Submission to Inquiry into the Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007 ('the Bill')

Thank you for the opportunity to participate in the above inquiry. We would be pleased to provide further written submissions should the Committee require any further information.

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.

General Observations

It is AMCRAN's view that the Bill should not be adopted.

Firstly, we note the short period of time within which the Committee is to seek public submissions and report on the Bill. While we understand that a public consultation was conducted through the means of a Discussion Paper by the Attorney-General's Department, it does not appear that any report from that public consultation has been released.

Secondly, no explanation or justification has been provided for the necessity of these measures. The Attorney-General's Discussion Paper alludes to the existence of community concerns about the public availability of material that advocates the doing of terrorist acts. However, the Discussion Paper, the Explanatory Memorandum, and the Second Reading Speech do not 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 in the Discussion Paper, which it then goes on to distinguish from the type of material that is intended to be covered by the proposed amendments in any case.

No clear justification has been given as to why the amendments are necessary to prevent ideologically or religiously motivated violence or to strengthen security. It would be unjustifiable, given its likely impact on freedom of speech and legitimate debate, to introduce the new criteria for refusal of classification in the absence of any such evidence of community concern.

Thirdly, as the Attorney-General stated in his Second Reading Speech, there has been no agreement reached by the States and Territories as to the necessity of these measures, despite the lapsing of more than 12 months in which they were given to deliberate. In these circumstances, and in the absence of any compelling reason that the amendments are urgently required, it does not seem appropriate that the Commonwealth should rush through the Bill. We submit that it is against the spirit of cooperation for the Commonwealth to make the proposed amendments which would allow the Board and the Review Board to not have regard to the Classification Code or the guidelines if section 9A applies, effectively bypassing the process whereby the States and Territories have agreed to govern classification decisions.

Particulars of amendment

In addition to the above concerns, we submit that the Bill should not be passed due to the following reasons.

1. Overly broad definitions
2. Wide coverage
3. Proposed section 9A(3)

Each of these will now be dealt with in turn.

1. **Broad definition of 'advocate' and 'terrorist act':**

   AMCRAN has in the past raised our concerns about the overly broad definitions of "terrorist act" and "advocate". We submit that there is considerable uncertainty in the definitions, 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**

[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.

> **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 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. **Wide coverage:** There is a concern that the breadth of the definitions as discussed above would considerably and unreasonably widen the types of materials that would be required to be submitted for classification.

   Section 5 of the *Classification (Publications, Films and Computer Games) Act* 1995 ('the Act') defines "publication" as any written or pictorial matter, but does not include a film, a computer game, or an advertisement for a publication, a film or a computer game; "publish" is defined as including selling, offering for sale, letting on hire, exhibiting, displaying, distributing or demonstrating.

   The breadth of the definitions of "advocating" and "publications" would mean that a much wider range of materials, including those materials intended for private discussions or lessons, private correspondence, or poster of display, or any material distributed to a small audience no matter how small, may be expected to be submitted for classification.

3. **Proposed s 9A(3)**: The proposed s 9A(3) states that material would not fall within s 9A if the depiction or description of a terrorist act could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire. While we understand this as an attempt to alleviate concerns about improper infringement on free speech, we are of the view that it does not go quite far enough. There are circumstances where the depiction or description of the terrorist act in itself may not reasonably appear to be done as part of public debate, discussion, entertainment or satire, but rather, the entire expression of the commentary is, if taken as a whole.

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[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).

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

Likely undesirable consequences of amendment

We submit that the amendments would also likely result in the increased monitoring and surveillance of certain groups the community, and any likely impact on counter-terrorism efforts must be considered.

4. **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 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.

   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.

5. **Effect on counter-terrorism efforts:** We are concerned that the proposed amendments may also damage the fight against terrorism through three effects. Firstly, by limiting certain ideas, it ironically gives the ideas a kind of 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 attacked by reason and logic.

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.