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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Reference: Australian film and literature classification scheme

FRIDAY, 25 MARCH 2011

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

REFERENCES COMMITTEE

Friday, 25 March 2011

Members: Senator Barnett (Chair), Senator Crossin (Deputy Chair) and Senators Furner, Ludlam, Parry and Trood

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Barnett, Crossin and McGauran

Terms of reference for the inquiry:

To inquire into and report on:

a) the use of serial classifications for publications;

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

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

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

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

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

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

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

i) the application of the National Classification Scheme to music videos;

j) the effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';

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

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;

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;

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

o) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General's Department.

WITNESSES

Committee met at 8.32 am

CHAIR (Senator Barnett)—Good morning everybody. This is the first public hearing for the Senate Legal and Constitutional Affairs References Committee's inquiry into Australia's film and literature classification scheme. This is a public hearing and a *Hansard* of the proceedings will be available. The inquiry was referred to the committee by the Senate on 16 November 2010 for inquiry and report by 30 June 2011. The terms of reference for the inquiry are on the committee's website. The committee has received 61 submissions for this inquiry, the majority of which have been authorised for publication and are available on the website.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public but under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such requests may, of course, be made at any other time.

I ask witnesses to remain behind for a few minutes at the conclusion of their evidence in case Hansard staff need to clarify any terms of reference. I also ask that people in the hearing room ensure their mobile phones are either turned off or switched to silent.

[8.35 am]

SHELTON, Mr Lyle Gavin, Chief of Staff, Australian Christian Lobby

WILLIAMS, Mr Benjamin Peter, Deputy Chief of Staff, Australian Christian Lobby

CHAIR—Welcome to both of you, we have seen you before and we appreciate you being back here to our committee on this occasion. The Australian Christian Lobby has lodged submission No. 25 with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Shelton—No, Chair.

CHAIR—I now invite you to make an opening statement at the conclusion of which I will invite members to ask questions.

Mr Shelton—Thanks very much, Chair, and thank you, senators, for the opportunity to present here today. I will just make some brief general remarks. Our recommendations are included in our submission, but I just thought it would be good to try and set a bit of a scene here.

Three years ago the Senate's committee on Environment, Communications, Information Technology and the Arts inquired into the sexualisation of children in the contemporary media environment. It found that preventing the premature sexualisation of children is a significant cultural challenge. It made a number of recommendations relevant to this inquiry including that broadcasters, publishers, advertisers, retailers and manufacturers take action and that the Senate should consider that action within 18 months. Even if the Senate had had the opportunity to follow through on this recommendation, sadly it would not have found much action to consider. The report remains on the shelf with virtually none of its recommendations actioned. Two weeks before the 2010 election, Prime Minister Julia Gillard recorded a video interview with ACL's managing director Jim Wallace. He asked her a broad range of questions of concern to the Christian constituency which ACL had previously put to Mr Rudd before he lost the prime ministership, and also to the opposition leader, Tony Abbott.

On the question of the Senate's 2008 recommendations about the premature sexualisation of children, the Prime Minister had this to say, 'For myself I suppose I've got a particular concern about young girls but even more generally what message we are sending about how you value yourself and how you assess your self-worth, and that does trouble me personally.' She went on to say that there should be a comprehensive review of the classification system and we are pleased to see the government's announcement before Christmas that the Australian Law Reform Commission is undertaking such a review.

In response to the same question at ACL's Make it Count webcast in June last year, Tony Abbott, the opposition leader, said the classification system was broken. We are glad to see that there is bipartisan agreement on this.

Parents, however, do not distinguish between the complex rules governing media content, whether it is film, literature, television, mobile phones, the internet, computer games or outdoor advertising; parents just see the relentless mainstreaming of violence and sex pushed by vested commercial interests thumbing their noses at the standards of civil society. In 2009 there was a public outcry about Free TV Australia's watering down of the commercial television industry code of practice. At a time of heightened community concern about television standards Free TV Australia went the other way, making it easier for children to be exposed to inappropriate content and making the job of parents harder and making it harder for complaints to be upheld.

Meanwhile, the plethora of inappropriate billboards children are exposed to as they drive with their parents through our cities has led to increased calls for outdoor advertising to be G-rated. The House of Representatives is currently conducting an inquiry into this and holding public hearings, and has even done so this week. Again, it is going over old ground from the 2008 Senate inquiry.

Like commercial and public television, the self-regulation 'Dracula in charge of the blood bank' approach to advertising standards is failing community expectations for the protection of children. In recent years Senate estimates has heard time and time again about the failure of relevant authorities to police and enforce the sale of inappropriate magazines. The 2007 inquiry which led to the Northern Territory intervention heard horrific stories of abuse of children linked to the exposure of X-rated DVDs leading to bipartisan support for a ban in prescribed parts of the Northern Territory. The Classification Board and the Classification Review Board last year demonstrated what a farce they have become with the green-lighting, against their own guidelines, of the film *Salo*, which, in the words of Classification Board chair Donald McDonald contains 'depictions of paedophilia.'

The committee will later hear from apologists for industries who produce material known to be harmful to children. They will argue largely that further regulation is unnecessary and parental concerns should be dismissed as moral hysteria. It would be interesting to see if music industry representatives are supportive of Kanye West's latest video of his hit song *Monster*, which contains image after image of eroticised violence against women.

ACL commends the government for its policy to filter 'refused classification', that is illegal material, from the internet through a mandatory filter at ISP level. As the Prime Minister told Jim Wallace in that pre-election interview, 'The objective is clear which is there are things that are not legal to go and watch at the cinema and if they are not legal to go and watch them at the cinema you should not be able to get them on the Internet. There is content that we rightly say it's repulsive and banned and we've got to make sure that is true across all of the ways you can get images and information today.'

We agree with the Prime Minister. The global nature of the internet has long made a mockery of our classification standards and the laws made by this parliament. Mandatory ISP filtering is a positive move which is sadly yet to obtain bipartisan support but we hope that it will.

We note that the UK government is encouraging ISPs to filter all pornography making it available to adults on an opt-in basis. While there are engineering costs involved, it is our understanding that it is technical feasible and these costs are not insurmountable. With one in

three 10-year-olds having viewed pornography on the internet, the UK government has not ruled out legislating for the opt-in filter.

At the moment internet and other new media does not comply with classification standards. Inconsistencies and dangers to children are everywhere. Filtering technology can and should be used to give effect to classification standards. Arguments against tighter classification measures and using technology will be mounted from the extreme left and the extreme right of politics. On the right, the nanny state argument will be applied against tougher measures and the use of filtering technology. On the left, it will be argued that adults should be able to see whatever they want, even claiming photos of naked children have artistic merit. Both approaches are reckless. A measure of a society's civility is its collective willingness to provide a safe environment for its children.

At present the contemporary media environment is toxic for children; as the PM notes, especially for girls. This is because our classification system is a failure. Like big tobacco before it, commercial vested interests will beg to differ with family groups, child advocates and the academic research which shows their products are harmful to children. How many more government inquiries will there be before action is taken? This issue has gone beyond the tipping point and if root and branch reform does not result from this Senate inquiry and the accompanying Australian Law Reform Commission review this year, then we will be back again here going over the same old ground.

ACL thanks the committee for continuing to shine a light on the difficult problems with the classification system and urges bipartisan support for reforms which will better protect children from exposure to violence and other inappropriate material in public spaces in the media. Thank you very much.

CHAIR—Thanks, Mr Shelton. Mr Williams did you wish to add anything?

Mr Williams—Nothing to add, thank you, Chair.

CHAIR—Thank you, we will move to questions. I will kick it off. Firstly, thank you for your submission, it is very comprehensive. There is a lot of information and recommendations for the committee to consider and we are certainly looking forward to doing that. Also thank you for your opening remarks. You have given a big picture approach and clearly the way I see this inquiry is that we are looking at the operation and how it can be improved. We are looking at the different medium that our censorship laws apply to, whether it be TV, television, new media internet, outdoor advertising, and how that should be applied, and of course the key principles.

I want to talk to you first about the key principles. What are the principles that you think should apply to our censorship laws and the classification system across the country? Do you think they should relate to community standards? Clearly over the last many decades community standards have changed and surely the law should reflect that change? What are the key principles that you see as important that should be underpinning our whole classification and censorship system in Australia?

Mr Shelton—Thanks very much. I think the key principle has got to be the protection of children from inadvertent exposure to material that is clearly not appropriate for them. There is

agreement across the board; I think there are not too many people who would argue that exposure to pornography and violence is not harmful to minors. Unfortunately, we have a situation where it is very easy for children to come across these sorts of images on all the media that you have just mentioned.

As we have outlined in our opening remarks, we feel that the classification system has failed to apply that principle of ensuring that children are not exposed to this material, for example in outdoor advertising. Also, and I speak as a father of four young children myself, when often watching television in prime time there will be advertisements for programs which are clearly inappropriate for kids, yet there is no thought given when those advertisements are aired. These are advertising inappropriate aspects of shows which are to be screened later at night time. That is just but one example of many which I think parents are frustrated with. The principle should apply that a child should not have to come across any of this sort material on any medium or any public space; that should be the starting point of our classification system. If we must, as a society, allow for products to be produced which involve the exploitation of women for the entertainment of men, if that must occur, then that should be done in a way in which children can never be exposed to that by accident. It must be for adults to opt-in to only. Sadly that is not the case in our current environment.

CHAIR—That is a good explanation. I think you have covered the fact that it should apply across all medium not just to particular parts, and including the online media—is that right?

Mr Shelton—Absolutely; this is the problem. Senators are better aware than are we of the mishmash of rules and regulations and laws which apply to magazines, outdoor advertising, and mobile phones (of which there is nothing.). Now we have, as I understand it, internet television, which makes a mockery of the television code of practice which says that certain programs can only be screened after certain times of day. A five-year-old can log onto iview and view inappropriate material any time of the day. Clearly the new media has marched ahead of the ability to maintain that principle that we have talked bout. There does need to be some sort of standardisation across all media. It is great to see the government moving with the Australian Law Reform Commission process. I think that really is an opportunity and I would urge, as I said in my opening remarks, that there be bipartisan support for root and branch reform of the classification system across all forms of media.

CHAIR—We have a constitutional issue here in this country with the federation of states and cooperative federalism, which allowed the Classification (Publications, Films and Computer Games) Act to be passed in 1995 and then adopted by the states and territories. Of course things have evolved since that time. Have you considered the merit of perhaps a different system that might apply Commonwealth law that perhaps relies on different heads of power whether it be trade and commerce, external affairs power, customs power and so on? Or, do you think we can simply improve the current arrangement of a cooperative approach whereby we have passed a law, the states have adopted it, and of course the different states have their own powers, in certain instances, to classify and to censor certain classification items whether they be movies or whatever? Have you given that much thought? I know your submission is very comprehensive but I just draw that to your attention if you have given that any thought?

Mr Shelton—I will let Ben comment in a second. My expertise and ACL's expertise is not in constitutional law, though we are not unmindful of these impediments, that is the frustration. I

did not wish to imply any undue criticism of the Senate in my earlier remarks to do with the 2008 inquiry, but it seems that unless we can address these head of power issues, we are going to continue to go around and around the mountain on this issue. Somehow we have got to find a way to get some standardisation. Obviously there are problems in getting that through the COAG and SCAG processes. In an ideal world we would get consistency across the nation. I think this issue is so important.

We have seen the extreme examples of what has occurred in the Northern Territory in particular, and I do not for one minute think that is isolated just to Aboriginal communities; I think that you would find similar inappropriate exposure of children to that sort of material across the suburbs of white Australia as well. It clearly shows that there is an urgency about this. It is something we cannot afford to have drag on again for more and more years through lengthy processes of state and Commonwealth governments trying to find some level of cooperation, so I do think it does need a bold reform move.

CHAIR—Thank you. Mr Williams, did you want to add to that?

Mr Williams—Yes, I would just like to reiterate what Lyle has just mentioned about consistency. The principle that we would like to see adhered to is greater consistency across all jurisdictions. Perhaps the second principle that we would like to see applied is leadership, from the Commonwealth government in particular. We just see a lot of these initiatives bottled up in bureaucratic processes like COAG and SCAG, unfortunately who only meet very few times each year. We would like to see some leadership from the federal government to drive the agenda and to make reforms in this particular area.

CHAIR—Thank you. I will now move to one of the areas of particular concern that has been raised in Senate estimates many times and that is the call-in notices and the enforcement of those or lack of it? You have referred to the merit of the establishment of a national database and you have also discussed the merit of increasing penalties. Can you provide a little bit more detail with respect to both recommendations and how they would work?

Mr Williams—At this point in time there is obviously, from Senate estimates hearings, evidence of a complete lack of respect for the call-in notices that are given by the Classification Board to publishers of publications and films. We would like to see some penalties in place for that to stop occurring. Obviously this is happening because these penalties do not exist; there is no fear of any prosecution or any follow up from the Commonwealth or the states that are responsible for administering in the call-in notices. We would like to see a deterrent effect being brought to bear on the distributors and the publishers of those particularly publications and films.

CHAIR—What about the national database, how would that work?

Mr Williams—I believe either the Classification Board or perhaps the classification branch of the Attorney-General's Department, which is responsible for law and policy in this particular area, is in the best position to administer a national database of call-in notices.

CHAIR—I want to move on to another area. You mentioned in your opening remarks and in your submission the issue of artistic merit and the Bill Henson artistic images of a couple of

years ago. Can you flesh out for the committee firstly your views on that, and secondly how we should address that as a committee and as a parliament?

Mr Shelton—I think a very clear line has got to be drawn when it comes to children. One of the last taboos that we do have in our society is the abhorrence for the sexualisation of children and I think that is something we should not compromise on as a society in any way, shape or form. I think it is disappointing that some artists will try and push the envelope on this, and we have seen that, and we have seen apologists for that. A clear line has to be drawn in the best interests of children, because if we start to go down the path of normalising the sexualisation of children in art, it will follow in popular culture. Already there have been examples of that in various types of advertising material that has presented. It has been well publicised and there was a court case, I believe, with a major retailer just a few years ago. I think if we do not take a tough line on the sexualisation of children then we will see the boundaries pushed more and more.

As I said in the opening remarks, and I know senators here are well versed in the *Salo* issue, I do not agree with the proposition that adults should be able to watch and see whatever they like. I do not think the Prime Minister does either and neither do the government nor this parliament because we have a category called 'refused classification'. There are just some things that we judge as a civil society that go beyond the realms of civil liberties, and I think that is appropriate particularly when it comes to the protection of children. I would hope that the parliament would not bow to some civil liberties groups who think it should be open slather.

CHAIR—Before I move to other senators, there is one other area of interest at this stage and that relates to music and videos. At the moment it is what you would call self-regulation; it is certainly not regulated by us in any way as a parliament. You have made recommendations about that and I would like to know how that could happen. Secondly, what do you say to the argument that you are creating more red tape and regulation by having these videos assessed in advance of them being shown? I would like to get your response to that because that is an argument that has been put by other witnesses.

Mr Shelton—I will just mention the issue of red tape and I will let Ben talk to the specific recommendation. Again, when it comes to standards that apply for the protection of children, I think most parents are abhorred by what they see on the Saturday morning music video shows. I mentioned the Kanye West example, which has not been released in Australia as yet, but this industry continues to push and push the line. If it means a little bit more red tape, so be it. I think our standards in protecting children are worth the inconvenience.

Mr Williams—Obviously music videos are a particular class of media for which several people have identified an issue involved with the sexualisation of society. ACL's recommendation is not as strong as getting those music videos classified externally beyond the broadcasters; it is for the ACMA to conduct a specific investigation into the classification of music videos to ensure that the television industry is actually applying industry standards appropriately. Unless the television industry itself is willing to self-regulate the content that it is willing to broadcast in often PG-rated music video programs, then there is obviously a need for additional red tape, if that is what it is to be called.

CHAIR—Should it be mandatory or should it be self-regulation? Do you have a view on that?

Mr Shelton—We think that the self-regulation of television centres has not worked and it is time for the government to step in with tighter regulation.

Senator McGAURAN—You mentioned in your introduction about one in three children in the UK. For the purposes of our report, can you give me the source of that and just repeat it again, one in three of what age?

Mr Shelton—One in three 10-year-olds in the UK have viewed pornography on the internet.

Senator McGAURAN—Does it define pornography?

Mr Shelton—I would have to take that on notice. My understanding is it is mainstream or so-called mainstream pornography. That is what has led to the calls by two British government MPs, in particular, for this form of internet filtering that I mentioned.

Senator McGAURAN—Can you just get us a line on the level of pornography—I dare say it could be anything from soft to hard? It is probably soft given they are 10, or whatever, but I am only guessing. If you could it would serve our purposes because if this was the only report we can rely on then we will rely on it. There is obviously no Australian equivalent but it would not be far from it.

Mr Shelton—I will certainly take it on notice.

Senator McGAURAN—What was the name of that really crummy artist, that photographer who took the photos of the 12-year-old girl?

Mr Shelton—Bill Henson.

Senator McGAURAN—I want his name down on the answer record too. What a fraud. That was paedophilia and it was in fact seen to be so by the government of the day. Was there not such a reaction to that that laws were moved? Are you able to do that at least for our purposes and the secretary can follow that up? There was a reaction against that sort of attempt to make paedophilia art but I think laws were put in place, is that not true?

Mr Shelton—My understanding is that laws were actually watered down to accommodate that as art. Ben, you might have some further detail there?

Mr Williams—There were some amendments made to New South Wales legislation as a result of that particular set of circumstances. I wish to take that on notice, if that is all right.

Senator McGAURAN—Many of my questions are really for the secretary. I suppose this might be unfair—so there is a bit of red tape and you said if we need more red tape we need more regulation against such things, let us do it. Have you noticed that that particular regulation moved by the New South Wales government has worked on artists—why am I using that term—people like Bill Henson?

Mr Shelton—I could not comment on that, Senator.

Senator McGAURAN—Nevertheless there was a community reaction against him and we note it and that is a good thing, so there can be a swell against this. You mentioned that Donald McDonald—for the record this is the chairman, the longstanding chairman of the Classification Board—said that the movie *Salo*, which was passed for distribution, had paedophilia in it. What is the source of that?

Mr Shelton—His words were 'depictions of paedophilia' in testimony he gave to Senate estimates.

Senator McGAURAN—He said to Senate estimates that the movie *Salo* had 'depictions of paedophilia' but depictions is meaningless. It had paedophilia obviously in it, yet it was released. I am asking for a lot of knowledge from you but feel free to give an opinion. Is it your understanding that the existing classification system would rule that out if that was the case? Well, it is the case. The chairman of the Classification Board tells us a movie has paedophilia in it, yet it is released. Do you think that breaches the Classification Board guidelines system?

Mr Shelton—Yes, absolutely. I believe it is in direct contravention of the guidelines and as a lay person, in my reading of those guidelines, I cannot for the life of me understand how the board and then the review board could green-light this film based on its own standards. I believe this has been a long running battle, but eventually those who support this film's release for distribution have chipped away and chipped away until they found a board that will, somehow, find a convoluted way to allow it, something to do with providing extra documentary material. It seems like it would be a breach of the guidelines. In one sense, if there was a proper application of the guidelines, there would be almost no need for reform in this area but of course the guidelines are not applied and so the whole thing is made a farce.

Senator McGAURAN—That is my very point actually. We make the point that we can put more red tape, we can put more regulation, but maybe what is there already is not too bad, a bit of tweaking would not hurt, but it is those who are appointed to make these judgements?

Mr Shelton—Absolutely, Senator. Obviously there are certain guidelines that apply to film classification. As we were saying earlier it is different for television and that is where inconsistencies arise in the minds of the community. That is why I think the Australian Law Reform Commission looking at the whole thing across all media is valid. It gives us a chance to look at the failings, yet again, and hopefully to apply some consistency across the board.

Senator McGAURAN—I will speak about the law reform in a minute but do you think that this committee should be looking at the classifications scheme itself and how it is written, which is a mammoth task, but also the checks and balance on not only the appointments but their judgements? Checks and balances such as if the chairman of the board tells you there is paedophilia in the movie yet he ticks it off. Do you think there should be a community check and balance, a community advisory board, not an overriding veto board, I do not know how you would set it up, we are at the embryo stage, but there has to be more community touchstone?

Mr Shelton—Yes, absolutely. How you structure that, as you say, would need to be determined. If the Australian Law Reform Commission review does not make tangible recommendations about how we can overcome these problems then it will again have failed and we will be back here again in a couple of years time as a result. It is community pressure that has

driven this myriad of government inquiries and public outcries and it is just going to keep going because we have gone beyond the tipping point in this.

Senator McGAURAN—Have I got a chance for a few more?

CHAIR—Yes.

Senator McGAURAN—Just on law reform, the government has reacted, as you saw, to this committee and community pressure to set up the law reform. Who are the law reform commission? What is the understanding that the law reform will do anything more than look at this in a very technical sense? Are you confident that the law reform has the abilities to produce a report of this matter?

CHAIR—Are you referring to the Australian Law Reform Commission?

Senator McGAURAN—Yes, the Australian Law Reform Commission.

Mr Shelton—I am not acquainted with the personality or personnel behind that. I suppose I take it in good faith that the government, as you say, is rightly responding to the pressure that has come from this committee as well as other processes. I look at the terms of reference, which were released just this week; they are not quite as comprehensive as those for this committee but they are broad enough to cover the areas of concern that have been raised in this committee. I think that is a positive thing. There is certainly scope to look at all these things. I think it will not reflect well on the government if this report of the Australian Law Reform Commission does not seriously take into account the mounting community concern that we have seen over the years with Senate inquiry after Senate inquiry, House of Representatives looking at things, and community outcries. If this becomes yet another report that is left on the shelf with unactioned recommendations, I think that will not reflect well on the government. If the Australian Law Reform Commission does not make strong recommendations addressing these concerns it certainly will not reflect well on the commission.

Senator McGAURAN—One last question: are you sure the community does not like these sort of pushing of the boundaries, either on television or film? Are you sure you are sure about that? You come from some might say a niche market. How do we know because often these boards and experts will tell us that in many respects they are just responding to the new community, the modern community values anyway?

Mr Shelton—I suppose I could give you a couple of anecdotes. In 2009 when Free TV Australia was recommending the watering down of the commercial television code of practice, we obviously saw what they were proposing and we put out a media release. I think we were one of the few groups to do so. We were amazed at the take up of it. We were contacted by mainstream media all over Australia; radio, talkback radio, television, newspapers. I believe we were on the front page of the *Telegrap*h in Sydney. This is the Australian Christian Lobby raising concern about television standards. This is not just a niche concern. Obviously our constituency values family life and the protection of children greatly, but that is not unique to the Christian community.

As we found with this campaign in 2009, we were just blown away by the community support both through the media but also through the people who responded to our Tame the Tube (Make a Stand) internet web activist campaign to lodge submissions to Free TV Australia. That is just but one example. You will see by the sort of people that submitted to the 2008 Senate inquiry, to this Senate inquiry and to the House of Representatives inquiry that it is not just Christian groups, it is feminist groups, it is child activists and advocates; it is a whole cross-section of the Australian community. Also both the Prime Minister and the opposition leader are speaking as one on this. When it comes from the highest offices of the land, I think it shows that the community has had enough. Our classification boards, the advertising standards boards, all of these people who are failing parents and failing children in this nation should be on notice because this has reached a tipping point. It will keep coming and coming back to the parliament unless something is done. This ALRC review is really the chance to grasp the nettle once and for all.

Senator McGAURAN—Can I just ask one more ? Again all I ever ask is your opinion, not some studied research, and you might not even be able to answer this. Something puzzles me: when I was growing up, pornography was *Playboy* with the staple in the middle. I know technology and communications have changed and that in many senses has accelerated at least access to but it has also brought on more adventuresome pornography. Are we just hearing it more or is there actually a tilt towards paedophilia? When I say *Playboy* with a staple in the middle, they were mature adult entertainment, but I am constantly hearing, and we were at a briefing last night with Customs, about all the child pornography that they pick up, for example. Is it an actual tilt that pornography in the last 20 years has gone that way or is it just we are hearing more about it? I know society frowns on it deeply. Generally speaking has the industry tilted that way? If the answer is yes, then why?

Mr Shelton—That is a question I am probably not qualified to answer, although I am happy to give some reflections. I do not come from any basis of expertise.

Senator McGAURAN—Reflections are fine.

Mr Shelton—I think things like pornography and child pornography have always been with us but I do not think they have been with us on the scale that is being made available through media that we have today. Also, as has been pointed out, community values to some extent have changed. That has been very much a media driven phenomenon; it has been driven by the vested commercial interests of certain industries which make profits from various forms of exploitation. We do have a proliferation of this. I am very worried that there is greater exposure and accessibility to this material, which, as I say, has probably always been around but it is certainly more wide available to particularly young men. It is distorting their view of appropriate sexuality—there would be research and academics that would back this up—and distorting their ability to form functional relationships into the future because of the mainstreaming of pornography in our society. That is a huge concern.

I think the mainstreaming of pornography is a concern that transcends the Christian community, and it filters down into our advertising. It is ubiquitous and I think that is a real concern. I think it something we as a society need to really take stock of and I think we are. I think that is the process that we have been going through as a society because of the public pressure that is building from the general community. So I think it is a healthy process, a healthy

debate, but I do not think we can continue to have more and more government reports produced sitting on shelves with really good recommendations like we have seen over the last few years.

CHAIR—Before we finish, I have one other question. One of your recommendations related to suicide and that that should be classified accordingly. Can you just flesh that out for us and the reasons why?

Mr Williams—Obviously suicide is a very serious social issue in Australia. We do have very high rates of youth suicide and of male suicide into middle ages. It is a very unfortunate issue. With the discussion taking place on the internet quite openly of suicide there have been examples of people encouraging others to take their own lives. We would wish to see any information that does encourage people to take their own lives to be refused classification and given the treatment under the classification system that it deserves.

CHAIR—Freedom of speech and people willing to express their views about life and death and other associated issues, what do you say to that because that is the argument contrary to your own?

Mr Williams—Of course there is legitimate debate to be had about euthanasia and end of life decision making but inciting somebody to take their own life is a completely different matter. We feel that is obviously stepping beyond the line. Certain people in our society are quite vulnerable to this sort of information and messaging. We would like to see that information and those people protected from obtaining or being exposed to that kind of information.

CHAIR—Finally, I talked about the principles, the formats that are to be classified and thirdly the actual operation of the system. The first one relates to the principles which are set out in the National Classification Code. It has been that way for 15-odd years now. I am interested in your views, perhaps on notice when you have reflected on it a little bit more, of the merit of those principles and their application to modern day Australia? Do you think they should be changed or are you happy with them the way they are? Are you happy to do that?

Mr Shelton—We can take that on notice.

Senator CROSSIN—Thank you. I apologise as we had to go down and start the Senate. With regard to X18+ films in the Northern Territory, since the *Little Children are Sacred* report nothing has happened in terms of the availability of the supply of those films in the Northern Territory. You can still actually purchase them, probably from the ACT, I suspect. I am wondering if your organisation has done anything to lobby the Northern Territory government about that.

Mr Shelton—No we have not, and it is something we should do and we will certainly undertake to do that because we do feel strongly about it. My understanding was that the prohibition applied in the prescribed areas, so I am interested in your comments that it is not actually working.

Senator CROSSIN—I am not sure I have any evidence to suggest it is not working. I do not go into people's lounge rooms when I am visiting people in those areas. That is irrelevant because you can drive into Darwin; there are plenty of places in the Northern Territory other

than the prescribed areas essentially so they are still able to be purchased and are readily available. There and the ACT are the only two places around the country, as you know. I am surprised. I am trying to elicit people to support the idea that since the *Little Children are Sacred* report, I would have thought it would have been one of the most fundamental first things you might have done.

Mr Shelton—I think that is fair comment. Our views on this issue have been well known for many years. We were pleased that there was bipartisan support for the ban. I am disturbed to hear that it does not seem to be working in the prescribed areas. We do say in our submission that we would like to see that extended to the whole of the Territory because we realise things can cross over a border.

Senator CROSSIN—Do not get me wrong here, I cannot tell you it is not happening in the prescribed areas. All I know is that there has been no movement to stop the availability of X18+ right across the Territory. The legislation and the availability today is the same as it was a week before the *Little Children are Sacred* report was handed down.

Mr Shelton—We would love to see the industry shut down from the ACT and the Northern Territory. We have made that position clear and made representations to that effect over many, many years. I guess when the action was taken by the parliament a few years ago to ban in the prescribed areas, we felt that was a really, really good first step. We would be concerned if there was any watering down or if the will of the parliament was not having its effect. We will certainly do some more follow up upon that.

Senator CROSSIN—Thank you. I am sorry that is all we have time for. I am sorry I did not have the chance to ask you more questions.

CHAIR—We are very flexible here, Senator Crossin, not a problem at all. Thank you very much again to ACL for your submission and your evidence today.

Mr Shelton—Thank you very much.

Mr Williams—Thank you.

[9.18 am]

HARVEY, Mr Ian Malcolm, Executive Director, Australian Music Retailers Association

LAWRENCE, Mrs Una, Recorded Music Labelling Code Ombudsman, Australian Recording Industry Association and the Australian Music Retailers Association

SIVAKUMAR, Ms Rohini, Legal Counsel, Australian Recording Industry Association

CHAIR—Welcome to you all and thank you very much for being here today. ARIA and AMRA have lodged submission No. 52 with the committee. Do you wish to make any amendments or alterations to that report?

Mr Harvey—No, thank you.

CHAIR—We invite you to make an opening statement, after which we will have questions from members of the committee.

Mr Harvey—Thank you, Chair. Our code was established in 2003 after a protracted period of discussion at SCAG during 2002. It covers only the audio content of CD and other media. A CD product is made up of at least two parts: a slick or cover art, which is considered a publication, and the actual audio content. It does not cover music video. The co-partners are ARIA, who represent the major recording labels, and AMRA, who represent the retail channel. ARIA members are responsible for the classification of the product, the AMRA members for its display and the nature of its sale to the consumer and the public.

Since 2003, with the establishment of the code, there have been a number of changes to the market conditions in which we operate. In particular: the advent of online, digital download product is much more significant and that is dominated by offshore suppliers; the collapse of what was the CD single—a single with two songs on a small CD, or an old seven inch, if you go back that far—which has now been virtually superseded by the digital download; and the arrival of a series of what you would call non-recording industry participants or IT providers, ISPs—the two obvious ones in this market are Apple with their iTunes product and BigPond/Telstra with their BigPond Music product.

The code is applied where appropriate to more than 35 million CDs, which were sold in the last calendar year, and other physical sources; there are some vinyl products sold and there are still a small number of single CDs. Digital download dominates the single song market but the CD remains the predominant form of album, so a package of music in that sense.

Last year there were just over 5,800 recordings released through ARIA members and sold by AMRA members, and 358 of these carried some form of the code labelling. That is a fairly typical result. The classifications are heavily skewed to the level 1 label, which is the moderate language and themes. Since 2003, something like 1,600 releases have had the label applied. Our complaints service takes between five and 10 complaints per annum that are actionable under the

code. There are a number of other calls to the complaints centre but between five and 10 per annum are actually actionable.

To date we believe the code has been an effective tool, or as an effective tool as can be created, to provide consumers with the appropriate advice regarding the product that they are picking up in stores. The code of course is aligned to the National Classification Scheme in that our level 1, 2 and 3 labelling regime follows the same criteria and is applied to the extent that it can given that it is only audio, as the M, MA and R18+ classifications are applied to film and other media. That concludes the opening statement.

CHAIR—Thanks very much, Mr Harvey. Would either of the other witnesses like to add to that? We will move to questions. I will kick it off again. Have you considered the principles that are set out in the code that are relevant to the implementation of the classification system in any comprehensive way? If you cannot answer that today, I am happy for you to take it on notice and provide feedback. These are the principles that underpin our classification code as from 1996. Have you had any thoughts about that, as to whether you support them, or think they should be amended in some way? I am happy for you to take that on notice and come back to the committee with your views.

Mr Harvey—I think our view is that the classification scheme, at least to the extent that we are connected to it, works, and that the principles are sound.

CHAIR—Thank you. If you want to add to that, come back to us on notice, that is not a problem. What about the view that these principles should apply consistently across all media and all mediums where the classification system should apply? Do you think that that should be the case? It seems that you are a little bit—I will not say out on a limb—different to some of the other media, whether it is television, newspaper publications and so on. You are an area where there is more self-regulation, and you are doing your own thing as it were, rather than applying directly the principles set out in the classification system. What do you say to that?

Mr Harvey—I do not agree with that premise. Our whole approach to this is to reflect the National Classification Scheme in the application of our code on each of those products. Now, the context is that we are only dealing with the audio component. The classification training that we undertake with our members reflects exactly the same criteria that should be applied to TV, film and video.

CHAIR—My point is, what about the music videos?

Mr Harvey—Music videos are outside our remit. Music video is classified by the National Classification Scheme through the Attorney-General's classification unit. Anything that has video content that comes through an ARIA member is automatically referred to the Classification Board.

Ms Sivakumar—Can I also add that music videos that are actually broadcast on television, on *Video Hits* and other programs like that, are subject to either the commercial television codes of practice or, if it is on subscription television, the Australian Subscription Television and Radio Association codes of practice.

CHAIR—You agree with the view that the principles and the values that are espoused in the classification code should apply across all media, no matter what the media is? Do you agree with the principle that it should be consistent?

Mr Harvey—Yes, I think from a consumer point of view, and we see this in our consumer call centre from time to time, these principles should be applied across the board.

CHAIR—Have you got recommendations for improving the system, the actual operation of the system, bearing in mind that the code is limited because of the variety of the new digital distribution options? What do you say about that?

Mr Harvey—This is the difficult issue for us at both ARIA and AMRA levels. The two principal suppliers of online digital product into this market are members of neither organisation. There is no reason for them to be members of either organisation. Their content is held offshore, it is not domestic, although one of the companies is an Australian company. BigPond's content is held in Singapore, as I understand; they use an international provider and they put a BigPond front end to it. iTunes, of course is a US company and I think their servers are stored in Canada. We have no leverage with those organisations to deliver either our code, or probably more pertinently, the National Classification Scheme.

If you were to look at the iTunes site, for example, and the National Classification Scheme for TV programs and film that you can download, it certainly does not have any of the iconography of the National Classification Scheme apparent. There is a small piece of text, almost the fine print, that says that this may be rated MA or R or whatever, but the extent is that there is no leverage. We have no leverage to change that.

CHAIR—We are legislators, and we are trying to act in the public interest, so do you have any advice for us with respect to how to improve the system, bearing in mind that there are significant gaps based on jurisdictional issues given that these providers are overseas? Do you have advice for our committee or are you mute on that?

Mr Harvey—The advice that I can offer, and I will leave my colleagues to give an alternative view if they wish, is that I think the consumer deserves the right to have a consistent understanding. At the moment the circumstances to which both you and I have just referred makes that impossible. I think the consumer deserves that.

CHAIR—Would Mrs Lawrence or Ms Sivakumar like to add to that?

Ms Sivakumar—As my colleague pointed out, it is quite difficult, especially given the international nature of a lot of the content that is supplied, both in physical and digital products from overseas. I think you have your work cut out for you, definitely, if you have to engage with different jurisdictions and different organisations that are maybe not as receptive to the classification schemes that we have in place in Australia.

Mrs Lawrence—I am one step removed from ARIA and AMRA but in the reports that I prepare on an annual basis on their behalf for SCAG, I have noted that they have actually tried to get compliance with their code amongst BigPond and iTunes, and have been rejected quite soundly in the past. It is not for lack of trying. There are just these global technical challenges.

CHAIR—I appreciate that. Could you give us a snapshot of your role, Mrs Lawrence, in terms of the role of the ombudsman?

Mrs Lawrence—I really do two things for ARIA and AMRA. I prepare a sort of overview report of the operation of the whole scheme on an annual basis, and that is submitted to SCAG. I also act as an appeal/complaints review person. In the time in which I have been involved with the scheme, which is since 2003, only one person has actually chosen to escalate a complaint to me. So, that has not been a very onerous part of my role, but on that occasion the complaint was upheld.

CHAIR—I am not sure if you have seen the submission of Family Voice Australia. They have expressed some pretty firm views with respect to some of the lyrics which they found most offensive, and I would draw that to your attention. You can respond to that on notice if you would like to. Do you have expressed views about the use of lyrics and the sexualisation of music videos that seems to have increased rather than decreased over the last decade, based on the evidence of which I am aware?

Mr Harvey—On that particular submission, we will need to take that on notice. If there are examples, then we would be perfectly happy to look at those examples and apply them against the principles of the code. In terms of music video, it simply falls outside of our remit. Again, I say that our content and our processes are entirely audio-based, and anything to do with music video is at the purview of either the Classification Board, Free TV Australia, ABC, SBS, or subscription television.

Anecdotally we observe what is on Saturday morning on Channel 10 and other programs. I have to say that we have between five and 10 actionable complaints a year going to our complaints service. We have many more phone calls to our complaints service on the question of music video than we do on lyric content. In each of those instances, those complainants are referred to the appropriate organisation. We are aware of some consumer concern about music video content, probably more so where it appears in the course of a broadcast week.

CHAIR—I will read a recommendation and then get you to respond to it? It says:

> The ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes needs to be revised and strengthened to more effectively limit the distribution of material which demeans women by treating them as sexual objects, including as objects for sexual violence.
>
> If the music industry is not willing to do this then consideration should be given to legislation to bring audio music recordings under the National Classification Scheme.

Ms Sivakumar—Who was that submission from?

CHAIR—Family Voice Australia. It is on the public record on the website. Do you have a response to that or do you want to take it on notice and respond?

Mr Harvey—I think we should take that on notice.

Ms Sivakumar—We should take that on notice.

CHAIR—Not a problem.

Senator CROSSIN—Can you just take me through the way in which you would deal with a song that might have very offensive language in it? Does that get released under some sort of classification warning?

Mr Harvey—The process would be that the song comes to a record company. The label staff in that record company are trained to apply the code. They would apply that code and that product would then be labelled accordingly. Depending on the nature of the content—whether it is considered moderate, or strong language or themes, or in the case of the R18+, very high levels of potentially offensive content—that label is applied. That product at all times should be presented in that way, with that label either built into the artwork or as a stuck-on label. Then in store, there is a reference that is aligned to the National Classification Scheme which shows how the two align. I have a copy here if you would like it. We talk about the same language.

Senator CROSSIN—Yes, that would be useful. If you go to buy a CD it should clearly have a label on it advising you, somehow, that the songs on it could be potentially offensive, or it has some sort of classification on it?

Mr Harvey—The majority of recordings do not fall into this. There is no point classifying Susan Boyle, for example; she sings of wholesome, family value kinds of things.

Senator CROSSIN—I am not asking you about Susan Boyle. You will know the kind of groups I am asking you about.

Mr Harvey—Yes. What I am trying to say is that the vast majority of the product appears in store without a label at all. There is no equivalent to G, for example, in our code. Where there is evidence of language and so on, then it automatically will receive a level 1 label, and it gets graduated from that point.

Senator CROSSIN—I probably cannot remember the last time a young person bought a CD, I have to be honest with you. It is all getting downloaded, even by me these days. Your problem is that when you download through iTunes or BigPond, that warning is not available? I could buy this exact same album through iTunes, and you are saying that because it is regulated overseas it cannot have that same warning, because you cannot regulate it?

Mr Harvey—It certainly does not have our code. If you go to iTunes you will sometimes see next to a product the word 'explicit' in a small, grey font. I do not mean small to be belittling, but it is a small icon that says 'explicit' in grey, and that is the extent of it.

Senator CROSSIN—It is a little box, is it not?

Mr Harvey—Yes, it is a little box saying 'explicit'. Beyond that the answer is yes.

Senator CROSSIN—In the accompanying video clip, even though the video itself might not be offensive, the words in the song might be, at nine o'clock Saturday morning. You only have control over the content of the CD?

Mr Harvey—Of the CD.

Senator CROSSIN—So if I am watching a particular show on a Saturday morning and a song comes up—first are there any restrictions as to what time of the day these songs can be played?

Mr Harvey—Again, that is outside our remit. That falls either with Free TV or the National Classification Scheme.

Senator CROSSIN—So all you do is put a little sticker on the CD saying—

Mr Harvey—All we do is put a sticker on the case of a CD. Anything else falls outside of our code.

Senator CROSSIN—If the song is coming up on the television, who would make a decision to put underneath that there is offensive language in this song?

Mr Harvey—Principally the broadcaster or their relevant association would manage that process.

Mrs Lawrence—Can I also add that there are time restrictions, in that content that is classified in different ways has to only be shown at certain times of day.

Senator CROSSIN—Do you have a breakdown of what those times are?

Mrs Lawrence—No, I do not. It is in the realm of the commercial television and ABC codes.

Mr Harvey—Senator, if you were to watch *Rage*, it starts late at night and runs through until some time after eight o'clock of a morning, or something like that. At some point in the morning, and I cannot tell you exactly when, the ABC will then say that the next portion of *Rage* is rated PG. They will actually change the rating of the content to reflect the time of the day. You may like to take that up with the ABC; they will give you exact detail on that. Certainly, though, I have observed that the rating that they apply changes during the course of the airing of that program.

CHAIR—That is different with subscription TV, is it not? You are talking about the ABC?

Mr Harvey—I am talking about the ABC free-to-air broadcasts.

CHAIR—What about subscription TV?

Ms Sivakumar—They have their own codes of practice. We cannot speak to what is in those codes regarding classifications, but they do have their own codes of practice.

Senator CROSSIN—Can I just ask one more question? Is there any international network that you are involved in where you meet with iTunes people or the people in Singapore? Is there some international organisation where you talk through and share data about this?

Ms Sivakumar—I might have to get my colleagues to speak from a retail level but from a recording industry level, there is an association, or international federation of recording industry bodies around the world that do meet. I cannot say from a retail perspective if AMRA has an equivalent.

CHAIR—What about from the recording industry perspective, do you discuss these issues, and do you have suggestions on how—

Ms Sivakumar—I will have to take that on notice because I have not actually been involved in any discussions with this body before. I can find out though whether these kinds of issues have ever been raised.

Senator CROSSIN—That would be useful. Mr Harvey?

Mr Harvey—From a retail point of view, no, there is no global overarching body.

Senator McGAURAN—I just want to get the gravitas of the ombudsman. Mrs Lawrence, are you appointed by ARIA or are you an outside appointment? I am not sure.

Mrs Lawrence—I am appointed by ARIA and AMRA.

Senator McGAURAN—So they term you ombudsman, do they?

Mrs Lawrence—Yes.

Senator McGAURAN—Are you in the same office or building? What is the arms length?

Mrs Lawrence—No, I operate completely independently from them. I have my own office and meet with them as needed.

Senator McGAURAN—What is your background, personally?

Mrs Lawrence—I have a background in classification. I was on the Classification Board some years ago, and I have worked for television stations as a classifier.

Senator McGAURAN—They sound like good qualifications. Your reports are recommendations only are they? Have you seen them followed through?

Mrs Lawrence—Yes. Primarily the issues that I raise in my reports for further action relate to education about the scheme and training of the industry ARIA members—there is turnover of staff at distribution level—to make sure that the code is consistently applied and well understood within the companies. While it does sometimes take a while for the recommendations to be acted upon, they certainly have done that in the past.

Senator McGAURAN—You mentioned that there was one particular complaint that was followed up to the ombudsman. Would we be privy to what that was, what your recommendation was, and the report on it? You can take it on notice. I am not sure we have the time for you to go

through it. You can, quickly, but it might give us an example of how the process works within ARIA.

Mrs Lawrence—The complaint was initially dealt with by the complaints handling service. I think, from memory, the issue was that the recording was not classified. The complainant's child obtained a copy of it and the complainant believed that the material required a warning, in terms of coarse language.

Senator McGAURAN—Did you agree with that?

Mrs Lawrence—Yes, I did agree with that. My view was that it should be labelled level 1 under the scheme, which means it should carry a sticker: 'Warning: Moderate impact coarse language and/or themes'.

Senator McGAURAN—Was that taken up?

Mrs Lawrence—Yes.

Senator McGAURAN—Mr Harvey or Ms Sivakumar, you say in your submission that the code is effective and one of the reasons for this is that the complaints process has led to system improvements in the distribution channel. What does that mean?

Mr Harvey—When the code was first implemented there were instances of failure to label product appropriately. It was classified, but it found its way through the distribution system without being labelled. We do not seem to have those sorts of instances anymore. The code, over a period of time, has kind of got itself to the point where it is embedded in the processes of the record companies, and there is a higher level of awareness from the retailer.

There has been the odd instance over time where a retailer has rung me and said, 'I have just received such-and-such a product, it has not been labelled, and I am not sure that that is right'. Then there has been a little bit of industry dialogue. We have found that in fact there was a batch or two that had found its way into the market, and it was easy to take that remedial action. I think within the channel itself there is a high level of awareness and there is a good deal of understanding. The self-regulating nature is, of course, only as good as the people that are applying it, but I think that the industry has a really good understanding of why it is applied, and how it should be applied, and what their responsibilities are. That takes a little bit of practice to achieve that.

Senator McGAURAN—How long has the ombudsman been appointed? Are you the first ombudsman?

Mrs Lawrence—Yes.

Senator McGAURAN—When were you appointed?

Mrs Lawrence—2003.

Mr Harvey—The appointment of the ombudsman was part of the agreement that we reached with SCAG, and in fact Mrs Lawrence was recommended to us by the national classification board. That is how we came to have that relationship.

Senator McGAURAN—Just back to Mrs Lawrence, if we are privy to it, and we have access to it, could we have a broadsheet copy of that one example that you had? If you wanted to write that up for us, it will give us an idea of when you pitched what was offensive language, or what you considered a moderate impact, and we could then cross-reference that with the actual words.

CHAIR—I think Senator McGauran is saying you do not have to do it now. If you have it, that is great. If not, you can take it on notice.

Mrs Lawrence—I have it.

Senator McGAURAN—So we can see an actual example that went all the way, and then all the way back with the recommendation.

CHAIR—We are trying, as a committee, to get an understanding of how the system works.

Senator McGAURAN—I am not sure who to ask this, but perhaps back to Mrs Lawrence, or all of you. I know everything is in context, but what impact classification would the F word get in a song?

Mr Harvey—The F word has a basic rule, which I believe is also applied at the National Classification Scheme level, which is always the training that we have had. There is the one F word rule, which means that it gets a level 1 advisory, irrespective.

Senator McGAURAN—What is that, moderate impact?

Mr Harvey—Yes. The context then is how is that word used: is it used comedically; is it used as a once; is it used as an incitement? You can use the f-word or any of these words in many, many ways, so it then becomes a question of the impact. However, the f-word itself would automatically require a level 1 label to be applied.

Senator McGAURAN—Have you noticed over the years, whatever that would be, that that sort of language, such as the F word and worse—they are so common on television now it is becoming a moderate word—are coming into songs, or not so much?

Mr Harvey—I am not aware of any sort of empirical studies that have analysed what language is used, and what language is not used. As an observation, I would say the F word is used infrequently in what you might call pop and rock music; it is only used for effect every now and then. Where I think it is confronting, and where the impetus for the upgrading of the code and those kinds of things came from, was the introduction into mainstream music of the rap and hip-hop genre. Clearly the F word and other variations of it have quite a high profile in that particular genre, and clearly it also has a fairly high profile in some comedy. For example, Billy Connelly and some other comics use the f-word to great effect in the delivery of comedy. Of course, a comedy CD also comes under our remit. I think what has happened though is that rap and hip-hop, where it was confronting 10 years ago in the same way that Elvis Presley was 60

years ago or that Skyhooks were in the late 1970s, I think rap and hip-hop have kind of become a bit more mainstream. We certainly do not get the complaints about Eminem and some of those artists that we were getting in the initial days of the code. I think it is largely genre based. It is seemingly part of the rap and hip-hop genre. I do not really understand it personally, but that American, urban language seems to be quite predominant. Again, if you watch *The Wire* on television from Baltimore, I think you get a sense of where that might actually fit and come from.

Senator McGAURAN—Of course there is self-censorship, not by the singers, but by society itself. A lot of the singers will need to tailor their songs to sell their songs.

Mr Harvey—This is true. One of the services that we offer is an advisory group within ARIA and AMRA. On a number of occasions we have been asked to sit to look at a particular product, and to look at an artist's work. They are concerned that they might be heading towards the R level restrictions. They do not want to be restricted, so they have sought some advice on how to effectively tone it down so that only a level 2 label is applied. The artists do self-censure from time to time once they actually understand the code themselves. Others, of course, might see it as a status raising mark to have an R level restricted recording. It depends on the artist.

Senator McGAURAN—Is the group Cannibal Corpse still around?

Mr Harvey—The answer is yes.

Senator McGAURAN—They are still going, are they?

Mr Harvey—Cannibal Corpse presents a really interesting problem. If we have a moment I will do this as quickly as I can. In the very early days of the code, Cannibal Corpse released an album, and I cannot think of its name at this time.

Senator McGAURAN—What year are we talking?

Mr Harvey—Early 2000s. It was one of the key things that we were looking at when we were forming the code in 2002-3. You have to understand that you cannot actually understand the lyric that is being sung in Cannibal Corpse. It is just vocal noise; you cannot discern the words, and this is quite important. Importantly therefore, we cannot actually classify what we cannot understand. It is English, but absolutely unintelligible.

Senator CROSSIN—Did you get them to write it down for you?

Mr Harvey—In actual fact originally the Cannibal Corpse slick, the artwork, had the lyrics on it. The lyric was refused classification as a publication under the National Classification Scheme at the time. We could not refuse the audio because it was unintelligible so the band then repackaged that product with a black slick, no lyrics, and it was passed.

Senator McGAURAN—Were you around then?

Mr Harvey—No, that was just before my time, but it was one of the extreme level case studies which we were all examining at the time.

Senator McGAURAN—It is one of the extremes. What would you call it, gothic music? There would still be a lot of goths around.

Mr Harvey—Indeed, and if you really want the lyric, no matter whether there is a slick or not, any number of lyric websites such as lyricsa-z or lyrics.com will give you their lyrics, and virtually everybody else's.

Senator McGAURAN—Mrs Lawrence, do you know of this Cannibal Corpse group?

Mrs Lawrence—Yes, I do.

Senator McGAURAN—It seems to be the extreme, but there are many Cannibal Corpses around. How would you have handled a complaint in regard to the lyrics, given the background that you cannot understand the lyrics, but that nevertheless the lyrics can be obtained? How would you have handled that?

Mrs Lawrence—I think you have to look at what is there in the physical unit that the complainant has purchased. That is the limit of the code. As Mr Harvey says, if the CD has just a blank cover and there are no lyrics on it, and on listening to the CD—truly, I have heard some of their stuff and it is just a horrible, horrible roar, it is incomprehensible—

Senator McGAURAN—Even though you knew that behind that roar there was a message?

Mrs Lawrence—You can only look at what is actually in front of you. That is all you can apply the standards to. The standards apply to a physical CD. You cannot go beyond that; that is beyond the scope of the code.

Mr Harvey—If you were to read the lyrics, Senator, I would agree with you.

Senator McGAURAN—I see your point but you are letting them off the hook. You are virtually undermining your own classification system on the grounds that you do not understand the group. You know what the group is saying; you know it but you just cannot hear it. Many young people exposed to it will find out what is being said.

Mr Harvey—I take that point. This is not to minimise the point that you are making, but at that time this code was not actually in place. As I said, it was one of those examples that we used to develop the code. The product in the end was approved by the OFLC, Office of Film and Literature Classification, at that particular point in time when it existed, on the same basis that I have just mentioned, that the lyric was unintelligible, and the offensive part, which was the artwork and the words themselves, which you were just about to consider reading, were removed.

Senator McGAURAN—That was then, but Mrs Lawrence tells us today it would still get through.

Mr Harvey—On the basis of the way the code is written, it would, yes.

Mrs Lawrence—Also remember, I am saying that it was packaged with a blank cover and no accompanying lyrics at all, so it is on that understanding. Clearly if the lyrics were printed with it, it would be quite a different matter, and that would again be picked up as Mr Harvey referred to earlier.

Senator McGAURAN—You know what they are singing, if you want to call it that?

Mrs Lawrence—I would not. I do not think people would know what they were singing.

Senator McGAURAN—You would, as ombudsman.

Mrs Lawrence—We would only know what they were singing if we had a separate means of accessing the lyrics.

Senator McGAURAN—We are going around in circles on this except to say that you are in charge. You know what they are singing. You can say, 'Look, they have to access it somewhere else anyway', but you are sort of being too clever by half and disseminating your responsibilities when you actually know what they are singing, and you are undermining the spirit of the classification. You can see I keep going back to the lyrics, because I am going to read them out—see, you cringe. You cringe, point made. I may well read them out, because this is all being taken up by Hansard, and we have to get it down on paper.

Why do you not say to me: 'At the time, this is why it was released. It was one of the reasons that led to a review in 2003. It would not happen now because regardless of whether the vocals are good, and the audio is good, and the lyrics are not on it anymore, we know what that group is up to. We know what they are saying.' You would not put it that way; you would be more professional than me, of course. Why do you not say: 'We know what the lyrics of that group are, and we know that people will be able to access those lyrics if they want to. It is our job to say that the spirit of the classification is this. It is refused classification. If you want to download it some other way, good luck to you.' Why don't you say that to me instead of defending it as if you would release it again? You will do it again. You will do it all over again 10 years later.

Mr Harvey—I do not think we can. I do not think we can say that we will refuse classification.

Senator McGAURAN—There you are. Mr Chairman, the old Cannibal Corpse lyrics, you are provoking me to read out because people will not know what I am talking about. You have no idea how bad—all right, I am being asked, and I will not—but people ought to know that the ombudsman of ARIA cringed when I said that I would read them out. I have been politely asked by Senator Crossin, and rightly so, not to do it, because there is a reason.

CHAIR—Senator McGauran, order.

Senator McGAURAN—I do not want people to think I am just beating this up.

CHAIR—We have just a few minutes before our break. I would draw to your attention, and the committee's attention, that it is the Family Voice submission. I am making the point that it is set out in the Family Voice submission, which is on our website.

Senator McGAURAN—I am making the point that no one wants me to read them out for a reason, yet they will not refuse classification of them.

Mr Harvey—Senator, we cannot.

Senator McGAURAN—You cannot? Explain that.

Mr Harvey—Under the code as it stands at the moment, we cannot.

Senator McGAURAN—Why can't you?

Mr Harvey—Simply because it is unintelligible noise. If the lyric appears with it then we can refer it onto the national classification board and it can be dealt with under that particular aspect, but as it stands at the moment, if you read the code, it is about what you hear on the CD. You just simply cannot make an assessment of whether it is good or bad, in terms of the lyric content on the CD.

Senator McGAURAN—We will leave it there and say this: we are being told by ARIA that they cannot ban Cannibal Corpse. I assume if we could hear the lyrics they would. Therefore, for the purposes of our inquiry, we should look into a recommendation that says whether you can hear it or not, if these are the lyrics that the group attach to this song, then they ought to be given the authority to ban it.

CHAIR—We are just coming up to the break, and I wanted to finish with a question. You have the three-tiered labelling regime, correct?

Mr Harvey—Yes.

CHAIR—Can you on notice give us some examples under each tier?

Mr Harvey—Absolutely.

CHAIR—Secondly, I also understand you have a further category which is 'not to be sold'; is that right?

Mr Harvey—Yes.

CHAIR—How many have you done over the years in the 'not to be sold' category?

Mr Harvey—The answer is zero under this code. The only kind of example that falls into that is the one we have just been discussing. That preceded, of course, this code, but that would be the kind of example.

CHAIR—When you say this code, you mean the 2003 code which kicked in?

Mr Harvey—Yes.

CHAIR—Can you let us know, and this might be in your annual report, how many in each category in each year there have been since 2003?

Mr Harvey—Yes.

CHAIR—Secondly, have you reviewed your code since 2003? Have you reviewed the code specifically since the 2008 Senate committee report on the sexualisation of children?

Mr Harvey—The answer to the second part of the question is no, we have not since the 2008 report. I cannot give you the exact date of it, but probably in 2006 we had a series of discussions with the OFLC at that time, reviewing the first three years or so of the application of the code. We took on board then their community values reflection. We took on board their most recent update of that information. The last formal examination of it would be somewhere around that 2006 period.

CHAIR—Did you as either industry look at the 2008 Senate committee report? What reflections do you have on it, if any? Or did you not?

Mr Harvey—No, we have not.

CHAIR—Thank you for that. We have concluded this part, and we thank you for your evidence, it has been most informative. We will have a break until 10.20 am. Thank you again.

Mr Harvey—Thank you.

Proceedings suspended from 10.06 am to 10.25 am

ROWLINGS, Mr William Murray, Secretary/Chief Executive Officer, Civil Liberties Australia

von BRASCH, Mr Arved Jens Konrad Andreas, Member, Civil Liberties Australia

CHAIR—Thank you for being here. We have received your submission No. 34. Would you like to make any alterations or amendments to it?

Mr Rowlings—No, thank you.

CHAIR—In light of that, we would like you to make an opening statement, after which we will have questions from members of the committee.

Mr Rowlings—Thank you. Thank you for the opportunity to make a submission and to appear in person. It is a very valuable part of the democratic process, and CLA is pleased to be involved. We would like to stress three points. Firstly, it has been more than two decades since anyone had a close overall look at the way we go about classifying or, in some cases, censoring what Australians can see, hear, watch, play and experience. The current reviews of the classification system are very timely, and we congratulate this committee for starting things off. Secondly, the world of information and data exchange has changed dramatically over the past two decades. For example, two of the major systems, MS-DOS and the Apple Macintosh system, only emerged from the technocrats in the mid-1980s. We are all struggling to cope with the changes of the past 20 or 25 years. Thirdly, one other technology had its birth slightly earlier, but matured just on 20 years ago to become the worldwide web, or the internet. The web has grown exponentially because there is a lack of central control. We need to make sure that Australia does not try to put controls or breaks on the internet in this country in such a way as to penalise ourselves, in relative terms, internationally.

The internet has certainly changed how we all learn, including particularly children. What is so now will be more so in the future. The pace of change of technology that we have experienced over the past 20 or 25 years will not slow down. Any change to the classification system has to try to anticipate what will be in the future, so it needs to be based firmly on principle.

CLA believes there should be three principles. Firstly, access to all information should be as open and simple as possible. The default position should be an absence of restriction and maximum simplicity. Secondly, individuals and companies should have the right and the responsibility to control their own information access and that of the people for whom they are responsible. Thirdly, educating and informing all people appropriately about the opportunities and the dangers of an open access system is a proper role for a central authority such as the government. Those principles are behind our submission, which basically says: make things simpler and consistent, remove controls wherever possible, make people and organisations responsible for what they can control, educate rather than sensor, and protect children and others who seek protection by measures which include a white list and free software, as well as much more education than at present. Thank you.

CHAIR—Thanks very much for that. Mr von Brasch, did you wish to add anything?

Mr von Brasch—Not at this time, thanks.

CHAIR—I just want to go to these principles. I am seeing this in three areas. First are the principles under which the classification system is working or not working, whichever way you wish to see it, our censorship system. Second is the medium; do you agree there should be a consistency across all media, whether it be TV, radio, internet, whatever it is?

Mr Rowlings—We agree.

CHAIR—Third regards the operations; how it can actually be improved. In your opening remarks you referred to these three principles that you wish to support. What are your views on the principles set out in the code? Do you think they need to be amended or changed in accordance with your three key principles? Let us address that issue first.

Mr Rowlings—I must say that they need to be addressed because the technology for delivering them has changed so much that they need to be looked at in light of the new technology. While the principles themselves are relatively soundly based, we need to learn the lessons of the past 20 years, both in where the problems have arisen, where the fringe areas are, and in terms of what the technology has done to what we thought the principles were when we laid them down.

CHAIR—The key is the second aspect of the principles set out in the code. The first one is that adults should be able to read, hear and see what they want. The second one is that minors, as in children, should be protected from material likely to harm or disturb them. We have got what some people might say is a bit of a conflict or competing values there. You seem to emphasise the need for open access to people wherever possible, and I think you say as simple as possible. Regarding, 'as simple as possible', what are the constraints on that? Under your third principle I notice you say that children should be protected, as should others who seek protection, by measures which include a white list and free software, as well as much more education than at present. I would like you to flesh out for the committee exactly what that means. Could you do that, and then tell us about these competing principles and how they should be balanced with each other?

Mr von Brasch—First you have to realise that ignorance is not the same thing as innocence, especially with regard to children. Just because they know something or they do not know something is not necessarily relevant to whether they are innocent or not. The main thrust is that the internet has changed the ability of the government to actually do much in this regard in its entirety. The point is there is so much volume on the internet, it is logistically impossible for a classification board to actually go through the material that is available in any practical way. If the internet cannot be regulated in that manner, then it no longer makes sense to try and regulate material that is bought in the physical realm in the same manner. To that end, when we talk about safe material we talk about keeping children safe. What people actually interpret that to mean is very different from what a blacklist or any sort of mandatory internet filtering would actually entail. Any sort of exclusion area or blacklist where certain sites are explicitly excluded is inherently going to leave a whole bunch of other material that would not fall under the definition of safe, as most people would actually interpret that.

The main danger is that there is going to be a huge increase in a false sense of security, where people will feel that they actually can leave their children on the internet as a babysitter, without supervision. There is no way to actually make the internet safe in that regard. The option then to look at is something like a white list, a system where businesses or personal sites could apply to be included on the list. You can them hold them responsible for the dynamic content that they produce. If their material is suitable for a five-year-old one day and they actually upload pornography or whatever, the next day you can hold them accountable because they apply it to the government. Also no security is needed because it is a list of material that is perfectly legal. Anyone who has a child or does not wish to access the majority of content on the internet can then sign up for such a service.

CHAIR—I would like you to flesh that out in a minute so let us come back to that. Do you support that there should be consistent values, consistent principles applying on all the different media? I think you said yes initially, but it seems to be in contrast to what you just said about the internet.

Mr von Brasch—That is the point. You cannot apply that to the internet.

CHAIR—On the one hand you are saying that it should apply but then on the other hand you are saying that technology says it is too hard and it cannot be done.

Mr Rowlings—I think we said yes, where possible. The problem is there are some places where you cannot do that so you have to do something else to achieve a similar effect. We are all bedevilled by these technological changes that have happened over the past 20 years, which is what we are going to cope with. Again, when you asked a question earlier about how does what we do in Australia relate to overseas. The truth is that what we do here will have very little impact unless we get international treaty agreement on these things. One of the recommendations, I would suggest, out of this committee might be to seek international treaty agreement, particularly with America, where a lot of this stuff is generated. That would be one outcome of this.

CHAIR—What I am hearing you say is you want consistency wherever possible, but it is not always possible because of technology, and you have used the internet as an example. Are there other examples where you think technology has come at us at such a fast pace that it cannot be regulated adequately or you cannot apply those principles in those different formats? If so, what other formats are there where it cannot be applied?

Mr von Brasch—One thing I would say is with regards to things like social media, mobile phone conversations, SMS messages or email even, to a large extent, a lot of that occurs on a very immediate basis. There is no way that a government is going to be able to intervene in each case. You can only respond after the fact; that is just a reality. The same thing applies when you see sites on Facebook where hate groups get started or other rather nasty material gets posted; it is only after the fact that you can deal with. You cannot deal with it beforehand because of the nature of the beast.

Mr Rowlings—The example of that is in the papers today of the army in Afghanistan. It is a classic example of Facebook. The only way to beat that is the other thing that we stress

overwhelmingly, which is education. Education is the only way to beat these things. You cannot control it, so you need to educate.

CHAIR—Just on that point, can I just draw to you attention that I am on the Joint Select Committee on Cyber-Safety. This week we had Facebook appear, one of the few occasions they have appeared, but they did, for which we are very thankful. Their evidence to the committee, which is on the public record, was that they are taking down 20,000 Facebook sites per day—they were going to check whether it was per day or per week but he said per day—because of the age being under 13. Facebook themselves were taking them down. Now that seemed like a lot to me, but that was their evidence. You cannot just say it cannot be done because Facebook had acted, in terms of the age issue, and they have taken those sites down.

Mr von Brasch—Your own words were, 'they took them down'. They had already been up for some time beforehand. The point that I am making is that they had already existed on the internet for some time before it was actioned.

CHAIR—We asked for further and better particulars and I think they are coming back to our committee, and it will be on the public record. I do not want to take them out of context, but point taken from your side. Did you want to add to your earlier comments?

Mr von Brasch—I think I covered everything.

CHAIR—I just want to flesh out this white list and how it would work. You have talked about distributing a CD to families, I assume, in their homes. Are you saying that families would then apply, download this CD and be able to allow their kids to operate on this white list accordingly?

Mr von Brasch—We have had experience with filtering in the past with the net alert system, for instance, as a scheme. It is understandable that there is a concern about children, particularly below the age of seven or eight which is known as the age of reason, having access to material that they are deemed incapable of understanding. As I have tried to explain, an exclusionary list, that is a blacklist, is not going to actually make the internet safe. Therefore the solution is for parents who are concerned to have a white list where—

CHAIR—The bells are ringing for a division in the Senate.

CHAIR—We will resume taking evidence. I think you were part way through an answer. Did you want to conclude or finish where you were up to, Mr von Brasch or Mr Rowlings?

Mr von Brasch—I am afraid I have lost my trail of thought.

Mr Rowlings—We will move on, if you are happy to and try to truncate our answers.

CHAIR—I was just asking about the white list and how that would work, and I think you sort of answered that.

Mr Rowlings—I can explain something which may help you. Mr von Brasch is a software engineering with qualifications in this area, so when he speaks technically, he knows what he is talking about.

CHAIR—I am sure he does. Thank you.

Senator CROSSIN—Do you have a view, in terms of AMRA's classification, of CDs and tapes? They told us this morning, of course, that they do not regulate video content. In terms of words, do you have a view that there are times when songs just should not be allowed to be broadcast at all, that there are certain songs that just should not be out there?

Mr Rowlings—I would imagine that there are. I think Senator McGauran made a very good point when he was talking about the lyrics of that song. I have never heard of it, but he has now made it immensely popular around Parliament House, I am sure. He made the point that many young people will find out what was said. The technology has now changed to the extent that they can go to the internet and find these things out. If you are trying to regulate it in one domain, you cannot because it is already available in another domain. That is how the change is occurring.

Senator CROSSIN—Yes, that is right, and that is the problem, is it not, really?

Mr Rowlings—Yes.

Senator CROSSIN—Essentially, that is the issue. We can ban and brown paper wrap as many magazines or videos or DVDs as we like, but you can actually get on the internet and buy it overseas. I am not entirely sure we have got an answer to how we regulate that.

Mr von Brasch—I would say it is a problem that you cannot actually solve in the traditional manner, which means that you really have to push education now.

Mr Rowlings—That is why we are stressing education. The only way to address that is to have the children educated and supervised by their parents enough to know not to go down that track. I know it is a big ask, but there is no other way to address a problem like that, that we are aware of, because banning and restricting and closing down will not achieve that. People will go around it. All it will do is penalise Australia to some extent because what you are closing down here is expanding in the rest of the world. We mentioned in our opening statements about the danger of trying to close down here.

Senator CROSSIN—Regarding content on Facebook and those sort of social networking sites, do you have a view about what is happening on those sites and what can be done to regulate something there?

Mr von Brasch—It has to be an educational issue. These are just regular people sitting behind the computer and typing things and posting it immediately; it comes up immediately. There is not a third party that would use it because there is just way too much data for that to be possible.

Senator CROSSIN—It is very impersonal, is it not? You can say or do or post what you like.

Mr von Brasch—Really, it is an education issue. Privacy is going to be a big concern when some of these people apply for jobs later on. The only way to get that message out is to actually say, 'Be careful because this might come and bite you later'.

Senator CROSSIN—Finally, have you got a view about how effective the Classification Review Board is?

Mr Rowlings—My concern with the Classification Review Board is that the minute that you put a restriction on something you make it attractive to people. The very process of doing something like that is self-defeating to some extent. The Classification Review Board is, again, an attempt to put boundaries and controls and restrictions on things, and that ultimately will not work. The peaceful pill handbook never had so much publicity as when it was going through its agonies with the Classification Board. Suddenly everybody in Australia knows about it, when it was going to be a little book that only the cognoscenti knew about. The danger is that once you highlight the fact that you are banning or tightening controls on something, you just make it more attractive to people, particularly young people.

Senator CROSSIN—It would not have become an issue if the actual classifications scheme was watertight in the first place, would it, if the classification scheme actually bans certain publications or restricts them?

Mr von Brasch—Perhaps, but we have just said that that kind of control is not possible.

Mr Rowlings—What we have suggested is more of the model that the ARIA people were talking about, where the industry itself controls itself and the Classification Board exists but acts as a review board on that process, so it is able to jump in with penalties and so on, and places restrictions on the industry if the industry misbehaves. That is exactly the type of model that we were talking about.

When we talk about education, I would like to read a press release dated Tuesday, 8 March, from Brendan O'Connor, the Minister for Home Affairs, headed 'Lotteries and "work from home" scams hit Aussies':

> The Minister for Justice Brendan O'Connor today launched a new report that reveals the types of online scams that are defrauding Australians of their hard earned cash.
>
> … … …
>
> The Parliamentary Secretary for Treasury David Bradbury said education is the key.
>
> 'The best way to make sure you don't fall for a scam—or avoid falling for one again—is to be informed about what to look out for and maintain a suspicious mind when you are online,' Mr Bradbury said.
>
> 'The surveys show that knowledge of a scam, such as receiving similar offers in the past or being made aware of the scam through the media, were key factors in avoiding falling victim.'

It seems to us the government has recognised that in this online area education is the key when it comes to scams and so on. If it is in that area, then it is obviously the key to the other areas that we are talking about.

CHAIR—Thanks very much to Civil Liberties Australia for your submission and your evidence today.

Mr Rowlings—Thank you.

Mr von Brasch—Thank you.

[10.56 am]

ALTHAUS, Mr Chris, Chief Executive Officer, Australian Mobile Telecommunications Association

BEACHLEY, Ms Adele Maria, Managing Director, Australia and New Zealand, Research in Motion

SHAW, Mr James, Director, Government Relations, Telstra Corporation

WATTS, Mr Timothy Graham, Regulatory Manager, Telstra Corporation

CHAIR—Welcome. AMTA has lodged submission No. 42, Telstra has lodged submission No. 26, and Research in Motion Australia has lodged submission No. 17. Do you wish to make any amendments or alterations to those submissions?

Mr Althaus—No, Chair.

CHAIR—Thanks very much. We would invite you to make some opening statements, after which we will have questions. Thank you. Who would like to kick off?

Mr Althaus—I will kick off. Thank you for the opportunity to address you today. AMTA, as outlined in the submission, is the peak organisation for the mobile sector representing all aspects of that sector. We, as an organisation, in partnership with our industry members, have taken a very proactive approach to content and content management over the years, including, obviously, participation here today. We note the Australian Law Reform Commission inquiry into the National Classification Scheme, which is also underway.

Much of AMTA's focus is on public awareness and education, particularly in relation to content, and extending into areas such as cyber security and cyber safety. We also participate strongly in regulatory approaches. For example, we were the author of the Mobile Premium Services Industry Scheme in relation to mobile premium services, which is now in a code form and managed by the Communications Alliance.

One of the things that is undoubtedly going to be highlighted to you over and over again in this space is the speed of change and the dynamic nature of the sector. That is strongly evident in Australia, as it is around the globe. We are at a penetration rate in mobiles in this market of 115-odd per cent, with over 26 million subscriptions. Smartphones are a development of recent times and are proving to be highly attractive to consumers of all kinds, to business and to government.

Smartphones are, in fact, growing very, very strongly. Some work by Access Economics that AMTA commissioned suggests that in 2012 around 50 per cent of users will be using these devices. Of course, this is all a reflection of convergence and mobile broadband is a central theme in convergence. We are seeing extraordinary, probably unprecedented levels of uptake. Talking globally, we are now in excess of 400 million mobile broadband subscriptions. In the

last year that has grown, estimates suggest, at some rates in the order of 17 million new subscriptions per month.

CHAIR—Globally?

Mr Althaus—Globally. You can see this is an extraordinary level of growth and, of course, we have seen the pervasive nature of new facets of the mobile broadband world and the online world, particularly social networking as a key driver of that growth. Also, hand in hand with smartphone devices, is the world of the application. Apps themselves are one of the keystones of this growth trend because they provide you with utility and service to achieve outcomes that you would like to achieve with your device and with your service.

Interestingly, messaging is still the number one use of mobile broadband, followed very closely by time spent on applications; third place goes to voice, and fourth place goes to web browsing. You can see that applications are rising very, very quickly up that scale. Mobile broadband, in a global sense, is expected to reach a billion subscriptions by 2012 and, perhaps, the more bullish estimates suggest out to five billion by 2016.

Chair, the combination of mobile devices, mobile broadband and cloud computing will define the digital future. There is a fundamental shift taking place as we speak in the area of convergence, and these elements are the key features.

Turning to how this plays in the classification environment, the key themes of the industry and AMTA's submission relate to regulatory forbearance. This is a very dynamic space. Several convergence reviews have urged regulatory forbearance on the behalf of government to ensure that pre-emptive and potentially unnecessary actions are not taken in the regulatory sense, which may up the regulatory burden and constrain the sector. It is certainly a key theme. Platform neutrality is also a central. Consumers have little interest in the difference in regulatory terms between the various screens in which they are moving, so platform neutrality is similarly a very, very important part of the future and must be a feature of any classification approach.

We note the fundamental nature of freedom of choice and access to material. It is a feature now, and it should remain a feature in the future. To this end, most of the myriad of applications which have been raised in this inquiry are not able to be submitted. Most of them are aimed at giving utility to the user of the device. They are often small and inexpensive and of course have quite profound impacts on productivity of the user, whether that is a private individual or a business or a government. Similarly, apps development is a smaller scale industry than we are used to in the previous classification environment of large scale films and published material.

Underlying all of that the notion of self-regulation is a key theme for the industry. It is in place and operates effectively in this rapidly expanding environment. It will be a feature I am sure my colleagues will refer to in their remarks. Let me close at that point.

CHAIR—Thank you.

Ms Beachley—Firstly, thank you for the opportunity to appear before the committee today and, I think, more importantly, for your interest in seeking to investigate what can be done to improve and modernise the National Classification Scheme. Specifically, we have an interest in

the effectiveness of the scheme in dealing with new technologies and new media, particularly for games on mobile phones.

Today I would like to briefly discuss RiM's experience with the classification scheme to date, as well as a proposal to revise the regulation for classifying mobile games. Research in Motion, or RiM, is the company behind the Blackberry PlayBook tablet, the Blackberry smartphone and software for businesses. Our technology also enables connectivity for third party developers, including independent vendors of mobile phone games.

The market for apps has grown at an exponential rate and the number of applications available has doubled over the last year. There are now well over 500,000 apps and games available for Australian consumers to download onto their phones. Consumers have spent an estimated $6.2 billion globally in 2010 on mobile application stores. This is expected to nearly triple, to $17.5 billion, in 2012. We expect this will continue to grow, and so too will the range of products available.

Games remain to be the number one most popular application. Under the current model for classification of computer games, games have to be classified before they can be sold, hired or made available for play in Australia. However, only a handful of mobile phone games have been classified in Australia. The Classification Board's processes are designed to classify content such as films, DVDs, videos and computer or console games, rather than games and applications for mobile devices. RiM has gone through the classification process for the five games that come pre-installed on Blackberry smartphones. These games such as BrickBreaker are very, very simple in their nature. If there is time I am very happy to show you those games.

Many governments have taken different approaches to the classification of mobile games. In Europe and North America, wireless carriers and mobile device manufacturers have worked together to establish voluntary industry guidelines and best practices. This approach has allowed flexibility for new technologies, whilst creating industry mechanisms to help consumers make informed decisions about mobile game content. The growth of innovation in games and applications presents policy makers with a very important consideration. Put simply, if mobile phone games were to be classified, too many resources would be devoted to classifying material that is unlikely to contain offensive content. In turn, this would create a practical constraint on the board's ability to properly classify and monitor material that genuinely concerns the broader community. As a practical example, the popular sudoku numbers puzzle requires an assessment by the Classification Board. Just flying down here there were many people around me on the flight with their newspapers, doing sudoku on the plane. The effort devoted to this task means that the same resources are not deployed in tackling material that is of genuine concern.

RiM believes that a practical solution can be developed to deal with the unintended consequences of these laws, which have not kept up with the pace of technology. The first option for a solution would be to revise the act to a system similar to what is already in place for print and literature. In this case, whole groups of publications are exempt as they are not expected to have offensive content. A key element to this proposal would be to allow independent vendors to self-classify applications. As an alternative option, the committee could consider changes to the act to generally remove classification requirements for games on mobile devices. This option should likely be accompanied by a sensible mechanism for consumers to lodge complaints with the regulator to investigate, and possibly classify, relevant material.

I would be happy to elaborate further on either option, but we strongly believe that a complaints based mechanism for requiring the regulator to investigate material on mobile games must be accompanied by a sensible standard for triggering a review. This is to protect against frivolous complaints or other possibilities for abuse.

The mobile game industry is now a global marketplace and, for small businesses or developers, it can be very costly to go through a classification process for every country in which the game may be distributed. One solution to this would be to allow the self-regulatory approaches already adopted in Europe and North America. I am very happy to provide that detail to the committee, outside of this forum.

RiM believes that approaches I have briefly outlined would present sensible options for modernising the regulations by striking an appropriate balance between upholding the basic purpose for the legislation against the need to have an effective and workable classification scheme for consumers, industry and the regulators. I will close there, thank you, and I look forward to any questions.

CHAIR—Thank you very much. Over to Telstra, Mr Shaw.

Mr Shaw—Thank you, Chairman and thank you, committee. We thank the committee for the opportunity to lodge a submission with the inquiry and to appear today to give further evidence. Telstra has long supported the National Classification Scheme's underlying objectives of protecting people, but particularly children, from material that may be harmful but allowing with reason adults to watch what they choose. In terms of the online environment, Telstra's view is that a holistic approach including education, law enforcement, international cooperation, technology and parental supervision is needed to ensure that Australians exercise reasonable care and responsibility for their online activities.

We take our role as a responsible corporate citizen quite seriously in this area, and we have supported a whole range of activities both directly and through the Telstra Foundation, which all aim to make the internet a safer place for users. We believe that educating Australians, but particularly kids, parents, teachers and carers about safe and secure internet technology and technology use is an integral part of our business, and we are determined that our customers have the tools and the knowledge to protect themselves and their children online. We have a whole raft of cyber safety measures which I will not go through today, but if the committee is interested I can provide those separately in a further document. Suffice it to say that Telstra and the Telstra Foundation spend considerable time and resources in providing a whole suite of cyber safety protections. More recently, Telstra has taken on a position of industry leadership being one of three ISPs that have volunteered to block a list of child abuse URLs and we are in the process of meeting that commitment.

It is through that view of cyber safety that Telstra considers the effectiveness of the National Classification Scheme and the purpose of this inquiry. In our view, while parts of the classification scheme are currently working well, for example the self-assessment arrangements established under the Content Services Code, after more than a decade of incremental changes, the scheme stands as a complex arrangement of parallel and sometimes overlapping systems of classification.

While technology change is rapidly blurring, I think you have heard that from colleagues at the table, the boundaries between different sources of content are blurring and Australia's classification scheme involves parallel arrangements for television, radio, community broadcasting, pay television, narrowcasting services, internet and mobile phone content. Many aspects of the classification scheme are operating effectively in themselves, but the complexity, particularly the regulatory complexity created by the operation of parallel systems of classification operating in an environment of ongoing technological change, has created areas of uncertainty which have the potential to be confusing for consumers and costly for industry participants implementing the scheme. To this end we also welcome, aside from this inquiry, the government's recent announcement that the Australian Law Reform Commission will undertake a holistic review of the National Classification Scheme, in light of technology change. This review offers a timely opportunity to undertake a wholesale evidence-based examination of the effectiveness of current regulatory arrangements in achieving the objectives of the National Classification Scheme.

With that, Chairman, we close our remarks and are happy to take questions.

CHAIR—Thank you very much for that. We have covered a lot of areas there. I appreciate you are all coming from a common understanding but also different perspectives so I would like to ask a few questions. I thank all of you for your submissions to this inquiry. I might kick off with Mr Althaus. You have mentioned in your submission twice, on page 3 and then also in the conclusion section that there is a very large number of mobile applications that are clearly and demonstrably non-submittable material. Can you give us any evidence to support that? Then I want to ask you what do you do with the submittable material and how that is assessed?

Mr Althaus—The apps environment is expanding very, very rapidly and frankly, you can purchase or download an app for zero or a small amount of money to assist you to use your device to do a very, very wide range of things, whether that is looking at the weather, playing a game of sudoku or checking the football scores et cetera.

CHAIR—Is this your own assessment or is there research undertaken? Can you point to a source or this is your own assessment?

Mr Althaus—It is our own assessment but there are numbers of sources that we could suggest the committee looks at that do an assessment of the apps environment in terms of what range of apps are fulfilling what purposes.

CHAIR—That is what I would like to know. For and on behalf of the committee, if you have got any evidence, please take it on notice and come back to us with what proportion is non-submittable, in your view, and what proportion is submittable? When it is submittable, let us just talk now about the guidelines as to how it is appropriately assessed.

Mr Althaus—A lot of the apps are available online through app stores, that is the dominant method of procuring them. The management of those app stores via the various platforms is very strict. It is perhaps an analogy to Facebook and YouTube. They have very well defined, internal mechanisms to self-regulate the material that is passing through their store or their platform.

CHAIR—Are you confident that they do? If so, and I am happy for you to take it on notice, exactly what process do they undertake? What guidelines do they have? What safeguards do they have to assess those applications accordingly?

Mr Althaus—We can take that on notice. Ms Beachley may have some comments about that because she is responsible for one of those areas. Can we also put a little bit of context around the apps environment and the likely impact of a regulatory burden to try and assess and judge applications. This is a very rapidly expanding and huge exercise. Industry takes the self-regulation responsibility very, very seriously because of course there are reputations and brands at stake here. All of the industry signs on to that implicit, and in some cases explicit, commitment to giving appropriate material to the people who want to use it as opposed to open access and completely unfettered—

CHAIR—I will go there in a minute. Let me just go back one step then. Do you support the current principles which underpin our classification system as set out in the classification code?

Mr Althaus—Yes, we do.

CHAIR—I think you said in your submission that across all platforms you think it should be consistent? Should it apply all platforms?

Mr Althaus—There must be a sense of neutrality. The consumer is not concerned what platform they are using and the regulatory environment must take that into account.

CHAIR—I am happy to move to Ms Beachley if that is of better assistance. I would like to know how these games and the applications are categorised, and give us a couple of examples. Again I am happy for you to take this on notice to give us a bit more information as to how they are categorised. Then I would like to know what numbers, per year for example, are categorised in which category and how many are refused classification or refused sale as a result of their inappropriate classification.

Ms Beachley—Our platform and our app world store has a very rigorous vetting process. Essentially we only approve applications that would be rated the equivalent of say G or PG. We feel that that keeps the interest of the broader community in mind. Obviously I can only speak to our own platform. In terms of the data that you have asked, I would be very happy to come back to you with more detailed information.

CHAIR—If it is not P or PG it is refused classification, is it?

Ms Beachley—If it is not P or PG it is not something that we would approve to be placed onto our apps store. We also ask that our developers take on responsibility for ensuring that they are complying with local classification.

CHAIR—I wonder if Telstra would like to make an observation and input in that particular matter?

Mr Shaw—In respect of the apps that we sell through our BigPond store online, we have assessors on staff who assess that content to ensure that I think MA15 is the limit to which we go in terms of providing content to the BigPond store.

CHAIR—We have got P, PG and you go P, PG and MA15. Have you got the three categories?

Mr Shaw—Correct.

CHAIR—I do not want to put you to too much effort, but can you break down as to how many in different categories per year and how many you would refuse? Would that be possible?

Mr Shaw—Yes.

CHAIR—If I could just go to Telstra now. Can you give us a feel for how it works at Telstra in terms of how many assessors you have, their qualifications, how long the assessments take, and the volume of the material that is flowing through that assessment process per year, for example?

Mr Shaw—I think you are going a little it beyond what I can answer today, so I might have to come back on those. I think we have a number of assessors on our staff, more than one or two. In terms of the classification arrangements they are trained I believe to the Classification Board qualification. The volume is something we would like to come back to; suffice it to say though volumes are growing at a very great rate and I think Mr Althaus' opening comments alluded to that. We can give you a snapshot now and perhaps over the last couple of years.

CHAIR—That is fine.

Mr Watts—I might add to Mr Shaw's evidence that the content assessors at Telstra are trained in accordance to processes set out in the Classification Board. There are formal training processes that these people go through in order to gain that qualification to do that process with Telstra.

CHAIR—You will come back with further and better particulars then. Are you happy to take that on notice?

Mr Shaw—Certainly.

CHAIR—Thank you very much. On the issue of age verification, we had evidence at the Joint Select Committee on Cyber-Safety earlier this week from Facebook where he said on evidence that there were 20,000 sites per day being taken down or refused. He was going to check whether that was per day or per week. How do you apply the age verification for your clients?

Mr Shaw—Through the use of the requirement to get a credit card number. My understanding is that you have to be 18 to get a credit card so in order to get onto the BigPond apps store we require credit card details.

CHAIR—What about if the kids are accessing their parents' credit cards? How do you sort of work that through the system?

Mr Shaw—That is regrettable if children are doing that to circumvent the arrangements, but I suppose is no different from the children picking up their parents' DVD that has been left around or picking up a magazine that has been classified that is left around. That is something that relates to the relationship within the home between the parent and the child as to whether a parent would let the child use a credit card online unsupervised; similarly, letting them access other material that might be left around the house unsupervised.

CHAIR—It is probably for all of you but particularly for Ms Beachley and Mr Shaw, in terms of your support for self-regulation, you have mentioned the overseas experience in Europe and the US. There is an argument, if I can be a Devil's advocate, that you are leaving it up to the industry to decide what is best. How can we be sure that you are actually complying with the guidelines and the principles set out in the code when we say, 'go ahead and self-regulate'? Some strong arguments have been put by the Australian Christian Lobby, Family Voice Australia and other witnesses to say that is going to let down the interests of children in particular, that it does not best protect their interests. What are your answers to that? Secondly, how can we best protect the interests of children?

Ms Beachley—I think it is a collaborative approach. Obviously we are coming from a perspective in which we only approve P and PG applications. I think ensuring that you have a complaints-based mechanism that requires the regulator to investigate material, particularly with respect to mobile games which is where we are coming from, needs to be accompanied by a sensible standard for triggering that review.

CHAIR—Mr Shaw do you want to add anything?

Mr Shaw—I think we are pretty much in accord with our colleagues from RiM. We, like them, assess the material for which we are responsible for putting up on our store and making available. Like all aspects of the online mobile environment, there is a need for a collaborative effort between governments, parents, educators, police and the like to ensure that material that is not appropriate is dealt with appropriately and that material that is criminal is dealt with appropriately in that respect as well. We also think that the regulator needs to be properly resourced and equipped in order to deal with a complaints-based arrangement such that these things can be dealt with again through the appropriate mechanisms. We think that is the best arrangement to put in place to protect society as a whole given the way that the online environment works and the global nature of the internet and the mobile internet.

CHAIR—Mr Althaus, I think you would like to add to this?

Mr Althaus—Just to add, Chairman, and in support of my colleagues, convergence is a phenomenon which is new. It is evolving very, very rapidly. Industry is acutely aware of its self-regulatory responsibilities and is moving perhaps at a much more efficient and effective pace than government will ever be able to do to keep pace with change. As well as the partnership approach, while some may be sceptical of industry in a self-regulatory sense, I think there is very, very strong evidence that self-regulation is being very, very effective. For the problematic

small percentage, the comments around partnership and collaboration to try and focus a solution on those problematic one or two per cent is the way forward.

CHAIR—Yes and no. The one or two per cent might be the cause of grievous and significant concern in the community and this is the problem of what may or may not fall through the gaps as a result of self-regulation. The other argument is to say that it is not necessarily foolproof and we want to be sure that the principles that are agreed, nationally, apply across all mediums are then actually applied, so if there are either mistakes or inappropriate classifications, then penalties should apply. We need to be consistent, that is certainly the position that has been put to us. I just make that as an observation.

I will move on to RiM. On page 7 of your submission, you have talked about the games that were classified and installed on a BlackBerry smartphone. Could you fill us in on the cost to RiM for the applications for the classification of those five games so we have got a bit of an idea of the cost involved?

Ms Beachley—The cost is effectively $2,040 per game to achieve the classification. Again, I cannot speak to the time and the cost at the classification board level but the cost to RiM is $2,040.

CHAIR—So you would say that is a fair and reasonable cost?

Ms Beachley—I believe it is very costly, because if you look at the developer community, particularly even in Australia, most developers are owner-managed enterprises, which means there are between maybe one and three employees. To register a game for classification at a cost of $2,040 each time—so it is not just once, it is each time you bring out new versions of the same game—you incur that cost.

CHAIR—In the scheme of things, in terms of the total cost, do you think that is over the top or do you think it is fair and reasonable?

Ms Beachley—I am coming at this from the perspective of innovation. If I am for example a university student and I would like to start my own enterprise on application development, $2,040 may not be something that I can necessarily afford, even though that is my chosen path.

CHAIR—How many BlackBerry units have been sold in Australia? Are you able to tell us that?

Ms Beachley—We effectively do not break down those numbers to the country level.

CHAIR—You are going to come back to us in terms of the games that have been classified?

Ms Beachley—In total, globally, we have 20,000 applications available on BlackBerry smartphones.

CHAIR—Is that at the moment? How many per year would there be?

Ms Beachley—That is at the moment. We launched our application store in Australia in late 2009.

CHAIR—Has anybody got a view as to how many there would be across the industry?

Ms Beachley—It is hundreds of thousands.

CHAIR—You are a big player though, are you not?

Ms Beachley—No. I have a breakdown in terms of the number of applications, and this is based on calculations from publicly available information. We have over 20,000 applications available; Windows have over 10,000; Nokia have over 50,000; the Android platform have over 135,000; and Apple have over 325,000 applications, which is how we have calculated that global marketplace to be in the region of half a million applications currently.

CHAIR—Now probably to the cutting edge of this point: in terms of compliance and those that perhaps have not done the right thing, can you give us some ideas and an overview as to what action has been taken against those that have breached your category classification and what have you done about it?

Ms Beachley—In terms of RiM?

CHAIR—Let us start with RiM and then we will go to Telstra.

Ms Beachley—I can give you a fairly recent example which is outside my jurisdiction but it something that has occurred in the US recently in which there was a complaint around an application, it was not necessarily a game. Some senators in the US wanted the application removed. So RiM has effectively removed that because we did not believe it was in the public interest to keep it on there. In terms of self-regulation and collaboration, that is something that we feel has worked quite effectively.

CHAIR—So you have responded to concerns expressed in the community, which was then taken up by some US senators and you have responded to that?

Ms Beachley—Yes.

CHAIR—You have supported a complaints-based mechanism, I understand, based on your evidence?

Ms Beachley—Effectively yes, but again what we are advocating is that there needs to be the proper mechanisms in place to ensure that self-regulation but also a complaints-based mechanism is not subject to abuse or frivolous behaviour.

CHAIR—Has that example happened in Australia?

Ms Beachley—Not to my knowledge.

CHAIR—You have not taken any device or application off market, as it were, because it is inappropriate?

Ms Beachley—Not to my knowledge, no.

CHAIR—If it does come to your knowledge would you let us know; also if you are aware of that happening outside of your areas of interest, if you have any information in that regard?

Ms Beachley—Absolutely, of course. I am happy to come back to you to continue that discussion.

CHAIR—Yes, you are aware of the argument that a complaints-based mechanism is not necessarily adequate because, frankly, a lot of people in the community would not have a clue where to complain in the first place. They would not realise that the system was based on complaints only and they think that government is regulating this area. That is probably a view that at least some people would have. Do you accept that point?

Ms Beachley—There are some examples around self-regulation which are happening in the EU at the moment and also in the US which I would be very happy to come back and provide those specific examples.

CHAIR—Where do the complaints go? If I have got a complaint, where do I go?

Ms Beachley—In terms of our store?

CHAIR—In terms of the applications with one of your devices?

Ms Beachley—It would come into our company.

CHAIR—So I would complain to RiM if I am a consumer? How would I know where to complain if I have got an application that I think is not appropriately classified?

Ms Beachley—Effectively the customer's contract, in terms of the plan is with the carrier. So usually the carrier is the first point of call for the consumer across any platform.

CHAIR—Thank you for that, maybe we will go to Telstra. Would you like to respond to some of those questions, Mr Shaw?

Mr Shaw—If an application is put to us to be put into our BigPond store and it fails to meet the classification criteria, then it is refused, we do not put it up. I am not aware of us taking any further action with the developer other than to refuse to provide a platform for their material to be made public. That said, just because it does fit within the classification guidelines does not mean that we will necessarily put it up. We look at whether we think there is a commercial case for making that application available before we provide it with space within the store. That is generally our approach to determining what we do or do not sell.

CHAIR—What about complaints? If I am a consumer and I make a complaint, I presume I make it to Telstra or BigPond but then what happens?

Mr Shaw—I would prefer to get some detail on notice to be able to explain to you precisely how we would handle complaints that come through. Suffice it to say, we get complaints from a variety of sources. Some people will go back through the BigPond front of house, others will be just ringing up the Telstra call centres and the like and we get letters. Having multiple points of entry, I would like to be able to come back to you and describe how those work.

CHAIR—No, that is fine. When you do that and come back to us could you give us an idea of the quantum of complaints that may come in and the nature of those complaints?

Mr Shaw—In respect of classification material because we do get complaints about a variety of issues?

CHAIR—In respect of the applications that are approved and then people complain to say, 'This is not appropriate for my kids' or whatever, so give us some quantum.

Mr Shaw—Yes.

Senator CROSSIN—I think you have covered a lot of the areas already, but I wanted to ask of Telstra: Mr Shaw, you are responsible for the BigPond Music download similar to iTunes?

Mr Shaw—It is part of the Telstra business, yes.

Senator CROSSIN—You might have heard us talking this morning to a number of people about their problems with—

Mr Shaw—Regrettably no, Senator, my attentions were somewhere else, given another issue that is running at the moment.

Senator CROSSIN—Sorry, you are probably right. We were just talking to ARIA and AMRA really about the classification of songs and video music clips essentially with the problem being of course that iTunes is housed overseas so essentially you are downloading from America or Canada. That would be a similar problem with your BigPond Music stream because it is housed in Singapore, is that correct?

Mr Shaw—You are testing me, I am afraid. That is a question we would have to take away and come back to you.

Senator CROSSIN—I wanted to explore whether there is any capacity to actually regulate the classification of I suppose the content of those songs or particularly video clips because they are uploaded in Singapore?

Mr Shaw—Can I go back into the business and get further information on that very issue? First of all whether what you understand to be the case is correct and flowing from that, how we deal with issues of classification around content.

Senator CROSSIN—Can you download movies on that as you can with iTunes?

Mr Shaw—We have BigPond Movies available, yes.

Senator CROSSIN—I suppose my question goes the same to movies as well. I am curious to know whether an Australian classification gets picked up if you download through BigPond or whether you rely on no classification seeing it is coming out of Singapore. I am not clear how that works.

Mr Shaw—I stand to be corrected, and that is why I would like to get some further advice, but my suspicions are that we do classify the material that we sell through the BigPond site with our own internal assessors. The result would be that they have assessed that material irrespective of which site it is being downloaded from. I would like to confirm that to ensure I am not misleading the committee. I cannot see how we would apply a different set of arrangements to that material as opposed to the other material that we sell through the BigPond site.

Senator CROSSIN—I do not think I want to clarify anything else, I think everything has been covered by the Chair actually.

CHAIR—Have you considered the big picture approach here in terms of how we should regulate and legislate? At the moment we have got a cooperative approach with the states which came in, in 1996. It is cooperative federalism, but you have got some states staying and having different approaches to other states and different to the Commonwealth. We have introduced this bill based on section 122 of the Australian Constitution in 1996 and that is the bill before us or the act that we have been talking about which has been taken up in the different states and territories but clearly there is a different approach.

Have you considered the constitutional possibilities for the Commonwealth to enact accordingly so we have a consistent approach across the Commonwealth in every state and territory? For example, could we rely on the trade and commerce power, on the territories power, on the communications power, on the customs power or on the external affairs power and as a result pass a law in this parliament that would apply across all mediums and formats that would be consistent? Or, do we have to continue along this path of a cooperative federalist approach where perhaps we come up with a consistent outcome and then enact it, and then have the different states and territories implement it in their jurisdiction in a uniform and mirrored way? Have you considered that and if not why not? Perhaps you could consider it if you have not.

Mr Althaus—From AMTA's point of view, no we have not. Of course there are several processes running at the minute that will lead us into that path. Perhaps the over-riding statement would be that consistency and lack of duplication and cognisance of the regulatory burden are all key elements of what industry is seeking. In this space we are talking about a boundary-less environment, state or national; this is a global phenomenon that we are currently considering. How classification fits into that is going to be quite a complex thing. Certainly consistency and uniformity are very important to industry, and how we apply nationally versus globally is equally so.

CHAIR—That last point is well noted as well, thank you, Mr Althaus. Would the other witnesses like to respond?

Mr Shaw—To my knowledge we have not undertaken any detailed legal examination of that matter. We certainly echo the views that Mr Althaus put forward, being a desire to get consistency not only at the national level but to the greatest extent possible at the international

level. This is important to an industry sector that truly does not recognise borders, whether they be state or national in many respects. We try and do what is right in that environment.

CHAIR—Let me just come in there. There was a question to the previous witnesses on this very issue. Have you discussed this with your international counterparts—indeed Telstra operates globally as well—and considered the merits of the best approach for Australia based on the fact that this is a global phenomenon that we are talking about? Have any of you discussed that in the international forums and meetings that you go to?

Mr Shaw—I wish I could get an overseas trip out of the company but incredibly it is all Canberra and Sydney and Melbourne.

CHAIR—The golden triangle. There are a few other states and territories that might merit to receive your attention too, Mr Shaw.

Mr Shaw—I am not personally aware of any, but I will check with our people that are involved in the media side and do have international contacts. I suspect though that what is driving our considerations mainly at this stage is the fact that so many different jurisdictions are looking at these issues and we are having to handle them at that level. It arguably almost comes down to something that an intergovernmental approach would facilitate that rather than the different jurisdictions driving off in different directions and taking all of the bandwidth, so to speak, that is available to address these issues.

CHAIR—Ms Beachley?

Ms Beachley—I mentioned two areas of the world and examples of what is happening in the EU but also in the States with CTIA, the International Association for the Wireless Telecommunications Industry, where manufacturers are working together. Again that is specific to those jurisdictions and currently we do not have that in Australia.

CHAIR—Thank you for your input in terms of the overseas experience. That is useful the committee in our deliberations.

Mr Althaus—There are global forums within the industry and they are as actively engaged in these sorts of discussions as we are in Australia. Certainly industry does come together to consider the global impact of what regulatory settings may be put in place within country blocks or specific countries.

CHAIR—Thank you for that, Mr Althaus. If there is anything further that you can add after checking with your international counterparts at an industry association level, please let us know. If not, that is fine. Finally, I wanted to get your thoughts on the Classification Liaison Scheme which operates across the nation supported by the Attorney-General's Department and the various state and territory A-G departments, where they are on the ground in terms of classification services. Are you aware of their services and do you have a view as to the merit of that service?

Mr Shaw—I personally am not so I would like to take that on notice and come back with some advice.

CHAIR—Not a problem. Does that come into your purview, Mr Althaus?

Mr Althaus—I am aware of it but no, it does not impact on the association directly.

CHAIR—It is more to do with classifications, but I thought you might have come across it.

Ms Beachley—We have come across it in our interactions with the Classification Board through the process that we have been through with our games.

CHAIR—You are happy or content with the relationship you have had with them?

Ms Beachley—I think the relationship has been very open, it has been very collaborative and I think it has recognised the dilemma that the industry faces.

CHAIR—Do you think they perform an important and useful service?

Ms Beachley—I think to put them through classifying hundreds of thousands of applications would put undue strain on the resources.

CHAIR—So there is an issue with regard to resources there, for sure?

Ms Beachley—Yes.

CHAIR—No problem, thank you very much. We have concluded, unless you wanted to make a concluding comment, we are more than happy.

Mr Shaw—In relation to the question for Senator Crossin, my colleague, Mr Watts, might be able to add a little bit further to the questions around offshore content and the like.

Mr Watts—In respect to actual practice with BigPond Movies, the content provided through BigPond Movies is assessed by our trained content assessors in accordance with the Contents Services Code, which is set up under schedule 7 of the Broadcasting Services Act. In practice that is occurring and based on the classification assessed, we apply restricted access obligations in accordance to the defined classification.

Senator CROSSIN—Would that classification model and the application of that vary to our own regulated classification scheme in this country?

Mr Watts—No, it does not vary at all. It is assessed under the same National Classification Scheme.

Senator CROSSIN—It is similar then or the same?

Mr Shaw—The same.

Mr Watts—It is exactly the same as the classification for publications, films and computer games.

Senator CROSSIN—Is there a capacity to review those decisions?

Mr Shaw—We might take that on notice, I suspect there is but let me just confirm.

Senator CROSSIN—Okay, thank you.

CHAIR—Thank you very much to each of you for being here today and your evidence. It has been most useful.

Mr Althaus—Thank you.

Mr Shaw—Thank you.

Ms Beachley—Thank you.

Mr Watts—Thank you.

[11.48 am]

SWAN, Mr Robert James, Coordinator, Eros Association

CHAIR—Thank you very much for being here, Mr Swan. We have with the committee the Eros Association submission No. 60. Do you wish to make any amendments or alterations to that?

Mr Swan—No, I do not.

CHAIR—We invite you to make an opening statement, after which we will have some questions.

Mr Swan—Chair and members of the committee, thank you for inviting us here today to put our case. Before I start, I just wondered whether I might ask of the committee something. Yesterday in another room here, I formally asked the Standing Committee on Social Policy and Legal Affairs inquiry on the regulation of billboard and outdoor advertising whether the members of the committee would come forward and state their religious affiliations and the degree of religiosity that they may have had in their own lives, as a precursor to the discussions. The chair of that committee came forward yesterday and said that he was very happy to do that and he invited other members of the committee to do the same. I think another two of them did through the course of the meeting. Given that these are moral debates happening around this issue, I thought that was appropriate and I just wonder whether that is something that committee members might like to also do?

CHAIR—Mr Swan, thank you for the question. This committee will not be following that same approach if that is what occurred yesterday. It is up to individual senators or members to indicate their views. This is a forum in which we are trying to obtain some information from you for the purposes of the deliberations to meet the terms of reference set out in the committee. You are entitled to ask that publicly and in other forums but in this forum we will be asking the questions and you will provide the answers to the best of your ability. We appreciate your introductory remarks and we will go from there.

Senator CROSSIN—On what you said, Chair, that it is up to individuals, I am quite happy, Mr Swan, to advise you that I am a Catholic and come from a profoundly strong Catholic background. I have my own views as well so I want to put that in context to you. I am not ashamed and am quite proud to actually confess that I belong to the Catholic faith and I have been brought up as a very strong Catholic all of my life.

Mr Swan—Thank you. I am not suggesting there is anything wrong with religion, but I just think in these debates that if we—

CHAIR—Is this part of your opening remarks, Mr Swan?

Mr Swan—Yes, it is.

CHAIR—Okay.

Mr Swan—If this was a finance committee, looking at banking in Australia and members of the committee owned shares in the banks, that would already be declared. I think that a moral declaration is also reasonable.

CHAIR—Mr Swan, I draw to your attention that the views of the senators and the members in this parliament are set out on the public record. They are in their first speech. My position is very clear on a whole range of issues. There is nothing that I want to hide or indeed any other senator wants to hide. The purpose of these committee hearings is to obtain your views and I think we are starting to get a feel for your views. We would ask you to continue with you know our opening remarks.

Mr Swan—Thank you. My members wanted me to put to you today the position that the Australian classification scheme, as a national scheme, is completely broken and for them it does not work. I think this year we will see zero classifications for all adult publications in Australia and we will now see, as a result of a Customs decision taken two weeks ago, zero classifications for X-rated films in Australia. If you look back around about the mid-1990s, there were 6,000 classifications a year for X-rated films in Australia. As I say, if nothing happens with the change at Customs in which they are now forbidding adult importers to bring in masters from which they can edit and make X-rated films that fit the Australian scheme, then there will be no classifications.

There is only one company that actually brings these films into the country at the moment and classifies legally, and that is Calvista. It is a public company. They will go broke within the next month if this scheme cannot be repaired. Last year they paid over half a million dollars in classification fees to the Classification Board. We will not see that happen.

I say to members of the committee that a scheme that shows no compliance whatsoever for the adult categories of films and magazines is a broken scheme. It has been progressively breaking down over the last 10 years in varying degrees. That is not to say there are no adult magazines and films being sold out there.

There are more being sold now than there ever has been before; it is just that as of this week, none of the new titles will be classified. I think that the government has to work with the adult industry to get their films classified. They can rely on enforcement agencies like the police and the CLS, the Classification Liaison Scheme, which is effectively an enforcement agency in itself now, to try and stop the sale of unclassified films, but they are powerless to do it because the demand is so great. Governments have to work with people who are in the industry who do have a moral perspective and who do not want to sell adult material to children or to people who are offended by it or anything like that. They have to get on and work with them. I put to you that the major issue here is that we do not have a truly national unified scheme. As you can see from our submission, the inconsistencies in the state and federal legislation are just so numerous that it is a ludicrous situation to suggest that we have a national scheme; it is not that at all.

Using the police as enforcement officers has not worked mainly because many police officers either buy X-rated films themselves through the outlets that they are asked to prosecute or they have family and friends who do so, and the police are deeply compromised in that regard. I

would suggest that many magistrates are deeply compromised as well because many of them are known to adult shop owners as customers. When they get to court and they sit before a magistrate who is presiding over them, often there is a wink and a nod there about this. Adult products are popular throughout the community. It is not just the domain of people living in caravan parks with ear piercings and tattoos. People across all spectrums buy this material and enjoy it and equally people across all spectrums do not like it, although they would be in a very strong minority. That is all I would like to say as an opening statement.

CHAIR—Thank you very much, Mr Swan.

Senator CROSSIN—Can you just explain to me, when you say the system is broken, do you mean from the perspective of people who might make these products or people who are purchasing? Just give me a bit of background of who would be suggesting that.

Mr Swan—I am saying in the first instance it is broken because there is no compliance; we are looking at zero compliance from here on in. It is broken from the point of view of producers, the people who produce X-rated or adult content, and that is sometimes R-rated as well. The biggest producer of adult content in Australia was a company called abbywinters.com down in Melbourne who were recently raided by the Victorian police and taken through the courts and fined $6,000. They promptly sold everything up and moved to the Netherlands so they could trade legitimately in what they were doing. From the point of view of producers, nobody can produce adult material from the states because it is illegal to do that. It is illegal to sell it from the states as well. It is legal to sell X-rated material from the Northern Territory but illegal to produce it there. The ACT is the only jurisdiction that allows you to sell and to make this material but the ACT does not have the necessary infrastructure for producers of the material to actually set up and produce. From that point of view, the scheme is broken in that the industry just will not deal with it anymore because it is impossible to deal with.

In terms of people who import adult magazines into the country for example, they are asked to pay $800 to classify a magazine. A lot of the importers simply bring in 10 copies of one magazine. It is an impossibility to think that they would have to load 100 magazines with an $800 charge, which is $8 extra for a magazine. The magazine is only worth $3 so nobody would buy it. That is why they cannot afford to do that, it is simply not economical. That is why I am suggesting the system is broke, Senator, that it does not recognise the vagaries of the market. It does not appreciate the way in which this market has traded for 34 years.

Senator CROSSIN—If in fact you are only bringing 100 copies of a magazine into the country, why would you not pay $11 for it instead of $3? If you wanted it that badly you would pay that amount would you not? Are you suggesting it should only cost them $100 to get it classified or no dollars to get it classified?

Mr Swan—I would suggest that the industry, like it does in many countries of the world, self-regulates. The serial classification scheme or whatever could apply to a whole range of adult magazines that do not necessarily follow the same title.

Senator CROSSIN—What would lead you to convince us that self-regulation would work?

Mr Swan—Because the adult industry is just like any other industry in Australia. It is a professional industry that wants to trade legally and professionally. They would adhere to the guidelines that are issued by the government. They would do that. At the moment to spend $800 to classify a magazine, and let us face it, the Classification Board simply go, flick, flick, flick, flick, oh category 1 restricted, is not even value for money. They claim it is a fee for service, but we would say it is not a fee for service; that does not cost $800. It costs $800 to classify a business card if you have got a nude figure on it.

Senator CROSSIN—I am just curious to understand perhaps how a self-regulated industry in this area would work. Would not people surely be trying to support each other or do you think they are disciplined enough to impose codes of conduct and codes of principles?

Mr Swan—Absolutely they are. It would function no differently to I suppose the Advertising Standards Bureau as they work for billboards, or as the Press Council works for newspapers or as Free TV works for television. Every now and again an anomaly crops up, there is a problem but they deal with it and we would be no different. Japan does this.

Senator CROSSIN—Is there any space in the market to say that there are things that should just not be filmed, that there are certain things that should not be available publicly? Or, is there a view that whatever you want to film should be out there and it is up to people to pick and choose what they want to see based on a classification system? Are there just some places you should not go?

Mr Swan—We would simply follow the classification guidelines. If we are filming X-rated films, we would film the film to fit the guidelines, which means that it is non-violent erotica with no offensive fetishes and that is what would be done.

Senator CROSSIN—X-rated?

Mr Swan—Yes. Nobody would even think of breaking the law. You have got a company like adultshop.com which is a listed company on the stock exchange, for the moment anyway, with a division, Calvista, which is under huge fire, as I mentioned before. They are trying to survive this round with Customs. If they make a film, why would they make it illegally or do something silly because they would simply risk being struck off the stock exchange for that behaviour? They would not do it. Private companies as well would not do that. There has never been, as far as I can see, a prosecution for a minor being in an adult shop in Australia. I cannot find one anywhere, which means that the people that run adult shops are good at keeping the law.

CHAIR—I have two questions before I go to Senator McGauran, about your recommendation to abolish the call-in scheme. We are certainly aware that the call-in notices are not being effective but what are your reasons for abolishing it and what would you do to replace it?

Mr Swan—The first thing would be that the call-in system does not work because at the moment it is only ever issued against magazines; it is not issued against films, even though there would be a widespread application of that call-in process through ordinary video libraries in Australia with R- and MA-rated films that are not classified. It is never used that way and I have never been able to understand why they do not call films in but they never do. I do not know. I will not make a judgment on that.

The problem with magazines is that when an importer of an adult magazine brings a magazine into the country that is to be sold category 1 restricted—so it can go in a plastic bag to service stations, newsagents, whatever—they pre-print modify it, so they stick black dots on the rude bits. They have people who do this to a master copy, then they get that copy classified and pay the fee, and then they have a team of people in the factory putting black dots on all the other ones. It is not a sweat shop. It is a bit old fashioned but that is the way it has to be done because these magazines are manufactured overseas. What happens when that magazine gets out in the marketplace is that a competitor or parallel importer to that person, who has paid the classification fee and is following the law and has modified the magazine accordingly, will bring another dozen or 20 copies in that are not print modified and put them out in the marketplace. What does the community liaison service or the police or someone finds that magazine do? They call-in the magazine that has done the right thing because that is the only documentation they have got of anyone. They rescind the rights of the person who has done the right thing. That is why this system is a total failure.

CHAIR—The second thing is that you have been very critical of the classification liaison service. This is a cooperative approach between the federal and state governments when it was introduced in 1996. Why are you so critical of that service? We are aware, we have heard this morning, of the stresses on their capacity to fulfil their responsibilities but why are you critical of that service?

Mr Swan—It is a good question. When you go back to the origins of the CLS, it was originally called the community liaison service. I think when Minister Ruddock ditched the OFLC and took those responsibilities inside the Attorney-General's office, at that stage things changed and that group became known as the classification liaison service. Our members noticed a really big change in their attitudes and what they did. Previously their charter, which was once written into the annual report of the OFLC, was that they were there to advise retailers of their obligations under the act. When they became the classification liaison service, they stopped doing that. In fact they started going into adult shops anonymously, not letting anyone know who they were, getting their little palm pilots out, making notes on what was illegal and then going back to their office and then writing a letter on Attorney-General's letterhead to the state police force advising them of breaches that were taking place there. That has resulted in a three- or four-fold number of prosecutions against adult shops for selling X-rated films. One retailer on Oxford Street in Sydney went to jail, which was the first time ever that an adult retailer has been sent to jail for selling X-rated material. The CLS said that they had nothing to do with that. I am not so sure that is the case but that is the end result of that process now. I do not think that is their brief, it never was.

Senator McGAURAN—On that last point about that particular case you are talking about, the retailer that went to jail, how long did they go for?

Mr Swan—They got three months.

Senator McGAURAN—Can you supply some details or point our secretary to the details of that particular case? It is just important backdrop information. Was that in New South Wales?

Mr Swan—Yes, he was prosecuted for selling a mixture of I think six refused classification tapes which were mainly gay-bondage tapes, where people have their bottom smacked and that

sort of thing. The bulk of it, I think 41 films, were classified as X-rated which means they fit the federal classification guidelines. He was sent to jail on the basis of the number of films that were classified as X-rated, which is unclassified in New South Wales. There may have been a couple of other issues with that case, I am not sure. I believe that there might have been an issue about the ownership of that store as well although I cannot confirm that from the transcripts of the court case. The transcripts of the court case simply show confusion between the public prosecutor and the judge about what classification RC mean and actually what X is. He went to jail for three months for essentially selling films that had been classified by the federal censorship office as okay for Australians.

I think this raises an interesting case: is the morality of people living in New South Wales different from Commonwealth Australians. I do not understand how you can make a difference about that, about morality. I can understand differing rail gauges between the states and the Commonwealth rail line, for example, it is an economic thing, but saying that people living in New South Wales have a different morality to Australians is simply nonsense, nobody would agree with that.

Senator McGAURAN—The nutshell of that case was he was selling X-rated in New South Wales which is illegal?

Mr Swan—Correct.

Senator McGAURAN—Which brings me to a follow up question from my colleague. We have been trying to find from the other witnesses the culture within the presentation. The first witnesses from the Australian Christian Lobby said, 'Look if we have to do more regulation, if we have to do more red tape as a mitigating fact then yes, we will do that'. I think my colleague was trying to get the similar culture from you. Is there a line in the sand that your industry would draw on pornography and all that entails, whether it is consensual or violent or whatever? I am looking for the boundary.

Your answer as I understood to her was, 'We will always work within the classification system,' but already we see one case where someone did not and you are screaming blue murder for it. Well, he did not and New South Wales does not have an opening for X-rated and he got caught. In a sense you have already contradicted yourself. Let us go back to the question: what within the culture of your industry is the line drawn on acts of pornography, or are there any?

Mr Swan—Of course. That line is drawn at the federal classifications. I will be quite frank with you, Senator, we advise our members to break the law in the states. It is a terrible law. How can you have a law that says it is illegal to sell a film in the states that has been classified by the federal authorities? It is a complete nonsense and if that is breaking the law then I am guilty.

Senator McGAURAN—You advise them to break the law yet you have just said all in the one breath now—

Mr Swan—It is an act of civil disobedience. We are suggesting that they carry out an act of civil disobedience—

Senator McGAURAN—Yet you tell us the line in the sand is the law?

Mr Swan—It is the federal law. Our line in the sand in the federal law, and we run by that.

Senator McGAURAN—You are telling us you have advised to keep the federal law but not the state law?

Mr Swan—Exactly. Our industry association—

Senator McGAURAN—You realise this is complicating yourself but that is all right.

Mr Swan—That is fine. Here in the ACT it is okay for me to do that.

Senator McGAURAN—I am trying to go beyond just the restrictions of the classification system. If we were to pull out the whole classification system and say to you, where in your culture or morality would your industry generally speaking—and you have been a spokesman for how many years now, 20?

Mr Swan—Yes.

Senator McGAURAN—So you pretty much know the industry inside out. Forget the classification system, where is the morality and culture where the camera would be turned off?

Mr Swan—I do not understand what you are getting at because we would—

Senator McGAURAN—How liberal are you?

Mr Swan—We are liberal to the point of the federal law, of the guidelines of the federal Classification (Publications, Film and Computer Games) Act 1995 for category 1 and category 2 images and for X-rated and R-rated films. That is our boundary; we would not go beyond that. We would never suggest our members sell or make anything beyond that.

Senator McGAURAN—Are you missing my point or you just do not want to answer it?

Mr Swan—If you get the guidelines, the classification act guidelines—

Senator McGAURAN—Let me put this to you: I do not want to get into the ridiculous or the too-hypothetical but if the law really loosened up on the censorship and changed from 18-year-olds, which is now the restriction, to 13-year-olds, what would you do? Would the industry adapt to that?

Mr Swan—No, we would stick to that benchmark of 18 because it is a benchmark that is used in many countries around the world and we consider that 18 is a proper age for people to be acting in adult films. It is two years above the age of consent, which is 16 in most states in Australia, which means that there is a buffer zone of two years for people once they can actually start having legal sex in the real world to them making a decision that they can act in a commercial way with it. We think that is entirely appropriate. We would never go below 18.

Senator McGAURAN—That is great. That is my whole point; you do have a line in the sand, a

moral line in the sand if you like? If the law was pulled out you would still draw your own line?

Mr Swan—Yes, we would absolutely. Taking that a bit further, I can say that in our code of ethics we do not approve of women having cosmetic surgery like breast augmentation to act in X-rated films. We think that is a travesty. I do not think it should be set in stone but we think it is not right.

Senator McGAURAN—Now that we have found beyond the law that you have your own code, you have your own morality and culture—I actually prefer culture than morality but it is not for me to say too much—so now the sex industry are all agreed?

Mr Swan—Adult retail, yes.

Senator McGAURAN—There is always a nice word for everything.

Mr Swan—The sex industry takes in prostitution as well and we do not represent members of the brothel industry.

Senator McGAURAN—We all agree that there is a line in the sand at some point. We will all debate where that line is but none of us can disagree that there is a line in the sand, that this community, this society, is in a consensus that censorship must exist?

Mr Swan—Yes.

Senator McGAURAN—Because there are a lot of people who argue the opposite. I think now we are getting to a point that they are becoming a real minority. We will all debate the line in the sand—the deep conservatives and the more liberal—but there is a line in the sand, and I am really glad about that. You may think that is a minor point but it is actually a significant milestone to get your industry to even agree that somewhere there is a line in the sand. We heard evidence today that the chairman of the censorship board allowed a movie to be released even though he conceded it had paedophilia in it, which kind of leads you to the point that there is no line in the sand down there at the classification board if he says that, yet found reason to release it.

Mr Swan—That would not have been an X-rated film?

Senator McGAURAN—It was R-rated.

Mr Swan—Was it *Taxi Driver* or something where Jodie Foster was 13 I think when she made that film? Do you mean something like that?

Senator McGAURAN—I think this one was the movie *Salo*.

Mr Swan—It is a good point. I have a letter here from a person who witnessed an episode of *South Park* on AUSTAR earlier this year in which there were three sexual scenes between the cartoon characters. It was only two months ago that the Supreme Court judge in Sydney ruled that cartoons with *Simpsons* characters online that a guy had on his computer represented child

pornography. This guy has written to ACMA, to the Australian Federal Police, to the Ombudsman for the Australian Federal Police and to the Attorney-General saying, 'How come AUSTAR is not being prosecuted for running these three scenes of cartoon characters having sex, underaged kids?' They were eight and six I think, and nothing happened.

So there are anomalies in the system, there is no doubt about that. I guess maybe no one wants to prosecute AUSTAR for that sort of stuff whereas there is another law for individuals on the street. It is a good point you make, that there are differences.

Senator McGAURAN—There are differences, as long as we all can agree that we must have some form of censorship. I was not here for the civil liberties but I can imagine what they were saying. Were they saying no censorship?

CHAIR—No, they were not, they wanted to have a balance but you will have to look at the *Hansard*.

Senator McGAURAN—I will and this is probably a very similar point but for me this is a huge breakthrough to get Eros to agree that they would independently draw a line in the sand, even though probably I would not agree where that line is drawn.

Mr Swan—You might be surprised, Senator.

Senator McGAURAN—I might be. I am surprised already. I asked this question of the first witnesses, I said that in my day, pornography—

Mr Swan—You mean when you used to watch pornography?

Senator McGAURAN—I never bought a *Playboy* but I suppose I saw it.

Senator CROSSIN—I think you should just stick to the questions.

Senator McGAURAN—The question is this: in my day pornography was an adult centrefold with the staple right in the middle, putting it simply, but with the onslaught of technology, greater access and greater knowledge, there is a great more dare in pornography and access alone. What was once, to use a term, an adult industry, adults acting and adults viewing, it seems to have tilted, if not dramatically shifted, towards pornography being more and more focused on the youth and even the child? It has become either borderline paedophilia or paedophilia. The whole industry has shifted that way. Evidence is the bust just last week where the biggest paedophile ring was broken. That is happening time and time again. There is the sexualisation of children, even on the catwalk if you like. Customs spends so much time now finding pornography related to paedophilia more than they ever did. To me there seems to be this whole tilt in the industry towards that end of the market.

Mr Swan—Not from my industry.

Senator McGAURAN—Not from your industry?

Mr Swan—No. My industry in Australia is very much the other way. Could I suggest that what you have said about the number of people who have been charged with paedophile offences online or viewing child pornography and trading in it is a very interesting point. My take on that is that in fact the internet is a trap in itself that was never around when these people were buying magazines with child pornography in it or that sort of thing, trading magazines. In fact the internet has been responsible for apprehending a lot of these people; it actually is not the great disseminator of child pornography that people think. From my investigations on this and from what I can read in police reports, most child pornography does not go on the worldwide web, it actually goes in other forums and other ways online but not on the worldwide web. I think that the reason that the police have been able to make so many arrests lately is that people are online with their credit cards and they leave their online footprint wherever they go. That is why they are being caught.

I would suggest that that is actually an interesting thing that members of the committee might consider, that in fact the internet is not producing any more people who consume this material but simply outing the numbers of people who have actually been into it for a long time. Actually in the past it has been a very popular thing but was never spoken or known about because it was passed on through magazines and even eight millimetre films and stuff like that.

CHAIR—Thanks very much, Mr Swan, for your evidence today.

Mr Swan—Thank you.

CHAIR—The committee will break for lunch.

Proceedings suspended from 12.22 pm to 1.36 pm

HANDSLEY, Professor Elizabeth, President, Australian Council on Children and the Media

BIGGINS, Ms Barbara Edith, Chief Executive Officer, Australian Council on Children and the Media

Evidence was taken via teleconference—

CHAIR—Welcome. The Australian Council on Children and the Media has lodged submission No. 44. Thank you for that. Professor, have we received your submission?

Prof. Handsley—I am one of the authors of the submission of the ACCM submission.

CHAIR—Very good. That is what we wanted to clarify. Do you have any amendments or alterations to the submission?

Prof. Handsley—There is one further matter that we would like to raise today.

CHAIR—Before you do that, I would like to just indicate to you that we are here in Parliament House. We invite you to make an opening statement of any further points of clarification and then we will have some questions from members of the committee. Please proceed

Prof. Handsley—Thank you for the opportunity to make a submission to this inquiry. We appreciate very much the Senate's interest in these issues. We appear today on behalf of the Australian Council on Children and the Media, a peak national body representing the interests of parents and children and children's professionals in relation to the media. Our membership includes Australia's major child focussed organisations and a number of individuals, all with a keen interest and considerable expertise on the impact of media on children's development.

In representing the organisation today, my colleague, Barbara Biggins and I bring considerable experience and knowledge to the table about the effectiveness of law and regulation of the media in protecting children and in the construction and application of Australia's classification system. Our brief overview statement is as follows.

Classification fulfils a very useful role in providing information for consumers for some media. This information can often not be gained in any other way. Systems that are well promoted and understood can inform the choices of parents and carers thereby helping them to find enjoyable media experiences and protect children from harm. Classification does not become irrelevant with the advent of new media. It may be more challenging but this does not mean we abandon it where it can be applied.

We also want to state strongly that contrary to statements that have recently been made by various players in this debate we do not believe that the classification system is 'broken'.

Our National Classification Scheme can hold its head high in having an almost uniform set of classification categories that are easy for people to come to grips with and having many checks and balances and overall consistencies, unlike America with its different categories for different media and its self-regulatory non-enforceable system.

Australia has been a leader and is far from the laughing stock of other countries as is claimed in other fora. Our system does not deserve to be undermined by careless comments. This leads to public disregard and disdain and underuse by the public.

This is not to say that it cannot be improved. Our self-regulatory classification areas of free to air TV certainly could be improved.

In reviewing our national classification system we need to consideration the following qualities of a really useful and trusted system. Such a system would: (a) be constructed and applied independently of industry and commercial interests; (b) be based on evidence from current research about the likely harm from some media depictions; (c) provide detailed and readily accessible information about content and the likely impact on children of different ages; and (d) take account of community concerns about the exposure of the community as a whole to material that is injurious to the public good.

The national classification system is currently based partly on moral or aesthetic judgments as to what is offensive, and partly on the concept of harm. ACCM believes that the National Classification Scheme would be vastly improved if the offensiveness aspect was downplayed and the harm aspects emphasised. To achieve this, it would be necessary to review it thoroughly, to establish it on a solid evidence base in the psychological literature to provide more detail about content, and to provide more information to parents about likely impacts at different ages and stages of childhood as opposed to the present, somewhat arbitrary age of 15 years used in the guidelines.

Our organisation is presently meeting this need with its Know Before You Go movie review website. With the support of the South Australian Attorney-General, this service provides parents and carers with detailed and useful information but it is not nearly well enough known. Our expectation is that the shift of emphasis to documented risks of harm would involve less focus on language and nudity and more emphasis on violence and degrading depictions, especially of women and girls.

Classification could also have a role to play in addressing the commercialisation of childhood. For example, product placement could be made a classifiable element so that parents could know in advance which products are being pushed to their children through films and other program material.

In our submission we have signalled other areas that need to be reviewed including the application of consumer advice lines and our concerns that classification standards have been lowered since the introduction of this current joint set for films and computer games. By this we mean not that the classifiers have not been doing their job properly but that the guidelines, which they have been called upon to apply, have been too subjective, lacking the more specific criteria that were in use until 2002 to 2003. In our view this has resulted in more violence at lower levels

of classification, easily accessible to children and in the current community concerns about the very violent games now in the MA15+ category for games.

The other area we would like to draw attention to is the present system's inability to deal with community concerns about depictions that sexualise children and childhood. The classification system has no criteria that deal with, for example, highly eroticised depictions of scantily clad females in music videos. Such depictions are not nudity and they are not sexual references, they are not sexual activity, so they fall through the cracks in the current system. This is an area needing attention.

Another specific issue we would like the committee to consider closely is the idea that additional material on a DVD can justify a lower classification for the main item on the DVD. We suggest that additional material that explains the director's intentions, for example, has no effect on the impact of the film itself and therefore should have no effect on the classification. That concludes our opening statement.

CHAIR—Thank you for that. Ms Biggins did you want to say anything else?

Ms Biggins—No, I did not at this point.

CHAIR—Thank you very much. We will now move to questions.

Senator CROSSIN—Thanks, Professor. In your submission you have said to us that you do not believe the classification system is broken but your submission is certainly critical of the way in which the scheme is enforced. Perhaps you might want to provide us with some ideas about where you believe the enforcement is not working, what should be done in the future or what sort of recommendations we could look at?

Prof. Handsley—I will speak first but I think that Ms Biggins would probably like to follow up. Our comment that the classification system is not broken refers to the comments that are often made in public fora that suggest that the system is just a complete mess and does not work at all. We just wanted to make the point that it does work, really quite well, that the structure is very sound. There might be details at how it operates in particular cases or in particular fields that would bear improvement but we just disagree very strongly with this use of the word 'broken' in terms of applying it to the whole system. I think Ms Biggins is probably a better person to respond to the question that you particularly posed about enforcement.

Ms Biggins—Before I move to that I want to support Elizabeth Handsley with the statement that the structure is very sound. We have said that Australia should be very proud of that structure. If one looks at the United States, that really is a mess in terms of structure. It has no structure compared to what Australia has. We must observe that overall we have almost uniformity of categories, so that parents can easily understand it. In the United States there are different categories for video games, different categories for TV programs, different categories for films, different categories for music lyrics and it is no wonder that people find it very hard to come to grips with understanding the system. We believe that Australia's structure is very sound.

What we are saying can be improved are the categories that are used—G, PG, M, MA15+ and R18+—and the associated criteria. It is those criteria that are used to put certain sorts of content

into those categories that do need to be evidence-based. As we have indicated, there is a lot of very violent material now going into lower classifications which, if we use an evidence base, would not be there at all.

Moving to the enforcement issue, that has been done at a state level certainly in terms of things like publications. We have discussed in our submission about enforcement at the level of publications: where they are displayed; whether in fact they are displayed in conformity with the requirements for how they could be displayed; and whether in fact publications are actually being displayed with appropriate classifications. There seems to be quite some evidence that there are issues there. Because there is very little monitoring or a great variability in the monitoring of publications from state to state, that is an area of enforcement that really does need to be looked at.

The other area of enforcement that would concern us is whether enforcement in fact can occur. When you are looking at the legally classified categories of MA15+ and R18+, there is certainly very good evidence that it is almost impossible to enforce the age restrictions on portable items such as DVDs and computer games. It is almost impossible to protect children despite what the law says because once those portable items are out of the retail outlet then there are very few controls.

Senator CROSSIN—With respect to this whole issue of artistic merit, I suppose, when it comes to the portrayal of children in the media, you suggest that responsible social commentary is a more objective alternative. How do you get that description and concept changed to reflect the thoughts in your submission?

Prof. Handsley—If you are asking as to how it would be drafted, I am not sure that we are in a position to give you the exact wording at this stage. We are speaking more at the level of principle where we do already have some recognition of artistic merit in the criteria. We believe it should be possible, and it would be desirable, to have those positions redrafted in order to make it clear that, if there is clear evidence of potential for harmful impact on people's thoughts, attitudes and behaviour in the community, then that would override any issue of artistic merit. We do not want to do away with artistic merit as a criterion, but it should not be weighted nearly as strongly as the clear evidence of a potential for harm.

Senator CROSSIN—Finally I might pre-empt what my other colleagues are going to suggest, but with respect to billboard advertising, you say the current self-regulatory scheme is not effective. Do you think in some way the advertising bureaus should have stricter codes of practice or regulations when it comes to this?

Prof. Handsley—We have a general concern with self-regulation, particularly of advertising media, for the following reasons. An advertising campaign would normally last a number of weeks, and certainly a billboard would normally last a number of weeks—let us say four to six weeks. That is probably about the length of time it would take for someone to complain about it and for the advertising standards board to go through the process of coming to a finding of breach. It is not at all unusual to find that there is that finding of breach that comes out pretty much when the advertising campaign has run its course anyway. Because self-regulatory systems do not contain any kind of sanction for a breach, simply a request that the material be removed, there is no motivation or incentive on the part of the advertisers to control their behaviour in

advance, if you like. It is always worth running the risk that you will be held in breach because, by the time that finding comes out, you will have made your impact with the billboard anyway. That applies not just to billboards but to all sorts of advertising media. We really have quite a strong view that that kind of system could be made a lot more effective by having government regulations with some kind of sanction or some kind of proper incentive at the outset to comply, rather than just to run the risk of having a statement that you have not complied at the end when there is really no skin off your nose and you have had the chance to get your advertising message across.

Our other concern about billboards is that they are the most difficult form of media for parents and children to avoid being exposed to. There is really very little you can do other than just stay inside your house and stay off the main roads if you do not want to be exposed to billboards. Every other medium that you can think of, just about, you can do at least something to limit your exposure to them. Therefore, we would say that billboards and other forms of outdoor advertising should be one of the most regulated forms of media, not one of the least regulated which it is at the moment.

Senator McGAURAN—Still on billboards, do you have a series of examples that you would consider offensive?

Prof. Handsley—We tend not to think of things as offensive. We tend more to look at them as harmful or potentially harmful. We would look at the research and psychological evidence about what could be harmful. There is plenty of evidence at the moment that sexualised material can be harmful to children and to other people as well, but we are mainly concerned about children.

In terms of changing their attitudes and their expectations about their own appearance, it can cause people to become too focused on their own appearance. Also some of the material that we have seen on billboards in recent years has simply introduced young children to fairly detailed aspects of adult sexuality that they just really do not need to be exposed to, and that we really should not be requiring parents to explain to their children, yet it is very hard to avoid children seeing that sort of material when it is up there on a billboard on a main road.

Senator McGAURAN—You are right to correct me on the word 'offensive', because that is different for everyone, but 'harmful' is a good term to use now. As to examples, it would be very handy for the committee if you just gave us three examples? Maybe you could take that on notice?

Prof. Handsley—Yes, I think we would like to take that on notice. Especially here on the phone, it is not very easy to get across an idea. We can certainly provide you with some examples, and graphic examples of the kinds of material that we would be really concerned about. We could probably make a case that it would be rated M or even MA15+ if it were a film, and yet because it is an ad on a billboard, it gets away with all sorts of things. We would be happy to provide that sort of example.

Senator McGAURAN—Thank you. I hope this is not a Dorothy Dixer, but today we heard evidence from the first witnesses, the Christian lobby, that the chair of the Classification Board conceded in the estimates committees that the movie *Salo* had contents of paedophilia in it, but

even on that concession the movie was passed and released. Ms Biggins, you are a former member of the review board, are you not?

Ms Biggins—That is correct.

Senator McGAURAN—You would have kept yourself updated on the classification rules and laws, but certainly the principles have not particularly changed. From your experience, is it possible to have it both ways—to have a movie that concedes paedophilia yet be released? Was that okay in your day?

Ms Biggins—No, it was not. The principal reasons when I was Chair of the Classification Review Board for *Salo* being given an RC rating—and I am speaking here as an individual, of course, not as the ACCM—really revolved around cruelty and torture and degrading portrayals, because there was some ambiguity around the ages of the persons involved. The review board at the time thought that there was a very clear case for extreme examples of gratuitous cruelty and torture, that those quite definite criteria were contravened by the film, and that the artistic merit as some claimed for the film was certainly not sufficient to override that clear prohibition in the criteria.

I guess my observation over the years—and I think this is really an important issue for the Senate committee—regards the change in the wording that has occurred since the wording that was in force when the Classification Review Board last looked at *Salo*, which I think was 1998. The wording then was much clearer than it has been since the amalgamation of the film and computer games guidelines in 2003, making those guidelines much more subjective and relying a great deal on impact and context. I could probably read the wording that applied at the time. For example, the R18+ category in the 1999 guidelines stated:

> Gratuitous, exploitative or offensive depictions of cruelty or real violence will not be permitted. Sexual violence may only be implied and should not be detailed. Strong depictions of realistic violence, but depictions with a high degree of impact should not be gratuitous or exploitative.

With that degree of detail, that was why the Classification Review Board at that time thought the film warranted an RC rating.

I suppose if I could just move slightly sideways while we are on this issue to something that we did draw attention to near the end of our opening statement. One of the issues that concerns us greatly about the more recent decision about *Salo* is one that has very wide implications way beyond *Salo*. That issue is the view of both the Classification Board and the Classification Review Board that the version of *Salo* which was put on a DVD with a whole lot of other material was deemed to be a modified film because of the presence of the additional material on the DVD. We find that principle quite worrying because that then says that if you put a very strong film on a DVD and you perhaps put a 'making of' or a short documentary on why the director did what he did, then somehow or other that downgrades the classification of the main feature. This is a most worrying precedent and one that should be very carefully examined.

Senator McGAURAN—Just to get it clear, between 1998 when you first judged *Salo* and when the rules were changed, if you like, in 2003, there has been a softening and a greater emphasis on the context element of it, all things in context—is that right?

Ms Biggins—With the introduction of the 2003 guidelines, it was changed to examining impact and context as being the most important elements. When you were examining those, you were required to look at frequency and close-ups and detail and all of those things, but a much more subjective approach. Whereas in the guidelines that were in force from 1996 to 1999, it actually spelt out the types of material that should not be NR18+ and which should be NRC.

Senator McGAURAN—If we got the 1999 guidelines and cross-referenced them with the 2003 guidelines, we would actually see the written difference? It is not subtle, it is actually written in there—impact and context in 2003?

Ms Biggins—Yes.

Senator McGAURAN—But it is not written in 1999?

Ms Biggins—Yes.

Senator McGAURAN—That would be something beneficial to see how words have tilted the whole interpretation of the classifications system. We will actually find in 2003 where they write emphasis on impact and emphasis on context?

Ms Biggins—That is right. That change has had a ripple effect throughout all of the classifications. It is resulting in material which perhaps would have belonged in MA15+ that has gone to M, or it would have been in R18+ and has gone to MA+, simply because the context has been interpreted as, well, it is a fantasy context or it is a horror genre or it is an action and adventure movie, and therefore put in that context, this very violent material is deemed to not have the same impact. The wording of the guidelines allows that interpretation.

Senator McGAURAN—If we wanted to keep it simple and said, 'Let us just go back to the original 1998 guidelines', do you think that would have a profound effect on the existing board's interpretation?

Ms Biggins—It certainly would have a profound effect on my interpretation of the guidelines were I in their position.

Senator McGAURAN—That is an excellent answer. You have been before estimates before, I am sure; that is a real estimates answer. You are right, and that leads me to the next point. If that would have an impact on you reading it, and I have always admired your work over the years, it does bring us back to the point that it is who you appoint as much as what you write, is it not, on these boards, or is it?

Ms Biggins—I do not actually agree with that statement. Who you appoint is important, in that certainly there should be people on those boards who have a good understanding of child development and can understand impact on children in particular. Certainly it needs a cross-section of the Australian community there, but the words are all important. If you are in a classifier's position, you are not at liberty to bring your own personal interpretation of what should be an M or MA+ or R18+; you are obliged to apply the guidelines as approved by the state and territory and federal ministers. It is those state and territory and federal ministers who bear the responsibility for the form of the criteria that are being applied. The classifiers are the

servants of the ministers, and they do their job according to the criteria. The wording is all important.

Senator McGAURAN—That is a good and interesting answer. On the same issue, and I hate to keep saying 'in your day' or anything like that, but I recall with the developments in 1998—and you can correct me if I am wrong—was it not written into the guidelines, when making the decisions, a need to reflect and seek counsel, if you like, from the community? You almost needed a community advisory board as a touchstone. Am I correct that that was a requirement?

Ms Biggins—Not that I recall. We were really obliged to think through the sort of networks and the associations that we had and bring our experience and our knowledge of what people thought about certain issues in the community. We would have that as a background, but there were no requirements for community consultation. Mind you, that might not be a bad idea. I have been quite a fan of the New Zealand wording which requires 'consideration of material that might be injurious to the public good.' I know that that allowed the New Zealand classification board to then go and consult with psychologists and child abuse specialists or sexual violence specialists about whether certain material would be injurious to the public good. It brought a broader view and a very informed view to that concept of harm and injury to the public good.

Senator McGAURAN—That is very interesting. The New Zealand model might be something that this committee can look at and reflect on. That might be a new clause we can insert into the classifications system. Thank you.

CHAIR—I would like to follow up on that New Zealand model. One question I have been asking witnesses is: do you support the principles which underpin the classification code and which underpin the classifications system currently? Do you have a view as to the merit of the current principles? Secondly, would you support, for example, introducing what they have in New Zealand whereby consideration should be given to material that may be injurious to the public good?

Ms Biggins—Perhaps I will provide what I think might be a bit of clarification about the New Zealand system. To the best of my knowledge, they in fact really only classify their own material when it gets up into the very high categories. Otherwise, they generally copy and adopt Australian classifications that are applied in the lower areas, such as G, PG and M. They generally do that unless there is some public complaint. Indeed, there was a few years back when—I cannot bring the name of the film to mind—Australia classified a film G and I think it caused quite a torrent of complaints in New Zealand. The New Zealand classifiers then looked at it and applied a PG.

CHAIR—Okay, thank you. Do you still have a view on that additional point in the principles?

Prof. Handsley—Are you referring here to the principles of (a) adults should be able to read, hear and see what they want and (b) minors should be protected from material likely to harm or disturb them, and so on?

CHAIR—Yes.

Prof. Handsley—I think our starting point would be not so much that there is anything wrong with those principles, and we could probably state right now our agreement with each of those principles at some level. What might be helpful is better clarity on the fact that these principles are to be balanced against each other in the context of particular decisions. We have noticed that in public debate it has been quite common for people to read paragraph (a) and stop there, and therefore complain about a decision that stops them from reading, hearing or seeing what they want. So, that might be one improvement.

Once again, to come back to our general theme of clear evidence of harm or potential harm to children, we would like to see greater clarity on the notion that changes to people's thoughts, feelings, attitudes and behaviour are a harm. We are not sure that that is very well understood or well accepted. We believe quite strongly that those sorts of changes are of potential harm. For example, if a person is desensitised to violence, that is a form of harm to that person, and it is certainly a form of harm to the kind of community member that that person is then able to be. That is another concept that is missing from these principles and missing from the public debate. For example, if my son or daughter gets harmed, when I as a parent am choosing my child's media exposure, it is not about so much the potential for harm to my child; it is also the potential harm to my community if my child then starts acting out aggressively or becomes desensitised violence or sees violence as an acceptable way of resolving disputes. That is a sort of broader community concept about the harm to the community. The fact that we have people who have been affected by certain kinds of media experience need to be included quite clearly in that statement of principles.

CHAIR—Noted. Thank you. Can I ask you about the Henson photographs? This came up earlier in the day. Could you express a view as to how they should be reviewed, classified and dealt with?

Prof. Handsley—Yes. I will comment on that. I am not commenting so much in my capacity as President of ACCM here because the Australian Council on Children and the Media is concerned most with children as consumers of the media rather than children as subjects of the media. In my capacity as a professor of law, I have given considerable thought to this, and I might also just throw in the fact that I am a former child model myself. I have some basis for thinking through this from a personal perspective as well.

My main concern with those photos has been the question of how consent was gained for those children to appear in material that would be widely published, and published for the rest of their lives. There are many matters where we do not allow children under our legal system to give consent to certain kinds of activities and experiences, and there are some matters where we do not allow parents to give consent on behalf of children. One example that the committee might be aware of is the one that is based on Marion's case, the family law decision from the High Court about 15 to 20 years ago, where it was decided that parents cannot give consent on behalf of their intellectually disabled children to an irreversible sterilisation operation. I would liken the experience of having your naked body plastered all over websites for the rest of your life to be something akin to an irreversible sterilisation operation, perhaps not as bodily invasive, but certainly something that could affect your life quite profoundly.

I think the main point is that it is irreversible. I would suggest that, on that sort of analysis, there would be a basis for saying that parents cannot give consent on behalf of their children to

having naked pictures taken, irrespective of the artistic merit. One could also justify a less strict position to have some kind of special procedure whereby the child [inaudible] information about the implications of this decision, and so on. I am not terribly happy about the idea of leaving it the way that it appears to be at the moment, where as long as the artist or the photographer can get some sort of consent from someone, then what that person does with the photographs afterwards is completely out of their hands.

I see it not so much as a matter of whether the images disturbing or offensive or anything like that; I think it is mainly about the interests of the children who appear in photos like that and how those interests can best be protected.

CHAIR—All right. I have received your message there regarding the child and the parents and the consent side, but I would like you to address the angle regarding the community and the impact on other children and the community generally of seeing such photographs. Are you saying that that is okay, notwithstanding the consent issue? Let us put the consent issue to one side; what is your view on the appropriateness or otherwise, and how should it be dealt with from the point of view of the rest of the community?

Prof. Handsley—I will comment on that again in my more personal capacity, because once again this is not a matter on which the Australian Council on Children and the Media has arrived at a considered view. I think it is possible to imagine photos of naked children that are done in an appropriate way, that is not demeaning to the child, not to potentially embarrass the child later in his or her life, that are beautiful and powerful and have a place in our public galleries. Whether there might be a case for classifying those images so as to limit the audience of those images, that could be something that is certainly worthy looking at. I think one would have to introduce different kinds of criteria from those that we currently have. I do not think the ones that currently exist in the system are quite [inaudible] what the potential issues are there. One would have to be sort of quite creative in developing criteria or guidelines for that. On the whole, it is ultimately a matter of let us go back to the evidence to see what is potentially harmful for the people who view those images. I am not aware personally of a whole lot of evidence on that, although it might be out there.

CHAIR—That is fine. Thank you very much. I want to move now to your recommendation of a shorter period of one year for serial classifications or alternatively more frequent enforcement. Could you outline your reasons why you have recommended that, and how would it help improve the system?

Ms Biggins—Those thoughts arose from our partnership with Julie Gale of Kids Free 2B Kids, with whom we work on issues to do with the sexualisation of children. We share her very strong concerns resulting from her considerable amount of research into the sorts of publications that are actually out there, particularly those which are showing pictures—and I will use the word ‘offensive’—depictions of mainly girls who certainly appear to be under the age of 16 or 18 years. The way that they are presented was in a very sexually provocative manner. On closer examination, many of those magazines were either incorrectly classified, in other words, they were not displaying the classification that had been ascribed to them. In some cases they were on open display, they were not in plastic bags; and in some cases, they carried a lower classification sticker than they should have.

We understand that the complaints made about that material have been very slow to be resolved, and any action about that material even slower to result. In our view, if that sort of malpractice is out there, then it warrants a much closer and more frequent examination of whether the enforcement obligations are being observed, and one year seems to be more appropriate than two.

CHAIR—Thanks for that. We are very tight for time, so I will finish with this final question on the Senate report of 2008 regarding the sexualisation of children. Were you supportive of that report, and are you concerned that there has not been a fulsome response to it since then? Do you have any other observations about that report?

Prof. Handsley—On the whole, yes, we supported the findings of that report. We were a little disappointed that so many of the recommendations were basically of a self-regulatory nature, that various industries go back and have a look at what they are doing. We would have liked to have seen them realise that if those industries were going to do anything, they would have done it by then.

I draw the committee's attention particularly to the question of video clips, where the statement was made in the television industry's original submission that they did not see that there was any community concern because there had been no complaints. The Senate committee obviously saw it differently and recommended that the TV industry go back and have a look at the way that it classifies that material. When the government came out with its statement in response to the Senate committee's report, it came out on that particular recommendation with pretty much the same words that the industry had started with, that is, that there had not been any complaints and therefore there was no community concern about it. We were deeply concerned by that response from the government, I am sorry to say. We thought that showed a lack of engagement with that particular issue and a lack of engagement with the Senate process that had concluded there was community concern, something did need to be done, and they just basically overlooked that, which was very disappointing. The postscript to that is that the television industry has subsequently reviewed its code, made a number of changes, but has not changed one word in relation to the classification of video clips. So, we were very disappointed about that.

Another point that I can make in relation to the committee's recommendations and the government's response is in regard to the recommendation relating to sex education in schools. From memory, the government's statement was something to the effect of, 'Well, such education would need to be sensitive to people's political and philosophical beliefs; it would need to be implemented in consultation with the community,' and one other thing that I cannot quite remember. Certainly everything that they said that sex education in schools should be is something that advertising, especially on billboards, is not. That is, it is not implemented in consultation with anyone in the community and so on. We just found that deeply ironic that the government would make that kind of comment about sex education in schools, whereas it was overlooking exactly those same problems in relation to advertising.

CHAIR—Thank you. Ms Biggins, did you want to add anything?

Ms Biggins—I think not. We would like to table two documents that may be of assistance to the committee. In Sydney on 1 March, the ACCM held a conference largely on classifications.

We brought out to Australia Professor Douglas Gentile who is a world expert on the impact of computer games, but also has examined closely America's classification system, and in particular has made many proposals about the implementation of evidence-based classification systems. We believe that his paper would be highly relevant to the committee's considerations, and would like to supply you with a copy.

CHAIR—Thank you.

Ms Biggins—In addition, Professor Handsley also gave a paper at that conference looking at the range of options that are open to us in Australia with our present structure of laws and regulations for ways in which children could be better protected in relation to the media. That would include some examination of the classifications system.

CHAIR—Thanks very much for that. The committee would be delighted to receive those. It would be appreciated if that can be arranged through the secretariat. We are now out of time, unless there are any quick concluding remarks.

Prof. Handsley—No, nothing from me, other than to thank you for listening. It was nice to talk to you.

CHAIR—Thank you very much. Likewise, Ms Biggins, thank you.

Ms Biggins—Thank you.

[14.25]

PHILLIPS, Mrs Roslyn Helen, National Research Officer, Family Voice Australia

Evidence was taken via teleconference—

CHAIR—I understand Mrs Roslyn Phillips is on the line?

Mrs Phillips—I am indeed.

CHAIR—Welcome. It is good to have you here to speak to the Senate committee.

Mrs Phillips—Thank you.

CHAIR—The committee has received your submission, No. 15. Do you wish to make any amendments or alterations to that submission?

Mrs Phillips—No amendments or alterations.

CHAIR—Very good. I will now ask you to make an opening statement, at the conclusion of which we will have questions from members of the committee. I want to indicate to you so that you are aware, Senator Crossin, who is the deputy chair, has just ducked out but will be back very shortly, I am sure. I am here also with Julie Dennett, the secretary of the committee. Senator Julian McGauran has been with us; he has dashed out. I just wanted to let you know that that is who is here at the moment.

Mrs Phillips—Thank you.

CHAIR—So fire away.

Mrs Phillips—And you are Senator Barnett?

CHAIR—Senator Barnett, indeed.

Mrs Phillips—Thank you. On 3 February this year I gave evidence to the federal parliamentary Joint Select Committee on Cyber-Safety. I was disturbed to see a number of academic witnesses declare that filtering harmful websites is not the way to go. For example, one witness from a South Australian university implied that children need to encounter these websites in order to learn how to make good ethical choices for themselves. She said: 'Filtering and blocking software, and those kinds of technological barriers, are not a solution. Clean feed and things like that are not going to help young people develop their ability to discriminate, to evaluate and to act under circumstances that require them to exercise their own judgment. If we do not give them a chance to exercise judgment, how will they develop that skill? The emphasis going forward needs to be on education.'

It sounded to me as if she would advise educating children about drugs by giving them a selection of heroin, amphetamines and cannabis, assuming they would learn from this experience not to take drugs in future. I believe that she was very naive. I have been reading some of the submissions by witnesses to your hearing today, and they seem to be saying the same sort of thing, believing that sex education will solve any problems with pornography addiction and so on. The evidence simply does not support that view.

Dr Mary Ann Layton, for example, is a clinical psychologist who lectures at the University of Pennsylvania. She came to Australia a few years ago and at a meeting in Parliament House, Canberra, she explained her own experience as a psychotherapist. Among other things, she said: 'I began working with individuals who had been raped, who had experienced incest, and all kinds of sexual violence. After 10 years of working with these individuals, certain things became clear. One is that there was not one case of sexual violence that didn't involve pornography. You didn't have to be a rocket scientist to know something was going on here. Apart from pornography, there was no other common factor. The other thing I came to understand was that, despite my belief in the power of psychotherapy to heal, I knew there were not enough psychotherapists in the world to heal all those who'd been damaged. We would not solve the problems merely by doing psychotherapy after a rape or case of incest.'

She is not the only one. She is not speaking at all from a religious background; she has just observed from her own caseload how much pornography is involved in the damage of other people. Last year, in November, Dr Gail Dines, another lecturer from the US, came out. She is a professor of sociology and women's studies at Wheelock College in Boston. She was interviewed by Tony Jones on ABC's *Lateline*. He seemed to suggest that she was exaggerating about the impact of pornography, but she replied: 'There are studies done across the west to say that something between 65 and 85 per cent of boys by the age of 13 have viewed pornography more than once. We know that images impact on the way we think about the world. If that was not the case, we would not have a multibillion dollar a year advertising industry. If advertising can affect the way we think and act, why can't pornography? These images are very powerful. What does it mean for a young 11-year-old boy who has no history of sex to compare those images to? What does it mean that this is his first introduction to pornography, and what does it mean that it is accessible 24 hours a day? This is a social experiment. We have never before brought up a generation of boys on hard-core pornography, and the studies are showing that this is not good news.'

Underlying all of the 24 recommendations in our submission, which I hope the committee will take seriously, is our concern that pornography and violence and, even worse, violent pornography, is doing enormous damage already throughout the community. It is now available on mobile phones 24 hours a day and it is available in many other forms of media. We desperately need not only a classifications system but an enforcement system that protects our young people.

CHAIR—Thank you very much. We might go to questions. Can I say up front that we do appreciate the submission from Family Voice Australia. It is very comprehensive.

Mrs Phillips—Thank you.

CHAIR—We note that there are many recommendations, so we appreciate that and thank you. I will kick off with some questions. In terms of pornography being harmful to children, can you point to some specific evidence that backs that up? I am aware of an Australia Institute report in, I think, 2003, but do you have any more recent or other evidence to indicate that children's access to pornography is harmful to them?

Mrs Phillips—I wonder if you have read the Mullighan report looking into sexual abuse and other things, particularly in Aboriginal communities? There it was quite clear that freely available pornography in Outback communities has done very great damage to the children who were acting out what they had seen the night before on the TV sets in their homes.

CHAIR—You would say that would be one. I am happy for you to take it on notice, if there is any other evidence to which you would want to alert the committee, that would be good. We are obviously aware of the *Little Children are Sacred* report as well, and the reasoning and rationale for a lot of that action, as it were, is based on that, of course.

Mrs Phillips—Yes, the *Little Children are Sacred* report refers to Aboriginal children, but of course, there are similar problems in white children, it is just that nobody has done the research. We are getting reports here in South Australia, often not made widely public, I think because it is so abhorrent that schools do not want to make it widely known. We are getting informal reports from teachers of five and six-year-olds in schools sexually abusing other children. It is not in the headlines. What happens is the victims are usually moved to another school, but it really is very, very traumatic for them to have this happening. Usually the abusers have been exposed either to child abuse in their own home or often it is just pornography that is available, because the adults leave it lying around.

CHAIR—You do not need me to say to you that if those sorts of things are happening, that should be reported to the police, of course. I move now to the Henson photographs. I am interested in your position and views as to how they should best be dealt with. There was obviously some controversy when that became public.

Mrs Phillips—There was indeed.

CHAIR—There are allegations and purported artistic and literary merit. How do you think they should be classified?

Mrs Phillips—I have to agree with the Prime Minister at the time, Kevin Rudd, and his gut reaction. It is claimed that these photographs of a pre-pubescent girl were not titillating, but unfortunately there are some in our community who do find such things arousing. I believe we have to be very careful about such images. I do not think they should have been classified the way they were.

CHAIR—You have recommended a G rating for outdoor billboards. Can you tell us why and why self-regulation is not workable in that instance in your view?

Mrs Phillips—You cannot switch off billboards. I am concerned also about TV which you can switch off, because in many homes, sadly that does not happen, and the children are exposed to it anyway. Even the most caring and protective of parents cannot switch off a billboard that they

see as they drive past on the highway. Much stricter standards are required of billboards, and that is not happening. I am very concerned about the Advertising Standards Bureau because it seems to be a body that is financed and run by the advertisers themselves. That seems to me a little bit like the fox guarding the henhouse. It is borne out by their decisions in many cases which are to dismiss public concerns about sexually suggestive billboards and things which I believe should not have been allowed, certainly on the basis of common sense. Can this committee make recommendations about the people who are supposed to be monitoring outdoor advertising? It does seem to me to be a conflict of interest.

CHAIR—Okay. What do you say to the arguments that have been put by some to this committee that the parents should have a greater role and responsibility for looking after their children, particularly in the home and on the internet and in other forums? Why should we have such a government interventionist role, as it were, from their perspective? What is your argument to that?

Mrs Phillips—Parents certainly have an important role but there are situations when parents cannot do anything. For example, I can have very good filters on the computers in my home, I can have strict rules about my children, that they can only use the computer in a public area and so on, but if they go next door to play with their friends, and the parents there do not have the same standards, the parents in my home cannot do anything about that.

Now that there are mobile phones with internet access, all that my child has to do is to go to school and see the pornography on a friend's phone. Parents cannot control that. I do think there is a strong case for the government to step in when I believe, as in this case, there is proven harm from the freely available pornographic and violent sites.

CHAIR—Thank you for that. In light of the time, I will pass to Senator Crossin who has some questions.

Senator CROSSIN—Thanks, Mrs Phillips. I want to pick up the issue in your submission that the sale of the X18 films should be prohibited in the Northern Territory. Can you perhaps give us some of your thoughts about that?

Mrs Phillips—Certainly. I believe that sexually explicit films, as we have outlined in our submission, do cause harm. As the *Little Children are Sacred* report shows, they cause harm in outback Aboriginal communities; they also cause harm in white communities. With the Commonwealth Intervention which prevented X-rated pornography being available in outback communities, we believe that is not effective because all you have to do is to go into Darwin and get a load of DVDs. We believe it should not be allowed anywhere in the Northern Territory. Indeed, we believe it should not be allowed in the ACT either, because of the harm involved. If the tap water that goes into every home was infected with *E coli* or cryptosporidium, or even something like heroin, I am sure the government would not sit back and say, 'We will just put a sign on the tap saying "Not suitable for children" and it is up to the parents whether or not they drink it.' I do not think the government would take that view, and I believe this is a similar situation.

Senator CROSSIN—Have you made any representations to the Northern Territory government about it?

Mrs Phillips—Not specifically to the Northern Territory government. We have made many, many submissions to the Commonwealth government and to various state government inquiries. Would you like us to do that?

Senator CROSSIN—I probably would not deter you from doing that, put it that way.

Mrs Phillips—Thank you. We will take that on board.

Senator CROSSIN—Can I ask you about filtering systems for mobile phone services?

Mrs Phillips—I was talking only the other week to Mr Matthew Wigzell who works with Webshield, which is an ISP, and they have developed an application which could be applied to mobile phones to filter them. I have also spoken to somebody from Queensland who says they have developed something similar. I believe that most mobile phones do not have any filtering applied to them. I would like to see the government more active in promoting such filters.

Senator CROSSIN—Along the lines of a filtering system on an ISP provider through your computer?

Mrs Phillips—Yes.

CHAIR—Mrs Phillips, thanks very much for appearing before the committee from Adelaide. Would you like to make a closing comment before we move to our next witness, or have you covered it?

Mrs Phillips—I would like to add something else which we did not mention in our submission. On the discussion in terms of reference G about actual sex in R18+ films, we noted the gradual category creep of the Classification Board's gradually allowing more and more actual sex into films, and not classifying them X or RC but simply allowing them as R18+. We were very concerned about *Nine songs* which was classified back in January 2005 by the Classification Review Board as R18+. We took it to the South Australian Classification Council which looked at it quite separately and independently. It should be noted that they agreed with us. In August 2005 the South Australian Classification Council decided to classify *Nine songs* in South Australia as X18+ because in its view it did contravene the guidelines for R18+.

CHAIR—That is interesting. What about other states, or was it just South Australia?

Mrs Phillips—I think South Australia is unique in that it does have a classification council. When there are substantiated complaints, it will have another look at Commonwealth decisions. I am not sure that any other state has that facility.

CHAIR—This is part of the discussion we are having with at least some witnesses, and in the deliberations of the committee, because some states have different approaches to others, as do territories, obviously, as we have just been talking about with the X18+ films. Thank you very much for drawing that to our attention.

Mrs Phillips—One other comment I would like to make is that since 2003 the film classification guidelines have talked about impact as being the differentiating factor between the

different classifications of G, PG and so on. So if it is G, it is very mild impact; if it is PG, it is mild; M it is moderate; MA is strong and so on. We are very unhappy about that because it is so vague and subjective. What is a high impact to one person might not be high to another. As a result, I think there have been some very inconsistent decisions by boards in recent times. We would like to see a return to more detail in the classification guidelines to indicate things like how frequent scenes of violence are and whether or not the sexual scene is discreet. Those sorts of terms have been removed, and the emphasis is on impact, as I said, which is not really a very satisfactory way of determining which category the film should be in.

CHAIR—Thank you for that contribution.

Mrs Phillips—One more comment, if I may?

CHAIR—Okay, no problem.

Mrs Phillips—We feel that when there has been a breach of the guidelines, for example, with TV stations, nothing is done to the TV station as a result. There is no punishment. For example, only the other week, after six months, a complaint of mine was upheld by the Australian Communications and Media Authority about the wrong classification of an ABC program. I believed that it was wrongly classified M and ACMA agreed with me, but nothing has happened as a result. There has been no apology to me from the ABC, and there has been no reprimand by ACMA. There was not even a media release. If there is no punishment, why have the guidelines?

CHAIR—Thanks for that contribution.

Mrs Phillips—Thank you.

CHAIR—In light of the time, we will conclude there, and thank you again for your evidence, Mrs Phillips.

Mrs Phillips—Thank you very much.

[14.48]

AILWOOD, Dr Sarah Louise, Private capacity

ARNOLD, Mr Bruce Ian, Private capacity

CHAIR—Good afternoon, and thanks for being here today. We have your submission, No. 37, with the committee. Do you wish to make any amendments or alterations to that?

Mr Arnold—No.

CHAIR—Would you like to make an opening statement, after which we will have questions.

Mr Arnold—Thanks for the opportunity to give evidence this afternoon. We would like to begin by reiterating that our contribution is made on an individual basis, and that it reflects our awareness of the law and of content production, distribution and consumption. We encourage the committee to recommend the development and adoption of a forward looking media and technology neutral approach to the classification of content that is based on empirical research. There are a large number of vested interests in this debate, and the committee needs to critically scrutinise the claims made by all sides.

The key points of our submission that we would like to highlight are as follows. In the digital age, where there is increasing convergence of previously separate infrastructure and media streams and where content is delivered across a range of platforms, implementing an effective classifications scheme that will cross platforms and that will be future proof poses a great challenge, regulators and parliament should be wary of simplistic solutions and of unsubstantiated claims regarding harms. We recommend that classification should be tied to media content rather than a platform, and that it should apply across platforms. It is desirable to have a cross-jurisdictional system of classifying content, and that point was made by the previous speaker. This should include standard classifications on uniform criteria and a common approach to displaying classified and restricted publications and films.

The idea of including artistic merit is an appropriate category of inquiry. Classifying content is deeply problematic, and artistic merit is a concept that the law strategically avoids. Classifying films, books and computer games on the basis of content is not a perfect system, but it does, mostly, avoid judgments about what should and should not be classified that are based on subjective notions of aesthetic taste or value. Such a category would involve the establishment of principles of what is deemed artistic merit and the assessment of works in relation to those standards. This is not a suitable regime in a society that values creativity, responsibility and free expression.

We would like to emphasise that parental responsibility is a fundamental element of effective content regulation. The state and surrogates such as ISPs cannot be expected to eliminate all risk. Parents must guide their children through advice, and also through example, so parental advisories, such as content ratings, are a basis for effective guidance.

We believe that education is a fundamental element. If we want net-savvy kids, kids who are resilient, who are equipped to face dangers, and able to assist their peers, we have to invest in effective education programs across Australia.

There is no substantive basis for discriminating against computer games. An R18+ rating consistent with the law's treatment of other media will resolve the current classification anomalies that impact on the media, arts industries and adult gamers, and also recognise the realities of what people do online.

Finally, submissions to the committee have centred on sexuality, in particular, women and children. There is scope for this committee to look forward and address parental concerns regarding inadequate identification of commercial games that are targeted at minors. We suggest that you explore a mandatory dollar flag that will alert parents and guardians if the game involves payment through the parents' account with their telco or with the provider such as the Apple app store.

CHAIR—Thank you. Dr Ailwood, did you want to add anything?

Dr Ailwood—Not at this stage, no.

CHAIR—Thank you for your opening remarks and also for your submission. You are both at the law school at the University of Canberra. It is very good to have you here and to obtain your legal advice and counsel. Dr Ailwood, the submission states that you are a member of gamer communities, as well as other activities in which you are involved. Can you just expand on that? You are interested in advanced platform and role playing games, including massively multiplayer online games?

Dr Ailwood—I just wanted to emphasise that I was making my submission as someone who is actually experienced at playing games. I think quite a few of the people who have contributed to this debate are not necessarily aware of the nature of games and the way they are playing online, the way that massively multi-player online games work, and the way that different console systems work. I just wanted to emphasise that my submission is made from a position of experience and understanding of those things.

CHAIR—When you say 'gamer communities', is that a phrase that captures online gaming?

Dr Ailwood—Online gaming, and also in social intercourse. Relationships between gamers do not only happen online; they happen face to face as well.

Mr Arnold—Increasingly in large business as well, where we can expect to see substantial economic growth in that area. Online content and traditional media—films, books, Hollywood, music, games—are merging.

CHAIR—Mr Arnold, do you have a long experience in this area in terms of online content? You have given lectures and so on in this area?

Mr Arnold—Yes.

CHAIR—I want to ask you about the Commonwealth's ability to legislate in this area. I am not sure if you are constitutional lawyers, but even if you are not, you are familiar with this area. We have a system which is a cooperative approach, state and federal. Can you tell me, in your views, whether you think the Commonwealth can legislate in this area in and of itself using any of the heads of power that I have referred to in previous evidence, including trade and commerce, customs, telecommunications, external affairs and so on? Can you give us an expansive response?

Dr Ailwood—Not being a constitutional law expert, I think the Commonwealth's ability to legislate in this area is restricted. In my opinion, in terms of actual classification of media content itself, I do not think there are any heads of power under section 51 through which the Commonwealth can legislate. This is not the subject of international agreements through which it could use the external affairs power. It would require a huge expansion in the interpretation of the trade and commerce power and the corporations power if it was to legislate in this regard. Bruce has some comments about telecommunications.

Mr Arnold—In relation to online activity, it would be the telecommunications power, but the Commonwealth arguably does not have to do everything itself. The Commonwealth has an ability to persuade certainly the ACT and the Northern Territory, and more broadly the states, to act in a way that is consistent, a way that is forward looking, and that is realistic, to meet the challenges of the next 20 or 30 years.

CHAIR—Do you think a continued cooperative approach is the best way to go to get good outcomes in this area?

Mr Arnold—Yes, because we should be concerned with outcomes rather than the particular mechanisms.

CHAIR—I am aware of that, but I am asking questions to find out how we achieve the best outcomes and the best way possible. Under the current arrangements, you would agree that some states have different laws and different approaches to other states, and which are different from the territories, do you agree with that?

Mr Arnold—Yes.

CHAIR—In terms of the classification code, do you support those principles or do you not have a view on them, or do you think they can be improved?

Dr Ailwood—Do you mean the legal framework that underpins the code?

CHAIR—Yes, that (a) the adults should be able to read, hear and see what they want (b) minors should be protected from material likely to harm and disturb them et cetera and (c) and (d).

Mr Arnold—I think most Australians would be comfortable with those principles.

CHAIR—Yes, and likewise yourselves?

Mr Arnold—Yes.

Dr Ailwood—Yes.

CHAIR—Good; that is what I wanted to clarify. Do you think we should have a consistent approach across different platforms and different media in Australia?

Dr Ailwood—Yes. The idea that content is delivered through designated specific streams, I think those days are over. It is being delivered on various different kinds of devices, through portable devices, through internet to computers, it is being delivered to gaming consoles, it is being delivered direct to television, and a forward looking regime really needs to take into account that convergence.

CHAIR—You do not have a quick fix for us to apply those principles across all formats? I have read your submission.

Mr Arnold—I do not think there is a quick fix.

Dr Ailwood—No, I do not think there is a quick fix. I think this is incredibly challenging, actually.

CHAIR—This view that you have set out on pages 6 and 7 of your submission regarding the addition of a new classifiable element being the commercial exploitation of children, can you flesh that out for us and the reasons why you think that should be added?

Dr Ailwood—Much of the terms of reference that the committee is looking at, and from what I have seen from most of the people who have been witnesses today, this inquiry is very much concerned with issues about sex and violence in classification. We suggest that that is a slightly restricted approach, and that there are other dimensions of classification that are emerging because of the convergence of the ways that media is delivered.

In particular, we have suggested that many games are available now, and we refer here mostly to those which are downloadable to hand-held devices such as mobile phones, iPads or iPods, which are in fact linked to a payment system of some kind, such as a mobile phone account or to a credit card. These games are targeted directly at children. They are very simple platform games that adults would not be interested in playing, largely. Built into the ways these games are structured are opportunities for children to spend money: to continue game play, they need to spend money; to get rewards within the game, they need to spend money; to create whatever they are building, they need to spend money. It is very easy to quickly rack up substantial bills of hundreds, if not thousands, of dollars. We are of the view that that is quite a direct commercial exploitation of children. If we are looking at this as a consumer protection mechanism and we want to actually give accurate advice to parents about what their children are playing, then some kind of flag, such as a dollar symbol or a similar symbol, would be a way that they could know that is a game in which that is a possibility.

CHAIR—You think that is one way to get the message out there, to have some sort of flag mechanism that there might be some economic benefit to some other party and that this will cost money?

Mr Arnold—Yes.

Dr Ailwood—Every time a game is linked to a payment system, that is something that is flagged to parents and to children so they can say, 'If the game has this symbol on it, then you have to ask my permission before you download it.' There may be a debate as to whether that is something that would be the responsibility of the game developer, the telecommunications company or the ISP.

Mr Arnold—It may not be perfect, but it addresses a substantive problem. It is something that you could certainly incorporate in school curriculum, so that kids could be alerted: 'if you see this sign, there will be consequences'. In the same way that if the video, the game, the music, whatever has a particular marking on it, it is something that mum or dad probably do not want you to see.

CHAIR—We had AMRA and ARIA here this morning, the music industry recording retailers. What are your views on what is in the public interest? They have a self-regulating mechanism at the moment. We heard evidence that it is very difficult to ensure a consistent outcome in light of the importation of some of the music from overseas. Do you have a view as to how that should best be either regulated or self-regulated?

Mr Arnold—In principle, and probably in contrast to the previous speaker, I am happy with self-regulation, as long as it is done properly. I think the principle there is that those such as importers, dealers, distributors and overseas exporters are making money from this, so they have some responsibility to provide advisories to parents and to broadcasters. Yes, you may well have some inconsistency in the way that ratings are applied, but the fact that, if you like, some inconsistencies are probably inevitable is not an argument against the desirability of rating. I would think that rating is something that is quite achievable.

CHAIR—More generally in terms of the overseas experience across the board, we have heard about New Zealand, and we had evidence earlier today from RiM about the European and American arrangements. With your knowledge and background, can you share how the system works in other countries and how we compare?

Mr Arnold—For music videos?

CHAIR—No, across the board. This is a big picture question.

Mr Arnold—I would think that the people who have looked at, say, psychological harm or physical harm, criminologists, libertarians, legal experts, would consider that the Australian regime overall is doing pretty well.

Dr Ailwood—There is one key area in which the Australian regime radically departs from international regimes, and that is in the existence of an R18+ classification for video games. In that respect, we are quite different from most other western liberal jurisdictions. There are arguments that there are detrimental effects because we do not have an R18+ classification for video games. Games here are regularly classified MA15+ when they are classified R18+ in other jurisdictions. The fact that we only have an M15+ classification, which basically requires that any game that is not suitable for minors is refused classification, sends a signal that every game

that is available in Australia is suitable for minors, and anyone who is playing Grand Theft Auto would disagree with that. The fact that we do not have an R18+ classification is misleading, and that is one argument. Obviously there are various other arguments you could make about civil liberties and freedom of expression and the ability of adult gamers to be able to play games that they choose and games that are available elsewhere.

Mr Arnold—Or a more basic consistency why we are quarantining a particular cultural form; why are we quarantining content on the basis of its delivery.

Dr Ailwood—There is really very little rationale for the exceptionalism that is applied to video games in this context.

CHAIR—Again with your experience of the international community, is there anything else we should be aware of? Clearly there are serious challenges in terms of getting a consistent approach in Australia, but we know that games, music, chat rooms and the internet are all pervasive. It is international; it is global. How do we provide a system that is consistent across Australia when we have challenges of regulating or legislating in this area, or should we take a hands-off approach and just let the self-regulation approach deal with it?

Dr Ailwood—We have to be realistic about what we can actually achieve in terms of regulating content that is coming in through the internet from overseas. Getting a uniform system to operate in Australia that will also take into account various platforms will be a big enough challenge.

Mr Arnold—It comes back to your comment earlier about jurisdiction in Australia. We cannot do everything on our own, but we do have some persuasion as arguably a leading member of the international community. We can work with Europe, for example, Europe is a major market. Possibly we could work with Japan. We could work with Canada, and we could work with other countries, including New Zealand. It is not a total solution, but it is a start.

CHAIR—Just going to the system of the call-in notices which has been raised in Senate estimates previously, and it is really not working that well at the moment, based on the evidence that we received, at least from my perspective. Do you have a view as to how we can improve that system and how the objectives and principles can be implemented in that area?

Mr Arnold—I think we will pass.

Dr Ailwood—I think we will pass on that.

CHAIR—There was a view from the Australian Christian Lobby who thought that promoting suicide should be classified as inappropriate in all platforms because of the impact on people's lives, of course, and for the reasons set out in their submission. Do you have a view on that, or is that outside of your purview?

Dr Ailwood—I would say initially when you use the word 'promoting' to describe anything, that is extremely problematic. The context and the perspective that the film maker, the game maker, the publisher, the writer and the author is bringing to this is hugely important and needs

to be considered in a way things are classified. The idea that you can say a particular work promotes a certain behaviour is really dubious. That would be my starting point.

CHAIR—It has to be seen in context?

Dr Ailwood—Absolutely. It has to be seen in context. There was criticism when the film *Trainspotting* came out that it promoted drug use. How anybody could watch that film and consider that it promoted drug use, I do not understand. You have to look at the perspective that the filmmaker is coming from. That would be first thing I would say.

Mr Arnold—If we are restricting, say, online promotion of suicide, then if we are being consistent, we have to restrict the classics that have been taught in Australian high schools. So there goes Thomas Hardy for a start. There goes parts of the Bible—a whole range of literature. Classic film that you can rent in any DVD shop feature suicides, sort of Bette Davis is Ms Suicide.

CHAIR—No, I am just asking the question to respond to the ACL submission. I think you have covered it adequately, thank you. The issue of outdoor advertising has come up fairly consistently. I am not sure if you have appeared before the House of Representatives committee, have you?

Dr Ailwood—No.

CHAIR—It has an inquiry in that area as well. We are sort of covering that field. There is a view that it should just be a G rating. At the moment it is obviously self-regulated. What is your position on outdoor advertising? You do not have to have a position. I am just asking if you do, and if so, could you share it?

Mr Arnold—It is an interesting area because you can turn off your television; you can turn off the internet; you can turn off your phone, but if you have to drive down Parramatta Road, you do not have a choice. Whether you like it or not, you see the slogan for the Advanced Medical Institute, I think it is. There have clearly been what many people would regard as offences against good taste. Possibly parliament needs to strongly encourage the outdoor advertising industry to be more responsive to community needs. Possibly it does not have to enforce a rating system, but it could certainly encourage, and say, on behalf of the people of Australia, there are concerns out there; you guys need to be serious. If we look at industry concentration there, a fairly small number of businesses are responsible for most of the major billboards. They may well be responsive if they hear parliament thundering.

CHAIR—Thanks very much. Senator Crossin.

Senator CROSSIN—Thanks for your submission and for coming today. On page 4 of your submission, you state that:

> There are recurrent anecdotal claims in the mass media and in online fora that state law enforcement agencies have been indifferent to the sale of unrated magazines, videos and computer games that feature prohibited content. As a basis for informed policy development and coherent enforcement the Committee may wish to encourage the collection, critical analysis and publication of data regarding such claims.

Can you expand on that? Are you saying that there is a lack of collection of statistics and analysis on which to base informed views?

Mr Arnold—There is substantial, but I emphasise, anecdotal claims that, say, police on occasion have simply been indifferent, that if you want to buy adult content, you simply go to particular locations or particular venues and it is open slather. That is anecdotal. What we need in terms of informed policy making is some hard evidence. I think overall—and I apologise if I am diverging too much from your question—questions of rating and questions of content regulation are so politicised and so contentious that people make claims that I often think cannot be substantiated, and parliament needs to consider these questions on the basis of hard data and solid research, rather than simply someone's advocacy statements.

Senator CROSSIN—Similarly, on page 5, you state that:

> There is no agreement across the medical, criminological and scientific communities about the effect of isolated and recurrent exposure to X18 films on adults or children.

Are you saying that there is a lack of medical and scientific evidence there, or that it is inconsistent?

Mr Arnold—If you look at the scholarly literature, that is literature that can be regarded as authoritative, you can see a range of claims, but overall, the scientific literature, the credible literature, suggests that many of the claims from, say, particular advocacy groups are simply hogwash; they are alarmist, and they do not reflect the reality of, say, how children behave, and of the impact on children, or the impact on adults.

Senator CROSSIN—What should we do about fixing this problem—commissioning more research or collecting it?

Mr Arnold—Commissioning more research. At the Commonwealth level, we have a number of excellent research bodies. Unfortunately their funding seems to have been cut in the last couple of years. It is a task for parliamentarians, for officials, for ordinary citizens for that matter to look at this information critically and come up with sensible, intelligent, informed conclusions, rather than relying on claims that say, 'X murderer watched a nasty video and that is why he became a murderer.'

Senator CROSSIN—That is all I wanted to ask.

CHAIR—It has been very useful having your expertise, your information and your submission for our committee, and we appreciate that very much. We are done for today. I would like to thank all the witnesses who have given evidence to the committee. I declare this meeting of the Legal and Constitutional Affairs References Committee adjourned.

Committee adjourned at 3.16 pm