that centred on ASIO in the 1950s, 60s and early 70s, Malcolm Fraser went to enormous lengths to ensure the ASIO Act had bipartisan support. It embodies a number of provisions that the Intelligence Services Act, which governs the other agencies, does not, such as the need for the ASIO director-general to regularly brief the opposition leader. The relationship between ASIO and the attorney-general is precise, highly regulated, legally profound and of the greatest importance to the political and community credibility of ASIO.

The government has recognised this by providing that ASIO will still need its warrants approved by the attorney-general. Presumably, therefore, it will need both the home minister's approval and the AG's approval, making the procedure considerably more cumbersome than it is now.

Second, in approving ASIO's warrants, which means its covert activities, the attorney-general effectively controls ASIO's sensitive activities. No AG can approve these on a tick and flick basis. That means, under these weird new arrangements, ASIO will effectively have two ministers controlling it.

There are a million other unintended consequences. Immigration is not solely a security matter. There are all kinds of economic, nation-building, family and skills requirements, - humanitarian, business and other issues. If Dutton is to have control of all these matters, he will certainly not be full time on national security. If he passes all this off to a junior minister, then immigration will be outside of the cabinet, a disastrous outcome.

The politics of this all have a long way to run.

Labor leader Bill Shorten attacked the obvious political motives behind the home affairs ministry. By giving a huge gift to Dutton, Turnbull may well think he is shoring up his support in his party's right wing. It's a way of dealing with the Abbott problem without dealing with Abbott. But it looks too unstable and embodies such poor process that it is unlikely to be effective.

Shorten also said it was unlikely Labor would gratuitously block legislation to do with the structure of government. My guess is Labor will wave the L'Estrange changes through. But Labor, and the parliament generally, may be much more reluctant to sanction severing ASIO from the attorney-general. Labor will be too smart to have a straight-out fight with the government over any aspect of national security. But inquiries and delays may well be the order of the day.

Meanwhile the bureaucratic infighting began the minute the announcement was made, and this will be a huge distraction to all the agencies involved while this messy process unfolds. Morale is poor within the government.

Four structural factors make its re-election extremely difficult. First, there is the mathematics of its one-seat majority, Labor's necessary gains are so small. Second, there is the disunity in the party, which is extremely unlikely to go away. Third, Labor will enjoy a huge funding advantage and a similar massive advantage from the de facto third-party endorsements of policy positions from all the quasi-government bodies it has created or staffed with people who share a centre-left world view, which the Coalition in government has done nothing to change. And finally, in our hyper-driven social media environment, six years of Coalition government will seem to the electorate like a lifetime.

A government convinced it's heading for a loss typically makes the wrong decisions for the wrong reasons. The department of home affairs looks to be, sadly, a classic example of this.