

Dear Sir/Madame ,

I would like to express my disapproval of the Anti - Terrorism Bill, I think it is an affront to our Constitution, Our Free speech and to Human Rights, it is an outright disgrace !!! If passed it will bring oppression and shame to this once Great Country.

I feel strongly that there laws are an insult to every Australian who abides by our Constitution, and as

Chris Connolly has pointed out - The Sedition Law is a sleeping Giant of Authoritarianism !! Shame on those who have

anything to do in making this Law!!! The proposed section on sedition laws should be abandoned. Terrorism should continue to be tackled by existing laws, including: - Existing incitement to commit crime offences;- Existing terrorism related offences; - Existing provisions allowing terrorist organisations to be banned. I fully agree with Chris Connolly's Submission below

Yours sincerely

Tora Blackman.

Submission to the Senate Legal and Constitutional Committee

Proposed Offences for Sedition in the Anti-Terrorism Bill 2005 Submission to the Senate Legal and Constitutional Committee 27 October 2005 Chris Connolly Law Faculty University of NSW

Extract:

#### 1. Overview

The proposed Anti Terrorism Bill 2005 seeks to update and reinstate "sedition" as a major offence in Australian law, purportedly as a means of targeting activity that is generally linked to terrorism, but lacks a specific link to a single terrorist act. This is a dangerous proposal that re-awakens an ancient and oppressive law in Australia. Sedition law is the sleeping giant of authoritarianism, and it has the potential to inhibit free speech and restrict open democracy. This submission presents an analysis of the sedition proposals in the Bill, and recommendations about their removal or amendment. The proposed Bill contains three types of rules on sedition:

1. Sedition and treason offences that require an element of force or violence (generally updated from existing law).

2. New sedition and treason offences that do not require an element of force or violence - they simply require support of "any kind" for "the enemy". These are new offences and the burden falls on the accused to mount a defence based on very limited "good faith" exceptions.

3. A slightly expanded test for banning an "unlawful association" based on a very broad definition of "seditious intention". No force, violence or support for the enemy is required, and no "good faith" defence is available. In addition, the proposals increase the penalty for the main sedition offences from three to seven years. The proposals open the door for a wider range of sedition prosecutions and a broad test for banning associations. The proposals reawaken a law that has an appalling track record, here and abroad, of abuse by Government - especially at times of national stress.

This submission argues that the proposals should be abandoned on the following grounds: - Sedition laws are not required to tackle terrorism as we already have appropriate laws in place to prohibit racial vilification, terrorist acts,

terrorist funding and membership of (banned) terrorist organisations;— Sedition laws have no place in a modern democracy as they inhibit free speech and restrict open democracy – essentially delivering a victory to those who opposed democratic values; – Sedition laws have an appalling history of abuse by Governments and they politicise the criminal law – there are no other (active) laws in Australia that are so heavily politicised;— The sedition laws, as proposed, introduce new offences where there is no link to force or violence, reversing the history of this area of law in Australia;— The sedition laws, as proposed, place an undue burden on the accused to prove their innocence, thus reversing the accepted onus of proof in Australian criminal law;— The sedition laws, as proposed, provide only a very limited defence of good faith in particular circumstances, which does not include a general good faith defence that might cover general discussion, education, journalism, artistic expression, satire and other forms of free speech; and

– The sedition laws, as proposed, carry an excessive punishment for activity that might only amount to encouragement or support rather than the actual carrying out of an act. In addition to these general objections to the proposed sedition laws, extreme concern needs to be raised regarding the proposed ability to ban “unlawful associations” for expressions of a broadly defined “seditious intention”. These are of great concern for the following reasons: –

The ability to ban “unlawful associations” does not require any link whatsoever to force, violence or assisting the enemy; –

The ability to ban “unlawful associations” is not subject to any “good faith defence” or humanitarian defence; –

The ability to ban “unlawful associations” as set out in the 2005 proposal appears to have no link at all to terrorism; and –

The ability to ban “unlawful associations” is linked to an archaic definition of “seditious intention” that covers practically all forms of moderate civil disobedience and objection (including boycotts and peaceful marches).

The practical impact of the “unlawful associations” proposal would be to provide the Government with the ability to ban any organisation that opposes a Government decision and encourages protest or dissent that falls outside the law, no matter how slight or technical the breach.

There is absolutely no link between this section of the proposal and terrorism.

This submission recommends the abandonment of these proposals. Alternatively, some further detailed restrictions on their use are proposed, to ensure a fairer balance between anti-terrorism measures and free speech.

2. Proposed offences The proposed Bill contains three types of rules on sedition: 1. Sedition and treason offences that require an element of force or violence (generally updated from existing law). 2. New sedition and treason offences that do not require an element of force or violence – they simply require support of “any kind” for “the enemy”. These are new offences and the burden falls on the accused to mount a defence based on very limited “good faith” exceptions. 3. A slightly expanded test for banning an “unlawful association” based on a very broad definition of “seditious intention”. No force, violence or support for the enemy is required, and no “good faith” defence is available. These three types of sedition laws replace old sedition laws in Sections 24A to 24E of the Crimes Act with new sections in the Criminal Code (sedition and treason), and update Section 30A of the Crimes Act (unlawful associations).

2.1. Sedition offences requiring force or violence The proposals create a new section of the Criminal Code – 80.2 Sedition. This creates three sub-offences: Urging the overthrow of the Constitution or Government A person commits an offence if the person urges another person to overthrow by force or violence: (a) the Constitution; or (b) the Government of the Commonwealth, a State or a Territory; or (c) the lawful authority of the Government of the Commonwealth. Urging interference in Parliamentary elections A person commits an

offence if the person urges another person to interfere by force or violence with lawful processes for an election of a member or members of a House of the Parliament. Urging violence within the community A person commits an offence if: (a) the person urges a group or groups (whether distinguished by race, religion, nationality or political opinion) to use force or violence against another group or other groups (as so distinguished); and (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth. Each of these provisions requires the offender to encourage an act of force or violence.

2.2. Sedition offences not requiring force or violence The proposals expand the new section of the Criminal Code - 80.2 Sedition - through the inclusion of two further offences that do NOT require a link to force or violence. These proposed offences are: Urging a person to assist the enemy A person commits an offence if: (a) the person urges another person to engage in conduct; and (b) the first-mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and (c) the organisation or country is: (i) at war with the Commonwealth, whether or not the existence of a state of war has been declared; and (ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth. Urging a person to assist those engaged in armed hostilities A person commits an offence if: (a) the person urges another person to engage in conduct; and (b) the first-mentioned person intends the conduct to assist, by any means whatever, an organisation or country; and (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

2.3. Unlawful associations with "seditious intentions" Section 30A of the Crimes Act allows the Attorney General to apply to ban an "unlawful association", including: "Any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention"<sup>2</sup>. The proposed new definition of seditious intention is a slightly updated version of the archaic definition of seditious intention described in the "History of Sedition offences" chapter below. It reads: (3) In this section, seditious intention means an intention to effect any of the following purposes: (a) to bring the Sovereign into hatred or contempt;

(b) to urge disaffection against the following: (i) the Constitution; (ii) the Government of the Commonwealth; (iii) either House of the Parliament; (c) to urge another person to attempt, otherwise than by lawful means, to procure a change to any matter established by law in the Commonwealth; (d) to promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth. 2.4. Defences A defence is available to the two offences relating to assisting the enemy if it relates to conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature. However, the onus of proof is on the accused to show that their conduct meets this defence. There is also a defence available for all of the proposed sedition offences (except for banning unlawful association with seditious intentions) for acts done in good faith. Again, the onus of proof is on the accused to show that their conduct meets this defence.

### 3. History of sedition offences

3.1. International history Sedition has a long and undignified history. It is hard to go past the Bible for the most famous of sedition trials. Both Barabbas<sup>3</sup> and Jesus<sup>4</sup> faced charges of sedition. The charges against Jesus were said to be at least in part a result of his encouragement of others to refuse to pay taxes to Rome. There are numerous other important figures in history who have been charged and sometimes imprisoned for sedition, including both Ghandi<sup>5</sup> and Nelson Mandela<sup>6</sup>. The clear lesson from the history of sedition laws is that they are used routinely by oppressive regimes, or are used by more liberal regimes at

times of great national stress. Their use is nearly always the subject of considerable regret at a later date. It is also difficult to find a single example of a sedition trial that resulted in a useful long-term outcome for the ruling authorities. The sedition charges are either the last desperate gasp of an authoritarian regime (eg Ghandi) or the extreme and sometimes ludicrous result of a regrettable moment in national history (eg McCarthyism). In 2005, sedition is most often encountered as the desperate tool of undemocratic regimes such as Zimbabwe and, on occasion, China. Sedition may rear its head elsewhere, although it is probably used more sparingly than people realise. For example, Singapore recently charged two Internet bloggers with sedition, but it was the first use of the charge in Singapore in more than thirty years.

3.2. Sedition in Australia The somewhat sad history of sedition offences in Australia shows that the crime has come in and out of fashion. There have been times when it has laid dormant for decades, but in keeping with global experience, it has been used at times of national stress. Sedition charges were famously used against the rebels and their supporters following the Eureka Stockade. Most charges were a mix of sedition and "high treason" and almost all were unsuccessful (in jury trials). Some of the rebel leaders such as Peter Lalor later became Members of Parliament and it could be argued that many of the principles of democracy we enjoy today are a result of their alleged sedition<sup>7</sup>.

## 5. Recommendations Recommendation

1. The proposed section on sedition laws should be abandoned. Terrorism should continue to be tackled by existing laws, including: - Existing incitement to commit crime offences; - Existing terrorism related offences; - Existing provisions allowing terrorist organisations to be banned.

Recommendation 2 (Alternative) If the Government insists on including a section on sedition offences in the proposed Anti-Terrorism Bill 2005, substantial amendments will be required. - All sedition offences (not just selected offences) should require a link in some form to force or violence; - All sedition offences (not just selected offences) should allow a broad good faith defence; - The good faith defence should be expanded to include general public interest free speech, including speech for academic, journalistic or artistic purposes; - The onus of proof for the good faith and humanitarian defences should not be reversed. The burden of proving an allegation of sedition should remain with the prosecution, even where a good faith or humanitarian defence is raised. - The proposed section on banning "unlawful associations" for seditious intentions should be deleted or amended to include a link to force or violence and a broad good faith defence. - Penalties for sedition offences should be proportionate to the alleged harm. The maximum penalty should remain at the current level - three years imprisonment.

## 6. Appendix - Sedition in the Arts

The best known use of sedition laws to attack the arts community is, of course, the period of McCarthyism in the USA in the 1950s. The arts community, and Hollywood in particular, bore the brunt of successful and unsuccessful allegations of "Un-American Activities", and some of the greatest artists and thinkers of that time spent long periods out of work or underground. These included Charlie Chaplin, Dashiell Hammett and Arthur Miller. However, sedition offences have been used as a tool to silence criticism for many centuries, and the arts community have not been immune. It appears no section of the arts community has remained untouched. Some of the better known examples are listed below (with apologies for the Anglo-Western-centric selection): -

Poets Robbie Burns was threatened with a charge of sedition in 1794. He is rumoured to have "tempered his writing", and even written letters and articles

under assumed names as a result of the threat<sup>21</sup>. William Blake was charged with sedition in 1803 for exclaiming "damn the King and damn his soldiers" in a heated moment<sup>22</sup> (he was acquitted in 1804). John Keats was never charged with sedition, but he was famously accused of "lisp[ing] sedition" by his critics.-

**Novelists** The best-known novelist charged with sedition was Daniel Defoe, author of *Robinson Crusoe*. His satirical piece mocking church and state - *The Shortest Way With Dissenters* (1702) - saw him fined and imprisoned. Salman Rushdie managed to fight off a private prosecution for sedition following publication of *The Satanic Verses* in 1991<sup>23</sup>.-

**Playwrights** Ben Jonson - famous for writing *Volpone* - was imprisoned in 1597 for sedition for writing *The Isle of Dogs*<sup>24</sup>. In the 1660s Molière's satirical play *Tartuffe* was banned by Louis XIV for sedition, although the ban was later lifted.- **Cartoonists** Honore Daumier's famous cartoon *Gargantua*, a lithograph depicting the French King as a corpulent giant feeding upon the riches of his people, landed him in jail for 6 months on sedition charges in 1831. Joseph Johnson - a cartoonist in Rhodesia (now Zimbabwe) was charged and ultimately exiled for sedition in the 1970s. -

**Filmmakers** Robert Goldstein, the maker of *The Spirit of '76*, which depicted British atrocities in the American Revolution, was charged under the US Sedition Act 1917 during World War One. The judge was concerned that the film might cause Americans "to question the good faith of our ally, Great Britain". The filmmaker was sentenced to 10 years in prison, but was released after 3 years. It was his only film.

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