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11 November 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate, Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Secretary,

Submission regarding the Anti-Terrorism (No 2) Bill 2005

I am writing to make a submission on behalf of the Australian Screen Directors Association (ASDA) in regards to the proposed anti-terrorism legislation currently before the Senate.

ASDA is the key professional association representing of Australian directors. ASDA has over 500 members who work as directors and producers of feature films, documentaries, television drama, animation, commercials, and interactive media.

ASDA is a signatory to the joint submission being made on behalf of a coalition of artists and filmmakers, and signed on their behalf by Robert Connolly (Arenafilm). ASDA shares the concerns of the broader arts community in regards to the proposed changes to sedition law included in Schedule 7 and fully supports the recommendation of the submission to excise this Schedule from the current Bill.

While it is a signatory to this submission, ASDA felt that it was important to stress the particular concerns of the Australian directors that it represents. This is because ASDA is of the opinion that the proposed legislation could potentially impact seriously on the creative and professional capacities of Australian filmmakers.

Australian directors have played a central role in the creation and development of Australia's film culture, particularly over the past thirty years. Whether they work in fictional forms or documentary, they have been integral in the ongoing telling of Australia's story to itself.

Many of the films that these directors have made have either touched on, or directly engaged with, political issues. Many have been directly polemical and engaged in legitimate political dissent. They have covered issues that are politically sensitive, and

have often been directly critical of the State, the sovereign and the Australian Parliament. ASDA is concerned that filmmakers will be discouraged to make such films in the future because of a concern that making such films could result in arrest or prosecution under the new sedition laws.

ASDA submits that the ability of filmmakers to make films with a direct political message is an essential part of the democratic process. This is a principle that ASDA believes is supported widely by the Australian community.

Sedition Laws – Dead letter law

ASDA states up-front that it seriously questions the very existence of sedition laws in an open democracy like Australia. While there are compelling arguments to have laws that limit certain types of speech and expression, ASDA is of the view that sedition laws are not the appropriate vehicle for this intention in the modern age.

ASDA submits that Australia's sedition laws are throwbacks to a bygone age, and notes that support for this position from across the political spectrum. The fact that they have not been used for over forty years suggests, as one commentator has mentioned, that they are 'dead letter law'.

ASDA welcomes the Attorney General's recognition of this fact in his announcement of a review into sedition laws and looks forward to engaging actively in this review.

ASDA has noted that since the changes to sedition laws were proposed in the current Bill, there have been few people willing to actively defend sedition laws in the public arena.

Sedition Changes – Waking the Dead

ASDA's has two central concerns about the resurrection of sedition laws in this Bill:

1. The Bill dusts off this 'dead letter' law, and suddenly reintroduces it into the political arena. It feels to many within ASDA as if a sleeping giant has been awoken.

The effect of this is that suddenly what was considered a moribund legal power is back in the game, and so all of the concerns about the law that could have been previously written off as hysterical can no longer be dismissed.

ASDA, for instance, can no longer reassure its members, as it has been able to with a fair degree of certainty over the past 25 years, that sedition laws will not be invoked against directors making films that urge disaffection against the state or the monarch.

2. The Bill goes further than a simple housekeeping exercise, and toughens up sedition law in a number of key areas that we believe pose serious threats to legitimate freedom of speech and expression.

In particular Schedule 7 of the Bill:

- introduces new offences that do not require an element of “force or violence” (an element that have always been a central part of Australia’s sedition offences)
- expands the test for banning an ‘unlawful association’ based on a very broad definition of ‘seditious intention’
- limits, or removes in some cases, the ability to use ‘good faith’ defences , and
- places an undue burden on people accused to have engaged in seditious acts, or shown seditious intention, to prove their innocence, thus reversing the accepted onus of proof in Australian criminal law.

ASDA notes the Government’s stated intention that the changes to sedition are aimed at doing little more than updating and modernising current sedition laws. ASDA’s continuing concern is that this intention is not reflected in the proposed changes. The changes outlined above go well beyond housekeeping changes.

ASDA submits that if it is genuine that these changes are merely about updating and modernising , then there is no compelling or urgent reason to pass Schedule 7 with the rest of the current Anti-Terrorism Bill, prior to a full and proper review of sedition taking place. Existing sedition laws will remain in place, and along with all of the other legislation which covers the limitation on what Australians are allowed to say (such as Anti-vilification legislation), will continue to protect the public until the review is completed.

ASDA looks forward to constructively working from this point on to ensure that the legislation that is ultimately passed more accurately reflects the Government’s stated intention, and that despite the fact that we are living in changed times, Australians will continue to be reasonably allowed to express their ideas and concerns without fear of recrimination.

I would be happy to support this submission in person to the Committee, and to answer any further questions about the issues that I have raised.

Yours sincerely

Richard Harris
Executive Director