



**Australian Government**

**Attorney-General's Department**

**Classification, Legal Services and  
Native Title Division**

07/6890

26 July 2007

Ms Jackie Morris  
Secretary  
Senate Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Ms Morris

I am writing in relation to matters I took on notice at the Committee's hearing into the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007* on 17 July in Sydney.

The Committee asked whether legal advice obtained in the drafting of the Bill could be provided. As the Committee is aware, it is not the usual practice to provide copies of legal advice.

The Committee also requested that I review the Hansard and consider whether there is anything further to add in relation to the differing views expressed about the effect of proposed paragraph 9A(2)(c). I have reviewed the Hansard and submissions put to the Committee.

The committee received submissions arguing that the result of the amendments proposed in the Bill would be to capture a much wider range of material than intended. The provisions do in fact set a very high hurdle for material to be refused classification. Proposed subsection 9A(3) in the Bill, was introduced to make it clear that material that could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire is not material that will be caught by these provisions. A publication, film or computer game does not advocate the doing of a terrorist act simply if it depicts or describes a terrorist act.

The evidence I gave to the committee included that the interaction of proposed subsection 9A(3) with section 11 of the *Classification (Publications, Films and Computer Games) Act 1995*, strike an appropriate balance between setting out clear standards and providing for decision-making discretion. The Classification Scheme, while it uses a 'reasonable adult(s)' test in some instances, does not apply that test in all cases. Neither the 'reasonable adults' test nor the 'reasonable adult' test applies to material which 'promotes, incites or instructs in matters of crime or violence'.

The committee heard concerns from the Classification Review Board regarding the ease of applying the proposed provisions. The proposed amendments provide a clear set of elements for the Classification Board and the Classification Review Board to consider when making decisions. I understand the Review Board regularly obtains legal advice in the course of considering review applications.

I do not think I can add anything further to my evidence. I understand that the Convenor of the Classification Review Board may have provided the Committee with a copy of her letter to the Attorney-General, and that the Attorney-General is providing the Committee of a copy of his response to the Convenor.

Yours sincerely

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