

Executive Council of Australian Jewry Inc.

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The Hon Philip Ruddock MP
Attorney General
By email: classificationreview@ag.gov.au

28 May 2007

We refer to the discussion paper concerning material that advocates terrorist acts issued 1 May 2007.

The Australian Jewish community welcomes the paper and its recognition that the Classification Code and guidelines need to be amended so that publications, films and computer games that advocate terrorist acts are refused classification.

Careful drafting needs to be undertaken to ensure that the right balance is struck between excluding material that seeks to undermine our nation and society, and preserving the value of free speech. There is however no untrammelled right of free speech. Advocacy of terrorism should not be seen as legitimate speech. And, as is the case with vilificatory speech, one person's exercise of the right of free speech ought not be permitted to intimidate another person into not exercising the same right.

Regrettably, and uniquely, the Australian Jewish community is recognised by Commonwealth and State authorities as being at a higher risk of a terrorist attack than other specific segments of Australian society. We also experience unacceptable and continuing high levels of antisemitic incidents including assaults on Jewish persons going to and from synagogue and vandalism of synagogues.

When Jihadist material that counsels, condones, encourages, sympathises with, encourages, praises or urges hatred or violence against Jewish people is disseminated, the risk to the Jewish community is increased even when no explicit call to a terrorist attack is included. The dissemination of such material ought to be entirely unacceptable to the Australian and State governments not just because of its extremist and racist nature but also because Jihadist antisemitic vilification is demonstrably connected with the growth of sympathy for terrorism. Appropriate amendments to the Classification Code can make a real and valued contribution to reducing the risk of both antisemitic and terrorist attacks. Such material should be excluded from classification or as a fallback position, be rated "R" at a minimum to ensure that it is not distributed to children.

We are in agreement with the thrust of the discussion paper and make some recommendations below that we submit will contribute to the effectiveness of the proposed changes.

Recommendation 1: Broaden the definition of terrorist act to include all terrorism offences under the criminal code.

The Classification Board currently is obliged to refuse classification to material that: "promotes, incites or instructs in matters of crime or violence". The obligation in our view already extends to all existing terrorism offences, but clarification of that is certainly in order.

The category of offences is broader than the single category of commission of a terrorist act. Terrorist acts cannot be viewed in isolation. In the context of an asymmetrical war on terror, terrorist acts constitute part of a pattern of conduct, not all of which is in itself violent, but which when considered in context are intended and serve to undermine our society and nation.

The necessary foundation already exists in the Commonwealth Criminal Code provisions. Cross-reference to them in the Classification Code is not a step recommended in the discussion paper, but one which we submit ought to be carefully considered and taken forward. For example:

- Material may be subject to classification which, within the meaning of section 101.4(1) of the Criminal Code is a thing that is "connected with preparation for a "terrorist act".
- Material may be subject to classification which is training material within the scope of section 101.2 of the Criminal Code. Such material will relate to preparing for or engaging a person who will assist in a terrorist act. An offence can occur even if a terrorist act does not occur; or the training is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or the training is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.
- Material can also provide support to a terrorist organisation. It can promote the financing of terrorism, an offence under §103.1.

It seems to us incongruous that the amendments proposed to the Classification Code would be narrower than the Criminal Code provisions. Taking such a narrow approach would open the door to classification and distribution of material which is criminal or seditious or both. In line with the structure of Australian antiterrorism legislation, the better course is for such material to be excluded, with the promoter or distributor of the material then having to exercise a right of review. The default provision should be that material which promotes a terrorism offence is excluded.

It is important that material which plays a role in the process that Whealy J described in *Regina v Lodhi* [2006] NSWSC 691 at [51] as "*the preparatory stages leading to the engagement in a terrorist act*" be captured by the amendments.

Finally, we agree that the examples given in the paper of praise for and counselling of terrorist behaviours are examples of material which should also be refused classification.

Recommendation 2: Broaden the scope of the operative verb: "to advocate" so that material which "counsels, condones, encourages, sympathises with, encourages, praises or urges" terrorism offences would be refused classification.

We recommend amending the definition of the term: "advocate". We urge that the words: "counsels or urges" be expanded to read: "counsels, condones, encourages, sympathises with, encourages, praises or urges". Material which reports a terrorist act and condones it even without explicit praise should be caught by the amendment. The same applies to material which provides encouragement without urging the commission of a terrorist act.

Recommendation 3: Acknowledge the connection between incitement to racist violence and terrorism.

Terrorism begins with the dissemination of hatred. The link between hatred and violence is self-evident. Whilst extreme forms of racial hatred are not criminal under the Commonwealth Racial Discrimination Act, it is important that this opportunity be taken to amend the Classification Code to require that such material be either banned or given the most restrictive rating possible. As things presently stand, extreme forms of racial hatred can be promulgated to children, as was the case with Sheikh Faiz Mohammed's "Death Series". Quite apart from the present review, in

relation to the classification granted to the "Death Series" we would urge the Attorney General to seek review of the decision under section 42 of the Classification (Publications, Films And Computer Games) Act 1995.

The fact that racial vilification is not a crime under Commonwealth law ought not to be a barrier. By way of comparison, the law relating to obscenity and indecency lacks a common law definition, but has the effect of restricting freedom of speech in relation to certain matters. A publication will be considered obscene or indecent if, following the common law standard, they are likely to cause offence to a reasonable adult person. *Crowe v Graham* (1968) 121 CLR 375 at 394, 399; see also: advocacy of unacceptable conduct such as drug taking: *John Calder (Publications) Ltd v Powell* [1965] 1 QB 509.

We therefore submit that even if material that counsels, condones, sympathises with, encourages, praises or urges violence against Jewish people is not excluded because it does not promote a terrorist act, such "race hate" material should be given the most restrictive rating possible, and the classification code should be amended to so provide.

Recommendation 4: Ensure that consequential enforcement provisions are enacted.

We assume that consequential amendments will be made to the Classification (Publications, Films and Computer Games) Enforcement Act 1995.

Yours faithfully

A handwritten signature in black ink, appearing to read 'GJ Leonard', with a long horizontal stroke extending to the right.

Grahame J. Leonard
President

Cc:
D.D. Knoll