



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Committee Secretary
Senate Legal and Constitutional Committees
By Email: legcon.sen@aph.gov.au

Dear Madam

RE: Inquiry into the Australian Film and Literature Classification Scheme

On behalf of the Council I thank you for the opportunity to make a submission to this inquiry.

About the Queensland Council for Civil Liberties

The Queensland Council for Civil Liberties was founded in 1967 with the object of seeking the implementation in Queensland and Australia of the Universal Declaration of Human Rights.

Article 19 of the Declaration provides:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

It was an infusion of membership from the Queensland University Committee on Censorship which helped save the Council from extinction in the early 70s.¹ As a result the Council has had a longstanding position on censorship.

Form of the Submission

In this submission we propose to set out the general principles that the Council submits the committee should apply in its consideration of the classification system.

Freedom of Speech

The Council takes the view that freedom of speech is one of the fundamental freedoms in our society.

In our view any censorship is clearly and unequivocally harmful because there is an infringement of one of our basic rights, that is, the right to freedom of speech.

¹ Eddie Clarke: *Guardian of Your Rights – Queensland Council for Civil Liberties; A History* page 30 - 32

The starting point of any censorship system in the Council's submission should be that as we live in a free society adults should be free to determine what they watch

The most usual argument in favour of restricting access to pornography is that it causes harm.

It is our view that simply demonstrating that speech may result in harm is not sufficient to justify its restriction. Speech is not as Voltaire is alleged to have thought insignificant. If this were so it would not be worth defending to the death. Speech is in fact fundamental to human activity especially that organised democratically. For this reason it cannot be eliminated except in certain narrow ways and circumstances. It is ironic indeed that it is the same significance which warrants protection for speech which gives it the power to harm. Free speech is not an absolute and it can and should be in certain circumstances regulated. But the fact that it could cause harm is not sufficient justification for doing so because of its immense value. One need only reflect on the extremely dangerous ideas that free speech protects, ideas we would submit far more potentially harmful than obscenity, to see the accuracy of this proposition.

However we turn to consider the evidence in support of the claim that pornography in particular causes harm.

The Council's research would indicate that the most recent and comprehensive review of the research in this area is that prepared for Ofcom, the British Office of Communications² which concludes in paragraph 24 that:

The general conclusion of most reviewed research on adults is that it is explicitly violent sexual pornography (abusive porn) that causes serious impairment in adults. This is thought to take the form of an increased disposition towards aggressive behaviour and negative attitudes towards women.

There might be a negative effect of long term or frequent exposure to abusive pornography that desensitises people to the impact of rape... However attitudes in these cases have not been proven to lead to behaviour and laboratories studies cannot be assumed to be representative of natural viewing conditions.

The studies that refer to R18 porn often find no effects or sometimes even positive effects. The conclusion that is drawn by many researchers is that it is the violence and not the sexual content that causes aggressive behaviour.

However, the epistemological and scientific difficulty in determining the relationship if any between pornography and behaviour have been repeatedly commented upon.

² Ellen Helsper "*R18 Material; Its potential impact on people under 18*

These issues are well summarised in a statement by the researcher Malamuth quoted in the New South Wales Parliamentary Library Research Service briefing paper number 15 of 2003 titled "X Rated Films and Regulation of Sexually Explicit Material".

Pornography research has often been influenced by ideological/political perspectives with a vested interest in particular conclusions. This may have led to framing of research questions and design of some studies in ways that encourages simple conclusions, while not readily accommodating more nuanced conclusions... In future work, it is essential not to use an "either or" lens in which research is cast separately into questions such as whether pornography exposure is generally harmful or not... Depending on such factors as the cultural milieu, the individual's background, the particular content of the stimuli, the types of responses focused on, the content of exposure, the consumer's environmental circumstances, and the way harm is defined, differing conclusions may result. (Page 37)

One of the very practical and quite fundamental arguments in favour of taking a very broad approach to freedom of speech is that the distinctions required to regulate speech are harder to make than in other forms of conduct, because of the vagueness of language.

The United States Supreme Court has repeatedly demonstrated that the regulation of obscenity is particularly beset by the use of inherently vague unsatisfactory terminology.

It is the Council's view that the recommendations of the Report of the Joint Select Committee on Video Material represented a significantly improved, though not entirely satisfactory, classification scheme. We remain of the view, especially given the research evidence quoted above, that the Committee's recommendations in relation to non-violent erotica should be implemented.³

It is also clear in the Council's view that subtle changes in the language of the classification system and in the approach to its interpretation over the last 15 years have resulted in a slow but sure increase in the level of censorship in this country.

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Illegality

It is often said the fact that something shows an illegal act is sufficient to warrant its censorship. However, the normal means by which our society deters illegal activity is by banning and prosecuting that unlawful activity.

In order to protect free speech, we have to make a distinction between the primary evils that society has to prevent and the secondary harms or acts that are likely to lead

³ In 1986 the QCCL in the face of community and scientific concern gave qualified approval for some restrictions on sexual violence. As yet a satisfactory system has not been proposed to our knowledge.

⁴ New South Wales Parliamentary Library Research Service briefing paper number 15/03 opcit, page 42

to the primary harm. In almost all cases, freedom of speech is going to be a secondary harm or act.

Protecting free speech means that there must be a tighter correlation between the speech and the primary evil than would be necessary to regulate other secondary evils.

For example, there is a possibility of looting and one means of attacking it is to prevent people advocating looting and another is to impose a curfew. In order to prevent people advocating looting, you would have to show that is more likely to be effective than imposing a curfew.

So in this context a primary harm the government is often trying to prevent is the exploitation of or harm to children. It has proposed to achieve this objective by regulating freedom of speech.

The fact that illegal sexual activity is depicted in a movie is not ground for banning it; otherwise we would be banning Romeo and Juliet.

Having said that the Council accepts that child pornography should be prohibited where real children are used in its production and pornography that is made possible by the commission of actual coercive criminal acts such as snuff films should also be prohibited. As we have noted in the case of the Romeo and Juliet example, prohibition of the representation of people under the age of 18 participating in sexual conduct cannot be complete. There must be a defence of artistic merit and of educational or scientific purpose.

Apart from that issues of pornography should be dealt with by warnings about content, restrictions on mode of display or places of sale.

Children

The question of the effect on children of exposure to violence or to explicit sexual material is as much a topic of debate as is the exposure of adults. For example the Ofcom report referred to previously concludes:

There is no empirical research that proves beyond doubt that exposure to R18 material seriously impairs the mental or physical development of minors.

From the civil liberties point of view children are not full members of the polity and as such are entitled to special protection subject to two caveats.

The Council would emphasise that the capacity of children to be exposed to violence or sexually explicit material is not simply a matter of whether or not they are under 18. As the ACLU has put it to shield children from violence right up to the age of 18 may not only be quixotic but would leave them unequipped to cope with the world as we know it. We would commend the recommendation of the

Parliament of Victoria Family and Community Development Committee⁵ that there should be indicative categories published for ages say 8, 15 and 18. We note in particular Item M of the reference concerning the application of the scheme to new media including mobile phone applications. This is indeed a cause of concern for us since it seems to the Council that the attempt to apply the classification system to all types of media will have the effect of reducing adults to children since it's going to be all but impossible for any provider of this content to be able to verify that the person to whom they are sending the material is not a child.

This is one of the areas where, as has traditionally been the case in our society, responsibility for the protection of children from this material must lie with parents. The committee should investigate whether or not it is possible to apply to mobile phones some technology similar to the internet filters that are applied on personal and other computers. These filters could be supplied free of charge by the government as the previous Howard government proposed to do with internet filters.

Other specific aspects of the terms of reference

On the question of outdoor advertising such as billboards the Council accepts that there is a stronger case to protect people from exposure to unsolicited material which they may find offensive. This has always been the case. This is why the Council has supported restrictions on the display and appropriate warning labels for material.

We would have no opposition in principle to the extension of classification to music videos so long as a category of non-violent erotica was created

So far as music lyrics are concerned it is considered that the current system is entirely satisfactory. Those who do not wish to listen to lyrics they find offensive can simply not listen to the well known radio stations which are likely to broadcast such lyrics. It is also our experience that appropriate warnings are given.

In the Council's view the convergence of media means that it is as the Victorian Parliamentary Committee found, increasingly impossible to maintain different classification systems for different types of media. However, we would oppose the introduction of any uniform system which resulted in a diminution of the freedom of speech which currently exists in any one particular form of media.

Anti Terrorism Laws

It is our view that Section 9A of the *Classification (Publications, Films and Computer Games) Act 2007* should be repealed. In our view it represents an entirely unacceptable restriction of freedom of speech.

⁵ *Inquiry into the Effects of Television and Multimedia on Children and Families in Victoria* October 2000

In the Council's view any law which criminalizes incitement or generalized expression of support for terrorism is unacceptable.

In our view the appropriate level of certainty in this area of the law is achieved by three requirements:

1. There must be language that is clearly going to incite people;
2. There must be an intention to incite;
3. There must be a connection between the incitement and actual violence.

The council's view on this is consistent with the *Johannesburg Principles*, a statement of principles by a panel of international experts on human rights principles and anti-terrorism laws.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
9 March 2011