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Classification Review Board
22 – 33 Mary Street
Surry Hills
Sydney NSW 2010



New South Wales
Council for
Civil Liberties

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Submission: New South Wales Council for Civil Liberties

Re: Islamic Literature – Application for Review of Classification from the Australian Attorney-General, the Hon Philip Ruddock MP

“If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”— John Stuart Mill, On Liberty

Introduction

As one of the leading non-political, non-religious, and non-sectarian human rights organisations in Australia, the New South Wales Council for Civil Liberties (NSWCCL) objects to heightened censorship of material which is politically unpopular or even repulsive but not otherwise objectionable.

For the past forty years the NSWCCL has monitored censorship in Australia and spoken out when paternalistic determinations threaten to prevent people in Australia from viewing material available in countries around the world.

The NSWCCL believes that freedom of expression (and freedom of political communication in particular) is fundamental to the functioning of a successful democratic society and an Australian ideal upheld by both tradition and law. A citizenry well-informed by a range of competing ideas and a variety of information will always be

better equipped to deal with challenges posed by people who oppose Australia's liberal democratic tradition. Trying to fruitlessly repress access to political opinions, however disturbing they might be, not only limits the right of people in Australia to see and hear what citizens of democracies around the world may see and hear, but ultimately makes Australia less safe by keeping people uninformed as to what motivates others view different from our own.

It is wrong and counterproductive to seek to suppress political views to which one is opposed by censoring them.

In this case, the NSWCCCL objects to classification based on a politically motivated rejection of the material. NSWCCCL submits that censorship of this material will ultimately be counter-productive to the interests of those who oppose its content.

We note that the time limitations imposed on the making of this submission permit only a summary written submission to be made.

Freedom of Political Communication

In the late 1990's the High Court of Australia found and developed the implied constitutional freedom of political communication.¹

The High Court correctly determined that such a right was essential to representative government and that while it was not all encompassing it protected free and public political discussion.

An attempt to censor the material in this case runs the risk that the attempt will be legally challenged, which would be counter-protective regardless of the result. The attempt would draw additional attention to the material and provide a platform for further promoting unpalatable political views.

Maintaining an Independent Classification Review Board

The NSWCCCL believes that it is important that the Classification Review Board not be seen as part of the political process or to making a politically motivated decision.

A decision that is perceived by any section of the community to be politically motivated will have the counter-productive tendency to validate the censored material, at least in the view of that section of the community.

Other Consideration of the Material

¹ See *Australian Capital Television v Commonwealth* [(1992) 177 CLR 106] and *Nationwide News v Wills* [(1992) 177 CLR 1]

The material in question has already been subject to intense government and media scrutiny, including decisions by the Commonwealth Director of Public Prosecutions and the Australian Federal Police that such material does not pose a security threat or violate the recent anti-terrorism laws. The DPP's decision not to limit the dissemination of the material in question reflects the view that there is no nexus between the positions taken in the material and any threats to Australian society. Moreover, the AFP determined that the material in question is "descriptive, rather than inciting any type of violence."² Descriptive literature and film, however unpopular politically, should not be examined with more heightened scrutiny than the Board would normally employ.

Restricting Access to Controversial Material has the Contrary Effect

Restricting film and literature only serves to make such material more widely disseminated and potentially popular. In this instance, because the content of the material in question is inherently political, restricting the material will only send a message that the material is more significant than it otherwise might be. Moreover, given the ease with which information is disseminated over the internet, restricting access to political material is largely impossible.

Ultimately, pushing material underground will only prevent open and honest discourse. Throughout the last century, open and honest discourse triggered by controversial films and literature have only served to strengthen the liberal Western tradition in the face of competing views from other societies. In short, the NSWCCCL believes that the best way to confront politically sensitive material is free and public discussion, not through sensationalised second-hand accounts available through the media or over the internet.

The Further Marginalization of the Islamic Community

The *Classification Act 1995* instructs the board to consider "the persons or class of persons to or amongst whom it is published or is intended or likely to be published."³ All of the material in question is directed at the already marginalised Islamic community. The NSWCCCL believes that restricting perfectly lawful statements, including statements that glorify suicide bombers or offensive statements by Muslim leaders who are critical of the Western way of life, will further marginalise this community and have a chilling and contrary effect on freedom of expression within it. The NSWCCCL believes that censoring the material in question will only prevent free and open discussion that can most effectively undermine politically unpopular views that seek to undermine the traditional liberal principles of Australian society.

Undermining Australia's International Reputation

² See Kelvin Bissett and Angela Kamper, "Muslim 'Books of Hate' Get OK." *The Daily Telegraph*, 15 May, 2006.

³ *Classification (Publications, Films and Computer Games) Act 1995*.

The Board should avoid censoring material which relates to international political themes where that material has not been censored in other democratic countries. It is not obvious that the material poses any significantly greater threat in Australia compared to any of the other countries in the world where it is freely available. To do so would have the tendency to undermine Australia's international reputation.

Conclusion

While the material in question may be politically and socially controversial, as it does not present a threat to Australian society, it ultimately serves an educational purpose. The material provides people in Australia with insight into the views that underlie the current political climate and the motivations of those that oppose the liberal western tradition. Censoring such material, in addition to being realistically impossible, only increases the significance of the material and undermines the values that ultimately will best protect Australian society.

Yours faithfully,

Stephen Blanks

Secretary, NSW Council for Civil Liberties