

Dr Alex Douglas MP

31/10/2011

Honourable Member for Gaven

Parliamentary Crime and Misconduct Committee

Dr Alex Douglas

Thank you for the opportunity to comment with regards the Criminal Organisation Amendment Bill 2011. The first point I would like to raise is that the amendments proposed so nothing to address the reasons the New South Wales *Crimes (Criminal Organisations Control) Act 2009* (NSW) was declared invalid.

From the *Wainohu v New South Wales* [2011] HCA 24 (23 June 2011)...
(<http://www.austlii.edu.au/au/cases/cth/HCA/2011/24.html>)

Is the [Crimes \(Criminal Organisations Control\) Act 2009](#) (NSW) or any provision or part of it invalid on the grounds that:

- a. it undermines the institutional integrity of the Supreme Court of New South Wales;
- or
- b. it is outside the legislative powers of the Parliament of the defendant?

Answer: The [Crimes \(Criminal Organisations Control\) Act 2009](#) (NSW) is invalid.

The above decision by the High Court of Australia, in part looked at the nature of the appointment of Judges. The NSW Act and the QLD Act though different in approaches to the appointment of judges the same problem exists that is the requirement of the COPIM has the possibility to be perceived as being unable to separate the function of a Judge and that of Public Interest Monitor.

The Criminal Organisation Amendment Bill 2011, does nothing to address this point that the High Court noted as being a problem with the *Crimes (Criminal Organisations Control) Act 2009* (NSW) This is covered in detail from a historical context in the case of *Wainohu v New South Wales* [2011] HCA 24 (23 June 2011) from

Judges exercising administrative functions – historical context

21 through to 59

From **The functions of the eligible judge under the Act**

60 through to 72 the High Court Judges give their reasons for ruling the incompatibility of using appointed judges, the difference between the two acts does nothing to diminish this problem. Furthermore the Criminal Organisation Amendment Bill 2011 does nothing to address this fundamental reason behind the *Crimes (Criminal Organisations Control) Act 2009* (NSW) being declared invalid and the same result will occur here in Queensland should the Government endeavour to use these laws. The only result will be an expensive exercise that will only waste the courts time and the taxpayer's money.

Further to this in the explanatory notes it states ... *Information declared to be 'criminal intelligence' is withheld from the respondent. Further, the informant can not be required to give evidence or be cross-examined. Therefore, the use of such evidence raises significant natural justice issues...*

This is a fundamental problem, when a law removes an accused person's right to hear the evidence being used against them it removes the possibility that the accused can present proof that the evidence used against them is wrong.

Now this would not be a concern if there had never been a case of Police fabricating evidence or of a criminal giving false evidence in return for favours such as reduced sentence or pecuniary reward or to have the beatings stop. I know in a perfect world these issues would not be of concern, unfortunately we do not live in a perfect world. To have an innocent person convicted under these circumstances is the greatest miscarriage of justice and to this end the government should resolutely set itself on a course to avoid.

The following is an often quoted statement

Olmstead v. United States, 277 U.S. 438 (1928)

MR. JUSTICE BRANDEIS, dissenting.

...Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that, in the administration of the criminal law, the end justifies the means -- to declare that the Government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face....

This mentions the possibility that Government may commit crimes, well if the Queensland government presses on with these draconian laws they are imperil of breaking laws. There are enough laws in place to deal with criminal behaviour without making a law that turns innocent men into criminals by way of their friendships. This amendment and impending use of the law leading up to an election is nothing more than grandstanding and propaganda of trying to ride into the election on the back of appearing to get tough on "the Bikies". There is nothing going on here of legitimate law making for the good of the Queensland people.

Yours truly

Russell Camel Wattie

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