Submission

To: **Senate Legal and Constitutional Affairs References Committee**

Re: **Inquiry into the Australian film and literature classification scheme**

From: **Irene Graham**

Date: **4 March 2011**

Introduction

The writer of this submission, Irene Graham, is the provider of the web site "libertus.net": about censorship and freedom of expression, primarily in Australia. This web site has been online since late 1995 and is widely regarded as the most comprehensive online resource about the state of the censorship in Australia.

Furthermore, to avoid any potential misconceptions: during the period mid 2000 to mid 2007, the writer was the Executive Director of the non-profit membership-based organisation Electronic Frontiers Australia Inc. (EFA) and, in that capacity, appeared before numerous Federal Parliamentary Committee inquiry hearings (including most often the Senate L&CA Committee). However, since mid 2007, the writer has not been in that role, nor on the Board of EFA. This submission is lodged in an entirely personal capacity.

Response to Terms of Reference

This submission addresses a number of the Committee's terms of reference, using the same item numbers, although terms (n) and (o) have been moved to the beginning of this submission.

n) the Government's reviews of the Refused Classification (RC) category;

During the past two decades, there has not been any Federal Government review, inviting public comment/views, about the breadth of the Refused Classification (RC) category. While reportedly the Government has referred this matter for review by the ALRC, final terms of reference for the ALRC review have not yet been publicly released. Hence, it is not possible to comment on "Government's reviews" beyond remarking that the RC category has become increasingly restrictive over the past two decades without any evidence of widespread public support for the increased restrictions/censorship. Accordingly, it would appear that review is long overdue.

With regard to increased censorship, two particular instances are noted:

- The *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007* inserted Section 9A into the C'th Classification Act in defiance of the views of State/Territory Censorship Ministers (thereby making a mockery of the so-called "national co-operative" censorship scheme). This amendment was also made without regard for issues/concerns raised by the Classification Review Board and the Human Rights and Equal Opportunity Commission (nor in submissions by members of the general public), and in the absence of any evidence of community support for the increased censorship. Detailed information about this issue and associated circumstances is available here:
  http://libertus.net/censor/debate/censor_bill_terr2007.html

  Section 9A of the C'th Classification should be repealed (or, at the ***very*** least, the amendment recommended by the Senate Legal and Constitutional Affairs Committee in para 3.41 of its July 2007 report on Inquiry into the Bill should be implemented).

- In September 2000, a range of depictions of non-violent activity between consenting adults was deleted from the X18+ classification and thereby became "Refused Classification". There was no evidence that this was a reflection of changes in "community standards" or "community attitudes" concerning X-rated videos, nor did the then Federal Government claim there had been any such change. The political saga which eventually resulted (after 4 years of political circus/shenanigans) in increased censorship is documented in detail here:
  "The banning of fetish depictions deemed 'undesirable' by Australian politicians"
  http://libertus.net/censor/rdocs/censor_bill_2000-banfetishes-etc.html

  The changes to the X18+ classification criteria implemented in 2000 should be repealed/deleted.

o) any other matter, with the exception of the introduction of a R18+ classification for computer games....

The classification criteria/guidelines for classification of Category 1 Restricted Publications (and any and all other relevant classification criteria) must be amended to permit realistic depiction of normal female genitalia, or, *at the very least*, to require that all such depictions that have been digitally altered ("air brushed" etc) must include a prominent notice stating that the depiction has been digitally altered and does not represent reality. Australian "classification"/censorship laws have long been causing both women and men to have a completely false impression about the appearance of normal female genitalia and this situation must be stopped. Many proponents of censorship claim that it is to protect women; however Australian censorship/classification laws cause women who have normal genitalia to believe there is something wrong with their body and therefore seek plastic surgery. For more information see:

- Doctors warn women over unreal images, Julie Robotham, Medical Writer, *Sydney Morning Herald*, 8 Jan 2001 (http://web.archive.org/web/20010805130322/www.smh.com.au/news/0101/08/national/national12.html)
- Magazine in row over genital surgery article, Melissa Fyfe, *The Age*, 8 Jan 2001 (http://web.archive.org/web/20010124145100/http://www.theage.com.au/news/2001/01/08/FFXV7Z7LNHC.html)

Classification laws/criteria in the above regard have not been changed since 2001, so the problem continues although it is unfortunately not an issue that typically receives mainstream media reporting.

a) the use of serial classifications for publications;

The writer is under the impression that serial classifications for publications was introduced in 2005 for the purpose of reducing the weekly/monthly workload of the Classification Board and reducing costs to responsible magazine publishers (i.e. those willing to comply with classification laws). Also, the Classification Board is empowered to revoke a serial classification in cases of apparent breach of the relevant classification criteria and has done so.

Repeal of the serial classification system would, in effect, penalise law abiding publishers/distributors (collateral damage resulting from possibly illegal activity by others), and very likely result in increased costs to consumers and taxpayers (due to increased costs to law abiding publishers/distributors which would be passed on to customers, and a need to increase the number of tax-payer funded members of the Classification Board to deal with weekly/monthly submissions of single publications for classification).

It is unclear, from information made publicly available during/as a result of Estimates hearings in very recent years, whether or not alleged abuse of serial classifications is widespread, or is limited to a relatively few importers/distributors. Great caution should be exercised, and significantly more information should be made publicly available, before any formal proposal to remove the Classification Board's power to issue serial classifications is made. Among other things, if it is considered that changes to the serial classification system are necessary, significant effort should be made to ensure that publishers/distributors who have been complying with the serial classification conditions/law since implementation to date are not financially, or in any other way, penalised by any changes intended to target those who do not comply with classification law.

b) the desirability of national standards for the display of restricted publications and films;

It is assumed that "restricted" means material that is illegal to sell to persons under 18 years (e.g. Category 1 and 2 publications, and R18+ and X18+ films).

Already, under the National Classification Guidelines, the covers of Category 1 Restricted Publications are prohibited from containing descriptions and depictions that are unsuitable for public display - unless the publication is displayed for sale in a sealed plain opaque wrapping, and Category 2 Restricted Publications are only permitted to be displayed and sold in premises restricted to adults. X18+ films may only be displayed for sale in the Territories in premises restricted to adults and, while there does not appear to be a specific restriction on the content of covers of boxes containing R18+ film DVDs, the general matters required to be taken into account by the Classification Boards, and the significantly smaller size of DVD covers (as compared to magazines) seems to make it unlikely that there is any problem with the covers of DVDs. If the Committee is made aware of any R18+ DVD covers that are allegedly unsuitable for public display, and if the Classification Board advises the Committee that that particular DVD cover would be

required to be sealed in plain opaque wrapping if it was the cover of publication/magazine, then - and only then - there may be merit in restricting the content of covers of film DVDs in the same way as the covers of publications.

Beyond the above, the manner of shelf display in sale/hire premises should not be a "national standard", but remain the role/responsibility of each State and Territory Government in the context of their classification enforcement legislation. If there was to be a "national standard" for shelf display, it should be a standard that states that there are no restrictions other than restrictions applicable to the content of covers.

The writer notes the numerous discussions during Senate Estimates in recent years concerning alleged display/sale of magazines, in milk bars and petrol stations etc., that allegedly would be Refused Classification if classified, and the Classification Board Director's issue of call in notices and notice to State/Territory Government authorities about believed breach of the particular State/Territory's classification enforcement laws. The possible fact that State/Territory classification enforcement efforts are not preventing display and sale of material that would be "Refused Classification" is not an excuse or reason for further restricting the display and/or sale of material that is legal to sell to adults.

c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;

This matter has been the subject of numerous discussions during Senate Estimates in recent years, during which the Classification Board Director has consistently stated that he has been exercising his call in powers (and has revoked some serial classifications), and notified State/Territory enforcement authorities as relevant. Classification enforcement legislation is the role/responsibility of State/Territoriality Governments and their agencies. It has long seemed that enforcement of "classification" law in a number of, perhaps most, States is of relatively low priority. It seems quite possible that this situation results from ever increasing censorship criteria over the last two decades (or more), in the absence of evidence of widespread community support for more censorship, such that both governments and their police services are likely aware that censorship enforcement may be a pretty much thankless activity, other than in the case of extremist groups (e.g. fundamentalist religious right groups) who seek to have their "values" imposed by government on everyone else.

d) the interaction between the National Classification Scheme and customs regulations;

The customs regulations or related legislative instruments should be amended to require Customs officers to have material classified by the Classification Board before denying import. 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. Unknown/unidentified members of the Australian Communications and Media Authority are empowered to guess how the Classification Board would classify particular material and have guessed wrong on a number of occasions (and possibly on many occasions other than the instances that have come to public light during Estimates hearings and/or in media reports). There is no reason to think that anonymous customs officers are any more competent in correctly guessing a classification decision that would be made by members of the Classification Board.

e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;

The Classification Scheme should not apply to works of art. The scheme is designed principally to enable consumers to make informed decisions about purchase and/or viewing of entertainment media - it is no more suitable for application to works of art than it is to news and current affairs reporting.

Artistic merit should continue to be a matter required to be taken into account by the Classifications Boards when making classifications decisions, as has long been the case under classification criteria.

f) the impact of X18+ films, including their role in the sexual abuse of children;

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

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

Furthermore, the phrasing of this term of reference (f) appears designed to give uninformed members of the public an incorrect impression about the type of content permitted and contained in films classified X18+.

g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;

The R18+ classification should not be tightened any further. It is already so restrictive that some films available for purchase/viewing by adults in other "western democratic" countries (e.g. Western European counties, Canada, USA, etc) are banned/Refused Classification in Australia.

h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;

Outdoor advertising, such as billboards, should not be included in the National Classification Scheme. While the writer is aware that during the past couple of decades there have reportedly been a small number of billboards that have been complained about by a small number of members of the public, the content of these billboards appeared similar to content on free to air TV and hence seem unlikely to receive a "restricted" classification. While there was one text-only billboard in approx. 2008 which was the subject of apparently significant public complaint, these billboards were changed, or removed, as a result of complaints. The latter occurrence is very likely to be well-known to other billboard publishers, and deter them from similar advertising which is likely to result in bad/undesirable publicity and complaints for them and their clients. One instance of arguably inappropriate billboard advertising (resolved without specific legislation), does not merit requiring all billboard advertisers to pay for a classification.

k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;

The writer assumes that the Committee is aware of the Senate Environment, Communications and the Arts Committees' June 2008 report on their Inquiry into "Sexualisation of children in the contemporary media". It is doubtful that anything significant has changed since then, in terms of the media, or perceived solutions to the perceived problem. If the Committee is seeking to receive different or more information, it would have been helpful if this term of reference was not so vague.

With regard to the "effectiveness of the National Classification Scheme in preventing...objectification of women in all media", the writer (a woman) does not support any changes to the so-called "National Classification Scheme" for any such purpose. Any such changes would be increased censorship, and censorship is a blunt and largely ineffective tool in terms of changing societal views or attitudes (particularly since the advent some 20 years ago of the world-wide communications system known as the Internet). Changes to classification criteria would almost certainly give rise to an increase in "femi-nazi" conspiracy theories and, much more concerningly, also result in censorship of productions by women - history shows that censorship allegedly intended to "protect" women has also censored female voices/productions.

l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;

The Australian Communications and Media Authority's role in so-called "supervising...standards for...Internet content" should, at most, be limited to referral of questionable content to the Classification Board for classification.

There have been a number of instances in recent years where the ACMA has guessed that particular Internet is "prohibited content" but on subsequent referral to the Classification Board, the same content has been classified as **not** "prohibited". The ACMA has demonstrated that it is not capable of accurately guessing how particular content would be classified by the Classification Board (and nor would be any other government agency). Hence ACMA should not have the power to order take-down, or blacklist, any Internet content prior to having obtained a classification decision from the Classification Board.

Whether even the Classification Board should be empowered to classify/censor Internet content is a separate highly controversial issue. In the writer's opinion existing Australian classification laws which aim to censor content on the world-wide Internet are a waste of tax payer funding given it is impossible for the

Classification Board, or ACMA, or any regulatory authority to classify more than a minuscule percentage of content on the World Wide Web - which contains at least one trillion web pages (as in 1,000,000,000,000) unique URLs, and the number is/was growing by several billion pages per day, as reported by Google's Web Search Infrastructure Team on 25 July 2008 (http://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html).

m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;

According to the Classification Board Director during February 2011 Estimates hearing "games that [are] available on mobile phone applications [are] classifiable as computer games. The government is aware of this, all ministers are aware of this and this is a matter that is exercising ministers at SCAG".

According to "Communiqué, Standing Committee of Attorneys-General [SCAG], 10 December 2010": "Ministers considered the difficulties raised by industry and the Classification Board relating to the classification of online computer games including mobile phone applications that are games and asked officers to urgently develop alternative options for an interim solution."

The writer considers that it borders on the ridiculous for a Senate Committee or any government agency to purport to be seeking public comment on "the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications" in the apparent absence of any publicly available information as to what is the perceived problem/difficulty.