



Archived at the Flinders Academic Commons:
<http://hdl.handle.net/2328/27231>

This is a scan of a document number DUN/Speeches/3488
in the Dunstan Collection, Special Collections, Flinders University Library.
<http://www.flinders.edu.au/library/info/collections/special/dunstan/>

Title:

ALP broadcast regarding 'proposals before Federal Parliament to amend the Crimes Act', with excerpts read out from 'The Commonwealth Crimes Bill, 1960'.

Please acknowledge the source as:
Dunstan Collection, Flinders University Library.
Identifier: DUN/Speeches/3488

© Copyright Estate Donald Allan Dunstan

AL.P. BROADCAST FROM 5KA 7/11/60PRESENTED BY DCN DUNSTAN - MEMBER FOR NORWOOD

Good Evening:-

The current proposals before Federal Parliament to amend the Crimes Act contain a number of features which are an outrage upon accepted canons of the administration of British justice and ought to cause the gravest concern to every citizen.

Let me, if I may, detail some of the obnoxious provisions.

"4. Section 24(I) (d) adds a novel but far reaching provision to the crime of assisting the King's enemies. This new sub-section makes it treason to assist by any means whatever an enemy at war with the Commonwealth, whether or not the existence of a state of war has been declared. To the first part of the provision, which appears in substance the old Act, there can be no objection, notwithstanding the very wide scope of the expression "assist by any means whatever". But the citizen who may be called upon to face a charge for an offence carrying the death penalty or any other penalty is entitled to have the offence clearly defined. This is of the essence of our system of law and justice.

But this sub-section is badly drafted and dangerous. It does not even specify whether it refers to a declaration of war by Australia or by the enemy. It contemplates a de facto state of war between the Commonwealth and another country. It may be true, as the Attorney General says, that these days a declaration ~~by Australia's potential enemies, and not by Australia.~~ of war is old fashioned. Presumably he is speaking of a declaration by Australia's potential enemies, and not by Australia. We may hope that no Australian Government will regard itself as at war with another country without declaring so plainly and without equivocation.

In the light of such learned comment it will be clear that this particular sub-section is bristling with difficulties. This makes the sub-section so dangerously wide as to be unacceptable, especially having regard to the enormous scope of the phrase "assist by any means whatever". Take for example, the Korean war referred to by the Attorney General. At one stage Chinese soldiers were fighting U.N. Forces in the Yalu River area. They were called "volunteers" by the Chinese Government.

Not everybody believed that they were simply volunteers. Suppose Australian soldiers were amongst those in action against them, upon the view that the Chinese Government's denial was false, Australia might well say: "China is an enemy at war with Australia". In such circumstances, any Australian advocating by speech or action recognition of the Government of China by the Commonwealth or exchanging information on trade, industrial conditions, health, cultural matters, or saying that the U.N. Command was taking a wrong or dangerous step in pursuing the North Koreans beyond the Yalu River might be held to be "assisting the enemy".

Section 24(I) (c) remains substantially as in the old Act. Section 24(I) (f) makes it treason to form an intention to do any of the acts of treason specified, provided the intention is manifested by an overt act. Sub-section (3) introduces a proper protection for the person charged with treason under 24(i) (f), in that no evidence of the overt act is admissible unless alleged in the indictment. This means that the person charged will have reasonable notice of what is alleged against him.

But the objection here is nevertheless even greater than with the earlier specified acts of treason. The citizen's offence here is the forming of an intention to assist an enemy at war with the Commonwealth whether or not the existence of a state of war has been declared. The overt act required to be proved is not an overt act of assistance to the enemy but merely an overt act evidencing the intention to assist. Thus, a speech or an article advocating diplomatic recognition of China at a time when Australians and Chinese were in de facto conflict without any declaration of war, might be held to be an overt act manifesting an intention to assist an enemy at war with the Commonwealth. Notwithstanding that it could not be proved that the speech or article was in fact of assistance to the enemy, once the intention to assist is proved, the person is still liable to the punishment of death for treason.

Section 24AA introduces a new offence of "treachery", punishable by imprisonment for life.

Section 24 AA (1) (a) makes it treachery to do any act or thing whether in Australia or elsewhere in an attempt to overthrow the Constitution of the Commonwealth by revolution or sabotage, or to overthrow by force or violence the established Government of the Commonwealth, of a State or of a "proclaimed country".

Sub-section (4) and (5) define "proclaimed country" as a country so declared for the purposes of the section and provide that a proclamation shall not be made except in pursuance of a resolution of each House of Parliament passed within the twenty one days

Australian citizens for an end of the blockade would be treachery. A trade union refusal to load supplies to the United States would render those participating liable to be prosecuted under the Section.

In none of the above examples is Australia one of the belligerents.

Section 24 AB introduces the new offence of "sabotage" which, like the offences of treason and treachery, may be committed in peace time as well as in war time.

On the face of it, the gist of this new offence is the destruction, damage or impairment, for a purpose prejudicial or intended to be prejudicial to the safety or defence of the Commonwealth, of articles used or intended to be used in the Commonwealth by the Defence Forces or by the armed forces of a proclaimed country. The punishment provided by the Act is fifteen years.

On a prosecution under this section it is not necessary to show that the accused person was guilty of a particular act tending to show a purpose prejudicial, or intended to be prejudicial to the safety or defence of the Commonwealth and, notwithstanding that such an act is not proved against him, he may be convicted if, from the circumstances of the case, from his conduct or from his known character as proved, it appears that his purpose was a purpose prejudicial, or a purpose intended to be prejudicial, as the case requires, to the safety or defence of the Commonwealth."

Goodnight.