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13 July 2007

Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
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Canberra ACT 2600

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### **Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007**

The National Association for the Visual Arts (NAVA) appreciates the opportunity to provide comment on the above Bill.

NAVA is the peak body representing and advancing the professional interests of the Australian visual arts and craft sector, including artists who work in film, multi media and whose work is reproduced in or commissioned for publications. NAVA has about 3,000 individual and organisational members and 1,000 student affiliates. NAVA provides both advocacy and direct service to members and the visual arts industry through offering expert advice, representation, resources and a range of other services. Since its establishment in 1983, NAVA has been very influential in bringing about policy and legislative change to encourage the growth and development of the visual arts and craft sector and to increase professionalism within the industry.

NAVA notes that the Bill specifically "is not intended to restrict the legitimate exercise of freedom of speech" and "is not intended to capture material... (that) could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire."

However, NAVA shares the concerns expressed in the submission made by the Arts Law Centre of Australia that:

1. Australian artists already feel great pressure and uncertainty about what they are allowed to express in their art practice under current legislation.

NAVA has several examples of the 'chilling effect' already being in evidence, and artists having their works censored because of a perception that the work contravenes certain laws.

As a current example, Melbourne artist Van Thanh Rudd has developed a touring project called "The Carriers - Local Terrain" endorsed by Kultour, a touring company sponsored by Australia Council. He has produced a polemical artwork called *Portrait of an Exploding Terrorist* which is somewhat abstracted but nevertheless a recognisable (though not gory) depiction of an exploding person. His purpose is to take art outside the gallery directly to the public. As part of his national tour, on Friday July 7th this year he carried his large painting (oil on canvas 165cm x 150cm) through the streets of Brisbane's CBD and into the Queen Street Mall. The day before he had been given a warning by Brisbane City Council Officers not to carry this painting in the mall due to its contents being "not suitable in this climate of terrorism as it might scare people". The next day Council staff returned with police officers who threatened to arrest Rudd under 'public nuisance' laws if he didn't leave the mall. While this is a visual arts example, the same attitudes and consequent actions could be applied to visual artists' work in publications, films and computer games.

2. the drafting of proposed section 9A does not achieve the stated intention of the Attorney General's Department to protect some sorts of work (eg: that of filmmakers, authors or publishers) dealing with contentious subject matter and to protect the "legitimate exercise of freedom of speech".


Because artwork is open to interpretation and the language of the proposed legislation is so loose, especially in the current climate it is open to misapplication and the curtailing of human rights. In clauses 9A (2) (a) and (b) this is exacerbated by the inclusion of the word 'indirectly' which lays wide open the possibility of attributing any acts of terrorism to the indirect influence of anything which happens to suit at the time. Indirect causal links are completely unprovable.

NAVA has expressed its serious concern that the Sedition clauses in the Anti-Terrorism Act pose a very real threat to freedom of expression for artists in Australia and has strongly endorsed the findings of the Australian Law Reform Commission in its *Fighting Words: A Review of Sedition Laws in Australia (2006)*. In our view, these proposed amendments to the Classification (Publications, Films and Computer Games) Act 1995 would exacerbate the problem.

For the reasons stated above, we believe that the Bill in its current form will further undermine artistic expression and freedom of expression in Australia and would strongly recommend that it should not be adopted. However, if the amendment is to go ahead, NAVA strongly recommends that the words "artistic expression" be inserted into Clause 9A(3) as follows:

"A publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act but the depiction or description could reasonably be considered to be done as part of public discussion, debate, **artistic expression** or as entertainment or satire".

Yours sincerely



Tamara Winikoff  
Executive Director