



Australian Government

**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
Canberra City 2601

Ms Julie Dennett
Committee Secretary
Standing Committee on Legal and Constitutional Affairs

Inquiry into the Australian film and literature classification scheme

I refer to your letter of 29 November 2011, inviting input into the above Inquiry.

Customs and Border Protection would like to provide assistance to the Inquiry in relation to two items within the Terms of Reference:

- (b) the interaction between the National Classification Scheme and Customs Regulations; and*
- (n) the Governments reviews of the Refused Classification Category (RC)*

The following information describes the legislative framework under which Customs and Border Protection undertakes its role in preventing the importation of objectionable goods, and how that role supports the Government's prohibition on the availability of highly offensive material.

Regulatory Framework

The importation of objectionable material is prohibited without permission under Regulation 4A of the *Customs (Prohibited Imports) Regulations 1956* [Customs PI Regulations]. A like export control exists.

Objectionable material is defined under the regulations as publications and any other goods, that:

- (a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be imported; or
- (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- (c) in relation to a computer game — are unsuitable for a person under 18 to see or play; or
- (d) promote, incite or instruct in matters of crime or violence; or
- (e) promote or incite the misuse of a drug specified in Schedule 4; or

- (f) advocate the doing of a terrorist act.

The Customs PI Regulations are intended to mirror the classification legislation, in so far as preventing the importation of any material which has been (or would be) refused classification in Australia. However, the Customs PI Regulations are not identical to the classification legislation as it is a dedicated border control that also covers material that may not be intended for commercial use. Regulation 4A under the Customs PI Regulations operates under its own power and does not reference classification legislation.

Penalties

Three levels of penalties apply to the importation of objectionable material, depending on the seriousness of the offence:

- *Personal* imports of objectionable material can include fines of up to three times the value of the goods or \$110 000, whichever is greater.
- *Commercial* importations of objectionable material are considered Tier 1 goods. In addition to the fine of up to \$110,000, penalties for illicit, *commercial* importations can include five years imprisonment.
- Imports (both personal and commercial) of child pornography are considered Tier 2 goods and can result in penalties of \$275,000 in fines and ten years imprisonment.

Tier 1 and Tier 2 offences are special offences under sections 233BAA and 233 BAB of the *Customs Act 1901*. As section 233BAB provides a heavy criminal penalty and carries far more serious consequences than the regulation, it includes a detailed definition of items of child pornography or child abuse material for the purposes of Tier 2 offences which is independent from the definition within Regulation 4A of the Customs PI Regulations.

The *Customs Regulations 1926* lists those goods considered to be Tier 1 and Tier 2 goods.

The listing of commercial importations of objectionable material as Tier 1 goods came into effect on 16th December 2009. Tier 1 penalties apply to categories of objectionable material defined in the *Customs Regulations 1926* as either:

- i) The import or export of 25 items or more; or
- ii) goods imported for the purpose of:
 - (a) selling the good;
 - (b) letting the good for hire;
 - (c) by way of trade, offering or exposing the good for sale or hire;
 - (d) distributing the good for the purpose of trade; or
 - (e) exhibiting or displaying the good in public.

The prosecution of offenders importing prohibited objectionable material is undertaken by Customs and Border Protection.

Policy

The Attorney-General's Department (AGD) has policy responsibility for the classification of films, publications and computer games and other goods. Customs and Border Protection administers import (and export) controls on objectionable material at the border, on behalf of AGD.

The purpose of the objectionable material regulation is intended to reflect the government's policy that:

- adults should be entitled to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them; and
- everyone should be protected from material that they find offensive.

The import regulation is intended to take account of community concerns about depictions that condone or incite violence, particularly sexual violence; and the portrayal of persons in a demeaning manner.

Customs legislation applies to:

- computer games, computer generated images, films, videos, DVDs, interactive games and publications
- material that describes, depicts or expresses matters of sex, drug misuse, crime, cruelty, and violence that is offensive to a reasonable adult
- child pornography and child abuse material
- material that promotes or incites crime and drug misuse
- terrorism material

Customs and Border Protection does not have a role in classifying goods under the classification legislation, or determining whether goods are packaged to meet certain requirements for display. Determinations by officers are intentionally limited to assessing whether the goods would be considered objectionable under customs legislation at the time they are imported. If they are not considered to be objectionable, no further assessments are made as to their classification (for example, X or R18+). This is appropriate as many goods assessed are intended only for private consumption.

Point of sale display requirements and compliance checks on domestic distributors are the responsibility of State and Territory law enforcement agencies.

Working with other Government agencies

Customs and Border Protection works closely with AGD through an administrative agreement that outlines the roles and responsibilities of both agencies. The agreement includes arrangements for information sharing, and support where Customs and Border Protection has difficulty determining whether something is considered objectionable.

Under the administrative agreement, AGD provides training to Customs and Border Protection officers, in accordance with an agreed program. The training is provided in every region of Australia to all officers required to view and assess objectionable material at the border. Officers are trained every two years.

AGD updates Customs and Border Protection about classification decisions, through bulletins and access to a web based database, on publications, films and computer games which is used to assist making decisions at the border as new information becomes available. New information can include the reclassification of material, variants in different versions of computer games, and how to identify those versions at the border. As it is usually impractical for officers to make assessments on computer games at the time of importation (many have hidden features not easily identified) AGD provides a list of banned games for our reference.

Where appropriate, Customs and Border Protection will consult the Australian Federal Police or State and Territory police on any detections of child pornography in the Customs environment to determine whether the importer is already under investigation for similar matters. Child welfare authorities are also contacted, where a risk to children is identified from a seizure.

Occupational Health and Safety guidelines are issued to all officers assessing material suspected of being objectionable to minimise any adverse effects from undertaking the assessment process.

Future Amendments

If any recommendation is considered to alter the guidelines to what is deemed to be Refused Classification material, equivalent amendments are required to the Customs PI Regulations to ensure that the controls at the border are consistent with the domestic controls.

Enforcement

An important part of Customs and Border Protection's role is to prevent, deter and detect prohibited, harmful and prohibited goods from entering Australia. We undertake this role using an intelligence led, risk based approach, whilst minimising the impact on legitimate trade and travel.

A range of techniques are employed to risk assess cargo and travellers including (for objectionable material), electronic profiling, x-ray screening and physical examination. Currently we screen around 13.2 million passenger arrivals, 3.1 million import declarations, 7.7 million self assessed low value cargo lines and 36 million mail articles per year.

Seizure and Prosecution Information

Customs and Border Protection detects a substantial quantity of objectionable material each year, much of which is in electronic form (e.g. DVDs, computer hard drives, electronic games etc).

In the Financial year 2009/2010, there were 1373 detected breaches of the prohibited Import regulation for objectionable material. 54 of these cases were considered sufficiently serious to warrant prosecution, including 47 cases involving some form of child pornography. All but 4 cases were successfully prosecuted.

In the six months to December 2010, a further 782 detected breaches were identified, 18 of which have proceeded to prosecution, including 16 cases involving child pornography.

None of the 18 cases related to terrorism material.

Customs and Border Protection would be pleased to provide any further advice the Inquiry may require in relation to the operation of the Customs legislation with classification matters.

The contact officer for further enquiries is within the Trade Policy and Regulation Branch. He may be contact on 01

Sue Pitman
National Director Trade and Compliance

25 February 2011