



Submission to the Senate Legal and Constitutional
Affairs Committee
INQUIRY INTO THE *CLASSIFICATION*
(*PUBLICATIONS, FILMS AND COMPUTER GAMES*)
AMENDMENT (TERRORIST MATERIAL) BILL 2007

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Contact

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UnitingJustice Australia welcomes this opportunity to comment on the *Classification (publications, films and computer games) Amendment (terrorist material) Bill 2007*.

At the heart of our response to issues around counter-terrorism measures is our commitment to human rights. While we support the Government's purpose in reducing the threat of terrorist acts, we believe that there is a fine balance that must be achieved between the necessary suppression of certain civil and political rights for the common good, and the maintenance of those fundamental democratic rights such as freedom of speech, political and religious affiliation.

At the 2006 National Assembly, the Uniting Church in Australia adopted its statement *Dignity in Humanity: A Uniting Church Statement on Human Rights*. The statement adopted fundamental human rights principles by which we pledged to assess national policy initiatives, including the following which was adapted from article 29(b) of the *Universal Declaration of Human Rights*:

In the exercise of a person's rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of human dignity and the general welfare of a democratic society.¹

It is this principle of balance, entailing thoughtful attention to the impact of ceding certain civil and political rights, that informs our assessment of this legislation – as it informs our assessment of all anti-terrorism initiatives. While we support the Government in implementing legitimate, fair policy to avert terrorist acts, we do not support initiatives that impede civil rights without appropriate justification.

The Uniting Church has expressed its significant concern about the introduction of anti-terrorism legislation that infringes on civil and political rights in policing possible terrorist acts.

We have previously expressed concerns about certain aspects of the proposed changes, in the form of our recent submission to the Attorney- General's discussion paper on *Material that Advocates Terrorist Acts*.² While this discussion paper outlined only a plan to amend the Classification Code and guidelines, and not a legislative change to the *Classification (Publications, Films and Computer Games) Act 1995*, the proposed legislative changes are broadly similar to the changes outlined in that discussion paper. The concerns we raised included:

- The paper did not clearly demonstrate that existing remedies contained in the Classification Code and Guidelines were inadequate to ensure that material which promoted, incited or instructed in terrorist acts was refused classification;
- Indeed, the Attorney-General had referred two cases to the Classification Review Board which were subsequently refused classification on the basis that they were designed to promote and incite terrorism;
- We suggested that there were legitimate questions to be asked around why the Classification Board had not refused classification to these materials in the first instance, which the Attorney-General's paper did not explore;

¹ *Dignity in Humanity: A Uniting Church Statement on Human Rights*, resolution of the 11th National Assembly, Uniting Church in Australia July 2006 s13(d)

² Department of the Attorney-General *Material that Advocates Terrorist Acts Discussion Paper* 1 May 2007.

- We also questioned the use of Criminal Code definitions in the process of classification, and asked the Attorney-General to provide an example of material that “indirectly counselled” the doing of a terrorist act that could be differentiated from political censorship, in order to allay our fears on this score.³

Our submission in response to the Attorney-General's paper asked for these matters to be clarified before changes to the Guidelines or Code went ahead. As yet these matters have not been addressed, despite the Attorney-General's suggestion in his second reading speech that the proposed legislative changes represent a refining of the proposals contained in the initial paper.

We reiterate these questions, as they have direct relevance to the legislation currently before the Parliament. The legislation would enact substantially similar requirements to the proposals outlined in the Attorney-General's paper. In particular, we feel that there has not been enough discussion around the need for these changes.

We note particularly the legislation's continued reliance on *Criminal Code* definitions relating to the advocating of terrorist acts. The Uniting Church has in the past expressed strong opposition to the *Criminal Code*'s definition of “advocating a terrorist act”, insofar as it captures ‘praising’ a terrorist, and ‘indirectly counselling’ a terrorist act. In the past, we have considered that the Code's provisions of criminal sanctions for organisations advocating a terrorist act whether or not such an act will occur, under this definition of “advocating a terrorist act”, have been overzealous. We are concerned that this definition is proposed for use by the Classification Board in determining whether material is deemed suitable for consumption by the Australian public.

We also note the comment of the Classification Review Board, that the introduction of the Criminal Code definition of what constitutes ‘advocating’ a terrorist act to the process of classification marks a significant shift away from the current role of the classification bodies. Using this definition would require the bodies to give regard to the possible influence of material on persons “regardless of age or mental impairment”. Historically, the boards apply classification based on the “reasonable adult” test. We specifically note their expert comment that:

It is also difficult to imagine how the Review Board might reliably form such a view – that praise of a terrorist act might lead a child or a person with a mental impairment to engage in a terrorist act. Perhaps, some further clarification of this aspect could be considered.⁴

On a process level, we are concerned by the tenor of the Attorney-General's statements to the Parliament, to the effect that this legislative change is being proposed as a way of circumventing the need for the States and the Federal Government to cooperate on this issue, or else pressuring the States to comply with the Federal Government's proposals. This is not a useful approach to the Government's dual house majority. In our view, substantial changes to the way that material is classified for public consumption should be the subject of wide community debate and consultation, in order to determine that these changes are necessary.

³ UnitingJustice Australia *Submission to the Attorney-General's Department Material that Advocates Terrorist Acts Discussion Paper* May 2007

⁴ Australian Government Classification Review Board *Submission on Material that Advocates Terrorist Acts Discussion paper* 1May 2007

We remain supportive of preventing the importation, distribution and ownership of material that would promote, incite and instruct in the doing of terrorist acts. However in evaluating the proposals, it has become clear that the need for these changes has not been demonstrated. We hope that these comments are of some use to the committee in evaluating the possible impacts of this legislation.

submission prepared by Alicia Pearce, UnitingJustice Australia