COUNTER-TERRORISM LAWS

How neutral laws create fear and anxiety in Australia's Muslim communities

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The claim is often made that members of Australia's Muslim communities are unfairly targeted by the Commonwealth's counter-terrorism laws.[1] This perception has been credited with generating high levels of distrust and apprehension amongst these communities.[2] A recent study conducted by Monash University into counter-terrorism policing in Victoria noted that Muslim communities felt a heightened sense of vulnerability to police surveillance and intrusion.[3] As noted by one Victorian youth leader:

> ... from where we stand the federal government looks like the enemy, they act like they hate us and we don't know why ...[4]

This distrust has been recognised by several Commonwealth investigatory committees as one of the greatest challenges facing the Commonwealth in achieving an effective counter-terrorism strategy.[5] This is because the laws risk alienation of Australia's Muslims at a time when social cohesion should be a priority. In addition to the benefits which accrue from the advancement of Australia as a diverse yet cohesive society, from a security perspective, any factors that isolate and exclude Muslim communities from the national project must be seriously addressed. Terrorism is far more likely to emerge from a divided society in which some feel marginalised and disempowered on the basis of their race or religious beliefs. As the Attorney-General Robert McClelland stated on 23 July 2008, 'a terrorist attack here has as much prospect of emanating from a disgruntled and alienated Australian youth as it does from an overseas terrorist organisation'.[6]

The Security Legislation Review Committee (in its 2006 report [7]) and the Parliamentary Joint Committee on Intelligence and Security (in its 2006 [8] and 2007 reports [9]) both made recommendations as to how best to address the community's perception of the Commonwealth's counter-terrorism laws and build cross-community partnerships. Common to these recommendations was the need for comprehensive information about the counter-terrorism laws (including any mechanisms for complaint) to be provided to the community;[10] greater efforts to be made by representatives of all Australian governments to communicate with the public, but especially marginalised communities, and to understand and address their concerns about the operation of the counter-terrorism laws;[11] and clear recognition by Australian governments and intelligence agencies as to the right of all Australians to equal treatment.[12] The limited success that government has had in this respect,[13] may be contrasted with the importance of the Australian Muslim Civil Rights Advocacy Network ('AMCRAN') publication, *Anti-terror Laws: ASIO, the Police and You* — now in its third edition.[14] Of course, the very existence of such a publication is itself a major indication of the depth of community concern over how these laws work.

To a large extent, the previous Howard government tended to dismiss the fears of Australia's Muslim communities on the ground that the counter-terrorism provisions of the Commonwealth *Criminal Code Act 1995* ('*Criminal Code*') are expressed in ethnically and religiously neutral terms and therefore are not discriminatory.[15] But this is an inadequate response since it fails to recognise the importance of the subjective dimension of 'security'. If we emphasise the individual at the heart of what we mean when we speak of 'human security' then, by any measure, security must mean more than simply the implementation of measures which will objectively enhance public safety. It must also encompass the promotion of feelings of 'freedom from concern, care or anxiety' which individuals and groups have about their place in the community.[16] In short, the government cannot say that it is achieving security when its approach generates feelings of deep *insecurity* in law-abiding communities within the polity.

The purpose of this article is to bridge this divide — between the many claims and reports of alienation amongst Australia's Muslim communities and the apparent neutrality of the Commonwealth's anti-terrorism laws. The new federal government has adopted a clear rhetoric of 'social inclusion' in discussing national security, and there are many ways in which this goal can be advanced. We argue here that swift attention to some of the provisions in Australia's terror laws would be a very clear step towards this aspiration by easing the distrust in Muslim communities which is so potentially harmful to security. It would also, it should be said, render the laws themselves far more effective insofar as they provide the legal mechanisms for bringing terrorists to justice.

New terrorism offences — individuals and organisations

The central offence inserted into the *Criminal Code* as a response to the attacks of September 11 is that of committing or threatening to commit a 'terrorist act'.[17] Division 101 of the *Criminal Code* also contains provisions that attempt to address activities prior to an actual terrorist attack.[18] These include providing

REFERENCES

1. See, eg, Security Legislation Review Committee ('SLRC'), *Report of the Security Legislation Review Committee* (2006), [10.93], [10.95]–[10.97]; Australian Law Reform Commission ('ALRC'), *'Fighting Words': A Review of Sedition Laws in Australia* (2006), [7.36], [7.40]–[7.46]; Parliamentary Joint Committee on Intelligence and Security ('PJCIS'), *Review of Security and Counter-Terrorism Laws* (2006), [3.5]–[3.6], [3.9], [3.21]; Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into the Terrorist Organisation Listing Provisions of the Criminal Code Act 1995 (Cth)* (2007), [3.2]–[3.5].
2. Ibid.
3. Sharon Pickering et al, *Counter-Terrorism Policing and Culturally Diverse Communities* (2007), [2.5.15], [7.4], [7.5.2].
4. Ibid 111.
5. See, eg, SLRC, above n 1, [10.97].
6. Robert McClelland (Paper presented at Safeguarding Australia 2008, Canberra, 23 July 2008), [33].
7. SLRC, above n 1, [10.102].
8. PJCIS (2006), above n 1, [3.32], [3.38], [3.45] (Recommendations 3–5).
9. PJCIS (2007), above n 1, [3.25] (Recommendation 1).
10. SLRC, above n 1, [10.99], [10.101]–[10.102]; PJCIS (2006), above n 1, [3.33]–[3.38], Recommendations 4–5; PJCIS (2007), above n 1, [3.24]–[3.25].
11. SLRC, above n 1, [10.99]–[10.100], [10.102]; PJCIS (2006), above n 1, [3.39]–[3.43]; PJCIS (2007), above n 1, [3.19]–[3.20], [3.25].
12. PJCIS (2006), above n 1, [3.45] (Recommendation 5).
13. Though there have certainly been greater efforts made by the Commonwealth towards improving community consultation and education: Australian Government, Submission No 14 to the PJCIS (2006), above n 1, Part II, 2.
14. The third edition of this publication was launched on 17 July 2008 and is available at <amcran.org/>.
15. See, eg, Australian Government, Attorney-General's Department, Submission No 31 to the ALRC, above n 1.
16. Ian Loader and Neil Walker, *Civilizing Security* (2006), 17–18.
17. *Criminal Code Act 1995* (Cth), s 101.1.
18. See for example *Criminal Code Act 1995* (Cth) s 101.6.

or undertaking training for such activities,[19] as well as possessing items or documents which might be useful in preparing for an attack.[20] As others have identified, the preparatory offences are not without significant problems.[21] However, they are at least dependent on the proof of specific activities or conduct of any individual charged with their commission.[22]

It is when one turns to Division 102 of the *Criminal Code* that the cause of the alarm in Australia's Muslim communities becomes distinctly clearer. The crimes in Division 102 hinge upon a person's relationship with a 'terrorist organisation'. There are two ways that a group may be classified as a terrorist organisation. First, if it is 'directly or indirectly engaged in, preparing, planning, assisting in or fostering' a terrorist act (whether or not such an act actually occurs).[23] A court may make a declaration that a group falls within this definition during the course of a prosecution of an individual for a terrorist organisation offence. The second, and more controversial, way in which a group may be classified as a terrorist organisation is if it is proscribed as such by the Commonwealth Attorney-General. A group may be proscribed if it falls within the aforementioned definition or if it 'advocates the doing of a terrorist act' (whether or not such an act actually occurs).[24] The definition of 'advocates' (which includes directly 'praising' the doing of a terrorist act)[25] has raised particular concern amongst Muslim communities regarding their freedom of speech, as such communities are more likely to voice politically unpopular opinions, for example, opposition to the war in Iraq or support for violent liberation movements in foreign countries.[26] At present, 18 groups have been proscribed as terrorist organisations under Australian law.[27] All but one of these groups identifies itself as Islamic,[28] and even the one which does not (the Kurdistan Workers Party) is likely to have many Muslim members.

To some extent, certain offences relating to organisations may not be viewed as too controversial. Targeting individuals who 'direct' the activities of a terrorist organisation [29] or 'recruit' other individuals for a terrorist organisation [30] is a justifiable national security strategy. However, some of the other terrorist organisation offences have a worryingly loose scope, and it is these that have undermined any efforts made by the Commonwealth to reassure minority groups that they have nothing to fear from the counter-terrorism laws. The breadth of the offences not unreasonably gives rise to a fear amongst Muslim communities that they may be applied arbitrarily and in a politically motivated fashion. This possibility was implicitly recognised by the Parliamentary Joint Committee on Intelligence and Security in 2007 when it stated that there was still a tendency in public debate to 'conflate Islam the religion with the distorted political theology of groups that use terrorist tactics', which has fed prejudicial attitudes.[31]

Section 102.5 provides a good example of the loose scope of the offences. A person may be guilty under this section of intentionally providing training to, or receiving training from, a terrorist organisation if they are reckless as to its character as such an organisation. Crucially, there is nothing in the offence that requires the training *itself* to be connected to a planned terrorist activity. Running camps dedicated to weapons training would undoubtedly be covered by the section, but so also might training of any other kind, such as the use and maintenance of office equipment. As a result, the offence lacks a sufficiently targeted operation and exposes people to liability when their activity has no direct connection to terrorism at all. By way of contrast, the offence of providing 'support or resources' to a terrorist organisation in section 102.7 requires that the support or resources will help the organisation engage in preparing, planning, assisting in or fostering the doing of a *terrorist* activity.

The *Criminal Code* also criminalises the provision of funds to a terrorist organisation.[32] It is understandable for the Commonwealth to criminalise the intentional funding of politically or religiously motivated violence. However, these offences do not stop there.

First, it is sufficient if a person is merely 'reckless' as to whether the organisation to which they are giving money is a terrorist organisation.[33] A person is reckless if they are aware of a substantial risk that the organisation is a terrorist organisation and, in the circumstances, it is unjustifiable to take that risk.[34] As Waleed Aly points out, the subjectivity of the terms 'substantial risk' and 'unjustifiable' means that there is little firm guidance for people to predict when their conduct will violate the *Criminal Code*. This is particularly problematic for Australian Muslims:

> Because charity is one of the five pillars on which Islamic practice is based, Muslims tend to be a charitable people. This is especially true at certain times of the Islamic year when charity is religiously mandated. Countless charitable fund-raising efforts followed the tsunami and the Pakistan earthquake, and even in the normal course of events, Muslim charities regularly provide relief to parts of the Muslim world many other charities forget.[35]

Secondly, the use to which the funds are put by an organisation is irrelevant. This means that donations to proscribed organisations to assist with humanitarian functions carried out by those organisations (such as the establishment of schools and hospitals) would be illegal.[36] The difficulties faced by charities, and by people who make donations to charities, were highlighted by the November 2005 police raid of the Melbourne-based Tamils Rehabilitation Organisation (TRO). This raid was conducted after the Australian government received a warning from the Sri Lankan government that charity donations to the TRO for tsunami relief may have been used to fund the Liberation Tigers of Tamil Eelam (LTTE). The director of the TRO, however, asserted that it is impossible for charities to avoid co-operating with the LTTE in directing charitable support to those parts of the country effectively controlled by it.[37] The recognition of this reality and the fear of prosecution under the *Criminal Code* — since confirmed as very real by the arrest and charging in 2007 of those men whose homes were raided two years earlier[38] — is likely to have a chilling effect upon

19. *Criminal Code Act 1995* (Cth) s 101.2.

20. *Criminal Code Act 1995* (Cth) ss 101.4, 101.5.

21. Gregory Rose and Diana Nestorovska, 'Australian counter-terrorism offences: Necessity and clarity in federal criminal law reforms' (2007) 31 *Criminal Law Journal* 20, 28–30; Bernadette McSherry, 'Terrorism Offences in the Criminal Code: Broadening the Boundaries of Australian Criminal Laws' (2004) 27 *UNSW Law Journal* 354, 366-67.

22. See for example *Criminal Code Act 1995* (Cth) s 101.2

23. *Criminal Code Act 1995* (Cth) s 102.1(1) (definition of a 'terrorist organisation').

24. *Criminal Code Act 1995* (Cth) s 102.1(1). See also s 102.1(2).

25. *Criminal Code Act 1995* (Cth), s 102.1(1A) (definition of 'advocates').

26. See, eg, Australian Muslim Civil Rights Advocacy Network, Submission No 22 to the PJCIS (2007), above n 1.

27. *Criminal Code Regulations 2002* (Cth) cll 4A–4W. The GIA was not relisted when it expired in November 2008. For an overview of proscription in other countries, see Roger Douglas, 'Proscribing terrorist organisations: Legislation and practice in five English-speaking democracies' (2008) 32 *Criminal Law Journal* 90, 96.

28. Public Interest Advocacy Centre, Submission No 11 to the PJCIS (2007), above n 1, 5.

29. *Criminal Code Act 1995* (Cth), s 102.2.

30. *Criminal Code Act 1995* (Cth), s 102.4.

31. PJCIS (2007), above n 1, [3.17]–[3.18].

32. *Criminal Code Act 1995* (Cth), s 102.6. The *Charter of the United Nations Act 1995* (Cth) also makes it a criminal offence for a person to deal with the assets of a person or entity listed under that Act or to give assets to a listed person or entity (ss 20–21).

33. *Criminal Code Act 1995* (Cth), s 102.6(2)(c).

34. *Criminal Code Act 1995* (Cth), s 5.4.

35. Waleed Aly, 'Reckless terror law threatens charities at home', *Sydney Morning Herald* (Sydney), 29 August 2005.

36. Joo-Cheong Tham, 'Giving rights away, but to what end?', *The Age* (Melbourne), 14 November 2006.

37. Cameron Stewart and Natasha Robinson, 'Tamil Tigers in Tsunami Funds Row', *The Australian* (Sydney), 25 November 2005.

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the willingness of Australian Muslims to carry out their religious obligations and make charitable donations.

Crimes of status and relationship

The most unsettling of the offences found in Division 102 are those that relate not to activities conducted by an individual in connection with an organisation but which criminalise membership and association.[39] It is understandable that in close-knit minority groups there might be unease about offences based on one's relationship to others.[40]

Under section 102.3, a person commits an offence if they are intentionally a member of an organisation which is, and he or she knows is, a terrorist organisation. Whilst that appears straightforward enough at first glance, it should be remembered that these provisions can apply to groups or individuals who do not even regard themselves as an 'organisation'.[41] On top of this, the *Criminal Code* defines membership to include 'informal' members.[42] This aims to address the practical problems surrounding the secrecy and unstructured nature of terrorist organisations,[43] however, it makes it rather murky as to when someone has offended the section.

It is instructive to compare section 102.3 with other proscription regimes. Neither Canada nor the United States criminalise formal membership of a terrorist organisation, let alone informal membership. Under section 13 of the *Terrorism Suppression Act 2002* (NZ), it is an offence to 'participate in a terrorist group or organisation' for the purpose of enhancing its ability to carry out terrorist acts. While this may capture what the Commonwealth Code calls 'informal members', it is clear that the targeted conduct is participating in the organisation. Status per se — formal or informal — is not criminalised.[44] Lastly, the United Kingdom provides that a person who 'belongs, or professes to belong, to a proscribed organisation' commits an offence.[45] Profession of belonging to a group may include 'informal' membership but as the Parliamentary Joint Committee on Intelligence and Security has noted, the former requires, at the very least, some clear evidence of self-identification with a listed organisation.[46]

A further difficulty arises since the onus is placed on a member of a terrorist organisation to establish the defence that he or she took all reasonable steps to cease to be a member.[47] If all it takes to be an informal member is for a person to have attended a meeting of an organisation,[48] it is difficult to see what he or she could do to dissociate themselves from that organisation (especially if they are not even aware that they might be regarded as an 'informal member' of the organisation).[49]

Section 102.8 is even less precise. It contains the offence of association with a member of a terrorist organisation. The offence will be made out if, on two or more occasions:[50]

- a person 'intentionally associates with ... a member of, or a person who promotes or directs the activities of, an organisation'; and
- 'the person knows that the organisation is a terrorist organisation' (though confusingly, a later subsection says that the offence will only apply if the person is reckless as to whether the group is listed as a terrorist organisation) and knows that the person they associate with 'is a member of, or a person who promotes or directs the activities of, the organisation'; and
- the nature of the association is that it 'provides support' to the terrorist organisation that is intended to 'assist the organisation to expand or continue to exist'.

The 'association' will not be an offence if the defendant can prove that it took place:

- with a close family member and involves a matter that can reasonably be regarded as one of family or domestic concern;
- in the course of practising a religion at a place of public worship;
- only for the purpose of providing humanitarian aid; or
- for the purpose of providing legal advice or representation in connection with a set range of matters.[51]

This section is also expressly limited by the guarantee implied from the *Constitution* that communication about political matters should remain free.[52] However, the defendant bears the evidential onus of establishing the extent to which the offence is curtailed by this freedom.

The Security Legislation Review Committee was highly critical of almost every aspect of section 102.8. The central concepts of 'associate' and 'support' were unclear, particularly in their relationship to each other;[53] the level of knowledge required was confused by the subsection insisting upon recklessness;[54] and the failure to specify the boundaries of the offence relative to the constitutionally implied freedom was unsatisfactory.[55] The Committee also felt that the offence was provocative to the Muslim community by targeting the human right of 'association' when its main concern

38. Aruran Vinayagamoorthy and Sivarajah Yathavan (along with Arumugam Rajeevan of Sydney) were granted bail in July 2007 and are due to be tried under the financing offences in 2009.

39. *Criminal Code Act 1995* (Cth), ss 102.3 and 102.8 respectively.

40. Islamic Information and Support Centre of Australia (IISCA) Inc, Submission No 27 to the PJCIS (2007), above n 1, Appendix A.

41. A broad definition of an 'organisation' was stressed by the Crown in its submissions to the court in *R v Ul Haque* (unreported, NSW Supreme Court, Bell J, 8 February 2006), [51].

42. *Criminal Code Act 1995* (Cth) s 102.1(1).

43. SLRC, above n 1, [10.13]; see generally Stephen Sloan, 'Foreword: Responding to the Threat' in Robert J Bunker (ed), *Networks, Terrorism and Global Insurgency* (2005) xx, xxiv-xxv.

44. The Parliamentary Joint Committee on Intelligence and Security recommended that Australia should change the membership offence to a participation offence similar to that which exists in New Zealand: PJCIS (2006), above n 1, Recommendation 15.

45. *Terrorism Act 2000* (UK), s 11.

46. PJCIS (2006), above n 1, [5.72].

47. *Criminal Code Act 1995* (Cth), s 102.3(2).

48. This has been suggested by Amnesty International Australia, Submission No 13 to the Senate Legal and Constitutional Affairs Committee, *Inquiry into the Anti-Terrorism Bill 2004* (2004), 9–10. This question remains unanswered.

49. Ibid.

50. *Criminal Code Act 1995* (Cth), ss 102.8(1), 102.8(2).

51. *Criminal Code Act 1995* (Cth), s 102.8(4).

52. *Criminal Code Act 1995* (Cth), s 102.8(6).

53. SLRC, above n 1, [10.67]–[10.68].

54. Ibid [10.64]–[10.65].

55. Ibid [10.67], [10.71], [10.75].

was actually with the provision of 'support' to terrorist groups, which was already criminalised by section 102.7.[56] The Committee recommended the section be repealed entirety.[57] These criticisms were endorsed by the Parliamentary Joint Committee on Intelligence and Security in 2006, which noted that:

> the association offence has provoked widespread anxiety and concern; it is highly contentious and arguably has an impact beyond what was originally intended. It is complex, difficult to interpret and therefore difficult to advise people what they may or may not do.[58]

Of course, since the use of 'association' as the hook under s 501 of the *Migration Act* to revoke the visa of Dr Mohamed Haneef last year,[59] the very real problems of this concept as a basis for even administrative decisions, let alone criminal prosecutions, have been made all too clear. It is only fair to say that any community concerns that already existed about injustice which might befall innocents through the crime of association with a terrorist organisation have not been allayed, but in all likelihood very much exacerbated by the Haneef affair.[60]

Progress by the Rudd government

Many of the themes of the various Commonwealth inquiries have been picked up by the new Attorney-General, Robert McClelland. In December 2007, he stated that there has not been 'enough emphasis on community building' and noted that 'cultural diversity … is not only an asset for social enrichment — it is also a potential asset for our national security'.[61] What is needed is 'a mix of hard intelligence and law enforcement, as well as steps to promote greater inclusiveness and opportunity in Australia'.[62]

In announcing the Clarke Inquiry into the Haneef Case, McClelland also noted that the treatment of Mohamed Haneef had 'prompted some in the community to question' whether 'their national security agencies are functioning as effectively as they can be, and that our counter-terrorism laws are being appropriately enforced'.[63] AMCRAN has confirmed that the Haneef affair has indeed fuelled concerns amongst Australia's Muslims about the potential for innocent people to be targeted by the Australian Federal Police and the Commonwealth Director of Public Prosecutions, and, if such measures are unsuccessful, for immigration laws to be used to supplement them.[64]

Unfortunately, this strong language is yet to be carried into practice by the Rudd government. It blocked debate on Liberal MP Petro Georgiou's Independent Review of Terrorism Laws Bill, which was introduced into the House of Representatives in early 2008,[65] and has been criticised for framing the terms of reference for the Clarke Inquiry too narrowly, preventing any significant review of the relationship between Australian intelligence agencies and those in foreign countries.[66] Concerns have also been raised about the limited scope of the Clarke Inquiry's powers and the private nature of hearings before it.[67]

Conclusion

Ultimately, the harmonious inclusion of Muslims within the Australian community is a challenge which far transcends the specific provisions of any piece of legislation.

But getting the detail of the law right so that it does not alarm innocent people about their vulnerability to the state is not insignificant. Status offences have a weak connection to criminal activities relating to terrorism and thus their justification on national security grounds is deficient. At the same time, with their strong reliance on executive discretion — both through the process by which terrorist organisations are proscribed by the Attorney-General and the looseness with which criminal liability is stipulated by the particular provisions — these offences may appear to some sectors of the community as sufficiently flexible that they could be employed against them if the will to do so arose. The laws are not inherently discriminatory against Muslims in Australia but it must be recognised by government that those provisions which point to relationships between people as the basis of a crime send a worrying message to some about how the laws might operate.

In late June 2008, McClelland revealed that the Rudd government is considering the recommendations of the recent inquiries into the Commonwealth's counter-terrorism laws.[68] It is to be hoped that the government responds constructively to these recommendations.

In addition to amending the existing offences discussed in this article, a vital step in countering the threat of discriminatory enforcement of the counter-terrorism laws remains providing better community education about the laws and people's legal rights than has occurred to date. This would include the establishment of 'accessible complaint mechanisms for people targeted by these laws' and 'a comprehensive system of reporting and recording all incidents, investigations and crimes'.[69] This may assist, to some extent, in generating inter-community dialogue and the social cohesion necessary to prevent terrorist activities. However, it is fair to ask whether community education alone at this late stage is enough.[70]

Therefore, in addition to community education, it would be appropriate for the Commonwealth to follow the recommendations of the earlier reviews and establish an office of Independent Reviewer of Terrorism Laws. The existence of an Independent Reviewer, with the power to set his or her own agenda and to respond to public complaints, would surely go some way towards allaying the fears of Australia's Muslim communities that the operation of the counter-terrorism laws is politically-motivated.

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56. Ibid [10.66], [10.69].

57. Ibid [10.77]. As an alternative, the SLRC recommended at [10.78] that s 102.8(5) be repealed.

58. PJCIS (2006), above n 1, [5.96]. The PJCIS recommended that the offence be 're-examined' in light of these considerations: [5.99], Recommendation 19.

59. The advice provided to the former Minister for Immigration and Citizenship by the Solicitor-General and the Minister's decision to revoke Haneef's visa: smh.com.au/pdf/haneefpdf.pdf at 13 August 2008.

60. See also the Attorney-General, Robert McClelland (Press conference, 13 March 2008): attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Transcripts_2008_13March2008-ClarkeInquiryintotheHaneefCase at 13 August 2008.

61. Robert McClelland (Paper presented at Security in Government Conference, National Convention Centre, Canberra, 7 December 2007).

62. Ibid.

63. McClelland, above n 60.

64. Australian Muslim Civil Rights Advocacy Network, Submission to the Clarke Inquiry into the case of Dr Mohamed Haneef (2008), 1–2.

65. Hansard, 19 March 2008, 2199–2202. See also House of Representatives, House Notice Paper, Winter (2008), No 33, 26 June 2008, Orders of the Day, Item 6.

66. Senator George Brandis, Press Release, 'Haneef Inquiry must include British Intelligence', 10 April 2008. See also Max Blenkin, 'Promise made to the UK about scope of Haneef inquiry', *The Age* (Melbourne), 28 May 2008.

67. Additionally, the powers of the inquiry were criticised as (a) insufficient to compel the production of documents and the appearance of witnesses; and (b) enabling closed proceedings with limitations on the ability of interested persons to attend or cross-examine witnesses.

68. 'Anti-terror laws need overseer: Liberals', *The Age* (Melbourne), 24 June 2008.

69. Emrys Nekvapil, Submission No 45 to the ALRC, above n 1.

70. See Patrick Emerton, Submission No 108 to the ALRC, above n 1.