

CHAPTER 1

Introduction

Referral of the inquiry

1.1 On 16 November 2010, the Senate referred the Australian film and literature classification scheme to the Legal and Constitutional Affairs References Committee (committee) for inquiry and report by 30 June 2011, with particular reference to:

- (a) the use of serial classifications for publications;
- (b) the desirability of national standards for the display of restricted publications and films;
- (c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;
- (d) the interaction between the National Classification Scheme and customs regulations;
- (e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;
- (f) the impact of X18+ films, including their role in the sexual abuse of children;
- (g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;
- (h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;
- (i) the application of the National Classification Scheme to music videos;
- (j) the effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';
- (k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;
- (l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;
- (m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;

- (n) the Government's reviews of the Refused Classification (RC) category; and
- (o) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General's Department.¹

Context of the inquiry

1.2 In 1996, the National Classification Scheme was introduced with the aim of establishing a cooperative system between the Commonwealth and the state and territory governments to make Australia's censorship laws more uniform and simple.²

1.3 It has now been more than 15 years since the introduction of the National Classification Scheme. In that time technology has progressed at a rapid pace. People, and particularly children, access material through a variety of media and it is important that the classification system is able to be applied to media in a consistent and comprehensive manner.

1.4 Further, the committee is aware of community concerns in relation to several aspects of the National Classification Scheme, such as the effectiveness of the enforcement system and the availability of Restricted publications and films from general retail outlets. These issues have also been pursued by the Senate Legal and Constitutional Affairs Legislation Committee through the estimates process.

1.5 A complicating factor is that the National Classification Scheme does not apply to all media. For example, media such as billboards and outdoor advertising are regulated through industry codes. Given the very public nature of such media, the committee believes it is appropriate to consider the application of the National Classification Scheme to these types of media.

1.6 In this context, the committee has undertaken a comprehensive review of the National Classification Scheme:

- its ability to uniformly and consistently apply classification criteria to new media;
- its effectiveness in balancing the competing principles of protecting children from material that is likely to harm them, and protecting the community from exposure to unsolicited material that they find offensive, against the interests of adults being able to read, listen to and look at material of their choosing; and
- an assessment of whether the scope of the National Classification Scheme should be expanded to apply to all media.

1 *Journals of the Senate*, 16 November 2010, p. 300.

2 *Intergovernmental Agreement on Censorship*, November 1995, item B.

Other current inquiries

1.7 The committee notes that there a number of ongoing inquiries which are also reviewing aspects of the regulatory framework for classification in Australia. Those inquiries are briefly outlined below.

ALRC's National Classification Scheme Review

1.8 On 24 March 2011, the Attorney-General referred the terms of reference for the National Classification Scheme Review to the Australian Law Reform Commission (ALRC). The terms of reference for the ALRC direct it to consider a range of issues including:

- (i) the relevant existing Commonwealth, state and territory laws and practices;
- (ii) the classification categories contained in the Classification Act, National Classification Code and Classification Guidelines; and
- (iii) any relevant constitutional issues.³

1.9 The ALRC released an issues paper for its inquiry on 20 May 2011, and has called for submissions to the issues paper by 15 July 2011.⁴ The ALRC is due to report to the Attorney-General by 30 January 2012.

House of Representatives billboard and outdoor advertising inquiry

1.10 On 14 December 2010, the Attorney-General referred to the House of Representatives Standing Committee for Social Policy and Legal Affairs an inquiry in relation to the regulation of billboards and outdoor advertising.⁵

1.11 Although there is no fixed tabling date for the inquiry, media reports have suggested that the House of Representatives committee will table its report by the end of June 2011.⁶

Convergence Review

1.12 The Convergence Review is an independent review established by the Australian Government to examine the policy and regulatory frameworks that apply to

3 See Australian Law Reform Commission (ALRC), *Review of Censorship and Classification*, <http://www.alrc.gov.au/inquiries/classification/terms-reference>, (accessed 4 May 2011).

4 See ALRC, *National Classification Scheme Review – Respond to issue paper*, <http://www.alrc.gov.au/inquiries/classification/respond-issues-papers>, (accessed 30 May 2011).

5 See House of Representatives Social Policy and Legal Affairs Standing Committee, Inquiry into the regulation of billboards and outdoor advertising, <http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/index.htm>, (accessed 30 May 2011).

6 Clare Kermond, 'When sex doesn't sell', *The Age*, 25 March 2011, p. 8.

converged media and communications in Australia. The review is being conducted by the Convergence Review Committee, whose members have been appointed by the government.⁷

1.13 On 28 April 2011, a Framing Paper was released for the inquiry.⁸ The Convergence Review Committee is due to report in March 2012. Officers from the Department of Broadband, Communications and the Digital Economy were unable to indicate to this committee during the current inquiry if an interim report will be provided before March 2012.⁹

Review of Refused Classification category

1.14 On 9 July 2010, the Minister for Broadband, Communications and the Digital Economy announced a review of the Refused Classification category under the National Classification Scheme. The review arose as part of the Australian Government's consultations on measures to accompany the introduction of internet service provider (ISP) filtering of Refused Classification content. In announcing the review, the Minister indicated the legal obligations for ISPs to undertake mandatory filtering will not commence until the review is complete.¹⁰

1.15 Officers from the Department of Broadband, Communications and the Digital Economy indicated that the government's review of the Refused Classification category will be undertaken as part of the ARLC's National Classification Scheme Review.¹¹

Joint Select Committee on Cyber-Safety

1.16 The Joint Select Committee on Cyber-Safety was established on 29 September 2010.¹² That committee has broad-ranging terms of reference, including:

7 See Department of Broadband, Communications and the Digital Economy, *Convergence Review*, http://www.dbcde.gov.au/digital_economy/convergence_review, (accessed 30 May 2011).

8 Department of Broadband, Communications and the Digital Economy, *Convergence Review Framing Paper*, April 2011, http://www.dbcde.gov.au/_data/assets/pdf_file/0019/133903/Convergence_Review_Framing_Paper.pdf, (accessed 30 May 2011).

9 *Committee Hansard*, 27 April 2011, p. 35.

10 Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, 'Outcome of Consultations on Transparency and Accountability for ISP filtering of RC content', Media Release, 9 July 2010, available at http://www.minister.dbcde.gov.au/media/media_releases/2010/068, (accessed 30 May 2011).

11 *Committee Hansard*, 27 April 2011, p. 34.

12 The resolution for appointment of the Joint Select Committee for Cyber-Safety was passed in the House of Representatives on 29 September 2010 and by the Senate on 30 September 2010.

- the online environment in which Australian children currently engage;
- the nature, prevalence, implications of and level of risk associated with cyber-safety threats;
- Australian and international responses to current cyber-safety threats, their effectiveness and costs to stakeholders; and
- opportunities for cooperation across Australian stakeholders and with international stakeholders in dealing with cyber-safety issues.

1.17 The Joint Select Committee on Cyber-Safety is due to table its report by 30 April 2012.¹³

Attorney-General's Department's consultation on R18+ classification for computer games

1.18 On 14 December 2009, the Minister for Home Affairs released a discussion paper on the introduction of an R18+ classification for computer games to the National Classification Scheme. The Attorney-General's Department undertook an initial consultation on this topic and released a final report on the public consultation in December 2010.¹⁴

1.19 The committee's terms of reference for the current inquiry specifically precluded the committee from considering the consultation by the Attorney-General's Department on the introduction of an R18+ categorisation for computer games. The committee notes, however, that this has been an issue which state and territory leaders have discussed. In particular, the committee notes that the South Australian Attorney-General has expressed support for the introduction of an R18+ category for computer games, on the condition that the current MA15+ category is abolished.¹⁵ The Victorian Attorney-General has also expressed concerns that the introduction of an R18+ category for computer games will legalise games with high levels of graphic, frequent and gratuitous violence.¹⁶

1.20 On 25 May 2011, the Minister for Home Affairs announced draft *Guidelines for the Classification of Computer Games* which include an R18+ classification category. A decision about the introduction of an R18+ classification for computer

13 See the Joint Select Committee for Cyber-Safety's website, <http://www.aph.gov.au/house/committee/jscc/index.htm>, (accessed 30 May 2011).

14 See Attorney-General's Department, *An R18+ Classification for Computer Games*, <http://www.ag.gov.au/gamesclassification>, (accessed 30 May 2011).

15 Daniel Wills, 'Battle on for game ratings', *Adelaide Advertiser*, 17 March 2011, p. 27.

16 Melissa Fyfe, 'Censorship showdown, Victoria rejects R rating for video games', *Sunday Age*, 3 April 2011, p. 1.

games will be made at the July 2011 meeting of the Standing Committee of Attorneys-General.¹⁷

Conduct of the inquiry

1.21 The committee advertised the inquiry in *The Australian* newspaper on 24 November, 8 and 22 December 2010, and fortnightly from 2 February 2011 to 16 March 2011, and invited submissions by 4 March 2011. Submissions continued to be accepted after the official closing date. The committee also invited 236 organisations and individuals to make submissions. Details of the inquiry and associated documents were placed on the committee's website.

1.22 The committee received 70 submissions from various individuals and organisations, and a large quantity of additional information. All submissions and additional information are listed at Appendix 1. Submissions and additional information were published on the committee's website. However, due to the graphic nature of material contained in some submissions, the committee made a decision not to make such material available on the Parliament of Australia's website. That material is publicly available in hard copy format on request from the secretariat.

1.23 The committee held public hearings in Canberra on 25 March 2011 and 27 April 2011, and in Sydney on 7 April 2011. Witnesses who appeared at the hearings are listed at Appendix 2. The *Hansard* transcript is available on the Parliament of Australia's website at: <http://aph.gov.au/hansard/>.

Structure of the report

1.24 The committee's report is structured in the following way:

- Chapter 2 gives an historical overview of censorship and classification in Australia.
- Chapter 3 provides an overview of the National Classification Scheme.
- Chapter 4 discusses the effectiveness of serial classification decisions and also considers the desirability of national standards for the display of Restricted publications.
- Chapter 5 discusses the classification of Restricted films (R18+ and X18+) under the National Classification Scheme.
- Chapter 6 discusses the enforcement system for the National Classification Scheme, and the interaction between the National Classification Scheme and Customs regulations.

17 See Australian Government, *Proposed Draft Guidelines for R18+ Computer Games*, http://www.classification.gov.au/www/cob/classification.nsf/Page/InformationCentre_ProposedDraftGuidelinesforR18+ComputerGames, (accessed 1 June 2011).

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- Chapter 7 covers the application of the National Classification Scheme to artworks; exemptions from classification for film festivals; and the treatment of material which advocates terrorism.
 - Chapter 8 considers the ability of the National Classification Scheme to apply to new media.
 - Chapter 9 outlines the regulation of television content (specifically music videos), radio and recorded music.
 - Chapter 10 outlines issues with respect to the inclusion of billboards and outdoor advertising in the National Classification Scheme.
 - Chapter 11 deals with the effectiveness of the National Classification Scheme and other regulatory mechanisms in preventing the objectification of women and the sexualisation of children.
 - Chapter 12 sets out the committee's view on the issues canvassed in the inquiry, along with the committee's recommendations.

Acknowledgement

1.25 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Note on references

1.26 Submission references in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee *Hansard* are to the official *Hansard* for the hearings held on 25 March and 7 April 2011, and to the proof *Hansard* for the hearing held on 27 April 2011. Page numbers may vary between the proof and the official *Hansard* transcript for 27 April 2011.

