

How not to fight the 'War on Terror: the Criminal Code Amendment (Terrorist Organisations) Bill 2003

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Present proscriptions powers

- Part IIA, *Crimes Act 1914* (Cth): prosecution and declaration
- *Criminal Code Act 1995* (Cth):
 - 'terrorist org' offences;
 - listing by regulation if UNSC decision
- Part 4, *Charter of UN Act 1945* (Cth)

Criminal Code Amendment (Terrorist Organisations) Bill 2003

- Proposes to remove requirement of UNSC decision
- Proposes to allow regulation to list organisation as 'terrorist organisation' if Minister satisfied organisation is in/directly involved in terrorist act

Why Bill should be opposed? I

- Argument based on 'independence' a red herring:
 - - prosecution via *Criminal Code Act* through terrorist offences and ter org offences;
 - - prosecution and declaration via Part IIA of *Crimes Act*; and
 - - *Charter of UN Act 1945* (Cth)

- Unnecessary for purpose of shutting down organisations and their support base given present proscription powers

Why Bill should be opposed? II

- If present proscription powers, what's the big deal:
- Bill proposes by-passing of courts to confer broader in terms of scope and more punitive executive power, 'full weight of the criminal law'

- Arbitrary executive power to impose severe criminal penalties:
- Vague criteria: what is an 'org'?:
 - - what are the lines of an 'org' drawn?;
 - - when is an act attributed to an 'org'?:
 - - what sort of acts will suffice? e.g. 'fostering' and speech acts

Why Bill should be opposed? III

- Arbitrary executive power to impose severe criminal penalties
- Secret and untested evidence: provided by ASIO

- Meagre review mechanisms, e.g. AD(JR)

- Problem with arbitrary executive power: mistakes and abuse;
 - - Compounded by fact that powers will most likely be aimed at foreign organisations.

Way forward I

- Present state of play: interregnum with ALP proposing judicial

model of proscription (like Pt IIA of *Crimes Act*)

- Way to oppose: no magic formula: patient work of campaigning, refer to Civil Rights Network
- Opposition not merely defensive: strategic opportunity to focus attention on Pt 4 *Charter of UN Act*;
- - strategic opportunity to defend and elaborate, among others, upon principles of democratic accountability

Way forward II

- Not atypical responses at forums like this: what can we do? can we make a difference?
- Not occasion for despair:
 - - True that testing challenges and formidable forces against us;
 - But we can make a difference, e.g. proscription powers: removal of 'security and integrity' limb and having proscription by regulation hence, allowing for parliamentary scrutiny;
 - - with some good faith and hard work, we can make difference again