

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

Output 1.3

Question No. 37

Senator Fierravanti-Wells asked the following question at the hearing on 20 October 2008:

Has the provision for standing for application for the Classification Review Board been 'watered down' over the years and has consideration been given to extending the criteria so a wider range of people have standing?

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

The provision for standing has not been 'watered down' since the Act came into effect in 1996. Section 42 of the *Classification (Publications, Films and Computer Games) Act 1995* provides for standing to apply to the Classification Review Board. This section was amended by Parliament in 2001 and 2004.

In 2001, subsections 42(3), 42(4) and 42(5) and section 42A were inserted into the *Classification (Publications, Films and Computer Games) Act 1995* by the *Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2001*.

The provisions added in 2001 are reproduced below:

42(3) Without limiting paragraph (1)(d), if the decision referred to in that paragraph is a restricted decision, the following persons or bodies are taken to be persons aggrieved by the decision:

- (a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned;
- (b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.

42(4) However, a person or body is not aggrieved by a restricted decision because of subsection (3) if the decision was made before:

- (a) the person engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned; or
- (b) the organisation or association was formed, or its objects or purposes included and its activities related to, the contentious aspects of that theme or subject matter.

42(5) In this section:

restricted decision means a decision of the Board:

- (a) to classify a publication Category 1 restricted, Category 2 restricted or RC; or
- (b) to classify a film MA, R, X or RC; or
- (c) to classify a computer game MA (15+) or RC.

42A Review Board may refuse to deal with certain applications

The Review Board may refuse to deal with an application for review made by a person referred to in paragraph 42(1)(d), or to deal further with it, if the Review Board is satisfied that the application is frivolous or vexatious or not made in good faith.

The purpose of the amendment which added subsections 42(3), 42(4) and 42(5) was to extend standing to apply to the Classification Review Board by expanding the range of persons and organisations covered by the term 'a person aggrieved' in paragraph 42(1)(d).

In 2004 subsection 42(5) of the *Classification (Publications, Films and Computer Games) Act 1995* was amended by the *Classification (Publications, Films and Computer Games) Amendment Act 2004*.

The references to 'MA, R, X' in paragraph (b) were replaced with 'MA 15+, R 18+, X 18+'.

The reference to 'MA (15+)' in paragraph (c) was replaced with 'MA 15+'. These amendments reflected changes in the names of the classification markings.

Consideration has not been given since these amendments to further extend the criteria in section 42 of the *Classification (Publications, Films and Computer Games) Act 1995* to give a wider range of people standing to apply to the Classification Review Board.