



10 July, 2007

Attn: Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Sir/Madam

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)  
AMENDMENT (TERRORIST MATERIAL) BILL 2007**

Thank you for the opportunity to comment on the Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007 (**Bill**).

**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.

### **Amendments to the Act unnecessary**

Arts Law is concerned that the Bill is unnecessary and, if passed, will have a disproportionate impact on artists and freedom of expression in Australia.

Under the existing classification laws, publications, films or computer games must be classified RC (refused classification) if they “promote, incite or instruct in matters of crime or violence”.<sup>1</sup> Terrorist acts are criminal acts under the provisions set out in Part 5.3 of the Criminal Code. Classification decisions must also give effect to specific principles, including the principles that:

- everyone should be protected from exposure to unsolicited material that they find offensive;<sup>2</sup> and
- the need to take account of community concerns about depictions that condone or incite violence, particularly sexual violence.<sup>3</sup>

Arts Law is concerned that adding a requirement that a publication, film or computer game that “advocates the doing of a terrorist acts” be classified RC (refused classification) adds additional subjective criteria to the classification of works and that the current provisions are sufficient to prevent the publication of material that is offensive or promotes, incites or instructs in matters of terrorism.

### **Proposed section 9A(3) exceptions requires further drafting**

Arts Law does not support the Bill. If, however, the Committee recommends the Bill then Arts Law submits the Committee should recommend section 9A(3) be amended to clarify that artistic expressions do not constitute advocating of a terrorist act.

Arts Law submits that section 9A(3) should be amended as follows:

*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 as part of public discussion, debate, artistic expression, entertainment or satire.*

Arts Law is of the view that without the suggested amendment, section 9A(3) is insufficient to protect the breadth of artistic activity in Australia. Artists engage in artistic expression and create artistic works for a wide range of reasons. These reasons may include encouraging public discussion or debate or providing entertainment or satire, however the purposes and forms of expression can be broader than any of these terms. An environment in which artists cannot be confident in the legal status of their work and the legal rights and obligations relevant to such work has a chilling effect on creativity, leading to works not being created or, if created, not being publicly released.

<sup>1</sup> Item 1(c) of clauses 2, 3 and 4 of the *National Classification Code* (Cth).

<sup>2</sup> Clause 1(c) of the *National Classification Code* (Cth).

<sup>3</sup> Clause 1(d)(i) of the *National Classification Code* (Cth).

## **No intention to include artistic expression**

The Australian Attorney-General's Department noted that,

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.<sup>4</sup>

Arts Law is of the view that the current drafting of proposed section 9A(3) is too narrow to achieve the intention of the Attorney-General's Department. Moreover, Arts Law is concerned that the Bill does not recognise the implied constitutional freedom of political communication.<sup>5</sup> The proposed amendments in their current form do not provide adequate protection for freedom of speech.

## **Concerns of art practitioners**

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 Bill, 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. Whilst some works would fall in the exceptions set out in section 9A in its current form there would be instances in which the artistic work could not easily be classified as constituting "public discussion or debate" or "entertainment or satire". For these reasons Arts Law submits that the Bill is unnecessary and in its current form is likely to impair artistic expression and 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

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<sup>4</sup> Page 6 of the *Material that Advocates Terrorist Acts Discussion Paper* (2007) prepared by the Australian Attorney-General's Department.

<sup>5</sup> *Australian Capital Television v Commonwealth* (1992) 177 CLR 106 and *Nationwide News v Wills* (1992) 177 CLR 1.