



# Overview of proposed changes to Australia's sedition laws

## How do the sedition laws currently operate?

The sedition laws in the Commonwealth Criminal Code make it an offence to **intentionally** urge the use of force or violence:

- to overthrow the Government or the Constitution
- to interfere with an election, or
- by one group in the community against another group in the community on the basis of race, religion, nationality or political opinion, where the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

It is also an offence to intentionally urge another person to assist an enemy who is at war with the Commonwealth or a country or organisation engaged in armed hostilities against the Australian Defence Force.

Proving a sedition offence always requires the prosecution to prove beyond reasonable doubt that a person intended to urge the use of force or violence. Even if that intent is proven, there is a defence for acts done in good faith.

## How do the sedition laws affect freedom of expression, for example, by media commentators, satirists, artists and activists?

The sedition offences are not designed to capture media commentators, satirists, artists, activists or other persons acting in good faith when reporting on or criticising the Government's policies.

For example, to commit an offence under the sedition provisions, an author or speaker must **intend** to urge the use of force or violence, or to urge a person to engage in conduct to assist an enemy. Merely publishing or broadcasting material without intentionally urging force or violence is **not** an offence.

## Why is the Government amending the sedition laws?

The Government is amending the sedition offences to implement the recommendations made by the Review of Sedition Laws in Australia by the Australian Law Reform Commission (July 2006).

## Will the amendments limit freedom of expression?

The proposed amendments will not impose any further limits on freedom of expression. On the contrary, the amendments provide important clarification to the operation of the urging violence offences to ensure that legitimate expression is not captured by these offences.

## What do these amendments do?

The proposed amendments make the following changes to the sedition laws:

### **Change the name of the offences from ‘Sedition’ to ‘Urging violence’**

The title of the offences will be changed from ‘Sedition’ to ‘Urging violence’. The offence of ‘sedition’ has always dealt with urging violence against Australia’s community groups and institutions of Government. The change of name provides a plain English explanation of this offence.

### **Clarify intention to urge the use of force or violence**

The amendments will make it clear that, in order to commit an offence of urging violence, a person must **intentionally** urge the use of force or violence. This does not amend the offence, but simply clarifies that the urging of force or violence must be intentional.

### **Include an additional requirement: intention that the force or violence will occur**

As well as clarifying that a person must intend to urge the use of force or violence, the amendments will require that a person must **intend that the force or violence will occur**.

This provides an additional safeguard by requiring that the offence of urging violence will only be committed where a person:

- intends to urge the use of force or violence, and
- intends that the force or violence will actually occur.

### **Expand the offence of urging violence to interfere with elections to also cover interference with referenda**

The amendments will extend the offence of urging violence to interfere with elections so that it also applies to urging violence to interfere with a constitutional referendum.

### **Expand the ‘good faith’ defence**

The proposed amendments will also expand the ‘good faith’ defence in section 80.3. This will allow the court to have regard to any relevant matter in considering an urging violence offence, including whether the acts were done:

- in the development, performance, exhibition or distribution of an artistic work
- in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest, or
- in the dissemination of news or current affairs.

This will help to ensure that legitimate expression by persons such as journalists, artists, satirists and academics are not captured by the offences. These elements are addressed under the ‘good faith’ defence to avoid complicating the newly drafted urging violence offences.

### **Expand the offence of urging violence in the community**

The amendments will expand the offence of urging violence in the community by:

- adding 'national origin' to the list of distinguishing features for the purpose of the urging community violence offence, and
- expanding the offence to cover circumstances where a person urges another person (as distinct from a group) to use force or violence against a group or member of a group in the community.

### **Create a new offence of urging violence in the community generally**

The amendments will create a new offence of urging violence, based on race, religion, nationality, national origin or political opinion, even where the force or violence does not threaten the peace, order and good government of the Commonwealth. This will ensure that criminal sanctions apply to any urging of violence on the basis of race, religion, nationality, national origin or political opinion.

### **Repeal the offences of urging a person to assist an enemy at war with the Commonwealth or engaged in armed hostilities against the Australian Defence Force**

The amendments will repeal the offences of urging a person to assist an enemy at war with the Commonwealth or engaged in armed hostilities against the Australian Defence Force.

These offences are considered unnecessary, as other offences adequately capture action taken by a person to assist an enemy engaged in hostilities against Australia and the Australian Defence Force.

### **Repeal the requirement for the Attorney-General's consent**

The amendments will also repeal the requirement that the Attorney-General must give written consent before a person can be prosecuted for an urging violence offence. The decision to prosecute will remain with the Commonwealth Director of Public Prosecutions.



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