



# RESEARCH NOTE

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## Censorship and Classification in Australia

### Background

The Commonwealth Parliament has before it the *Classification (Publications, Films and Computer Games) Bill 1994* ("the Bill"). This Bill proposes a national scheme for the classification of printed material, films, videos and computer games. The availability for sale and distribution of such material is the responsibility of each State and Territory through their respective enforcement laws.

Because of the inter-action of Commonwealth and State laws in the matter of censorship, the classification process involves a proposed National Classification Code ("the Code") which establishes a set of principles for the classification of material. The Code has been formulated by a national ministerial council responsible for censorship matters. The Senate *Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies* reported on the Bill in November 1994 and, while supporting passage of the Bill, the Committee made recommendations on modifications to the Bill. These modifications included:

- amendments to the Code be tabled by relevant Ministers so that Parliament is kept informed of variations to classification principles (at both the

Commonwealth and State/Territories levels); and

- a community committee be established to provide recommendations to the Classification Board (in those cases where there was not a unanimous classification decision), and the Classification Review Board, with respect to films and videos with an MA or R rating.

A significant development after the introduction of the Bill into the House of Representatives is the amendment of the Bill by the Government to extend the classification regime to computer games or films now available through computer bulletin boards to personal computers in the home. It is suggested that the definition of "computer game" could be clarified further to ensure that it covers both the visual display **and any accompanying dialogue i.e. language.**

To be fully operational, the *Classification (Publications, Films and Computer Games) Bill 1994* will require uniform enforcement laws by the States and the Territories. Once the combined legislative framework is in place, Australia will have a comprehensive legislative basis for censorship and classification. The present system has anomalies and weaknesses.

### Constitutional Powers

The Commonwealth primarily relies upon section 51(i) - the trade and commerce power - to regulate the importation of films, videos, printed material and computer games. In addition, the Commonwealth has available section 122 - the Territories power - to make laws for the government of the Territories. The increasing use of telecommunications systems for computer-linked transmissions also brings into play the Commonwealth's telecommunications power at section 51(v) of the Constitution. Section 51(v) also covers laws on postal matters. It appears that the Commonwealth has not enforced tighter regulation on the use of the postal services for the delivery of X-rated videos for practical reasons and considerations of privacy of the mail service.

The Commonwealth utilises the "Territories power" to make classification changes via the *ACT Classification of Publications Ordinance 1983*, which is a Commonwealth subordinate law and not a law of the ACT Legislative Assembly. The ACT has no constitutional power to classify material (e.g. what is depicted and permissible in X-rated videos).

While the Commonwealth has power to regulate imports, it has no head of power to support a national law to classify material

produced in Australia. At present, it is still possible for the States to have their own classification boards which could lead to variations in the classification applied to the same publication. The Bill attempts to create a national classification system with complementary State and Territory uniform enforcement laws.

### Classification Fees

The Commonwealth levies an application fee on the industry for the classification of material (1992-93 - \$1,022,540; 1993-94 - \$847,065).<sup>1</sup> Under a sharing

<sup>1</sup> The fee is charged for classification of material. The decrease in 1993-94

formula, the Commonwealth retains about 50% and distributes the other 50% to the States and the Northern Territory. The ACT, at present, receives no share of the classification fees (not even for the classification of X-rated videos; that component is shared by other jurisdictions).

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collections was due to a reduction in total collections for South Australia, pending a new Commonwealth/State Agreement (p7, *Report on Activities 1993-94 OF&LC*).

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## The Classification System

The Bill does not alter the existing classifications which are set out in the following table.

<b>Printed Matter (Voluntary Classification)</b>	<b>Films and Videos (Mandatory Classification)</b>	<b>Computer Games (Mandatory Classification)</b>
Unrestricted	G.-.General	G.-.General
Restricted - Category 1 (Sold in a sealed wrapper to those 18 years and over; not to be sold in Queensland)	PG - Parental Guidance	G 8+ - Comic Horror
Restricted - Category 2 (Sold on restricted premises to those 18 years and over; not to be sold in Queensland)	M - Mature: 15+	M - Mature: suit 15+
RC - Refused Classification	MA - Mature Accompanied: 15+	MA - Restricted: 15+
	R - Restricted: 18+	Refused Classification
	X - 18+ only	(An assumption is made that the uniform State laws will require mandatory classification).
	Refused Classification	