

31 January 2007

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

The Peaceful Pill Handbook

- Application for Review of Classification by the Attorney-General (Commonwealth)
- Application for Review of Classification by the Right to Life Association (NSW) Inc.

“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

General submissions

1. The NSW Council for Civil Liberties (NSWCCL) supports the conclusion of the majority of the Classification Board in their decision published on 12 December 2006 (L06/256), and (generally) the reasoning for that conclusion.
2. NSWCCL submits that the publication is a call to political action to change the law in Australia, and is protected by the implied constitutional freedom of political communication.
3. NSWCCL believes that refusing classification to this publication would involve an unreasonable and unnecessary interference with the principle that adults should be able to read, hear and see what they want.
4. NSWCCL submits that the publication should not be refused classification based on a political, religious or moral rejection of the content of the publication.

5. NSWCCCL submits that refusal of classification to this publication will criminalise conduct (ie distribution of the publication) which many reasonable adults believe should be permitted. It will have the effect of bringing the law into disrepute.
6. In relation to whether the publication instructs in matters of crime, NSWCCCL submits:
 - (a) it is a matter for each individual review board member to come to his or her own view as to whether or not:
 - (i) the publication instructs in matters of crime; and
 - (ii) another person may (genuinely) hold the view that the publication does not instruct in matters of crime;
 - (b) in coming to their view on that matter, review board members are not required to agree with any legal advice that may be given to them
 - (c) mere provision of information is insufficient to comprise instruction;
 - (d) in order for information to instruct, it must be accurate and not misleading;
 - (e) in order to apply the *Classification (Publications, Films and Computer Games) Act 1995* consistently with the constitutional implied freedom of political communication, it is necessary for the term 'instruct' to include a requirement that the provision of information must have the likely effect to bring about the commission of a crime; and
 - (f) it is necessary to identify with precision the crime in order to assess whether or not information provided instructs in matters of that crime.

These submissions are developed further below.

7. If (contrary to the above submissions) the review board considers that the publication does instruct in matters of crime, NSWCCCL submits that the review board should identify with precision the information which is said to constitute the instruction, so as to enable the author and publisher to consider amending the publication, and to assist the public generally in understanding what the review board considers permissible in a publication dealing with the themes of this publication.

Conceptual framework

8. Discussion of the contents of the publication requires careful distinction between a number of different concepts, including:
 - (a) suicide;
 - (b) assisted suicide;
 - (c) physician-assisted suicide;
 - (d) voluntary euthanasia; and
 - (e) euthanasia.
9. Further, each of the above concepts is capable of relating to different categories of people, including:

- (a) seriously ill and suffering people for whom there is little hope that their quality of life will ever recover to a level that is satisfactory to them;
 - (b) people suffering depression or other mental illness;
 - (c) people suffering chronic, but not terminal, physical illness;
 - (d) people not suffering from any illness at all.
10. It is relevant to observe that the publication in this case primarily discusses the concept in paragraph 7(a) in relation to people in category 8(a).

The publication

- 11. NSWCCCL acknowledges that the publication warrants a Category 1 restricted classification as it is unsuitable for a minor to see or read.
- 12. NSWCCCL acknowledges that the publication may offend some sections of the adult community on the grounds of religious or moral beliefs. However, NSWCCCL believes that such sections of the community do not have the right to require society as a whole to conform to their religious or moral beliefs. Classification in "Category 1 restricted" will sufficiently protect such sections of the community from exposure to the publication on a unsolicited basis.
- 13. The target audience for the publication is seriously ill and suffering people for whom there is little hope that their quality of life will ever recover to a level that is satisfactory to them.
- 14. The publication contains discussions of end of life (EOL) considerations and the issue of suicide in EOL decisions. It also discusses suicide methods and contains a survey of the relative advantages and shortcomings of suicide in EOL decisions. The publication also describes a project undertaken by a group of elderly people who held a common belief in the right to die with dignity and to plan one's own death, in which they attempt to make their own barbiturate or a similar chemical compound. It discusses places in the world where assisted suicide and physician-assisted suicide is legal, and it discusses issues relating to the immediate post-death period.
- 15. The publication has a serious intent to explore adult themes of EOL decisions and associated issues such as suicide and assisted suicide. The treatment of these themes is not exploitative.

Further submissions in relation to paragraph 6 above

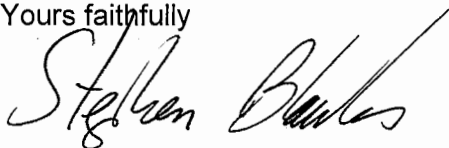
- 16. The review board is required to apply the correct legal meaning of the word "instruct". This was discussed extensively in *Brown v Members of the Classification Review Board* (1998) 82 FCR 225. Extracts of relevant passages from that case are annexed to this submission.
- 17. Further, NSWCCCL submits the review board is required to apply the *Classification (Publications, Films and Computer Games) Act 1995* consistently with the constitutional implied freedom of political communication. The publication is a call to political action, and therefore engages the constitutional freedom. NSWCCCL submits that it is necessary for the term 'instruct' to include a

- requirement that the provision of information must have the likely effect to bring about the commission of a crime.
18. As to paragraph 6(a)(i) and 6(b) above, it is obvious that on many questions, different people will (genuinely) have different views. This applies both to questions of fact and questions of law. The question as to whether the publication instructs in matters of crime is ultimately a question of fact, not law (subject to the application of the correct legal meaning of the terms) "instruct" and "matters of crime".
 19. The information provided at pages 167 and following in the publication is insufficient to enable a person to manufacture Nembutal or other barbiturates. Accordingly, the information may be considered not to be accurate or to be misleading, having regard to the apparent objective for which it is provided. For this reason, the information does not amount to instruction.
 20. As to the relevance of the formulation of the question in paragraph 6(a)(ii) above, NSWCCCL submits:
 - (a) the review board is required under the *Code* to give effect, **as far as possible**, to the principle that adults should be able to read, hear and see what they want and the other principles in the *Code*.
 - (b) the other principles in the *Code* are appropriately accommodated by the classification category R1.
 - (c) having regard to the first principle of the *Code*, the review board is required as far as possible to classify the book so that adults may read it;
 - (d) accordingly, if the review board considers it is possible for a person (genuinely) to hold the view that the publication does not instruct in matters of crime, the review board must not refuse classification to the publication.
 - (e) thus the proper question for the Board to consider in relation to this publication is whether a person may (genuinely) hold the view that the publication does not instruct in matters of crime, the Board must not refuse classification to the publication.
 21. It is plain from the decision of the classification board that it is possible for a person (genuinely) to hold the view that the publication does not instruct in matters of crime.
 22. Accordingly, the instruction "as far as possible" in the *Code* requires that the review board does not refuse classification to the publication.

Conclusion

The above submissions are intended to be an outline only. NSWCCCL would like to have an opportunity to respond to written and oral submissions made by other parties.

Yours faithfully



Stephen Blanks

Secretary, NSW Council for Civil Liberties

Extracts from *Brown v Members of the Classification Review Board* [1998] 319 FCA on the meaning of “instruct”

1. The word "instruct" is to be construed in a way which includes elements of promotion or incitement. Not to do so would lead to a broad construction satisfied by the mere fact that a publication furnishes the reader with knowledge on "*matters of crime*". On that basis it could be argued that books or films describing or depicting the commission of crimes, real or fictitious, instruct in matters of crime. So too, a detailed newspaper report of how a particular crime was effected might be said to instruct in matters of crime.¹
2. French J said

“Consistently with the principle of freedom of expression recognised by the Code itself, it must appear from the publication in question that it goes beyond the mere provision of information about crime and teaches or educates in matters of crime.”
3. French J cited with approval the following passage from the judgment of Merkel J at first instance:

“...an instruction, to fall within the Code, must do more than state the obvious or inform or convey knowledge of matters in such a general way that, in a real and practical sense, no instruction has really been given.”
4. Heerey J, said

“I agree with French J that in the present statutory context “instructs” is to be read as connoting (i) the imparting or teaching of knowledge, skills and techniques as to how crime may be committed, and also (ii) some element of encouraging or exhorting the commission of crime.”

¹ Per French J