CHAPTER ONE

INTRODUCTION

Background

1.1 The *Classification (Publications, Films, and Computer Games) Amendment Bill (No.2) 1999* (the Bill) was introduced into the House of Representatives on 8 December 1999. The Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee on 16 February 2000, for inquiry and report by 4 April 2000.

1.2 The Committee has been tasked with an inquiry that, among other issues, considers the following:

a. the reasons for the change in the classification of films and videos, from X to NVE;

b. all advice provided to the Government on this change and what public consultation took place prior to the Bill being introduced;

c. the nature and possible effects of the pornographic material to be included in NVE;

d. whether the change from the X rating to NVE would support moves to make the bulk of material now classified X more accessible throughout the States.

1.3 The Explanatory Memorandum states that censorship in Australia involves a cooperative Commonwealth, State and Territories scheme that was revised from 1 January 1996. A Commonwealth body (OFLC) body classifies material, and State and Territory legislation provides for the enforcement of such classification decisions.[1] The reason for the Bill coming into force 12 months after Royal Assent or on earlier Proclamation was to give the States and Territories sufficient time to enact complementary legislation.[2] Changes to the cooperative national legislative scheme require the agreement of all participating jurisdictions. [3]

1.4 The Coalition's Law and Justice policy for the election of 2 March 1996 stated:

> X-rated videos have been banned for sale or rental to the public in each of the States. The Australian Capital Territory should not continue as a centre of distribution for such material to the States. The Liberal and National Government will ban the X-rated classification.

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1 *Explanatory Memorandum*, p.3

2 *Explanatory Memorandum*, p. 13

3 *Explanatory Memorandum*, p. 3

> The Liberal and National Parties are particularly concerned with the degree of violent and sexually violent material available on video. We will work with the States and Territories with a view to restricting the availability of such material.[4]

1.5 The Commonwealth Government proposed to the States and Territories that the current X classification be abolished and that a new classification category - NVE (Non-Violent Erotica) - be established. Undesirable material permitted in the current X classification including mild fetishes, any violence, sexually aggressive language and portrayals of minors[5] would be excluded from the proposed NVE classification. (Such material would presumably fall into the RC classification and could not be shown at all). The sale and hire of X-rated videos is currently banned in all States but not in the Australian Capital Territory and the Northern Territory.

1.6 On 7 April 1997 the Government agreed that the Attorney-General negotiate with State and Territory Censorship Ministers to achieve a ban on X-rated videos and to create a new NVE category for non-violent sexually explicit videos that would exclude certain material which is currently allowed in the X-rated category or which contains demeaning material. The decision to introduce the new category has been reached with agreement of State and Territory censorship ministers.

1.7 In his Second Reading Speech, the Attorney-General stated that:

> For this material [X-rated videos], the question to be asked is not whether some individuals find the material offensive but whether the general community finds it so unacceptable that it justifies its banning. The government does not consider the latter to be the case.
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> In reaching its decision, the government took into account the fact that X-rated videos have been available in Australia for over 15 years and that a large number are circulating within the community. Given the demand for these videos, banning them would inevitably drive the industry underground. The government considers it is far better to maintain a strict regulatory regime to control the content and availability of videos containing sexually explicit material. By doing so adequate protection can be provided to minors and those who may be offended by such material and the involvement of criminal elements in its production and distribution limited.[6]

1.8 Consequential amendments will be made to the *Broadcasting Services Act 1992* to prohibit broadcasting of NVE programs, together with the current RC (Refused Classification) programs. Similar amendments will be made to the provisions of that Act relating to online programs.[7]

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4 *Submission No. 33*, Commonwealth Attorney-General's department, p. 5

5 See *Submission No. 33*, Commonwealth Attorney-General's department, Attachment A to the Standing Committee of Attorneys-General Meeting papers, July 1997.

6 Second Reading Speech, House of Representatives proof Hansard, p. 9686

7 *Explanatory Memorandum*, p. 1

Supervening issues

1.9 The Committee notes that this inquiry has been made more difficult than it might have been because of two supervening events, further consultation with the States and Territories and the tabling of incorrect material.

Additional consultations with the States and Territories

1.10 In evidence to the Committee at its first public hearing on 23 March 2000, representatives of the Attorney-General's Department suggested that the Government was consulting further with the States and Territories on the title of the new classification proposed to replace the current X classification.[8] Many of the submissions to the Committee commented specifically on the title of the new classification.[9] Therefore, any actual or proposed change to the title by the Government would significantly affect the basis on which the Committee conducted its inquiry. Accordingly, on 24 March 2000 the Chair wrote to the Attorney-General to express the Committee's concern that there might be little point in continuing its inquiry or reporting back to the Senate in an uncertain context. The Attorney-General was requested to advise whether or not the Government was consulting with States and Territories on the title of the proposed new classification.

1.11 On 27 March 2000 the Attorney-General provided a written response to the Chair confirming that the Government was holding such consultation with the States and Territories.

1.12 The Committee considered the advice conveyed by the Attorney-General in his letter, together with the evidence in this regard presented by the Department at the hearings, to have been insufficient in its detail to have assisted its inquiry into this matter. The Committee notes that the purpose of conducting this inquiry will have been significantly compromised if the outcome is that it has deliberated over the text of a draft law that is changed before the Committee has had the opportunity to perform its official function of considering and commenting upon the Bill's contents.

1.13 Nonetheless, the Committee decided to proceed with its inquiry into the Bill by holding a second public hearing.

Tabling of incorrect material in Parliament

1.14 At the second hearing, evidence was given by the Attorney-General's department to the effect that when the Attorney-General was making his Second Reading Speech, he purported to table proposed National Classification Guidelines that had been agreed to in principle by him and the State and Territory Ministers responsible for censorship. However,

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8 *Transcript of evidence*, Commonwealth Attorney-General's department, p. 27

9 See, for example, *Submission No. 9*, Mr and Mrs Gawler, p. 1; *Submission No. 15*, National Civic Council (Mildura Branch), p.1; *Submission No. 20*, Salt Shakers, p. 6; *Submission No. 24*, Festival of Light, p. 8;*Submission No. 28*, Mr John Miller, p. 11; *Submission No. 31*, Young Media Australia, p. 1; *Submission No. 36*, The Coalition Against Trafficking in Women, p. 5; *Submission No. 38*, Women's Action Alliance(Victoria) Inc, p. 1

it appears that the document which was tabled did not represent that agreed position but wrongly referred to the amendment of the word 'demean'.[10]

1.15 The Glossary of Terms in the Guidelines for the Classification of Films and Videos defines 'demean' as:

> 'A depiction, directly or indirectly sexual in nature, which debases or appears to debase the person or the character depicted.'[11]

1.16 The tabled document apparently showed an amendment of the definition of 'demean' to read:

> 'A depiction, directly or indirectly sexual in nature, which debases or appears to debase the person or the character depicted or which lowers the dignity or standing of the person or character.'

1.17 The departmental official explained how the document had come into existence and how it differed from what should have been tabled. In answer to a question from Senator Harradine, he said:

> You asked whether there were any other changes in documentation. Prior to giving this evidence now, you mentioned to me the guidelines that the Attorney tabled in the House of Representatives . . . If you look at the guidelines that were tabled, at the bottom of them is a glossary. The glossary says that the definition of "demean" is "debase" – and I have not got it in front of me at the moment – or "lower in dignity and standing".
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> As Senator Harradine is aware, he wrote and has raised in Senate estimates committees the question of the full Macquarie Dictionary definition of "demean", which gave two alternatives. One was "debase" and the other was "to lower in dignity or standing" – to which the Attorney-General replied that he would take up with censorship ministers the question of adding in the other alternative definition because, in his view, it did not make any difference. He did do that, as he undertook to you, Senator Harradine.
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> What we did was to do a mock-up of the guidelines that we had. They are the same above that line' (dividing the glossary from the text) 'as has been agreed, but unfortunately the mock-up one was tabled in the House of Representatives even though censorship ministers did not agree at that meeting to the additional definition being included. It was proposed when debate on the bill resumes that that matter would have been raised.[12]

1.18 It seems to the Committee that what was involved here was an honest mistake on the part of the Department. It also seems to the Committee that it was quite reasonable, for the reason given by the Attorney-General, for censorship ministers to reject the suggested amendment. However, it most regrettable that the Parliament was provided with incorrect

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10 *Transcript of evidence*, Commonwealth Attorney-General's department, p. 63

11 See Committee's Information Package on the bill which contains this material

12 *Transcript of evidence*, Commonwealth Attorney-General's department, p. 63

information, even on a minor issue. It is also regrettable that the mistake has caused confusion and distraction for the Committee.

Conduct of the inquiry

1.19 The Committee wrote to a range of individuals and organisations, and placed advertisements in a national newspaper on 1 and 4 March 2000, inviting submissions to the inquiry. In response, the Committee received a total of 42 submissions including supplementary submissions. A list of these is at Attachment 1. The Committee also received a large amount of correspondence (including several hundred electronic form letters from the Sexpo site) which either supported or opposed the Bill.

1.20 The Committee held public hearings in Melbourne on 23 March 2000, and in Sydney on 30 March 2000. A list of witnesses is at Attachment 2.

Note on references

1.21 References to submissions are to individual submissions as received by the Committee, and not to a bound volume. References to the Hansard transcripts are to the proof Hansard. Page numbers may vary between the proof and the final Hansard transcript.