

SEDITION LAW IN AUSTRALIA

Introduction

The sedition offences are contained in the *Anti-Terrorism Act (No 2) 2005* (Cth). Under the changes to the law, statements and acts that condone the use of violence against Australians and its institutions could lead to seven years imprisonment. This information sheet provides an overview of the new sedition laws and the debate surrounding the new legislation.

What is sedition?

The classic definition of sedition is that it is a political crime that punishes certain communications critical of the established order. Sedition crimes have been enshrined in state and territory based Australian laws since before federation and inserted into the Commonwealth Crimes Act in 1920. Under the Commonwealth Act, seditious behaviour that intended to: (i) bring the government into hatred or contempt; (ii) excite disaffection against the government, constitution, UK parliament and Kings Dominions; and (iii) bring about change to those institutions unlawfully, was criminalised.

The definition of 'sedition' and 'seditious intention' is central to the debate surrounding recent reforms to the old sedition laws in Australia. Those who are critical of the changes argue that the term 'sedition' in the reformed legislation is a misnomer, as some of the key reforms do not fall within the classic definition of 'sedition' at all.

The specifics of the new offences

In 2005 the Federal Government argued that the reasons for revitalising the sedition offences were to: (i) prevent terrorism; (ii) protect the integrity of the electoral process; (iii) protect public order from threats posed by inter-group violence; and (iv) prevent seditious or treasonous speech in the classic sense.

The reforms replace the old sedition laws with five new offences:

1. *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. The penalty for this offence has increased from three to five years and can be committed by anyone anywhere in the world regardless of where the interference takes place.

2. *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; 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. A person arguably falls foul of this provision if, for example, the person is a member of a racial minority group that is the victim of violence by white supremacists and urges members of their

group to forcefully resist the white supremacists. A possible outcome of such resistance would be some degree of street violence or race violence.

Treason and treachery

The following three offences are often described as ‘urging treason and urging treachery’. Importantly, the offender need only urge treasonous conduct, rather than intend both treasonous conduct and treasonous intentions on the part of others.

3. 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; (b) the Government of the Commonwealth, a State or a Territory; or (c) the lawful authority of the Government of the Commonwealth.

4. 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 to be an enemy at war with the Commonwealth.

5. 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.

To give an example of an application of the above provisions, a person who urged Australian soldiers and their allies to lay down their arms and refuse to fight, would be urging persons to engage in conduct that: (i) would assist a country at war with Australia, and (ii) assist a country engaged in armed hostilities with the Australian Defence Force. This pacifist would possibly be committing an offence under the Act.

For the offences contained within the sedition provisions the penalty is imprisonment for up to seven years. Of the above five offences, the additional element of ‘recklessness’ applies to the first three. Recklessness under the criminal legislation requires that the person consciously considers the risks involved and nevertheless proceeds with the conduct.

Defences to sedition offences

The good faith defences provided for in the Sedition provisions may apply when the offending material points out mistakes of political leaders or errors in governments, the constitution, laws and courts with a view of reforming these errors, or expression that points out issues causing hostility between groups. The defences also protect lawful attempts to change the law, any speech in connection with an industrial matter and the publication of a report or commentary on a matter of public interest.

Limitations of the Defences

In reality the good faith defences, as they are currently drafted, only protect a very specific form of political expression and have the potential to restrict freedom of speech and impact on artistic expression. In particular, the good faith defences do not specifically extend to artistic expression aimed at the promotion of discussion or the presentation of a different view.

Arts Law advocates that there should be a specific defence which expressly provides a defence for all

forms of artistic expression. For example, the *Anti - Discrimination Act 1977* (NSW) protects statements made reasonably and in good faith for academic, artistic, scientific, research, or public interest purposes. The Commonwealth *Racial Discrimination Act 1975* expressly protects statements and acts done reasonably and in good faith in relation to artistic works and activities.

Debate surrounding the new legislation and specific ramifications for the arts

The sedition reforms have been met with a wave of criticism for a number of reasons. The Australian Law Reform Commission has stated that the new offences attempt to shift the focus away from mere speech towards 'urging' other people to use 'force or violence' in a number of specific contexts. One of the key concerns identified is that there is no definition of 'urging'. It will be the role of the courts to give greater clarity to its definition and limits.

Some individuals and organisations argue that when artists are faced with the prospect of breaching the law, particularly if it carries the threat of up to seven years imprisonment, they may err on the side of caution and self-censor. Arguably the most insidious thing about self censorship is that it is impossible to measure or quantify because it is an act of restraint. Even if these laws have not yet been used against artists, the fact that they may be, has an effect on the artistic output of many arts professionals. The change may not be immediately recognizable, but the cumulative effect will be reflected in the content and diversity of artistic expression available to the public.

Other commentators also suggest that artists and arts organisations who have previously engaged in work that challenges contemporary orthodoxies, have dealt with controversial themes and opinions or have produced satirical or metaphorical work are likely to be the most affected by the sedition provisions. Often these works are aimed at providing social commentary or criticism and may be open to multiple subjective responses. Artists risk facing prosecution for a sedition offence if the work or performance influences people or just one person in a certain way. If numerous meanings can be drawn from a creative work, under the sedition provisions which allow for 'reckless urging', there is a risk that an artist may be prosecuted for someone else's interpretation of the work, even if that interpretation was unintended.

More information

Arts Law Centre of Australia

If you have any further inquiries about the new legislation and how it impacts on your arts practice please contact the Arts Law Centre of Australia. In addition, if you have ever been informed by an individual or organisation that you are in breach of the sedition provisions of the *Anti - Terrorism Act (No 2) 2005* (Cth) please contact Arts Law. In order to keep the Federal government aware of the practical implications of new laws it is also important to inform the Australian Law Reform Commission of any interaction that you may have with the legislation.

Our publications order form is available on request by telephoning (02) 9356 2566 or tollfree outside Sydney on 1800 221 457. Also visit our website www.artslaw.com.au

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The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

