

A "minor" legal change that will have major consequences

By Miriam Gani (*Canberra Times* 4/11/05, page 15)

What's in a word? Quite a lot, apparently. On Wednesday, with a fine sense of drama and the Attorney General by his side, the Prime Minister announced that there was an urgent need for new legislation following intelligence of a "specific" terrorist threat to Australia.

The announcement put the spotlight on one of the government's more obscure tinkering with current terrorism laws: a proposed amendment to the scope of the "terrorist act" offences, including the replacement of the word "the" with the word "a".

Despite its minor appearance, this change could have a big impact on the reach of the criminal law. Accordingly, it deserves proper attention in Parliament. Ironically, however, the amendment will not address Mr Howard's immediate problem, if indeed there is a *specific* terrorist threat to Australia. Our current law already does that. Instead, the change will do something else – it will allow the prosecution of non-specific terrorist threats.

Wednesday's announcement and the subsequent recall of the Senate is the latest chapter in a saga of legislation by press release and contrived deadlines. The process by which Australians have been exposed to the proposed new anti-terrorism laws marks a departure from normal law making procedures. The electorate has been "softened up" to pre-dispose it to accept a significant expansion of criminal offences and police powers.

Talk of a specific threat, and the sense of urgency such an announcement generates, certainly inclines us to consent to swift and decisive action by our Parliament.

But what does the hastily introduced mini-bill actually do? Why should we be wary of it and, why does it not, in fact, address the problem of a "specific" terrorist threat?

First, the Bill does not do everything that the Prime Minister said it would in his press conference. It does not deal with "terrorist organisations" at all. Instead, the focus is on "terrorist acts". Whilst it will not change the definition of a "terrorist act", the scope of the existing terrorism laws will be greatly expanded.

At the moment, a "terrorist act" is defined as an action or a threat of action done or made with the intention of advancing a political, religious or ideological cause and, additionally, with the intention of coercing, or influencing by intimidation a government or intimidating the public. To constitute a terrorist act, the action must also be one which causes serious damage or harm to property or persons or which creates a serious risk to the health or safety of the public or interferes with an electronic system. Non-violent political action is excluded from the definition.

The current law prohibits a range of activities including training for and making documents in preparation for a terrorist act. Most of the offences can be committed "even if *the* terrorist act does not occur" At the time the original provisions were passed in 2002, there was a significant emphasis on the preventative focus of the offence provisions. This clause was seen in that light – an offence would be committed even if the planned terrorist act did not eventuate – that is, planning a specific act or a specific threat of action was sufficient to ground a charge.

So our current laws cover precisely the situation that the Prime Minister was talking about in his press conference. If the threat is clear, then the authorities already have the power to arrest and charge the individuals concerned.

The proposed new laws remove the phrase quoted above ("even if the terrorist act does not occur") and replace it with the following:

A person commits an offence even if, *a* terrorist act does not occur, or there is no connection with a specific terrorist act or there is a connection with more than one terrorist act.

This minor substitution could have a big impact. It extends the offence to people who engage in behaviour that is preparatory to terrorist activity of a generic nature. Many more will, potentially, be subject to its terms. The consequences for our civil liberties could be dire as law enforcement bodies are invited to look at a broad range of potentially disconnected activities and, evidently, draw conclusions about what might or might not be intended.

The risk that the new legislation may become a measure of our paranoia, rather than our true security intelligence, is a matter that should concern us all.

Whilst the amendment may ultimately be seen as a necessary long-term change to our laws, it is nevertheless an example of jurisdiction-creep. Accordingly, it should be discussed and debated in an appropriate way and from the premise that it is, in fact, a significant expansion of the criminal law. It should not be rushed through the Parliament. To characterise this Bill as the way to deal with a "specific" threat is to misrepresent the case.

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