

The Senate Legal & Constitutional Committee  
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10 November 2005

## **Re: Anti-Terrorism Bill (No.2) 2005**

We would hereby like to make this submission regarding Schedule 7 – Sedition of the abovementioned Bill. We are seriously concerned about the definitions of “seditious intention” and “good faith”; and the inclusion of “urging” and “public disturbance”, as used for the purposes of the Bill.

### 1. Definition of Seditious Intention

In Sub-section (3) of Section 30A ‘seditious intention’ has been defined firstly as an intention to effect the purpose of bringing the Sovereign into hatred or contempt.

This section of the Bill does not at all establish the requirements for an intention to be defined as ‘hateful’ or ‘contemptuous’; and hence does not differentiate between what would parochially be considered ‘hateful’ or ‘contemptuous’ – e.g. severely critical, strongly disapproving – and what would legally be considered as a hate crime.

In other words, we are concerned that under such a definition of ‘seditious intention’ any strongly critical and disapproving views of the Sovereign may be viewed as criminal activities. Such legislation would curtail Australian citizens’ right to freedom of speech; it would greatly diminish our legal right to criticise and disapprove of our government.

### 2. Inclusion of Urging

In Section 80.2 “urging the overthrow of the Constitution or Government” has been included as a seditious act.

This section of the Bill and its sub-sections have two major flaws. Firstly, ‘urging’ alone – without the use of force, violence and coercion – could include campaigning, writing, public speaking, and many other forms of peaceful expression and persuasion. Secondly, to outlaw any direct or indirect action aimed at ‘the overthrow’ of a government would mean that the incumbent political party or political system are provided with an extraordinary level of protection against any challenges to oust or replace them; challenges such as those posed by opposition political parties during elections, and attempts at reforming the political system such as the republic movement.

The Bill's desire to outlaw 'urging' altogether is an attack on freedom of speech, and criminalises Australian citizens' use of non-violent forms of expression and political involvement. The Bill's aim to outlaw attempts at changing the government have the potential to render Australia a despotic state. We believe that current criminal law is sufficient for protecting the safety of the members of the government from violent attempts at 'overthrowing' them, and the abovementioned section of the Bill is both unnecessary and possibly tyrannical.

### 3. Definition of In Good Faith

Sub-section (1) of Section 80.3 provides the defence of acting in good faith for those defending against the charges of sedition as brought against them pursuant to 80.1 and 80.2.

This section of the Bill does not at all clarify what may or may not be defined as an act committed 'in good faith'. It is not clear whether the term refers to the defendant's sincerity to the cause of their action or to their level of loyalty to the Sovereign. Such a vague phrase is truly poetic in its implications and incredibly subjective. Would the belief of the defendant alone, and not the substance of their action, be enough to determine the legality of their position?

In other words, phrases such as 'in good faith' are not only blatantly obscure for legislative purposes, but they could also provide a pretext for actions that are indeed criminal.

### 4. Inclusion of Public Disturbance

In Sub-section (2) of Section 80.3 the Courts are advised to assess the validity of a defendant's claim of acting 'in good faith' with regards to the defendant's "intention of causing violence or creating public disorder or a public disturbance".

This section of the Bill is fundamentally flawed as it groups the 'intention of causing violence' and 'the intention of causing public disturbance' in the same category of criminality. The former would refer to undoubtedly criminal acts of violence such as terrorism; but the latter could refer to peaceful forms of protest such as rallies, strikes, sit-ins, blockades and the like that are aimed at non-aggressively disrupting the day-to-day life of the public with the aim of expressing a point of view.

In other words, the inclusion of 'public disturbance' in the same part of the Bill as 'causing violence' vilifies a number of peaceful activities undertaken by Australian citizens to raise public awareness of their conditions and points of view. The criminalisation of 'public disturbance' amounts to dispossessing the people of Australia of one of their most potent forms of political activity.

We urge you to consider this submission in your review of the Anti-Terrorism Bill (No.2) 2005.

Sincerely,

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