

New Home Affairs department should prompt review of Australia's human rights performance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle



AAP/Lukas Coch

Prime Minister Malcolm Turnbull has just announced the creation of a new “ [super-ministry](#) ”, modelled on the UK

[Home Office](#)

. By the end of 2018, Australia will have a new Department of Home Affairs.

This change consolidates responsibility for all security agencies within a single portfolio. Peter Dutton, currently immigration minister, will head the proposed department.

Dutton gains responsibility for the Australian Federal Police from Justice Minister Michael Keenan. He also adds responsibility for ASIO, previously under the portfolio of Attorney-General George Brandis. As home affairs minister, Dutton will retain responsibility for immigration and border protection.

Announcing the change, Turnbull and Brandis went to considerable effort to note the attorney-general's continued significance, despite his loss of responsibility for intelligence. Both emphasised that the attorney-general would gain responsibility for some oversight bodies previously within the prime minister's portfolio.

According to Turnbull, the new arrangements will ensure stronger oversight of security matters to balance protection for civil liberties and freedoms.

What does this reform mean for people subject to Australia's immigration system?

The comments of the four ministers at today's press conference were revealing in many ways.

One group of people – refugees and asylum seekers – were completely absent from the

New Home Affairs department should prompt review of Australia's human rights performance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

ministers' remarks. This raises questions regarding the meaning of the changes for these particularly vulnerable people, who remain subject to the powers of the home affairs minister.

Brandis said the reforms are significant because, for the first time, a senior cabinet minister will have as his exclusive focus the national security of Australia. That is, the home affairs minister's sole focus will be national security and border security.

Dutton, preparing to assume wide-ranging new powers, reflected on his ministry's success in stopping and turning back boats. According to Dutton, without integrity in the immigration and border protection system, "we can't keep our country safe".

And Keenan celebrated the government's novel use of the immigration system to further its national security priorities.

The sum of these propositions is a continued linking of people seeking asylum with the notion of [a threat](#) to Australia's integrity and security. Today's announcement failed to show care or responsibility for the [dehumanising impact](#) of this strategy.

Instead, Dutton takes on a considerably expanded portfolio, despite extensive [critique](#) regarding his [efforts](#) to expand already very [broad powers](#).

Australia's bid for the UN Human Rights Council

Foreign Minister Julie Bishop was absent from today's announcement. She is [currently visiting](#) India and Sri Lanka.

[Her opposition](#) to the creation of the new super-ministry has been widely reported.

New Home Affairs department should prompt review of Australia's human rights performance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

Until today's press conference, Brandis was also on record [as opposing](#) the creation of a super-ministry. This may explain the emphasis Turnbull placed on the oversight role of the attorney-general for "ensuring governments act lawfully and justly".

Others will consider whether this change is called for in the sense of enhancing Australia's security capacity or performance. But today's announcement must also be assessed in the context of Australia's human rights standing.

Bishop and Brandis have taken primary responsibility for promoting Australia's current bid for election to the UN Human Rights Council. According to the Department of Foreign Affairs and Trade, Australia is the ideal candidate for a two-year term on the council, as it has been - and continues to be – an "[international human rights leader](#)".

The government has taken steps to demonstrate Australia's commitment to human rights, in support of its campaign.

For example, in February, Brandis announced that Australia would [adopt the Optional Protocol to the Convention Against Torture](#) (OPCAT). OPCAT aims to [improve oversight](#) of international standards at the domestic level. Its adoption in Australia will enable access for independent inspection agencies to Australian prisons and detention centres.

And, fortunately for Australia, France recently withdrew as a candidate. Although an election will still be held in October this year, Bishop is [now confident](#) that Australia and Spain will be elected unopposed to the two available seats for their regional grouping.

Regardless of the likelihood of its election, however, does today's shift in the national security context support the legitimacy of Australia's bid for election to the Human Rights Council?

In launching Australia's bid, Bishop described human rights as "national values deeply embedded in Australian society". Brandis described Australia's candidacy as:

New Home Affairs department should prompt review of Australia's human rights performance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

... the most natural thing in the world for a country which – at its core – is a nation built on a belief in, and a commitment to, the human rights of all – the human rights of all Australians and the human rights of all the peoples of the world.

Such characterisations are widely disputed by [domestic](#) and [international](#) commentary, which tests [Australia's performance](#) against its international legal obligations.

Notably, the people ignored in today's announcement – those seeking asylum from persecution in their home countries – have suffered [human rights abuses](#) in Australia's immigration system.

It is difficult to see how the consolidation of [far-reaching security powers](#) in a single ministry will promote human rights. Outgoing Human Rights Commission president Gillian Triggs has already identified expanding executive power [as a threat](#) to democracy and human rights.

While the protection of the Australian community from terror threats is an undeniable and legitimate priority for any government, lawyers must oversee the coming reforms to determine whether they [further threaten](#) the [delicate balance](#) between safety and security on one hand, and freedom and rights on the other.

Australia's model for these reforms, the UK Home Office, hardly has a [stellar human rights record](#). It has been [criticised](#) for "making border guards of doctors". Its officials have been given incentives for reaching asylum seeker [rejection targets](#).

And in June this year, UK Prime Minister Theresa May demanded expanded anti-terror powers

New Home Affairs department should prompt review of Australia's human rights performance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

for government. [She said](#) :

... if human rights laws stop us from doing it, we will change those laws so we can do it.

The human rights implications of today's announcement must be carefully monitored, particularly considering the lack of comprehensive human rights protection in Australian law.

Disclosure

Amy Maguire is a Co-Chair of the Indigenous Rights Subcommittee of Australian Lawyers for Human Rights and a member of Amnesty International.

Authors: Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

Read more <http://theconversation.com/new-home-affairs-department-should-prompt-review-of-australias-human-rights-performance-81167>