



Australian Government
Classification Review Board

19, 20 & 23 June 2006 and 3 & 5 July 2006

23-33 MARY STREET
SURRY HILLS, NSW

MEMBERS: Ms Maureen Shelley (Convenor)
The Hon Trevor Griffin (Deputy Convenor)
Mr Rob Shilkin
Mrs Kathryn Smith
Mrs Gillian Groom
Ms Ann Stark
Mr Anthony Hetrih

APPLICANT: Commonwealth Attorney General, the Hon Philip Ruddock
MP, not represented.

INTERESTED PARTIES: NSW Council for Civil Liberties.

BUSINESS: To review the Classification Board's decision to classify the publication *Defence of the Muslim Lands* (the publication) 'Unrestricted'

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) in a unanimous decision classified the publication RC (Refused Classification).

2. Legislative provisions

The *Classification (Publications, Film and Computer Games) Act 1995* (the Act) governs the classification of publications and the review of classification decisions. Section 9 of the Act provides that publications are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines.

Relevantly, the Code in paragraph 1(c) of the Table under the heading 'Publications' provides that:

1. Publications that

- (c) promote, incite or instruct in matters of crime or violence

are to be classified 'RC'. The Code also sets out various principles to which classification decisions should give effect, as far as possible.

Section 11 of the Classification Act requires that the matters to be taken into account in making a decision on the classification of a film or publication include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the publication or film; and
- (c) the general character of the publication or film, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

Three essential principles underlie the *2005 Guidelines for the Classification of Publications* (the Publication Guidelines), determined under s.12 of the Act:

1. The importance of context;
2. Assessing impact; and
3. The six classifiable elements – themes, violence, sex, language, drug use and nudity.

3. Procedure

The Review Board convened on 19 and 20 June 2006 in response to the receipt of an application from the Attorney General, the Hon Philip Ruddock MP (the Applicant), dated 5 June 2006 and numbered L05/1452.

The original application for classification of the publication was lodged by the Australian Federal Police on 15 December 2005 (application reference L05/1452). The Classification Board classified the publication (L05/1452) as 'Unrestricted' on 23 December 2005.

At its meeting on 19 June 2006 seven members of the Review Board received an oral submission from Mr Drew Kovacs representing the New South Wales Council for Civil Liberties, provided in addition to their written submission. The Review Board determined it was not able to reach a decision without carefully reading the publication and considering all relevant matters. The Review Board then adjourned in order to do this.

The Review Board further deliberated on the 20th and 23rd of June 2006 and on the 3rd of July 2006. The Review Board on 5 July 2006 met a final time to consider the substance of the application and, after careful consideration of all of the relevant issues, determined that the publication be classified 'RC' (Refused Classification).

4. Evidence and other material taken into account

In reaching its decision the Review Board had regard to the following:

- (i) The Applicant's application for review;
- (ii) The NSW Council of Civil Liberties' written and oral submissions;
- (iii) The Publication *Defence of the Muslim Lands* (L05/1452);
- (iv) The relevant provisions in the Act;
- (v) The relevant provisions in the Code, as amended in accordance with s.6 of the Act;
- (vi) The Classification Board's report; and
- (vii) The *2005 Guidelines for the Classification of Publications*.

5. Synopsis

Written in 1984 - as was the preface by Osama Bin Laden - four years after the invasion of Afghanistan by the USSR, the book is a "fatwa" (Islamic legal ruling) and a "call to arms" against the invasion, which was condemned at the time by much of the Western world including Australia, the UK and the US.

The book was reprinted in English in August 1996 and again in September 2002, which was the edition submitted for review. The original translation was undertaken in 1996 by the Mujahadeen in Bosnia "with a view to encouraging the English-speaking Muslims to come to the assistance of their fellow Muslims there."

In addition to the original work by Sheikh Azzam, the September 2002 edition includes a dedication to Sheikh Azzam "who ignited the flame of Jihad in the 20th Century", a publisher's foreword, a biography of Abdullah Azzam, the addition of 150 footnotes giving explanations and additions to what was meant (in the eyes of the publishers) by the author, the scholars index outlining details of more than 50 scholars whose statements form the basis of the book, and a detailed glossary of Arabic or Islamic terms.

The book is 114-pages and aims to clarify, through the use of classical sources of Islam, the concept and manner in which "Jihad" should be prosecuted. It justifies the concept of "Jihad" in the context of fighting the USSR as per the author's words and with the addition of the publisher's comments "to all similar situations facing the Muslims" today (as at September 2002).

6. Findings on material questions of fact

Classifiable elements

Having determined that the book promotes and incites crime, specifically, the crime of terrorism, the Review Board did not consider it necessary to consider the impact of the classifiable elements of violence, themes, nudity, coarse language, sex or drug use. The facts and reasons for the determination in regard to promotion and incitement of terrorism are outlined below.

Promotes, incites or instructs in matters of crime

This is a book by Sheikh Abdullah Azzam. Azzam is often known as the “Godfather of Jihad” and is known as a mentor to Osama Bin Laden. The book states at page xv that when Sheikh Azzam realised that only by means of an organised force would the Ummah (the Muslim believers) ever be able to gain victory, then Jihad and the gun became his pre-occupation and recreation. The Sheikh’s motto is stated to have been:

“Jihad and the rifle alone. No negotiations, No conferences and No dialogue”.

The book contains an endorsement by Osama Bin Laden stating:

“Sheikh Abdullah Azzam was not an individual, but an entire nation by himself. Muslim women have proven themselves incapable of giving birth to a man like him after he was killed”.

The book is dedicated to Sheikh Abdullah Azzam and the Mujihadin of Afghanistan *"who ignited the flame of Jihad in the 20th Century...amongst them were those that joined the Caravan of Martyrs and amongst them are those that are still waiting..."*

The book notes specifically in the publisher's foreword that

“this book was written at a time when the first Soviet-Afghan Jihad was well underway, and the context in some parts may be related to this. However, since the core issues dealt with in this book are based on the texts of classical scholars, the material is applicable to all similar situations facing Muslims”.

The publisher, for the 2002 edition, prays “may He grant success and victory to all those who fight in His Way in all corners of the World”.

The publication promotes and incites in matters of crime or violence, specifically terrorist acts and martyrdom operations. This is illustrated in pages 64 & 65 and includes the plan, the action and execution of these operations. Also the concluding paragraph of page 93 furthers this premise.

While the document was written in 1984 and much of the content was regarding the Jihad in Afghanistan, this revised edition was published in 2002 with a publisher’s forward explaining how it is just as relevant today in Islamic conflicts all over the world. Additionally, there are “letters of agreement” by Islamic scholars who support the use of martyrdom operations as described in the document.

There is also some level of instruction on how to go about martyrdom operations and their benefits on pages 64 & 65. This is not detailed, however, in the context of the document as a whole, and due to the tone of glorification and justification of these martyrdom operations, this has increased impact.

The book also discusses the benefits of martyrdom and cost in some detail. The book is a call to arms. Its objective purpose, as outlined in the foreword by the publishers in September 2002, and intent is to exhort people to perform acts of terrorism.

The main purpose of the document is to justify the use of, and glorify martyrdom operations. It also calls upon Muslims to become involved in this type of operation to

overcome the “disbelievers”. “Fighting for Islam” is held in the highest esteem as described in the quote on page xvi: “Standing for an hour in the ranks of battle waged for the Sake of Allah is better than standing in prayer for sixty years”.

The publisher notes that:

“there is not a land of Jihad in the world today, nor a Mujahadin fighting in Allah’s Way, who is not inspired by the life, teachings”

of the author Abdullah Azzam.

The book notes that there are two types of Jihad against the disbelievers:

- offensive Jihad (where the enemy is attacked in his own territory - it is obligatory on Muslims to send an army "*at least once a year to terrorise the enemies of Allah*").
- defensive Jihad (a compulsory duty on all Muslims to expel the disbelievers "from our lands").

Jihad is stated to be the most important of all compulsory duties on Muslims.

The book notes that it is a “sin” for Muslims to not advance towards “Afghanistan, Palestine, the Philippines, Kashmir, Lebanon, Chad, Eritrea etc.”

The book specifically states that it is not necessary for persons who are to engage in Jihad to seek the permission of their parents or spouses.

Appendix C is entitled *The Islamic Ruling on Martyrdom Operations*. The description of martyrdom operations is specific. It states that

“the form that (martyrdom or self-sacrifice operations) usually takes nowadays is to wire up ones body, or a vehicle or suitcase with explosives, and enter into amongst a conglomeration of the enemy, or in their vital facilities, and to detonate in an appropriate place there in order to cause the maximum losses in the enemy ranks, taking advantage of the element of surprise and penetration...another technique is for an armed mujahid to break into the enemy barracks or area of conglomeration and fire at them at close range, without having prepared any plan of escape, not having considered escape a possibility. . .

As for the effects of these operations on the enemy, we have found, through the course of our experience that there is no other technique which strikes as much terror into their hearts, and which shatters their spirit as much.

On account of this they refrain from mixing with the population, and from oppressing, harassing and looting them. They have also become occupied with trying to expose such operations before they occur which has distracted them from other things. Praise is to Allah.

...On the material level, these operations inflict the heaviest losses on the enemy, and are lowest in cost to us. The cost of equipment is negligible in comparison to the assault; in fact the explosives and vehicles were captured as war-booty such that we return them to the Russians in our special way."

The publication notes the practical success and benefit to Islam of martyrdom operations in Chechnya, Afghanistan and “Palestine”.

This Appendix contains 24 pages of Koranic and Islamic analysis supporting the argument that such operations are legal. The conclusion to the Appendix is:

“that martyrdom operations are permissible, and in fact the mujahid who is killed in them is better than one who is fighting in the ranks, for there are great oceans even among martyrs, corresponding to their role, action, effort and risk undertaken.”

Promotion, Incitement or Instruction in Matters of Crime and Violence

The Review Board considered that the book:

- was specific and explicit in its support for and encouragement of suicide bombing;
- contained details about how to undertake suicide bombing, explained techniques for undertaking such crimes and outlined the political and psychological benefits and distress caused to the enemy caused by such attacks;
- was written in an emotively and passionate manner with the purpose of being a real and genuine call to specific action by Muslims. The book was written as an impassioned plea to Muslims to fight for Allah and engage in acts of violence;
- was republished in 2002 to specifically refer to "all situations confronting Muslims around the world" which gave the book a contemporary relevance and context;
- was written by a well-known Jihadi who had engaged in acts of terrorism and who had ties to the Taliban, Osama Bin Laden and associates;
- had the objective purpose of promoting and inciting acts of terrorism against disbelievers, and suicide bombings, either in non-Muslim lands or in occupied Muslim lands.

French J in *Brown v Classification Review Board* noted that the term “promote, incite or instruct” is a “collocation of overlapping meanings”. This decision was in the context of an interpretation of the term "instruct". Nevertheless, insofar as this “collocation of overlapping meanings” applies to the interpretation of the term “promotes or incites” the Review Board concluded that the publication contained elements of specific instruction, referred to above, about how to undertake suicide bombing attacks.

7. Reasons for the decision

The Review Board considered:

- the general principle that adults should be able to read what they want, but also the community's concerns about material that promoted terrorism and other criminal activities;

- that the publication, being written by a prominent Islamic terrorist, may appeal to some disenfranchised segments of the community and that the book was designed to encourage such people to take up arms and commit specific crimes against non-believers, in the cause of Islam;
- that the book, written by an extreme Jihadi, presented a one-sided and extreme interpretation of Islam and it did not have any discernible educational or literary merit.

Even after considering the need to undertake a conservative interpretation of the Code, the Review Board unanimously concluded that the publication promoted and incited in matters of crime and violence. Having considered this, the Review Board did not consider it necessary to consider the impact of the classifiable elements (violence, themes, nudity, coarse language, sex or drug use).

The Review Board unanimously concluded that the publication should be Refused Classification.

Note: The Review Board had regard to section 101.1 of the Commonwealth Criminal Code which provides that "*a person commits an offence if the person engages in a terrorist act*". This is punishable by imprisonment for life and is a crime. Under section 15.4, the offence applies whether or not the conduct constituting the alleged offence occurs in Australia.

A "terrorist act" is defined under the Code to include an action done:

- "with the intention of advancing a political, religious or ideological cause"; and
- "with the intention of coercing, or influencing by intimidation, the Government of the Commonwealth or a State or Territory or foreign country or of part of a State, Territory or foreign country; or intimidating the public or a section of the public"; and
- which causes serious harm to a person, serious damage to property, death, or endangers a person's life.

The Review Board also noted that each State referred power to the Commonwealth to legislate against terrorist acts. For example, New South Wales passed the *Terrorism (Commonwealth Powers) Act 2002* "to refer certain matters relating to terrorist acts to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the *Constitution of the Commonwealth*". The other States passed equivalent legislation.

Also, the Review Board noted that the provisions apply in the Territories because the Commonwealth can make laws for the Territories under section 122 of the Constitution.

The Review Board was satisfied that the objective purpose of *Defence of the Muslim lands* was to promote and incite actions of precisely this type.

8. *Summary*

The classifiable elements and the impact in the overall context of the book warrant a refused classification (RC). The publication was refused classification in accordance with the National Classification Code as it was found to “promote, incite or instruct in matters of crime or violence.” The decision of the Review Board was unanimous.