

CHAPTER TWO

ISSUES RAISED BY THE BILL

Introduction

2.1 Evidence to the Committee raised a number of issues. These include:

Term of reference (a)

- relabelling the X-rated classification as NVE does not fulfil the promise of the Government to ban the X classification;
- the change from X to NVE will remove ambiguity in the content of these materials;

Term of reference (b)

- There has been insufficient discussion on, and information about, the proposed changes;
- There has been ongoing discussion on this and related matters;

Term of reference (c)

- the proposed new classification fails to address the social problems arising from pornography, including demeaning the status of women and endangering the safety of children
- contrary to the Government's assertion that there is insufficient scientific evidence to show that viewing of pornography has a significant negative impact on social behaviour, there is a large body of evidence suggesting that pornography is causally related to sexual violence
- the NVE classification unnecessarily restricts the content of material covered under the existing X classification and infringes on the rights of some people conducting lawful consensual activities

Term of reference (d)

- the introduction of the NVE category will provide a regulated market for such films and videos
- the removal of certain types of contents under the NVE classification will result in driving underground the market for such materials.

Term of reference (a), the reasons for the change in the classification

2.2 Little direct evidence was provided to the Committee concerning the reasons behind the change. It was noted by witnesses, however, that a basic reason for change was that the current Government included this policy as part of its election platform in 1996,¹ and similar

1 See *Explanatory Memorandum*, p. 5

policies had been stated by other political parties.² A further objective was to improve the operation of the national legislative classification scheme.³

2.3 The basis of this change is complex. There has long been some community concern about access to erotic or pornographic material and the possible effects of such access. Certainly this view was expressed in the Committee's hearings,⁴ and there was much discussion on alleged links between easily available pornography/erotica and increased violence to women.⁵ However, no statement has been made by Government in introducing the bill that this community concern is a reason for the proposed changes.

2.4 It could be argued, nonetheless, that the changes do represent the outcome of some community pressure. It could also be argued that the factors that must be excised from current x-rated films in order for them to obtain re-classification would cover a concern with aggression and violence, including towards women. The NVE category appears to place an emphasis on consensual behaviour, in a non-violent atmosphere, and does not accept sexually aggressive behaviour.

Process of change

2.5 The Explanatory Memorandum to the Bill notes that the Government's promise to ban the X-rating is met in two steps which implemented its option B(iii).⁶

2.6 The first is through abolishing the X-rating altogether, so that from the date of effect of the legislation this classification is no longer available.

2.7 The second step is the introduction of the NVE classification. Although existing X-rated films can retain this title, a range of undesirable material can be removed from films currently rated X, and application made for the NVE classification. This undesirable material includes:

- Mild fetishes;
- Sexually aggressive language;
- Any depiction of violence at all; and
- The portrayal of persons over 18 as minors.⁷

2.8 The effect of this would be that material of this kind currently available in existing X-rated videos must be removed if an NVE rating is to be obtained for them.⁸

2 See also Second Reading speech, p. 2, and *Transcript of evidence*, Eros Foundation, p. 48

3 See *Explanatory Memorandum*, p. 6

4 It was also referred to in the *Explanatory Memorandum*, p. 7 and p. 9

5 These effects, and the evidence to support them, are considered in some detail below

6 *Explanatory Memorandum*, p.5. See also *Submission No. 33B*, Commonwealth Attorney-General's department, p.1, answer to Question 1

7 See material provided to the Standing Committee of Attorneys-General, Meeting of 12 December 1997, Attachment B, 'Non-Violent Erotica', which is contained in *Submission No. 33*, Commonwealth Attorney-General's department. See *Explanatory Memorandum*, pp. 1, 6

Objections to the changes

2.9 Given that it has been believed in some circles⁹ that the Government would totally ban a range of erotic or pornographic material in the implementation of its policy, some commentators believed that the change of classification was a watering down of the original intention.

2.10 Although the X classification, strictly speaking, will apply only to those films currently rated X (if they are not modified), the continued life of many of these films modified to fit within the NVE classification was seen as a sleight of hand, and the Government's bowing to well-organised pressure:

What is the motive behind the legislation. We consider that the motive... must be the pacification of the demands of the sex industry to increase the range of materials they can sell openly.¹⁰

2.11 To a degree, there was also some objection by a representative of the industry who believed that the new classification was in fact too restrictive, and that it would exclude some material that acknowledged cultural diversity:

We have a concern that it will Americanise our industry...Asian films that have Asian adults having sex would not fit into the NVE guidelines because they look too young. We are concerned that some of the European films that are fairly robust will not fit into the NVE guidelines because of the Italian macho style or the nature of them. So, unfortunately, we feel that the NVE classification will leave us with just American vanilla.¹¹

Community preferences

2.12 In a broader sense also, the objective of the legislation is to make certain films available thus meeting the needs of some members of the community.

We think the main reason is that the community wants it. We found in the most recent poll we did in 1999, that 73 per cent of those polled thought that NVE ...videos should be available to adults in Australia from properly licensed adult book stores. Only 21 per cent thought they should be banned.¹²

8 *Transcript of evidence*, Office of Film and Literature Classification, p. 68

9 See, for example, *Submission No. 5*, Christian Democratic Party (WA) Inc, p. 2 *Submission No. 6*, Australian Family Association (Western Australian Division), pp. 3-4; *Submission No. 8*, Endeavour Forum Inc, p. 2

10 *Transcript of evidence*, Coalition Against Trafficking in Women, p. 5. See also *Submission No. 1*, New South Wales Council of Churches, p. 3

11 *Transcript of evidence*, Eros Foundation, p. 49; on the term 'vanilla', see also *Submission No. 17*, Ms Kath Albury, p. 14

12 *Transcript of evidence*, Eros Foundation, p. 48

Community interest in clearly defined products

2.13 A further objective of the legislation is to more clearly define the contents of these films, thus allowing for appropriate choice and limited access. Such objectives meet the needs of both the industry, and of potential consumers or non-consumers. In referring to one of the options considered (Option B(iii)), the Explanatory Memorandum notes the usefulness of clearly defined availability of some material:

Option B (iii) maintains a strict regulatory scheme to control the content and availability of videos containing sexually explicit material. This ensures adequate protection for minors and those that may be offended by such material. Under this option, the new category will more accurately describe the type of material contained in it and undesirable content will be removed.¹³

2.14 The issue of access to material must necessarily take into account the preferences of some parts of the community, and the legislation seeks to do so: ‘there are not considered sufficient grounds, as a matter of public policy, to deny adults generally the freedom to access non-violent sexually explicit videos if they so wish.’¹⁴ Thus the Government has sought to ‘balance conflicting views and to arrive at an acceptable solution to a difficult issue.’¹⁵

2.15 The issue of limiting access to material in what might usually be deemed private situations, was raised by one witness. The Coalition Against Trafficking in Women believed that making ‘pornography’ into ‘erotica’ would in fact put greater pressure on women to become involved in practices they were opposed to, in their personal relationships.¹⁶ A similar view was also held by the organisation Salt Shakers.¹⁷

2.16 This argument moves the emphasis from women who are involved in public activity, including participation in videos, to the private sphere.¹⁸ It is an area in which Government generally sees limited need for involvement, and the legislation does not consider this issue directly.

Improved classification

2.17 The option that has been recommended (to use NVE) is stated to have the benefit of excluding certain material which will assist the community generally to know the type of content that is available. Although such classification in itself will leave a wide range of identified problems unaddressed, it is believed that the classification is more precise; excludes undesirable material; protects minors, including through the exclusion of certain

13 *Explanatory Memorandum*, p. 7

14 *Explanatory Memorandum*, p. 7

15 Second Reading speech, p. 2

16 *Transcript of evidence*, Coalition Against Trafficking in Women, p. 9

17 *Transcript of evidence*, Salt Shakers, p. 14

18 *Transcript of evidence*, Senator Mason, p. 13

material; and ensures that those who do not wish to see such material are aware that it is contained in certain types of films.¹⁹

2.18 As noted in the Introduction, the emphasis has been very much on the tightening of control,²⁰ and on limiting the type of material available.

Term of Reference (b) ‘all advice provided to the Government on this change and what public consultation took place prior to the Bill being introduced’.

2.19 Concern was also expressed by various groups about the availability and presumably the nature of advice to government; and the extent of public consultation.

Advice to government.

2.20 The recommendation to progress with an NVE classification resulted from a meeting of the Standing Committee of Attorneys General,²¹ and was announced by the government in April 1997.²² Some of the material that was considered by the Standing Committee of Attorneys-General at various stages was also made available to the Committee, in the submission from the Attorney-General’s department; and some of that same material was previously tabled in Parliament.

2.21 The nature of the advice provided to various governments, by the public service to Ministers, and the consultations between governments are generally excluded from public discussion. Questions on the nature of policy advice given to government(s) by departments are excluded from Committee consideration,²³ and the decisions of governments are similarly not matters which public servants may discuss.²⁴ The debate within or between governments is generally a matter for governments to agree to release publicly, but is exempt from release otherwise. Thus, this issue could not progress far in respect of this level of consultation and discussion.

2.22 The limits placed on public servants were noted on various occasions during the hearings²⁵ by an officer from the Commonwealth Attorney-General’s department.

I do not think it is up to me as a departmental officer to make comments about who may or may not have agreed...ministerial councils conduct their business confidentially...²⁶

19 See *Explanatory Memorandum*, p. 7

20 See above, Chapter 1, quote following Paragraph 1.4. *Transcript of evidence*, Senator Mason, p. 30

21 See *Transcript of evidence*, Senator Payne, pp. 59, 64-65. The actual consultations are between ministers responsible for censorship

22 See, for example, *Transcript of evidence*, Commonwealth Attorney-General’s department, pp. 27-28

23 See *Transcript of evidence*, Senator Payne, p. 27

24 *Transcript of evidence*, Senator Payne, p. 29 and p. 34

25 See *Transcript of evidence*, Commonwealth Attorney-General’s department, p.35

26 *Transcript of evidence*, Commonwealth Attorney-General’s department, p. 64

2.23 Nonetheless, it is clear that governments provided information on their intentions and on the progress of these at intervals during the extensive consultation process. In response to the announcement of its intention to consult with States and Territories on the NVE classification, the Government received ‘a significant volume of correspondence from members of the public in which they expressed their views on that decision.’²⁷ Although this correspondence itself may not have been released, other documents were tabled in June 1998.²⁸

Public consultation

2.24 In other instances, including where advice and information is provided by a range of other bodies, including the sex industry, it is possible to gain more information about consultation. The Eros Foundation provided information and other material concerning their viewpoint and the extent to which there was a public demand for certain forms of sexual material. They also noted that there had been ongoing consultation on the classification issue for some time, including Senate committee inquiries. The Eros Foundation noted that:

It has certainly been in the public eye for the last four years. The Australian public went to the last election with two parties saying they would introduce NVE if they were elected. It has been something that the community has been around. Our public polling is showing that the community supports the availability of this type of material.²⁹

I consider the public consultation that was done in the inquiry into video material as relevant consultation that has resulted in the NVE being proposed now....

I think that we have had continuous consultation on this.³⁰

2.25 As noted above,³¹ there was opportunity for the community to make comment on the proposed changes, and this is a familiar method of public consultation. It appears from other information provided by the Attorney-General’s department³² that information on proposed changes has been available to the public for some time. In this respect, the use of the NVE classification would have been advised in accordance with established procedures.

2.26 Nonetheless, a number of organisations did believe that there had been little consultation.³³

27 *Submission No. 33*, Commonwealth Attorney-General’s department, p. 1

28 These tabled documents are also included as Attachment B to the department’s submission to this inquiry

29 *Transcript of evidence*, Eros Foundation, p. 53. See also *ibid.*, pp.48, 52

30 *Transcript of evidence*, Eros Foundation, pp. 52-53

31 See Paragraph 2.23

32 *Submission No. 33*, Commonwealth Attorney-General’s department, Attachment, Item 2, p. 3

33 See, for example, *Submission No. 20*, Salt Shakers, p. 1 and *Submission No. 24*, Festival of Light, p. 4

Term of Reference (c), “the nature and possible effects of the pornographic material to be included in ‘NVE’”

2.27 The Committee notes that the range of views expressed in evidence to the inquiry with regard to the effects of the change in classification, indicates that opposition to the new NVE category approaches the issue from diametrically opposed positions. Some opponents of the change argue that it seeks to disguise pornography under a ‘soft’ title, while others object on the grounds that it significantly restricts the contents of videos and films.

2.28 The evidence of the Attorney-General’s Department has clarified to a certain extent the question of the Government’s intent. In its written submission of 16 March 2000, the Department advised that on 8 April 1997 the Government announced in a press release it would support a ban on X-rated videos and create a new NVE category, and would consult with the States and Territories. In his Second Reading speech, the Attorney-General reiterated that the Bill includes amendments to give effect to the Government’s decision.

2.29 At the same time, the Government sought to balance the views of the general community regarding sexually explicit films and videos against the need to maintain a strict regulatory regime to control the content and availability of videos containing such material.

2.30 The Attorney-General stated:

The creation of the new category does not mean that the material contained in it has government endorsement. Indeed, the government was concerned about some of the materially currently permitted in the X classification. This material, which includes certain fetishes, the use of sexually aggressive language and the portrayal of persons over the age of 18 as minors, will not be permitted in the new NVE category.³⁴

2.31 The Committee notes, in this context, that the Schedule to the National Classification Code of the *Classification (Publications, Films and Computer Games) Act 1995*, the legislation currently governing this area, reads:

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:

34 See Second Reading Speech, p. 1. On 26 August 1997, in response to a question without notice from Senator Harradine regarding the press release of 8 April 1997, Senator Hill stated that: ‘The essential message sought to be conveyed by the joint press release in respect of the proposed new NVE category was that it would be subject to tighter guidelines than currently apply to the X-rated category,’ *Senate Hansard*, p. 5676

- (i) depictions that condone or incite violence, particularly sexual violence; and
- (ii) the portrayal of persons in a demeaning manner.³⁵

2.32 In oral evidence to the inquiry, the Attorney-General's Department and the Office of Film and Literature Classification referred to 'a significant tightening from the original concept of X-rated' as introduced in 1984, and agreed that the proposed NVE category indicated even further tightening of contents of classified material.³⁶

'Pornographic' versus 'erotic' material

2.33 Many of the submissions to the inquiry from church groups and other organisations, as well as from individuals, consider the term 'Non-Violent Erotica' to be misleading and unacceptable. Their position in this regard is best summarised by the views of Salt Shakers Christian Ethics Action Group. In its written submission Salt Shakers argues that the "romantic" and "warm" term 'erotica' is "simply being used as a euphemism for pornography and is used to give pornography a softer and more acceptable public image." The submission concludes:

We submit that the name Non-Violent Erotica should not be used. Instead a name such as **Harmful Pornographic Material** or **Dangerous Pornographic Material** or **Hard Core Pornography** would convey the reality of this material. The name that has been recently proposed, **Non-Violent Pornography**, is a big improvement on 'Non-Violent Erotica', but still doesn't highlight the dangers or the true nature of the material. [emphases in original]

2.34 In oral evidence to the Committee, Salt Shakers clarified this view in response to questions, stating:

We have suggested possible other names that would label these videos more truly as what they are. We did say in [the submission] that we would rather not have them at all, but if the government is going to go ahead with the removal of violence and leave the rest of the material in the NVE category, or what was to be called NVE, we would rather see that name changed to something that more aptly said what the material was all about. ... [With regard to Non-Violent Pornography] if the censors are told it is erotica not pornography they will know what to look for."

2.35 The Coalition Against Trafficking in Women (Australia) has expressed a similar view in its evidence, though grounding its opposition to the new category particularly on the view that all such material is pornographic,³⁷ and that pornography violates the human rights of women. Its submission states:

We believe NVE is a deceptive title. We oppose this title because in our view all pornography is a form of violence against women and leads to violent practices against women. To label something 'non-violent' suggests it is therefore not

35 Acts of the Parliament of the Commonwealth of Australia 1995, AGPS 1996, Volume 1, p. 316

36 *Transcript of evidence*, Office of Film and Literature Classification, p. 30

37 See *Transcript of evidence*, Coalition Against Trafficking in Women, p. 5

harmful. We also believe that the word ‘erotica’ does not adequately reflect the hard core pornographic nature of the majority of the videos concerned. The fact that this is the label preferred by the pornographic industry only makes us suspicious about the intent of the re-labelling. We are opposed to any move which would make ...most of what was labelled “X” sound innocuous.

2.36 Therefore, the Coalition Against Trafficking in Women, like Salt Shakers, concludes:

At the very least, if a classification change IS deemed necessary by your Committee, the current X-rating for pornographic videos should be “Non-Violent PORNOGRAPHY”, and NOT erotica. [emphases in original]³⁸

2.37 A further perspective was given by the Eros Foundation which challenged the validity of stating that ‘pornography’ was in fact part of the NVE classification at all:

We define pornography or pornographic material...as material that would be refused classification, as child pornography, as bestiality, as sexually explicit violent material. We do not consider the material that is within the guidelines of NVE to be pornographic.³⁹

2.38 Other opponents of the proposed change of category are represented by the evidence of Ms Kath Albury and Ms Linda Jaivin. Ms Albury contends that the current ‘X’ classification already includes ‘Non-Violent Erotica’ contents and that there is no need to further restrict such materials. Her submission states:

Suffice to say that as a feminist, I am deeply concerned by any legislation which seeks to control my sexual expression. I believe that I have the right to consent to sexual activities, and that this consent does not demean, degrade or dehumanise me. I do not believe that participation in unconventional sexual fantasies or practices is a transparent indication of stupidity, sickness or moral weakness.⁴⁰

2.39 Ms Albury added to these comments in her oral evidence, stating:

Consensual sex, fetish role play and masturbation neither demean nor degrade adults whether they are married or unmarried, heterosexual, homosexual, bisexual, intersexed, transgendered or transsexual. I believe that the proposed amendments to the classification bill pave the way for government sanctioned discrimination against sexual minorities who are not breaking any laws.⁴¹

2.40 Ms Jaivin’s submission opposes the change in classification for similar reasons, arguing that consensual fetish activity is not unlawful in Australia and expressing deep

38 See *Submission No.36*, Coalition Against Trafficking in Women. The organisation further expounded its views at the first public hearing, commenting that a stricter classification ‘would show social disapproval of the material and it might actually help the men who might otherwise consume this material to have some kind of second thoughts about it’, *Transcript of evidence*, p. 9

39 *Transcript of evidence*, Eros Foundation, pp. 48-49

40 *Submission No. 17*, Ms Kath Albury, p. 3

41 *Transcript of evidence*, Ms Kath Albury, p. 41

concern that a ‘minority of conservative moralists’ should restrict the right of the community to enjoy consensual sexual activities and their representation in film and video.⁴²

2.41 At the second public hearing, Ms Jaivin expressed a preference for the label ‘Non-Violent Pornography’, despite reservations regarding negative connotations of the term, in view of her wish to retain a more inclusive category. Further, Ms Jaivin commented that an ‘NVP’ category could protect children from accessing such material.⁴³

2.42 Both Ms Albury and Ms Jaivin, as sex positive feminists, disputed the oral submission to the inquiry provided earlier by Professor Jeffreys, on the basis that her assertions were anecdotal and not supported by objective evidence.⁴⁴

Acceptance of NVE classification

2.43 In this context, Professor Peter Sheehan, Vice-Chancellor of the Australian Catholic University⁴⁵ indicated in oral evidence that the community is likely to accept the proposed NVE classification. He commented:

Basically, the two principles that are very important are the freedom to see and hear what one wants to see. One needs to pit that against protection against what is offensive, degrading and demeaning, plus the protection of children. The balance of that is fairly precarious. I see the non-violent erotica classification as being fairly conservative in its phrasing. It eliminates aggression, aggressive language and concentrates entirely on sex, not aggression. I think it is a conservative depiction of what is now available in the X category. ... I think it would be acceptable.⁴⁶

2.44 Professor Sheehan stated further that children would not be any better protected if the material were labelled NVP, commenting:

... I think pornography will be a flag sign for impressionable children to get access to it. The literature says that children do like to get banned and restricted material; in fact, they would get their hands on it in all sorts of ways, and ‘pornography’ would make that fairly likely. So I think very much that children would not be protected by that shift of label.⁴⁷

Access to materials by minors

2.45 As alluded to in the preceding discussion, many submissions to the inquiry have voiced concern at the adverse effect on children of exposure, either accidental or wilful on the part of adults, to sexually explicit films and videos. A number of submissions, such as that of

42 *Submission No. 12*, Ms Linda Jaivin, p. 1

43 *Transcript of evidence*, Ms Linda Jaivin, p. 43

44 *Transcript of evidence*, Ms Jaivin/Ms Albury, pp. 42-43

45 Professor Sheehan is a professor of psychology and former chair in the late 1980s of the Commonwealth Film Classification Board

46 *Transcript of evidence*, Professor Sheehan, p. 37

47 *Transcript of evidence*, Professor Sheehan, p. 38

the Festival of Light (SA), cite a report in the Melbourne newspaper, *The Age*, of 18 June 1999 which claimed that, in 1998, 84 kindergarten and primary school students with deviant sexual behaviour in Melbourne's outer eastern suburbs had been referred for treatment to a counselling service. This, and other, submissions assert that the children's access to sexually explicit videos was a major factor in conditioning their inappropriate behaviour.

2.46 Evidence in this context was given by Australians Against Child Abuse.⁴⁸ The organisation stated:

The [counselling] program ... receives an increasing number of referrals each year. Last year it was 95 referrals. We service only the outer eastern metropolitan region of Melbourne. As far as I am aware, it is the only program of its kind in Australia. The types of sexualised behaviour we observe in these children, both boys and girls – 75 per cent boys and 25 per cent girls – are usually what we call of a high tariff nature. They are highly age-inappropriate, highly sexualised and they tend to be persistent and non-responsive to redirection.⁴⁹

2.47 Australians Against Child Abuse commented that, for a proportion of the children presenting to the centre, the sexualising component in their lives had been exposure to sexually explicit material on video. The exposure could occur in one of two ways, either because poor boundaries had been set around their access to such material, or because adults had deliberately shown it to them, to see its impact on them or for the purpose of abusing them.⁵⁰

2.48 From this, the organisation concluded that the classification of videos, of itself, is of little value in further assisting those people who may already demonstrate limited responsibility in respect of children in terms of their access to such material.⁵¹

2.49 Mr Spencer Gear expressed similar concern in his written submission regarding a direct nexus between viewing of 'X'-rated videos, by adults and minors, and sexual abuse of children. He cited several case studies to demonstrate this linkage. In oral evidence, Mr Gear indicated that around 20 to 25 percent of cases (referred to the organisation for which he worked) dealing with victims of sexual abuse involved viewing of sexually explicit videos.⁵² In ensuing discussion at the hearing, Mr Gear clarified that his observations regarding a correlation between viewing of sexually explicit videos and molestation of children were based on case histories (not all of his direct experience) rather than empirical research.

48 Now known also as The Centre for Children

49 *Transcript of evidence*, The Centre for Children, p. 1

50 See also below, Paragraphs 2.50-2.54

51 *Transcript of evidence*, The Centre for Children, p. 2: 'If I have an opinion about the change of title, it might be to be concerned that any change of title does not further assist people who already may tend to minimise or keep poor boundaries with children to do that...'

52 See *Transcript of evidence*, Mr Spencer Gear, pp.57, 61-62 for a statement on the numbers of children referred to

The issue of parenting

2.50 Although the above commentators did not disregard the role of parents in the access that children had to videos, their more immediate concerns were with the effect on children of access and not the reason for access. However, the Committee heard evidence which suggested that the basic problem in many instances of children being adversely affected by sexual videos were parenting practices⁵³ that ranged from carelessness to serious abuse:

Under half of these children have actually experienced contact sexual abuse – that is, sexual abuse by physical contact. The rest of them have been influenced by extremely age-inappropriate sexual material or activities.⁵⁴

Carelessness/indifference

2.51 Evidence provided to the Committee suggested that, although not all children were necessarily affected substantially by seeing sexual material, of those children referred for treatment for overt sexual and inappropriate behaviour, ‘exposure to sexually explicit material on video’⁵⁵ was a causal factor of the behaviour. This could result from carelessness – ‘there are poor boundaries around such material’.

There are people who may not realise the extent to which children are curious. They may want to look at that material for themselves and not protect the material adequately.⁵⁶

2.52 Such carelessness may also constitute abuse.

Parents involved directly in sexual abuse of their own children

2.53 Direct parental involvement in abuse may also include ‘adults deliberately show[ing sexually explicit material] to them, basically for their own gratification, to see the impact on these children.’⁵⁷ However, such action could certainly be followed by physical actions including incestuous rape, and it has been stated this can have an extensive and long-term effect.⁵⁸ Nonetheless, the Committee does believe it is important to separate the beliefs and actions of some parents from the material which they may use to gratify themselves.

Parents allow others access to their children for abuse.

2.54 Evidence on such persons was limited, as it was not clear if some adults referred to as involved in sexual assaults on children were the parents of the children or some other adult.⁵⁹ Mr Gear referred to ‘molesters’⁶⁰ and to a case where it appeared that a male adult

53 See *Transcript of evidence*, The Centre for Children, pp. 3,4

54 *Transcript of evidence*, The Centre for Children, p. 1

55 *Transcript of evidence*, The Centre for Children, p. 1

56 *Transcript of evidence*, The Centre for Children, p. 1

57 *Transcript of evidence*, The Centre for Children, p. 1

58 *Transcript of evidence*, Mr Spencer Gear, pp. 55-56

59 *Transcript of evidence*, Mr Spencer Gear, p. 55

60 *Transcript of evidence*, Mr Spencer Gear, p.55

was involved in the sexual abuse of several children; it was not clear if the adult was the father of these children.⁶¹ However, from the material provided, a woman – possibly the mother of the children, was involved directly in the abuse.

Conclusion

2.55 While the Committee was concerned by accounts of the effects of the use of such material, the Committee believes that the restriction of videos would have a minimal effect on such persons. Their behaviour reflects much more serious problems, including a lack of awareness of the consequences of their actions,⁶² and apparent indifference to community standards of sexual behaviour and treatment of children.

2.56 However, in order to identify clearly the importance of restricting access to such videos to children, the Committee believes that labelling could include a warning, advising of the possible risks to children who view such contents. This would make the risks obvious and assist careless parents to prevent accidental access. From evidence to the Committee, it appears that the community is already in favour of restricting access to specific stores, which suggests an acceptance of the need to limit access to children.⁶³ The Committee notes that New South Wales legislation makes it an offence for X-rated videos to be shown to minors in either public or private settings.

Recommendation 1

The Committee **recommends** that prominent warnings be added to NVE video covers about the contents of the video and the possible effects of such material on children.

The definition of ‘child’ should also be included on any such warning.

Recommendation 2

The Committee further **recommends** that a prominent label on the video cover clearly state the penalties for contravention of legislation

Term of Reference (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

2.57 At its appearance before the Committee on 23 March 2000, the Attorney-General’s Department reviewed the history of the move towards an ‘NVE’ category since introduction of the ‘X’-rated category in 1984. The major point that has been made in respect of the issue of increase or decrease of videos because of classification, is that this matter depends upon state governments:

61 *Transcript of evidence*, Mr Spencer Gear, pp. 55-56

62 See *Transcript of evidence*, The Centre for Children, p. 2

63 See *Transcript of evidence*, Eros Foundation, p. 53

... the Commonwealth bill merely provides for the classification; what happens to the classification is a matter for state and territory law. The two territories will, of course, still allow NVE, but none of the States has indicated that they will allow NVE to be sold in their States. So they have agreed to the new name, they have agreed to the new categories, but none of them has agreed to allow the sale or hire of NVE videos, as classified, in their jurisdictions, any more than they do the X at the moment. But that is a decision for each jurisdiction and the government of that jurisdiction.⁶⁴

2.58 A related issue is that of public perception. The Attorney-General's department commented that in 1988 the Joint Select Committee on Video Material observed community perceptions of the contents of 'X'-rated material were still that the classification allowed sexually violent matter. In order to correct this misapprehension, the Commonwealth Parliamentary Committee recommended at that time the creation of a new category of NVE. If it is true that some members of the community would use NVE, but not X, and if NVE films were legally obtainable within States, then there would possibly be an increase in such material. However, decisions on this matter are made by State ministers.

2.59 Any increase may be offset to some degree by the fact that a percentage of current X-rated films would not be re-classified to NVE.⁶⁵

2.60 The Department clarified that the industry that currently exists in the ACT could feasibly continue with the production of sexually explicit material, in exactly the same way as it is now, except in the form of a new product redesignated as NVE.

Black marketing of 'X'-rated videos

2.61 Opponents of the classification change on the grounds that the NVE category further restricts the availability of sexually explicit materials argue that this change will lead to increased black market dealing in videos refused classification. For example, Ms Albury states in her written submission:

If the Australian Parliament wishes to protect the rights of women working in the sex industry, then forcing even part of the industry underground is a dangerous move. Like the garment industry, the sex industry needs acceptance and regulation to ensure that all workers have safe conditions of employment, free from exploitation.⁶⁶

2.62 The Eros Foundation has expressed a similar view in its submission to the inquiry, commenting that:

The Committee should remember that the larger States have huge and uncontrolled black markets in sexually explicit video material and under the present regime they are powerless to do anything about it. The main reasons for this is that State governments believe that the current X rating is politically difficult to sell to the general public but the NVE rating would not be.

64 *Transcript of evidence*, Commonwealth Attorney-General's department, p. 28

65 *Transcript of evidence*, Commonwealth Attorney-General's department, pp. 35-36

66 *Submission No. 17*, Ms Kath Albury, p. 3

Any state government which was endeavouring to work out a way to rid itself of this black market should be applauded⁶⁷

2.63 At the second hearing, the Eros Foundation expanded on the situation of the black market in Australia, stating:

It is hard to get a figure to get a hold on the illegal industry. The legal industry estimates that it is the same size as the illegal industry. We sell about 1.2 million videos every year legally and we estimate that a similar amount is sold illegally. ...We may not be able to count how many Chinese videos are available, but certainly through adult shops and through going around the industry that we know, we estimate that it is the same size, which is probably a turnover of about \$40 million.⁶⁸

2.64 The Eros Foundation commented further that most of the illegal material is not imported from overseas, but is material pirated from videos that have been brought in legally by distributors in the ACT, edited and classified, and then distributed on the black market in the States.⁶⁹

2.65 Ms Robyn Parry, in her submission to the inquiry, also raises concerns regarding black marketing of sexually explicit videos, though from a different perspective. Ms Parry writes:

In the banning of X rated material option, the argument is put that this would be likely to drive the adult video industry underground and open the way for the criminal elements into it. Would not the abolition of the X rating and the introduction of the NVE rating do the same thing? It is proposed that the NVE rating would further curtail the type of material allowed in the current X classification. The X rated content which would no longer be included in the NVE rating would still have a demand and I would suggest that this would still be met by an underground adult video industry operated by criminal elements.⁷⁰

2.66 However, concern in this regard is not shared by Electronic Frontiers Australia Inc. (EFA), which states in its submission:

X-rated material is freely and openly available by mail order from the ACT and NT in all states. No reasons have ever been advanced for restricting over the counter sales or mail order sales in the states themselves, but there seems little justification for such restrictions, provided that appropriate measures are in place to restrict sales to adults. Such measures are much more likely to be effective in over the counter sales anyway. No doubt because of the stigma that religious groups have managed to attach to matters of sex, mail order sales will continue to be popular amongst those who prefer more privacy.

67 *Submission No. 21A*, Eros Foundation, pp. 4-5

68 *Transcript of evidence*, Eros Foundation, pp. 49-50

69 *Transcript of evidence*, Eros Foundation, p.50

70 *Submission No. 30*, Ms Robyn Parry, p. 4

It is known that the state censorship agencies often receive requests from members of the public to loosen the restrictions on X-rated material. If changing the classification to NVE were effective in removing the barrier to such changes, it would at least provide one positive outcome from the proposed amendments.⁷¹

Conclusion

The extent to which the change in classification would increase or decrease black market operations in the distribution of illicit videos, is not clear. Should the States decide not to accept the NVE category, and to retain their current exclusion of X-rated material, it is reasonable to assume that the present practice of obtaining such videos by mail order from the Territories will continue.

2.68 Insufficient evidence has been provided for the Committee to conclude that the effect of changing the classification to NVE will have any marked impact on the current situation of the black market dealing in illicit videos.

Summary

The Committee notes the force of arguments in favour of an alternative classification of 'Non-Violent Pornography'. It concludes, however, that the Bill adopts a measured approach by taking account of community views with regard to access by adults of materials of their viewing choice while continuing the trend to progressively restrict the nature of the contents. The Committee is not persuaded that any change to the NVE classification would achieve meaningful outcomes in terms of the issues raised above by witnesses.

Recommendation 3

The Committee **recommends** that the Bill proceed without amendment

71 *Submission No. 27*, Electronic Frontiers Australia Inc., p. 4