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

20th April '06

Dear Sir,

Re: Review of Sedition Laws - Issues Paper

National Legal Aid refers to the "Review of Sedition Laws – Issues Paper". We appreciate that the closing date for submissions has passed but forward our following comments to you in the hope that you may find them of use and still be able to take them into account. Please accept our sincere apologies for their lateness.

Introduction

National Legal Aid represents the Directors of each of the 8 State and Territory Legal Aid Commissions. NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal or Territory legal systems; or
- Obtain adequate information about access to the law and legal system

NLA makes this submission to the Inquiry on the basis that Commission services may be required to provide assistance to people affected by the laws relating to sedition.

General Comments

It is apparent from the Issues Paper produced by the Commission that the law in relation to sedition is complex and unclear. This complexity, coupled with the historical connotations of the phrase 'sedition' have caused apprehension and fear among some, including the media and particular religious groups.

For this reason, we submit that the offence of sedition is outdated and support recommendation 27 of Senate Legal and Constitutional Affairs Inquiry into the Anti-Terrorism Bill (No 2) 2005 that the offence should be removed from the legislation.

However, if this is not accepted, we submit that recommendation 29 of the

same Inquiry should be accepted, namely, that:

- all offences in proposed section 80.2 in Schedule 7 be amended to expressly require intentional urging; and
- proposed section 80.3 (the defence for acts done 'in good faith') in Schedule 7 be amended to remove the words 'in good faith' and extend the defence to include statements for journalistic, educational, artistic, scientific, religious or public interest purposes (along the lines of the defence in section 18D of the *Racial Discrimination Act 1975*).²⁹

We also support the recommendations of the Committee of Review of Commonwealth Criminal Law (the Gibbs Committee) in 1991 that sedition offences should be confined to the following offences:

- inciting the overthrow or supplanting by force or violence of the Constitution or the established Government of the Commonwealth or the lawful authority of that Government in respect of the whole or part of its territory;
- inciting interference by force or violence with the lawful processes for Parliamentary elections; and

However, we disagree with the Gibbs Committee that the following offence should be considered sedition:

- inciting the use of force or violence by groups within the community, whether distinguished by nationality, race or religion, against other such groups or members thereof.

Response to Inquiry Questions

We make the following comment in relation to the corresponding questions listed:

2. Is 'sedition' the appropriate term to identify the conduct proscribed under s 80.2 of the *Criminal Code* (Cth)?

No. The description of that offence as 'sedition' is confusing as the conduct of 'urging group based violence' in section 80.2 (5) is not behaviour which would commonly be understood as sedition.

Would it be better to remove the link with the old sedition offences by using a more contemporary description such as 'urging or inciting politically motivated violence'?

Yes, such a description would avoid confusion and more closely reflect the offences.

5. It has been suggested that the fault elements in ss 80.2(1), (3) and (5) of the *Criminal Code* are not sufficiently clear. Should

those sections be amended to provide expressly that it must be proved that the defendant intended to urge the use of force or violence?

Yes, a subjective test is required.

7. **Sections 80.2(7) and (8) of the *Criminal Code* make it an offence for a person to urge another person to engage in conduct intended to 'assist' the enemy or those engaged in armed hostilities against the Australian Defence Force. Does the term 'assist' need clarification to indicate the range of conduct to which it applies?**

Yes, this must be clearly defined.

13. **Is it preferable to address the problem of urging group-based violence through the sedition offences, or through anti-vilification legislation?**

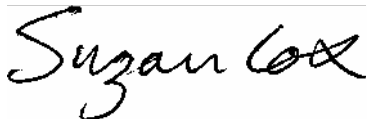
It is more appropriate for this offence to be included in anti-vilification offences, as group based violence is outside the commonly understood meaning of sedition.

Conclusion

The offence of sedition as expressed in the legislation is inappropriate in a modern liberal democracy which values freedom of communication and expression and robust political debate. Sedition is not a well known or understood concept in legal or layman's terms, and for this reason its continued use will only lead to further confusion and uncertainty. The offence of sedition should be removed.

Whatever offences remain must protect the principles of freedom of expression and political communication. This should be done by the requirement to demonstrate a link between the 'urging' behaviour and resultant force or violence and this must be the intended outcome of the 'urging'.

Yours sincerely,

A handwritten signature in black ink that reads "Suzan Cox". The signature is written in a cursive, flowing style.

Ms Suzan Cox QC
Chairperson
National Legal Aid