

Legal and Constitutional Affairs Committee

I attach comment from the WA Attorney General.

I also suggest that certain parts of the Torah, Koran and Bible carry a note of vilification of other religions or approval of triumphalism over other ethnic or religious groups. Given the literal status some people accord these, I ask whether this is helpful to preventing religious and ethnic discord.

Geoff Taylor

-----Original Message-----

From: Jim-McGinty

Sent: Wednesday, 9 November 2005 12:38 PM

To:

Subject: Re: Questions about the proposed antiterror legislation

Mr Geoff Taylor

Dear Mr Taylor

Thank you for your emails of 27 October and 2 November 2005 which concern the proposed anti-terrorism legislation which was the subject of our previous emails including my email to you of 20 October 2005.

I have noted the matters in your subsequent emails and the following comments are provided.

First, you refer to Chapter III of the Commonwealth Constitution and suggest that it "did not envisage disaggregating courts and judges in the way that [proposed section 105.2] of the [Anti-Terrorism Bill (No. 2) 2005 (Clth)]". Of course, as you may be aware, Chapter III refers to the High Court as well as State and Federal courts. Therefore, in so far as the provisions in the Bill refer to those courts and their judicial officers, that is, at least, within the contemplation of Chapter III. Further, given High Court decisions in relation to the separation of powers, particularly, Commonwealth judicial power from other powers and decisions such as the Kable case provisions such as section 105.2 might be viewed as being required by Chapter III.

Secondly, you refer to the Crimes Act 1914 (Clth) and question why similar provisions appear in the proposed anti-terrorism legislation. As you may be aware, the Crimes Act 1914 (Clth) and the Criminal Code 1995 (Clth) apply to criminal offences and police powers in relation to such offences. However, the proposed anti-terrorism law deals with situations which may not, at that stage, constitute a criminal offence but where the Australian Federal Police consider on reasonable grounds that such an order would, for example, substantially assist in preventing a terrorist attack.

Thirdly, you refer to Article 9 of the UN International Covenant on Civil and Political Rights. As you may be aware, Commonwealth legislative power does not, as a matter of constitutional law, have to comply with international treaties or conventions. Of course, in relation to the Anti-Terrorism Bill (No. 2) 2005 (Clth) there are differing views as to whether the provisions of this proposed legislation conform or comply with international treaties including this covenant. In this context, I understand that the Commonwealth Government

considers that this Bill does not breach those treaties or covenants.

Finally, you may be aware that the Second Reading speeches, explanatory memoranda and provisions of the Anti-Terrorism Bill (No. 2) 2005 (Clth) are on the website www.aph.gov.au/senate_legal of the Senate Legal and Constitutional Legislation Committee to which the Bill was referred on 3 November 2005. The Committee has invited written submissions and will report back to Parliament by 28 November 2005. You may wish to raise your concerns and views with that Committee.

Thank you for again informing me of your views and concerns.

Yours sincerely

JIM MCGINTY MLA
ATTORNEY GENERAL
9 November 2005

>>> "Geoff Taylor" 2/11/05 6:12 am >>>

Mr McGinty

The material below in the Crimes Act is already law so why repeat it in the antiterror law? (but compare present S24F(2) below with the proposed S 80.3 below).

At the bottom is Art 9 of the International Covenant on Civil and Political Rights.

Geoff Taylor, Perth

CRIMES ACT 1914 - SECT 24A

Definition of seditious intention An intention to effect any of the following purposes, that is to say:

(a) to bring the Sovereign into hatred or contempt;
(d) to excite disaffection against the Government or Constitution of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_commonwealth> Commonwealth
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_commonwealth> or against either House of the Parliament of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_commonwealth>

monwealth> Commonwealth;
(f) to excite Her Majesty's subjects to attempt to procure the alteration,
otherwise than by lawful means, of any matter in the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth established by law of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth; or
(g) to promote feelings of ill-will and hostility between different classes
of Her Majesty's subjects so as to endanger the peace, order
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s23wa.html#order

> or good government of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth;

is a seditious intention.

CRIMES ACT 1914 - SECT 24B

Definition of seditious enterprise

(1)

A seditious enterprise is an enterprise undertaken in order
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s23wa.html#order

> to carry out a seditious intention.

(2)

Seditious words are words expressive of a seditious intention.

CRIMES ACT 1914 - SECT 24C

Seditious enterprises A person who engages in a seditious enterprise with
the intention of causing violence, or creating public disorder or a public
disturbance, is guilty of an indictable
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s23wa.html#indic

table_offence> offence punishable on conviction by imprisonment for
not
longer than 3 years.

CRIMES ACT 1914 - SECT 24D

Seditious words

(1)

Any person who, with the intention of causing violence or creating public disorder or a public disturbance, writes, prints, utters or publishes any seditious words shall be guilty of an indictable offence.
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s23wa.html#indictable_offence> offence.

Penalty: Imprisonment for 3 years.

(2)

A person cannot be convicted of any of the offences defined in section 24C or this section upon the uncorroborated testimony of one witness.
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16.html#offence>

CRIMES ACT 1914 - SECT 24F

Certain acts done in good faith not unlawful

(1)

Nothing in the preceding provisions of this Part makes it unlawful for a person:

(a) to endeavour in good faith to show that the Sovereign, the Governor-General, the Governor of a State, the Administrator of a Territory, or the advisers of any of them, or the persons responsible for the government of another country, has or have been, or is or are, mistaken in any of his or their counsels, policies or actions;

(b) to point out in good faith errors or defects in the government, the constitution, the legislation or the administration of justice of or in the Commonwealth, a State or Territory, or another country, with a view to the reformation of those errors or defects;

(c) to excite in good faith another person to attempt to procure by

lawful
means the alteration of any matter established by law in the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth, a State
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16.html#state>
, a Territory or another country;
(d) to point out in good faith, in order
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s23wa.html#order

> to bring about their removal, any matters that are producing, or
have a
tendency to produce, feelings of ill-will or hostility between
different
classes of persons; or
(e) to do anything in good faith in connexion with an industrial
dispute or
an industrial matter.

(2)

For the purpose of subsection (1), an act or thing done:

(a) for a purpose intended to be prejudicial to the safety or defence
of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth;
(b) with intent to assist an enemy:
(i) at war with the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth; and
(ii) specified by proclamation made for the purpose of paragraph
80.1(1)(e)
of the Criminal Code to be an enemy at war with the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com

monwealth> Commonwealth;
(ba) with intent to assist:
(i) another country; or
(ii) an organisation (within the meaning of section 100.1 of the
Criminal
Code);
that is engaged in armed hostilities against the Australian
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s51.html#austral

ia> Defence Force;
(c) with intent to assist a proclaimed
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s24aa.html#procl

aimed_enemy> enemy, as defined by subsection 24AA(4) of this Act, of
a
proclaimed
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s24aa.html#procl

aimed_country> country as so defined;
(d) with intent to assist persons specified in paragraphs 24AA(2)(a)
and (b)
of this Act; or
(e) with the intention of causing violence or creating public disorder

or a
public disturbance;

is not an act or thing done in good faith.

Compare present Crimes Act provisions with this in the proposed
antiterror
legislation:

80.3 Defence for acts done in good faith 30

(1) Sections 80.1 and 80.2 do not apply to a person who:

(a) tries in good faith to show that any of the following persons 1
are mistaken in any of his or her counsels, policies or actions: 2

(i) the Sovereign; 3

(ii) the Governor-General; 4

(iii) the Governor of a State; 5

(iv) the Administrator of a Territory; 6

(v) an adviser of any of the above; 7

(vi) a person responsible for the government of another 8
country; or 9

(b) points out in good faith errors or defects in the following, 10
with a view to reforming those errors or defects: 11

(i) the Government of the Commonwealth, a State or a 12
Territory; 13

(ii) the Constitution; 14

(iii) legislation of the Commonwealth, a State or a Territory
or another country; 16

(iv) the administration of justice of or in the 17
Commonwealth, a State, a Territory or another country; 18
or 19

(c) urges in good faith another person to attempt to lawfully 20
procure a change to any matter established by law in the 21
Commonwealth, a State, a Territory or another country; or 22

(d) points out in good faith any matters that are producing, or 23

have a tendency to produce, feelings of ill-will or hostility 24
between different groups, in order to bring about the removal 25
of those matters; or 26

(e) does anything in good faith in connection with an industrial 27
dispute or an industrial matter. 28

Note: A defendant bears an evidential burden in relation to the matter
in 29

subsection (1). See subsection 13.3(3). 30

(2) In considering a defence under subsection (1), the Court may have
31

regard to any relevant matter, including whether the acts were 32
done: 33

(a) for a purpose intended to be prejudicial to the safety or 34
defence of the Commonwealth; or 35

(b) with the intention of assisting an enemy: 36

(i) at war with the Commonwealth; and 37

(ii) specified by Proclamation made for the purpose of 1
paragraph 80.1(1)(e) to be an enemy at war with the 2
Commonwealth; or 3

(c) with the intention of assisting another country, or an 4
organisation, that is engaged in armed hostilities against the 5
Australian Defence Force; or 6

(d) with the intention of assisting a proclaimed enemy of a 7
proclaimed country (within the meaning of subsection 8
24AA(4) of the Crimes Act 1914); or 9

(e) with the intention of assisting persons specified in paragraphs 10
24AA(2)(a) and (b) of the Crimes Act 1914; or 11

(f) with the intention of causing violence or creating public 12
disorder or a public disturbance. 13

80.4 Extended geographical jurisdiction for offences 14

Section 15.4 (extended geographical jurisdiction-category D) 15

applies to an offence against this Division. 16

80.5 Attorney-General's consent required 17

(1) Proceedings for an offence against this Division must not be 18
commenced without the Attorney-General's written consent. 19

(2) Despite subsection (1): 20

(a) a person may be arrested for an offence against this Division; 21
or 22

(b) a warrant for the arrest of a person for such an offence may 23
be issued and executed; 24

and the person may be charged, and may be remanded in custody 25
or on bail, but: 26

(c) no further proceedings may be taken until that consent has 27
been obtained; and 28

(d) the person must be discharged if proceedings are not 29
continued within a reasonable time.

This is not a part of the proposed antiterror law:

CRIMES ACT 1914 - SECT 30C

Advocating or inciting to crime Any person who by speech or writing
advocates or encourages:

(a) the overthrow of the Constitution of the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com
monwealth> Commonwealth by revolution or sabotage;

(b) the overthrow by force or violence of the established government of
the
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com
monwealth> Commonwealth

<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com
monwealth> or of a State
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16.html#state>

or of any other civilized country or of organized government; or
(c) the destruction or injury of property of the

<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s77.html#the_com
monwealth> Commonwealth or of property used in trade or commerce with
other
countries or among the States
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16.html#state>
;

shall be guilty of an offence
<http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16.html#offence
> and shall be liable on conviction to imprisonment for any period
not
exceeding 2 years.

The International Covenant on Civil and Political Rights.

(Is this Australian domestic law after the Teoh decision in the High Court?)

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.