

Submission

on the

Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007

to the

Senate Legal and Constitutional Affairs Committee

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20 July 2007

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1. Introduction

Currently there is too much uncertainty around whether the existing classification laws adequately prevent the circulation of material which advocates the doing of terrorist acts.¹ The Bill would amend the Classification (Publications, Films and Computer Games) Act 1995 to ensure that this material will be refused classification.

The Bill was introduced into the House of Representatives on 21 June 2007 and referred by the senate to the Legal and Constitutional Affairs Committee for inquiry. The Committee is due to report to the Senate by 30 July 2007.

2. Changing the Act or the Code and guidelines?

The classification scheme is a co-operative scheme between the Commonwealth, States and Territories and changes to the National Classification Code and the classification guidelines need approval by the Standing Committee of Censorship Ministers. In his second reading speech, the Attorney-General, Mr Ruddock, outlines the steps he has taken to gain agreement for changes to the Code and guidelines that would have the same effect as this Bill, which is ensuring that material that advocates terrorist acts is refused classification. Mr Ruddock goes on to explain that he has introduced the Bill as an alternative means of securing the same result by unilateral Commonwealth action in the event of a failure by the States and Territories to reach a timely agreement on changes to the Code and guidelines. He states that the Government does not intend to proceed with the Bill if a timely agreement with the States and Territories on changes to the Code and guidelines can be achieved.

There are strong national security reasons to do everything reasonable to limit the likelihood of terrorist acts being committed in Australia, or by Australians overseas. Prohibiting the publication and distribution of material that advocates terrorist acts is a reasonable measure that could contribute to this national security goal. “The primary heads of constitutional power which could support Commonwealth anti-terrorist legislation”, including legislation preventing the publication of material which advocates terrorist acts “are the defence power; external affairs power, incidental power, executive power and the implied nationhood power.”²

If the Attorney-General is ultimately able to get the agreement of the States and Territories to amend the Code and guidelines to ensure that material that advocates terrorist acts is refused classification then it will be necessary to amend the National Classification Code to ensure that any change to the guidelines is read as binding on the Classification Board and the Classification Review Board.

One of the points being raised in a current challenge to a decision of the Classification Review Board by Adultshop Pty Ltd is that the guidelines are purely advisory and that items may be classified otherwise than as required by the guidelines in order to give effect to one or other principle in the National Classification Code.

To meet this problem, the following new section 1A could be added to the Code immediately after section 1.

“1A. To avoid doubt, these principles are not to be taken to permit a publication, film or computer game to be classified other than in accordance with any guidelines determined by the Minister in accordance with Section 12 of the Classification (Films, Publications and Computer Games) Act 1995.”

3. Advocating terrorist acts

The community has a clear interest in ensuring that material advocating terrorist acts is not available in Australia. This requires measures to prevent the publication and sale of such material within Australia; the prohibition of importing such material and an effective means to prevent access to such material stored electronically offshore but accessible via the Internet.

4. 'Hate' material

It is not appropriate to conflate 'hate' material with material that advocates terrorist acts.

Some vilification legislation imposes unacceptable limits on free speech because it lacks an adequate defence of truthfulness; it has a low threshold such as 'inciting severe ridicule'; and lacks adequate exemptions for public discussion of controversial matters.

The definitions in proposed new Section 9A of the Act adequately distinguish the advocacy of terrorist acts from 'hate' material.

5. Customs Regulations

The Customs (Prohibited Imports) Regulations 1956 and Customs (Prohibited Exports) Regulations 1958 should be amended to identify material that advocates terrorist acts as prohibited imports and exports. The definitions used in proposed new section 9A of the Act should be included in these regulations.

6. Broadcasting Services Act 1999

This Act provides for take-down orders for Internet content hosted in Australia that is or would be refused classification under the Classification (Publications, Films and Computer Games) Act 1995, the National Classification Code and guidelines.

The amendments introduced by the Bill will be applicable to these provisions.

However, this will not adequately protect the Australian community from material that advocates terrorist acts. Any such material hosted electronically outside Australia, but accessible through the Internet, will still be available from within Australia and may inspire terrorist acts within Australia.

It is time to take seriously the implications of a worldwide information and communication system – the Internet – for the Australian community.

Only a mandatory filtering system at either national or Internet Service Provider (ISP) level could adequately prevent people within Australia having ready access to material that advocates terrorist acts.

What is the point of prohibiting the import, publication, sale, distribution or hosting on an Australian website material that advocates terrorist acts when the same material may be readily available from offshore websites to anyone with a computer and a modem?

When the Classification Review Board recently refused classification to Dr Philip Nistchke's Peaceful Pill Handbook he simply made it available for download from Google Books.

Advocates of terrorism are often involved in international organizations. It is quite likely that any film or publication advocating terrorist acts which is refused classification in Australia or refused entry as a prohibited import will be made available from an overseas hosted website.

The Committee should recommend that the Government take the necessary steps for a mandatory filtering system at either national or ISP level which would allow the blocking of access to all offshore websites which host content which is material advocating terrorist acts.

7. Endnotes

¹ Hon Phillip Ruddock, Second Reading Speech, House of Representatives, 21 June 2007.

² Senate Legal and Constitutional Affairs Committee, Provisions of the Anti-Terrorist Bill (No.2) 2005, Section 2.36, p 12.