

**SUBMISSION OF THE FEDERATION OF COMMUNITY
LEGAL CENTRES (VIC.) INC**

TO THE CLASSIFICATION REVIEW

**REGARDING PROPOSED AMENDMENTS TO THE
NATIONAL CLASSIFICATION CODE AND GUIDELINES
RELATING TO MATERIAL THAT ADVOCATES
TERRORIST ACTS**



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This submission was prepared by Marika Dias of the Anti-Terrorism Laws Working Group on behalf of the Federation of Community Legal Centres (Vic).

Inquiries to Sarah Nicholson, Policy Officer, Federation of Community Legal Centres (Vic) on 9652 1500 or Sarah_Nicholson@clc.net.au

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The Federation of Community Legal Centres

The Federation of Community Legal Centres Vic. Inc ('the Federation') is the peak body for fifty-two Community Legal Centres across Victoria, including both generalist and specialist centres. Community Legal Centres provide free legal advice, information, assistance and representation to more than 100,000 Victorians each year. We exercise an integrated approach combining assistance of individual clients with preventative community legal education and work to identify and reform laws, legal and social systems.

Community Legal Centres have expertise in working with excluded and disadvantaged communities and people from culturally and linguistically diverse backgrounds. We operate within a community development framework. We provide a bridge between disadvantaged and marginalised communities and the justice system. We work with the communities of which we are a part. We listen, we learn, and we provide the infrastructure necessary for our communities' knowledge and experiences to be heard.

The Federation, as a peak body, facilitates collaboration across a diverse membership. Workers and volunteers throughout Victoria come together through working groups and other formal and informal networks to exchange ideas and strategise for change. The day-to-day work of Community Legal Centres reflects a 30-year commitment to social justice, human rights, equity, democracy and community participation.

The Anti-Terrorism Laws Working Group is one of a number of issue-specific working groups within the Federation comprising workers from member centres. This Working Group supports CLCs to provide targeted community legal education programs for communities affected by the State and Commonwealth anti-terrorism laws and supports CLC lawyers to provide up-to-date legal advice to clients affected by the State and Commonwealth anti-terrorism laws. The Working Group also works to monitor the impact of State and Commonwealth anti-terrorism laws on affected communities and individuals. The Working Group has worked closely with a number of communities that have been affected by recent changes to Australia's anti-terrorism laws, in particular Muslim, Kurdish, Tamil and Somali community groups.

Introduction

The Federation does not support the proposal that the National Classification Code ('the Classification Code') and Guidelines be amended to refuse classification of material advocating terrorist acts ('the proposal').

In our view, the proposal is not necessary. In our assessment the current Code and Guidelines have sufficient scope to be able to deal with material inciting or promoting terrorist acts.

The proposal also has potential for excessive censorship of political, religious and ideological material due to the proposed definitions of 'terrorist act' and 'advocates', which are overly broad. In this regard we are concerned that the proposal contravenes internationally accepted human rights principles, may be unconstitutional and even goes beyond the principles espoused in the Classification Code itself.

We are also concerned that these broad definitions will result in discriminatory application of the Classification Code and as a result, material produced by certain community groups will be censored more than others.

Necessity

In our view the current Classification Code and Guidelines are already sufficient to deal with material that advocates terrorism. The Classification Code currently provides that material that 'promotes, incites or instructs in matters of crime or violence' must be refused classification. Under the Commonwealth *Criminal Code Act 1995* ('the Criminal Code'), engaging in a 'terrorist act' is a serious criminal offence, punishable by life imprisonment.¹ Any material that promotes, incites or instructs in a terrorist act is therefore already liable to being refused classification under the Classification Code. The 'Material That Advocates Terrorist Acts Discussion Paper' ('the Discussion Paper') states that 'doubts exist as to extent to which the present law ensures all material that advocates terrorist acts is refused classification'.² Given that a 'terrorist act' is clearly a crime, however, undoubtedly material that 'promotes, incites or instructs in' a terrorist act will fall within the scope of the existing Code. The Federation is therefore of the view that the Code has sufficient scope and does offer sufficient clarity to allow classification of material dealing with terrorist acts.

We acknowledge that 'promotes, incites or instruct in' may not be the same as 'advocates' as defined in the proposal it is proposed to be defined. In our view, however, the term 'advocates' as proposed is too broad and creates too broad a category of material that may be refused classification. This will be discussed further below. For this reason we take the view that, in as much as the current Classification Code covers material that 'promotes, incites or instructs in' terrorist acts, it is sufficient to deal with material advocating terrorism.

In addition, as noted in the Discussion Paper, the Classification Code also provides that material may be refused classification on the basis that 'material deals with matters of violence in such a way that it "offends against the standards of morality, decency and propriety of a reasonable adult to the extent that [it] should not be classified"'.³ The Discussion Paper then states, however, that 'this provision has

¹ Section 101.1, Part 5.3, Schedule 1, *Criminal Code Act 1995 (Cth)*

² Classification Policy Branch, Attorney-General's Department, *Material That Advocates Terrorist Acts Discussion Paper* 1 May 2007, available at <http://www.ag.gov.au>, 2 ('The Discussion Paper')

³ Ibid.

not been actively used in classifying material that might be considered to encourage terrorist acts'.⁴ In our view this provision would be sufficient to classify material that truly raises community concerns because it advocates terrorism. Simply because it has not been used for this purpose to date, does not mean that it is not fit for this purpose. This provision might easily be used to deal with material that incites widespread killing via bombing, for example, as this would clearly offend against a reasonable adult's sense of morality, decency and propriety. Similarly it could easily be used to classify material that incites or advocates suicide bombing, hijacking, hostage taking or other acts of violence that are commonly associated with the notion of terrorism.

The Discussion Paper refers to current Federal Court litigation which may clarify the exact scope of the Classification Code and Guidelines in relation to material advocating terrorist acts. We presume that the litigation referred to is the case relating to the decision to refuse classification to the books 'Join the Caravan' and 'Defence of the Muslim Lands'. In this case, the Classification Board at first instances classified both publications as 'unrestricted'. These decisions were later set aside by the Classification Review Board, with classified both classifications as 'RC (Refused Classification)'. The New South Wales Council for Civil Liberties has made application to the Federal Court for an order of review in relation to the Classification Review Board's decisions.

While we submit that the current Classification Code and Guidelines are adequate, as discussed above, the current Federal Court litigation will inevitably shed some light on exactly how material advocating terrorism may be dealt with under these instruments. The Federation, therefore, takes the view that it would be imprudent to amend the Code and Guidelines in the absence of a clear indication that they are currently inadequate. In our view, it is imperative that a reasoned and evidence-based approach to this issue be taken, particularly given the serious incursion into civil liberties and political freedoms that is being proposed. This requires waiting for the outcome of any pending court proceedings that deal with the issue. Clearly it would be unwise to amend the Classification Code and Guidelines, only to find out that they were adequate all along when the results of the current proceedings emerge.

Justification

In its News Releases of 27 July 2006 and 3 May 2007 the Attorney-General's Department has suggested that the proposal stems from a need to protect the community from terrorism and that it has emerged in response to community anger about the availability of material advocating terrorism.⁵

In relation to the first-mentioned ground, it is our view that the current Classification Code and Guidelines are sufficient to deal with material of concern (as argued

⁴ Ibid.

⁵ News Releases available at <http://www.ag.gov.au>

above). We also submit that refusing classification to material advocating terrorist acts will not actually have the effect of making our society any safer. It is more likely that such material will continue to be circulated except via more covert channels. In this sense it will then become more difficult to gauge the kinds of material that are being consumed by the community. In our view, it would be naïve to suggest that increasing censorship of such materials and ideas will actually eliminate that material and those ideas altogether. Instead, increasing censorship will simply push such things underground. Any threat posed to the wider community (and the Federation does not necessarily accept that such materials pose a widespread threat in and of themselves) will not be reduced, and there is even a risk that it may be increased.

One possible outcome of the banning of material is that it impedes worthwhile and productive debate and discussion about that material. If there is a genuine concern about material that advocates terrorist acts, surely the community requires access to that material in order to be able debate its merits and expose the lack thereof. We note the comments of Amir Butler, co-convenor of the Australian Muslim Civil Rights Advocacy Network (AMCRAN) in relation to the Classification Review Board decisions discussed above:

If we are to properly defeat what is essentially a perverted understanding of Islam, it is not enough to simply argue that these ideas are bad because the Government says so. These ideas must be comprehensively debunked and refuted. And Muslim leaders, scholars and intellectuals have been doing just this for more than 1000 years. This is the only means by which people will be dissuaded from adopting these ideas. Yet by banning these books the Government is now denying the community the opportunity to do so. Without access to this material, it is impossible for us to understand the ideas, articles and justifications being used by the terrorists. If we, as a community, cannot understand the religious arguments being offered for suicide bombings, it is impossible for us to refute them.⁶

This comment raises a genuine concern that material advocating terrorism will covertly proliferate and become more persuasive if it is banned because it cannot be effectively refuted by communities.

With respect to the latter ground for change, we note that the Attorney-General's 'News Release' of 27 July 2006 regarding this proposal states that 'a significant proportion of the community is outraged that this material is available'.⁷ 'Community concern' was again referred to in the News Release of 3 May 2007.⁸ The Federation takes that view that the Attorney-General's department should make public the results of any recent and comprehensive survey or study that has informed these comments and that this information should have been included in

⁶ Amir Butler (2006) Banning Books Won't Protect Us, *Herald Sun*, 11 August 2006.

⁷ Ibid.

⁸ Ibid.

the Discussion Paper. Where such significant legislative changes are proposed it is imperative that the impetus for these changes be a matter of public record. In the absence of such records, it is our view that the highly expansive definition of 'terrorist act' proposed does not accurately reflect community views. The broad range of conduct that may be encompassed by the proposed definition of 'terrorist act' greatly exceeds the common-place notion of 'terrorism' which is generally limited to bombings, hijackings, hostage taking etc. (The breadth of this definition and its implications are discussed further below.) As stated in the National Classification Code, classifications decisions are to give effect to the principles, inter alia, that 'adults should be able to read, hear and see what they want' and 'the need to take account community concerns about depictions that condone or incite violence...'⁹ Any proposal to increase censorship should therefore be based on an accurate and detailed assessment of actual community concerns. In this case, we submit that the proposed amendment goes beyond the scope of community concerns because the broad definitions relied upon have the effect of exposing an inordinately wide array of political material to censorship. The proposed amendments do not just cover material advocating the types of acts that the community are concerned about but expand the scope of the Classification Code and Guidelines even further. Insofar as they drastically exceed the scope of community concerns, in our view the proposed amendments are not justified.

Breadth of Definitions

As noted in the Discussion Paper, it is proposed that the definitions of 'terrorist act' and 'advocate' in the Classification Code and Guidelines will be the same as the definitions contained in the Criminal Code.

Definition of 'Terrorist Act'

In the Criminal Code, a 'terrorist act' is defined as an action or threat of action done or made with

- the intention of advancing a political, religious or ideological cause; and
- the intention of coercing or influencing by intimidation a government of the Commonwealth, State, Territory, foreign country or a section of the public.

Further, to be a 'terrorist act', the action must either cause or threaten serious physical harm to a person, serious property damage, a person's death, endangerment to a person's life, a serious risk to public health or safety, or serious interference with an electronic system.¹⁰

An exception has been created for advocacy, protest, dissent or industrial action that is not intended to cause death, physical harm, endangerment to a person or a serious risk to public health or safety.¹¹

As the Federation has argued on previous occasions, we are of the view that this definition is overly broad and consequently may be applied to an inordinately wide

⁹ Clause 1, *National Classification Code*.

¹⁰ Paragraph 100.1, Schedule 1, *Criminal Code Act 1995 (Cth)*.

¹¹ Paragraph 100.1, Schedule 1, *Criminal Code Act 1995 (Cth)*.

array of acts and threats of acts. The corollary of this, when it is transposed into the Classification Code and Guidelines, is that an inordinately wide array of materials will be exposed to censorship.

The breadth of the term 'terrorist act' was confirmed by Justice McClellan in an article on 'Terrorism and the Law'. Justice McClellan commented that 'It is apparent that the definition of "terrorist act" is capable of catching conduct that does not fall within popular notions of a terrorist act'.¹² In our view, this is a serious concern. It is even more concerning where it is proposed that the same definition be incorporated into the classification system, which necessarily relies on notions of community standards, public opinion and the 'reasonable adult'. While the Attorney-General's 'News Release' of 3 May 2007 states that '[t]errorist acts are a specific and highly dangerous threat', the definition of 'terrorist act' proposed is not at all specific and actually may encompass a range of activities that goes well beyond accepted conceptions of terrorism.¹³

It is important to note that breadth of this definition is substantially exacerbated by the inclusion of the mere 'threat' of the designated activities in the definition of terrorist act. Thus, a terrorist act may either be an action that falls within the above definition or a threat of such an action. In the Classification Scheme context, this means that material that advocates making a threat of doing a terrorist act may be refused classification. This creates quite a distance between actual conduct that is concerning (ie actual violence and property damage) and the material that is being banned. In this regard, the broad definition of 'terrorist act' means that the legislation will exceed the scope of its stated aim, ie to protect the community.

At this juncture, we note also that the Parliamentary Joint Committee on Intelligence and Security (PJCIS), in its 'Review of Security and Counter Terrorism Legislation', has recommended that the definition of terrorist act be amended to remove the threat of terrorist acts.¹⁴ This was also recommended by the Scheller Committee in its inquiry into the Australian security legislation.¹⁵ We urge the Attorney-General's Department to consider the findings of those Committees with respect to the definition of 'terrorist act' before importing the term wholesale into the Classification Code and Guidelines.

Definition of Advocates

The definition of 'advocates' is also unduly expansive. As noted above, the proposal suggests that the definition of advocates that is contained in the Criminal Code will be utilised in the Classification Scheme. This defines 'advocates' to mean:

¹² Justice McClennan, *Terrorism and the Law* 2006 as cited in, Parliamentary Joint Committee on Intelligence and Security, *Review of Security and Counter Terrorism Legislation* December 2006, 99 ('Security Legislation Review')

¹³ *News Release*, *ibid*.

¹⁴ *Security Legislation Review* 62.

¹⁵ As cited in *Security Legislation Review* *ibid*.

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.¹⁶

Firstly we note the criticisms of both the Sheller Committee and the Parliamentary Joint Committee on Intelligence and Security in relation to this definition. Both Committees expressed concern that the term 'risk' was too broad and suggests a 'mere chance'. While the Sheller Committee recommended repeal of that sub-section altogether in the context of the Criminal Code, the PJCIS recommended that 'risk' be amended to 'substantial risk'.¹⁷

The Federation is of the view that censoring material that merely advocates a terrorist act is entirely inappropriate, particularly where 'advocating' may involve simply praising the act or indirectly urging/counselling it. The definition of 'advocates', which would apply to terrorist acts, goes further than the definitions that apply to any other material relating to criminal activity by allowing for the censorship of material that simply praises terrorist acts. Furthermore, the proposed definition of 'terrorist act' is itself so broad that material praising a wide array of political acts may be censored and not just material that the broader public finds abhorrent. This may include, for example, material praising the liberation and self-defence of people subject to foreign occupation or an oppressive government.

In a liberal democracy it is not desirable to ban certain materials simply because they express praise for certain acts (however abhorrent those acts may seem to the broader public). It is the fundamental basis of any open, democratic society that its members be able to freely express their opinions, regardless of the content of those opinions. The above definition of 'advocates' and the consequent breadth of the proposed amendments would seriously jeopardise this fundamental precept.

Problems Created by these Broad Definitions

When used in combination, the terms 'advocates' and 'terrorist act' as defined in the proposal create a broad category of material that may be refused classification.

The Discussion Paper states that '[i]t is intended that only material that advocates terrorist acts as strictly described would be refused classification'.¹⁸ Unfortunately, however, as discussed above, 'terrorist acts' and 'advocates' are not strictly described at all. Implicitly acknowledging the breadth of those definitions, the Discussion Paper suggests that an Explanatory Statement will provide clarification of the types of material that would not be considered to advocate terrorist acts.¹⁹ In our view, however, the definition of 'terrorist act' is so broad that the Explanatory

¹⁶ Section 102.1(1A) *Criminal Code*.

¹⁷ *Security Legislation Review*, 71.

¹⁸ *The Discussion Paper*, 2.

¹⁹ *ibid*.

Statement and the Classification Code will necessarily be at odds. The example of patriotic battle movies is given in the Discussion Paper as something that would not be refused classification. Patriotic battle movies might easily fall within the definition of material that 'advocates' a 'terrorist act' because of the breadth of the definitions. The question then arises, 'why should some materials be banned and others not, when both of them fall within the definitions in the Classification Code?' According to the Discussion Paper, the answer to this question will lie in the Explanatory Statement which will provide some sort of list of materials that will not fall within the scope of the Classification Code. Whereas the definitions in the Classification Code are broad and may include many acts, the Explanatory Statement will explain the terms as if they are limited so that a list of what does not fall within them can be clearly articulated. In our view, this kind of inconsistency between the Explanatory Statement and the head instrument is unacceptable. The legislation should clearly reflect the scope of the powers being conferred. It is unacceptable and imprudent to make the Classification Code inordinately broad and then seek to clarify it via an Explanatory Statement that simply contains a list of subjectively-determined examples. If approached in this way, the proposed amendments will only create more uncertainty and will give rise to the possibility of legislative over-reach. Furthermore, the question 'why should some materials be banned and others not, when both of them fall within the definitions in the Classification Code?' will remain unanswered.

We provide the following example by way of illustration. If you take the view that the current conflict in Iraq is in breach of international law,²⁰ one possible result of the proposal is that some Australian Defence Force (ADF) materials and government materials relating to national defence would fall within the scope of the definition of material advocating a terrorist act. For example, any material that advocates for Australia's involvement in Iraq will fall within the definition of material advocating a terrorist act. On this interpretation, any material which urges citizens to join Australia's armed forces would be advocating a terrorist act given that Australia is currently participating in the war in Iraq. The Discussion Paper suggests that a terrorist act 'would not include action legitimately taken by the armed forces of a country on the international stage in accordance with what they perceive to be their national interests and international law'.²¹ Even though many ADF and government materials could fall within the definition of 'advocates terrorist acts', they will not be 'refused classification' because they are state-sanctioned. This kind of inconsistency is fundamentally counter-democratic. Due to the definitions of 'terrorist act' and 'advocates', two sets of material may equally fall within the scope of the Code and one will be censored simply because it is not state-sanctioned. For example, on this reasoning, materials of the African National Congress in South Africa in fighting apartheid would be subject to censorship whereas materials produced by the apartheid South African government would not.

²⁰ See eg, Professor George Williams and Devika Hovell, 'Special Feature: Advice on the Use of Force Against Iraq' (2003) 4 *Melbourne Journal of International Law* 183, Gerry Simpson, 'The War in Iraq and International Law' (2005) 6 *Melbourne Journal of International Law* 167.

²¹ *The Discussion Paper*, 6.

The Federation is fundamentally opposed to legislation that opens the door to political censorship in this way. We are opposed to unnecessary incursions into free speech and civil liberties, particularly where they impinge upon political expression. As a result of the broad definitions proposed for ‘advocates’ and ‘terrorist act’, if the proposal is implemented it may give rise to situations where political censorship occurs in relation to material that is politically and/or socially controversial. In our submission, this kind of politicised censorship has no place in a modern, democratic context.

Constitutionality

The Federation is also concerned that the proposed amendments may be unconstitutional. While the work we do does not make us experts in constitutional law, we do regard the proposal as raising questions around the issue of freedom of political communications.²² The majority in the High Court in *Lange v ABC*, found that laws enacted to satisfy some legitimate end are not invalidated by the principle of freedom of political communication implicit in the Australian Constitution (as previously established by the High Court).²³ The majority stated, however, that these laws must satisfy two conditions so as not to be invalidated:

*One, that the law is compatible with the maintenance of the constitutionally prescribed system of representative government and two, that the law is reasonable appropriate and adapted to achieving that legitimate object or end.*²⁴

In our view, the proposal represents an excessive incursion into the freedom of political communication. While proposing to restrict a certain type of material, it in fact addresses itself to a much broader category of materials because of the expansive definitions relied upon. In this way it is not reasonably appropriate and adapted to achieving its stated aims. It may, therefore, be invalidated due to the implied freedom of political communication.

International Human Rights

One of our key concerns regarding the proposal is its capacity to suppress freedom of political and religious expression. The definition of ‘terrorist act’, insofar as it requires political, religious or ideological aims, means that this amendment has the capacity to unduly limit people’s freedom of religious and political expression.

In this respect we are concerned that these provisions are inconsistent with Australia’s international obligations under the *International Covenant on Civil and Political Rights* (‘ICCPR’).²⁵ The ICCPR was ratified by Australia in 1972 and

²² See *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104.

²³ *Lange v ABC* (1997) 189 CLR 520.

²⁴ *Ibid.*

²⁵ *International Covenant on Civil and Political Rights* (ICCPR). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, in accordance with Article 49 (ICCPR).

comprises Schedule 2 of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). Most notably the proposal is inconsistent with those obligations relating to freedom of expression as contained in Article 19(2). Article 19(2) provides that:

Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [sic] choice.²⁶

This Article is subject to the qualification that freedom of expression may be subject to certain restrictions where those restrictions are provided by law and are necessary:

- (a) For the respect of the rights or reputations of others;
- (b) For the protection of national security or of public order or of public health or morals.²⁷

We submit that the proposed amendments are not consistent with the right to freedom of expression, even taking into account the qualification relating to national security. In our view, the proposed amendments will place a greater restriction on the right to freedom of expression than is necessary in a democratic society to maintain national security. The restriction is greater than necessary particularly in light of the expansive definitions of 'terrorist act' and 'advocates' which create a very large category of material that may be refused classification. In our view, therefore, the censorship being proposed goes well beyond that which would be acceptable under the ICCPR.

Consistency with the Classification Code

As alluded to above, the Classification Code states at Clause 1 that the following principles must underpin classification decisions:

- (a) that adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive; and
- (d) the need to take account of community concerns about;
 - (i) depictions that condone or incite violence, particularly sexual violence; and
 - (ii) the portrayal of persons in a demeaning manner.²⁸

Clause 1 suggests that while it is a general principle that adults should be able to read, hear and see what they want, where principles (b), (c) and (d) come into play, that general principle may be restricted. As the proposal relies on very broad definitions of 'advocates' and 'terrorist act' it allows for censorship of material that does not fall within the scope of principles (b), (c) and (d). By proposing to refuse

²⁶ Ibid.

²⁷ Ibid.

²⁸ Clause 1, National Classification Code ('The Code').

classification to material that does not necessarily fall within the scope of principles (b), (c) and (d), the proposed amendments are not consistent with the principles espoused in the Code.

Discriminatory Application

A further concern is that the definition of 'terrorist act' necessarily relates to politically, religiously and ideologically motivated acts only. In the context of the Classification Scheme, this means that the definition is particularly prone to being applied in a way that suppresses material related to particular kinds of political dissent, certain religious views and some ideological causes.

The Discussion Paper is itself an indication of this issue. In the discussion paper, the two examples of material that would fall within the definition of material that advocates terrorist acts, relate to material published by a 'fundamentalist religious organisation' and material distributed at 'a cultural festival'.²⁹ Although the definition of 'terrorist act' is extremely broad, the focus is clearly on non-mainstream religion and non-Anglo ethnicity when looking at the source of 'terrorist acts'. In our experience conducting community legal education and casework with culturally and linguistically diverse communities, these communities are inordinately targeted by counter-terrorism legislation and policing. In particular, Islamic communities have disproportionately borne the brunt of security measures. For example, all but one of the 19 organisations that have been listed as terrorist organisations in Australia are Islamic and, up until recently, all of those people charged with terrorism offences have been Islamic.

Given the political and media environment which readily links terrorism with Islam, there is a real concern that material produced by Islamic groups is more likely to be viewed as material that advocates terrorist acts than material produced by non-Islamic groups. The current political and media climate is such that an Islamic publication discussing terrorist acts is more like to be viewed as advocating those acts than a similar non-Islamic publication.

The Classification process exacerbates this concern. While all films, videos and DVD's for public screening, hire or sale must be classified, publications only need to be classified where they are 'submittable' publications. A submittable publication is one that is likely to be restricted to adults because it:

- contains depictions or descriptions likely to cause offence to a reasonable adult;
- is unsuitable for a minor to see or read; or
- it is likely to be refused classification.

As suggested in the Discussion Paper, the standard requirements and procedures for classification will apply and therefore publishers and distributors of material that falls within the definition of a 'submittable publication' will need to apply to the Classification Board for classification of their material. We are concerned, that

²⁹ *The Discussion Paper*, 3.

materials relating to Islam and terrorism will be more likely to be viewed as 'submittable publications' from the outset because of their Islamic links and because of the links currently drawn between Islam and terrorism in many circles. In this way, Islamic publications will be more likely to attract the classification process than non-Islamic publications.

While at present we raise these concerns in relation to Muslim communities, we are also concerned that these issues may extend to other non-Anglo ethnic and religious groups as time goes on. For example, the Tamil and Somali communities have recently become the focus of counter-terrorism policing and the Kurdish community affected by the listing of the Kurdistan Workers Party as a terrorist organisation.

In our view, it is entirely unacceptable that materials produced by one community group would be censored more than those produced by another, particularly when it takes place along religious or ethnic lines.

Conclusion

The Federation's views regarding the proposal may be summarised as follows:

- We submit that the existing Code and Guidelines are sufficient to deal with material relating to terrorism.
- We argue that the proposal will not address the issue of community safety from terrorism or even material advocating terrorism.
- We submit that the definitions of 'terrorist act' and 'advocates' are too broad and therefore are inappropriate in the context of the Classification Scheme. We argue that the proposed definition of 'terrorist act' goes beyond commonly accepted notions of terrorism.
- We argue that as a result of these broad definitions, the proposal is a potential incursion into civil liberties and fundamental democratic principles.
- We raise the concern that the proposed legislative amendments will be found to be unconstitutional.
- We raise the concern that the proposed legislative amendments are inconsistent with Australia's international human rights obligations.
- We raise the question of whether the proposed amendments are consistent with the principles espoused in the Code itself.
- We are concerned that the Classification Scheme will be applied in a discriminatory manner or to suppress political dissent. The very broad definition of terrorist act relied upon contributes to the scope for discriminatory application.

Given these very serious concerns, the Federation does not support the proposal to amend the Code and Guidelines. We urge the Attorney-General's Department to withdraw the proposal.