



FACULTY OF LAW

GEORGE WILLIAMS

ANTHONY MASON PROFESSOR
AUSTRALIAN RESEARCH
COUNCIL LAUREATE FELLOW
FOUNDATION DIRECTOR,
GILBERT + TOBIN CENTRE OF
PUBLIC LAW

24 November 2010

Committee Secretary
Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into the Australian Film and Literature Classification Scheme

Thank you for the opportunity to make a submission to this inquiry.

My submission relates to a specific aspect of the classification scheme, s 9A of the *Classification (Publications, Films and Computer Games) Act 2007* (Cth). The section was inserted into the Act by the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Act 2007* (Cth).

Section 9A states:

9A Refused Classification for publications, films or computer games that advocate terrorist acts

- (1) A publication, film or computer game that advocates the doing of a terrorist act must be classified RC.
- (2) Subject to subsection (3), for the purposes of this section, a publication, film or computer game **advocates** the doing of a terrorist act if:
 - (a) it directly or indirectly counsels or urges the doing of a terrorist act; or
 - (b) it directly or indirectly provides instruction on the doing of a terrorist act; or
 - (c) it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3 of the *Criminal Code*) that the person might suffer) to engage in a terrorist act.
- (3) 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 merely as part of public discussion or debate or as entertainment or satire.
- (4) In this section:
terrorist act has the meaning given by section 100.1 of the *Criminal Code* (no matter where the action occurs, the threat of action is made or the action, if carried out, would occur).

The following articles by myself and David Hume analyse this provision:

- 'Australian Censorship Policy and the Advocacy of Terrorism' (2009) 31 *Sydney Law Review* 381
- 'Advocating Terrorist Acts and Australian Censorship Law' (2009) 20 *Public Law Review* 37.

Based upon these articles (which I attach to this submission), I submit that s 9A should be removed from the legislation for reasons that include the following:

- Section 9A runs counter to sound policy in the field of Commonwealth classification law. It removes discretion in censorship decisions from the independent Classification Board and Classification Review Board by pre-empting its decision at a political level.
- Section 9A fractures the cooperative, uniform scheme introduced by the *Classification Act* towards which Commonwealth censorship policy has evolved for a century.
- Section 9A is overbroad in extending to conduct that clearly should not be Refused Classification.
- Section 9A is almost impossible to apply with any precision in making classification decisions.

Yours sincerely

George Williams