

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
AUSTRALIAN LAW REFORM COMMISSION
REGARDING
REVIEW OF SEDITION LAWS

JULY 2006



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

The Media, Entertainment & Arts Alliance appreciates the opportunity to comment on the Australian Law Reform Commission's Discussion Paper 71, *Review of Sedition Laws* (ALRC Discussion Paper).

In its submission to the Senate Legal and Constitutional References and Legislation Committee's Inquiry into the Provisions of the Anti-Terrorism (No. 2) Bill 2005, the Alliance argued that sedition laws are outdated and should be repealed. Consequently, the Alliance argued that Schedule 7 of the Bill should be removed from the Bill and considered separately.

The Senate Committee recommended that Schedule 7 be removed from the Bill in its entirety and that the ALRC "conduct a public inquiry into the appropriate legislative vehicle for addressing the issue of incitement to terrorism" including "the need for sedition provisions such as those contained in Schedule 7"¹.

In the end, the Government did not accept this proposal and Schedule 7 remained in the Bill and the inquiry recommended by the Senate Committee was announced following the passage of the legislation.

The ALRC Discussion Paper sets out a number of recommendations which the Alliance supports.

The ALRC recommends the term "sedition" be removed from federal criminal law, the terminology and its associated historical baggage, being archaic and having no place in modern criminal law.

Consequently, the Alliance supports Proposal 2-1. Further, the Alliance agrees that the Standing Committee of Attorneys-General should move to modernise state and territory law and likewise remove the term "sedition" wherever it might appear. It is important that in amending federal criminal law, state and territory law is also harmonised. To that end, the Alliance supports Proposal 2-2.

The Alliance recognises that the terms of reference for this Inquiry are narrow and therefore is pleased to see that the ALRC, in recognising the restrictions placed upon it, has nonetheless recommended that the Government initiate a review of the remaining offences in Part II of the *Crimes Act 1914* as set out in Proposal 4-1.

The Alliance agrees with the ALRC that there is no need to introduce the concept of "glorification of terrorism" for the reasons set out in the Discussion Paper. Consequently, the Alliance supports Proposal 6-1.

Proposals 8-1 to 8-12 effectively redefine the crime of "sedition" as offences "against political liberty and public order". However, the proposals go well beyond a mere change of nomenclature. These proposals "shift the emphasis from speech that is critical of the established order to exhortations to use force or violence against the established authority, voters or particular groups within the community".² As the ALRC points out: "It is difficult to understand why exhortations to use force or violence should *not* be prohibited by federal law – so long as the offences are properly framed."³ These proposals provide that framework. They make clear that, for a person to be found guilty, the person must urge the use of force or violence, intend that the urged use of force or violence will occur, and the urging be intentional and reckless. Additionally, treasonable offences are restricted to those offences that materially assist an enemy rather than, as is currently the case, "by any means whatever".

The Alliance considers that Proposals 8-1 to 8-12 adequately address concerns raised in respect of sedition and strike an appropriate balance between maintaining the right to freedom of speech and the community's expectations that fellow Australians not incite others to the use of force or violence.

¹ *Provisions of the Anti-Terrorism Bill (No 2) 2005*, Senate Legal and Constitutional Committee, 2005, Recommendations 27 and 28.

² *Review of Sedition Laws*, Discussion Paper 71, Australian Law Reform Commission, May 2006, page 35.

³ *Ibid.*

As raised at a consultation meeting recently, the Alliance recommends that Section 80.2 (8) (a) be further amended to read as follows:

“in the **development**, performance, exhibition or distribution of an artistic work; or”

The Alliance further supports Proposals 9-1 to 9-4 regarding the urging of inter-group violence.

As George Williams commented recently in *The Age*, “The law, no matter how stringent, cannot guarantee our security”⁴.

What therefore is necessary is a balanced response to threat, and these proposals assist that objective, in particular by recognising the limits of legislation by proposing other strategies be implemented such as educational programs “to promote inter-communal harmony and understanding.”

Proposals 10-1 to 10-3 concern defences and penalties and are supported by the Alliance. Proposal 10-2 requires consideration be given to the circumstances in which the urging of force or violence occurred having regard to whether it was in the context of the creation or distribution of an artistic work, in the course of publication, discussion or debate or any purpose in the public interest, in connection with an industrial dispute or industrial matter or in publishing a report or commentary about a matter of public interest.

Lastly, Proposals 11-1 and 11-2 relate to unlawful associations and both are supported by the Alliance.

The Alliance commends the considered work of the ALRC and the elegant solutions it proposes in the Discussion Paper. The Alliance recommends the Government adopt and implement them as soon as possible.

⁴ *What price security?* George Williams, *The Age*, 25 March 2006.