

Over the last year or so topical issues have included our relations with Indonesia, 'going to war on a lie', the likely duration of the international struggle against Islamist terrorism, the situation of David Hicks, the application of control orders, and whether we should pull out of Iraq. These have all shared at least one common underlying theme – differing basic assumptions by the protagonists as to whether Australia is currently at war or not.

Ensnared in our geographically isolated and secure continent, and immersed in our generally relaxed and affluent lifestyle, the instinctive reaction by many Australians would be that this is just an arcane point for discussion among international lawyers, diplomatists or soldiers. After over half a century of general peace, prosperity and progress, few Australians under the age of 70 remember World War II. Few under 80 remember it well. Very few Australians have much of a personal intellectual framework that can easily envisage why the 'peace' we all largely take for granted is actually not a permanent or universal concept. Many, probably most, simply give such matters no thought whatsoever.

This degree of idealistic presumption, ignorance or apathy needs to change. The customary stability of our wider strategic and domestic security situations are not assured in future without general effort. Decisions on this require informed and effective public debate on the security challenges we face, will face or may logically face eventually. We must also properly debate the national strategies needed to deal with these challenges, the balancing of civil liberties with community safety, and the allocation of adequate and sustained national resources to both our external defence and our domestic security.

In the strictest legal sense, Australia is indisputably at war because we have freely committed our defence force to UN-endorsed operations in Iraq, Afghanistan and against internationally proscribed terrorist groups generally. But most Australians do not feel themselves at war because their day-to-day lives and interests are so untouched by our military commitments.

Later this year the High Court is expected to rule on the constitutional validity of legislation implementing temporary and limited control orders. These can be applied to those citizens or residents reasonably considered to pose an unacceptable risk of committing, actively supporting or deliberately ignoring terrorist attacks against the rest of us. Test cases concerning other new laws will probably follow.

A long-established principle, firmly based in several High Court precedents, is that the constitutional heads of power governing defence and security wax and wane according to the threat. This justified quite draconian national security regulations during both World Wars but was why the Communist Party Dissolution Act was struck down by the High Court in 1951.

Our likely long-term fight against Islamist terrorism involves both warfighting and law enforcement depending on the particular geographic circumstances, strategic and

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<i>Reconstruction Task Force members welcome a RAAF C130J-30 Hercules to Afghanistan.</i>	
<i>Photo Courtesy of the ADF</i>	

legal contexts, and operational situations involved. Despite the commonplace scaremongering by self-described civil liberties lobbies and some ideologues, our democratic way of life has barely been affected by the temporary and limited security measures adopted over recent years. But these measures are definitely still necessary and reasonable, they are therefore constitutionally valid, and they may be needed for some years yet. ♦