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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Protection of the Australian National Flag (Desecration
of the Flag) Bill 2006**

Explanatory Memorandum

Circulated by authority of the Hon Bronwyn Bishop MP

Protection of the Australian National Flag (Desecration of the Flag) Bill 2006

This Bill is intended to protect the Australian National Flag (the Flag) by making it a criminal offence to wilfully destroy or otherwise mutilate the Flag in circumstances where a reasonable person would infer that the destruction or mutilation is intended publicly to express contempt or disrespect for the Flag or the Australian Nation. This Bill is to amend the *Criminal Code 1995*.

Background

There have been previous attempts to protect the Flag.

There were during the 1980s and 1990s attempts to change the Flag and the Coalition whilst in opposition tried unsuccessfully to prevent its change other than by way of Referendum.

Upon coming to Government the Howard Government introduced legislation to provide that the Flag could only be changed by way of referendum being voted upon by all Australian electors. This is now the law.

Further protection for the Flag, this time against desecration, has previously been introduced by way of a Private Member's Bill to amend the Flags Act 1953. This Bill was introduced but only read a first time. No opportunity was afforded to debate the Bill.

As indicated above, this Bill is designed to amend the Criminal Code and requires any act of desecration to be wilful and to be in circumstances where a reasonable person would infer that the destruction or mutilation is intended publicly to express contempt or disrespect for the Flag or the Australian Nation.

The fact that it is currently not an offence to destroy or mutilate the Flag means that fictions are resorted to in bringing a prosecution. An example was the recent prosecution for theft where a Flag was taken from an RSL flag pole and burned.

The affront was the desecration of the Flag, but the prosecution was for theft.

Protocol for Disposal of the Flag

Asher Joel's "Australian Protocol and Procedures 2nd Edition" provides that "When a flag becomes dilapidated and is no longer in suitable condition for use, it should be destroyed in a dignified way by burning privately".

Clearly such an act would not constitute an offence under the Bill as such an act is not wilful and is not done in circumstances where a reasonable person would infer that the destruction or mutilation is intended publicly to express contempt or disrespect for the Flag or the Australian Nation.

Comparison with the United States of America

Protection for the United States of America National Flag has a long history and was in effect until 1989 when a split decision of the Supreme Court 5-4 voted it down as being in breach of the First Amendment of the U.S. Constitution.

Since then the House of Representatives has overwhelmingly approved a Constitutional change to allow the Congress to enact legislation again to protect their flag against physical desecration, on six occasions, the last being 1 July 2005. In addition all 50 states have passed resolutions supporting a flag protection amendment.

In Australia we have enormous public support for protecting the Flag. Indeed people are amazed that there is no law in existence to protect the Flag. To protect their flag in the U.S.A. they require a constitutional amendment, in Australia we do not. In the U.S.A. all 50 states and the Congress are permitted to debate this issue which is clearly one the people want debated. In Australia it is hoped that the Government will allow the Australian Parliament to debate an issue about which the Australian people feel passionate. We have the opportunity to lead in the area of protecting our National Symbol - the Flag and not await another's decision and follow. The Australian people are entitled to have those they have elected debate this issue which is of enormous importance to them.

Conclusion

The Australian National Flag is the paramount symbol of our Nation. Thousands of Australian men and women have fought and died under this Flag in the defence of the nation.

Their sacrifice to defend our Nation requires this Parliament to defend the Flag for which they have fought.