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By Email: sentencing@alrc.gov.au

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Sir,

Review of Sedition Laws – submission in response to Issues Paper 30, March 2006

We are writing to you on behalf of Free TV Australia in response to the Australian Law Reform Commission's Issues Paper 30. Free TV provides this submission on behalf of all 48 metropolitan and regional commercial television broadcasters.

As you will be aware, we previously provided a submission to the Senate Legal and Constitutional Committee on 11 November 2005. That submission set out at length our concerns that the legislation as drafted at that time went further than was desirable in relation to the media's activities of news gathering and reporting. We do not intend to repeat those arguments in this submission.

The purpose of this letter, as discussed in our meeting with Professor David Weisbrot and ALRC staff on 28 March 2006, is to provide suggested drafting for a media exemption from the operation of the sedition provisions of the *Anti Terrorism Act 2005*.

We remain concerned that the use of the word "*urging*" in the sedition section of the Act may unintentionally catch news reporting activities. We are concerned that there is a real risk that a published comment, an interview, an editorial opinion, a feature film or a documentary, which by reason of the subject matter, content and tone, might be regarded as "*urging*" within the meaning of the section. For example a published opinion that a victory against the "*Coalition of the willing*" in Iraq would be a good thing, or that Australians should expect a terrorist attack if the Commonwealth continues to support the Iraq war, may be caught by the section because they might be seen to support or lend sympathy to claims made by terrorist leaders about what they are seeking to achieve, or the just nature of their cause,.

We understand that it was not the intention of the Parliament to catch such activities. This was further confirmed in our 28 March 2006 meeting with Professor Weisbrot where we suggested that a properly worded exemption (along the lines of the publisher's defence in the *Trade Practices Act*, and similar provisions in the *Privacy Act* and the *Copyright Act*) was necessary.

Proposed exemption

We are of the firm view that the ALRC should recommend that the Act be amended to clarify that offence provisions are neither intended nor designed to prevent journalists from reporting, or to restrict the free flow of opinion in the media. We propose a media-specific exception which provides that any act or omission in the course or, for the purposes of, or associated or in connection with the reporting or publication of news or current affairs, opinion, comment or artistic expression does not amount to, and is not capable of evidencing, a seditious intent for the

purposes of the *Crimes Act* section 30A or of amounting to a breach, or conspiracy to breach, any of the offence provisions in section 80.1 of the *Anti Terrorism Act 2005*.

Our proposed media exemption is as follows:

ANTI TERRORISM ACT 2005 - SECT 80A

Application of provisions of Division to prescribed information providers

- (1) *Nothing in sections 80.1 and 80.2 of this Act or section 30A(3) of the Crimes Act applies to a prescribed publication of matter by a prescribed information provider;*
- (2) *For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:*
 - (a) *in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information, or in the course of, for the purposes of, associated with or in connection with the reporting or publication of news or current affairs, opinion, comment or artistic expression publication of ; or*
 - (b) *in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of prescribed information provider in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.*
- (3) *In this section:*

“prescribed information provider” means a person who carries on a business, trade, profession or calling of providing information, or reporting or publishing news or current affairs, opinion, comment or works of artistic expression, and without limiting the generality of the foregoing, includes:

 - (a) *the holder of a licence granted under the Broadcasting Services Act 1992; and*
 - (b) *a person who is the provider of a broadcasting service under a class licence under that Act; and*
 - (c) *the holder of a licence continued in force by subsection 5(1) of the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992 ; and*
 - (d) *the Australian Broadcasting Corporation; and*
 - (e) *the Special Broadcasting Service Corporation.*

Please contact Alina Bain, Director Legal & Broadcasting Policy, Free TV Australia, on (02) 8968 7100, if you would like to discuss this submission.

Yours sincerely



JULIE FLYNN
Chief Executive Officer