

11 November 2005

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Senate Legal and Constitutional Committee  
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Patrons  
Pat Corrigan AM  
Prof. David Throsby

Dear Committee Secretary and Members

**Re: Inquiry into the Anti-Terrorism (No 2) Bill  
2005**

Please find attached, a submission from the  
National Association for the Visual Arts (NAVA)  
to the above Senate Inquiry.

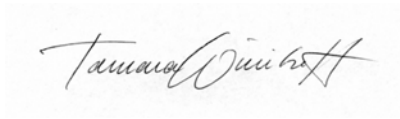
This submission calls for the Seditious Provisions  
(Schedule 7) to be removed from the legislation.

NAVA welcomes the commitment by the Attorney  
General to conduct a review of seditious  
legislation and urges that this review should  
take place before any changes are made to the  
current seditious laws.

The reasons for the art community's concern and  
examples of current censorship of artists' work  
are included in the submission.

I am happy for this submission to be made public  
and am willing to appear before the Committee as  
part of its public hearing process.

Yours sincerely

A handwritten signature in black ink, reading "Tamara Winikoff". The signature is written in a cursive style with a large, stylized initial 'T'.

Tamara Winikoff  
Executive Director



Australian Senate Legal and Constitutional Committee  
Department of the Senate Inquiry into the Anti-Terrorism  
(No. 2) Bill 2005

Submission by The National Association for the Visual Arts  
(NAVA)

11 November 2005

"Regulation and legal interference in free speech is controversial, especially in a self-stated democratic society. When art and law does collide, the result is often unsatisfactory. The nature of the adversarial system pits conflicting interests against each other: the language of boundless creativity and strict regulation could be seen as comparing apples with oranges".

Quote from *Freedom of Expression* unpublished research paper by Jenny Lovric (see copy attached) commissioned by the Visual Arts Industry Guidelines Research Project in 2001.

### **Background**

The National Association for the Visual Arts (NAVA) welcomes the opportunity to respond to the proposed Anti Terrorism (No.2) Bill 2005 being reviewed by the Senate Legal and Constitutional Committee.

NAVA is the peak body representing and advancing the professional interests of the Australian visual arts and craft sector, comprising 20,000 practitioners, galleries and other art support organisations. Since its establishment in 1983, NAVA has worked to bring about appropriate policy and legislative change to encourage the growth and development of the visual arts and craft sector and to increase professionalism within the industry. It has also provided direct service to the sector and its members

through offering expert advice, representation, resources and a range of other services.

In the very short time between the first publication of a version of the Federal Government's proposed Anti-Terrorism Bill on ACT Chief Minister Jon Stanhope's website and the deadline for this submission, it has not been possible to undertake the kind of research and discussion with the arts sector which would be NAVA's usual practice in preparing such a submission. This also must be the case for all others attempting to put submissions forward to the Committee. While there are other aspects of the Bill which may require urgent action, this haste can not be said to apply appropriately to the section dealing with sedition. NAVA urges the Senate Committee to require a full and thorough public inquiry into the issue of sedition before any further action is taken in legislating such provisions.

### **Key Recommendation**

NAVA strongly urges the Government to:

- i) excise the Sedition clause from its proposed Anti Terrorism legislation
- ii) undertake a thorough and detailed public inquiry prior to passing any further legislation dealing with sedition
- iii) as a result of this inquiry to make long needed changes to the outdated existing sedition law to ensure the Australian community's right of freedom of expression.

### **Sedition clause**

NAVA acknowledges that there are occasions when the right to freedom of speech and expression must be balanced against the need to protect vulnerable members of the community against violation of their rights. However NAVA believes that existing laws in relation to vilification, discrimination and defamation offer this protection already. In the absence of a statutory human rights framework in Australia, NAVA remains extremely concerned that both the existing and proposed new sedition legislation unjustifiably interferes with legitimate freedom of speech and other forms of expression.

### **Review required**

The current sedition law dates back to 1914 as part of the Commonwealth Crimes Act. In the intervening period it has not been updated to reflect contemporary attitudes and circumstances.

Last week Attorney General Phillip Ruddock acknowledged that a review of the law in relation to sedition was necessary. NAVA strongly agrees, and would urge the Government to follow through on Mr Ruddock's public statement. However, this must be done before making any changes to the existing law. It seems counterintuitive to legislate first and then review the legitimacy of the legislation afterwards. In addition to its objections to the content of the proposed sedition clause in the legislation, NAVA would contend that this lack of due process jeopardises the Government's ability to legislate appropriately and fairly.

### **Ensuring Artists' Freedom of Expression**

NAVA is concerned to ensure that the sedition clause does not inhibit artists' entitlement to exercise their democratic right to represent, discuss and critique ideas, through their artwork or other forms of public or private expression. As with all Australian citizens, they should remain free to continue to challenge current orthodoxies. This must include government policies, legislation and actions and the actions of other key decision makers as well as the Sovereign.

Because artists' work is often oblique, using metaphorical imagery, quotation or allusion and satire, many meanings can be drawn from it. Under the proposed law, artists could be charged with "seditious intent" for influencing others in a loosely specified way. This then would make artists and galleries which show their work vulnerable to being accused of adversely influencing the actions of others, whether this was intended or not.

It is easy to imagine that if this law had been in force in the past, the work of great Australian artists would have been indictable, like S.T.Gill's comments on the Eureka uprising, Albert Tucker's Images of Modern Evil and Sydney Nolan's war angst paintings. We acknowledge that artists' work can change public opinion and bring to light injustice, flawed thinking and questionable or reprehensible action. The ability of a member of the community to influence

others in this way is a sign of a healthy community. We call to account a government which seeks to undermine that ability.

### **Past Censorship examples**

In 1996, art student Karen Lindner, in a collaborative project involving the Victorian College of the Arts and Transfield Obayashi construction company created an artwork for the Melbourne City Link Tunnel project which featured text messages such as "Why do you control?" and "Why are you afraid of your vulnerability?" During the state's fourth anniversary celebrations the Kennett government ordered that the work be covered up. When there was a community outcry, Kennett responded by saying "if the community want, as they do, corporate sponsorship, they must decide whether to bite the hand that feeds them".

In 1999, the *Sensation* exhibition from the UK was cancelled by National Gallery of Australia director Dr Brian Kennedy. Kennedy claimed it was because of "museum ethics" regarding sponsorship but it was widely believed that there was political intervention and the exhibition was censored because of its controversial content. In New York the exhibition had sparked deep controversies over Chirs Ofili's depiction of the Virgin Mary as Black and covered in elephant dung and in London there was an outcry over a portrait of convicted child murderer Myra Hindley.

In 2002, artist group PVI collective felt under considerable pressure to pull a performance work called *Terror[ist] training school: route 65* from the Artrage festival in Perth. As PVI collective member Kelli McCluskey explained "with only a few weeks to go until opening night, our publicity campaign was out and everything was going fine, then the Bali bombings happened.." PVI opted to postpone the work which was re-exhibited some months later, with an abbreviated title and a publicity campaign.

In 2002, Melbourne property tycoon Fender Katsalidis commissioned Australian war artist George Gittoes to produce a work for display on the city's Republic Tower apartment building. Just before the painting was due to be unveiled, Gittoes was told the work had been rejected in a move that Melbourne University art historian Christopher Heathcote described in *The Age* as reflective of the kind of "censorship that occurs when there is 'warfare in the air.'"

In 2003, the ABC's Lateline programme reported on an alleged attempt by 'key lobbyists in the Jewish community' to censor an exhibition at Sydney's Powerhouse Museum depicting Palestinian life and experience under occupation. When the exhibition reached Sydney all images featuring Israeli soldiers had been removed.

In 2004 (to 2005), artist Azlan McLennan had three of his works censored for their depiction of issues considered sensitive during the "war on terror". After 48 hours his work *Fifty Six* was withdrawn from the 24seven gallery, his work *Canberra 18* was withdrawn from Platform gallery and his work *Mind the Gap* was withdrawn from Monash University gallery.

In 2004, artist Zanny Begg was asked to remove her work from the Blacktown [Out of Gallery] project because it was deemed inappropriate in the climate of terrorism. The work featured 10 life sized stencils of US soldier which made "checkpoints" for weapons of mass destruction around the suburb of Blacktown. In the wake of the controversy all other artists involved in the [Out of Gallery] project were asked to change or move their works out of Blacktown. The work was re-exhibited at Mori Gallery and over 120 artists contributed a work to show their opposition to censorship of the arts.

### **Current problem examples**

Currently there are many highly respected artists who are making deeply concerned and thoughtful comments on the September 11 terrorist attacks in New York, Australia's detention of asylum seekers, the involvement of Australia in the Iraq war and other government actions with which they disagree. The sedition clause in this legislation would mean that they could be jailed and/or silenced for exercising this human right.

Just this week NAVA has learned of an incident where an invited artist visiting from overseas was taking documentary video footage in public places. Twice in 10 days the artist was told that his/her name would be sent for possible inclusion in a terrorist watch list. In the first instance, despite previously having been given authorisation, the artist was apprehended by a security official who took his/her ID details. Some of the video

footage had to be deleted. The second time the artist was baled up by the police while videoing road signs and the same threat made. The artist is very concerned now that his/her name will be on the terrorism suspect list, and that when travelling internationally, in future he/she will be treated as a suspect and may have visa and travel declined.

Last week an Australian artist and lecturer exhibited his artwork "No More Lies" as part of the "Conduit" exhibition at the Wagga Art Gallery. The exhibition was of work by several staff in the School of Visual and Performing Arts at Charles Sturt University. The work showed digitally enhanced images of the Prime Minister, the Attorney General and the Immigration Minister with their lips sewn together. A member of the public visiting the gallery lodged a complaint with the Prime Minister's Office that the work might be regarded as an act of "treason". The Department for Communication, Information Technology and the Arts then rang the gallery director following up the complaint and asked whether the exhibition was funded by the federal government's "Visions" program. If taken any further this could reasonably be understood to be an implied threat. The artist is understandably concerned that his work may be censored, or worse that he could be charged with sedition. The gallery is also concerned that their funding may be in jeopardy because of the adverse publicity.

### **Self censorship**

With the risk of this kind of treatment and the seriousness of the potential consequences, self-censorship is the likely course of action for many artists, galleries and other art organisations. For fear of possible misinterpretation of their work or abuse of power by government or police, artists and galleries will be under pressure. The result could be the stifling of free inquiry and expression with a consequent quelling of expression of opinion, censorship of any perceived form of dissent and the resulting blandness of contemporary cultural production.

### **Lessons from History**

Australia cannot be presumed to be free of abuse of power. History teaches us that complacency is the handmaiden of repression. Legislation cannot be predicated on a



government's assurances that it will not abuse its powers. A government may change its mind or another government may not be so benignly disposed. In Australia there have been times where people have been accused of working against the interests of the state when they were seen to have beliefs contrary to those in power.

Artists are often people who deliberately question certainties. At times of national confidence this is regarded as a strength, that decisions can be shown to withstand the test of rigorous interrogation. In times of rapid change or uncertainty, this ability to see the wisdom of tolerance of difference, is undermined. It is important that the citizenry retain the right to question the wisdom of the country being committed to wars or to embracing particular ideological positions. Examples have been cited of the suppression of dissent in relation to the Eureka Stockade, Vietnam war, the Iraq war, the spread of McCarthyism to Australia, the detention of asylum seekers etc. NAVA is continually approached by artists who have experienced various forms of censorship.

In the new legislation Clauses 80.2(7) and (8) there is no mention of the element of force or violence but simply that the person commits an offence if they intend the conduct of another "to assist by any means whatever", an organisation or country which may be at war with the Commonwealth whether the state of war has been declared or not. This opens itself to possible abuse. With the punishment of 7 years imprisonment, it is only too easy to see how such loose law could be used to "disappear" dissenters.

## **Specific objections**

The proposed sedition clause in the legislation is regressive and more restrictive of freedom of expression than the current unsatisfactory law. The terms of the offence are too broad, unfair and unspecified on at least three counts.

The proposed new law proposes that a person commits an offence if the person can be thought to:

- i) "promote a feeling of ill-will or hostility between groups so as to threaten the peace, order and good government of the Commonwealth". This could be very widely interpreted to include all manner of legitimate disagreements with others in the community.
  
- ii) be "assisting by any means whatsoever an organization or country at war with the Commonwealth" - for example an artist might be accused of being responsible for urging another person to commit offences, as a result of the other person interpreting their artwork in an unintended way. The artist is not responsible for the way in which another interprets their work.
  
- i) "whether not the existence of a state of war has been declared and the organization or country is engaged in armed hostilities" - the artist may be questioning whether Australia is justified in engaging in armed conflict particularly when breaking international treaties. The artist, like any other citizen should have the right to question a government's actions.

## **Organisations**

The section of the law dealing with "unlawful associations with seditious intentions" seems to allow for organizations to be suppressed and their members charged for acts of civil disobedience, without these having been linked to force or violence or to terrorism. Nor are organizations and their members protected against these charges through the good faith provisions.

The community's right of association, assembly or collective action can be abused under such loose provisions

and groups disbanded or prevented from exercising their rights to call into question policies, laws or actions to which they take exception.

Once again this goes against members of the community rights to exercise their democratic rights, which the Australian government has vociferously vowed to protect and criticised others for transgressing. For example, it is not long ago that in Queensland public assembly was deemed to be illegal. Australians cannot afford to be complacent about their freedoms.

## **Good faith provisions**

The defences to sedition in the Bill are anachronistic and fail to protect freedom of speech and expression that goes beyond the very limited constitutional protections for political and religious speech.

The presumption of guilt in the "good faith" defence means that the burden of responsibility would rest with those charged to prove that their work or action was not intended to cause the overthrow of the government or disrespect to the monarch rather than a rethinking of the wisdom of their actions. The onus on the accused to prove that they acted in good faith reverses the cherished Australian legal tradition of presumption of innocence until proven guilty.

This is a radical shift from a cherished democratic right in Australia and is viewed with great concern by the arts community who have been articulating this concern to all

## **Conclusion**

NAVA's knowledge and experience of the kinds of abuses that artists have been subjected to in the past, leads us to be very concerned over the lack of appropriate legislation and review mechanisms to prevent the curtailment of the right of freedom of expression in Australia, not only for artists but for all members of the community.

NAVA and its constituency are only too aware of the way that sedition laws have been used by repressive regimes and individuals in other countries and through history to curtail citizens' right to question or resist actions with which they disagree. Any legislation which would allow the suppression of the democratic process must be viewed with the greatest concern. This is felt to be the case with both the current and proposed new sedition legislation.

Attachment A - VAIGRP Freedom of Expression research paper