

Submission to the

**Australian Law Reform Commission**

Review of Commonwealth Laws for Consistency  
with Traditional Rights, Freedoms and Privileges

**Traditional Rights and Freedoms —  
Encroachments by Commonwealth  
Laws (IP 46)**

**Pirate Party Australia**

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27 February 2015

# 1 Introduction

## 2 Responses to questions

**Question 2-1** What general principles or criteria should be applied to help determine whether a law that interferes with freedom of speech is justified?

A law that interferes with freedom of speech may be justified if it prohibits:

- explicit incitement to commit crimes against a person or property, or
- unfounded and damaging attacks on a person's reputation, or
- deliberate dissemination of misinformation calculated to cause harm, or
- misleading information relating to a product's fitness for purpose, or
- publication of the details of specific ongoing law enforcement and intelligence operations, excluding details relating only to operational capacity, or
- intentional attempts to cause a person to experience an immediate apprehension of physical harm.

**Question 3-1** What general principles or criteria should be applied to help determine whether a law that interferes with freedom of religion is justified?

A law that interferes with freedom of religion may be justified when the exercise of a person's religion involves the commission or explicit incitement of crimes against a person or property.

A law that interferes with freedom *from* religion may not be justified if it grants public benefits such as tax concessions or subsidies to religious institutions that do not perform demonstrable charitable work.

**Question 4-1** What general principles or criteria should be applied to help determine whether a law that interferes with freedom of association is justified?

A law that interferes with freedom of association may be justified where:

- its intention is to prevent the commission of a crime, and
- it only applies where there is reasonable belief that a person's purpose for association is the commission of a crime, and
- in order to convict a person it must be demonstrated that their reason for association was the commission of a crime, and
- its effect is not to alienate a person from society or interfere with the exercise of democratic rights.

**Question 5-1** What general principles or criteria should be applied to help determine whether a law that interferes with freedom of movement is justified?

A law that interferes with freedom of movement may be justified where it regulates the ingress and egress of persons between jurisdictions in an orderly and efficient manner and:

- is necessary to monitor the movement of criminal suspects, or
- prevents the ingress and egress of persons reasonably suspected of doing so for the purposes of committing a crime.

A law that interferes with freedom of movement is not justified if it presumes a person's ingress to or egress from a jurisdiction is for the purposes of committing a crime.

**Question 7-1** What general principles or criteria should be applied to help determine whether a law that retrospectively changes legal rights and obligations is justified?

A law that retrospectively changes legal rights and obligations cannot be justified unless it does not unreasonably cause immediate disadvantage to affected individuals and entities.

**Question 8-1** What general principles or criteria should be applied to help determine whether a law that limits the right to a fair trial is justified?

**Question 9-1** What general principles or criteria should be applied to help determine whether a law that reverses or shifts the burden of proof is justified?

There are no circumstances in which a law that reverses or shifts the burden of proof is justified.

**Question 10-1** What general principles or criteria should be applied to help determine whether a law that excludes the privilege against self-incrimination is justified?

There are no circumstances in which a law that excludes the privilege against self-incrimination is justified.

**Question 14-1** What general principles or criteria should be applied to help determine whether a law that denies procedural fairness is justified?

There are no circumstances in which a law that denies procedural fairness is justified.

**Question 18-1** What general principles or criteria should be applied to help determine whether a law that restricts access to judicial review is justified?

There are no circumstances in which a law that restricts access to judicial review is justified.