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Professor David Weisbrot
President
Australian Law Reform Commission
GPO Box 3708
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Dear Professor Weisbrot

Review of Sedition Laws: Discussion Paper

I refer to the recent meeting at your offices with you and your staff to discuss the Sedition Discussion Paper and thank you for that opportunity.

Unfortunately due to time and resource constraints we are unable to offer a detailed written submission to supplement our oral submissions. However, some brief comments are made in this letter.

On behalf of Australian Lawyers for Human Rights I would like to congratulate the Australian Law Reform Commission for not just a comprehensively researched and thought-through report but a reasonable and workable solution to the problems posed by the so-called sedition parts of the *Anti-Terrorism Act (No 2) 2005.*

ALHR supports the decision to remove s.80.2(7) and (8) in their entirety as they were provisions which ALHR was most concerned violated human rights in the sense that they allowed for national security concerns to disproportionately overwhelm the right to free speech.

We are, however, concerned at the removal of the defence in s.80.3 and its replacement with the list of matters to be taken into account by the trier of fact when determining intention. You have mentioned at par 5.42 that a matter cannot be prescribed by law in Article 19(3) of the ICCPR unless it is done so with reasonable precision so that a person can adjust their conduct accordingly. The test as enunciated *Sunday Times v UK* (1979) 2 EHRR 245 is that the person

must be able to foresee, to a degree that ius reasonable in the circumstances the consequences that a given action may entail. We cannot see that the current draft of s.80.2(8) fits this requirement when the factors set out there are merely to be taken into account. It is ALHR's submission that to meet the requirement in Art 19(3) with respect to precision the section should be amended as follows:

> *"A person does not intend that the urged force or violence will occur if the conduct was done …"*

Any concerns about persons using such factors in a sham manner so as to disguise illegal conduct may be ameliorated by the inclusion of the qualifier "genuine" with respect to the types of conduct set out at s.80.2(8)(a) to (d).

ALHR welcomes the inclusion at s.80.2(7) of a requirement that the relevant person must intend that the force or violence urged will occur. However, the other elements or Principle 6 of the Johannesburg Principles should be included such as the imminency of such violence, and the likelihood that the urging will incite such violence. The third requirement that there be a direct and immediate connection between the urging and the likelihood or occurrence of such violence is likely to be a necessary causal component encapsulated already in the second part of Principle 6.

Allocation of s.80.2(5) to a separate section and remove it from s.80.2 so that there is no confusion with terrorism and political liberty issues.

We also suggest that the definition of "material" after s 80.1(1)(f) should be elevated to a definition rather than a note. Further, while we support the use of the qualifier "material" we would be more comfortable if material meant "substantially material" or "significantly material" so that trivial material assistance is not caught by the provision. This issue is relevant to the question of whether the provision might disproportionately encroach upon the rights guaranteed by Article 19(2).

Thank you once again for the opportunity to respond and our apologies for making this submission one day late.

Yours sincerely,

by email

Simeon Beckett
President