

Australian government rejects limits on sedition powers

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For the second time in less than a year, the Australian Attorney-General Philip Ruddock has brushed aside key recommendations in an official report calling for limits on the government's new sedition laws.

Late last year, Ruddock rejected a Senate committee report calling for the removal of revamped sedition provisions from the Anti-Terrorism Act 2005, pending a review of the measures during 2006. When Ruddock this month finally tabled that review, conducted by the Australian Law Reform Commission (ALRC), he effectively dismissed its major proposals.

The Howard government's legislation extended sedition to include "urging disaffection" against the political system, urging "another person to overthrow by force or violence" a government and urging conduct that "assists" an "organisation or country engaged in armed hostilities" against the Australian military, whether or not a state of war has been declared.

These laws can criminalise many forms of political dissent, including supporting resistance to Australian military interventions, such as in Afghanistan, Iraq and the Asia-Pacific region, where troops have been sent to pursue "regime change" in East Timor and the Solomon Islands.

The sedition clauses clearly have nothing to do with combatting "terrorism" or politically-motivated violence. Acts of terrorism, political force or violence have always been serious crimes. By adopting the vague term "urging," the government has potentially outlawed a range of expressions of political opinion—any that allegedly encouraged force or violence, or resistance to Australian troops, even if no such acts eventuated.

Lawyers testified before the Senate committee that the laws were so wide they could be used to prosecute anti-Iraq war demonstrators and even protesters chanting "Bring Johnny [Howard] down!" Others said last year's riots by youth across France could be defined as terrorism

or sedition under the Bill, along with statements such as "9/11 was a hoax", "America had it coming" and "we must resist the occupiers".

People can be convicted, and face up to seven years' jail, without even intending that any "force or violence" result from their comments. Organisations that support such sentiments can be declared "unlawful associations," also allowing their property to be seized and their members, supporters and donors imprisoned.

After receiving hundreds of submissions and conducting weeks of consultations, the ALRC report, *Fighting Words*, suggested that the government drop the "red rag" term "sedition" and re-badge the laws under the heading of "urging political or inter-group violence".

It advocated requiring an actual intention to cause force or violence, and restricting the term "assist" an enemy to "material assistance," such as providing arms, funds, personnel or strategic information. The report also urged the removal of the attorney-general's power to authorise sedition prosecutions, because it "could contribute to a perception there may be a political element in the decision whether or not to prosecute".

The ALRC commissioners—three law professors and two judges—expressed no disagreement with the government's underlying objectives in the "war on terror". Essentially, the recommendations offered tactical advice on how to achieve those objectives without inflaming public opinion.

"It would be unfortunate," the report said, "if continued use of the term 'sedition' were to cast a shadow over the new pattern of offences. The term 'sedition' is too closely associated in the public mind with its origins and history as a crime rooted in criticising—or 'exciting disaffection' against—the established authority."

The report also expressed concerns that journalists, academics, scientists, artists and even media proprietors could find themselves prosecuted, simply for researching,

writing about, debating or merely poking fun at official responses to terrorism, political dissent and anti-war activity.

Ruddock sat on the report for six weeks before tabling it in parliament on September 13, and then refused to commit the government to adopting any of its recommendations. Instead, he misrepresented the report by claiming that the ALRC had “recognised the need to have these types of offences”.

He said the government would carefully consider the report, but told the *Sydney Morning Herald* just days later there would be no change to require proof of violent intention, because this would make sedition too hard to prosecute.

Ruddock also told the *Herald* the best guarantee against inappropriate use of the law was the attorney-general’s role in approving sedition prosecutions. This “guarantee” effectively leaves Ruddock and his cabinet successors in personal charge of pursuing sedition cases. Clearly, the Howard government is determined to retain unfettered discretion to use the expanded sedition laws.

Australian governments have a long record of launching sedition prosecutions to suppress political opposition. In the late 1940s, for example, at the outset of the Cold War, the Chifley Labor government jailed two prominent leaders of the Communist Party for making statements about refusing to support Australia in the hypothetical event of a war against the Soviet Union.

The Menzies government sought to jail more Communist Party leaders, following the 1951 referendum defeat of its legislation to outlaw the Communist Party. Although one of Menzies’s sedition prosecutions (for ridiculing the monarchy) ultimately failed, the Australian Security Intelligence Organisation (ASIO) used the cases in the meantime to carry out damaging raids of party offices and member’s homes.

As recently as 1960, the Menzies government prosecuted a public servant, Brian Cooper, in Papua New Guinea for urging local people to fight for immediate independence from Australia. Cooper included the use of violence as one of three possible methods of achieving self-determination. He was imprisoned for two months with hard labour after ASIO officers testified that he had “communist” views. The Australian High Court unanimously upheld his conviction for “exciting disaffection” against the PNG government (and called his penalty “remarkably light”).

Labor’s shadow attorney-general Nicola Roxon welcomed the ALRC report, backing its recommendation

for the term “sedition” to be removed from federal criminal law. She also endorsed its call for “a clear distinction in the law between free speech and conduct calculated to incite violence in the community”. But she gave no commitment that a Labor government would require proof of intention or “material assistance” for criminal charges.

Essentially, she criticised Ruddock from the right—effectively accusing him of failing to effectively pursue the “war on terror”. She said he had introduced “clumsy, poorly-drafted laws” that “did not do the job of protecting Australia in the way that they should”.

Likewise, none of the eight state and territory Labor governments responded to the report’s call for a review of their own draconian sedition laws, which the ALRC criticised as “mostly a good deal worse than the federal laws”.

Last year, the state and territory leaders all joined hands with Ruddock and Prime Minister John Howard to push through “anti-terrorism” legislation that outlawed “advocating” or “praising” terrorism and gave the federal government the power to ban political groups for doing so. By criminalising expressions of political opinion, these measures are very similar to the sedition laws.

The legislation also imposed two forms of detention without trial—“preventative detention” and “control orders”—that allow people to be jailed or placed under house arrest without any proof of a terrorist intention, let alone a terrorist act.

Despite the revamped sedition laws now being on the books for more than 10 months, Ruddock has refused to give a time line for formally considering the ALRC report. Given Labor’s state and federal track record of providing bipartisan support to the essential features of all the nearly 40 pieces of “anti-terrorism” legislation passed since 2002, he and Howard no doubt feel safe to procrastinate and ultimately retain the central features of the sedition clauses.



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