



6 June, 2006

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

By Email: sedition@alrc.gov.au

Dear Sir/Madam

**Review of Sedition Laws
Discussion Paper: June 2006**

Thank you for the opportunity to comment on the issues raised by the May 2006 Discussion Paper concerning the *Review of Sedition Laws (Discussion Paper)*.

About the Arts Law Centre of Australia

The Arts Law Centre of Australia (**Arts Law**) was established in 1983 and is the national community legal centre for the arts.

Arts Law provides legal advice, publications, education and advocacy services each year to over 2500 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients

Our clients not only reside in metropolitan centres, but also contact us from regional, rural and remote parts of Australia, and from all Australian states and territories. Our client base is multi-cultural, and both Indigenous & non-Indigenous.

Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

The comments that we make in this submission are informed by our clients' profile, which is that they are:

- new, emerging artists or established arts practitioners or arts organisations;
- creators of their own material and users of other artist's work;
- operating arts businesses;
- operating in all arts sectors;

- working in both traditional and digital media;
- on low incomes/ with limited funds;
- needing to be self-reliant in business;
- limited in their ability to enforce rights;
- eager for accessible legal information, although they typically have limited legal education; and
- at least professionally, legally compliant.

In response to the proposals set out in the Discussion Paper

We have addressed the some of the proposals in the Discussion Paper that directly affect the artists and arts throughout Australia.

2. Proposed Reforms

As an organisation that advises artists and arts organisations around Australia, Arts Law is concerned that the sedition offences contained within Schedule 7 of the *Anti-Terrorism Act (No. 2) 2005 (sedition offences)* will have an impact on freedom of expression and diversity of artistic expression in Australia. Arts Law is concerned that the sedition offences are wide, vague and misleading. We believe this may lead to artists and arts organisations self-censoring for fear of being seditious. We agree that the term ‘sedition’ is too closely associated in the public mind with its origins and history as political crime that punishes certain communications critical of the established order or authority (Discussion Paper, 2.28).

Arts Law agrees that amendments to the sedition offences should be made to ensure “that there is a bright line between freedom of expression – even when exercised in a challenging or unpopular manner – and the reach of criminal law, which should focus on exhortations to the unlawful use of force or violence” (Discussion Paper, 2.27). If the substantive offences in Part 5.1 and Division 80 of the *Criminal Code* (Cth) are to be retained Arts Law agrees that they should be amended to “Treason and offences against political liberty”, and section 80.2 should be amended to “Offences against political liberty and public order.” Further, Arts Law agrees that state and territory laws should be reviewed and amended through the Standing Committee of Attorneys-General, with a view to removing the term sedition.

4. Australian Sedition Laws and Related Provisions

With reference to the current federal sedition laws and other aspects related to sedition, such as treason, treachery and interfering with elections, Arts Law submits that these ‘dead-letter’ laws in the Commonwealth, state and territory *Crimes Acts* should be reviewed and potentially abolished. Arts Law is concerned that whilst these laws are rarely prosecuted they are archaic and may have a chilling effect on freedom of expression and artistic practice in Australia.

5. International Framework

Arts law agrees that any measures taken to counter terrorism by the Australian Government must be compatible with Australia’s obligations under international law to respect human rights, including freedom of expression (Discussion Paper, 5.2). We note that one of Arts Law’s major concerns with the sedition offences is the vagueness and lack of clarity that exists, resulting in artists and arts organisations being concerned that they will be engaging in seditious and illegal practices and censoring their own work as a result. Accordingly, Arts Law submits that the sedition offences are inconsistent with Article 19 of the ICCPR and the requirement that any lawful restriction on freedom of expression must meet certain standards of clarity and

precision to enable artists and arts organisations to foresee the consequences of their conduct (Discussion Paper, 5.37).

6. Sedition Laws in Other Countries

Arts Law agrees that there is no need to introduce into federal law an offence of 'encourage or glorification of terrorism' similar to section 1 of the *Terrorism Act 2006* (UK). This offence is unnecessarily vague and there is no clear connection between the speech and any criminal act. Arts Law submits that such an offence would result in artists and arts organisations engaging in self-censorship for fear of being charged with this offence, thus resulting in unnecessary limits being placed on freedom of expression and the constitutionally implied right of freedom of political discussion in Australia.

7. Sedition and Freedom of Expression

Arts Law supports the conclusion made by the ALRC that the sedition provisions do not "draw a clear enough distinction between legitimate dissent – speech that ought not to be interfered with in a liberal democracy – and expression, whose purpose of effect is to cause the use of force or violence within the state" (Discussion Paper, 7.72). Further, we support the proposals set out in Chapter 8 of the Discussion Paper and the clear recognition of the need to protect freedom of expression. In particular Arts Law supports the proposals which make it clear that mere rhetoric or expression of dissent are not offences of treason or sedition in Australian law.

10. Defences and Penalties

Arts Law supports proposal 10-2, with reference to section 80.2(1), (3) and (5) of the *Criminal Code*, whereby the prosecution should be required to prove that the person charged intended that the force or violence urged will actually occur. Most importantly, Arts Law supports the premise that this proposal aims to take into account the context and whether the conduct was in connection with a performance, exhibition or artistic work; academic debate; or the public interest. We note the ALRC's specific recognition of the concerns raised by Arts Law and other artists and arts organisations such as the National Association for Visual Arts (NAVA) and we support proposals in Chapters 8 to 10 which aim to tighten the elements and interpretation of the offences and provide clarity for Australian artists and arts organisations.

11. Unlawful Associations

Arts Law supports proposal 11-1 which calls for the repeal of provisions in Part 11A of the *Crimes Act* which aim to remove concern that arts organisations might be prosecuted for hosting exhibitions, performances or other events that are deemed to have an underlying seditious intention.

Conclusion

Arts Law looks forward to hearing the outcome of the ALRC proposals. We are prepared to expand on any aspect of this submission, verbally or in writing.

Yours faithfully



Robyn Ayres
Executive Director
Arts Law Centre of Australia