

In Good Faith : Sedition Law in Australia

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[John Macarthur](#) (1767–1834). Founder of the wool industry. Charged and acquitted of seditious behaviour against Governor Bligh in 1807-1808.

Portrait (showing him carrying a possibly seditious letter) reproduced by permission Dixson Galleries, State Library of New South Wales

' the offence [sedition] is one if the person urges by force or violence the overthrowing of a government, or interfering with an election, or encouraging other people to use – or groups of people – to use force or violence against other groups' -- The Attorney-General, Hon Philip Ruddock MP, [Alan Jones Radio Programme, 14 November 2005](#).

Introduction

This e-Brief provides background on the history of sedition as a Commonwealth criminal offence. Some examples of past sedition prosecutions are given. Proposals for reform in the early 1990s are outlined as well as the controversial amendments which were made during 2005. On 2 March 2006, the Attorney-General announced a review of sedition laws would be conducted and it is intended that this e-brief will be updated as needed.

Sedition legislation

Colonies and States

In colonial times and into the twentieth century, some colonies or States contained the offence of seditious activities in their criminal legislation eg [Criminal Code \(Old\) ss 44–46, 52](#); [Criminal Code \(Tas\) ss 66-67](#), [Criminal Code \(WA\) ss 44–46, 52](#), [Criminal Code \(NT\) ss 45-46](#). In those States where criminal offences have been codified, these offences still exist today. In the other States, however, seditious libel, uttering seditious words, and participation in a seditious conspiracy were, and still are, common law offences. The exceptions are in South Australia and the Australian Capital Territory, where legislation has repealed the common law offence.

Commonwealth

Laurence Maher (1992) comments that sedition is primarily a peacetime weapon. In time of war the Commonwealth Government is amply equipped to implement a policy of total mobilisation for the prosecution of the war effort. This last occurred in Australia following the outbreak of war in Europe in 1939. The basic legal mechanism was the *National Security Act 1939* and the Regulations made under the Act. The Commonwealth was able to exercise [extensive control](#) over the dissemination of information and opinion by (a) the imposition of rigid censorship, (b) the prohibition of certain organisations (such as the Communist Party of Australia), whose aims and activities were considered by the Government to be inimical to the war effort and (c) the internment of alleged subversives. (page 287).

1918 — War Precautions Act

Similarly at the start of the First World War the Commonwealth passed the *War Precautions Act 1914*, which gave the new Commonwealth Government unprecedented powers to conduct the war effort. In 1918 new Regulation 27A was inserted into the War Precautions Regulations 1915 by Statutory Rule no. 86 of 1918. This made sedition a Commonwealth offence:

"Any person who by word of mouth or in writing or by any act or deed:

- a. advocates, incites, or encourages disloyalty or hostility to the British Empire or to the cause of the British Empire in the present war; or
- b. advocates the dismemberment of the British Empire, or who says or does anything calculated to incite encourage or assist such disloyalty or hostility, shall be guilty of an offence against the Act".

1920 — Crimes Act

When the country had concluded its peace treaties, it came time to repeal the 1914 Act (and its regulations) but the Government decided to introduce permanent measures relating to seditious behaviour. In 1920 sedition was made a permanent Commonwealth offence by the passage of the *War Precautions Act Repeal Act 1920*, which inserted new sections 24A-24E into the *Crimes Act 1914*.

When introducing the Bill, the Prime Minister and Attorney-General, Billy Hughes, said that the new provisions had been modelled on those in the Queensland *Criminal Code* which had been in existence for about twenty years. He also emphasised that actions done 'in good faith' (new subsection 24A(2)) 'will give ample freedom to the citizens of this country to obtain redress of all grievances, and to secure by lawful means any reforms which they may deem to be necessary' (Senate and House of Representatives, *Debates*, 22 November 1920, pp. 6790-6791).

There was vigorous debate about the permanent sedition provisions with some claiming that they were unnecessary and liable to be used by the Government against political opponents. Sir Robert Best (Liberal/National Party and Member for Kooyong), however, seemed to speak for the majority when he said that the recent war had highlighted enemies of the state within and that 'the Australian soldier fought for the unity and safety of the British Empire, and is not going to stand quietly by and see Australia or the Empire assailed or menaced in the way that has been attempted' (ibid. p. 6845).

Dates of the debates on the Bill were as follows:

- *House of Representatives Debates*

22 November 1920	Introduced and Second Reading
23-24 November 1920	Second Reading Debate. Passed Third Reading by 31–8

- *Senate Debates*

25 November 1920	Introduced, Second Reading and Third Reading. The Senate did not divide. Passed on the voices.
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The text of the new sections 24A-24E of the Crimes Act 1914 is reproduced at the end of this e-brief in [Appendix A](#).

1921 — Customs Act

Importing seditious literature was also an offence under the *Customs Act 1901*. Section 52 of the Act gave the Governor-General (acting on advice from the Minister for Trade and Customs) the power to prohibit the importation of items by proclamation. In 1920 three Irish independence pamphlets published in the United States (including a song) were prohibited without reason (*Commonwealth of Australia Gazette*, 1920, pp. 646, 2301, 2353). In 1921 more general provisions relating to seditious literature were proclaimed. Customs Proclamation No. 24 (*Gazette*, 3 February 1921, p. 159) prohibited the import of literature which advocated:

- a. the overthrow by force or violence of the established government of the Commonwealth or of any State or of any other civilized country
- b. the overthrow by force or violence of all forms of law
- c. the abolition of organized government
- d. the assassination of public officials
- e. the unlawful destruction of property.

Later in the same year, Customs Proclamation No. 37 (*Gazette*, 23 June 1921, p. 989) added category (f) i.e. literature 'wherein a seditious intention is expressed or a seditious enterprise advocated'.

The proclamations were later repealed and re-enacted as items 20-21 of the Second Schedule of the Customs (Prohibited Imports) Regulations. Item 20 covered parts (a)-(e), while part (f) was rewritten as item 21 to say:

Literature wherein a seditious intention (as defined by section 24A of the Crimes Act 1914-1955) is expressed or a seditious enterprise (as defined by section 24B of the Crimes Act 1914-55) is advocated.

Items 21-22 were repealed by the Hawke Labor Government in 1983, when Gareth Evans was the relevant Minister (Attorney-General) - see [Customs \(Prohibited Imports\) Regulations Amendment](#), Statutory Rules 1983, no. 331, 21 December 1983. Regulation 4A(1A) of the [current Regulations](#) nevertheless prohibits the importation of items which 'promote, incite or instruct in matters of crime or violence'.

Amendments and law reform to the Crimes Act after 1920

1926. Crimes Act (no. 9). A new Part IIA 'Protection of the Constitution and of Public and other Services' was inserted into the Crimes Act 1914, which made unlawful any organisation which advocated 'the carrying out of a seditious intention' (new paragraph 30A(1)(b)). Part IIA was introduced after a general election in response to recent strikes and the rise of the Communist Party of Australia. This provision is still in force, despite the 2005 amendments, and is set out at the end of [Appendix C](#).

1960. Crimes Act 1960 (no. 24). The 1920 additions relating to sedition remained unaltered until 1960, when sections 25 and 26 of the *Crimes Act 1960* repealed subsection 24A(2) and re-enacted the 'in good faith' defence as new section 24F. After fifteen years of the Cold War and an [unsuccessful attempt to ban the Communist Party of Australia](#) in the 1950s, this legislation was part of a package of amendments introduced by the Attorney-General, Sir Garfield Barwick, to provide for treason, treachery and sabotage offences. The 'good faith' defence was redefined and now applied to all these offences.

1966-1982. Minor amendments of a technical nature were made to the sedition provisions by the *Statute Law Revision (Decimal Currency) Act 1966* (no. 93), *Crimes Act 1973* (no. 33) and the [Crimes Amendment Act 1982](#) (no. 67).

1986 [Intelligence and Security \(Consequential Amendments\) Act 1986](#) (no. 102). This amended s. 24A to remove references to the United Kingdom and overseas and narrowed the definition of sedition to include the concept of intent to cause violence, etc. This implemented a recommendation by Justice Hope in his 1985 *Final Report of the Royal Commission on Australia's Security and Intelligence Agencies*. [Second Reading speech](#).

1989 [Crimes Legislation Amendment Act 1989](#) (no. 108). This amended s. 24E to remove the imposition of a fine to those found guilty of sedition summarily (by a magistrate) in addition to, or instead of, imprisonment. The maximum sentence would now be 12 months imprisonment. This was part of a programme to reform penalty provisions in the Crimes Act. [Second Reading speech](#).

1991 [Review of Commonwealth Criminal Law \(Gibbs Report\)](#). In its [Fifth interim report](#), the Review, chaired by Sir Harry Gibbs, recommended that sections 24-28 of the *Crimes Act 1914* be repealed and be replaced by 3 offences: incitement to overthrow the Constitution or the government; incitement to interfere by force or violence with Parliamentary elections; and inciting violence against national, racial or religious groups (new section 28(1)). A dissent in good faith section was also recommended (new section 28(2)). These recommendations were set out in chapter 32 and in a draft bill attached as Part VII, but lay dormant until 2005.

2001 [Law and Justice Legislation Amendment \(Application of Criminal Code\) Act 2001 \(no. 24\)](#). This repealed and substituted section 24C to effect the removal of the references in paragraphs 24C(a)-(c) to agreeing or undertaking to engage in a seditious enterprise, conspiring with any person to carry out a seditious enterprise and counselling, advising or attempting to procure the carrying out of a seditious enterprise. These matters were ancillary to the primary offence provided in section 24C, namely engaging in a seditious enterprise. Reliance would instead be placed upon the relevant general ancillary provision in the *Criminal Code*, namely sections 11.1 (attempt), 11.2 (aiding, abetting, counselling or procuring the commission of a primary offence) and 11.5 (conspiracy). [Second Reading speech](#).

The 2005 amendments

2005 [Anti-Terrorism Act \(No. 2\) 2005](#) (no. 144). This repealed most of the existing provisions on sedition in the Crimes Act and, in their place, inserted new provisions (sections 80.2-80.6) into the *Criminal Code*. This was done in accordance with Government policy to put major new offences into the *Criminal Code Act 1995* rather than in the Crimes Act. The Code is intended to incorporate old common law offences as well as new changes to the criminal law. The new provisions expanded the offence to include the behaviour of 'urging' and the element of recklessness. They commenced on Royal Assent on 28 December 2005. [Appendix B](#) shows the seditious provisions in the *Crimes Act* immediately before their repeal, while [Appendix C](#) shows the current provisions in the Criminal Code and the Crimes Act.

Although the new provisions were similar to those already existing, they received much critical comment from a variety of sources. The main criticisms fell into the following categories:

- Some thought the Government had created a new offence and were unaware of the existing provisions, which had been in force since 1920.
- Sedition was an archaic offence and should be repealed, not reinvented.
- Many of the provisions are covered by existing legislation (such as those dealing with incitement) or are more appropriate in other legislation (eg: vilification should be in human rights legislation).
- The Government could use the new provisions against its political enemies.
- The 'good faith' defence has been watered down.
- It is difficult to interpret and apply, especially for non-lawyers. For example, s. 80.2 refers to an organisation or country which 'is specified by Proclamation ... to be an enemy at war with the Commonwealth'.

As a result of these comments some amendments were made to the Bill, such as clarifying the role of the media when reporting or publishing comments. Further comment and analysis are provided in the Key Documents listed below:

Parliamentary documents

- [Text of Bill](#)
- [Explanatory Memorandum, Bills Digest and Parliamentary Debates](#)
- Senate Legal and Constitutional Legislation Committee, [Inquiry into the provisions of the Anti-Terrorism Bill \(No. 2\) 2005](#). See especially Submission 80F (from the Gilbert + Tobin Centre of Public Law) for sedition provisions.

Other comment

- Special issue of the [Human Rights Defender 2005](#) on the Anti-Terrorism Bill (No. 2) 2005. Contains three articles on sedition.
- B. Walker & P. Roney, [Memorandum of Advice \[to the ABC\] re: The Anti-Terrorism Bill 2005, & the proposed amendments to the laws of sedition, October 2005](#).
- P. Ruddock, "[Sedition laws won't curb the right to criticise Queen and country: Attorney-General Philip Ruddock argues that the anti-terrorism bill passed by the Senate this week has been misunderstood](#)", *Australian*, 8 December 2005, p. 17.
- M. Turnbull, "[Put sedition in the dustbins of history](#)", *Daily Telegraph*, 5 December 2005, p. 20.

Government review of sedition laws

When introducing the sedition law amendments on 3 November 2005, the Attorney-General [announced](#) that they would be reviewed by the Government in 2006. After [concerns](#) were raised that the review may not be fully independent and a recommendation (no. 28) from the [Senate Committee looking into the Bill](#) for a public inquiry, the Government [agreed](#) to the [Australian Law Reform Commission](#) (ALRC) conducting the review.

The terms of reference for the inquiry were [announced](#) on 2 March 2006. The Commission was asked to review the appropriateness and effectiveness of the amended sedition legislation and to report by 30 May 2006. The ALRC chair has written about the inquiry in [On Line Opinion](#). A detailed *Issues Paper* was published on 20 March and a *Discussion Paper* was published on 29 May. The report, *Fighting Words: A Review of Sedition Laws in Australia* (ALRC 104), was tabled in Parliament on 13 September and recommended several changes including removal of the word 'sedition' since it was seen as being archaic, but the Commission still supported the offence of urging violence against the government and community groups. All documents may be found on the [inquiry website](#).

Some submissions to the review have been published on the Internet:

- [Australian Lawyers for Human Rights](#)
- [Australian Press Council](#)
- [Australian Vice-Chancellors' Committee](#)
- [Executive Council of Australian Jewry](#)
- [Gilbert + Tobin Centre of Public Law \(UNSW\)](#)
- [Law Institute of Victoria](#)
- [National Association for the Visual Arts](#)
- [National Tertiary Education Union](#)
- [New South Wales Young Lawyers Human Rights Committee](#)
- [Sydney PEN](#)

Prosecutions for sedition

Commonwealth prosecutions for sedition were made mainly against members of the Communist Party of Australia (CPA). Some examples were:

- **Laurence Louis Sharkey**. General Secretary of the CPA, who said he would support a Soviet invasion in certain circumstances and might use force to allow workers to gain power. Sentenced, after appeal, to eighteen months imprisonment and hard labour. See [R v Sharkey](#) [1949] HCA 46; (1949) 79 CLR 121 (7 October 1949).

- **Gilbert Burns.** A CPA Member who publicly said that if there was war with the Soviet Union he would support the USSR. Sentenced to six months imprisonment. See [Burns v Ransley](#) [1949] HCA 45; (1949) 79 CLR 101 (7 October 1949).
- **William Fardon Burns.** The last successful prosecution for sedition under the Crimes Act appears to be that of William Fardon Burns, who was sentenced to six months jail in 1951 for writing seditious articles. (*Sweeny v Burns*, unreported, NSW Court of Petty Sessions, 1950)
- **Chandler, Ogston and Bone.** The last unsuccessful prosecutions under the Crimes Act, reported by Laurence Maher (1992, p. 288), were the cases of Herbert Bovyll Chandler, Adam Ogston and James Bone for publishing a seditious article about the monarchy in the June 1953 issue of the *Communist Review*. The magistrate dismissed the charges. (*Sweeny v Chandler*, *Sweeny v Ogston* and *Sweeny v Bone*, unreported, NSW Court of Petty Session, August - September 1953).
- **Brian Cooper.** After the W.F. Burns case, there appear to be no more successful prosecutions under the Crimes Act. However, the last federal prosecution and jailing for sedition was in 1960, when Department of Native Affairs officer Brian Cooper was prosecuted for urging 'the natives' of Papua New Guinea to demand independence from Australia. He was charged under the *Criminal Code* (Qld) which at the time extended to Papua New Guinea. He was convicted and sentenced to two months imprisonment with hard labour. He committed suicide four years after losing his appeal to the High Court (*Cooper v. The Queen* [1961] HCA 16; (1961) 105 CLR 177) in 1961.

There were no Commonwealth prosecutions for sedition during the Vietnam War era even though one commentator reports that seditious activity occurred (Douglas, [2004](#), p. 248).

In 2006, police ruled that books promoting suicide bombings and anti-Australian conspiracies can be sold in the Muslim community because they don't breach the new sedition laws. '[Muslim 'books of hate' get OK](#)', *Daily Telegraph*, 15 May, 2006, p. 1. In response, the Government at first considered stronger sedition laws: '[Sedition laws missing mark on hate books: Vaile](#)', *Age*, 17 May 2006, p. 10. It later referred the books for a review of their classification and asked for State and Territory opinion on the matter: '[Classification review to consider hate material](#)', Attorney-General's press release, 9 June 2006. The Classification Review Board banned two of the books ([Attorney-General's press release, 11 July 2006](#))

Further reading

- K. Baker, *Mutiny, terrorism, riots and murder: a history of sedition in Australia and New Zealand*, Rosenberg Publishing, Dural, NSW, 2006.
- M. Black, [Five approaches to reforming the law : 650 years of treason and sedition](#). ALRAC 2006 conference paper.
- P. Coleman, *Obscenity, Blasphemy, Sedition: Censorship in Australia*, Jacaranda Press, Brisbane, 1962. Chapter 5 discusses the Customs regulations relating to seditious publications. Call no. 363.310994 COL.
- R. Douglas, '[The Ambiguity of sedition: the trials of William Fardon Burns](#)', *Australian Journal of Legal History*, vol. 9, 2004, pp. 227-248.
- R. Douglas, '[Saving Australia from sedition: customs, the Attorney-General's Department and the administration of peacetime political censorship](#)', *Federal Law Review*, vol. 30, 2002, p. 135-175.
- R. Douglas, Law, '[War and liberty: the World War II subversion prosecutions](#)', *Melbourne University Law Review*, vol. 27, 2003, pp. 65-115.

- G. Griffith, [Sedition, Incitement and Vilification: Issues in the Current Debate](#), Briefing Paper no. 01/2006, NSW Parliamentary Library, Sydney, 2006. Written after the 2005 amendments, this is a thorough analysis of the new legislation.
- M. Head, 'Sedition, is the Star Chamber dead?', *Criminal Law Journal*, vol. 3, 1979, p. 89-107. Call no. S 345 CRI.
- L. Maher, '[Modernising the crime of sedition?](#)', *Labour History*, no. 90, May 2006, pp. 201-209.
- L. Maher, 'The Use and Abuse of Sedition', *Sydney Law Review*, vol. 14, 1992, pp. 287-316. Call no. S 340 SYD.
- L. Maher, 'Dissent, disloyalty and disaffection: Australia's last cold war sedition case', *Adelaide Law Review*, vol. 16, 1994, pp. 1-77. Call no. S 340 ADE.
- Review of Commonwealth Criminal Law (Australia), *Fifth interim report*, Parl. Paper 194, Canberra, 1991. Call no. 345.94 REV.
- Review of Commonwealth Criminal Law (Australia), *Offences relating to the Security and Defence of the Commonwealth* (Discussion Paper no. 8), The Review, Canberra, 1988. Call no. S 345.94 REV.
- [Review of Sedition Laws](#) (Issues Paper no. 30), Australian Law Reform Commission, Sydney, 2006. Call no. S 340.30994 AUS.
- R. Trembath, '[It's perfectly obvious that the Commonwealth is after this man.](#)' [The press and the prosecution of W. F. Burns for criminal sedition](#). Paper presented to the Australian Media Traditions Conference, Canberra, 24 November 2005.
- 'The Trial of John Macarthur', *Historical Records of New South Wales*, vol. VI, pp. 465-478.
- G. Williams, '[Speak up in defence of free speech](#)', *Sydney Morning Herald*, 30 May 2006.

Major websites

- [Caslon Analytics, Sedition and Terror Online](#). Brief factual overview of sedition law. Has some overseas information.
- [Wikipedia, Australian Sedition Law](#). An unauthored article which seems to rely on sources of variable reliability. Use with care!

Overseas sedition laws

It appears that many countries have such an offence, mainly in legislation but occasionally only at common law. In most democracies, sedition laws are rarely used, but in other countries they continue to be used to suppress the media and there have been several recent incidents of prosecutions.

The following legislation has been found, mainly from English speaking countries, with Internet links to the text, where available.

Country	Sedition law
Bangladesh	Criminal Code, articles 131-132
Belize	Criminal Code chapter 101 ss 213-217
Brunei	Sedition Act, chapter 24
Canada	Criminal Code s. 59
Fiji	Penal Code, Cap. 17, s. 65-66
India	Penal Code s. 124A

Ireland	Offences against the State Act 1939, ss. 11, 12, 26 ; Public Safety Act 1927, s.11
Kiribati	Penal Code, ch 67, Part IX
Malaysia	Sedition Act 1948
Maldives	Penal Code
New Zealand	Crimes Act 1961, ss 80-85. First prosecution in 64 years in 2006 (against Tim Selwyn).
Nigeria	Criminal Code Act s. 51
Pakistan	Penal Code s. 124A
Papua New Guinea	Criminal Code 1974, ss 44-46
Philippines	Revised Penal Code, articles 139-142
Sierra Leone	Public Order Act 1965, ss 33-37
Singapore	Sedition Act 1964
Solomon Islands	Sedition Act 1940
Sudan	Criminal Code, articles 66-69; Press Law, article 25
Taiwan	Criminal Code, article 100
Tonga	Criminal Offences Act ch. 18, ss 47-48
Trinidad and Tobago	Sedition Act
Tuvalu	Penal Code, ch 8, Part IX
Uganda	Sections 41, 42 and 50 of the Penal Code Act Sections 39, 40, 42, 43 and 179 of the Penal Code Act (Chapter 120 of the revised Laws of Uganda)
United Kingdom	There is probably no offence properly described as 'sedition' in English law, but - (1) the oral or written publication of words with a seditious intention, and (2) an agreement to further a seditious intention by doing any act, have always been common law offences. Source: Law Commission, Codification of the Criminal Law: Treason, Sedition and Allied Offences (Working Paper 72), 1978.
United States	Smith Act of 1940 (18 U.S. Code § 2384-5)

This publication also provides background on sedition laws in some countries:

ARTICLE 19, [Global Campaign for Free Expression. Memorandum on the Malaysian Sedition Act 1948](#). London, July 2003.

Appendix A: Sedition law as at 1920

Crimes Act 1914, Sections 24A-24E as added in 1920.

24A (1) Subject to sub-section (2) of this section an intention to effect any of the following purposes, that is to say

- (a) to bring the Sovereign into hatred or contempt;
- (b) to excite disaffection against the Sovereign or the Government or Constitution of the United Kingdom or against either House of the Parliament of the United Kingdom;
- (c) to excite disaffection against the Government or Constitution of any of the Queen's dominions;
- (d) to excite disaffection against the Government or Constitution of the Commonwealth or against either House of the Parliament of the Commonwealth;
- (e) to excite disaffection against the connexion of the King's dominions under the Crown;
- (f) to excite His 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; or
- (g) to promote feelings of ill-will and hostility between different classes of His Majesty's subjects so as to endanger the peace, order or good government of the Commonwealth,

is a seditious intention.

(2) It shall be lawful for any person

- (a) to endeavour in good faith to show that the Sovereign has been mistaken in any of her counsels;
- (b) to point out in good faith errors or defects in the Government or Constitution of the United Kingdom or any of the King's Dominions or of the Commonwealth as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects;
- (c) to excite in good faith His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the Commonwealth as by law established; or
- (d) to point out in good faith in order to their removal any matters which are producing or have a tendency to produce feelings of ill-will and hostility between different classes of His Majesty's subjects.

24B. (1) A seditious enterprise is an enterprise undertaken in order to carry out a seditious intention.

(2) Seditious words are words expressive of a seditious intention.

24C. Any person who-

- (a) engages in or agrees or undertakes to engage in, a seditious enterprise;
- (b) conspires with any person to carry out a seditious enterprise;
- (c) counsels, advises or attempts to procure the carrying out of a seditious enterprise,

shall be guilty of an indictable offence.

Penalty: Imprisonment for three years.

24D. (1) Any person who writes, prints, utters or publishes any seditious words shall be guilty of an indictable offence.

Penalty: Imprisonment for three years.

(2) A person cannot be convicted of any of the offences defined in this or the preceding section upon the uncorroborated testimony of one witness.

24E. (1) An offence under either of the last two preceding sections shall be punishable either on indictment or summarily, but shall not be prosecuted summarily without the consent of the Attorney-General.

(2) If any person who is prosecuted summarily in respect of an offence against either of the last two preceding sections, elects, immediately after pleading, to be tried upon indictment, the Court or Magistrate shall not proceed to summarily convict that person but may commit him for trial.

(3) The penalty for an offence under either of the last two preceding sections shall, where the offence is prosecuted upon indictment, be imprisonment for any period not exceeding three years, and, where the offence is prosecuted summarily, shall be imprisonment for a period not exceeding twelve months or a fine not exceeding One hundred pounds or both.

Appendix B: Sedition law as at November 2005

CRIMES ACT 1914 - SECT 24A

Definition of seditious intention

An intention to effect any of the following purposes, that is to say:

- (a) to bring the Sovereign into hatred or contempt;
- (d) to excite disaffection against the Government or Constitution of the Commonwealth or against either House of the Parliament of the Commonwealth;
- (f) 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; or
- (g) to promote feelings of ill-will and hostility between different classes of Her Majesty's subjects so as to endanger the peace, order or good government of the Commonwealth;

is a seditious intention.

CRIMES ACT 1914 - SECT 24B

Definition of seditious enterprise

(1) A seditious enterprise is an enterprise undertaken in order to carry out a seditious intention.

(2) Seditious words are words expressive of a seditious intention.

CRIMES ACT 1914 - SECT 24C

Seditious enterprises

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 3 years.

CRIMES ACT 1914 - SECT 24D

Seditious words

(1) Any person who, with the intention of causing violence or creating public disorder or a public disturbance, writes, prints, utters or publishes any seditious words shall be guilty of an indictable offence.

Penalty: Imprisonment for 3 years.

(2) A person cannot be convicted of any of the offences defined in section 24C or this section upon the uncorroborated testimony of one witness.

CRIMES ACT 1914 - SECT 24E

Punishment of offences

(1) An offence under section 24C or 24D shall be punishable either on indictment or summarily, but shall not be prosecuted summarily without the consent of the Attorney-General.

(2) If any person who is prosecuted summarily in respect of an offence against section 24C or 24D, elects, immediately after pleading, to be tried upon indictment, the court or magistrate shall not proceed to summarily convict that person but may commit him for trial.

(3) The penalty for an offence against section 24C or 24D shall, where the offence is prosecuted summarily, be imprisonment for a period not exceeding 12 months.

CRIMES ACT 1914 - SECT 24F

Certain acts done in good faith not unlawful

(1) Nothing in the preceding provisions of this Part makes it unlawful for a person:

- (a) to endeavour in good faith to show that the Sovereign, the Governor-General, the Governor of a State, the Administrator of a Territory, or the advisers of any of them, or the persons responsible for the government of another country, has or have been, or is or are, mistaken in any of his or their counsels, policies or actions;
- (b) to point out in good faith errors or defects in the government, the constitution, the legislation or the administration of justice of or in the Commonwealth, a State, a Territory or another country, with a view to the reformation of those errors or defects;
- (c) to excite in good faith another person to attempt to procure by lawful means the alteration of any matter established by law in the Commonwealth, a State, a Territory or another country;
- (d) to point out in good faith, in order to bring about their removal, any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different classes of persons; or
- (e) to do anything in good faith in connexion with an industrial dispute or an industrial matter.

(2) For the purpose of subsection (1), an act or thing done:

- (a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth;
- (b) with intent to assist an enemy:
 - (i) at war with the Commonwealth; and
 - (ii) specified by proclamation made for the purpose of paragraph 80.1(1)(e) of the Criminal Code to be an enemy at war with the Commonwealth;
- (ba) with intent to assist:
 - (i) another country; or
 - (ii) an organisation (within the meaning of section 100.1 of the Criminal Code);

that is engaged in armed hostilities against the Australian Defence Force;
(c) with intent to assist a proclaimed enemy, as defined by subsection 24AA(4) of this Act, of a proclaimed country as so defined;
(d) with intent to assist persons specified in paragraphs 24AA(2)(a) and (b) of this Act;
or
(e) with the intention of causing violence or creating public disorder or a public disturbance;

is not an act or thing done in good faith.

CRIMES ACT 1914 - SECT 30A

Unlawful associations

(1) The following are hereby declared to be unlawful associations, namely:

(a) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages:
(i) the overthrow of the Constitution of the Commonwealth by revolution or sabotage;
(ii) the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of organized government; or
(iii) the destruction or injury of property of the Commonwealth or of property used in trade or commerce with other countries or among the States;
or which is, or purports to be, affiliated with any organization which advocates or encourages any of the doctrines or practices specified in this paragraph;
(b) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention as defined in section 24A.

Appendix C: Sedition law as at January 2006

Criminal Code Act 1995

80.2 Sedition

Urging the overthrow of the Constitution or Government

(1) A person commits an offence if the person urges another person to overthrow by force or violence:

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

Penalty: Imprisonment for 7 years.

(2) Recklessness applies to the element of the offence under subsection (1) that it is:

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

that the first-mentioned person urges the other person to overthrow.

Urging interference in Parliamentary elections

(3) 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.

Penalty: Imprisonment for 7 years.

(4) Recklessness applies to the element of the offence under subsection (3) that it is lawful processes for an election of a member or members of a House of the Parliament that the first-mentioned person urges the other person to interfere with.

Urging violence within the community

(5) 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 (as so distinguished); and
- (b) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

(6) Recklessness applies to the element of the offence under subsection (5) that it is a group or groups that are distinguished by race, religion, nationality or political opinion that the first-mentioned person urges the other person to use force or violence against.

Urging a person to assist the enemy

(7) 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 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 made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth.

Penalty: Imprisonment for 7 years.

Urging a person to assist those engaged in armed hostilities

(8) 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 an organisation or country; and
- (c) the organisation or country is engaged in armed hostilities against the Australian Defence Force.

Penalty: Imprisonment for 7 years.

Defence

(9) Subsections (7) and (8) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (9). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

80.3 Defence for acts done in good faith

(1) Sections 80.1 and 80.2 do not apply to a person who:

(a) tries in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions:

- (i) the Sovereign;
- (ii) the Governor-General;
- (iii) the Governor of a State;
- (iv) the Administrator of a Territory;
- (v) an adviser of any of the above;
- (vi) a person responsible for the government of another country; or

(b) points out in good faith errors or defects in the following, with a view to reforming those errors or defects:

- (i) the Government of the Commonwealth, a State or a Territory;
- (ii) the Constitution;
- (iii) legislation of the Commonwealth, a State, a Territory or another country;
- (iv) the administration of justice of or in the Commonwealth, a State, a Territory or another country; or

(c) urges 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; or

(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or

(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or

(f) publishes in good faith a report or commentary about a matter of public interest.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

(2) In considering a defence under subsection (1), the Court may have regard to any relevant matter, including whether the acts were done:

(a) for a purpose intended to be prejudicial to the safety or defence of the Commonwealth; or

(b) with the intention of assisting an enemy:

(i) at war with the Commonwealth; and
(ii) specified by Proclamation made for the purpose of paragraph 80.1(1)(e) to be an enemy at war with the Commonwealth; or

(c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Australian Defence Force; or
(d) with the intention of assisting a proclaimed enemy of a proclaimed country (within the meaning of subsection 24AA(4) of the Crimes Act 1914); or
(e) with the intention of assisting persons specified in paragraphs 24AA(2)(a) and (b) of the Crimes Act 1914; or
(f) with the intention of causing violence or creating public disorder or a public disturbance.

80.4 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

80.5 Attorney-General's consent required

(1) Proceedings for an offence against this Division must not be commenced without the Attorney-General's written consent.

(2) Despite subsection (1):

(a) a person may be arrested for an offence against this Division; or
(b) a warrant for the arrest of a person for such an offence may be issued and executed; and the person may be charged, and may be remanded in custody or on bail, but:
(c) no further proceedings may be taken until that consent has been obtained; and
(d) the person must be discharged if proceedings are not continued within a reasonable time.

80.6 Division not intended to exclude State or Territory law

It is the intention of the Parliament that this Division is not to apply to the exclusion of a law of a State or a Territory to the extent that the law is capable of operating concurrently with this Division.

Crimes Act 1914

30A Unlawful associations

(1) The following are hereby declared to be unlawful associations, namely:

(a) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages:

(i) the overthrow of the Constitution of the Commonwealth by revolution or sabotage;
(ii) the overthrow by force or violence of the established government of the Commonwealth or of a State or of any other civilized country or of organized government; or
(iii) the destruction or injury of property of the Commonwealth or of property used in trade or commerce with other countries or among the States;

or which is, or purports to be, affiliated with any organization which advocates or encourages any of the doctrines or practices specified in this paragraph;

(b) any body of persons, incorporated or unincorporated, which by its constitution or propaganda or otherwise advocates or encourages the doing of any act having or purporting to have as an object the carrying out of a seditious intention (see subsection (3)). ...

(3) In this section:

seditious intention means an intention to use force or violence to effect any of the following purposes:

(a) to bring the Sovereign into hatred or contempt;
(b) to urge disaffection against the following:

(i) the Constitution;
(ii) the Government of the Commonwealth;
(iii) either House of the Parliament;

(c) to urge another person to attempt to procure a change, otherwise than by lawful means, to any matter established by law of the Commonwealth;
(d) to promote feelings of ill-will or hostility between different groups so as to threaten the peace, order and good government of the Commonwealth.

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