

A short history of sedition laws in Australia

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Last year's sedition laws were the latest and most controversial instalment in a raft of legislation since the war on terror was announced five years ago. Andrew Nette provides a short history of sedition in Australia.

The Federal Government's *Anti-Terrorism Act 2005* updates the sedition offences previously found in the *Crimes Act 1914*. The Act is the latest and most comprehensive of a long list of legislation to respond to what the Federal Government has claimed is the changed security situation facing Australia.

The Federal Parliament has passed 28 acts since 11 September 2001.¹ The most prominent of these is the *Security Legislation Amendment Terrorism Act 2002*, which defined a terrorist act and created categories of terrorism offences for the first time in Australian federal law. This Act included the introduction of proscription of terrorist organisations. This proposal was passed in a heavily amended form, although subsequent amendments the following year reinstated direct Ministerial proscription of organisations as the government had originally proposed.

The creation of the *Anti-Terrorism Act 2005*, was also a response to a number of overseas initiatives.² In May 2005, the Council of Europe adopted a new *Convention on the Prevention of Terrorism*, which requires State parties to criminalise public provocation to commit a terrorist offence. The Council defined 'public provocation' as meaning the 'distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.' The definition broadened the ordinary incitement to commit a crime, including terrorism, which is already an offence in many European countries.

Following the bombings in London in July 2005, the United Nations Security Council adopted a non-binding Resolution 1624 calling on states to prohibit by law incitement to commit

a terrorist act or acts. In August 2005, British Prime Minister Tony Blair also proposed a new offence of condoning or glorifying terrorism, whether in the UK or abroad

The first definition of sedition in Australian law appeared in the *Crimes Act 1914*. This stated that

A person, who engages in a seditious enterprise with the intention of causing violence or creating public disorder or a public disturbance, is guilty of an indictable offence punishable on conviction by imprisonment for not longer than three years.

Section 24 of the *Crimes Act 1914* defined seditious intention as intention to commit the following purposes:

- to bring the Sovereign into hatred or contempt.
- to excite disaffection against the Government or Constitution of the Commonwealth or against either the House of the Parliament of the Commonwealth.
- to excite Her Majesty's subjects to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Commonwealth established by law of the Commonwealth;
- to promote feelings of ill-will and hostility between classes of Her Majesty's subjects so as to endanger the peace, order or good Government of the Commonwealth.

In September 2005, Prime Minister John Howard announced that the existing federal offence of sedition would be replaced with an offence of "inciting violence against the community... To address problems with those who communicate inciting messages directed against other groups within our community, including against Australia's forces overseas and in support of Australia's enemies."

Section 80.2 of the *Anti-Terror Act 2005* repealed these

existing sedition offences, replacing them with five new offences, that will be given force in the *Criminal Code Act 1995*. These are:

- Urging the overthrow of the Constitution of the Government.
- Urging interference in Parliamentary elections.
- Urging violence in the community.
- Urging a person to assist the enemy, including assisting a person or country to assist an organisation or country; and the organisation or country is at war with the Commonwealth, whether or not the existence of a state of war has been declared.
- Urging a person to assist those engaged in armed hostilities.

Section 80.3 of the *Anti-Terror Act 2005* lists good faith defences to the sedition provisions. These include a defence for people who point out in good faith errors or defects, with a view to reforming those errors or defects, for those who urge in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in the Commonwealth, a state, a territory or another country. Also included are provisions that make it a defence for anything done in good faith in connection with an industrial dispute or an industrial matter, or the publishing of a report or commentary about a matter of public interest.

By choosing to update currently existing sedition provisions the Government is breathing new relevancy into what are essentially early twentieth century laws that are out of step with Australia as a modern, tolerant and pluralistic democracy. As Dr Ben Saul, Director of the Bill of Rights Project at the University of New South Wales Gilbert and Tobin Centre for Public Law put it

Old fashioned security offences are little used because they are widely regarded as discredited in a modern democracy that values free speech. Paradoxically, the danger in modernising these offences is that prosecutors may seek to use them more frequently since they are considered more legitimate.³

The concern that by modernising the laws the Government invests them with renewed legitimacy is backed up by the fact that the sedition offences in the proposed Bill include increased penalties, with the burden of proof being on the part of the defendant.

While the Bill includes a good faith defence protecting free speech that points out mistakes of political leaders, government laws or courts, including lawful attempts to change the law or statements about industrial matters, it is unclear exactly to what extent these reduce the danger of being able to criminalize political opponents. As Saul puts it:

While these defences seem wide, protecting legitimate free expression, most of the defences are directed towards protecting political speech, at the expense of other types of expression. By contrast, good faith defences commonly found in state and federal anti-vilification legislation typically protects statements made in good faith for an academic, artistic, scientific, religious, journalistic or other public interest purpose. Such statements may not aim to criticize the mistakes of political leaders, the errors of governments or laws, matters causing ill-will between groups, or industrial issues. The range of human expression worthy of legal protection is much wider than these narrowly drawn expressions.

In addition to those matters updated by the *Anti-Terrorism Act 2005*, Section 30A of the *Crimes Act 1914* gives the Government the power to declare any body of persons an unlawful association if they are engaged in activities including:

- The overthrow of the Constitution of the Commonwealth by revolution or sabotage.
- The destruction or injury of property of the Commonwealth or of property used in trade or commerce with other countries or among states.
- Any body which advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a sedition intention.

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References

- 1 Dr Jennifer Hocking, address to National Tertiary Education Union seminar, 'Academic Freedom, Universities and the Response to the New Terror Laws', Melbourne, 6 December 2005.
- 2 'Speaking of Terror: Criminalising Incitement to Violence', *University of New South Wales Law Journal*
- 3 Saul, Dr Ben, 'Watching What You Say', *The Age*, 19 October 2005.



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