



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES  
COMMITTEE

(public)

**Australian film and literature classification scheme**

WEDNESDAY, 27 APRIL 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE**  
**Wednesday, 27 April 2011**

**Senators in attendance:** Senators Barnett, Crossin and Furner

**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.

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**Committee met at 09:02**

**CHAIR (Senator Barnett):** Good morning, everybody. This is the third public hearing of the Senate Legal and Constitutional Affairs Reference Committee's inquiry into Australia's film and literature classification scheme. This is a public hearing and a *Hansard* transcript of the proceedings is being made. The inquiry was referred to the committee by the Senate on 16 November last year for inquiry and report by 30 June this year. The terms of reference for the inquiry are on the committee's website. The committee has received 67 submissions for the inquiry, the majority of which have been authorised for publication and are available on the committee's 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 resolution, 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 a request may, of course, also be made at any other time.

**LANDRIGAN, Ms Ann, Acting Chief Executive Officer, National Film and Sound Archive**

**MURPHY, Mr Mark, Principal Legal Officer, National Film and Sound Archive**

[09:04]

**CHAIR:** Welcome. We note that you have lodged submission No. 27. Do you wish to make any alterations or amendments to that submission?

**Ms Landrigan:** No, thank you.

**CHAIR:** Thank you. I invite you to make a short opening statement, after which we will have some questions from the senators.

**Ms Landrigan:** Thank you, and thank you very much for the opportunity to provide evidence in line with our submission. The National Film and Sound Archive, as a national cultural institution, has a significant role in actively promoting and disseminating screen culture. To that end, we have some key activities that we participate in when doing so. The first is that we run a screening program in our Arc Cinema in Canberra. We promote film and television programs and home movies in our exhibitions and Melbourne-based Australian Mediateque; we run touring film festivals around the country, in regional Australia generally, for community, school groups and Indigenous groups; and we present Australian film heritage online via an interactive website called *australian screen online*. Our response to the inquiry is therefore based on this set of activities, which are subject to the National Classification Scheme.

As you can appreciate, with material in our collection that dates back to the earliest days of moving image production, we have a significant number of titles that have never been classified. They might be Indigenous titles, ethnographic material, home movies and filmed oral histories, for example; and, as you are aware, we must apply for festival exemptions for each event at which we plan to screen these films.

Our response is, therefore, mainly concerned with any review of the classification scheme enabling cultural institutions such as the NFSA to obtain blanket exemptions allowing us to self-classify. We feel that this would help streamline our processes for making the collection more accessible and make it easier for us to show unclassified titles, specifically in the sort of environment we are now operating in, where the demand for material is increasing as the world becomes more digitised.

As we have outlined in our submission, there are already a range of exemptions already in existence in state and territory classification legislation and there are already precedents for a self-classification system such as television broadcasters, customs officials and the NFSA itself use. We self-classify already but only for one particular program, through special arrangement with the former Office of Film and Literature Classification. These are the titles on our *australian screen online* website.

We have a very good working relationship with the Classification Board, as no doubt other cultural institutions do in screening their collections. We would envisage that, under any self-classification scheme that were to come into play, the board would have some sort of oversight role and we would still seek exemptions for screening any high risk or higher impact titles perhaps.

The second key issue for us in our submission was, of course, the issue of convergence, which I know that you have been dealing with significantly in this review, and the many challenges that we face in making our collection more readily available across many different platforms. As we progressively digitise more of the collection, we expect demand to increase significantly, and this is complicated by the current classification scheme in its fragmented approach to classifying films and games made available through different distribution channels. A common approach, regardless of the distribution medium, is one that we hope this review will be able to address. Thank you.

**CHAIR:** Thank you for that. Mr Murphy, do you wish to add anything?

**Mr Murphy:** No, thank you.

**CHAIR:** Perhaps we could go directly to questions. I will kick them off. Can you outline for us, firstly, the process that you go through when you self-classify and, secondly, if you did receive a blanket exemption, what time, effort and resources would be required to self-classify, as you say?

**Ms Landrigan:** The self classification scheme at the moment is only for our Australian screen online website, where we show film clips from Australian titles. When we set that website up, we did a lot of negotiation with the Office of Film and Literature Classification at the time. I think they came up with a view that our clips were similar to advertising arrangements, so we use the set of guidelines that have been set up by the Classification Board to classify those clips. Sometimes we will classify a clip in a different way to how that film has actually been classified itself, given the nature of the clip.

I am just trying to think of how many titles we publish each year. I think we publish about 750 titles through that website each year and we might have three clips for every title that we publish; so it is quite a significant task. We have one or two individuals who are totally dedicated to looking at copyright and classification issues. Each clip that appears on the website is curated, so it is provided in a context so that the general public or school groups might have access to those clips.

**CHAIR:** If you had a blanket exemption, which is one of your recommendations, how would that change or what level of time and resources would be required to undertake the self-assessment process?

**Ms Landrigan:** That would most affect our touring programs and our in-house Arc screening program, our cinema program. We were looking at the stats before and, in terms of our Arc film program, we screen about 50 titles in a two-month period and we think about 50 per cent of those are currently unclassified in terms of, say, pre-1970 works that we are screening. I am not sure that it would take all that much more time for us, because we still have to prepare a great deal of information for the office in getting film festival exemptions for those screening programs now.

**Mr Murphy:** I imagine that one thing we would have to consider is more training for our staff. We have some staff that are specialists in applying for classification exemptions but, if we were successful in our recommendation to become a self-classifier for other activities, there would be a need for other staff to have training in those skills as well.

**CHAIR:** Can you tell us about your advice in your submission to us about the different media that your films apply to across different platforms? This has been a key issue, frankly, for our inquiry over the past many weeks and months. You have different rules that apply across different platforms. There is a view that there should be a more uniform, consistent approach, notwithstanding the different media platforms. Can you outline your views on that issue to us and how a more uniform approach could assist your organisation?

**Ms Landrigan:** Our response is consistent with, I think, the responses that you have been getting. The pressure on us is to make sure that the collection is available; therefore, we need to be able to do that through a range of different mediums, whether that is seeing a film on screen in a cinema, through to experiencing that in an exhibition—it might be through DVD or digital means—through to the internet. Consistency in classification is extremely important for us so that there is not confusion amongst audiences. I think cases have been put forward whereby the same film might have a different classification when it is being seen in a cinema compared to its publication on DVD vis-a-vis it appearing on the internet. So anything that can simplify that scheme would be useful, I think.

**CHAIR:** Perhaps I can go back a step and learn a little more about the National Film and Sound Archive organisation. We have your submission and we have read that, but can you describe a little more about your function and operation and how much you cover? My understanding is that it is the national audiovisual archive responsible for collecting, preserving and providing access to the nation's moving image and recorded sound heritage. Can you describe that in greater detail?

**Ms Landrigan:** Yes. We became a statutory authority in our own right in 2008, so we actually have an act that covers our operation.

**CHAIR:** What were you before then?

**Ms Landrigan:** We were part of the Australian Film Commission and, prior to that, we were part of a government department essentially—more like a branch of a government department. So our remit is to collect sound and screen material that is produced in Australia or by Australians or has some relevance to that or that is experienced by Australians; so we are collecting international works as well as Australian works. We have agreements with most of the film funding organisations around Australia, Screen Australia being one of those, to ensure that every work that is commissioned and produced enters the archive and we get a copy of that material. There are no legal deposit schemes, which means that we effectively need to chase material for the collection. It is unlike the National Library, where we have a deposit scheme in place.

**CHAIR:** Should there be one?

**Ms Landrigan:** We are also arguing for that but probably not under this review. Yes, we would like that. It would make life simpler. We have about 1.6 million items in the collection. We are collecting everything from films that have been produced by the sector through to home movies, oral histories, published sound recordings and artefacts and documents that provide context for that material.

**CHAIR:** What relationship did you have with Archives Australia?

**Ms Landrigan:** The National Archives has a specific responsibility for collecting government material. We are collecting material from the general production sector as well. Yes, we have a good relationship with the National Archives.

**CHAIR:** So there is no crossover implication there?

**Ms Landrigan:** No. If there is, there is discussion about that, yes.

**CHAIR:** How many people are in your organisation, how are you funded and what is your budget?

**Ms Landrigan:** There are about 220 people in the organisation. We are primarily government funded—about \$26 million a year—but we also earn income from specific programs that we might have at the cinema, which I mentioned before. We might charge nominal fees for exhibitions and other touring programs.

**CHAIR:** That is helpful background. Going back to our terms of reference, do you support the principles set out in the National Classification Code? The four main principles are that adults should be able to read, hear and see what they want; secondly, minors should be protected from material likely to harm or disturb them; everyone should be protected from exposure to unsolicited material they find offensive; and the need to take account of community concerns et cetera.

**Ms Landrigan:** Yes, we do.

**CHAIR:** You support all of those?

**Ms Landrigan:** Yes.

**CHAIR:** If you had a blanket exemption, how would you be confident that you would ensure that there is adequate protection, for example, for children in that instance?

**Ms Landrigan:** In the first instance we would rely on guidance from the board on how they have promulgated that code. But I guess it is how we currently conduct our programs now in terms of staff training. We limit specific material based on the audience that we are screening to, yes.

**Mr Murphy:** There is also the fact that, as we self-classify for titles on our Australian screen online website, it shows that we have experience and a track record in being responsible in how we classify titles and adhere to the classification code and guidelines in the act.

**CHAIR:** That was leading to my next point. Do you receive training from the Classification Board? Who trains your trainers, as it were, or your people? Who provides the training and what interaction do you have with the Classification Board, if any?

**Ms Landrigan:** I am not aware of specific training programs but, because of our need to apply so frequently for festival exemptions and our interaction with the Classification Board, it really is an experience thing in terms of our interacting with them on a high level each week in terms of programs for our Arc Cinema.

**CHAIR:** So you are not aware that they undertake or provide any particular training to organisations such as yours?

**Ms Landrigan:** I am not aware, but I would be happy to check that.

**CHAIR:** That is something that we will follow up as well. That is appreciated. I will move to Senator Crossin.

**Senator CROSSIN:** Thank you for your attendance this morning. My apologies that I was just a little late. Can you clarify for me: do you also collect X and R18+ movies that may be made in Australia as well?

**Ms Landrigan:** Yes. We do have a pornographic collection that we have had in the collection for many, many years. Our main collecting for currently produced material comes to us from the film funding agencies, both federal and state.

**Senator CROSSIN:** In your recommendations in your submission, can you explain to me what you mean by making the scheme media neutral?

**Ms Landrigan:** I think the question was raised before by Senator Barnett in terms of the different media platforms in which you might exhibit, whether it is a DVD or a film in a cinema, and we were talking about the issue that there are examples where something will receive a different classification, depending on whether it has ended up on the internet, DVD or film, and that is confusing for both audiences and—



**Mr Murphy:** I think it is very relevant to us too because of the breadth of the activities that we engage in. We do not just screen films; we might be showing footage in our gallery spaces or at exhibitions around the country; we also work in the online environment as well. Because there are so many media in which we operate, we support views already expressed here that it would be easier for us as operators in that space to have a consistent scheme and it would also be easier for our audiences as well in allowing them to better decide what is appropriate for them to view.

**Senator CROSSIN:** The other thing I want you to clarify for me is: your recommendation refers to 'enabling those institutions'—by that, do you mean cultural institutions like yourselves to obtain blanket exemptions to allow you to actually self-classify titles.' So you want the ability to be able to classify titles. Would not all titles that come to you be classified already?

**Ms Landrigan:** No. I think we were explaining before you arrived that we have a vast quantity of material in our collection that is not classified, because we have been collecting since the days that films started to be made. We call a lot of that material pre-1970 material, archive material.

**Senator CROSSIN:** So you classify that yourself now, do you?

**Ms Landrigan:** No, we do not. Either we have to get a festival exemption when we screen it in Arc or we might apply to get it classified.

**Senator CROSSIN:** What do you want changed about that? Do you want to be able to classify it yourselves?

**Ms Landrigan:** Yes. I think the issue for us is that, as the demand increases for us to get more material out there and the means by which we can do that increase, the pressure will be on us to be able to free up that material, and we think it would be easier if we were able to self-classify.

**Senator CROSSIN:** Would the majority of that be PG and M?

**Ms Landrigan:** We have not done an analysis and I would be happy to do that but, in terms of M and less, the answer to that would be yes.

**Senator CROSSIN:** That is all I have, actually.

**CHAIR:** Thank you. Senator Furner.

**Senator FURNER:** I have a couple of questions. You mentioned that you already self-classify some of your—

**Ms Landrigan:** For Australian screen online, yes.

**Senator FURNER:** What proportion of the archived entries that you have—I guess, in comparison with what you already classify—would need to be done if you had a blanket exemption from overall classification?

**Ms Landrigan:** I was just saying before we arrived that we would probably be asked that stat and I do not have it at my fingertips, but tens of thousands of titles would be still unclassified.

**Senator FURNER:** So the workload on your staff—you have mentioned the need for training and that—would be quite significant, I take it?

**Ms Landrigan:** It could be. It is not just a classification issue for us in terms of getting this material available. First, it is that we need to digitise it; and the other issue for us is checking all the copyright issues around particular titles because, as you are probably aware, the NFSA holds copyright over, I think, less than five per cent of the total collection that we have. So the whole process of clearing copyright is just as important for us as looking at the classification issues.

**Senator FURNER:** Do you have any overseas examples of what you are seeking in your evidence?

**Ms Landrigan:** I do not at hand. Mark, I do not know whether you have got any.

**Mr Murphy:** I am sorry; I cannot add to that.

**Senator FURNER:** I am done; thank you.

**CHAIR:** Thank you, Senator Furner. If you are aware of how they undertake such classification in the US, the UK, Canada or New Zealand, unlike Australia, that would be welcome; if not, that is fine. But if you have any contacts there, we would welcome that.

**Ms Landrigan:** Okay, thank you very much.

**CHAIR:** I have a supplementary question regarding X18+. Do you archive those, or just R18+?

**Ms Landrigan:** I cannot answer that question, but I can come back to you on that. If it is a film that has been produced in Australia and again funded by one of our agencies, yes, absolutely; but I am not aware of any of those examples in our collection.

**CHAIR:** Perhaps you could check that. I presume that you do archive category 1 restricted R18+. You indicated yes to that, I think, to Senator Crossin.

**Ms Landrigan:** Yes. Perhaps I can double-check that.

**CHAIR:** If you could do that. Also for category 2 and X18+, could you check that and come back to us? Also, when you come back to us, am I right in saying that you are going to provide a breakdown of the ratings for the films, the P, PG, M, MA and R18?

**Ms Landrigan:** In terms of in our collection?

**CHAIR:** Yes.

**Ms Landrigan:** That would probably be quite an extensive exercise. But if you want some indication, we could do that.

**CHAIR:** Or a very broad estimate?

**Ms Landrigan:** Yes. That is of the material that has actually been classified, keeping in mind that there is a lot of material pre-1970 that we have in the collection that is unclassified.

**CHAIR:** What happens to that?

**Ms Landrigan:** We could do a bulk statistic for that, if you would like.

**CHAIR:** Yes. What happens to the pre-1970 material?

**Ms Landrigan:** As I said before, if we want to screen that in one of our programs, it will then become part of our application for a festival exemption or we might get specific exemption for that film to show it. So we go through a process for those films.

**CHAIR:** Thank you very much for that. Thank you for being here today.

**Ms Landrigan:** Thank you very much.

**JOLLY, Ms Fiona, Chief Executive Officer, Advertising Standards Bureau**

[09.27]

**CHAIR:** Welcome and thank you for being here today. The committee has your submission, No. 41. Do you wish to make any alterations or amendments?

**Ms Jolly:** No, thank you.

**CHAIR:** Thank you. We welcome your opening statement, after which we will have some questions.

**Ms Jolly:** Thank you for the opportunity to address the committee's inquiry into the Australian film and literature classification system. The work of the Advertising Standards Bureau and its boards operates on the principles of responsiveness, accessibility, effectiveness, transparency, robust decision making and, importantly, it operates at no cost to government or to the community. Details of how we meet these operating values are set out in our submission and I will not repeat them. But I would like to make a couple of comments relevant to two of the committee's terms of reference.

Terms of reference (h) addresses the possibility of including outdoor advertising such as billboards in the national classification scheme. The vast majority of advertising and marketing communications in Australia complies with relevant codes and does not receive any complaints. The minority of advertisers whose ads are complained about do comply with board decisions and remove or modify their ads; so we do not believe that there is a problem that requires any change to the current system. The self-regulation system that we have effectively reflects community views in decisions about acceptable advertising. There are a wide range of community views on particular issues, and the bureau's research shows that the standards board is generally in line with community views.

The standards board that we have is independent, dedicated and diverse. It comprises 20 people from a broad range of age groups and backgrounds, is gender balanced and is broadly representative of the diversity of Australian society. Advertising standards board members are not from the advertising industry; they are community members who have shown, in their work and lives, an interest in community standards. Where the board's view on occasion has not aligned with the community, the board has responded and has become stricter. Where the codes do not meet the community's expectations, they are capable of fast and simple review by the AANA or other relevant industry associations.

The self-regulation system has a very efficient enforcement scheme operating on the commitment of industry and we achieve enforcement outcomes far beyond those obtainable through a legislated system. Very few advertisers provide any opposition to board decisions. Where there is a problem, we have support in enforcing compliance with our decisions, particularly in relation to third-party outdoor advertising, through the support of the Outdoor Media Association's commitment to apply standards board decisions. In short, the advertising self-regulation system does reflect community views and has an effective enforcement system in place. It operates to effectively regulate outdoor advertising and, in our view, it is neither appropriate nor necessary to give responsibility for regulation of billboards to the national classification scheme. Just briefly, in terms of reference (k), the effectiveness of the national classification scheme in preventing the sexualisation of children and the objectification of women in all media including all advertising, the self-regulation system is effective in meeting current community and developing community standards around depictions of women in advertising. As mentioned, the board's work is broadly in line with community standards. If the provisions of codes limit the board's ability to reflect community standards, this information is passed to the owners of the codes for their consideration and appropriate review. The self-regulation system is also effective in minimising the exposure of children to sexualised images in advertising. The standards board recognises the broad nature of the audience for outdoor advertising and takes into account changing community perceptions towards particular types of media and particular issues covered by the codes. The self-regulation system is also effective in ensuring that children are not portrayed in a sexualised manner in advertising. While complaints about two ads have been upheld on this issue in the past 12 months, there are in reality very few images in the media which depict children in sexualised manners.

The bureau is committed to continuous improvement, taking into account input from the public and industry and having regard to international best practice principles about self-regulation. Since 2005, the bureau has undergone substantial remodelling, including a range of initiatives to improve the transparency and accountability of our complaints handling service. Our complaint turnaround and case resolution times are comparable to those

of government organisations and, in fact, better than quite a few, but we have a commitment to making our current operating times shorter.

In summary, the elements of the system work to ensure that the needs of complainants, advertisers and the general community are effectively balanced and met. We ask you to give due consideration to the effectiveness of the current system as it relates to advertising and urge you to give proper consideration to the form of regulatory impact analysis in any recommendations for regulatory intervention in the advertising self-regulation system. As I said, we are committed to continuous improvement of the complaint resolution process and we do welcome any relevant feedback that may come out of this inquiry. Thank you.

**CHAIR:** Thank you very much for that. Senator Crossin.

**Senator CROSSIN:** Yes, I am happy to start; thank you very much. Ms Jolly, thank you for your submission. We have a number of witnesses appear before us that have, I suppose, interests in the outdoor advertising area. In your submission, just take me through that, where a breach is found, advertisers are usually asked to review or modify their advertisement. I assume that most of them comply with that pretty quickly.

**Ms Jolly:** Yes. We have the board meet on a particular day. My job then the next day is to call the advertiser whose ads have had complaints upheld and to advise them of the board's decision and, once they receive the case report, which is usually that day, they have five days to let us know what their intended course of action is. Most advertisers will remove their ad within those five days. In fact, if it is TV, it basically happens the next day; outdoor media can take a little longer because of where the outdoor billboard may be. But advertisers will bring their ads down within that time frame. Their obligation is to remove the ad. There is no question about that. They do have the capacity, though, to modify the ad, if it is possible for them to remove the offensive part of the ad. To understand, with some ads—for example, if it was a breach on language—there may be a particular word that they use, in which case it is quite easy to change the word or to have the word beeped out. With some ads that may have been banned, the problem element may be so ingrained in the ad that it is not possible to modify the ad.

**Senator CROSSIN:** Like a picture, for example.

**Ms Jolly:** Yes, if it is a picture.

**Senator CROSSIN:** Therefore, if they do not comply, you have a number of areas in which you can move.

**Ms Jolly:** Most advertisers—I would say something like 99 per cent of advertisers—will remove their ad following one or possibly two or three phone calls from me. We have arrangements, though, with the media agencies. And we had a case last month where the advertiser said, 'Well, no, I'm not going to take my billboard down,' and the outdoor media were able to have that ad down the next day because the ad was up on one of their member's sites. Similarly, with a television ad, we advise CAD once an ad has been banned and CAD will remove the CAD number from that ad immediately so that television ad cannot be broadcast again. That is our main sort of second response.

**Senator CROSSIN:** Give me a snapshot then. In the last year, how many ads have had to go to that stage of your interaction with them?

**Ms Jolly:** I would be guessing off the top of my head, but we have had one billboard and I think one TV one where we have had to ask for the assistance of the media.

**Senator CROSSIN:** In the last year you have had two, out of all of the outdoor advertisements or TV advertisements we are seeing on television?

**Ms Jolly:** Yes. This year, unfortunately, we have had a couple of small advertisers who do not operate on an outdoor billboard that is owned by the Outdoor Media Association, which is a very small number of billboards—a very small number of outdoor ads—or some small businesses who have their own signs on their own premises. I think we have had a couple of instances this year where we have been unable to get those small businesses to remove their signage. In that case, in two instances, we have asked for the assistance of the local council—one was an ad and one was a sandwich board—in having those removed. Councils are unable to do anything because councils do not have power over content of billboards, only about the size and placement. One matter related to a bus which had signage on it, which the board felt breached the code. Again the local council was not able to assist; and the Victorian roads authority were not able to assist because it was not actually a vehicle in the sense of it being driven around. So we have written to the Victorian government asking for them to make regulations to give Victoria Police the power to act on the very rare—in fact, one—occasion in Victoria in relation to this vehicle.

**Senator CROSSIN:** So what was that?

**CHAIR:** That was Kittens, was it?

**Ms Jolly:** That is Kittens, yes. It is a bus with the image of a woman lounging on it. We classified that as marketing material for the adult premises that it was advertising.

**Senator CROSSIN:** So you would put to us then that the system in which you operate is not broken; it is fine—just leave it alone—because your numbers alone prove that, with the self-regulating market, the backup you have is satisfactory then.

**Ms Jolly:** In terms of enforcement, absolutely. My background is government and I have had experience working with cooperative schemes around classification and around food, and the enforcement outcomes that we achieve in terms of the advertising self-regulation system are far superior to legislated systems because we have the cooperation of industry.

**Senator CROSSIN:** That is all I have; thank you.

**Ms Jolly:** On the occasions where we have had to refer something to government, government on every occasion has been unable to do anything.

**CHAIR:** Perhaps I can pursue this area about your billboards. Previous witnesses have raised this issue of the advertisements for Sprite and Bardot jeans. They were both declined; the complaints were not sustained. Is that correct?

**Ms Jolly:** Yes.

**CHAIR:** Let us just take those two. Your submission outlines your code and you have indicated up front that you think the board has a cross-section of the community on it; yet both those ads, which are outdoor billboards and have been raised previously—and I have copies of them here—were not sustained by the Advertising Standards Bureau. Media Standards Australia took on notice to respond and express their views with respect to both those outdoor advertisements. Other witnesses have expressed views as well, which you may have seen in the *Hansard*. Media Standards Australia say that, with respect to the ‘drink Sprite, look sexy’ billboard, it is hard to see how the ad was—and they quote—‘mocking, inappropriate use of sex, sexuality and nudity in advertising; the target audience would not be viewing the ad with an idea of discerning any advertiser’s intent to mock anything’. The advertiser said that the target audience was 18 to 24 years of age. This organisation says, ‘Despite the views of the board, this renders the ad very suggestive and quite disgusting.’ Just to clarify, firstly, do you stand by the board’s decision regarding the Sprite ad; and, secondly, how do you respond to views expressed that the ad is over the top, suggestive and actually in breach of your own code?

**Ms Jolly:** I have a couple of comments on that. I think it is important to recognise that there are a range of views about every aspect of things in society. Poker machines, for example, are in the news today; as is the way we treat asylum seekers; whether or not abortion, euthanasia or religion should be able to be advertised, let alone how they are advertised. But yes, there is a great diversity of views about what is acceptable content for an advertisement.

In our view, it is not possible to regulate so that no-one in the community is offended, and we argue that it is also not appropriate or necessary to do so. The two decisions you have referred to are two decisions out of 500 decisions that the board makes and we have an appropriate and balanced way to meet the broad community’s expectations and standards, with 20 members of the community from diverse backgrounds, locations, professions, religious views and life experience who can apply the provisions of the code. Different people have different views, but what we do is make sure that the system works in a number of ways. We have a diverse board. We recruit publicly for members of our board. We avoid desensitisation of our board members. We turn over our board membership regularly. We are currently advertising for new members and a significant number of the current board members will be leaving this year, to be replaced by new, fresh members of the community.

**CHAIR:** Is that because they become desensitised?

**Ms Jolly:** I am not sure they necessarily do. But I think in any organisation, in any board, if you have a group that work together over a long time, there is the risk of desensitisation and of group-think. So we have had, since 2005, a system of staggered appointments to make sure that there is continually new blood coming in and challenging the way that the board as a group considers the provisions of the code and the community’s views.

**CHAIR:** How often do you do that?

**Ms Jolly:** In 2006 and 2008, we turned over half the board on both those occasions. This year, we will probably come close to that again. So we are committed to making sure that there is no actual or perceived desensitisation. Let me just finish, though: in terms of being in touch with community standards, as I said, we have a diverse and a fresh board. As I have mentioned in our submission, we do test our board decisions against broad community views through research programs, and the number of research programs that we have

undertaken is outlined in our submission. And we have a program of continuous improvement, so we are continually looking for ways to make the system more responsive. So, yes, different people have different views, but my strong view is that the board's decisions are self-explanatory and they reflect the views and the discussions of the board. I assume that you have those determinations and that you have had an opportunity to read those. Different people in the community have all sorts of different views.

**CHAIR:** Thank you for that. The allegation is made by Media Standards Australia that the board has also admitted that the advertisement is still sexually suggestive. This is referring to the Bardot denim advertisement, which is actually on a bus, which goes all around the community and is seen by not just adults but also, of course, by children outside schools and the like. It is still sexually suggestive, even if it is only mildly so. If so, why is such an advertisement allowed to be in a public place? I think the point that they are making is that this is acting in breach of your own code. I am wondering what your response is to the fact that you are in disagreement with the complaint and the fact that it is not sustained is in breach of your own code. We can look at the different sections, but what is your response to that?

**Ms Jolly:** Section 2.3 of the code deals with issues of sex and it states that advertising and marketing communications must treat sex, sexuality and nudity with sensitivity to the relevant audience and/or time zone. Time zone obviously is relevant to television. This is not a blanket prohibition on any sexy images or suggestions of sex. But the board is required to take into account whether in its view the ad treats sex or a sexualised image with sensitivity to the relevant audience; and the board's decision, which is outlined in its case report, is that that particular ad does not breach that code. As I said, there is not a blanket—

**CHAIR:** Let us look at the relevant audience. Who is the relevant audience?

**Ms Jolly:** That is broad. The ad sits on a bus, so it is open to a general audience.

**CHAIR:** Including children?

**Ms Jolly:** That is right, yes.

**CHAIR:** The submission is made that the board considered that, while the ad does depict some nakedness, the nudity does not expose any private areas at all. The board noted that the model's breasts are not visible and her pose is only mildly sexually suggestive. If that is what the board noted, isn't that good enough to say that the complaint should be sustained, if they think it is mildly sexually suggestive?

**Ms Jolly:** The code does not prohibit sexually suggestive material. It says that ads have to treat sex, sexuality and nudity with sensitivity to the relevant audience. 'Sensitivity' does not equal zero. The board takes into account the broad audience and takes its view on whether or not that ad is sensitive to the relevant audience, but it certainly does look at the fact that that is on a bus and so it is available for viewing by young people, old people, liberal people, conservative people and religious people.

**CHAIR:** You stand by the decision of the board in both those instances, I understand.

**Ms Jolly:** And the reason that I do is that we have a board which is very diverse. There are a range of views and I can tell you that, in discussions around those two particular ads, as in many ads that the board looks at, there are a range of views at the table and some very close votes.

**CHAIR:** Let us talk about the Kittens ad. I have the photos here. They are actually set out in the submission from Kids Free 2B Kids and they are referred to in that submission, which is on the public record. It is on a bus, but there is a photo also on a car of a near-naked woman. Obviously, as a board, you have said that this is inappropriate and, if a complaint came to you, you would sustain the complaint. Is that right?

**Ms Jolly:** The board decided that the ad breached the code, yes. So we have ongoing work to do. That is a case where an advertiser has refused to comply with the board's decision and so, as I have said, we wrote to the Victorian government in January this year asking them to exercise regulation-making powers to give government officials power to change that.

**CHAIR:** I guess it gets back to the issues raised earlier about enforcement. The fact is that that is an issue because it is a voluntary code and it is a voluntary system that you have. You have indicated that, yes, there are not as many complaints and therefore it is not so bad. But in terms of enforcement, you have a problem then.

**Ms Jolly:** Absolutely not. That is one example and that is the only example where we have had to write to government to ask them to do something. In the nearly six years that I have been with this organisation, we have had to write to government once. As I have said, every single advertiser, with the exception of the four that we have identified in our submission, has removed the ad when we have asked them to, either directly through our representations or with the assistance of our media partners.

**CHAIR:** But an advertiser can fail to respond to your determination and not be sanctioned; is that right?

**Ms Jolly:** In theory, yes, and here is one example.

**CHAIR:** Not in theory; I am just asking you—

**Ms Jolly:** They can, yes, but they do not. They do reply and they do remove their ads.

**CHAIR:** But we have an instance here where that has occurred.

**Ms Jolly:** Yes, we have one.

**CHAIR:** I have other advertising here for a brothel. It says, 'Sex, chocolate and flowers not required—Pickwood Lodge'. It is on page 109 of this submission. 'This billboard advertising a brothel was on a busy road around the corner from a primary school. The board was of the view'—that is, the ASB board—'that, in the context of prevailing community standards, the majority of people would not find the advertisement offensive and it does not contravene section 2.3.' They say, 'A similar billboard near a primary school advertising a brothel featured a black background with red lips and—the G in red, bold type—the phrase "Got the urge? Do it now" appeared with contact details.' Are you familiar with that one?

**Ms Jolly:** There are many ads which are referenced in submissions. Unfortunately, we have no—

**CHAIR:** I am happy to give you the address. It is 120 Lygon Street, East Brunswick.

**Ms Jolly:** Yes; with no reference about how long ago those board decisions were made.

**CHAIR:** I do not have that in front of me. It is all in this submission here. Some of these photos in the submission are, frankly, risqué, but they are public documents.

**Ms Jolly:** There are two responses that we have to people where there are complaints about advertising for brothels or sexually related products. Banning the advertising of particular products or services is a matter for government and, when people complain that you should not be able to advertise a brothel, we ask them to raise this with their local member of parliament because it is for government to decide whether you are not allowed to advertise a particular type of product. We consider how those products and services are advertised, not whether they are legally able to be advertised. Our view is that we generally do not support restrictions on the types of products that can be advertised. In terms of the actual content of those ads, as I have said, some of the ads that are referenced to you are old and reflect decisions of a board that is no longer the current board and do not reflect decisions that have been made since the improvement to the board and since the program of research that the board now does into community standards to make sure that it is more in line with community values.

**CHAIR:** Can I just indicate to you that this submission is available to the public, if they contact our committee. It is in hard copy and I would welcome you obtaining that and perhaps responding to the concerns that are expressed in it, if possible. Would you be willing to do that?

**Ms Jolly:** I can certainly respond and give you what the outcomes of board decisions were. But the board decisions speak for themselves. So most of the time all I could give you is the actual board decision, which explains the—

**CHAIR:** You respond in the way that you see appropriate. The point I am making is that this submission has been made by Kids Free 2B Kids. This is extraordinary because these are billboards that are available and open to the public; they are for general exhibition, including children. Yet we as a committee have deemed it inappropriate to put them on our website. They are available in hard copy for you and others who seek them, but we feel unable to make them available on the website, as a committee, because of the, in part, pornographic nature of the material, which of course comes from billboards and, indeed, certain magazines that are available in petrol stations and general stores throughout Australia. They are available to the public. So that is some sort of bizarre approach that you might think we are taking here, but we felt that that was the appropriate thing to do.

There are others. We have Sexpo, the health, sexuality and lifestyle expo, and Lee clothes, with a very suggestive looking woman sucking an all-day sucker. Another billboard here is 'Sex for life'. Another one is 'Sexpo showtime'. And there are a range of others all set out in this submission, which is quite comprehensive. So obviously we would welcome any feedback from the bureau in terms of how you would see those. You mentioned in your submission to the committee, and indeed, we have had it from other witnesses earlier in our hearings, that signs have been put up by people who are not your members, who are small businesses and retailers and the like. Let us just clarify: you do not have any control or influence over those; and, secondly, how prevalent, to your knowledge, are those signs and billboards throughout the community?

**Ms Jolly:** Let me just clarify a couple things. The Advertising Standards Bureau does not have any members.

**CHAIR:** Yes.

**Ms Jolly:** Your reference to membership was to the Outdoor Media Association?

**CHAIR:** Indeed.

**Ms Jolly:** Just to be clear, we take complaints about any advertising or marketing material. If we get a complaint about a local sign that is put up of the type you mentioned, we will absolutely raise a case for those complaints if they raise an issue that is within the code. So they definitely come within our jurisdiction, and the majority of them comply with the board's decisions.

**CHAIR:** But what about the retailers that have billboards outside their retail stores or shops and so on? What happens to them?

**Ms Jolly:** There are a number of cases we have looked at where a complaint has been made, where a shop might have a large frontage out onto the street or into the shopping centre and it will have all sorts of posters on it. Certainly we will take complaints about those.

**CHAIR:** Yes, you will take complaints, but what happens in those instances?

**Ms Jolly:** The same thing. It is treated exactly the same as a large multinational or Australian advertiser. We are in contact with them and, if the board decision is that the ad breaches the code, then we ask them to take the ad down.

**CHAIR:** But what if it does not come from one of those advertisers?

**Ms Jolly:** What do you mean?

**CHAIR:** What if it emanates not from one of those advertisers who are a member, for example, of the AANA? They have just put it up of their own volition. We had evidence some—

**Ms Jolly:** If a shop is advertising in its window something about its shop, we will look at a complaint about that.

**CHAIR:** But when you say that you will look at it, you only have jurisdiction where a member of the AANA—

**Ms Jolly:** No. We operate without any regard to whether people are members of any industry organisations. We look at any complaint that comes from the community about any advertiser. The only criterion is that it has to be an ad or a marketing communication, which is interpreted very broadly, and that it has to raise an issue within the codes that we look at.

**CHAIR:** Is there any outdoor advertising for which you do not have responsibility or jurisdiction, you might say?

**Ms Jolly:** We do not have any jurisdiction over political advertising; the government has decided that is a free-for-all.

**CHAIR:** What is your response to that, or does the board have a view about that?

**Ms Jolly:** Around election time, we get complaints about political advertising and there has been some criticism of the fact that we cannot look at it. But our view is that, if the government has decided that no-one should look at it, it is not our position to take it on as an industry organisation. But any other advertising is able to be looked at.

**CHAIR:** We understand that you object to the G classification being applied to outdoor advertising. Can you outline for the committee why that is the case, bearing in mind that billboards are outdoors and they are open to the public, including children? I should go back a step. Do you support the National Classification Code? I assume that you do. Can you put that on the record for us—the code in terms of the—

**Ms Jolly:** The question you have asked is about the principles.

**CHAIR:** I am sorry; the principles behind the code, yes.

**Ms Jolly:** Broadly, yes. But the classification code principles apply to an environment where people are choosing to go to a movie or to switch on the television to watch a particular type of program. So the principle that adults should be able to read, hear and see what they want is that there should not be inappropriate censorship, and we certainly believe that. We also believe that minors should be protected from material likely to harm and disturb them. Our view is that the board always takes into account the effect on children who are part of the viewing audience; and the code enables them to make a decision to ban material if the board believes that the material is going to be harmful or offensive to or inappropriate for the audience.

**CHAIR:** Can I come in there?

**Ms Jolly:** Yes.



**CHAIR:** There is a difference between providing harm to children and being offensive. Do you follow or understand the difference?

**Ms Jolly:** I am sorry; yes, I was loose in my language there. In terms of the issue around sex, sexualisation and nudity, the board is confined by the code and has to take into account whether the ad treats sex, sexuality and nudity with sensitivity to the relevant audience. That is the test.

**CHAIR:** Yes; which is more on whether it is offensive rather than it is on harm to the children; whereas the principles behind the code talk about 'being protected from material likely to harm or disturb them'. That seems to me at least to raise questions about whether your code is consistent with the principles behind the classification code. Do you see the difference?

**Ms Jolly:** I can see that a lot of submissions have made an argument about a difference between offensiveness and harm. My view is that certainly, if there is material that is in the board's view likely to harm children, the board would ban that. They also have ability under section 2.6 of the code to ban an ad if it depicts material that is contrary to prevailing community standards on health and safety. For example, we have looked at ads which depict unhealthy slim models under that type of provision, on the basis that in the board's view it can be harmful and inappropriate to depict unhealthy slim models.

**CHAIR:** I guess the point is this: if it is clear to the board that it is harmful to children—

**Ms Jolly:** There would be no question that it would be banned.

**CHAIR:** Right; that is what you are saying to us.

**Ms Jolly:** And our board of 20 people, three-quarters of whom—I have not done an actual count—are all parents, grandparents, who have a commitment to society—

**CHAIR:** Let us just take that the next step. Are you aware of research or evidence that says that access to pornographic material is harmful to children?

**Ms Jolly:** We are talking about advertising and, in my view, there is no pornographic advertising. If there is something which we think treats sex inappropriately, that is absolutely banned by the board.

**CHAIR:** Are you aware of any evidence or research related to those issues?

**Ms Jolly:** I am certainly aware that submitters have referred to research. I am not qualified to assess the quality of the research methodology or the conclusions.

**CHAIR:** Sorry, you are not—

**Ms Jolly:** Not qualified to assess the methodology that that was—

**CHAIR:** You are not qualified. Do you have anybody at the bureau that does assess this research to determine whether it is harmful to children?

**Ms Jolly:** The type of harm that the codes require the board to ban is pretty obvious material.

**CHAIR:** Can you provide any detail about what is so obvious to you and the board?

**Ms Jolly:** The board's job is to ban ads if sex is not dealt with sensitively to the relevant audience.

**CHAIR:** There is a reference here to the Australia Institute research. I understand this was done in 2002 or 2003, so it was some time ago. Are you aware of that research by the Australia Institute?

**Ms Jolly:** I am certainly aware of a report that the Australia Institute released in around 2006, I thought it was.

**CHAIR:** It might be. We have some of your views on the record. The question is whether the board's actions are reflecting the views that you are sharing with us now and reflecting what is in the code. I guess that is open to debate, at least by some witnesses to this inquiry.

**Ms Jolly:** Absolutely. As I said, people have a range of views.

**CHAIR:** Let us finish on this question about the G classification, bearing in mind that the billboards are open to children outside schools, families, all sorts of people—a very broad cross section—and they cannot be moved. They cannot be turned off. They cannot be turned on. They are always there. Would you outline your view as to why we should not just put a G rating on billboards?

**Ms Jolly:** I do not think that the G rating is the cure-all that some have suggested that it is. The G rating still allows themes and depictions, which some submitters would still think were not appropriate. Our view is that the provisions of the code and the board's ability to represent the broad nature of the community views provide, basically, the same classification in any case. So we do not believe that G will add anything to it.

**CHAIR:** Thank you for that. Senator Furner, do you have some questions?

**Senator FURNER:** I do. I am mindful of time.

**CHAIR:** That is okay. Fire away.

**Senator FURNER:** In respect to the board's tenure, is that a two or three year period?

**Ms Jolly:** They are either two or three years, with the capacity to be extended. What we try to do is have staggered appointments so that we always have a mix of experienced board members and fresh board members. This is the first time, this year, all the board members' contracts notionally expire, but we certainly will not be saying goodbye to all of them, because we believe it is important to have some experienced members there.

**Senator FURNER:** So you will always have continuity of and at least some experienced members on the board.

**Ms Jolly:** Yes. We have two full-day training days a year for the board members. Part of that is to go through precedent over the past six months and discuss any cases where we think the board might have come to a view that was not necessarily consistent with an earlier view, to make sure that all the board members are consciously making decisions that are consistent decisions but also decisions that are in line with whatever research we have done and fed into them.

**Senator FURNER:** Is that training provided throughout their tenure as well?

**Ms Jolly:** Yes, we do two training days a year, as well as a full induction day whenever we have new members starting.

**Senator FURNER:** Over time, has the ASB considered that training to be more specific in examination of particular topics?

**Ms Jolly:** Yes. At our last training day in November, we spent most of the day talking about food advertising. There were some initiatives that came in under our jurisdictions last year which can be quite complex to apply. We spent a lot of time doing training with the board on how the codes work and looking at previous decisions and some ads which are out there that we had not necessarily had complaints about, but to make sure that the board could see what the decision making process was in relation to those codes.

Previously we have had people from the ACCC come to do a short training session with the board. We do not have a lot of truth and accuracy issues that we look at, but we had had a couple and we felt it was useful for the ACCC to come and give us a talk about how they approach truth and accuracy and where there is a difference between how they do that and how we do it. At our last training day, we also spent a bit of time with Google to really get the board to understand how internet advertising works and the different ways that people can experience internet advertising.

**CHAIR:** How did you get to talk to a Google representative? Nobody else in Australia has that opportunity—or very few people, might I say.

**Ms Jolly:** Senator, that is almost a dorothy dixer, if I may say so, because, as I said before, the enforcement efficacy of the ASB works because we have the cooperation of industry. Because we have the support and cooperation of industry it is exactly why we get people to come and talk to our board.

**CHAIR:** Were they there in person?

**Ms Jolly:** Yes, absolutely—three of them, actually.

**CHAIR:** Well done.

**Senator FURNER:** Just in respect of the billboards, you do not have any control or say over where they are posted?

**Ms Jolly:** No.

**Senator FURNER:** Or located?

**Ms Jolly:** As far as I am aware, that is a council issue. There are also some rules in the Outdoor Media Association code where they have put stricter rules than councils have in terms of placement of billboards near schools—for alcohol, I believe.

**Senator FURNER:** Thank you.

**CHAIR:** Thanks very much for your evidence today, Ms Jolly.

**Ms Jolly:** Thank you.

**LOUKAKIS, Mr Angelo, Executive Director, Australian Society of Authors**

**WINIKOFF, Ms Tamara, Executive Director, National Association for the Visual Arts**

[10:07]

*Evidence was taken via teleconference—*

**CHAIR:** Our next witnesses are via teleconference. We have the National Association for the Visual Arts and the Australian Society of Authors. We have received your submission, which we numbered No. 64. Do you wish to make any amendments or alterations to that submission?

**Ms Winikoff:** No, no amendments; just a brief opening statement.

**CHAIR:** We welcome you both to make an opening statement, after which we will invite members of the committee to ask questions.

**Ms Winikoff:** Thank you. Should I start?

**CHAIR:** Fire away.

**Ms Winikoff:** Thank you for providing the opportunity to address the members of the committee and to answer questions. I will just briefly amplify on our submission. As we all know, freedom of expression is regarded as a fundamental right within a liberal democratic society and one which is particularly valued by artists and people working in the media. But in Australia it is tempered by a swath of laws regulating behaviours, including those pertaining to child pornography, obscenity, defamation, racial vilification, blasphemy, sedition, public nuisance et cetera. These laws, we would submit, are already quite restrictive of what people can and cannot say and do.

In any circumstance, I guess human society is trying to balance conflicting positions, the contested ground between freedom and restraint. This is, of course, a complex ethical question and one which we see this Senate inquiry as having to face. With this in mind, there are a few particular issues of concern that we want to raise in relation to the inquiry's terms of reference and submissions by some respondents with a particular axe to grind.

On behalf of the arts community, NAVA would assert the following things. It would be excessive to require all artworks to be assessed by the Classification Board when only a small proportion of them are contentious. The classification would come at a considerable cost, both financial and in time, to artists whose low level of income is acknowledged as a problem by governments. The proposed banning of full frontal nudity implies that there is shame in the naked human body and that reflects negatively on the whole history of artistic practice across all cultures and all countries. We are already seeing the results of a campaign being waged by child protection zealots—that images of children, clothed or unclothed, are disappearing from the public domain. This form of censorship is a scapegoating of artists with the inability of the state to prevent child pornography or control its digital dissemination and its inability or unwillingness to negotiate appropriate standards with the advertising industry in relation to the sexualisation of children and objectification of women.

The National Association for the Visual Arts strongly recommends that the jurisdiction of the Classification Board should be broadened, but only to call in on or agree to assess contentious artworks. This should only be on condition that artistic merit would be regarded as a standard for assessment and that artworks would be both measured against criteria agreed through consultation with art experts and assessed away from the influence of political populism, the self interest of ideological special interest groups and media hype.

Meaning is in the eye of the beholder. I particularly cherish journalist David Marr's wonderful example of *The Sound of Music* being banned because some people might be sexually stimulated by the sight of naked feet in sandals. The arts constituency sees this as a potential move to return us to the counter reformation, where religious imagery was censored as being too licentious. Incidentally, they executed Galileo because he dared to question the belief that the earth was flat. Thank you.

**CHAIR:** Thank you for that. Mr Loukakis, would you like to make a statement?

**Mr Loukakis:** Indeed I will make a statement.

**CHAIR:** Thank you.

**Mr Loukakis:** Beginning with works of art and the role of artistic merit in the classification decisions, the ASA does not see how the classification system can be effectively applied or make sense, even, within the current

formulations, or even how it may be improved based on some reworking of the current classification formulations.

The ASA is concerned by the arbitrariness that arises in attempts to assert artistic merit as a criterion classification. What is interpreted as artistic by one reader is seen by another as an expression of reprehensible immorality. Why should *American Psycho* be classified as an R-rated publication when many consider it to be a work of considerable artistic merit? Why should, at the same moment, a popular fiction title such as *Transfer of Power* by the American author Vince Flynn not be classified under 9A—that is, refused classification for publications that advocate terrorist acts. Clause 2A directly or indirectly provides instructions on the doing of a terrorist act.

Let me give you a little detail on this book. When reverse engineered, part of the content of *Transfer of Power* is how to kidnap a president. When decoupled from the book's purpose—that is, to produce thrills in the reader according to the methods of a conventional literary genre, it can be read as a detailed and plausible set of instructions on how to commit a terrorist act. It is not a classified publication. So it may be that the classification system needs to be simplified rather than further codified.

On questions on artistic merit, the ASA does not wish to see the classification system used for the censoring or banning of political speech however that is described. The open air is a far better place for the community to make its judgments about what is and is not acceptable for the organisation of society.

**CHAIR:** Thank you. Are you done, Mr Loukakis, or are you still proceeding?

**Mr Loukakis:** In applying censorship derived from fear, 9A inescapably inhibits not only freedom of expression but also freedom of thought. All arguments about censorship are arguments about power and necessarily involve the transfer of power from creators to state functionaries. As it does so, the states are fundamental. In our culture, power is more valued than rationality.

More specifically, we submit that section 9A—'refuse classification for publication of films or computer games that advocate terrorist acts'—should be deleted for the reasons set out in Professor Williams' submission. In particular, it fails the most elementary test of censorship—certainty of application. Because no one knows precisely what it prohibits, it inescapably catches material which is beyond the ambit of the censorship. Such censorship purportedly controlled by the rule of law is in fact an arbitrary undermining of the rule of law. As the Australian Press Council submission points out, the problem extends to the discussion of euthanasia—subjects of such sensitive areas of public debate that the potential threat to censorship tends to diminish clarity and insight in an area where they are urgently needed.

It could be argued that, other than refused classification as measured under section 11 and clause 1, there is no need for any other categories. Protecting children by limiting what they can see may be considered a useful form of censorship. The question arises: by whom? It is far better to develop morality by exposing students and young people to notions of the good and true through teaching and education and far better also to allow parents the decisions in this area rather than having standards imposed by the state.

**CHAIR:** Thank you. Are you done, Mr Loukakis?

**Mr Loukakis:** That is it.

**CHAIR:** Thank you. We might move to questions. I will move to Senator Mark Furner.

**Senator FURNER:** Thank you. Thank you for your submission. Firstly, you made comment of a small percentage of contentious artwork. How would you define 'a small percentage'?

**Ms Winikoff:** I suppose we can only go on the kinds of complaints that we hear about, either directly to our organisation or similar organisations to ourselves, or those that are reported publicly. As far as we understand it, there are very, very few artworks or artists who are taken to court because of the kinds of artwork that they produce.

Censorship happens much more frequently, but it is often based simply on a complaint and not because work was actually breaking the law in any way. It may have just offended a particular subgroup within the community, or even an individual. I cannot give you a statistical answer to that, but I did add to my submission some of the examples of contention that we have come across recently. I think there are about 30 examples. I have not actually counted them.

**Senator FURNER:** Just work me through the process of dealing with a complaint. How is it documented? How is it reported and then responded to?

**Ms Winikoff:** Are you asking how we deal with that?

**Senator FURNER:** Yes, please.

**Ms Winikoff:** Usually the complaint comes from the artist because their work is being censored or threatened with censorship. What we would ask them to do is to send us a written account of what has happened. We would then consult with whoever it was who was identified as making the complaint to hear their side of the story. Then, depending on what the particular circumstances were, we might try to negotiate with the complainant to see whether there is some kind of reconciliation that is possible which does not result in the censoring of the artwork, if we felt that the work was not breaking the law.

**Senator FURNER:** How often does that occur in regard to looking at some sort of consensus?

**Ms Winikoff:** You mean using mediation?

**Senator FURNER:** Yes.

**Ms Winikoff:** Are you asking that?

**Senator FURNER:** Yes, I am.

**Ms Winikoff:** It happens erratically. Sometimes there is a bunch of them; sometimes there is nothing for a few months. Probably on average we deal with about five or six a year, but often they are resolved fairly amicably.

**Senator FURNER:** You also commented on an expression or opinion that art experts should be those that look at the classification of artwork. How would you draw upon that group of people if that was a possible way of censoring artwork?

**Ms Winikoff:** I think I should make it a bit clearer what was intended there. What we were suggesting was that if the Classification Board was to broaden its terms of reference to include consideration of contentious artworks, that in trying to decide what should constitute artistic merit in that process they should consult with art experts. What we have suggested is that there might be a standing committee established for that purpose and that those people would be drawn from amongst, for example, senior curators at galleries, other staff at well regarded galleries, whether they be public or private, and senior and respected artists themselves.

**Senator FURNER:** Thank you for that.

**CHAIR:** If I could kick it off in regard to Ms Winikoff, in your submission you indicated that it was your view that this Senate committee had not invited representative peak arts organisations. I just wanted to indicate to you that it is my advice that certainly you were and you are. It is a public inquiry, firstly, and advertisements were made available, but we also sent out invitations, most often electronically, including, I am advised, to your organisation and other peak arts organisation. I just wanted to indicate to you that we are very welcoming of submissions from anybody, including your organisation, which we have been. You have indicated in your submission that you did not receive that. We have evidence which supports the fact that we did send an invitation to you and, indeed, to other organisations.

**Ms Winikoff:** Thank you, Senator Barnett. When I was told that that was the case, we did actually go back and check our email records and also the junk mail and in neither of those could we find the invitation. However, we thank you for inviting us subsequently, again, from your point of view, to respond and make a submission.

**CHAIR:** Thank you for that. I just go to the National Classification Code and the principles behind the code—I have asked many witnesses the same question—and ask whether you support the principles behind the code. Just to clarify, so you know what I am talking about, it states:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:
  - (i) depictions that condone or incite violence, particularly sexual violence; and
  - (ii) the portrayal of persons in a demeaning manner.

**Ms Winikoff:** Yes, we do support those broad principles.

**CHAIR:** That is fine. I just wanted to clarify that or get that on the record. So in light of your support for those principles, how is that consistent with your view that artistic merit should apply and therefore be exempt from censorship?

**Ms Winikoff:** I think what we have suggested in trying to elaborate the meaning, or how artistic merit might be unravelled, is that there are several issues which are pertinent. As with anything, things are open to interpretation. So, in trying to tie down the guidelines about how to interpret something, what we have said is that in the first instance it would be important to try and identify whether the person producing the work was an artist, and in being an artist you can make certain suppositions about what their intention is in producing the work.

Secondly, we have suggested that the context needs to be taken into account, as does the intention and meaning of the work. While you can outline broad principles like the ones that you have referred us to, in any of those principles you would still be, as the Classification Board is, in the position of trying to interpret how to apply it to any particular case.

**CHAIR:** We have—

**Mr Loukakis:** If I could add something there, Senator, if you do not mind.

**CHAIR:** Please fire away.

**Mr Loukakis:** From the perspective of literature and writing, artistic merit is a form of moral force. It has the quality of moral force. Artistic merit resides in books that are complex, challenging, perhaps threatening on the surface, but beneath the surface there is usually something teachable, something moral, something good. The arguments over *Lolita* have ended. We understand that *Lolita* is a moral book. What it teaches is about relations between adults and children. The same can be said of many other books that have artistic merit.

**Ms Winikoff:** If I could add something to that too, Senator Barnett, when we look at some of the cases that have been contentious, it is very interesting to drill down into those questions of context and intention and meaning. As Angelo has just described, the intention of the author may be different from the way that it can be interpreted very broadly. You may find one particular group within the community interpreting it as a moral outrage against children and another group within the community saying that this is a moral lesson to try to describe what are the circumstances of sexual engagement between adults and children and how should we deal with those kinds of things.

If we try to avoid those things rather than actually giving them good, intelligent and detailed consideration, we are likely to fall into malpractice. The whole point of a great deal of—well, not a great deal but much of—artistic practice is that it is trying to deal with difficult and complex questions. It is not trying to take a simplistic, partisan position. It is saying: ‘These are difficult things. We need to have a close look at them. We need to think about them. We need to weigh one opinion against another.’ The intention of the artists in those cases is often to generate that kind of discussion in order to try and advance our thinking.

**CHAIR:** I guess the point is that there is an argument that the view that artworks should be exempted from classification if they are going to be viewed by the general public is of concern to a lot of people. When I say ‘by the general public’, I am including children.

**Ms Winikoff:** Again, I would say that that concern should only apply to contentious works. I do not know whether you are aware—I think you probably are—that the industry itself applies a lot of self regulation. If it is anticipated that there is likely to be concern, the industry will often employ signage to try and indicate to anybody who is about to enter the exhibition that there may be material within the exhibition that they may either find themselves, as consenting adults, confronting in some way or that they might wish to assess it first before taking children into the exhibition.

**CHAIR:** I guess the point is that you are relying on the industry, as it were. If you are having a blanket exemption then you are simply relying on the industry to ‘do the right thing’. That leads me to the Henson photographs, which have caused some discussion in the course of the inquiry, and the various exhibitions. Some of those photographs go back to his public exhibitions in 2008, of course, which caused a good deal of consternation in the community, including from the Prime Minister at the time, Mr Rudd. His comments are well known. There were some of the works that he had undertaken in 2008 and then I have here 2005 as well, which is full frontal with nudity—totally nude young girls under age, of age 13. Do you think that sort of material should be available and open to the general public, including children?

**Ms Winikoff:** Again, I think it depends on the circumstances. I think the problem that really arose with the Henson case was that one of the images was made available on the internet. That means that it could be accessed without parental guidance or that it could be unsolicited. I think that is where some of the more interesting questions lie. With galleries or art publications, because the context is well understood, judgments are relatively easy to make. But I think that the internet and the digital environment create a different environment and needs a different kind of consideration.

**CHAIR:** Going back to my question, though: should they be accessed by children?

**Ms Winikoff:** It could be accessed by anybody. It could be accessed by a paedophile.

**CHAIR:** Of course, that was one of the reasons for the Australian Federal Police being involved. I presume that is something that you are totally against.

**Ms Winikoff:** As always, looking at an image like the one that seems to have caused that contention is very much in the eye of the beholder. If you come to that image thinking of the beauty of the human body and the natural progression of a child into adulthood through puberty, which is their sexual maturation, then you may see that image as a very beautiful hymn to the beauty of the human condition.

If you come to it with a predatory frame of mind that you want to have sexual relations with children under age then you might interpret that image in a very different way. It is very difficult then to control the human psyche. For example, a friend of mine who works within the child abuse field said that child pornographers can get off on children's knitting patterns. Does that mean that you ban all children's knitting patterns?

**CHAIR:** It is a very contentious area. I agree with that in terms of the debate and the context et cetera. You still have not answered my question as to whether it should be available to and accessible by children. That is the third time I have asked the question.

**Ms Winikoff:** According to the Classification Board, that image was classified 'parental guidance'. I think that is a fair assessment.

**CHAIR:** Thank you for your feedback on that. I think we are done with questions. Mr Loukakis, did you want to add something?

**Mr Loukakis:** Just a final remark, picking up on a point you made earlier, Senator. It is important not to see these matters as a confrontation between art industries and viewers or citizens or readers. There is a cultural circle here. It includes education, educators and parents. We must avoid, at all costs—certainly from literature's point of view—the criminalisation of serious artists. That is one of the risks you take when you go wanting to ban the Bill Hensons and the Bret Easton Ellises. They are not criminals.

**CHAIR:** Mr Loukakis, do you support the Criminal Code in each and every state and territory of Australia with respect to child pornography and the provisions related to it?

**Mr Loukakis:** Which code? They are all different.

**CHAIR:** They all have provisions that penalise people who are involved in child pornography.

**Mr Loukakis:** I am all for the criminalisation of criminals, but I am not here to argue for the criminalisation of artists. Thanks.

**CHAIR:** All right. We will leave it there. Thank you.

**Mr Loukakis:** Thanks.

**Ms Winikoff:** Thank you.

**Proceedings suspended from 10.34 to 10.48**

**GALE, Ms Julie, Director, Kids Free 2B Kids**

**TANKARD REIST, Ms Melinda, Founder and Spokesperson, Collective Shout: for a world free of sexploitation**

*Evidence was taken via teleconference—*

**CHAIR:** Thank you for attending. We have had lodged with the committee the Kids Free 2B Kids submission No 63 and the Collective Shout submission No 65. Welcome to the inquiry. Do you wish to make any amendments or alterations to those submissions?

**Ms Gale:** No.

**Ms Tankard Reist:** No.

**CHAIR:** Thank you. Before inviting you to make a short opening statement, after which we will have members of the committee ask you questions, I just wanted to indicate that it is Guy Barnett, the chairman, on the line. I am joined by Senator Trish Crossin, who has just ducked out for the moment, and also Senator Mark Furner from Queensland, together with our acting secretary, Ann Palmer. With that said, we welcome you to make an opening statement.

**Ms Gale:** Thank you. Who goes first?

**Ms Tankard Reist:** Go, Julie.

**Ms Gale:** Thank you for the opportunity to speak today. I will take the five minutes allocated. Clearly, Kids Free 2B Kids is concerned about children being exposed to adult sex lives material. By submitting examples of porn magazines sold in local stores, 7-Elevens and petrol stations to be audited by the Classification Board, it became evident that most pornographic magazines sold in the public arena are either not classified at all or do not comply with the classification guidelines and are, therefore, illegal. This is further explained in the Kids Free 2B Kids submission, of course, which was also previously submitted to the SCAG censorship and enforcement working party.

It is worth noting that on both occasions the submission was deemed inappropriate to receive, send on or publish, despite images from sealed magazines being altered. It is ironic that the very inquiry set up to make decisions about the public display of classification of pornography deems examples from the public shelf as inappropriate.

Of major concern to Kids Free 2B Kids is a proliferation of the teen porn genre which depicts females who appear to be under 18. The text and images in these magazines are clearly about inciting sex with minors. I also note the occasional use of black dot stickers on covers in an attempt to indicate that the content complies with the classification rating. Evidence shows that frequently the content does not in fact contain stickers and the magazine should be either classified category 2 or refused classification.

I would like to make reference to a post on the Sex Party website dated January 2008 written by Fiona Patten. She said that, due to a campaign run by Melinda Tankard Reist and Kids Free 2B Kids, there was an unreported consequence with the classification office issuing a statement saying they would refuse to classify imported adult magazines with post-print modification—she says that was ‘black dots on rude bits’—to meet Australia’s strict censorship guidelines. Effectively, she said this decision would have ended the importation and legal distribution of all soft core category 1 restricted magazines in Australia.

Fiona Patten acknowledges that most imported magazines are sold without being classified. She states that, after legal advice and some ‘pretty strong letters’ to the Director of the Classification Board from the Eros Association, he overturned his earlier decision. As the Director of Kids Free 2B Kids, I would like to know—and I think it would be in the interests of this inquiry to know—the details of those ‘pretty strong letters’ and why the Director of the Classification Board, Mr Donald McDonald, overturned that decision.

In January 2010, on behalf of the Sex Party, Ms Fiona Patten wrote a false and misleading press release which went viral and led to articles being published in two leading newspapers stating that the Classification Board decided to ban depictions of small breasted woman and female ejaculation due to campaigning by Kids Free 2B Kids. This absurd and false allegation has led to continuing abusive emails to Kids Free 2B Kids and myself from Ms Patten’s supporters, and was presumably a tactic to discredit the work of Kids Free 2B Kids. We note that the Eros Foundation has a vested interest in porn magazines, given that a former officeholder, Mr David Watt, has



imported pornographic magazines sold in the public arena which promote sex with minors, rape and incest, and should have been refused classification.

In closing, I would like to acknowledge BP, Shell Coles Express and Mobil, who took swift and responsible action by removing all category 1 pornographic magazines nationwide from their company owned stores. This followed contact from Kids Free 2B Kids, which included providing examples of the content of the category 1 magazines they were selling. The same cannot be said for 7-Eleven, McDonald's Fuel Zone, Safeway, Caltex, United Petroleum and others who, despite the knowledge they were selling illegal content, refused to take responsible action, many stating they could not dictate what their co branded stores or franchisees sold. So the bottom line is that magazines inciting sex with minors, magazines that are not classified and magazines that either should be in adult only stores or refused classification remain in the public domain on shelves that children can easily view and access.

**CHAIR:** Thank you. Ms Gale, could I just indicate to you with respect to your comments regarding the Sex Party that it is my view—and we will just check with the committee—that we will need to put that back to them, in light of the comments that you have made, to seek a response from them in case there is some adverse comment. Secondly, I would certainly be seeking the views of the Classification Board with respect to your comments so that we obtain feedback from them as well. I just wanted to indicate that to you upfront.

**Ms Gale:** Sure.

**CHAIR:** Thank you. Ms Tankard Reist?

**Ms Tankard Reist:** Thanks, Chair. Supporters of Collective Shout are critical of the current scheme, which relies on a mixture of self regulation and government enforcement. In particular, we are concerned about the lack of effective enforcement through sufficiently serious penalties to deter those who are making a profit from the pornification of women and girls. In our view, the classification scheme has failed to halt or even slow the proliferation of images through publications, films, television, billboards, mobile phones and the internet and words through all these media, as well as radio and music recordings that demean woman, reduce them to sexual objects, foster a culture which condones sexual violence and pressures young girls to act in prematurely sexual ways. We believe the system has failed and needs a complete overhaul. There are so many examples of failure it is actually difficult to cover them in this summary. Distributors of pornography have shown complete contempt for the system, and that has been revealed through Senate estimates hearings and elsewhere, where they completely ignore call in notices. The Classification Board has shown that it is ineffective to deal with recalcitrant distributors who continue to bring into the country material promoting sex with little girls, rape and incest. They have ignored hundreds and hundreds of call in notices. There are no penalties for non-compliance, and yet they want even more self regulation than they already have, when they cannot even comply with the basic standards right now.

We want to emphasise that total lack of response to the call in notices and the absence of a centralised information system about follow up by any state or territory law enforcement officers for continual breaches of the scheme. We recommend a major overhaul of the enforcement system, including introducing penalties for failure to respond to call in notices, removing distributors who breach the scheme from access to further classification services and centralising information on the progress of enforcement actions by all relevant law enforcement agencies.

We also believe that, in terms of the advertising industry, if you use self regulation to its commercial advantage to the detriment of the community and women and girls in particular, the self regulation model in fact enables the advertising industry to avoid proper scrutiny of its long history of irresponsible and profit driven behaviour.

We are particularly concerned by the colonisation of public spaces with objectified and sexualised images of women and girls, together with a lack of proper action by regulatory authorities. We would like to note that if a man were to put up a pin up in his workplace featuring a naked or semi naked woman or girl that would be sexual harassment, a crime and against the law, but advertisers and marketers put up giant billboards all over the public spaces with similar images and it is called 'advertising'. We are expected to put up with it.

I want to make a comment about self regulation. This is provided to me by a colleague, Dr Abigail Bray. I am working with her on a new book on the harms of pornography. She has made such a profound comment here that I think it deserves to be put on the record. She says: 'The self regulation model is a form of lazy, irresponsible government which outsources government duty of care of citizens to citizens, effectively demanding that lone citizens enter into an exhausting and often futile battle with the government classification board which appears to defend corporations.' She also says: 'Citizens attempting to uphold human rights by participating in self

regulation battles are frequently vilified so the government is also outsourcing an ethical stance and the cultural and social cost of that principled human rights position to its citizens.'

Julie Gale is a classic example of this. She is a citizen that is expected to be vigilant. She has to pay for the pornography with her own money to do a job that government and our regulatory bodies have utterly and completely failed to do. Surely that is just too much for one citizen.

In summary, Collective Shout recommends that the national classification scheme be subject to a major overhaul with the primary goal of making it more effective in reducing the prevalence and availability of material in all media which contains images or words which reduce women to sex objects, which condone or celebrate sexual violence against women and which promote the sexualisation of children.

**CHAIR:** Thanks for that. We will move to questions. We have your submissions with us. I note, Ms Gale, your reference to the irony that many of the photographs included in your submission are so pornographic or risqué that unfortunately we have not, as a committee, been able to make your submission fully available to the public on the internet and on our website. Clearly there is an irony there, and it is a bizarre situation that we are in at the moment. I just wanted to note that and note your earlier comments.

Just to follow on from the previous submitters and witnesses in terms of artists, do you think that artists or artistic merit should be exempt from the classification system and, if not, why not?

**Ms Gale:** I would certainly like to answer that. I think—

**CHAIR:** Could you just indicate—

**Ms Gale:** No is the answer.

**CHAIR:** Who is speaking?

**Ms Gale:** It is Julie Gale speaking.

**CHAIR:** Thank you.

**Ms Gale:** No, I do not think they should be exempt. Currently, given some of the images that artists are getting away with, the rest of the Australian public, in fact, would be charged with either possessing or passing on images of child pornography. I do not think artists should be exempt from the rest of the country.

**CHAIR:** Thank you. I just wanted to get that on the record. I have asked other witnesses this question about the National Classification Code and the principles (a), (b), (c) and (d), which you are familiar with. Just to clarify, do you support those principles and/or do you have any further additions that should apply to those principles?

**Ms Gale:** I am not—

**CHAIR:** Do you want me just to remind you? The code states:

- a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:
  - (i) depictions that condone or incite violence, particularly sexual violence; and
  - (ii) the portrayal of persons in a demeaning manner.

**Ms Gale:** Melinda?

**Ms Tankard Reist:** The fact is that you can have these nice principles and these words but, without any proper system of enforcement and compliance, they are in effect meaningless. All those principles have been shown to be without meaning and without foundation because every day people like Julie Gale and I and other colleagues find multiple breaches and nothing is done about it. We have been making the same points for five years now. What has happened? The porn industry continues to bring in graphic pornography depicting rape, incest, violence against woman and promoting sex with under-age girls. All those examples are fully detailed in Julie's submission. We continue to have to complain against outdoor advertising which depicts women in highly sexualised ways. We have to continually complain about outdoor advertising which depicts and glamourises violence against women, which contributes to a dangerous environment for women and girls to inhabit.

**CHAIR:** Ms Tankard Reist, I am going to come to outdoor—

**Ms Tankard Reist:** You can have a principle, but what is being done to enforce it? Basically, not enough.

**CHAIR:** Sure. I will be coming to outdoor advertising in a moment. I just wanted to know whether you support the principles as I have read. Then we are going to get to the detail of whether the actual principles are being abided by or not. I would like to know if you support the principles.

**Ms Tankard Reist:** In theory they sound fine.

**CHAIR:** Thank you. Ms Gale?

**Ms Gale:** Yes, I agree.

**CHAIR:** Thank you. Let us move to a little bit more detail. I notice that the Eros Foundation in their submission—you would have to say you are poles apart—indicate that the system is broken. Why is it that you would agree with the Eros Foundation and they with you on that matter?

**Ms Tankard Reist:** It is the truth. It is a basic fact that we can agree with. But it seems a little bit hypocritical of them to acknowledge this when they undermine efforts to fix the system. They admit that it is broken. Robbie Swan is on the record as mentioning the lack of compliance, yet it is people connected with Eros that continue to flout the system. A former secretary of Eros is David Watt, who is in charge and heads up the Namda and Windsor wholesale corporations which have brought in some of the worst material. Even as recently as 2010, David Watt and his companies had not complied with any of the call in notices that have been issued by Donald McDonald of the Classification Board. I find it a little bit rich for Eros to acknowledge the brokenness of the system when people connected with their industry body continue to flout the system.

**CHAIR:** Thank you for that. Now to the outdoor advertising issue: you have both got a number of photos of outdoor advertisements in your submissions today. In previous hearings we have had the issue of the Sprite advertisement and the advertisement for Bardot jeans, where the complaint by the Advertising Standards Bureau was not sustained. Can you advise on your views with respect to this area generally and then specifically with respect to those two complaints, as to where the bureau, you believe, have got it wrong. How have they got it wrong? Was their code not followed or is their code inappropriately written?

**Ms Gale:** I think the code of ethics certainly needs to be rewritten. Section 2.3 relating to sex and nudity is just so open to interpretation. Then you have the selection of people on the board who have differing opinions and it is a majority rule vote. There are no references specifically to sexual objectification of females, to the impact of sexualisation of children. They have not ever sought and do not seek the advice of appropriate child development professionals about the impacts of sexualised imagery on children. I think the system is really broken.

**CHAIR:** All right. Ms Tankard Reist?

**Ms Tankard Reist:** I fully agree with Julie. In the submission of Collective Shout, we list all the ways in which the self regulatory system fails us. The fact is that an industry self regulation body like the ASB will always be conflicted in its role, relying as it does on the funding of the industry for its financial viability, and also the cooperation of the industry to implement and enforce its code of ethics and determinations.

You have mentioned two ads. Collective Shout and Kids Free 2B Kids list examples. We have new examples every day of inappropriate advertising—advertising promoting violence, advertising sexualising women and girls. This is a medium that, in the words of APN Outdoor, is virtually immune to consumer avoidance. We cannot avoid it. We are forced to look at it.

You have a problem of regulatory capture because the ASB has vested interests to represent its member bodies. There is no separation. There is no system of pre-vetting. Again, it relies on consumers, citizens like ourselves, who have to put our time into monitoring these things, protesting and complaining, because, again, the industry has failed to regulate itself. That is why we have called for some separation where you can have a third party without a profit motive assessing and making decisions about the appropriateness of this advertising.

**CHAIR:** In your submission you have drawn a distinction between what is harmful to children and what is offensive, I think, using your words. Can you just tell us your views as to the difference between the two? You have referred to an Australia Institute research study to say that, in your view, it is harmful to children. Can you expand on that, please?

**Ms Tankard Reist:** Sorry; is that to Julie or to me?

**CHAIR:** To you, Ms Tankard Reist.

**Ms Tankard Reist:** Okay. We argue harm to children. Collective Shout is also concerned about harm to women and girls by creating a hypersexualised environment by wallpapering the public domain with pornified images of women and girls. This is, of course, harmful to children. The ASB does not consult child development experts, so it has not shown any real concern about that. But we are also concerned about the broader messages sent about the worth and value of women and girls, where they are reduced to essentially their physical

appearance, their sexual parts and their ability to provide sexual gratification. It is harmful to children and an offence to women and girls who have to occupy these spaces and feel harassed by these images on a daily basis.

**CHAIR:** I am interested in any further evidence you have to support your view that it is harmful. You refer to the Australia Institute research—

**Ms Tankard Reist:** It is global. There is a growing body of global evidence. There is the Australia Institute study on corporate paedophilia and—

**CHAIR:** Can I just come in there. If you could perhaps take this question on notice for the committee.

**Ms Tankard Reist:** Certainly. I have listed some of the research in a footnote in the submission.

**CHAIR:** Right.

**Ms Tankard Reist:** I have listed my book *Getting Real: Challenging the sexualisation of Girls*, the American psychological association's report, the UK parliament, the Scottish parliament and other evidence, but I can provide a fuller list. Certainly, I have captured some of the main ones already in a footnote in the submission.

**CHAIR:** Thank you for that. It is appreciated. If there is anything further you wish to add, please let us know.

**Ms Tankard Reist:** Sure.

**CHAIR:** I just want to draw to your attention to the submission by the Attorney-General's department where they say, in terms of the call in notices, and you have made a point here:

In 2009-10, the Director called in 49 adult publications and 444 adult films. In the 2010-11 period to 31 December 2010, the Director called in 8 adult publications and 32 adult films. Only one of the publishers of adult magazines has complied with a call in notice issued by the Board.

I think you have highlighted the concerns you have. This has been brought up in Senate estimates again and again and again.

**Ms Tankard Reist:** Yes.

**CHAIR:** What can be done about it and do you have recommendations for reform?

**Ms Gale:** I would like to say something first. I could be out there buying porn magazines and submitting them to be audited every week. I see examples, because I know the guideline very well now, of magazines that are clearly not meant to be on the public shelves but, in terms of spending dollars consistently on the porn industry, I just stopped.

As to the numbers that the Classification Board could be sending out, the call in notices could be so much greater than the numbers that they are because they are relying on people like Melinda and I and others to bring to their attention the magazines that are not complying. Some time ago I stopped even bothering, because we just saw that it was futile and that most of them do not comply. I certainly did not want to keep spending money on proving the point.

**Ms Tankard Reist:** If I could add to that: no one is held accountable for these breaches. The porn distributors know they can keep doing this because there are no penalties for non compliance. They get a letter from Donald McDonald and possibly a visit from a community liaison officer over a nice cup of tea. Who is held responsible? No one seems to be able to tell the Senate legal and constitutional affairs committee who is responsible.

The system has become a farce. We address this in recommendation 3. We recommend a major overhaul of the classification enforcement system, including introducing penalties for failure to respond to call in notices and removing distributors who breached the scheme. Those who breached the scheme in the past continue to do so now. They have shown no desire to change their behaviour because they know they can get away with it. There are not that many Julie Gales in the country who are going to keep monitoring them, so they keep getting away with it.

We also want to see centralised information on the progress of enforcement actions by all relevant law enforcement agencies. Who is enforcing what is in the codes, the regulations and the laws? Nobody is enforcing it. The system is completely dysfunctional and needs to be changed as a matter of urgency.

**Ms Gale:** In the Senate estimates in May 2009 Donald McDonald said the police are not obliged to inform us of any action they are taking. So we have no clue if, in fact, any action has been taken at all.

**CHAIR:** Thank you very much for that. In light of the time, and before I move to Senator Crossin for questions, I just wanted to draw to your attention a supplementary submission from Media Standards Australia Inc regarding outdoor and billboard advertising and also a further response regarding a formal complaint they made regarding a pornographic music video at a Bussleton rural store regarding one of the McDonald's franchises in Western Australia. Can I draw that to your attention? That will be shortly on our website. I would be interested

if you have any feedback on the responses from Media Standards Australia as to whether you agree, disagree or have any other case studies that might be relevant for the committee's deliberations. I just draw that to your attention to take on notice.

**Ms Gale:** Sure.

**Ms Tankard Reist:** Sure.

**CHAIR:** Senator Crossin?

**Senator CROSSIN:** No, I do not have any questions. I think I have come a bit too late, so I do not want to ask questions on areas you might have covered.

**CHAIR:** Senator Furner?

**Senator FURNER:** I have just a couple, Chair. Firstly, Kids Free 2B Kids, you made mention of your analysis of the removal of some magazines from, I think, Mobil service stations.

**Ms Gale:** Yes.

**Senator FURNER:** Was that a campaign that was enacted as a result of your actions at all?

**Ms Gale:** Yes. I contacted quite a few companies, petrol station companies, 7-Eleven stores and anywhere that I could see that clearly on their shelves they were selling magazines that were illegal and did not comply with the classification laws. I alerted the CEOs of the companies to the fact. I sent them pixelated images of some of the content. Mobil, Shell Coles Express and BP were the three companies who took very swift action and removed nationwide all category 1 magazines.

**Senator FURNER:** And they continue—

**Ms Gale:** But we note that 7-Eleven and McDonald's Fuel Zone continue to be recalcitrant and have these forms of pornography in their outlets, as do many others.

**Senator FURNER:** It certainly surprised me. I do not go into fuel stations to look at magazines. I go in there to buy petrol, so it surprised me that that was happening—

**Ms Gale:** Basically, what happens—

**Senator FURNER:** Can you let me finish, please?

**Ms Gale:** The radar is on.

**Senator FURNER:** Hello? Can you let me finish, please?

**Ms Gale:** I am sorry.

**Senator FURNER:** I am saying that I do not go into fuel stations to buy magazines. I go in there to purchase petrol. So I was just wondering how, other than through complaints, you came about it. Is it a case that your campaign is around visiting these stations and documenting breaches, or is it a case that you are getting complaints from members of the public identifying particular issues?

**Ms Gale:** No. I noted going to milk bars that there were magazines sitting next to the Women's Weekly, the Herald Sun, the daily newspapers, that had titles and my gut feeling was they were not complying with the law. I did not know how they could be legally sitting there. I initially looked at the Classification Board guidelines and recognised that the magazines I had seen did not comply. So I started purchasing some and then I looked further afield and started to see that actually there was a proliferation. I guess it was a case of me switching my radar on and seeing that they were everywhere. It was a campaign that actually just started from seeing them myself.

**Senator FURNER:** Could you just answer the question in regard to whether you have had complaints from members of the public?

**Ms Gale:** Absolutely I have. I now speak about this issue when I go around the country and point out what is going on and show images of magazines. People are consistently now coming back to me with examples of their own.

**Senator FURNER:** Okay. Collective Shout, you mentioned, certainly in your submission, a view of implementing some penalty regime. How would you foresee that operating?

**Ms Tankard Reist:** I cannot provide a detailed model for how it should operate. Some penalties would be good. Perhaps you have a penalty for first offence and perhaps it needs to increase on second and third. Perhaps you do three strikes and you are out. At the moment utter contempt is shown by the distributors of pornography for the system. Perhaps you could look at other regulatory models elsewhere and see what is used there to try and bring some kind of compliance from this industry that so far has gotten away with doing whatever it wants.

**Ms Gale:** Could I make a comment?

**Senator FURNER:** Yes.

**Ms Gale:** I think it is really difficult because the Classification Board have recognised that many of these magazines do not even get submitted to be classified. What is happening is that distributors are importing the magazines. They are putting them in covers and putting category 1 stickers or labels on the magazines and selling them direct to retailers. So retailers are under the assumption that they have been classified. My guess is that it would be extremely difficult, particularly with only three community liaison scheme officers for the whole country, to know where to begin with this issue. That is why one of the recommendations from Kids Free 2B Kids is to remove all category 1 from the public arena and put it in adult-only venues.

**Senator FURNER:** Right. Does either of your organisations examine the content of pornography on the internet at all?

**Ms Tankard Reist:** Yes, we do; regularly.

**Senator FURNER:** I imagine if we had a utopian situation where we removed pornography from the shelves of the petrol stations or wherever they sell them it would turn the attention of whoever focusing on the internet to access their desire for pornography in that manner. Would you agree with that?

**Ms Gale:** Yes. One of the distinctions I would like to make there is that when we allow pornography, pornographic images and sexualised images of females in the public arena, as a community we are actually condoning it. We are saying to the kids, 'This is actually okay.' We are validating it and we are saying it is okay.

**Senator FURNER:** Okay.

**Ms Tankard Reist:** Collective Shout does support the government's attempts to have a mandatory filtering scheme, if I could put that on the record as well.

**Senator FURNER:** Thanks for that.

**CHAIR:** I have a supplementary question. You have referred to complaints. We heard from the media standards bureau that they do not receive that many complaints—and, indeed, other authorities. What do you say to that argument that they do not receive too many complaints; therefore it is not really a problem?

**Ms Gale:** That was very clear very early on; Free TV say the same thing when we ask them to get sexualised music video clips out of prime children's viewing hours. The Advertising Standards Board has said the same thing. What I have noticed in my campaigning is that most people do not know where to complain, how to complain, who to complain to, and fundamentally feel powerless to make a difference. Part of what Melinda Tankard Reist and I have been doing in the past couple of years is explaining the system to people. We know that the amount of complaint regarding sexualised imagery has certainly increased, and I regard that as a process of us raising awareness about the issue. It is ludicrous to think that just because people are not complaining there is no problem.

**CHAIR:** You receive lots of complaints, Ms Gale. Have you got any figures for us? How many complaints do you get?

**Ms Gale:** I do not have figures for you now. I get a fairly constant stream of communication through email from various people in the community.

**Ms Tankard Reist:** It is the same at Collective Shout. I do not even know if we could count them all. They are as constant as every day. We just pick the big ones, the ones we feel we have the resources to take on. None of us are salaried, so we cannot actually fight every case. But we do try to take up the main ones. It is a constant, unrelenting stream.

**Ms Gale:** That is an important point. We are not salaried. We are doing it because we are passionate about it and want to see change. That is right: we can literally only deal with what we can deal with.

**CHAIR:** Julie Gale, you said in your submission, and you have evidence of photos and so on, regarding young girls in pornographic magazines. Clearly, you are really suggesting that there is child pornography involved here. What efforts have you made and what results have you got in terms of combating what you see as illegal?

**Ms Gale:** I would like to clarify there because those magazines are imported and it states that the models are over 18, but in Australia we, of course, have the law that they are not allowed to be under 18 or appear to be under 18. My observation is that many of the models in these magazines appear to be under 18. It is hard to prove their actual age.

**Ms Tankard Reist:** And they are posed and styled to look like children.

**Ms Gale:** That is right, posed and styled with children's toys and little hands in puppets. So the reference around it is very clear, and the accompanying text is clearly about being very young. What have I done? One coup is to get acknowledgment from Mobil, Shell, Coles Express and BP. There was an acknowledgment. They saw the images and clearly saw there was a huge problem and they withdrew them nationwide. From the Classification Board, the answer is usually, 'These magazines have not been submitted to be classified.' And if they were, yes, they would probably be given 'refused classification', or particular images would have to be covered for that magazine to be acceptable. I have not got anywhere fundamentally with the classification system.

**Ms Tankard Reist:** I have a quick comment there. We have a problem with the whole system of serial classification, where a porn distributor will submit one issue, which is probably a less graphic issue, and then they have been given permission to import two years worth. So they save the more graphic ones for after they get the tick-off. We think the whole serial classification system needs to be ended immediately as well.

**Ms Gale:** What I note is that some of the distributors will put a magazine with another magazine, so there are two sealed together. The one at the front that is visible may comply but the one at the back often does not.

**CHAIR:** Finally, just going back to my first question regarding artists and artistic merit being exempt, I want to seek your feedback on the Henson photographs dating back from 2005, 2006 and 2008 and then of course 2010. How should they be dealt with and what is the right way to go about classifying or not classifying that type of art and those sorts of photographs?

**Ms Tankard Reist:** We need to get rid of this idea of artistic merit, because why is a pornographic image of a young girl okay just because you slap the word 'art' on it? I have a couple of these images on my website. One of them is not particularly well known because somehow it was kept under wraps during the debate. But this one particular image shows a girl who is definitely under age. It was auctioned only weeks after the controversy erupted. I have a description of this image in my book *Getting Real* and on the website. The camera peers down on a naked child on the crumpled sheets of a bed. Her knees are bent. Her legs are wide open. Her face is turned away from the camera. Her lips are parted. Her expression is blank. She is wearing childish bangles on both arms. Her hair is in a ponytail. Her vagina and breasts are highlighted by Henson's trademark manipulation of shadow. The girl is anonymous. However, to see the ugly sexual, political context of Henson's photograph is to be dismissed as a hysteric prude or worse. We do need another system because, as I said, if this image was shown in any other place it would be considered illegal and someone would probably be charged.

My colleague, researcher Nina Funnell, has pointed out that Henson's images have been found in the collection of paedophiles. She did an interview with a child, a youth prostitute, and they did find Henson's images in the collection of paedophiles. So the Classification Board needs to step in here and do something about this.

**Ms Gale:** I repeat what I said before: anyone else in the community having those images would clearly be charged with creating, possessing or transmitting child pornography clearly—no question about it.

**CHAIR:** Thank you very much. We are done with questions, in light of the time. Can we thank you, on behalf of the committee, for being here today.

**Ms Gale:** Thank you.

**Ms Tankard Reist:** Thank you for the opportunity.

**BANFIELD, Ms Wendy, Principal Legal Officer, Classification Branch, Attorney-General's Department**

**CAMPTON, Ms Ann, Assistant Secretary, Broadcasting and Switchover Policy Branch, Department of Broadband, Communications and the Digital Economy**

**COLLETT, Mr Chris, Acting Assistant Secretary, Classification Branch, Attorney-General's Department**

**FENTON, Mr Jeremy, Manager, Content Classification Section, Australian Communications and Media Authority**

**FITZGERALD, Mr Tim, Acting National Manager, Investigations, Australian Customs and Border Protection Service**

**FONG, Ms Phyllis, Acting Executive Manager, Citizen and Community Branch, Australian Communications and Media Authority**

**MAJOR, Ms Sarah, National Manager, Trade Policy and Regulation Branch, Australian Customs and Border Protection Service**

**MINOGUE, Mr Matt, First Assistant Secretary, Civil Law Division, Attorney-General's Department**

**PITMAN, Ms Sue, National Director, Trade and Compliance Division, Australian Customs and Border Protection Service**

**WINDEYER, Mr Richard, First Assistant Secretary, Digital Economy Strategy Division, Department of Broadband, Communications and the Digital Economy**

**CHAIR:** I welcome the witnesses from the various government departments and agencies—the Attorney-General's Department, the Department of Broadband, Communications and the Digital Economy, the Australian Communications and Media Authority and the Australian Customs and Border Protection Service. Does anyone have a comment to make about the capacity in which they appear?

**Mr Minogue:** I am the First Assistant Secretary of the Civil Law Division, which includes responsibility for the Classification Branch within the Attorney-General's Department.

**CHAIR:** Thank you very much indeed. I remind senators that the Senate has resolved that an officer of the department of the Commonwealth or of a state should not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.



I notice that the Attorney-General's Department has lodged submission No. 46, for which we are thankful, and Customs has lodged submission No. 10. Again, we are thankful for that. Would you like to make any alterations or amendments to those two submissions?

**Mr Minogue:** No.

**CHAIR:** Thank you. We now invite each of you to make some opening statements, after which we will have questions from the committee.

**Mr Minogue:** Thank you, Senator. I am conscious of time, but it might be helpful, given that there are a lot of us here, to quickly run through what the different agencies are for and what our responsibilities are.

As you know, the National Classification Scheme commenced on 1 January 1996 as a cooperative arrangement between the Commonwealth, states and territories for the classification of films, including videos and DVDs, computer games and certain publications. The scheme itself was established following the recommendations of the Australian Law Reform Commission about censorship processes in 1991 and it was executed following the entry into an intergovernmental agreement in 1995. At the Commonwealth level, the Minister for Home Affairs and Justice is responsible for the administration of the Commonwealth classification act, and in doing that he is supported by the Attorney-General's Department through the Classification Branch that Mr Collett and Ms Banfield are with; they also support the Classification Review Board. They manage somewhere between 6,000 and 7,000 applications for classification each year.

It is probably helpful, just at the outset, to say that the Commonwealth legislation that we assist the minister to administer is based on the territories power, so it applies in relation to the Australian Capital Territory. Being a complementary scheme, other states and territories have their own legislation that works to complement that in their own jurisdiction. But the Classification Board, in making decisions under the scheme, makes decisions that each state and territory can pick up in relation to their own legislation. So there are some separate pieces of legislation in each jurisdiction, but all work to give effect to decisions of the board at a national and complementary level. That is essentially the role of the Attorney-General's Department. It might be helpful if other agencies outline their responsibilities.

**CHAIR:** Thanks for that. Mr Collett, do you want to add anything on behalf of A-G's?

**Mr Collett:** No, thank you, Chair.

**CHAIR:** Ms Banfield?

**Ms Banfield:** No, thank you.

**Mr Windeyer:** I was not proposing an opening statement from the Department of Broadband, Communications and the Digital Economy but I will explain where we fit into the picture. We obviously have an interest in and a responsibility for those bits of legislation that relate to online content and also relate to the broadcasting world through the Broadcasting Services Act.

**CHAIR:** Thank you. Customs?

**Ms Pitman:** I would just remind senators that, as we briefed earlier, Customs' role is in support of a particular aspect of the scheme. While the Attorney-General's Department has policy responsibility for the classification of films, publications, computer games and other goods, we administer import and export controls on objectionable material at the border on behalf of the department. These controls require a permit to be issued before objectionable material can be imported or exported. We do not have a role in classifying goods under the classification legislation or in determining whether goods are packaged to meet requirements for display. Our determinations are limited to assessing whether the goods would be considered objectionable under customs legislation at the time that they are imported. If they are not considered to be objectionable, no further assessments are made as to their classification—for example, whether they should be classified as X or R18+ material.

We have powers under section 186 of the Customs Act 1901 to examine any goods subject to our control while they are moving through the border, including all items carried by passengers entering from an overseas location. This includes all goods, including electronic devices. So our focus is on physical goods and media of transmission rather than electronic transmission. We work closely with the department in administering our responsibilities at the border.

**CHAIR:** Thanks very much for that. Ms Major, do you want to add anything? No. ACMA?

**Ms Fong:** I just want to make a brief statement about the work that we do as regulators for television and internet content in Australia. The source power is in the Broadcasting Services Act, and regulation is a complaints driven process. A complaint usually triggers investigation by the ACMA and, where breaches are found, the

ACMA has a range of powers that it can use to take enforcement action. Apart from that, the ACMA is required to register codes of practice, where it is satisfied that there are appropriate community safeguards, that it has been endorsed by a majority of providers in a particular section of the industry and that there has been public consultation. There are also broadcasting standards. It is a licence condition to comply with a standard. Complaints about these matters may be made directly to the ACMA. I will leave it at that.

**CHAIR:** Thank you very much. Mr Fenton, do you want to add anything?

**Mr Fenton:** No.

**CHAIR:** I will go to Senator Crossin first, but can I just indicate for senators that, in light of the fact that we have four departments and agencies, if you want to jump in on a particular matter, please feel free to indicate through me, and I will be more than happy to go down that line. Senator Crossin?

**Senator CROSSIN:** It is such a huge area to try and cover in such a short time. I know you have all had numerous questions at estimates proceedings. I am also conscious of the fact that the Attorney-General has asked the Australian Law Reform Commission to conduct a wide ranging review and investigation into the classification system. I want to ask about the issue regarding the distribution of R18+ videos or films in the Northern Territory. Has anything been done to approach the Northern Territory government about changing legislation in that respect? It might be X18+; sorry.

**Mr Collett:** Are you referring to the prescribed areas within the Northern Territory emergency response?

**Senator CROSSIN:** I am talking about the fact that, despite the fact that we have had the intervention and numerous reports, you can still purchase X18+ films in the Northern Territory. The Northern Territory and the ACT are the only two places where that can occur. I am wondering what A-G's might have done about that.

**Mr Collett:** They are not legally available within the prescribed areas, but outside that in the Northern Territory they are legally available in restricted adult premises.

**Senator CROSSIN:** Yes, correct.

**CHAIR:** But not elsewhere in Australia.

**Senator CROSSIN:** But not elsewhere in Australia. So I can just drive from a prescribed area and purchase them. I am wondering: if we are going to be serious about enacting the intent of the original intervention five years ago, why haven't we moved on insisting that the Northern Territory government ban the sale of those types of videos in the Northern Territory?

**Mr Collett:** I am certainly not aware of any specific discussions to that effect. I am happy to look into that.

**Mr Minogue:** Senator, I am not sure if I have a response that will be able to satisfy you, but that is really a matter for the Northern Territory government. I take your point as to what are we doing about that, but in terms of the enforcement of areas where certain types of product can be properly supplied, that is a matter for the jurisdictional enforcement legislation and law enforcement agencies to do that. In terms of what action we might have taken in response to the Northern Territory emergency response, we will have to take that on notice and see if there was anything that the department has done.

**Senator CROSSIN:** To me, it just seems to be one area that is blindingly hypocritical, I suppose, in the sense that we have had the intervention and we have made a whole series of changes in respect of the Northern Territory. Whether it is inside their jurisdiction or not, they had no choice; we have done it. This is one area that we have not been diligent about, and that is the availability of X18+ videos in the Northern Territory. It is one of only two places around Australia where you can actually get them and yet we have not intervened in any other state or territory in respect of what happens, as we have done in the Northern Territory.

**Mr Minogue:** It is one of the places where you can get them?

**Senator CROSSIN:** Yes.

**Mr Minogue:** The proposition is that, given the intervention and the reasons behind the intervention, their continued availability in the Northern Territory sits at odds with that.

**Senator CROSSIN:** Yes, that is right.

**Mr Minogue:** Ultimately, the only response I can give is that, firstly, it is a matter for the Northern Territory government. Any action that the Commonwealth government may take, either formally or informally, in relation to the laws that apply in the Northern Territory would be a matter for government. As far as I am aware, there is—

**Senator CROSSIN:** I am going to raise it again because I think it is one of the areas that highlight a large degree of inconsistency about the approach we are trying to take; that is all. I raise it publicly for that very reason. I think people need to pay attention to it.

**Mr Minogue:** I understand the point.

**Senator CROSSIN:** I am keen to focus on classification of video film clips, particularly with music video film clips. Has there been any examination or work about moving on providing the classification of those clips, other than by self regulation, by TV stations, ARIA and APRA?

**Mr Minogue:** Certainly, the fact that something is a music video does not change its nature of being a film. To that extent, if it is going to be broadcast publicly, it could come within the classification guidelines. But being the type of thing that is normally available through television, it is the kind of area where ACMA would have the primary role. We might defer to ACMA initially as to what their process is.

**Mr Fenton:** There are complaints mechanisms available for anybody who views that content on broadcast television and the ACMA would investigate fully under the Broadcasting Services Act.

**Senator CROSSIN:** What I actually want to know is: is every video film clip classified before it is released for distribution on television?

**Mr Fenton:** In general, content broadcast on Australian television is classified by internal classifiers in the first instance.

**Senator CROSSIN:** By that do you mean television stations themselves?

**Mr Fenton:** Yes.

**Senator CROSSIN:** The only mechanism for a member of the public to complain about that is to go to you. So no federal government department has any say whatsoever on the content or the classification of that?

**Ms Banfield:** The Attorney-General's Department does not have any jurisdiction if it is broadcast on television. If it is a DVD that is for sale in a store, it is a film that would be classified by the Classification Board.

**Senator CROSSIN:** For me, that is where there are some real anomalies happening. In the evidence we have heard in the course of this inquiry, you can take a video film clip, for example, the fact that it is self regulated by television stations, the content of which can be highly controversial, the content of which can be shown at eight o'clock on a Saturday morning. You are looking at me as if as to say: 'Well, so what, Senator? ABC classify it themselves or Video Hits on Foxtel classifies it themselves. If they want to show it at eight o'clock in the morning, that's not our problem.'

**Mr Minogue:** Senator, that is probably not a bad example of how the scheme overall is intended to work, and I do not say that as a concession. As my colleagues were saying, if the film—be it a music DVD but it is the visual component of it that brings it within the scope of the classification scheme—is to be sold through means other than broadcast through television, it becomes a submittable publication under the classification act. In relation to films, all films are required to be submitted for classification. If it was sold through a store, the classification scheme would apply to it. If it is not submitted for classification, as it should be, the director of the board can issue a call in notice, and there are consequences that can follow if that is not done.

In relation to something that is not sold through a store but broadcast on television, the decision about what is appropriate still refers back to the scheme. The timing of when there might be some regulatory intervention might change, in the sense that, as my colleagues from ACMA were saying, the first classification assessment would have been done by the industry regulators under their code. But that is not something they do stand-alone. There is interaction between the board and industry regulators in terms of training and consistency of decision making. Then there is the capacity for complaints. As I understand it, if ACMA receives a complaint, it is obliged to act on it and follow it through.

There are different entities, but that is because there are different media through which the material is being viewed, but all are trying to achieve consistency under the one national scheme or arrangement. So rather than say 'So what', what we would put back is that, in terms of the scheme and the decisions that are made under it, there is a consistency of approach. There might be different timings of interventions, which still does not get to the answer of a particular item being shown at a time that people might be concerned about, but their response to being concerned about that is to make a complaint. I think that would then have its—

**Senator CROSSIN:** With the fact that you might have a role in a DVD of this film clip but not a role if it is only shown on television, do you not perceive that that is a gap in the classification system?

**Mr Minogue:** Not necessarily, because the item itself or the images themselves will still come under some official assessment, if you like, at some stage, on the basis of either submission for classification if it is sold as the

physical product or under, essentially, what might be called a two step arrangement with the industry through television, through the broadcasting industry, either through self classification by the industry and with the recourse to complaints through formal assessment by ACMA.

**Senator CROSSIN:** Do you just hope that the classification that the television station gives is the same as the Classification Board might give?

**Mr Minogue:** I think it is a little more than hope. There is in fact direct interaction between the board, the branch and ACMA in terms of both the classification decisions and the skills of classifiers to achieve the same outcome.

**Senator CROSSIN:** Have there been times when there have been products classified differently between—

**Mr Minogue:** I am not sure.

**Mr Fenton:** The codes of practice under which industry are classifying content reference and are underpinned by the National Classification Scheme, and in particular the classification guidelines, so there is a nexus there between the National Classification Scheme and those codes of practice in terms of community safeguards and the standards applied.

**Senator CROSSIN:** We have had plenty of witnesses that have continually called for some sort of consistency between the decision making process between the Classification Board and ACMA. Clearly, there is a very strongly held view out there that there are either gaps or weaknesses in the system.

**Mr Minogue:** Certainly, that is some of the evidence that has been put before the committee; I acknowledge that.

**Senator CROSSIN:** What is your response to those claims?

**Mr Minogue:** It depends a little about whether we are talking about the level of the scheme. In terms of the arrangements between the board, the classification branch and its trainers, ACMA and the industry self assessors, they are all underpinned by the code and the guidelines that the scheme is directed to. Our position is that it actually does work to achieve consistency; that is certainly the objective. And all referring to the same decision making information should lead to support that, as well as the active interaction between the two agencies.

In terms of any particular item or images that are of concern to members of the public, yes, we have to acknowledge that there will be circumstances where people are very concerned about some items being shown either at particular times or indeed at all, or some items being for sale either in certain places or at all; I certainly acknowledge that. But individual decisions do not necessarily bring into question the efficiency and effectiveness, which is probably the better test—the effectiveness of the scheme.

So, yes, people can be very concerned about individual decisions that are being made by the board, by industry or by ACMA on complaint, but in some ways that is how the scheme, being a cooperative scheme, is meant to work—that there are decisions taken in relation to things that are going to be controversial. That was one of the very reasons behind the establishment of the scheme, and of some recourse if people do not like those decisions.

**Senator CROSSIN:** I am not so sure the evidence has been that they do not like them. I think that they think there is inconsistency between what is happening.

**Mr Minogue:** You actually expressly asked that. I do not have any information about that. I do not know if my colleagues have any information about inconsistency between board decisions—or ACMA.

**Mr Fenton:** I would like to qualify as well that we are talking about inconsistency between the board and the ACMA. I think the question, as I have heard it, is actually about potentially an inconsistency between what is broadcast and the Classification Board. We can certainly testify to the fact that the ACMA strongly reference the board's decisions through formalised and informal arrangements such as training.

**Senator CROSSIN:** I do not have any other questions.

**CHAIR:** Senator Furner?

**Senator FURNER:** This is across the board, all the departments?

**CHAIR:** Yes.

**Senator FURNER:** In respect of Customs, you indicate in your submission that there were 1,373 breaches detected in relation to prohibited import regulations and 54 cases were considered sufficiently serious to warrant prosecution. What has happened to the other 1,319 of those cases?

**Mr Fitzgerald:** For Customs, it depends on the circumstances behind any particular importation. That can determine what action is taken. As you have suggested, in some instances that leads to prosecution action; in other instances, depending on the severity of what may have been located or imported, it might mean that a line area

sends a seize-and-warn letter to the person or persons that have imported goods. But, in general, if the goods are seen to be objectionable material then they are subject to seizure.

**Senator FURNER:** Are you able to identify out of those 54 cases whether they came in by sea or air?

**Mr Fitzgerald:** I have not got the statistics in front of me at the moment that break it down to that level, no.

**Senator FURNER:** It might be a question for estimates.

**CHAIR:** That would be of interest to us, Mr Fitzgerald, if you could take that on notice for this committee. We would like further and better particulars regarding these 1,373 breaches which were detected, as set out on page 4 of your submission, and the 54 cases where they were considered sufficiently serious to warrant prosecution, including 47 cases involving some form of child pornography. Can you give us a broad indication now as to the breakdown of those figures or would you like to take it on notice?

**Mr Fitzgerald:** I will take it on notice, thanks.

**CHAIR:** Thank you for that. Sorry, Senator Furner; fire away.

**Senator FURNER:** Those detected breaches were in the 2009-10 financial year. Has that been an increase over a period of time or are we seeing reductions in—

**Mr Fitzgerald:** I have not got the statistics to be able to say how it compares to the year before. It is fair to say that there has been an increase as recently as December of this year until current, in the number—

**CHAIR:** There has been an increase?

**Mr Fitzgerald:** In the number of detections, yes, on a percentage basis from December of last year to current.

**CHAIR:** Thanks for that. Just on that issue, when you provide further and better particulars, you have got the details for the 2009 full financial year; can you provide us with the most up to date figures? You have details in your submission for the six months to 31 December but can you provide the most up to date figures when you come back to the committee, up to the latest possible figures? Would it be possible for you to do that?

**Mr Fitzgerald:** Yes, definitely possible.

**CHAIR:** Thank you.

**Senator FURNER:** I have a couple of questions for ACMA. Certainly, this morning there has been some evidence provided in relation to complaints. What sort of level of complaints do you get on the volume of material that is submitted to the Classification Board?

**Mr Fenton:** I am a little unsure about the question. The volume of complaints does not necessarily relate to what is submitted to the Classification Board. They would be very different figures.

**Senator FURNER:** Can you provide the committee with the details of the volume of the material that ACMA submits to the Classification Board?

**Mr Fenton:** I can. This is in relation to online content investigations: in the 2009-10 financial year there were 266 applications for individual classifications to the Classification Board. Until 15 April this year there have been 131 applications to the Classification Board so far.

**CHAIR:** Have you got results for those?

**Mr Fenton:** I do, however—

**CHAIR:** A breakdown of how they are classified?

**Mr Fenton:** Yes, I can provide those. Would you like me to read those now?

**CHAIR:** If you have them there.

**Mr Fenton:** Certainly. For the 2009 10 year there were four that came back classified as G, 45 were PG, 33 were M, 46 MA15+, 48 R18+, 11 X18+, 78 refused classification, and there was one unrestricted decision in there. So that is a total of 266 for the last year. For this year to 15 April 2011, three were G, 17 at PG, 18 at M, 12 at MA15+, 18 at R18, one at X18+, refused classification 39, and 23 applications are currently being considered by the board. So we do not have results for those.

**Senator FURNER:** There was one submission from the Australian Home Entertainment Distributors Association—

**CHAIR:** Senator Furner, before we get on to that one, just to follow up your question: are these classifications based on complaints that you have received?

**Mr Fenton:** In the majority of cases, yes, the vast majority.

**CHAIR:** What are the other referrals based on?

**Mr Fenton:** The ACMA has own-motion investigative powers under the BSA. They would normally be referred investigations from a complaint. So, while they are not technically investigations triggered by complaint, they relate to material arising from a complaint. In the normal course of opening these investigations, they would concern serious content, meaning depictions of children.

**CHAIR:** Just to clarify for the record, you refer all material subject to a complaint to the Classification Board for classification; is that right?

**Mr Fenton:** No.

**CHAIR:** If not, what is the process.

**Mr Fenton:** No. Anything during the course of an investigation that the ACMA determines is hosted in Australia must be referred to the Classification Board for classification before the ACMA can take action on that item. The ACMA has a discretionary power to submit anything hosted overseas, and we utilise that fairly regularly.

**CHAIR:** But with all material subject to a complaint, is it right that that goes to the Classification Board?

**Mr Fenton:** No.

**CHAIR:** So how is it dealt with?

**Mr Fenton:** It is assessed by the ACMA in the majority of instances.

**CHAIR:** So in the minority of instances they get referred to the Classification Board?

**Mr Fenton:** Where the ACMA is mandated under the Broadcasting Services Act to submit to the Classification Board, it does so, and it has a discretionary power where it 'may'. The kinds of decisions where it would refer overseas hosted content to the Classification Board for classification would be threshold classification issues, issues where the ACMA is not aware of where the Classification Board would stand on a particular issue.

**Senator FURNER:** Going back to that initial question in regard to the Australian Home Entertainment Distributors Association, they suggested in their submission a new model of complaints handling where complaints would be referred directly to ACMA. I understand their proposal was to weed out vexatious complaints. I am wondering whether you are able to provide a consideration of the review of that approval and provide the committee with some feedback on that.

**Ms Fong:** I will take that on notice.

**Senator FURNER:** Sure. I have one last question to the Department of Broadband, Communications and the Digital Economy. How are we proceeding with the ISP filtering process? What stage are we at in regard to having that considered?

**Mr Windeyer:** There are probably two things I would draw your attention to. One is that the minister indicated in, I think, July last year that the next step with respect to the commitment to introduce mandatory filtering of refused classification material was dependent upon a consideration or a review of the 'refused classification' classification, if you follow. That is being conducted as part of the ALRC review of the National Classification Scheme, which is due to report towards the end of this year. At the moment the next step in the introduction of mandatory ISP filtering is tied to the ALRC activity.

The other area of activity is that three of Australia's largest ISPs, Telstra, Optus and Primus, indicated last year that they would proceed towards voluntarily filtering a certain amount of material. I think they indicated they were looking at around the middle of this year for when that would commence. That is a decision they took to voluntarily introduce it without any particular legislative requirement.

**CHAIR:** Just to follow on from that, the minister has publicly committed to public consultation regarding the ISP filtering proposal and the refused classification analysis that you said has been referred to the ALRC. Does the government intend to have a separate public consultation process or is he just relying on the ALRC inquiry?

**Mr Windeyer:** The minister's commitment with respect to a refused classification review is that it be handled through the proceedings of the ALRC review.

**CHAIR:** Alone?

**Mr Windeyer:** Yes.

**CHAIR:** This is a separate question: the convergence review that is taking place is obviously a substantial process. Can you give us a status report as to how things are progressing and when we are likely to get some outcome of that review?

**Mr Windeyer:** The convergence review is under way. A number of panel members have been selected. Terms of reference have been finalised and a reporting date has been set. I think it is the end of first quarter 2012, from memory. I can check that. I think it is fair to say it is at the early stages where the panel is working through how the next step of proceedings will occur. I cannot describe for you precisely at the moment how the process will unfold.

**CHAIR:** Are we likely to get a report prior to the first quarter of next year? That is a long way away. The review is obviously an important one. Will there be an interim report halfway through this year or towards the end of this year? Are we going to get an interim report or do we have to wait until the first quarter of next year?

**Mr Windeyer:** That is a question that is still being thought about. No decision has been made.

**CHAIR:** Could I ask you to take that on notice and advise the committee?

**Mr Windeyer:** Certainly.

**CHAIR:** Frankly, this is an issue that is important to this committee in terms of the convergence review, in terms of the different media platforms and the laws and policies that apply to them with respect to our censorship approach.

**Mr Windeyer:** Yes, I am happy to take that on notice, Senator. Certainly, nothing has been ruled out.

**CHAIR:** Thank you for that. Can we go back to the A-G's department and ask in terms of the constitutionality of the Commonwealth acting in and of itself. You mentioned, Mr Minogue, the territories power and then the fact that it was a cooperative system in 1996 and that is how the system started, which is obviously quite a while ago. Have you given consideration to other powers—for example, trade and commerce, the external affairs power, the telecommunications power and any other Commonwealth powers under our Constitution—to provide a system that can be put in place federally that has legal force and effect?

**Mr Minogue:** No, we have not given formal consideration to that. That is essentially because that would be a decision not just of Commonwealth government but of all governments about what the future of the scheme would be. There is certainly nothing to suggest that the cooperative nature of the scheme will not continue. But you are right: the types of powers the Commonwealth might look to, if they wanted to explore this, would be things such as the corporations power, the trade and commerce power and the postal telegraphic power, which is the broader one in relation to broadcasting and online issues. The external affairs power would be an interesting one. Most of the international conventions are about freedom of speech, particularly, for example, the International Covenant on Civil and Political Rights. They are about freedom of speech, so there are interesting issues about that.

**CHAIR:** I can think of another one: the Convention on the Rights of the Child.

**Mr Minogue:** Indeed. Criminality in terms of pornography or child abuse is clearly covered. I do not think there are any circumstances where that has not been acted on. In answer to the question, there could be some other constitutional heads of power that the Commonwealth could rely on, but there is certainly no suggestion that the Commonwealth is looking to do that.

**CHAIR:** Could I ask you to take on notice and give further consideration to the possible areas of Commonwealth action, if it was to be instructed to review that, and perhaps advise the committee accordingly with the possible areas of Commonwealth power to proceed down that track?

**Mr Minogue:** I am happy to take that on notice but I do not know that I would actually be able to say much more than I already have. We are not in the position where we would be able to provide legal advice. We have not sought legal advice, and if we were to, it would be advice to the Commonwealth government. We are not in the position where the Commonwealth government has asked us to do that.

**CHAIR:** Put it this way: you have an ALRC inquiry taking place at the moment. I suspect this will be a question they will be asking. It is an important matter for this committee, so I would ask you to take it on notice and come back to the committee with an answer to the best of your ability.

**Mr Minogue:** Thank you, yes, we will.

**CHAIR:** There was a report done by Dr Jeff Brand, co-director of the Centre for New Media Research and Education at Bond University in 2003. One of its recommendations was:

More commonality across schemes and nation-states would assist the increasing global entertainment industry and mobile public. Given the intractability of many moral codes, commonalities need not necessarily apply to principles and specific tests. Rather, procedural matters, markings, advertising, review processes and so on could be more unified and therefore streamlined to assist both consumers and content distributors.

Have any of the departments or agencies given consideration to a more streamlined, uniform, consistent approach, not just with respect to the moral code and the principles behind the code but in terms of the procedural matters, markings, advertising review processes? That is a global question to each agency. If you have not, that is fine, but if you have I would like to know.

**Mr Collett:** Certainly, from the Attorney-General's Department perspective, we have not taken any specific work in that regard. We do generally have awareness of other similar jurisdictions. The board, obviously, has connections with their counterparts. There are quite strong links with New Zealand, but we have not specifically progressed work in that area.

**CHAIR:** Is that a similar answer for each department and agency?

**Ms Fong:** From the perspective of the ACMA, with codes of practice, to the extent that it is possible, all the television codes contain provisions relating to the classification of content.

**Ms Pitman:** Customs has not specifically considered that question. I am just reminded that we do give importers every opportunity to tell us about the nature of the goods that they are bringing into the country. So we do attempt to streamline for those who want to be compliant.

**CHAIR:** Department of broadband?

**Mr Windeyer:** No. In a sense, our response is a bit similar to the ACMA's for things like schedules 5 and 7 in the Broadcasting Services Act. The link is back to the central classification framework as such.

**CHAIR:** Understood, which highlights the point of consultation and having a whole-of-government approach or, with respect, possibly the lack of it. You are sitting here because we have a Senate committee inquiry and you are all at the table. But do you ever get to the table and sit around and say: 'How can we do it better? How can we improve the system?' Has that ever happened?

**Mr Minogue:** I think there are a couple of very positive answers we can give to that—for example, some of the underlying issues relating to the convergence review and dealing with the classification scheme and the ALRC review, but also more broadly. Both here in Canberra and in Sydney, where the Classification Board is based, there have been a number of senior level meetings as well as regular interactions, both between ourselves and the department of communications and ourselves and ACMA.

**CHAIR:** Through the SCAG process or separately?

**Mr Minogue:** No, at officer level. Certainly through the SCAG process as well, but at officer level and a working level we do get together to do that. It is probably an initiative that Mr Collett is better placed to talk about than I am. The classification forum that has been conducted seems to have been a very positive system.

**CHAIR:** I am coming to that. Have you been instructed by your ministers or your department heads to review the principles behind the National Classification Code?

**Mr Minogue:** Not personally we have not, but in terms of the ALRC review, one of the specific terms of reference includes the classification categories contained in the act, the code and the guidelines. That is already there, as a decision of government—as a reference from government.

**CHAIR:** Is there any other department response? No? Okay. Let us move on. With this centralised database to enable the follow up of enforcement actions in classification matters, that would be a recommendation on behalf of a number of witnesses. I am asking A-G's if you see the merit in that. Obviously there is cross jurisdictional information that needs to be shared, state and territory and Commonwealth, and whether there are any barriers to such a database. Can you give us your feedback on that suggestion?

**Mr Minogue:** We might have to take some of the detail of that on notice, but we can talk generally.

**Mr Collett:** Certainly, we would support the general merit of the idea. It was something that was initially discussed at the classification forum in 2010. It was explored there; it may well have been discussed earlier. The minister for justice wrote to state and territory ministers earlier this year asking if jurisdictions would be interested in participating in an information sharing process. We have asked for the first round of input to be provided to our department at the end of this month, with a view to having sufficient time to pull that together and to tease out some initial issues ahead of the 2011 classification enforcement forum which will be held in early June.

**CHAIR:** When will that be held? June this year?

**Mr Collett:** Yes, 7 June, I think.

**CHAIR:** I would like to hear about the forum and outcomes of the forum. Are they available and are they in writing?



**Mr Collett:** I do not think there was ever a published document on the outcomes of the first forum in 2010. The primary purpose was to create an outstanding venue for key officers at both the Commonwealth and state level to form networks, participate in information sharing and look for shared ideas and opportunities to improve outcomes and practices.

**CHAIR:** Frankly, as a committee, we would like to know who was there, the issues discussed and the outcomes of the forum.

**Mr Collett:** Certainly, as to who was there, the Commonwealth Attorney-General's Department hosted the forum. Customs attended, as did, I think, the AFP, although I would have to check that. State and territory law enforcement officials attended.

**CHAIR:** In light of the time can you, on notice, provide that information to us?

**Mr Collett:** Absolutely.

**CHAIR:** The timing, the venue.

**Mr Collett:** The key issues.

**CHAIR:** The key issues and the outcomes from that, and likewise your agenda for June this year and your plans for the future, because that is of interest to the committee. What about your liaison with overseas jurisdictions in this area? Do you have a liaison with your overseas counterparts, let us say, in the US, New Zealand, Canada and the UK? If so, can you advise us of the extent of that and what you have learned from their experience?

**Mr Collett:** It is not something I can talk about in much detail. We do have contact with our overseas partners from time to time. There is not a formal process for that. A practical example would be that officials that attended the SCAG meeting in Wellington met with counterparts. There are from time to time specific reasons for us to form those links but there is not a standing forum.

**CHAIR:** Would other witnesses like to make observations in that regard if you can add value to that?

**Ms Fong:** The ACMA participates in an international association of internet hotlines. It is called 'IN HOPE' and we generally attend two meetings per year. Jeremy will be attending one later.

**Mr Fenton:** Yes; It is essentially an international forum for ensuring referral of illegal content, offensive depictions of children across international boundaries and ensuring that it gets to the correct law enforcement jurisdictions as fast as possible. I have to say that it is remarkably effective.

**CHAIR:** Again, could you provide further and better particulars regarding those forums?

**Mr Fenton:** Certainly.

**CHAIR:** Customs?

**Mr Fitzgerald:** From a Customs and Border Protection perspective, we have overseas posted officers that we take advantage of in order to share intelligence with other Customs agencies around the world. In addition to that we have forums such as the heads of intelligence meeting, which involves the UK, USA, New Zealand, Canada and ourselves, where we can get together and discuss in detail our own experiences, what we are seeing in respect of the types of seizures, where the seizures are coming from, profiles of those that might be importing that we can take advantage of, that help us to improve our intelligence led, risk based approach to activities.

**CHAIR:** Likewise, if you can take on notice anything that comes out of those forums that you think would add value to the committee's work, that would be appreciated. Broadband department?

**Mr Windeyer:** No. I think most of the interactions that are relevant to the work we do, certainly in the online space, are handled by the ACMA. I endorse the comments that the ACMA has given.

**CHAIR:** Just a global question again to each witness here: I have referred to the Bond University comparative analysis of ratings, classification and censorship in selected countries around the world—2003, unfortunately. Can you alert the committee to more recent research and evidence that provides that comparative analysis of ratings classification and censorship around the world that would help us in our deliberations? Could you take that on notice, please? Thank you.

Let us move on. A-G's, can you provide an update to the committee on the Salo proceedings in the Federal Court? I realise that it is before the court, but are there any updates in terms of where things are at? That would be appreciated.

**Mr Collett:** Certainly, Chair. As you are probably aware, the matter was heard on 4 March. Her Honour Justice Stone has reserved her judgement. There is nothing further we can add at this time.

**CHAIR:** Thank you. Let us go to call-in notices. Frankly, it has come up again and again in Senate estimates. It is a system, in my view, that is clearly broken or is not working adequately. In your submission, A-G's, you have, thankfully, noted the call in notices made in the last couple of years and the dreadful response to date. In fact, you have indicated that only one of the publishers of the adult magazines has complied with the call in notice issued by the board. I have noted your comments about law enforcement agencies being notified about the sale of the unclassified publications. We hear that every single time, frankly, but then we do not know what has happened. This point has been made again this morning by a number of witnesses. You refer it off to the law enforcement agencies and then it goes into a big black hole. Clearly, we have got all of this evidence before us which we have had to censor ourselves, as a committee—materials that are available in petrol stations and general stores that are available not just to the public but to children. We have had to censor it. This is bizarre, and it is an irony that has not been missed. Do you have some suggestions on improving the system?

**Mr Minogue:** In terms of where the system is currently under stress, particularly in relation to call in notices, I heard when we arrived evidence from a witness saying there needs to be criminality of our failure to respond. That is not where the problem is. The classification act which applies in the ACT is the Commonwealth act applying in the ACT, so there are different state and territory acts applying in each of them. They all make non submission of submittable material an offence in one form or another. The offence under the classification act is for failing to respond to a call in notice. So the power is already there. You could legislate again but it probably would not get you much further down the track. The issue is in relation to detection and enforcement, but balanced against the resources that the community wants to attribute to this function. That is not a cop-out; it is a genuine balance that the community needs to make. Having said that, one of the—

**CHAIR:** But how do you enforce the call in notice? How do you make that happen? One of the suggestions this morning was to apply a penalty to the distributor and then the second time if they fail, the third time—or three strikes and you are out; that was the suggestion. What other suggestions do you have to improve it?

**Mr Minogue:** That might have some impact; it might not. The problem is that with the material that we are concerned about, and people are concerned about, it is material that probably comes close to illegality under the regime as it currently is. It is pretty controversial and pretty extreme material. The people who would be doing that may well be not inclined to comply with rules in any event. So what we are finding is that the most effective way to do it—and it is not an abdication to say the board refers it to the state and territory law enforcement officers for them to enforce, because that is their proper role. What we are finding, though, is that there are other effective ways to try and do this. The means by which we are doing that is actually through some of the more direct devices where we are approaching vendors directly—newsagents, petrol stations and places of that nature. That is through the officers of the classification liaison scheme.

With respect to how we actually go about it in terms of the board, Customs and enforcement authorities directly, that is one of the key objectives of the classification forum—to try and get that better information. I will give you an example. In terms of all the things that state, territory and Federal Police need to do, when they get a referral of a call in notice that has not been followed up, in terms of the other things they need to do, to actually learn what the scheme is about, that is going to take even more time and make it harder for them to do. The purpose of the classification forum is to skill people up in the first instance so that that time cost is much lower, and so they can really zero in on the importance of the issue being put to them.

Having said that, there was the evidence from ACMA about the international work that they do in terms of pre-empting or, indeed, the notifications they are able to give to their overseas partners. Evidence previously was that it was very effective not just in terms of objectionable material, particularly in relation to child pornography or abuse being filmed or hosted in other countries, but that, in some cases, it was in fact quicker than a formal Interpol link as well. So there are a lot of mechanisms that can be done. The problem is enforcement. You are quite right about that. There is no getting around that.

**CHAIR:** We are a bit tight on time, so I will have to move on. Can you take on notice and provide the responses you have received from the law enforcement agencies in the states and territories to your minister's request for an update as to how it is going in terms of enforcing the law?

**Mr Minogue:** Yes.

**CHAIR:** I notice you referred in your submission to the Classification Liaison Scheme. You referred to the fact that, in the first half of 2010 11, for the financial year to 31 December, they have conducted 490 site visits across state and territories, including regional centres, and contacted 124 companies about breaches of classification law, referred 49 restricted premises and three websites to enforcement agencies. That is just a snapshot of what has happened in that six months; is that right? How big is this liaison service? Does it need

further resources and what are the outcomes of what you reported in your submission? We may not get through all of that now but I am happy for you to take that on notice if you cannot.

**Mr Collett:** As to how big the Classification Liaison Scheme is, it includes four officers. The next question was about the snapshot. Is there a broader collection of data you would like or—

**CHAIR:** You have given us the information for the first half of 2010 11. Maybe you can give it to us for the financial year, when you come back to us. I would like to know what the outcomes are. You have done those investigations. They have been contacted. They have been referred. Have they been prosecuted? Have the prosecutions been successful? Maybe give us further and better particulars regarding that.

**Mr Collett:** Certainly.

**CHAIR:** Do you see the Classification Liaison Scheme as a key part of the solution to solving the system being not fully operational?

**Mr Minogue:** I think we do. It is a positive innovation. It actually tries to be a little more proactive.

**Mr Collett:** It is probably also worth drawing to your attention that the Classification Liaison Scheme has a very significant education role as well, not just in the adult industry but across industry more broadly. It has been very successful over the years. There should be very good outcomes.

**CHAIR:** Likewise, can you take this on notice: in your submission you talk about the CLS referring to the New South Wales Police action against two adult retailers in the Lake Illawarra area. Let us know what has happened there.

**Mr Collett:** Certainly.

**CHAIR:** Likewise, if there are other examples where they have made referrals, we would like to know what has happened.

**Mr Collett:** We can certainly give some examples. At times it is difficult to match information and inquiries that we receive from law enforcement agencies to a precise referral—or, for that matter, an issue that may have come to the attention of police from outside the classification scheme.

**CHAIR:** Sure. We are a bit tight on time so I will move on. Customs: on occupational health and safety guidelines in respect of objectionable material, can you provide further and better particulars regarding those guidelines and how they are implemented? I am happy for you to take that on notice.

**Ms Pitman:** Yes, we can. Would you like me to talk about them now?

**CHAIR:** No, you can take it on notice. ACMA: in relation to parental locks on TV set top boxes, is ACMA aware of any instances where the parental locks have been circumvented? Can you provide details? That would be appreciated. I think that covers it for now.

Finally, Media Standards Australia have made some supplementary submissions, one of which is a formal complaint regarding a pornographic music video at a Busselton rural store. It is a McDonald's. They have made a complaint to McDonald's. McDonald's has written back in a thoughtful way with an apology. They have also written to ASTRA. ASTRA writes back and recommends that any concerns regarding the classification of material broadcast by a subscription television broadcaster be sent to the relevant broadcaster. They write to the broadcaster. They get a letter back and they say, 'You should be writing to ACMA.' Then ACMA writes back and refers them to Ron Robinson at the Classification Board. Ron Robinson writes back and says, 'You should refer it to ACMA.'

Frankly, there is a case study for you. I am happy to receive feedback from any of the relevant agencies on that case study. Frankly, it highlights a system that is not working. We hear from various witnesses that they do not receive many complaints. If complaints are dealt with in that way, I am not surprised, and perhaps others should not be surprised either. I am happy to get any feedback on that particular case study. It is not on the website yet but it has just been made public, so it will be in the next 24 hours or so.

**Mr Minogue:** We will see if there are some helpful comments we can make that will illuminate what might have happened.

**CHAIR:** Thank you very much. There being no further questions, can I thank all witnesses for their evidence today. It is much appreciated. I also want to thank the senators here at the table. I declare this meeting of the Legal and Constitutional Affairs References Committee adjourned.

**Committee adjourned at 12.31**