

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

Program: 1.1

Question No. AE15/054

Senator Leyonhjelm asked the following question at the hearing on 24 February 2015:

1. Is it true that the Classification Guidelines that distinguish soft core from hard core pornography state that soft core publications may depict genitals, but:
 - a. there must be little or no detail,
 - b. what is depicted cannot be prominent, and
 - c. realism counts as a factor against classification as soft core porn?
2. If so, are there other factors in the distinction? If not, how is the distinction made?

The answer to the honourable senator's question is as follows:

The Guidelines for the Classification of Publications (the Guidelines) set out the scope and limits of material permitted in the four publications classification categories: Unrestricted, Restricted - Category 1, Restricted – Category 2, and Refused Classification (content classified in this category cannot be legally distributed in Australia).

The Guidelines outline the type of content permitted in each classification category by reference to six classifiable elements: violence, sex, drug use, nudity, adult themes and coarse language.

In relation to nudity at the Unrestricted classification, the Guidelines state:

Descriptions and depictions of, and references to, nudity should not be:

- exploitative; or
- offensive.

Realistic depictions of sexualised nudity should not be high in impact. Realistic depictions may contain discreet genital detail but there should be no genital emphasis. Prominent and/or frequent realistic depictions of sexualised nudity containing genitalia will not be permitted. Realistic depictions in which sexual excitement is apparent are not permitted.

Stylised depictions of nudity may contain more detail than realistic depictions if this does not increase the impact.

Descriptions of nudity may contain more detail than depictions if this does not increase the impact.

In relation to nudity at the Category 1 – Restricted classification, the Guidelines state:

Nudity: Realistic depictions of nudity may contain genital detail and emphasis. Realistic depictions of obvious sexual excitement may be permitted. Realistic depictions may include touching of genitals.

At the Category 2 – Restricted classification (and particularly in relation to nudity) the Guidelines state:

Nudity: Realistic depictions of nudity may include actual sexual activity.

The Board must classify publications in accordance with classification criteria set out in the *Classification (Publications, Films and Computer Games) Act 1995* (the Act), the National Classification Code and the Guidelines for the Classification of Publications (the Guidelines) . It is not the criteria in the Guidelines alone that determines what classification category a particular item is assigned.

The Guidelines explain some of the matters that are taken into consideration when assessing the impact of material:

In considering each element, the Board makes classification decisions based on the impact of individual elements and their cumulative effect. Both the content and treatment of elements contribute to the impact. The Board takes into account the concepts underlying individual descriptions and depictions, and assesses factors such as emphasis, tone, frequency, context and the amount of visual or written detail in those descriptions and depictions.

The Guidelines clearly delineate between ‘descriptions’ and ‘depictions’, and in some cases ‘references’, in order to be able to describe, where appropriate, the different impact levels of images and text. Descriptions are representation through text. Generally, they are more detailed and lengthy than references, (which may include, for example, headlines, or captions accompanying photographs). Depictions are representation through image. ‘Realistic depictions’ include photographs; ‘stylised depictions’ include cartoons and other illustrations. Generally, descriptions of classifiable elements may contain more detail than depictions, if the level of impact does not increase as a result. In general, stylised depictions are considered to have less impact than realistic depictions, especially photographs.

The way in which image, text and concept are combined also contributes to the overall impact, and therefore the classification decision, as does the context in which classifiable elements occur. Context can be established by the general character of the publication itself, by the location and juxtaposition of images and text within the publication, and by the relationship between particular images and text (for example, a caption beneath a photograph).