

CHAPTER 5

Restricted films

Introduction

5.1 Terms of reference (b), (f) and (g) refer to certain aspects of the classification, display and impact of Restricted films.

5.2 This chapter discusses the classification of Restricted films, focussing particularly on:

- the distinction between R18+ and X18+ films;
- films that are Refused Classification (RC);
- the availability and display of R18+ films in Australia; and
- the impact of X18+ films and their role in the sexual abuse of children.

5.3 In addition, this chapter considers the availability of X18+ films throughout Australia, particularly in the Northern Territory.

Classification of Restricted films

5.4 The National Classification Code provides details on the type of content that will place a film into a particular classification category specified in the *Classification Act 1995*. As noted in Chapter 3, a film (except a film that is Refused Classification) will be classified X18+ if it:

- a) contains real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and
- b) is unsuitable for a minor to see.¹

5.5 A film (except a film that is Refused Classification or X18+) will be classified R18+ if it is unsuitable for a minor to see.

5.6 The *Guidelines for the Classification of Films and Computer Games* (referred to in this chapter as the Guidelines) set out the scope and limits of material in each of the classification categories.² In relation to X18+ films, the Guidelines note that such

1 National Classification Code, cl. 3, item 2.

2 X18+ and R18+ classifications only apply to films and not to computer games.

films can contain consensual sexually explicit activity. However, the category has the following limitations:

No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers.

Fetishes such as body piercing, application of substances such as candle wax, 'golden showers', bondage, spanking or fisting are not permitted.

As the category is restricted to activity between consenting adults, it does not permit any depictions of non-adult persons, including those aged 16 or 17, nor of adult persons who look like they are under 18 years. Nor does it permit persons 18 years of age or over to be portrayed as minors.³

5.7 For R18+ films, the Guidelines state that the material 'should not exceed high' impact.⁴ In relation to the classifiable elements of the film, the Guidelines provide as follows:

THEMES

There are virtually no restrictions on the treatment of themes.

VIOLENCE

Violence is permitted.

Sexual violence may be implied, if justified by context.

SEX

Sexual activity may be realistically simulated. The general rule is "simulation, yes – the real thing, no".

LANGUAGE

There are virtually no restrictions on language.

DRUG USE

Drug use is permitted.

NUDITY

Nudity is permitted.⁵

Assessing 'impact' and 'context' for films

5.8 One issue raised by a number of witnesses was the change in the Guidelines in 2003 for classifying films and the effect that this has had on the classifications given to films. While the discussion did not relate specifically to the classification of Restricted films, some witnesses considered that the changes have resulted in a

3 *Guidelines for the Classification of Films and Computer Games*, p. 12.

4 *Guidelines for the Classification of Films and Computer Games*, p. 11.

5 *Guidelines for the Classification of Films and Computer Games*, p. 11.

decline in the rigour of classification decisions, including decisions in relation to the classification of R18+ and X18+ films.

5.9 In its submission, the Australian Council on Children and the Media (ACCM) set out these concerns:

The current Guidelines (2003, rev. 2005) place great emphasis on tests of context and impact. The criteria are much less detailed about the types of content allowable at each level.

...It was our view then, and still is, that by comparison with the 2000 guidelines the current ones allow a more subjective range of judgements to be made eg whether material has strong impact or high impact. Our prediction then was that standards would slip, and they have done so. Judgements based on contexts of fantasy and/ or horror genres as lessening impact have lowered the classification of some materials.

Judgements based on whether the impact of violence was very mild, mild, moderate, strong or high can be less stringent than whether violence with high impact was frequent or infrequent, detailed or not (see Guidelines 2000: tests for M/ MA15+).⁶

5.10 Ms Barbara Biggins from ACCM told the committee that this change to the Guidelines has had a 'ripple effect throughout all classifications':

It is resulting in material which perhaps would have belonged in MA15+ that has gone to M, or it would have been in R18+ and has gone to MA+, simply because the context has been interpreted as, well, it is a fantasy context or it is a horror genre or it is an action and adventure movie, and therefore put in that context, this very violent material is deemed to not have the same impact. The wording of the guidelines allows that interpretation.⁷

5.11 Similarly, Mrs Roslyn Phillips of FamilyVoice Australia expressed dissatisfaction with using 'impact' as a criteria for classifying films:

...since 2003 the film classification guidelines have talked about impact as being the differentiating factor between the different classifications of G, PG and so on...We are very unhappy about that because it is so vague and subjective. What is a high impact to one person might not be high to another. As a result, I think there have been some very inconsistent decisions by boards in recent times. We would like to see a return to more detail in the classification guidelines to indicate things like how frequent scenes of violence are and whether or not the sexual scene is discreet. Those sorts of terms have been removed, and the emphasis is on impact, as

6 Australian Council on Children and the Media, *Submission 44*, p. 5.

7 *Committee Hansard*, 25 March 2011, pp 66-67. See also Family Council of Victoria, *Submission 22*, p. 7, which noted the 'creep downwards' resulting in today's G and PG categories containing elements that only a few years ago were M or even MA15+.

I said, which is not really a very satisfactory way of determining which category the film should be in.⁸

5.12 Collective Shout asserted that the use of impact has 'allowed the Classification Board and the Classification Review Board to make what often seem arbitrary decisions on classification'.⁹ Accordingly, Collective Shout recommended:

...that the Guidelines for the classification of films and computer games [should] be revised to replace the subjective 'impact' scale with more detailed provisions for each of the classifiable elements, including strict limits on depictions of sexual violence and demeaning depictions of women.¹⁰

R18+ films

5.13 Term of reference (g) for the inquiry specifies the 'classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+'.¹¹

Salo

5.14 Much of the evidence and submissions on the issue of classification of R18+ films centred on the 2010 decision by the Classification Board and the Classification Review Board to classify the film *Salo* as R18+. The Attorney-General's Department (Department) summarised the film as 'a 1975 Italian drama written and directed by Pier Paolo Pasolini based on the book *The 120 Days of Sodom* by the Marquis de Sade'.¹¹

5.15 The Department's submission provided details in relation to the 'long and complex classification history' of *Salo*, going back to 1976.¹² Briefly, the film was Refused Classification in Australia until 1993. In 1993, the film was classified R18+ by the former Film and Literature Board of Review, and between 1993 and 1997 it was available in all jurisdictions, except in Western Australia and South Australia where restrictions applied. In June 1997, the film was reclassified R18+ by the Classification Board; and, in 1998, the film was classified Refused Classification by the Classification Review Board. In 2003, an application for reclassification was declined by the Classification Board and, in June 2008, an edited version of the film was classified Refused Classification by the Classification Board.¹³

8 Committee Hansard, 25 March 2011, pp 77-78.

9 Collective Shout, *Submission 65*, p. 9.

10 Collective Shout, *Submission 65*, p. 10.

11 Attorney-General's Department, *Submission 46*, p. 10.

12 Attorney-General's Department, *Submission 46*, p. 10.

13 Attorney-General's Department, *Submission 46*, p. 10. The Attorney-General's Department's submission noted that the applications for classification relate to the same film with minor edits and changes to the running times.

5.16 The Department's submission described the events pertaining to the latest classification application for the film:

On 13 April 2010 the Classification Board classified a modified 292 minute version of the film *Salo* R18+ with consumer advice for 'Scenes of torture and degradation, sexual violence and nudity'. This version included additional background information providing an historical context which, in the view of the [Classification] Board, mitigated the overall impact of the material submitted to no greater than high.

On 15 April 2010, the Minister for Home Affairs applied for a review of the Classification Board's R18+ classification...because he considered it was in the public interest to do so, as there was likely to be sections of the community who would have different views on the content of this film...

In a majority decision, the Review Board classified *Salo* R18+ with consumer advice for 'Scenes of torture and degradation, sexual violence and nudity'.¹⁴

5.17 The Department's submission noted that FamilyVoice Australia had taken legal action in the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977*.¹⁵ In their appearance before the committee, officers from the Department noted that the matter has now been heard in the Federal Court and that a decision has been reserved.¹⁶

5.18 As this matter is still before the courts, it would not be appropriate for the committee to engage in a deliberative analysis of the Classification Board's or the Classification Review Board's reasons for their decisions in relation to the *Salo* matter. For this reason, the discussion below is a general consideration of the issue of classification of R18+ films.

Distinction between R18+ films and X18+ films

5.19 A number of submissions referred to the classification of films with actual sexual activity in the R18+ category, despite the statement in the Guidelines that for R18+ films the 'general rule' is 'simulation, yes – the real thing, no'.

5.20 In its submission, FamilyVoice Australia discussed this point at length, noting that the classification of films with actual sex as R18+ breaches a 'clear dividing line' between R18+ and X18+. ¹⁷ FamilyVoice Australia outlined the history of decision-making on this issue:

In January 2000 a decision [was made by] the Classification Review Board to classify the film *Romance* as R18+...The film contained several brief

14 Attorney-General's Department, *Submission 46*, p. 10.

15 Attorney-General's Department, *Submission 46*, p. 10.

16 *Committee Hansard*, 27 April 2011, p. 37.

17 FamilyVoice Australia, *Submission 15*, p. 10.

depictions of an erect penis, of fellatio and of a woman masturbating a man. As the Classification Board observed in its initial decision to classify the film as RC 'the explicit depictions of sexual activity [had] not previously been permitted (other than in an educational context) in the 'R' classification'...The Board found that the sexually explicit depictions could have been accommodated in the X18+ classification but that other scenes of sexual violence prevented this.

In classifying *Romance* as R18+ on appeal, the Classification Review Board opined that...the "rule" ['simulation, yes – the real thing no'] is expressed to be a general rule, implying the possibility of exceptions in a limited number of instances. After careful consideration the majority of the [Review] Board decided that the limited discretion implicit in the application of the rule should be exercised in this film's favour.'...

Since this decision a number of films with explicit depictions of sexual acts have been classified as R18+. ¹⁸

5.21 Collective Shout also discussed films containing 'actual sex' being granted R18+ classification, describing the 2008 decisions to classify anime films containing explicit sexual acts as a 'new low in film classification':

In 2008...the Classification Review Board [gave an] R18+ classification to three graphically animated anime films – *Classes in Seduction*, *T & A Teacher*, and *Bondage Mansion*, each of which featured explicit sexual acts...

Both *T & A Teacher* and *Classes in Seduction* feature sexual acts between a teacher and his or her students, which the Classification Review Board found acceptable. ¹⁹

5.22 The Collective Shout submission then quoted from an article by founder Ms Melinda Tankard Reist in which she argued that these films 'slipped into the "R" rating because the anime was said to reduce the impact of the [sex] scenes'. ²⁰

5.23 Collective Shout advocated that the Guidelines should be revised so that actual sex and animated scenes depicting explicit sexual acts should not be permitted in the R18+ classification. ²¹

5.24 In putting a contrary point of view, Mr Johann Trevaskis stated that it is 'ironic' that non-simulated sex is classified higher than simulated sex:

18 FamilyVoice Australia, *Submission 15*, p. 11.

19 Collective Shout, *Submission 65*, p. 9.

20 Collective Shout, *Submission 65*, p. 10, quoting from Melinda Tankard Reist, Crikey, 23 February 2009, <http://www.crikey.com.au/2009/02/23/comments-corrections-clarifications-and-ckups/>, (accessed 23 May 2011).

21 Collective Shout, *Submission 65*, p. 10. See also FamilyVoice Australia, *Submission 15*, p. 12.

I find it ironic that non-simulated sex, which might be more realistic than simulated sex, is classified higher than simulated sex...I find it disturbing that anyone has a problem with real sex, a natural activity both for recreation and procreation. Each adult should be free to decide whether to access sexual content. That is, I do not support the enforcement role that classifying a film as X or RC implies.²²

Films that are Refused Classification

5.25 By way of contrast to the material in R18+ films, the Department provided an example of a film that contains material that is Refused Classification. *Srpski Film* (also known as *A Serbian Film*) contains graphic depictions of rape, necrophilia and incest. The Department's submission outlined the reasoning behind the Classification Board's decision to categorise the film as Refused Classification:

While the [Classification] Board's decision acknowledged that a degree of artistic merit and dramatic intent is evident in this fictional film, it is of the opinion that the film is very high in viewing impact and includes an explicit depiction of sexual violence. The film therefore exceeds what can be accommodated within the R18+ classification and was classified RC.²³

5.26 The Department's submission noted that a modified version of the film received an '18 certificate' classification in the UK.²⁴ In February 2011, the Classification Board classified as Refused Classification a modified DVD version of the film.²⁵

Should R18+ films be available in Australia?

5.27 A number of submissions questioned the need for R18+ films to be available in Australia. For example, the Life, Marriage and Family Centre, Catholic Archdiocese of Sydney called for a 'broad community review' of the availability of R18+ films:

Given that there is no evidence that explicit, dehumanising sex scenes or scenes of torture, degradation, sexual violence and nudity that attract the R18+ classification contribute to or enhance social wellbeing, and given the growing evidence that, on the contrary, such explicit and dehumanising films do damage to the individual and the community, their legal availability should be subject to a broad community review.²⁶

22 Mr Johann Trevaskis, *Submission 32*, p. 3.

23 Attorney-General's Department, *Submission 46*, p. 11.

24 An '18 certificate' classification means no one younger than 18 may see the film in a cinema or rent or buy the video: see British Board of Film Classification website, at: <http://www.bbfc.co.uk/classification/guidelines/18-2/>, (accessed 8 June 2011).

25 Attorney-General's Department, *Submission 46*, p. 11.

26 Life, Marriage and Family Centre, Catholic Archdiocese of Sydney, *Submission 8*, p. 3.

5.28 The Catholic Women's League Australia argued, in relation to R18+ films, that 'we simply don't need these at all' and questioned why people would want to view them.²⁷

5.29 Similarly, and in the context of the film *Salo*, Mr Lyle Shelton of the Australian Christian Lobby made the following point:

I do not agree with the proposition that adults should be able to watch and see whatever they like...[W]e have a category called 'Refused Classification'. There are just some things that we judge as a civil society that go beyond the realms of civil liberties, and I think that is appropriate particularly when it comes to the protection of children.²⁸

5.30 On the other hand, the committee received submissions expressing the view that the R18+ category is too restrictive. For example, Ms Irene Graham contended that the R18+ classification should not be tightened any further:

It is already so restrictive that some films available for purchase/viewing by adults in other 'western democratic' countries (e.g. Western European countries, Canada, USA, etc) are banned/Refused Classification in Australia.²⁹

5.31 Mr Matthew Whiteley highlighted in his submission the full range of graphic content which is permitted in the R18+ category. In particular, Mr Whiteley referred to the film 'Cannibal Holocaust' which 'contains several scenes of actual animal killing and dismemberment filmed specifically for the film'. This film was released in its entire cut form in Australia with an R18+ rating from the Classification Board.³⁰ In noting the controversy with respect to *Salo*, Mr Whiteley observed:

[While] much has been made of such sexually explicit films such as *Salo* which depict simulated sexual violence, it's rather strange that no one seems to get outraged at the release of a film which contains real animal cruelty leading to death.³¹

5.32 The committee believes that it is not just the sexual element of R18+ films that is problematic for the broader community, it is the full range of material that is permitted in the R18+ category that might be seen to be offensive. For example, Salt Shakers advocated for more restrictions to be placed on all the classifiable elements in relation to R18+ films:

27 Catholic Women's League Australia, *Submission 11*, p. 7.

28 *Committee Hansard*, 25 March 2011, p. 7. See also Family Council of Victoria, *Submission 22*, pp 8–9.

29 Ms Irene Graham, *Submission 20*, p. 4. See also Mr Matthew Whiteley, *Submission 19*, p. 5.

30 Mr Matthew Whiteley, *Submission 19*, p. 5.

31 Mr Matthew Whiteley, *Submission 19*, p. 5.

Restricted films in the R18+ category have virtually no restrictions. We believe it is in everyone's best interests if violence, sex, themes and language had some restrictions upon them.

Relating to sex, the Guideline says "Sexual activity may be realistically simulated. The general rule is 'simulation, yes – the real thing, no'."

We believe that this is too explicit for this category.

Regarding sexual violence, the Guideline says "Sexual violence may be implied, if justified by context."

We contend that sexual violence should not be permitted.

Furthermore, drug use and nudity should still be required to be "justified by context".³²

Display of R18+ films

5.33 Term of reference (b) for the inquiry refers to the desirability of national standards for the display of Restricted films.

5.34 The display of R18+ films was an area of concern raised in submissions. Media Standards Australia (MSA) provided the committee with a photograph from a 'typical video library' in Western Australia. Although the detail in the photograph is not clear, according to MSA the display shows the film *Irreversible*, classified R18+, placed on the top centre of a shelf, with *Cat in the Hat*, classified G, and *Scooby Doo*, classified PG, 'not far away'.³³

5.35 Some submissions pointed to recent legislative amendments in South Australia which place restrictions on the display of R18+ films for sale or hire. Section 40A of the *Classification (Publications, Films and Computer Games) Act 1995* (SA) provides that premises (other than adult-only premises) must not display material for a film classified R18+ unless the material is displayed in a different area (for example, a different aisle or on a different stand or table) from other films. Further, the area where the R18+ material is displayed must be marked with a notice stating:

R18+ FILMS AREA—THE PUBLIC ARE WARNED THAT MATERIAL
DISPLAYED IN THIS AREA MAY CAUSE OFFENCE.³⁴

5.36 Restrictions also apply to the surface area of the material which can be displayed: for example, the cover of the DVD.³⁵

32 Salt Shakers, *Submission 23*, p. 9.

33 Media Standards Australia, *Submission 21*, p. 10.

34 *Classification (Publications, Films and Computer Games) Act 1995* (SA), ss. 40A(2). The notice must be printed in legible type of at least 15 millimetres in height and of a colour that contrasts with the background colour of the notice.

5.37 A number of submissions expressed support for this type of restriction to be put in place nationally.³⁶ MSA also suggested that a National Heart Foundation-style 'tick system' for family-friendly video stores should be rewarded and encouraged.³⁷ In evidence to the committee, Mr Paul Hotchkin from MSA provided more detail on what he envisages:

...it would go to promoting the G-rating type videos or PG-type videos. The video companies would have to meet specific rulings or guidelines to be able to get that tick. That way families would know that it is a family-friendly store.³⁸

5.38 Ms Irene Graham noted the lack of restrictions in relation to the display of R18+ films:

[W]hile there does not appear to be a specific restriction on the content of covers of boxes containing R18+ film DVDs, the general matters required to be taken into account by the Classification Boards, and the significantly smaller size of DVD covers (as compared to magazines) seems to make it unlikely that there is any problem with the covers of DVDs. If the Committee is made aware of any R18+ DVD covers that are allegedly unsuitable for public display, and if the Classification Board advises the Committee that that particular DVD cover would be required to be sealed in plain opaque wrapping if it was the cover of publication/magazine, then – and only then – there may be merit in restricting the content of covers of film DVDs in the same way as the covers of publications.³⁹

X18+ Films

X18+ and sexual abuse

5.39 Term of reference (f) relates to the impact of X18+ films, including their role in the sexual abuse of children. A number of submissions referred the committee to the *Little children are sacred* report and the evidence received in the course of that inquiry about the impact of pornography on indigenous communities.⁴⁰ For example, FamilyVoice Australia noted the following evidence from that inquiry:

35 *Classification (Publications, Films and Computer Games) Act 1995* (SA), paras. 40A(1)(a) and (b).

36 See FamilyVoice Australia, *Submission 15*, p. 5; Australian Christian Lobby, *Submission 25*, p. 3; Media Standards Australia, *Submission 21*, p. 10. See also Collective Shout, *Submission 65*, p. 4, which recommended that R18+ films should only be available for sale and distribution from a 'secure, physically separated area to ensure no children can enter the area'.

37 Media Standards Australia, *Submission 21*, p. 11.

38 *Committee Hansard*, 7 April 2011, p. 38.

39 Ms Irene Graham, *Submission 20*, pp 2–3.

40 Northern Territory Government, *Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007.

The Inquiry was...told a story of a 17-year-old boy who would regularly show pornographic DVDs at a certain house then get young children to act out the scenes from the films.⁴¹

5.40 The *Little children are sacred* report resulted in the Northern Territory National Emergency Response, part of which entailed restrictions being placed on the possession and supply of prohibited materials, including films classified X18+, in prescribed areas.

5.41 Submissions also referred to the findings of an earlier inquiry into violence against women in Indigenous communities in Queensland which emphasised the impact of X18+ films in those communities:

The incidence of sexual violence is rising and is [in] a direct relationship to negative and deformed male socialisation associated with alcohol and other drug misuse, and the prevalence of pornographic videos in some Communities.⁴²

5.42 Submissions also noted evidence to the Queensland inquiry that \$4,000–\$5,000 worth of X18+ films were being purchased by mail order each week from Canberra by men in the Cape Communities.⁴³

5.43 The committee was referred to a number of other research papers demonstrating a link between exposure to X18+ films and sexual abuse of children.⁴⁴ For example, FamilyVoice Australia noted the findings in a paper presented at the Ninth Australasian Conference on Child Abuse and Neglect in 2003 by staff from the Child at Risk Assessment Unit, Canberra Hospital. Those findings showed that exposure to X-rated pornography is one significant factor in children younger than 10 years old sexually abusing other children.⁴⁵

5.44 The Australian Christian Lobby also referred to a 2003 study by The Australia Institute:

An important 2003 research report from The Australia Institute found that almost three quarters of 16-17 year-old boys (73 per cent) report having watched an X-rated video. "One in twenty watch them on a weekly basis while more than a fifth watch an X-rated video at least once a month."

41 FamilyVoice Australia, *Submission 15*, p. 8. See also Media Standards Australia, *Submission 21*, p. 14; Australian Christian Lobby, *Submission 25*, p. 6; Collective Shout, *Submission 65*, p. 7.

42 Collective Shout, *Submission 65*, p. 7. See also FamilyVoice Australia, *Submission 15*, p. 8.

43 Collective Shout, *Submission 65*, p. 7; FamilyVoice Australia, *Submission 15*, p. 8.

44 See, for example, the Hon. Nick Goiran MLC, Member of the Western Australian Legislative Council, and Mr Peter Abetz MLA, Member of the Western Australian Legislative Assembly, *Submission 36*, pp 5-6. See also Media Standards Australia, *Submission 21*, pp 13-14.

45 FamilyVoice Australia, *Submission 15*, pp 8-9. The committee notes that the paper referred to does not claim that pornography is the only factor in children becoming sexually abusive.

One of the effects of this exposure, the authors postulate, is "young people exposed to images of non-mainstream sexual behaviours may be more likely to accept and adopt them".⁴⁶

5.45 However, the committee also received evidence disputing a link between X18+ films and the sexual abuse of children. For example, Ms Irene Graham argued:

The X18+ classification specifically excludes depictions of children (i.e. persons under 18 years). It is legislatively limited to depictions of non-violent sexual activity between consenting adults.

Accordingly, the X18+ classification has **no** role at all in the sexual abuse of children.⁴⁷

5.46 Submitters also referred to a paper authored by Milton Diamond of the University of Hawaii in 2009:

This extensive research paper concluded that..."It has been found everywhere scientifically investigated that as pornography has increased in availability, sex crimes have either decreased or not increased."⁴⁸

Availability of X18+ films

5.47 The inconsistency of restrictions applying to the availability of X18+ films in the different Australian jurisdictions is, in the committee's view, an area which highlights the complexity of the enforcement of classification decisions by state and territory governments.

5.48 In the ACT, for example, X18+ films may be exhibited in a restricted publications area, in premises located in a prescribed area.⁴⁹ X18+ films are available for sale in the ACT; however, the ACT legislation sets out certain requirements in relation to the sale of those films. For instance, the person purchasing the film must make a direct request for the film and the film must be contained in an opaque package.⁵⁰

5.49 Similar provisions are in place in the Northern Territory, with respect to the exhibition and sale of X18+ films.⁵¹ However, as part of the Northern Territory

46 Australian Christian Lobby, *Submission 25*, p. 7.

47 Ms Irene Graham, *Submission 20*, pp 3-4. Emphasis in original.

48 Eros Association, *Submission 60*, p. 15. See also Mr Robert Harvey, *Submission 9*, p. 2.

49 *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT), ss. 9(2). For the purposes of the ACT legislation, the 'prescribed areas' are set out in the *Classification (Publications, Films and Computer Games) (Enforcement) Regulation 1995* (ACT), s. 2.

50 *Classification (Publications, Films and Computer Games)(Enforcement) Act 1995* (ACT), s. 22.

51 *Classification of Publications, Films and Computer Games Act* (NT), s. 49.

National Emergency Response, the federal *Classification Act 1995* was amended to prohibit the possession and supply of prohibited material, including X18+ films, in prescribed areas.⁵²

5.50 The sale and public exhibition of X18+ films is prohibited in all states.⁵³ As the Eros Association noted in its submission, it is illegal to sell X18+ films in all states, but it is not illegal for a person to possess such films.⁵⁴

5.51 Submissions highlighted this anomaly, particularly in relation to the situation in the Northern Territory. For example, FamilyVoice Australia noted:

Videos and DVDs are very portable items. Unless their sale is prohibited not just within the boundaries of the prescribed areas but throughout the Northern Territory then X18+ films will most likely continue to play a role in the premature sexualisation and sexual abuse of indigenous children.⁵⁵

5.52 ACL recommended in its submission that, among other things:

- the possession or supply of X18+ films should be prohibited in the Northern Territory;
- there should be a prohibition on the use of a carrier service to send or receive an X18+ film; and
- the sale of X18+ films in the ACT should be prohibited.⁵⁶

5.53 In evidence at one of the public hearings, ACL indicated its intention to approach the Northern Territory Government to discuss this matter.⁵⁷

52 See *Classification (Publications, Films and Computer Games) Act 1995* (Cth), Part 10. For the purposes of the Northern Territory National Emergency Response, the 'prescribed areas' are defined in section 4 of the *Northern Territory National Emergency Response Act 2007*.

53 See: *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW), s. 6; *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Vic), s. 8 and s. 15; *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas), s. 22 and s. 36; *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA), s. 69 and s. 73; *Classification of Films Act 1991* (Qld), s. 37 and s. 39; *Classification (Publications, Films and Computer Games) Act 1995* (SA), s. 30 and s. 38.

54 Eros Association, *Submission 60*, p. 4. The exception to this is that the possession of X18+ material is prohibited in prescribed areas of the Northern Territory.

55 FamilyVoice Australia, *Submission 15*, p. 8.

56 Australian Christian Lobby, *Submission 25*, p. 7.

57 Mr Lyle Shelton, Australian Christian Lobby, *Committee Hansard*, 25 March 2011, p. 12. See also Mrs Roslyn Phillips, FamilyVoice Australia, *Committee Hansard*, 25 March 2011, pp 76-77, who indicated that FamilyVoice Australia has made many submissions to the Australian Government and various state government inquiries, but has not directly approached the Northern Territory Government on this issue.

5.54 The committee sought advice from the Department as to what steps the Australian Government is taking to address the situation in the Northern Territory. Officers of the Department stated that they were not aware of any specific discussions in which the Australian Government has insisted on the Northern Territory banning the sale of X18+ films in the Northern Territory.⁵⁸ Further, departmental officers indicated that it is:

...really a matter for the Northern Territory government...[I]n terms of the enforcement of areas where certain types of product can be properly supplied, that is a matter for the jurisdictional enforcement legislation and law enforcement agencies to do that.⁵⁹

5.55 In answers to questions on notice, the Department reiterated that the availability of X18+ material is normally a matter for state and territory governments, but also noted the measures in the *Classification Act 1995* regarding the possession and supply of pornography in prescribed areas of the Northern Territory:

To support these measures, in 2008 officers from the Classification Branch of the Department provided classification training in relation to the [Emergency Response] to officers from the Northern Territory Police, the Australian Crime Commission, the Australian Federal Police and the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs...in Darwin and Alice Springs. The Department continues to work with the Northern Territory Department of Justice on [Emergency Response] classification matters.⁶⁰

58 *Committee Hansard*, 27 April 2011, p. 30.

59 *Committee Hansard*, 27 April 2011, p. 30.

60 Attorney-General's Department, answers to questions on notice, received 18 May 2011.