



29 May, 2007

Attn: Kerri-Ann Smith
Classification Review
Classification Policy Branch
Australian Attorney-General's Department
Robert Garran Offices
2-4 National Circuit
BARTON ACT 2600

By Email: classificationreview@ag.gov.au

Dear Madam

**MATERIAL THAT ADVOCATES TERRORIST ACTS – DISCUSSION PAPER
1 MAY 2007**

Thank you for the opportunity to comment on the *Material that Advocates Terrorist Acts – Discussion Paper (Discussion Paper)*. Please note that the Arts Law Centre of Australia (**Arts Law**) also supports the submission made by the Australia Society of Authors (ASA).

About the Arts Law Centre of Australia

Arts Law was established in 1983 and is the national community legal centre for the arts.

Arts Law provides legal advice, publications, education and advocacy services each year to over 2500 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients

Our clients not only reside in metropolitan centres, but also contact us from regional, rural and remote parts of Australia, and from all Australian states and territories. Our client base is multi-cultural, and both Indigenous & non-Indigenous.

Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

The comments that we make in this submission are informed by our clients' profile, which is that they are:

- new, emerging artists or established arts practitioners or arts organisations;
- creators of their own material and users of other artist's work;

- operating arts businesses;
- operating in all arts sectors;
- working in both traditional and digital media;
- on low incomes/ with limited funds;
- needing to be self-reliant in business;
- limited in their ability to enforce rights;
- eager for accessible legal information, although they typically have limited legal education; and
- at least professionally, legally compliant.

In response to the Discussion Paper

Arts Law is concerned that the proposed amendments to the national Classification Code (**Code**) and the Classification guidelines (**Guidelines**) to ensure that material advocating terrorist acts is refused classification, will have a disproportionate impact on artists and freedom of expression in Australia.

Arts Law is not aware of any concern in the arts community in response to material advocating terrorism being made available in Australia. In contrast, Arts Law is aware of arts practitioners who are concerned that they are committing an offence or that their work may be censored or banned because it explores issues such as terrorism and war. There is a concern in the Australian arts community that the proposed amendments to the Code and Guidelines, coupled with the introduction of sedition laws, creates a chilling effect and an environment in which artists and arts organisations feel they have no freedom to explore and debate ideas through their work.

Examples include multi-media works that explore the potential impact of terrorism in a city such as Sydney and the creation of a culture of fear; screenplays that contain characters who advocate terrorism; and novels that debate the response of the Australian government to potential terrorism in Australia. Artists producing works of this nature have contacted Arts Law for advice and have expressed concern that the Australian artistic environment is one in which they can no longer express themselves freely.

Amending the Code and guidelines

Arts law submits that the current code and guidelines are sufficient and give effect to the broad principles that (as far as possible) adults should be able to read, hear and see what they like, that everyone should be protected from exposure to unsolicited material they find offensive, and the need to take account of community concerns that condone or incite violence.¹

Arts Law is concerned that by amending the code and adding a requirement that publications, films and computers games that "advocate terrorist acts" be refused classification adds additional subjective criteria to the classification of works. Moreover, unless artists "promote, incite or instruct in matters of crime or violence" their work should not be refused classification.

Elements "terrorist act" and "advocate"

As stated above Arts Law submits that there is no need for these terms to be placed in the Code or guidelines. However, if the Code and guidelines are amended to

¹ Clause 1, *National Classification Code (Cth)*.

include these terms then 'terrorist act' should include an exception for artistic expression thus reading:

*'terrorist act' means an action or threat of action that causes serious physical harm or death to a person, or endangers a person's life or involves serious risk to public health or safety, serious damage to property or serious interference with essential electronic systems. Such an action or threat of action must also be intended to advance a political ideological or religious cause and to coerce or influence by intimidation the public or a section of the public. However, it does not include **artistic expression**, advocacy, protest, dissent or industrial action which is not intended to cause serious harm, death, endangerment or life, or serious risk to the health or safety of the public.*

Further if these terms are adopted they should be placed in the guidelines.

Balancing freedom of speech

The Discussion Paper states:

Examples of material not intended to be captured by the provisions include investigative journalists' work, satirical pieces, or patriotic material that might appear to glorify war or battle. It is not intended that the proposal restrict film-makers or authors or publishers dealing with contentious subject matter in an entertaining, informative, educational, ironical or controversial way. This may include dealing with strong themes, having a shocking impact and presenting a story from alternative perspectives. The Board and Review Board are used to dealing with such material and giving appropriate classifications.

Arts Law is concerned that whilst the Discussion Paper recognises that "[f]reedom of speech is a valued part of Australian society", it does not recognise that the implied constitutional freedom of political communication underpins these values.² Further if the above examples are not intended to be captured by the provisions then this should be clearly stated in the guidelines. The proposed amendments in their current form do not provide adequate protection for freedom of speech.

Conclusion

We are prepared to expand on any aspect of this submission, verbally or in writing.

Yours faithfully

Arts Law Centre of Australia

² *Australian Capital Television v Commonwealth* (1992) 177 CLR 106 and *Nationwide News v Wills* (1992) 177 CLR 1.