



Classification Review
Classification Policy Branch
Australian Attorney-General's Department
Robert Garran Offices
2-4 National Circuit
BARTON ACT 2600

Attention: Ms Kerri-Ann Smith
By e-mail: classificationreview@ag.gov.au

Dear Ms Smith,

Re: Submission in response to Discussion Paper on Material that Advocates Terrorist Acts

Thank you for the opportunity to provide submissions in response to the above Discussion Paper.

About AMCRAN

The Australian Muslim Civil Rights Advocacy Network (AMCRAN) is dedicated to preventing the erosion of the civil rights of all Australians, and, by drawing on the rich civil rights heritage of the Islamic faith, provides a Muslim perspective in the civil rights arena. It does this through political lobbying, contributions to legislative reform through submissions to government bodies, grassroots community education, and communication with and through the media. It actively collaborates with both Muslim and non-Muslim organisations to achieve its goals.

Since it was established in April 2004, AMCRAN has worked to raise community awareness about the anti-terrorism laws in a number of ways, including the production of a booklet *Terrorism Laws: ASIO, the Police and You*, which explains people's rights and responsibilities under these laws; the delivery of community education sessions; and active encouragement of public participation in the law making and review process.

Concerns

It is AMCRAN's view that the proposed amendments to the National Classification Code and the relevant guidelines should not be adopted for the following reasons.

1. **Broad definition of 'advocate' and 'terrorist act':** The Discussion Paper points out that the proposed amendments would only apply to material that "actually advocate[s] someone commit a terrorist act within the concept of the

expansive definition of ‘advocates’ ”. It states that the Board and the Review Board would need to decide that the act clearly fell within the definition of a “terrorist act” and that the material clearly “advocates” doing that act.

While couched as a safeguard, this does not alleviate concerns that the definitions of “terrorist act” and “advocate” as proposed to be adopted are overly broad. It is proposed that the term ‘advocate’ be defined as:

action that directly or indirectly counsels or urges doing a terrorist act; or directly or indirectly provides instruction on doing a terrorist act; or directly praises doing a terrorist act where there is a risk that such praise might lead a person (regardless of his or her age or any mental impairment) to engage in a terrorist act.

We submit that there is considerable uncertainty in the definition, and the reach of the provisions is likely to be broad. For example, “providing instruction on the doing of a terrorist act” and the term “urging the doing of a terrorist act” are unreasonably vague and could potentially cover a wide range of activities. The problem is further exacerbated by the inclusion of “indirectly” as a qualifier. It is particularly worrying that material may be refused classification because it *might* lead another person to engage in a terrorist act.

It is also a concern that the question of whether a communication *might* lead another to act is often a subjective matter, one which calls upon a person’s prejudices and political view points. As can be seen from the UK experience of the “glorification of terrorism” offence, statements made by Muslims will often be regarded as “glorification” or “praising” by virtue of their and their audience’s faith:¹

Already Muslim dissent against oppression overseas has been curtailed in a climate of fear and uncertainty. It is clear that should this offence make it into law that Muslims will be the first targets and this will include those who support legitimate liberation struggles as defined by international law be it in Palestine, Iraq, Chechnya or elsewhere in the world. They may even be prosecuted for espousing the same sentiments as the Prime Minister’s wife [who was accused of being a Palestinian suicide bomber sympathiser], or feting figure who are no more or less ‘terrorists’ than Nelson Mandela.²

The Federation of Community Legal Centres (Vic) Inc. in their submission to the Australian Law Reform Commission review of the sedition laws similarly argued that “the statements of Muslim community members may be perceived through the lens of the highly politicised concept of ‘extremism’ and as a

¹ Fahad Ansari, *Another Pyrrhic Victory: Are Muslims missing the bigger picture* (2006) Islamic Human Rights Commission, <<http://www.ihrc.org.uk/show.php?id=1685>> 23 May 2006.

² Massoud Shadjareh, Chair of Islamic Human Rights Commission, ‘UK Terrorism Bill - Who will be prosecuted for glorifying terror and why?’ (Press Release, 15 February 2006).

result assessed as ‘terrorist’ or seditious’”.³ Similar conclusions may be drawn in relation to the concept of “praising”, particularly where the “risk” threshold is not qualified.

2. **Likely increase in monitoring and surveillance of certain groups the community:** Should the amendments be allowed, increased monitoring and surveillance would be permitted in order to put into effect their operation. This will likely result in additional scrutiny of materials that may be published or distributed, by certain groups in the community. There is a concern, and the concern may not be ill-placed in view of the examples given in the Discussion Paper, that the increased monitoring and surveillance would be on the Muslim communities particularly. This would more likely than not cause further friction in community relations at a time when cooperation, trust and confidence should be of the utmost importance in our fight against terrorism.

The examples given in the Discussion Paper appear to present a rather dim view of calls based on ideological or religious duty. It is offensive to suggest that “the impressionable and vulnerable in the community” need to be protected from “material which encourages people to carry out acts of terrorism through techniques such as praising terrorist acts or issuing calls for action based on ideological or religious duty”. This appears to directly contradict the first principle of the National Classification Code, namely, that adults should be able to read, hear and see what they want.

3. **Problems with ‘directly praise’, ‘indirectly counsel’:** The Discussion Paper draws attention to two areas covered by the proposed amendments that are allegedly not currently covered by the classification criteria of “promoting, inciting or instructing in matters of crime or violence”. It raises two instances: directly praise, and indirectly counsel, and provides examples under each of these headings. For “indirectly counselling”, it states,

“ ... through its text, tone and context, the material may indirectly counsel, urge or provide instruction in how to commit a terrorist act. It may not be a dispassionate exposé of serious issues. It may through its text or tone indirectly urge or instruct the reader to commit a terrorist act by for example causing death or serious harm to sections of the community to advance a political, ideological or religious cause.”

However, the Discussion Paper does not go any further in explaining why the above materials, as repugnant and despicable as they may be, need to be refused classification. It is not sufficient to simply state that this type of material should be banned, but rather, compelling reasons need to be given in order for such infringement on freedom of speech to be justified.

As another example, consider an organisation that supports resistance to the occupation of Palestinian land, that supports the idea that Palestinians are entitled fight for an independent state, and that non-violent means for

³ Submission No. 33 to Australian Law Reform Commission, above n 45 (10 April 2006) (Federation of Community Legal Centres (Vic)).

achieving a just arrangement have failed. Would this be considered indirectly counselling of a terrorist act? Resistance actions of Palestinians, even against Israeli military targets, would arguably fall within the gamut of the definition of advocating terrorism.

This will have a particular effect on some Muslim community groups who may wish to express solidarity with Muslims who are under the thumb of either oppressive regimes or various kinds of occupying forces. This is particularly the case, as the definition of a terrorist act makes no distinction between legitimate liberation and independence movements and terrorism. Examples of such situation would include commentary on Palestinian oppression at the hands of Israeli occupiers; and groups calling, on the basis of things such as the torture in Abu Ghraib, that America and its allies be forced out of Iraq by any means necessary. It is our view that the above point of view, while unpalatable to some, should not be limited.

4. **Likely consequences of proposed amendments:** We are concerned that the proposed amendments would also damage the fight against terrorism through three effects. Firstly, by limiting certain ideas, it ironically gives the ideas a kind of *cachet* and credibility they would not otherwise have; it will be interpreted by those susceptible to extremism as suppression of an idea that is inherently the truth but that the government, in some sense, cannot combat by logic, but only through banning. Secondly, it will be interpreted in the community as a form of hypocrisy on the government's part: that other groups can discuss whatever they want, but that special rules apply one way or another to the Muslim community. Finally, it forces the ideas underground, in effect, rather than keeping them in the public where they can be seen, analysed and disassembled.
5. **No explanation or justification provided:** The Discussion Paper alludes to the existence of community concerns about the public availability of material that advocates the doing of terrorist acts. However, nowhere does the Discussion Paper elaborate on the nature and the extent of the community concern. The only reference that is made is in the context of the sensationalist reporting about "hate" materials, which the Discussion Paper then goes on to distinguish from the type of material that is intended to be covered by the proposed amendments in any case.

It is clear from its four guiding principles that the National Classification Code is concerned with protection from harmful, disturbing, and offensive materials, which necessarily depends on the particular community value at the particular time. The fourth guiding principle specifically requires that the community concerns be taken into account. In these circumstances, any changes to the National Classification Code must be justified by compelling evidence of community concern.

No clear justification has been given as to why the criteria are necessary to prevent ideologically or religiously motivated violence or to strengthen security given its likely impact on freedom of speech and legitimate debate. In

the absence of any such evidence of community concern, we do not believe that a case has been made for the proposed amendments.

6. **Matters currently before the Federal Court:** There are matters currently before the Federal Court over the interpretation of a certain “phrase” (which is not mentioned in the Discussion Paper). We submit that it would be more appropriate to wait for guidance from the Federal Court as to the scope of the Guidelines before any amendment is made.

For these reasons, we do not believe that sufficient reason has been provided to justify the proposed amendments which would no doubt have a significant effect on the civil liberties of all Australians, particularly that freedom, and indeed, the right, to free speech.

Should you require further information please do not hesitate to contact us.

Yours sincerely,

Agnes Chong
Co-convenor
Australian Muslim Civil Rights Advocacy Network