

Are sedition laws necessary and effective?



The term 'sedition' should be removed from the federal statute book, and offences urging force or violence against the government or community groups should be redrafted, according to the Australian Law Reform Commission (ALRC).

The offence of sedition was amended in 2005 as part of the federal Government's Anti-Terrorism Act (No 2) 2005, which targets activity promoting terrorist violence.

The sedition provisions were controversial, with concerns expressed through the media and identified by a Senate inquiry that the laws may intrude unreasonably upon freedom of speech.

According to the ALRC, the main concerns regarding the sedition laws are that they are not sufficiently clear, overlap with other criminal offences, and may be inconsistent with Australia's liberal democratic system by inhibiting freedom of speech.

ALRC President Professor David Weisbrot said that Australians place a "very high premium on free speech and on the importance of robust political debate and commentary".

"However, all democratic societies place some limits on free speech - for example, through defamation laws and prohibitions on obscenity and racial vilification. If restrictions are merited, then it becomes a matter of finding the acceptable balance in a tolerant society."

Professor Weisbrot said it was understandable that the term 'sedition' prompts strong reactions.

"Sedition laws historically have a political connection. They tend to be introduced or revived at times of great social stress - in Australia, for example, during the anti-conscription movement of World War I, during the height of the Cold War in the 1950s, and now again with rising concern about international terrorism.

"However, the new offences abandon the old definition of 'sedition', which turned on 'exciting disaffection against the Sovereign or among her Majesty's subjects'.

"Instead, the new offences include: 'urging the use of force or violence' to overthrow the government or interfere with an election; urging others to assist an organisation or country engaged in armed hostilities

with Australia; or urging others to engage in violence against particular groups in the community.

"This is really just another form of the longstanding offence of incitement to violence. Continued use of the term 'sedition' only confuses the issues."

Federal Attorney-General Phillip Ruddock asked the ALRC to consider whether the sedition laws 'modernised' in the Anti-Terrorism Act 2005 (Cth) effectively address the problem of 'intentionally urging others to use force or violence' and whether 'sedition' is the appropriate term to describe these offences.

Mr Ruddock provided the ALRC with formal Terms of Reference on 2 March 2006. In particular, the ALRC was asked to examine:

- * whether the amendments, including the sedition offence and defences in sections 80.2 and 80.3 of the Criminal Code, effectively address the problem of urging the use of force or violence;
- * whether 'sedition' is the appropriate term to identify this conduct;
- * whether Part IIA of the Crimes Act, as amended, is effective to address the problem of organisations that advocate or encourage the use of force or violence to achieve political objectives; and
- * any related matter.

To help clarify the issues under consideration in this Inquiry, the ALRC has released two consultation papers - an Issues Paper, Review of Sedition Laws (IP 30) on 20 March 2006 and a Discussion Paper, Review of Sedition Laws (DP 71) on 29 May 2006.

"The Issues Paper tries to take some of the emotion out of the debate and it focuses on whether the new laws are necessary, how clearly they have been expressed, how effectively they will achieve their aims and how they fit in with the many other laws dealing with public order and the special problems of counter-terrorism," Professor Weisbrot said.

"For example, sedition overlaps with other serious

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News from the LCA

It has been a busy year for the Law Council of Australia, below is an update on some of the many projects that the LCA has been involved in this year.

ATO RELEASES GUIDELINE BOOKLET FOR SERVICE ARRANGEMENTS

The Australian Tax Office (ATO) recently released its Guideline Booklet on Service Arrangements, which clarifies the levels of profitability in a service trust that will be considered reasonable for the purposes of Phillips arrangements.

The Law Council raised serious concerns about the draft Guidelines, which were released for comment in June 2005.

It now appears the tax office has addressed some of those concerns in the amended final booklet.

The Guideline Booklet provides that the ATO will be unlikely to audit firms where the service entity retains less than 30 percent of the overall profits in the firm

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offences such as incitement, treason, treachery, sabotage and racial vilification.

“The review also will look closely at the ‘unlawful associations’ provisions of the Crimes Act, which have not been used for decades and may no longer be needed in light of more recent legislation dealing with terrorist organisations.”

Both consultation papers are available online from the ALRC’s website www.alrc.gov.au.

The ALRC is seeking community feedback on the proposals in the Discussion Paper before a final report is completed. Submissions close on Monday, 3 July 2006.

When releasing the Discussion Paper on federal sedition laws, ALRC President Professor David Weisbrot said the proposals aimed to ensure “there is a bright line between freedom of expression - even when exercised in a confronting or unpopular manner - and the reach of the criminal law”.

“Australians place a very high value on free speech and robust political debate. There is no reason these offences, which properly target the urging of force or violence, cannot be framed in such a way to avoid capturing dissenting views and opinions or stifling the work of journalists, cartoonists, artists and filmmakers, either directly or through the ‘chilling effect’ of self-censorship.”



and if indicative rates for labour hire, equipment, recruitment, rental and expenses are used.

“The Law Council is pleased that our representations have been given serious consideration and that the ATO has been prepared to provide more realistic parameters to guide professionals,” Law Council President John North said.

The arrangements will not become effective until April 2007 and that the ATO has provided some guidance about interim risk indicators.

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According to Professor Weisbrot, the ALRC made 25 proposals for reform.

“The provisions need amendment to make clear that the Crown must prove beyond reasonable doubt that the person intentionally urged others to use force or violence, and intended that this force or violence would occur.

“We also propose that in applying the law to a particular case, the jury must take into account the context in which the conduct occurred, such as whether it was part of an artistic performance or exhibition, or a genuine academic, artistic or scientific discussion, or an industrial dispute, or in a news report or commentary about a matter of public interest.”

Other key proposals include:

- * amendments to offences related to ‘assisting’ an enemy at war with Australia or engaged in armed hostilities against the ADF to clarify that this refers to material assistance—such as arms, funds, personnel or strategic information—rather than criticism of government policy;
- * repeal of the outdated provisions in the Crimes Act concerning ‘unlawful associations’, which effectively have been superseded by more recent laws on terrorist organisations; and
- * ruling out the need to introduce a UK-style offence of ‘glorification of terrorism’.