



AUSTRALIAN CATHOLIC UNIVERSITY

**Comment on the proposed National Classification Code pertaining to the refusal of classification
for material that advocates acts of terrorism**

I am entirely in support of the current intent of the Code to capture material that advocates terrorist acts. The addition of the phrase "advocate terrorist acts" usefully clarifies this intent in the proposed amendments to the Code that have been suggested in the discussion paper, using this phrase.

However, I believe that inclusion of the paper's other (highlighted) explanatory material in the "RC – Refused Classification" and "Glossary of Terms" sections clouds the intent rather than helps to clarify it. The judgments of Review Boards in their attempts to apply the Code in as objective a manner as possible is not serviced well by the additional material. In the final run, a judgment is subjective not objective but the principles of the Code need to be able to be implemented in a transparent way as reflected by the instructions of the Code itself. The suggested amendments do not make this possible: It is too subjective to talk of "risk that such praise might lead to" or "threat of action, intended to advise a political, ideological or religious cause." There is always an element of subjectivity in the applications of the Code, but the degree of subjectivity permissible in application of the new text is a major problem. It widens the element of subjectivity excessively and fails to provide respect for the principles of the Code itself. What defines a risk? What characterizes "praise" that is not permissible? And what does "might," mean in terms of an action's probability? What constitutes a threat? And how is "intent" to be defined in relation to "threat?" Inclusion of such text in both the RC and Glossary sections of the Code involves judgments that could reasonably be interpreted as political censorship that is counter to the original intent of the Code. The expected implementation of these phrases is too problematic and exposes the Commonwealth to the criticism that future decisions will be contrary to the important principle of respecting the right to be able to read, hear or see what persons want. Further, the amended text in these ways appears to show scant recognition for the need to genuinely permit "advocacy, protest and dissent which is not intended to cause serious harm... or serious risk to the health and safety of the public".

In summary, inclusion of the text "advocates terrorism acts", in my opinion is a useful addition that clarifies the intent of the Code. The terminology of the phrases I have highlighted exposes the Commonwealth, I believe, to the potential accusation of political censorship, especially through the degree of subjectivity now allowed that fails to respect the original intent of the Code.

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