

Australian Law Reform Commission

Fighting Words: A Review of Sedition Laws in Australia

Tabled 13 September 2006

Government response to recommendations

	Recommendation	Response
2-1	The Australian Government should remove the term ‘sedition’ from federal criminal law. To this end, the headings of Part 5.1 and Division 80 of the <i>Criminal Code</i> (Cth) should be changed to ‘Treason and urging political or inter-group force or violence’, and the heading of section 80.2 should be changed to ‘Urging political or inter-group force or violence’.	The Government supports this recommendation. The term “sedition” has a historical meaning that should not colour the clear elements of the offence. A shortened title such as “urging violence” is a plain English description of the elements of the offence, and is consistent with the overall approach of modernising the provision.
3-1	The Australian Government should initiate a review of the remaining offences contained in Part II of the <i>Crimes Act 1914</i> (Cth) to determine which offences merit retention, modernisation and relocation to the <i>Criminal Code</i> (Cth), and which offences should be abolished. This review should include the offences in sections 24AA, 24AB and 25-29 of the <i>Crimes Act</i> .	The Government supports this recommendation. However, a further formal external review of the offences in Part II is not required. The Attorney-General’s Department is currently considering the provisions with a view to repealing outdated offences or modernising necessary offences for inclusion in the <i>Criminal Code</i> . This task is being undertaken as part of the Model Criminal Code project which aims to incorporate all serious Commonwealth offences into the Code.
3-2	The Australian Government should initiate a process through the Standing Committee of Attorneys-General to remove the term ‘sedition’ from state and territory laws and to modernise and harmonise the relevant laws in keeping with the proposed changes to federal law.	The Government supports this recommendation by the Prime Minister raising this issue with the Premiers and Chief Ministers.
4-1	Sections 30A, 30AA, 30AB, 30B, 30D, 30E, 30F, 30FA, 30FC, 30FD, 30G, 30H and 30R of Part IIA of the <i>Crimes Act 1914</i> (Cth) concerning unlawful associations should be	The Government supports this recommendation. These offences have never been invoked since their enactment in the 1920s and 1930s. Further, there is no clear example of an organisation that

	repealed.	warrants proscription under Part IIA of the Crimes Act, nor has an organisation ever been proscribed under that Part. The provisions dealing with terrorist organisations in the Criminal Code are considered to adequately address any issue that might arise.
4-2	The Australian Government should include sections 30J and 30K of the <i>Crimes Act</i> in the review of old provisions of the Crimes Act called for in Recommendation 3-1.	The Government supports this recommendation. See comments above in relation to the review by the Attorney-General's Department in response to recommendation 3-1.
6-1	An offence of 'encouragement' or 'glorification' of terrorism, along the lines of that in section 1 of the <i>Terrorism Act 2006</i> (UK), should not be introduced into Australian law.	The Government supports this recommendation. At this time, it appears that the sedition offences, the provision for listing organisations that praise or otherwise advocate terrorism and the classification requirements in relation to 'books of hate' are sufficient to cover off on the glorification offence. However if circumstances suggest that such an offence is necessary, the establishment of an offence of this nature could be explored.
7-1	Peak arts and media organisations should provide educational programs and material to their members to promote a better understanding of: (a) the scope of federal, state and territory laws that prohibit the urging of political or inter-group force or violence; and (b) any potential impact of these laws on the activities of their members.	The Government supports this recommendation. The Government actively supports any recommendation in relation to providing information to the public to ensure a greater understanding of the application of the offences.
8-1	Section 80.2 of the <i>Criminal Code</i> (Cth) should be amended to provide that, for a person to be guilty of any of the offences under section 80.2, the person must intend that the urged force or violence will occur.	The Government supports this recommendation. As currently drafted, subsections 80.2(1), (3) and (5) require the prosecution to prove that the person intentionally urged the use of force or violence. The adoption of recommendation 8-1 would add an extra intention element to the offences so that the prosecution would need to prove that the person intentionally urged the use of force or violence and the person intended that the urged force or violence will occur.

9-1	The heading of s 80.2(1) of the <i>Criminal Code</i> should be changed to refer to urging the overthrow by ‘force or violence’ of the <i>Constitution</i> or Government.	The Government supports this recommendation in conjunction with acceptance of Recommendation 2-1.
9-2	The word ‘intentionally’ should be inserted in s 80.2(1) of the <i>Criminal Code</i> before the word ‘urges’ to clarify the fault element applicable to urging the use of force or violence.	The Government supports this recommendation. While the <i>Criminal Code</i> makes it clear that the sedition offences include the fault element of intention by virtue of section 5.6 of the Code, it is important the fault elements are clearly stated within the offence to ensure clarity and understanding of the operation of the offence.
9-3	Section 30C of the <i>Crimes Act 1914</i> (Cth), concerning ‘advocating or inciting to crime’, should be repealed.	The Government supports this recommendation. The offences of incitement are dealt with in section 11.4 of the Criminal Code.
9-4	The heading of section 80.2(3) of the <i>Criminal Code</i> should be changed to refer to urging interference in Parliamentary elections by ‘force or violence’.	The Government supports this recommendation in conjunction with acceptance of recommendation 2-1.
9-5	Section 80.2(3) of the <i>Criminal Code</i> should be amended to: (a) insert the word ‘intentionally’ before the word ‘urges’, to clarify the fault element applicable to urging the use of force or violence; and (b) apply to interference with the lawful processes for a referendum on a proposed law for the alteration of the <i>Constitution</i> .	The Government supports recommendation 9-5(a) for the same reasons outlined in relation to recommendation 9-2. The Government supports recommendation 9-5(b). Acceptance of this recommendation would clarify the offence to make it clear that it includes interference with the lawful processes for a referendum. This extension reinforces the offences contained in section 80.2(1)(a) which apply to a person who urges another person to overthrow by force or violence the <i>Constitution</i> .
9-6	As a consequence of Recommendation 9-5, section 80.2(4) of the <i>Criminal Code</i> should be amended to apply recklessness to the element of the offence under section 80.2(3) that it is the ‘lawful processes for a referendum on a proposed law for the alteration of the <i>Constitution</i> ’ in respect of which a person has urged interference.	The Government supports this recommendation for the same reasons outlined in relation to Recommendation 9-5(b). This recommendation is consistent with the drafting of offences in Division 80 of the Criminal Code.

10-1	The heading of section 80.2(5) of the <i>Criminal Code</i> (Cth) should be changed to refer to urging ‘inter-group force or violence’.	The Government supports this recommendation in conjunction with acceptance of recommendation 2-1.
10-2	<p>Section 80.2(5) of the <i>Criminal Code</i> should be amended to:</p> <p>(a) insert the word ‘intentionally’ before the word ‘urges’, to clarify the fault element applicable to urging the use of force or violence; and</p> <p>(b) add ‘national origin’ to the distinguishing features of a group for the purposes of the offence.</p>	<p>The Government supports recommendation 10-2(a) for the same reasons outlined above in relation to recommendation 9-2.</p> <p>The Government supports recommendation 10-2(b) as it clarifies that a person’s national origin can be a distinguishing feature of a group.</p>
10-3	As a consequence of Recommendation 10-2, section 80.2(6) of the <i>Criminal Code</i> should be amended to apply recklessness to the element of the offence under section 80.2(5) that it is a group distinguished by national origin that a person urges another to use force or violence against.	The Government supports this recommendation in conjunction with acceptance of recommendation 10-2(b). This recommendation is consistent with the drafting of the offences within Division 80 of the Criminal Code.
10-4	<p>The Australian Government should consider extending the offence in section 80.2(5) of the Criminal Code to circumstances in which:</p> <p>(a) a person urges another person (as distinct from a group) to use force or violence against a group in the community that is distinguished by race, religion, nationality, national origin or political opinion; and</p> <p>(b) a person urges a group that lacks one of the specified distinguishing characteristics to use force or violence against a group in the community that is distinguished by race, religion, nationality, national origin or political opinion.</p>	<p>The Government supports this recommendation and will take steps to extend the offence to cover where force or violence is urged against a member of a group (not just the group as a whole).</p> <p>The ALRC notes that the development of such an offence is consistent with Australia’s obligations under the International Convention on the Elimination of all Forms of Racial Discrimination 1966 and the International Covenant on Civil and Political Rights 1966.</p>

10-5	<p>The Australian Government should continue to pursue other strategies, such as educational programs, to promote inter-communal harmony and understanding.</p>	<p>The Government supports this recommendation in conjunction with Recommendation 7-1.</p> <p>The Attorney-General’s Department is currently further developing its community education program including the development and distribution of information pamphlets which explain the operation of the counter-terrorism offences and related legislation. Significant improvements have also been made to the National Security website and the Department’s website to give greater access to information regarding Australia’s counter-terrorism measures and the impact on the community.</p>
11-1	<p>Sections 80.2(7), (8) and (9) of the <i>Criminal Code</i>, concerning the offences of urging a person to assist the enemy and urging a person to assist those engaged in armed hostilities against the Australian Defence Force, should be repealed.</p>	<p>The Government supports this recommendation.</p> <p>The treason offence adequately deals with criminalising action taken by a person against the Australian Defence Force.</p>
11-2	<p>The treason offences in s 80.1(1)(e)–(f) of the <i>Criminal Code</i> should be amended to:</p> <ul style="list-style-type: none"> (a) remove the words ‘by any means whatever’; (b) provide that conduct must ‘materially’ assist an enemy, making it clear that mere rhetoric or expressions of dissent are not sufficient; (c) provide that assistance must enable an enemy ‘to engage in war’ with Australia or a country or organisation ‘to engage in armed hostilities’ against the Australian Defence Force; and (d) provide that the Proclamation under section 80.1(1)(e)(ii) must have been made before the relevant conduct was engaged in. 	<p>The Government supports recommendations 11-2 (a) and (b). This is consistent with the Government’s proposed response to recommendation 6 of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.</p> <p>The Government supports recommendation 11-2(c) and 11-2(d).</p>

11-3	In considering the recommendations of the Security Legislation Review Committee (the Sheller Committee) on the law of treason, the Australian Government should take into account relevant recommendations and commentary in this Report.	The Government supports this recommendation as all other recommendations regarding the treason offence have been taken into account.
11-4	Section 80.1 of the <i>Criminal Code</i> should be amended to require that, at the time of the alleged offence, the person is an Australian citizen or resident.	The Government supports this recommendation in the context of the response to recommendation 6(a) of the PJCIS Report on the Review of Security and Counter-Terrorism Legislation.. The Government accepts that the treason offence should only apply to persons who owe allegiance to Australia.
12-1	Section 80.3 of the Criminal Code (Cth) concerning the defence of ‘good faith’, should be amended so that it does not apply to the offences in section 80.2.	The Government supports in principle this recommendation in light of the proposed approach to implementing recommendation 12-2. An expanded good faith defence to the offence of sedition is the most appropriate response to recommendation 12-2 which takes into account the concerns outlined by the ALRC.
12-2	Section 80.2 of the <i>Criminal Code</i> should be amended to provide that in determining whether a person intends that the urged force or violence will occur for the purposes of section 80.2(7), the trier of fact must have regard to the context in which the conduct occurred, including (where applicable) whether the conduct was done: <ul style="list-style-type: none"> (a) in the development, performance, exhibition or distribution of an artistic work; or (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or (c) in connection with an industrial dispute or an industrial matter; or (d) in the dissemination of news or current affairs. 	The Government supports in principle this recommendation but will implement recommendation 12-2 in a different manner to that proposed by the ALRC to avoid complication. <p>The principles of recommendation 12-2 will be adopted through expanding the existing good faith defence in section 80.3 of the Criminal Code so that a court may have regard to the conduct listed in recommendation 12-2 of the ALRC report such as the performance of artistic or satirical work.</p>

12-3	A note should be inserted after each of the offences in sections 80.2(1), (3) and (5) of the <i>Criminal Code</i> drawing attention to the recommended new provisions regarding proof of intention that the force or violence urged will occur.	The Government supports this recommendation in line with the proposed response to recommendation 8-1.
13-1	Section 80.5 of the <i>Criminal Code</i> regarding the requirement of the Attorney-General's written consent to a prosecution should be repealed.	The Government supports this recommendation.