



**Australian Government**  
**Attorney-General's Department**

**Civil Law Division**

11/3581

6 April 2011

Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee  
On Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms Dennett

**Questions on Notice - Inquiry into the Australian film and literature classification scheme**

I am writing to provide answers to the questions that the Department took on notice.

***Provide a summary of residual powers that States and Territories have outside the scope of the National Classification Scheme***

Four Australian jurisdictions have classification processes outside of Commonwealth processes under the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth Classification Act).

**1. Queensland**

Section 4 of the *Classification of Films Act 1991 (Qld)* provides for the appointment of a Films Classification Officer. The Section also provides for a public service officer or police officer to be appointed as a classification inspector. Section 5 of the *Classification of Computer Games and Images Act 1995 (Qld)* provides for a Computer Games Classification Officer who can classify an unclassified computer game on their own initiative or because of representations made to them. Section 6 of the *Classification of Publications Act 1991 (Qld)* provides for a Publications Classification Officer who can classify a publication that is unclassified under the Act, applying the relevant Commonwealth provisions, on their own initiative or on the grounds of a complaint.

Currently Queensland does not have such officers appointed.

**2. South Australia**

The *Classification (Publications, Films and Computer Games) Act 1995 (SA)* establishes the South Australian Classification Council (the Council). The Council consists of six members appointed by the Governor for a term not exceeding three years. The Council must contain one legal practitioner, one person with expertise relating to the psychological development of young children and adolescents and one person with 'wide experience in education'.

The Council can classify a publication, film or computer game of its own initiative, or when required to by the Minister. Classifications are in accordance with the National Classification Code and National Classification Guidelines and have an effect to the exclusion of any classification under the Commonwealth Classification Act.

### **3. Tasmania**

Legislation in Tasmania limits the classification of material outside of Commonwealth processes to films. Section 41A of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Tas)* allows the Minister to establish a Review Committee if the Minister considers that a classified film unduly emphasises matters of violence or cruelty. Section 41 allows a person to apply to the Minister for a review of a classified film, if they consider that it unduly emphasises matters of violence or cruelty. When an application is received under s 41, the Minister must establish a Review Committee.

A Review Committee would consist of no less than three persons who, in the opinion of the Minister, have suitable knowledge, expertise and qualifications to review the films classification and make a recommendation to the Minister.

Depending upon the recommendation of a Review Committee, the Minister would either make an order prohibiting the sale and delivery of the item, assign a higher classification to the item or request that the Review Committee reconsider their recommendation. An order assigning a classification has effect, notwithstanding the classification assigned under the Commonwealth Classification Act.

The Department is not aware of the establishment of a Review Committee to date.

### **4. Northern Territory**

The *Classification of Publications, Films and Computer Games Act (NT)* provides for a Publications and Films Review Board (the Board). The Board may consist of five members, including at least one woman, one man, one lawyer and one person with qualifications in literature, art or education satisfactory to the Minister. The Board would have the same powers and functions as the Commonwealth Classification Board.

Currently the Northern Territory has not established a Publications and Films Review Board.

***Were Community Assessment Panels originally intended to be standing bodies? How often have they been used?***

It does not appear that Community Assessment Panels (CAPS) were originally intended as standing bodies. They were intended to be research tools to assist in gauging community standards. Classification Board members are themselves selected to be broadly representative of the Australian community and CAPS has been employed to ensure parity between Board decisions and the views of representative samples of community members.

CAPS was first proposed in December 1996 by the then Commonwealth Attorney-General. The proposal was agreed to by State and Territory Censorship Ministers.

A Research Reference Group was established to oversee the scheme and approve research methodology and instruments and to engage a consultant. Keys Young Pty Ltd was engaged to conduct the panels.

The first three panels were conducted in Sydney, Brisbane and Wagga Wagga between October 1997 and March 1998. A further three panels were conducted in Perth, Adelaide and Bendigo between July 1999 and April 2000.



In its final report on these CAPS sessions, Keys Young stated that *"it can reasonably be concluded that the Classification Board's decisions can be considered to represent community standards"*.

In July 2000, Commonwealth, State and Territory Censorship Ministers noted the successful completion of the scheme, and agreed to consider conducting further panels periodically.

In March 2003, the then Commonwealth Attorney-General advised State and Territory Censorship Ministers that a review of the operation of the recently introduced combined *Guidelines for the Classification of Films and Computer Games* was to be undertaken. The review was to test whether decisions of the Board made under the combined guidelines differed from those made under previous guidelines. The Attorney-General indicated that it would be useful to bring forward CAPS to coincide with the operational review. This view was supported by State and Territory Censorship Ministers.

CAPS were then conducted in 2004 to test the extent to which the decisions made by the Classification Board reflected current Australian community standards towards both films and computer games.

The panels consisted of up to 20 members of the public of various ages and backgrounds who provided independent classification assessments of films and computer games already classified by the Board, but not yet publicly released.

The 2004 CAPS were conducted in Canberra, Alice Springs and Melbourne. Outcomes from the panels demonstrated a high level of agreement between the community assessment panels and the Classification Board.

***Have any treaties been signed by Australia since 1996 that could support a Commonwealth classification law and what power does the Commonwealth have under the Constitution?***

Under the external affairs power of the Constitution, (section 51(xxix)) Australia can implement any relevant treaty obligations through Commonwealth legislation. However, the Department is not aware of a specific or relevant treaty that would support a Commonwealth classification law.

The question of what powers are available under the Constitution would depend on the nature of the particular legislative approach being pursued. This would be a matter for Government at the relevant time.

The action officer for this matter is Wendy Banfield who can be contacted on (02) 6141 3113.

Yours sincerely

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Classification Branch

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