



Australian Government
Classification Review Board

19, 20, 23 June 2006 & 3 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 *Join the Caravan* 'Unrestricted'.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) in a unanimous decision classified the publication *Join the Caravan* '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 classification 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 June 2006 in response to an application dated 5 June 2006 from the Attorney General, the Hon Philip Ruddock MP (the Applicant).

The original application for classification of the publication was lodged by the Australian Federal Police on 15 December 2005 (application reference L05/1454). The Classification Board classified the publication as Unrestricted on 23 December 2005.

At its meeting on 19 June 2006 seven members of the Review Board received oral and written submissions from Mr Drew Kovacs representing the New South Wales Council for Civil Liberties, and then adjourned to consider the substance of the application 'in camera'. The Review Board continued to deliberate 'in camera' on 20 and 23 June 2006 but did not reach a decision.

The Review Board then reconvened on 3 July 2006 for a final time 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 Attorney General's application for review;
- (ii) The NSW Council of Civil Liberties' written and oral submissions;

- (iii) The Publication *Join the Caravan* (L05/1454);
- (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

This 65-page publication examines the Islamic concept of "Jihad" largely as it relates to the conflict in Afghanistan in 1987. However, it was reprinted in 1996 and August 2001 with the addition of the publisher's foreword, details on Abdullah Azzam and (possibly) Part Three: Clarifications about the issue of Jihad today (although this is unclear).

The author refers to the preface of the first and second edition, part one, part two and the conclusion. In the publication before the Review Board, following the conclusion is part three, a glossary and quotations from Salahuddin Ayyubi (Saladin).

6 Findings on material questions of fact

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 9 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".

It was republished in August 2001. The publisher's foreword states:

"this book was one of the principal inspirations for thousands of Muslims from all over the world to go and fight in Afghanistan to defend Muslim blood, property and honour. Azzam Publications published the first English edition in August 1996. Due to popular demand and the book being sold out, we decided to publish a second English edition. Although a part of the book focuses on Afghanistan, most of it is applicable to Jihad in general."

The book is written as an emotive and passionate appeal to Muslims undertaking Jihad. The book states:

“we then are calling upon the Muslims and are urging them to proceed to fight, for many reasons...”

The book quotes from the Koran and various scholars as well as modern Mujahideen, outlining 16 religious and political reasons for Muslims to engage in violent Jihad.

The book argues that Jihad is obligatory on every Muslim. Looking to the structure and nature of the book, the Review Board concluded that it is presented as a direct appeal to the Muslims to engage in fighting, particularly in Afghanistan, but also in other theatres.

At page 18 the book records: “Two duties which we are trying to establish: the duty of Jihad (fighting) and the duty of arousing the believers”.

Further, at page 19 it states: “We then are calling upon the Muslims and urging them to proceed to fight, for many reasons, at the head of which are the following:

1. In order that the disbelievers do not dominate
2. Due to the scarcity of men
3. Fear of the Hell-Fire
4. Fulfilling the duty of Jihad, and responding to the Call of the Lord
5. Following in the footsteps of the Pious Predecessors
6. Establishing a solid foundation as a base for Islam
7. Protecting those who are oppressed in the land
8. Hoping for Martyrdom and a High Station in Paradise”

The book notes that “when an enemy enters an Islamic land or a land that was once part of the Islamic lands it is obligatory on the inhabitants of that place to go forth to face the enemy”.

The book states that Jihad is obligatory in every place that the “disbelievers” have occupied. “It remains (obligatory) continuously until every piece of land that was once Islamic is regained”.

The book contains at page 47 emotional language such as:

“What is the matter with the mothers, that one of them does not send forward one of her sons in the path of Allah, that he might be a pride for her in this world and a treasure for her in the hereafter through his intercession? And what is the matter with the fathers that they do not urge one of their sons, so that he can grow up in the rearing ground of heroes, the land of men and the grounds of battle? . . . What is the matter with the imams, that they do not sincerely advise those who seek counsel from them regarding going out with blood and soul in the path of Allah? For how long will the believing youths be held back and restrained from Jihad? These youths, whose hearts are burning with a fire, spurting forth enthusiasm, and blazing with zeal that their pure blood may irrigate the earth of the Muslims. The one who forbids a young man from Jihad is no different from the one who forbids him from prayer and fasting.”

The foreword specifically notes that the struggle in Afghanistan must continue until:

“Truth emerges distinct from Falsehood and the true Mujahadeen obtain triumph and defeat the enemies of Islam who are trying to destroy the fruit of the Afghan Jihad”.

The book was republished in 2001 and therefore has a contemporary relevance, especially as it refers to:

“Ahmad Shah Masood who has allied with Russia, America, Iran and France in order to fight against the establishment of Sharia in Afghanistan”.

The Review Board noted that Masood was the military leader of the anti-Taliban Northern Alliance and was assassinated in a suicide attack on September 9, 2001.

The book contains a section entitled “Notes for those coming to Jihad”, which contains real-world details about the Afghani people, and other practical details that Jihadis who come to Afghanistan to fight should know about.

The book also contains some instruction about how to prepare for jihad - it notes that every Muslim should reduce his spending and be frugal with his earnings in order to put money aside to support his wife and children, in order to be able to leave them to go out to Jihad. The book specifically notes that the following people are excused from going to Jihad:

- somebody who is unable, after much effort, to obtain a visa to come to Pakistan;
- somebody whose government denied him a passport or prevented him from leaving from the airport.

The book notes that people coming to Jihad should check with Islamic centres or with well-wishers in order to ensure that provision is taken of his family.

The book contains details of the type of interrogation that a Jihadi may expect upon return to his homeland and notes that fear of such interrogation is not an excuse to prevent a person from undertaking Jihad.

At page 48 there is active encouragement for Muslim believers to participate in Jihad: “Oh brothers of Islam! Come, therefore, to the defence of your religion . . . Draw your sword”.

Promote, Incite or Instruct in Matters of Crime or Violence

The Review Board considered that the book:

- was, in its own words”

“one of the principal inspirations for thousands of Muslims from all over the world to go and fight in Afghanistan to defend Muslim blood, property and honour”,

This, the Review Board considered provided some evidence about the book’s objective purpose.

- was specific and explicit in its support for and encouragement of fighting against non-believers, specifically in Afghanistan;
- contains instruction about how to prepare for, and matters to note about, Jihad in Afghanistan;
- is written in an emotive 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, specifically in Afghanistan but also elsewhere;
- was republished in 2001 to specifically refer to “Jihad in general”, which gives the book a contemporary relevance and context;
- is written by a well-known Jihadi who had engaged in acts of terrorism and who had ties to the Taliban, and was a mentor to Osama Bin Laden and his associates;
- has the objective purpose of promoting and inciting acts of terrorism against “disbelievers”, and in particular in Afghanistan.

Having determined unanimously that the book promoted and incited 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.

7 Reasons for the decision

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 contains some elements of specific instruction, referred to above, about what preparations to make and precautions to take when coming to Afghanistan for Jihad.

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.

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. Fighting for the Taliban in Afghanistan against the Government of that country, as well as being an act of violence, is also a crime under the Criminal Code.

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 *Join the Caravan* lands was to promote and incite actions of precisely this type.

8 Summary

The cumulative impact of the book draws the reader to the conclusion that Jihad is an obligation of Muslims. It takes the reader down a narrow path with the conclusion being that it is obligatory to go out and commit the crime of terrorism, particularly suicide bombing and other operations where death to the perpetrator is the likely outcome. On this basis, the publication is refused classification. The decision of the Review Board was unanimous.