

Dear Sir or Madam

The Senate Committee examining the Anti Terrorist Bill has sent the bill to the Dean of our Law School asking for comment. I am experienced in Criminal Law and would like to draw attention to what appears to be a flaw in the following amendment to the Criminal Code which is part of the Bill.

"Repeal the subsection.

16 3 At the end of Division 103 of the Criminal Code

17 Add:

18 103.2 Financing a terrorist

19 (1) A person commits an offence if:

20 (a) the person intentionally:

21 (i) makes funds available to another person (whether
22 directly or indirectly); or

23 (ii) collects funds for, or on behalf of, another person
24 (whether directly or indirectly); and

25 (b) the first-mentioned person is reckless as to whether the other
26 person will use the funds to facilitate or engage in a terrorist
27 act.

28 Penalty: Imprisonment for life.

29 (2) A person commits an offence under subsection (1) even if:

30 (a) a terrorist act does not occur; or

31 (b) the funds will not be used to facilitate or engage in a specific
32 terrorist act; or

(1 c) the funds will be used to facilitate or engage in more than one
2 terrorist act."

This proposed offence is directed at prohibiting a person funding a terrorist. I do not argue with this objective but this is not achieved by this draft offence. The gravamen of this draft offence is reckless inquiry by the person giving money as to the status of the receiver. Accordingly the offence is complete irrespective of the status of the receiver. Therefore assume citizen "A" gives or raises funds for citizen "B". Assume citizen "B" works for a legitimate charitable organisation. Assume citizen "A" fails to rule out the possibility that citizen "B" might divert the funds to a terrorist organisation. The offence is complete even if citizen "B" does nothing wrong and properly hands the funds over to the legitimate charity.

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