CHAPTER 6

Enforcement of the classification system and interaction of the National Classification Scheme with Customs regulations

6.1 Term of reference (c) refers to 'the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals'.

6.2 In its submission, the Attorney-General's Department (Department) noted that, pursuant to the National Classification Scheme, the states and territories are chiefly responsible for enforcing the laws under the National Classification Scheme, and that neither the Department nor the Classification Board has powers of enforcement.[1] The agencies responsible for enforcement of classification laws in each state and territory jurisdiction are as follows:

> The ACT Office of Regulatory Services and ACT Policing (part of the Australian Federal Police) enforce classification laws in the ACT. The Department of Employment, Economic Development and Innovation enforces classification laws in Queensland, on behalf of the Queensland Department of Justice and Attorney-General. State and Territory police are responsible for enforcing classification laws in other jurisdictions.[2]

6.3 This chapter considers the effectiveness of the 'call-in' notice regime along with the adequacy of information-sharing between Commonwealth and state and territory agencies in relation to the referral of classification matters. The chapter also examines the enforcement of classification laws by states and territories, and discusses the role of the Classification Liaison Scheme.

6.4 There is also discussion in this chapter of term of reference (d), the interaction between the National Classification Scheme and relevant Customs regulations. As the Australian Customs and Border Protection Service (Customs) noted in its submission, an important part of its enforcement role is 'to prevent, deter and detect prohibited, harmful and prohibited goods from entering Australia'.[3] It is therefore appropriate to consider the interaction of the National Classification Scheme with Customs regulations in the broader context of the classification enforcement regime.

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1 Attorney-General's Department, *Submission 46*, p. 4.

2 Attorney-General's Department, *Submission 46*, p. 4.

3 Australian Customs and Border Protection Service, *Submission 10*, p. 4.

'Call-in' notices

6.5 The powers of the Director of the Classification Board to 'call-in' publications were explained in the Department's submission:

> If a publication is unclassified, the Director has powers under the Commonwealth Classification Act and the State and Territory enforcement Acts to require publishers to submit an application for classification of a publication within three days, when the Director has reasonable grounds to believe the publication is submittable and is or will be published in Australia (the 'call-in' power).[4]

6.6 Section 23A of the *Classification Act 1995* makes provision for the Director of the Classification Board to call-in films if:

(a) there are reasonable grounds to believe that an unclassified film is not an exempt film; and

(b) the film is being published in the ACT, or there are reasonable grounds to believe it will be published in the ACT.[5]

6.7 A person who receives a call-in notice under section 23A of the *Classification Act 1995* has three days to comply with the notice.[6]

6.8 The Department's submission set out the numbers of call-in notices issued by the Director of the Classification Board in recent years, and the corresponding response to these call–in notices:

> In 2009-10, the Director called in 49 adult publications and 444 adult films.
>
> In the 2010-11 period to 31 December 2010, the Director called in 8 adult publications and 32 adult films.
>
> Only one of the publishers of adult magazines has complied with a call-in notice issued by the [Classification] Board. While some distributors indicated they no longer have copies of the called in product to submit, it is an offence not to comply with a call-in notice. Where call-in notices are not complied with the Department refers these matters to State and Territory enforcement agencies.

6.9 The Director of the Classification Board gave evidence to the Senate Legal and Constitutional Affairs Legislation Committee during the hearings for Budget Estimates 2011-12 that, in the current financial year to 30 April 2011, he had called in

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4 Attorney-General's Department, *Submission 46*, pp 5-6. See *Classification Act 1995*, s. 23.

5 'Publish' is defined in section 5 the *Classification Act 1995* to include sale, offer for sale, let on hire, exhibit, display, distribute and demonstrate.

6 *Classification Act 1995*, ss. 23A(3). Similar provisions exist in state and territory enforcement legislation: see, for example, *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Vic) s. 60A. There are also provisions for call-in notices to be issued in respect of computer games: see, for example, Classification Act, s. 24.

seven publications and 158 adult films. Only one of those call-in notices for publications has been complied with and none of the film call-in notices have been complied with.[7]

6.10 The lack of compliance with call-in notices has been an issue that has been discussed by the Senate Legal and Constitutional Affairs Legislation Committee for a number of years in the context of the estimates process.[8] At the hearings for Additional Budget Estimates 2010-11, the Director of the Classification Board reiterated his long-held view that the failure of publishers and distributors to respond to call-in notices does not mean that the system is a failure:

> To date, only one call-in notice for adult publications has been complied with, and the majority of films called in have not been complied with either. ...I do not believe this constitutes a systems failure, but in fact establishes that a breach of classification legislation has occurred. In each and every instance the Attorney-General's Department notifies the relevant law enforcement agency of the failure to comply. I will continue to use my call-in powers in circumstances where I believe it is warranted.[9]

6.11 The committee notes that when questioned about the lack of responses in relation to call-in notices at a hearing for Additional Estimates 2010-11, the Director of the Classification Board responded that he is 'pleased that progress is being made with enforcement'.[10]

6.12 Evidence to this inquiry suggested, however, that the high level of non-compliance of publishers and distributors with call-in notices is indicative of a failure of the system. For example, FamilyVoice Australia referred to the 'abysmal' response rate to call-in notices:

> It would be helpful to try to improve the abysmal response rate to call-in notices by introducing penalties for failure to comply with a notice, including suspension from using any services of the Classification Board for a fixed period, say twelve months, and until all call-in notices are complied with.[11]

6.13 Similarly, Ms Melinda Tankard Reist of Collective Shout told the committee:

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7 Senate Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2011-2012, *Estimates Hansard*, 25 May 2011, p. 33.

8 See, for example, Senate Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2009-2010, *Estimates Hansard*, 25 May 2009, p. 84; Supplementary Budget Estimates 2010-2011, *Estimates Hansard*, 18 October 2010, p. 14; Budget Estimates 2011-2012, *Estimates Hansard*, 25 May 2011, pp 34-35.

9 Senate Legal and Constitutional Affairs Legislation Committee, Additional Budget Estimates 2010-2011, *Estimates Hansard*, 22 February 2011, p. 32.

10 Senate Legal and Constitutional Affairs Legislation Committee, Budget Estimates 2010-2011, *Estimates Hansard*, 24 May 2010, p. 78.

11 FamilyVoice Australia, *Submission 15*, p. 5.

> The Classification Board has shown that it is ineffective to deal with recalcitrant distributors...They have ignored hundreds and hundreds of call-in notices. There are no penalties for non-compliance, and yet they want even more self regulation than they already have, when they cannot even comply with the basic standards right now....
>
> We recommend a major overhaul of the enforcement system, including introducing penalties for failure to respond to call-in notices, removing distributors who breach the scheme from access to further classification services...[12]

6.14 The Eros Association described the call-in system for adult publications as 'entirely ineffective':

> While available for all classifiable material it is only ever used on publications. It is unclear as to what the point actually is in 'calling in' a publication and [the] purpose it serves. As stated earlier, numerous companies sell the same publication. The end result of a call-in, is that the classification of the modified version is revoked even though that was not the version found in the market place.[13]

6.15 Ms Julie Gale from Kids Free 2B Kids told the committee of her frustration with the call-in system, and explained why she had stopped submitting material to the Classification Board for auditing:

> I could be out there buying porn magazines and submitting them to be audited every week. I see examples, because I know the [guidelines] very well now, of magazines that are clearly not meant to be on the public shelves but, in terms of spending dollars consistently on the porn industry, I just stopped.
>
> As to the numbers that the Classification Board could be sending out, the call-in notices could be so much greater than the numbers that they are because they are relying on people like Melinda [Tankard Reist] and I and others to bring to their attention the magazines that are not complying. Some time ago I stopped even bothering, because we just saw that it was futile and that most of them do not comply. I certainly did not want to keep spending money on proving the point.[14]

6.16 The Australian Christian Lobby (ACL) referred to the 'systemic failure of the call-in system':

> Despite the Classification Board having the capacity to 'call-in' for classification any submittable publication, or any film or computer game, this power has proven extremely ineffective in preventing unclassified pornographic content from becoming available on the Australian market.

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12 *Committee Hansard*, 27 April 2011, p. 24.

13 Eros Association, *Submission 60*, p. 12.

14 *Committee Hansard*, 27 April 2011, p. 24.

> According to answers to questions taken on notice in a recent round of Senate Estimates hearings, 'Since 1 January 2008, 858 items mainly concerned with sex or sexualised nudity ("adult material") have been called in'. The result: 'In this period, no distributors of adult material have submitted films or publications for classification as a result of the call-ins'.[15]

6.17 ACL also called for 'heavy financial penalties' where call-in notices are not complied with, and for an increase in penalties where there are repeated failures of compliance.[16]

Referrals to state/territory agencies and follow-up of referrals

6.18 The Department's submission noted the issues which are the main subject of referrals to law enforcement agencies:

- displaying for sale unclassified adult films or submittable publications;
- displaying for sale adult films and/or publications with incorrect markings, suggesting a film or publication is classified or has a different classification;
- non-compliance with a call-in notice issued by the Director of the Classification Board to submit a film or publication for classification; and
- advertising for sale unclassified adult films.[17]

6.19 In terms of the follow-up of referrals, the Department explained that '[l]aw enforcement agencies are asked, but are not required, to advise the Department when they investigate a referral from the Department'.[18]

6.20 This apparent gap in the enforcement system, where matters are referred to state and territory law enforcement agencies and there is no requirement for the agency to inform the Department of the outcome of the referral, has also been the subject of consideration by the Senate Legal and Constitutional Affairs Legislation Committee in the estimates process. The Secretary of the Department advised in 2010 that there is 'some level of awareness' about referrals.[19] It was also noted that, while state and territory agencies may contact the Department for advice or assistance, the

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15 Australian Christian Lobby, *Submission 25*, p. 4. See also Media Standards Australia, *Submission 21*, pp 10-11.

16 Australian Christian Lobby, *Submission 25*, p. 4.

17 Attorney-General's Department, *Submission 46*, pp 4-5.

18 Attorney-General's Department, *Submission 46*, p. 5.

19 Senate Legal and Constitutional Affairs Legislation Committee, Budget Supplementary Estimates 2010-2011, *Estimates Hansard*, 18 October 2010, p. 15.

Commonwealth 'does not have a repository of data about state and territory law enforcement'.[20]

6.21 During the current inquiry, the Department was able to provide the committee with some details in relation to enforcement actions:

> The Department is aware that state and territory police have undertaken a number of enforcement actions over the past eighteen months. For example in December 2010 Classification Liaison Scheme (CLS) officers were advised by NSW Police of action against two adult retailers in the Lake Illawarra area. 5,000 DVDs were seized from one store and 2,000 from another. CLS has referred these premises to the NSW Police in 2009.[21]

6.22 Further:

> CLS have been advised that on 4 May 2011, the owner of one store pleaded guilty and was fined $1500 plus court costs and an order was made for the 5,000 DVDs seized to be destroyed. On 4 May 2011 the owner of the store where 2,000 DVDs were seized pleaded not guilty...[22]

6.23 The Department also informed the committee that, from July 2010 to April 2011, the Department was notified of police investigations into seven Classification Liaison Scheme referrals. The outcomes of those referrals included, for example, warnings being issued with no charges being laid; a fine of $9,000 and an 18-month good behaviour bond; and a total of over 23,000 films seized and destroyed.[23]

Need for enhanced information-sharing

6.24 The lack of follow-up of referrals was highlighted by witnesses as a key flaw in the cooperative National Classification Scheme. For example, Ms Melinda Tankard Reist of Collective Shout noted:

> ...the absence of a centralised information system about follow up by any state or territory law enforcement officers for continual breaches of the scheme.[24]

6.25 ACL referred to a 'reckless lack of coordination between the [Classification] Board, the Commonwealth Attorney-General's Department and state and territory law enforcement agencies to have notices complied with'.[25]

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20 Senate Legal and Constitutional Affairs Legislation Committee, Budget Supplementary Estimates 2010-2011, *Estimates Hansard*, 18 October 2010, p. 15.

21 Attorney-General's Department, *Submission 46*, p. 5.

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

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

24 *Committee Hansard*, 27 April 2011, p. 21. See also Australian Christian Lobby, *Submission 25*, p. 4.

6.26 FamilyVoice Australia also emphasised the need for the coordinated sharing of information in relation to law enforcement:

> While it is appropriate that law enforcement of the classification system remains a matter for the states it would be very useful for the Commonwealth to play a role in coordinating information on the results of law enforcement efforts. Publications and films that are found to be in breach of the classification system are likely to be offered for sale in more than one state, not just in the state in which a copy of the offending publication or film has been found.[26]

6.27 It appears that the idea of a centralised database for sharing information on referrals has had some consideration by the relevant Commonwealth, and state and territory bodies. As the Department's submission noted:

> At the first Classification Enforcement Forum held in Sydney in 2010, representatives [of the Working Party] indicated an interest in increasing coordination and information sharing to enhance enforcement of classification offences.
>
> ...While there is no obligation for enforcement agencies to advise of the outcomes of investigations the Minister wrote to police Ministers on 10 February 2011 asking for this information as part of a wider strategy of increasing information sharing to improve compliance with classification laws. This will be progressed through the Classification Enforcement Forum.[27]

6.28 In evidence to the committee, officers of the Department indicated that they 'support the general merit of the idea' of a centralised database.[28] The Department was asked to indicate any barriers to the establishment of a centralised database for tracking referrals of classification matters:

> A centralised platform for intelligence sharing would require the commitment and participation of all relevant state and territory government agencies. Policy discussions on the feasibility and any impediments are ongoing and will be further considered...[T]he need for a centralised database would also need to be fully assessed, including whether the objective could be achieved in other ways.[29]

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25 Australian Christian Lobby, *Submission 25*, p. 4.

26 FamilyVoice Australia, *Submission 15*, p. 5.

27 Attorney-General's Department, *Submission 46*, pp 4 and 6. The Classification Enforcement Forum is a Commonwealth initiative attended by law enforcement and policy representatives from the Commonwealth, the states and territories, the Australian Communications and Media Authority and the Australian Customs and Border Protection Service. Participants exchange information on classification enforcement issues affecting each jurisdiction and explore ways in which shared intelligence could assist enforcement outcomes.

28 *Committee Hansard*, 27 April 2011, p. 36.

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

Effectiveness of the enforcement system

6.29 There appeared to be a range of views on the effectiveness of the enforcement of classification. For example, Ms Irene Graham referred to the states and territories giving such work a 'low priority'. Ms Graham attributed that to an 'ever increasing censorship criteria'; and, further, 'in the absence of evidence of widespread community support for more censorship...both governments and their police services are likely aware that censorship enforcement may be a pretty much thankless activity...'.[30]

6.30 Mr Robert Harvey described the enforcement system as 'more than adequate', stating that, if anything, state and territory agencies were 'overzealous in ensuring that action is taken against anything that might be an offence'.[31] In contrast, the Australian Council on Children and the Media (ACCM) described the application of the enforcement provisions as 'very lax'.[32] In evidence to the committee, Ms Barbara Biggins of the ACCM set out her concerns in more detail:

> ...enforcement at the level of publications: where they are displayed; whether in fact they are displayed in conformity with the requirements for how they could be displayed; and whether in fact publications are actually being displayed with appropriate classifications. There seems to be quite some evidence that there are issues there. Because there is very little monitoring or a great variability in the monitoring of publications from state to state, that is an area of enforcement that really does need to be looked at.
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> The other area of enforcement that would concern us is whether enforcement in fact can occur. When you are looking at the legally classified categories of MA15+ and R18+, there is certainly very good evidence that it is almost impossible to enforce the age restrictions on portable items such as DVDs and computer games. It is almost impossible to protect children despite what the law says because once those portable items are out of the retail outlet then there are very few controls.[33]

6.31 Salt Shakers called for better education in relation to the enforcement system for classification:

> There needs to be a better system that would allow citizens to work with law-enforcement agencies on this matter. Very few individuals know the difference between Category 1, Category 2 and nonrestricted and 'Refused classification' pornographic material. Often they don't know that it is illegal to sell or display X18+ material in stores (even adult stores) around the states. Even if they do, and they notice breaches of the *Guidelines* the person does not know who to contact. If a person does not know what the

30 Ms Irene Graham, *Submission 20*, p. 3.

31 Mr Robert Harvey, *Submission 9*, p. 2.

32 Australian Council on Children and the Media, *Submission 44*, p. 3.

33 *Committee Hansard*, 25 March 2011, p. 64.

> classification system entails or how it is enforced, then often the classifying of publications is, at best, a token effort.[34]

6.32 The Arts Law Centre of Australia called for 'standardisation in classification enforcement laws' because they vary in detail across the states and territories.[35]

6.33 The Office of Public Prosecutions Victoria (OPP) advised that it has prosecuted very few cases in the higher courts in recent years:

> ...figures [reveal] that during the period 2000 to 2010...there were only 11 offences of Possessing an unclassified or RC film with intent to sell in a commercial quantity and 1 offence of Copying an unclassified film with intent to sell in a commercial quantity recorded. The state Act contains very few indictable offences. With respect to both of the above offences none have been recorded in the last five years.
>
> During the same time period 30 offences of Possessing an X rated film with intent to sell or exhibit, 18 offences of Possessing an unclassified film, 45 offences of Selling an unclassified film, 6 offences of Selling a Refused Classification film and 29 offences of Selling a film classified X are recorded. Many of the less serious offences under the state Act are recorded as also having very few or no offences recorded.[36]

6.34 The OPP also noted that 'the statistics do appear to reveal an emphasis or concentration of effort on the offences...relating to on-line information services'.[37] Further:

> As to the reasons for the small number of reported offences it is unclear whether this is due to factors such as the complexity of the state Act, the lack of a specialised unit within Victoria Police specifically to deal with such matters or a change in resourcing priorities by Victoria Police.[38]

6.35 The committee also notes the views of the Director of the Classification Board, when questioned about an apparent lack of action by state and territory law enforcement agencies:

> My impression is that it really comes down to the priorities that the states and territories place on this. They wish to have these rules and regulations in place, they are parties to the scheme but in pursuing these matters presumably their police forces...have to make decisions about what resources they put to it. The effort that goes into it varies from state to state.

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34 Salt Shakers, *Submission 23*, p. 11.

35 Arts Law Centre of Australia, *Submission 33*, p. 9.

36 Office of Public Prosecutions Victoria, *Submission 14*, p. 2.

37 Office of Public Prosecutions Victoria, *Submission 14*, p. 2.

38 Office of Public Prosecutions Victoria, *Submission 14*, p. 3.

> There is possibly, if I could say, an issue of how fair dinkum the states are about this.[39]

6.36 Finally, Mr Bruce Arnold and Dr Sarah Ailwood highlighted the need for the collection of empirical evidence as a basis for policy development in this area:

> As a basis for informed policy development and coherent enforcement the Committee may wish to encourage the collection, critical analysis and publication of data...[Such] activity might be undertaken by the Australian Institute of Criminology or the Australian Law Reform Commission (ALRC).[40]

Classification Liaison Scheme

6.37 The Department's submission set out the role of the Classification Liaison Scheme (CLS):

> CLS is a joint Australian Government, State and Territory initiative established in 1997 with the primary functions of educating industry about classification and checking compliance with classification laws.
>
> CLS officers visit a wide range of premises throughout Australia, including cinemas, DVD and computer game stores, newsagencies, petrol stations, adult premises, games arcades and convenience stores. CLS officers actively check whether classifiable material complies with classification laws and refer breaches to law enforcement agencies.[41]

6.38 The Classification Liaison Scheme has four officers.[42] The Department's submission noted that, for the first half of the 2010-11 financial year (to 31 December 2010), the Classification Liaison Scheme has:

- conducted 490 site visits across all states and territories, including regional centres;
- contacted 124 companies about breaches of classification laws; and
- referred 49 restricted premises and three websites to enforcement agencies.[43]

6.39 The Department provided further information on these statistics in answers to questions on notice. For example, in relation to the 124 companies contacted about breaches of classification law noted above, adult premises are not included in this category, and the breaches identified were relatively minor. The Department stated that, in general, 'companies are very cooperative and responsive to the Classification

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39 *Committee Hansard*, 7 April 2011, p. 62.

40 Mr Bruce Arnold and Dr Sarah Ailwood, *Submission 37*, p. 4.

41 Attorney-General's Department, *Submission 46*, p. 5.

42 *Committee Hansard*, 27 April 2011, p. 39.

43 Attorney-General's Department, *Submission 46*, p. 5.

Liaison Scheme advice and incorrect practices are often corrected immediately'.[44] The Department also outlined some of the responses received where companies were contacted about breaches:

- a website was corrected after films were advertised with incorrect classification;
- the catalogue for a major retailer was withdrawn for advertising unclassified computer games and the distributor submitted the games for classification;
- a film was submitted for classification after being incorrectly assessed by the distributor as exempt from classification.[45]

6.40 The committee notes that witnesses expressed a range of views on the Classification Liaison Scheme's work. The Eros Association highlighted concerns that it has about the role of the Classification Liaison Scheme apparently evolving from one of education to one of enforcement.[46] Alternatively, Ms Melinda Tankard Reist of Collective Shout was of the view that the Classification Liaison Scheme does little to assist in the follow-up of breaches of the *Classification Act 1995*.[47]

Interaction between the National Classification Scheme and Customs regulations

6.41 Customs describes its responsibility in relation to classification as:

> [P]reventing imports of objectionable material. The standard for determining what is objectionable mirrors the 'refused classification' standard under the national classification guidelines and includes, materials depicting child pornography, sexualised violence or materials that incite terrorism.[48]

6.42 In its submission, Customs emphasised that it does not have a role in classifying goods or determining whether goods are packaged to meet certain requirements for display, and described the limitations of its role:

> 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...This is appropriate as many goods assessed are intended only for private consumption.[49]

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

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

46 Eros Association, *Submission 60*, pp 13-14.

47 *Committee Hansard*, 27 April 2011, p. 24.

48 Australian Customs and Border Protection Service *Annual Report 2009-10*, p. 65.

49 Australian Customs and Border Protection Service, *Submission 10*, p. 3.

Defining 'objectionable' material

6.43 Regulation 4A of the Customs (Prohibited Imports) Regulations 1956 (Customs PI Regulations) prohibits the importation of 'objectionable goods' unless permission is received from the Attorney-General. Objectionable goods are defined as publications and any other goods that:

- 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
- describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- are computer games that are unsuitable for under-18s; or
- promote, incite or instruct in matters of crime or violence; or
- promote or incite the misuse of a prohibited drug; or
- advocate the doing of a terrorist act.[50]

6.44 Border control measures are linked to the National Classification Scheme through a definition of objectionable material that mirrors the Refused Classification category in the National Classification Scheme. While the Customs PI Regulations are intended to mirror the *Classification Act 1995*, they are not identical.[51]

6.45 The penalty for importing objectionable material differs depending on the nature of the offence. Personal importations can include fines of up to three times the value of the goods or $110,000 (whichever is greater), while commercial importations can also lead to five years imprisonment.[52] Importation of child pornography, whether personal or commercial, can result in penalties of up to $275,000 in fines and ten years' imprisonment.[53]

6.46 Due to the heavy criminal penalty imposed on an individual that imports child pornography, the *Customs Act 1901* includes a detailed definition of items of child pornography or child abuse material that is independent from the definition provided in the Customs PI Regulations.[54]

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50 Australian Customs and Border Protection Service, *Submission 10*, pp 1-2.

51 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

52 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

53 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

54 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

Determining objectionable material

6.47 While the Department has policy responsibility for the National Classification Scheme, Customs administers import (and export) controls on objectionable material at the borders, on behalf of the Department.[55]

6.48 The Department provides training to Customs officers to assist them in their ability to make determinations. In addition, the Department advises Customs about classification decisions, including reclassifications and lists of items that have been refused classification.[56]

6.49 Customs will also consult the Australian Federal Police or state and territory police, and potentially child welfare authorities, on any detections of child pornography.[57]

Enforcement action by Customs

6.50 Customs detects and assesses a substantial quantity of objectionable material each year. Its general practice is to refer serious offences, such as child pornography, for prosecution, whereas in less serious cases offending items are seized and destroyed.[58]

6.51 Customs provided the committee with detailed information relating to the detection of objectionable material:

55 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

56 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

57 Australian Customs and Border Protection Service, *Submission 10*, p. 2.

58 Australian Customs and Border Protection Service, *Annual Report 2008-09*, p. 81.

Table 6.1: Detection of objectionable material (2009–10)[59]

	Mode of entry					
Media Type	Passengers	Post	Small Craft	Cargo (Air)	Cargo (Sea)	**Totals**
Computer	82		2	1		**85**
DVD	346	355	16	132	21	**870**
Electronic Storage*	206	6	9	6		**227**
Game	1	105		4		**110**
Mobile Phone	35		1	1		**37**
Publication	15	11	2	5	2	**35**
Unknown**	7	2				**9**
Totals	**692**	**479**	**30**	**149**	**23**	**1373**

6.52 As described in Table 6.1, Customs made 1,373 detections of objectionable material in the 2009-10 financial year. Customs informed the committee that, of these, 54 cases were prosecuted: 47 cases involved child pornography; seven cases involved abhorrent material (for example, harmful or disgusting fetishes); and two cases involved violence. None of these cases related to terrorism material. The majority of these prosecutions arose from detections relating to passengers. All but four of the child pornography cases were successfully prosecuted.[60]

6.53 For the 2009-10 financial year, sentences handed down included thirty custodial sentences ranging from one month to three years, two suspended sentences over 12 months, 11 good behaviour bonds ranging from 12 months to three years and one community service sentence. For the same period, court–imposed payments totalled $211,754.[61]

59 Australian Customs and Border Protection Service, answer to question on notice, received 25 May 2011. Figures represent detections rather than items; *electronic storage includes computer hard drives, USB devices, video and digital camera memory cards and similar goods; **unknown relates to records where the title of the goods is recorded but the media type was not recorded.

60 Australian Customs and Border Protection Service, answer to question on notice, received 25 May 2011.

61 Australian Customs and Border Protection Service, answer to question on notice, received 25 May 2011.

6.54 Customs also provided information for the current financial year, to 30 April 2011. In that period, Customs made 1,072 detections. Customs noted that it has experienced a reduction in the number of objectionable material matters being referred for investigation compared to 2009-10. In particular, fewer child pornography related matters have been referred.[62]

6.55 Customs informed the committee that, while the detection rate of objectionable material has remained consistent, the reduction of serious offences may indicate that an information campaign undertaken by Customs is having an effect on the number of importations of this nature.[63]

Issues

6.56 Customs submitted that any revision of the criteria by which material is Refused Classification under the National Classification Scheme would require similar amendments to be made to the Customs PI Regulations. This would be necessary to ensure that the classification and border control regimes continue to complement one another.[64]

6.57 As noted above, Customs officers determine whether material is objectionable, based on criteria in the Customs PI Regulations that mirror the National Classification Scheme guidelines for a refusal of classification. During the inquiry, Ms Irene Graham submitted that the determination that material is 'objectionable', and therefore prohibited, should be made by the Classification Board as the appropriate authority on classifications in Australia:

> Members of the Australian public are constantly told that they should "trust" the National Classification Scheme because classification decisions are made by a so-called "independent" Classification Board whose names are made publicly available. However, the customs import regulations basically import the definition of "Refused Classification" from the Classification Code and allow (unknown/unidentified) customs officers to guess whether or not the Classification Board would "refuse classification" to particular material.[65]

6.58 For this reason, Ms Graham recommended that relevant legislation and regulations should be amended to ensure that Customs officers refer material to the Classification Board for classification.[66]

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62 Australian Customs and Border Protection Service, answer to question on notice, received 25 May 2011.

63 Australian Customs and Border Protection Service, answer to question on notice, received 25 May 2011.

64 Australian Customs and Border Protection Service, *Submission 10*, p. 3.

65 Ms Irene Graham, *Submission 20*, p. 3.

66 Ms Irene Graham, *Submission 20*, p. 3.

6.59 The Eros Association alleged that new operating rules adopted by Customs in 2011 have changed the way in which films are treated:

> Customs now maintain that the industry cannot import a film or publication that 'may' be Refused Classification...[M]ost publications and almost all films need to be modified to meet the stringent Australian classification guidelines. For the past 30 years this has meant that bona fide operators have had to bring in a master tape or disk from overseas which is modified, then submitted and classified and then duplicated from. Now Customs are saying that even a master disk has to be classified to bring it in but you cannot classify the film if you do not have a copy of it in the country.[67]

6.60 The Eros Association described this as a 'Catch-22' situation that was significantly affecting legitimate importers of X18+ rated films.[68] Expanding upon the effects of this apparent change in policy, Mr Robert Swan, Coordinator of the Eros Foundation, stated:

> My members [want] to put...the position that the Australian classification scheme, as a national scheme, is completely broken and for them it does not work. I think this year we will see zero classifications for all adult publications in Australia and we will now see, as a result of a Customs decision taken two weeks ago, zero classifications for X-rated films in Australia. If you look back around about the mid-1990s, there were 6,000 classifications a year for X-rated films in Australia. As I say, if nothing happens with the change at Customs in which they are now forbidding adult importers to bring in masters from which they can edit and make X-rated films that fit the Australian scheme, then there will be no classifications.[69]

6.61 Salt Shakers submitted that the ability of Customs to screen imports needs to be improved to ensure that all objectionable material is captured.[70]

6.62 Two other submitters noted that the ability to source material that has been Refused Classification through the internet impacts on the ability of Customs to prevent physical importations.[71]

6.63 FamilyVoice Australia noted that the definition of objectionable material seeks to mirror the Refused Classification category, including any computer game rated above MA15+. FamilyVoice Australia drew the committee's attention to the fact that the sale of X18+ films is prohibited in all Australian jurisdictions except for the ACT and parts of the Northern Territory (NT) (possession of such material is prohibited in certain areas of the NT). FamilyVoice Australia therefore recommended

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67 Eros Association, *Submission 60*, p. 13.

68 Eros Association, *Submission 60*, p. 13.

69 *Committee Hansard*, 25 March 2011, p. 52.

70 Salt Shakers, *Submission 23*, p. 11. See also Family Council of Victoria, *Submission 22*, p. 10.

71 See Civil Liberties Australia, *Submission 34*, p. 37; Mr Bruce Arnold and Dr Sarah Ailwood, *Submission 37*, p. 4.

that the Customs PI Regulations should be amended to prohibit the importation of X18+ films so as to reflect the position of the majority of jurisdictions in Australia.[72]

72 FamilyVoice Australia, *Submission 15*, p. 6.