



Australian Government
Attorney-General's Department

Civil Law Division

11/3581

18 May 2011

Ms Julie Dennett
Committee Secretary
Senate Standing Committee
On Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Questions on Notice – public hearing
Inquiry into the Australian film and literature classification scheme

The Attorney-General's Department appeared before a public hearing of the Committee on 27 April 2011. I am writing to provide answers to the questions that the Department took on notice.

1. *Has any action been taken on the availability of X 18+ material across the Northern Territory?*

The availability of X 18+ material is normally a State and Territory responsibility under the National Classification Scheme. However, as part of the Government's Northern Territory Emergency Response (NTER) announced in June 2007, changes were made to the *Classification (Publications, Films and Computer Games) Act 1995* which introduced offences for possessing pornography within, and for supplying pornography in and to, prescribed areas of the Northern Territory.

To support these measures, in 2008 officers from the Classification Branch of the Department provided classification training in relation to the NTER to officers from the Northern Territory Police, the Australian Crime Commission, the Australian Federal Police and the Commonwealth Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA) in Darwin and Alice Springs. The Department continues to work with the Northern Territory Department of Justice on NTER classification matters.

2. *Provide details of the Commonwealth's powers under the Constitution that would support a Commonwealth classification law.*

The Department is unable to give the Committee constitutional advice about the scope of Commonwealth powers in this area. However, there are a number of heads of Commonwealth constitutional power that may be relevant, including the following:

- The trade and commerce power (Constitution, section 51(i));
- The corporations power (Constitution, section 51(xx));
- The communications power-(Constitution, section 51(v)); and
- The territories power (Constitution, section 122).

3. *Who attended the 2010 Classification Enforcement Contacts Forum and what were the outcomes?*

The list of attendees is at **Attachment A**.

The principal purpose of the Forum is to improve compliance and enforcement across the National Classification Scheme. Key outcomes of the 2010 Forum include:

- i. Participants agreed cross-jurisdictional intelligence sharing networks for classification information and offences was important for effective enforcement action. In order to establish an information sharing arrangement, the Minister for Justice wrote to States and Territories requesting a bi-annual report on compliance and enforcement action in relation to classification laws. This reporting will be shared across all jurisdictions to strengthen enforcement practices. The first reports were due on 29 April 2011 and the Department intends to present the compiled results to the 2011 Forum being held on 7 June 2011.
- ii. Participants agreed on the potential benefits of CLS prosecution briefs, to better assist law enforcement agencies pursue companies who commit significant and ongoing breaches under the National Classification Scheme. In April 2011, a comprehensive brief outlining the business practices of a major importer and wholesaler of adult publications and films which supplies illegal (unclassified and incorrectly labelled) product to the marketplace was referred to the relevant Police Commissioner for enforcement action. A second brief is currently being prepared on another major importer and wholesaler of adult products.
- iii. The Department and the Australian Customs and Border Protection Service have improved information sharing about importers, wholesalers and distributors of adult films and publications.
- iv. Closer working relationships between the Department and law enforcement agencies have been developed, leading to improved reporting and information sharing, improved understanding of classification matters and responsibilities across States and Territories, and improved referral practices.

4. *What is the agenda for the 2011 Classification Enforcement Contacts Forum and the aims for the future?*

The agenda for the 2011 Forum at **Attachment B**.

The Department intends the Forum to be a standing annual event bringing together key Commonwealth and State and Territory agencies with classification enforcement responsibilities.

The Forum will provide a central mechanism to improve and maintain networks and information sharing between the Department, agencies and regulators involved in the enforcement of classification laws, which will contribute to improved compliance. The Forum will also consider contemporary classification issues. As an example, the ALRC will attend and present at the 2011 Forum.

5. *Are there any barriers to a centralised database to enable the follow up of enforcement actions in classification matters?*

The Department is of the view that there is considerable value in information sharing. At the 2010 Classification Enforcement Contacts Forum, jurisdictions agreed to provide bi-annual reports on enforcement activity.

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 at the June 2011 meeting. The need for a centralised database would also need to be fully assessed, including whether the objective could be achieved in other ways.

6. *Provide outcomes from the Classification Liaison Scheme (CLS) statistics contained in the Department's written submission.*

In relation to the CLS statistics outlined on page 6 of the Department's written submission to the Inquiry, the Department provides the following further information on the outcomes from CLS action over the 2010-11 period.

490 site visits conducted across all States and Territories, including regional centres;

Reports on the findings of all site visits are provided to the relevant State or Territory Censorship Officer, companies are contacted about breaches identified, and all serious breaches are referred to law enforcement agencies.

124 (non-restricted premises) companies contacted about breaches of classification laws;

These companies have been contacted as a result of breaches identified during site visits. The types of companies contacted include cinemas as well as distributors and retailers of DVDs, computer games and publications. The primary role of the CLS is to educate industry about their obligations with regard to classification laws. CLS officers have no enforcement powers and provide companies with assistance on how to comply. Adult premises are not included in this category.

The breaches identified in this category are relatively minor. Examples:

- A retailer or cinema not displaying a notice explaining the classifications
- A distributor incorrectly marking a DVD as exempt from classification
- A distributor marking a computer game or DVD with the incorrect consumer advice.
- Advertising for a film or computer game not including classification information.

Breaches are often raised on site while others are raised with a company once CLS officers can confirm the classification status of a product. In general, companies are very cooperative and responsive to CLS advice and incorrect practices are often corrected immediately.

Examples of responses from companies to rectify breaches identified by CLS include:

- Website corrected after films advertised with incorrect classification.
- Catalogue for a major retailer withdrawn for advertising unclassified computer games and the distributor submits the games for classification.
- A film submitted for classification after being incorrectly assessed by the distributor as exempt from classification.

49 restricted premises and 3 websites referred to enforcement agencies.

Law enforcement agencies are asked, but are not required, to advise the Department when they investigate a referral. As previously outlined, the Department is addressing this through the development of an ongoing enforcement information sharing report.

From July 2010 to April 2011, the Department has been contacted by law enforcement agencies on 25 occasions, for advice on classification enforcement matters.

For the same period, the Department has been notified of police investigations into seven CLS referrals. Outcomes are detailed below:

Date of contact	Law enforcement agency	Reason	Action
8/9/10	NSW Police	CLS referral of adult shop on 12/4/10	Adult shop in Tweed Heads visited – warning issued no charges laid
4/11/10	NSW Police	CLS referral of adult shop on 3/5/10	Adult shop in St Marys - over 13,000 films seized and destroyed
3/2/2011	NSW Police	CLS referral of adult shop on 8/11/10	Adult shop in Tuncurry visited – warning issued, no charges laid
3/2/2011	NSW Police	CLS referral of adult shop on 8/11/10	Adult shop in Taree visited – warning issued no charges laid
25/3/2011	NSW Police	CLS referral of adult shop on 10/7/09	Fine of \$9,000 and 18 month good behaviour bond. 10,000 films seized and destroyed
5/5/2011	NSW Police	CLS referral of adult shop on 16/08/09	Adult shop in Albion Park – 2000 films seized. Owner pleaded not guilty, case pending
5/5/2011	NSW Police	CLS referral of adult shop on 16/08/09	Adult shop in Warrawong – 6000 films seized and destroyed

7. What was the outcome of action taken by NSW police in relation to two retailers referred by CLS?

In December 2010, 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 had referred these premises to NSW Police in 2009.

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 5000 DVDs seized to be destroyed. On 4 May 2011 the owner of the store where 2000 DVDs were seized pleaded not guilty and orders have been made.

8. Provide more recent research and evidence that provides a comparative analysis of international classification schemes than that provided in the Brand report of 2003.

The Department is not aware of more recent research providing a comparative study of international classification schemes since the report *A Comparative Analysis of Ratings, Classification and Censorship in Selected Countries around the World* by Dr Jeffrey Brand in 2003.

In the terms of reference for a review of the National Classification Scheme by the ALRC, the Commission has been asked to consider classification schemes in other jurisdictions.

9. Feedback on the Media Standards Australia complaint case study.

The Department has reviewed the information provided to the Committee by Media Standards Australia (MSA) concerning avenues of complaint in relation to music videos broadcast via the MAX TV channel in a McDonalds restaurant in Western Australia. It appears the complainant was provided with the correct information, that is, that complaints regarding the appropriateness of material broadcast by a subscription television licensee should be directed, in the first instance, to the relevant broadcaster. The information provided to the Committee by MSA does not include correspondence to or from the broadcaster of the MAX channel.

In an answer to Questions on Notice dated 21 April 2011, MSA provided copies of written complaints to several bodies in relation to this issue. The Department understands that MSA wrote to the ACMA on 27 January 2011 and received an answer on 8 February 2011, advising that under the *Subscription Television & Radio Association (ASTRA) Codes of Practice 2007*, complaints about matters covered by the code must be made to the licensee in the first instance.

MSA sent a separate, undated letter to McDonalds who responded on 9 March 2011, acknowledging the complaint and undertaking to review its practices and apologising for the incident. MSA had also written to ASTRA who, along with the ACMA, advised that complaints regarding the classification of material broadcast by a subscription television broadcasting licensee should be directed to the relevant broadcaster in the first instance. Links to both Foxtel and Austar complaints mechanisms were provided.

In its letter of 8 February 2011, the ACMA suggested MSA may wish to contact the Classification Liaison Scheme (CLS) to determine if McDonalds had breached any classification laws under the National Classification Scheme. In response to an email, CLS advised MSA that as the material in question was broadcast by a subscription television station, there were no potential breaches under the National Classification Scheme.

The action officer for this matter is Wendy Banfield who can be contacted on

Yours sincerely

Matt Minogue
First Assistant Secretary
Classification Branch

Telephone:

Facsimile:

E-mail:



Australian Government

Attorney-General's Department

**Attendance Record
Classification Enforcement Contacts Forum
Wednesday 21 April 2010**

Name	Agency	State	Email Address	Telephone
Mr Donald McDonald Director	Classification Board	CTH		
Mr Jeremy Fenton Acting Deputy Director	Classification Board	CTH		
Mr Kym Duggan Acting First Assistant Secretary	Civil Law Division Attorney- General's Department	CTH		
Ms Jane Fitzgerald Assistant Secretary	Classification Operations Branch	CTH		
Mr Chris Lee Senior Legal Officer	Copyright & Classification Policy Branch Attorney- General's Department	CTH		
Ms Barbara Vosoba Coordinator, Classification Liaison Scheme	Classification Operations Branch	CTH		

Mr David Lock Classification Liaison Scheme	Classification Operations Branch	CTH
Mr Ron Robinson Classification Liaison Scheme	Classification Operations Branch	CTH
Ms Jessica Coombs Project Officer	Classification Operations Branch	CTH
Ms Susan Hennessy Manager, Online Content Complaints Hotline	Australian Communication and Media Authority	CTH
Mr Jim Stewart Director, Community Protection Trade Policy & Regulation Branch	Australian Customs and Border Protection	CTH
MS Lyn Foster Drugs and Therapeutic Substances Community Protection, Trade Policy & Regulation	Australian Customs and Border Protection	CTH
Mr Robert Southwell Senior Inspector Compliance Unit	Office of Regulatory Services	ACT
Mr Danny Baker Acting Manager Compliance Unit	Office of Regulatory Services	ACT

Ms Natalie Marsic Executive Officer, Standing Committee of Attorneys-General	NSW Department of Justice and Attorney General	NSW
Superintendent Jo Foley Major and Organised Crime Unit	NT Police	NT
Mr Bob Melling Principal Compliance Officer Investigations, Compliance Fair Trading Operations	Department of Employment, Economic Development & Innovation	QLD
Sgt. Peta Schatto Coordinator, Licensing Enforcement Branch	SA Police	SA
Inspector Phill Ling Officer In Charge State Intelligence Services	TAS Police	TAS
Ms Tilda Hum Censorship Officer	VIC Department of Justice and Attorney General	VIC
Det. Sgt. Pat Doyle Staff Officer Organised Crime Squad	WA Police	WA



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Forum program

Time	Activity	Presenter
8.30 - 9.00	Arrivals	
9.15 - 9.30	Introductions	Matthew Minogue (Chair) First Assistant Secretary Civil Law Division
9.30 - 10.00	Overview of the National Classification Scheme and current operational issues	Barbara Vosoba Coordinator Classification Liaison Scheme
10.00 - 10.30	Content at the R 18+, X 18+ and RC classifications (Warning this will feature adult material)	Tim Serlis Training Officer Classification Branch
10.30 - 10.45	Classification Board, Director's call-in powers.	Lesley O'Brien Deputy Director, Classification Board
10.45- 11.00	Break	
11.00 - 11.30	Overview of role of the Australian Communications and Media Authority (ACMA)	ACMA
11.30 - 12.00	Overview of role of the Australian Customs and Border Protection Service	Customs
12.00 - 12.30	Discussion about interaction between regulatory authorities and law enforcement agencies	All attendees
12.30 - 1.30	Lunch	
1.30 - 2.00	Overview of seizure, forfeiture, commencing proceedings and classification by consent	CLS
2.00 - 3.00	General discussion based on reports provided by States and Territories on enforcement activities and prosecutions	All attendees

3.00 – 3.15	Break	
3.15 – 3.45	Overview of the ALRC Review of the National Classification Scheme	Professor Terry Flew Commissioner ALRC
3.45 – 5.00	General discussion on how we can work together, challenges and emerging issues.	All attendees
6.30pm	Dinner	TBC