



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

07/13615, MC07/14184

Maureen Shelley
Convenor
Classification Review Board
Locked Bag 3
HAYMARKET NSW 1240

Dear Ms Shelley *Maureen*

Thank you for your letter dated 20 June 2007 in which you restated your concerns about the definition of 'advocate' in the proposal set out in the Discussion Paper released by my Department to amend the classification scheme to capture material that advocates the doing of a terrorist act. You suggest that the result of the amendments proposed in that Discussion Paper would be to capture a much wider range of material than intended.

As you are aware, Censorship Ministers agreed to the release of the Discussion Paper on proposed changes to the Code and guidelines, and its release was widely publicised. By the closing date, the Department had received 36 submissions from interested individuals and organisations. A range of bodies, including legal institutions and academics, literary organisations, religious groups of a variety of persuasions and civil libertarians, provided submissions.

I have considered the issues raised in the Classification Review Board's submission on the Discussion Paper. I have also considered the submission that you made to the Senate Committee on Legal and Constitutional Affairs and the evidence you have given to that Committee about the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007*.

I remain committed to changes to the National Classification Scheme to ensure that it deals adequately with material that advocates the doing of terrorist acts. After careful consideration of all of the submissions on the Discussion Paper, including that from the Classification Review Board, and of your letter, a policy decision was made that the definition of 'advocates' should not be changed and should reflect its meaning in the Criminal Code.

As you may be aware, it has been a long standing concern of Senate scrutiny committees that statutory language should, wherever possible, have the same meaning when used in different Acts of Parliament. Consistency is important across law.

I consider that the meaning of 'advocates' and of 'terrorist act' in the *Classification (Publications, Films and Computer Games) Act 1995* should be consistent with their meaning in the Criminal Code. The meaning of these terms was agreed to by all States and Territories through the Council of Australian Governments (COAG) in 2005 when considering anti-terrorism laws. It is appropriate here.

Instead of amending this definition, the proposal was modified so that the new provisions will operate effectively against unacceptable material but will not impinge on freedom of speech or mainstream popular culture.

Proposed subsection 9A(3) in the Bill clarifies that a publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.

This means that where material could be said to, for example, praise terrorist acts, but this could reasonably be considered to be done merely as entertainment, this is not material which should be classified as RC under this provision. Examples could include investigative journalists' work, historical analyses, material that might appear to glorify war or battle (including 'factional' or fictional accounts of war, insurgency or resistance), satirical pieces, and popular culture movies.

This provision was included to address the concerns which had been raised that, without clarifying this point, the definition of 'advocates' could inadvertently catch all material which praises a terrorist act. It is not the intention of the Government to do so.

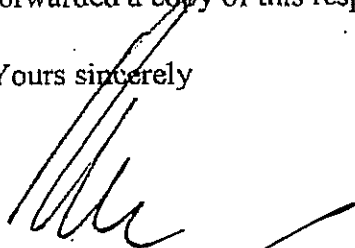
Striking the right balance is important. Freedom of expression is an important part of our society's values. However, there is another right which must be protected—the right to be protected from the pernicious influence of material that advocates that the naive and impressionable go out and commit terrorist acts against other human beings. It is the naive and impressionable that this material targets. So a test that relates to the risk of a reasonable adult being influenced to engage in terrorist acts would be ineffective in this context. In my view, such a test would be a poor policy response to the problem.

I am aware that in your evidence to the Committee you indicated that 'reasonable adults' are 'usually the class of persons whom we consider in the Classification Act as it stands'. You also indicated that there are two tests in the Act, 'reasonable adult' and 'reasonable adults'. I note that neither of these tests, which are contained in the Classification Code, applies to material which 'promotes, incites or instructs in matters of crime or violence'.

In your evidence to the Committee you referred to discussions in which the Review Board came to a view that it would necessarily classify all material which praises a terrorist act as RC. As a statutory decision making body which seeks to make high quality decisions, I anticipate that the Review Board will seek legal advice on the interaction of proposed subsection 9A(3) with the other new provisions as well as with existing provisions of the Act. I am confident that their interaction is such as to address the concerns you have expressed about the interpretation and application of proposed paragraph 9A(2)(c). However, I trust that you will inform me if your concerns persist after taking this step.

I understand that you have provided the Committee with a copy of your letter to me. I have forwarded a copy of this response to the Committee.

Yours sincerely



Philip Ruddock

26 JULY 2007