14 August 2015

The Executive Director

Australian Law Reform Commission

Email: [info@alrc.gov.au](mailto:info@alrc.gov.au)

Dear Executive Director,

**Traditional Rights and Freedoms –**

**Encroachments by Commonwealth Laws (ALRC Interim Report 127)**

**Submission with respect to Freedom of Speech and Secrecy Laws**

The ALRC has been charged with:

1. Identifying laws that encroach upon traditional rights and freedoms, and then
2. examining whether that encroachment is justified.
3. Also, in considering what, or if any, changes to law should be made, you are tasked to take into account, inter alia, how laws operate in practice.

You have identified one of the rights/freedoms as “freedom of speech”, and two of the laws that encroach upon, or interfere with, freedom of speech as The Crimes Act 1914 s.70 and The Australian Border Force Act 2015, Part 6.

I would set out my arguments in favour of repealing, or amending as set out in 3.68 and 3.69 of your Interim Report, these two laws but having read, and without legal training struggled to absorb, the two Acts, the Public Interest Disclosure Act, your paper IP46 and IR127 and many articles, opinions, etc, etc, on this subject, it is obvious I can add nothing to the debate by attempting involved legal and moral argument. You must know it all already.

Therefore, I give here the essence of my argument which I am convinced stands alone, irrespective of any PID Act provisions or qualifying provisions in either the ABF or the Crimes Act:

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| It is well known that “Not only must justice be done, it must also be seen to be done”. The UK’s Lord Chief Justice Hewart recognised that ***the perception of law*** is just as important as the conduct of the law.  The SMH quotes Sir Garfield Barwick as ruling in 1976 that: “....the question is not whether there is a real likelihood that a judge is biasedbut rather ***whether it might reasonably be suspected by fair-minded persons***that a judge might not rule with a fair and unprejudiced mind.”  Justice Dyson Heydon: “...***the appearance*** of departure from neutrality is a ground of disqualification ... because ***the rule is concerned with the appearance*** of bias, and not the actuality, ***it is the perception of the hypothetical observer that provides the yardstick.”***  These thoughts on the importance of how the law appears to the common man accord exactly with my argument that:  **If these two Acts - The Crimes Act 1914 s.70 and The Australian Border Force Act 2015, Part 6 – are perceived by the people to intimidate, to conceal abuse and wrongdoing, then that is exactly what they will be used for and that is precisely the effect they will have.** |

Laws are written to safeguard the people against wrongdoing. They present the framework for the protection and conduct of a decent and honourable society.

Laws that threaten with criminal charges in order to suppress free speech in the pursuit of honourable conduct, that protect and conceal those who would abuse, corrupt and intimidate, not only encroach upon but annihilate this most basic of human rights – freedom of speech - without which all other rights and freedoms are compromised.

**Can this encroachment be justified?**

I can think of no circumstance in detention centres here or offshore that could justify these obnoxious Acts or that has any bearing on Australia’s Border Security. Nor can I understand the need for secrecy surrounding detention centres **other than** (because of the very real threat of retribution to returned detainees and to their families remaining in the originating country) the need for a prohibition against identifying by name individual detainees.

I respectfully submit that so long as these two Acts remain in their present form they facilitate abuse, corruption and intimidation and should therefore be repealed.

Yours sincerely,

Susan Newman