COMMENTS BY SENATOR BRIAN HARRADINE

For many years the porn industry has sought to have the "X" title changed to the more marketable and harmless sounding Non Violent Erotica (NVE) title. If those parts of the Bill which replace the title "X" with NVE are enacted then the porn industry will have achieved its objective "with minimal financial impact". [1]

So certain is the porn industry of this outcome that it is lobbying the United Kingdom Government to follow suit and adopt the NVE title.[2] I am not sure that it is really the intention of the present Australian Government to be setting a precedent and thus be seen as the world leader in adopting the deceitful NVE title for videos which, though no physical violence is depicted, are "hard core" porn as admitted by a former Chief Censor.

A problem with this Report is that it fails to focus on the pornographic nature, theme, content and intent of the bulk of current "X" rated material to be included in the proposed NVE category. I refer, in particular, to the exploitative depictions of "group sex scenes involving fellatio, cunnilingus, intercourse including 'double penetration' – simultaneous anal and vaginal intercourse."[3] Such material could not be described as erotic without damage to that word, nor "non violent" in the sense as described by women's groups.[4]

Nor does the report adequately deal with the question of the material to be excluded from the proposed NVE which is currently in "X". It has been suggested that about 18% of material in "X" will be excluded from NVE. The basis for that comment is the survey done by the OFLC of titles submitted for and gaining an "X" classification between January and June 1998 of which 18% would be excluded. Of these the greatest percentage were in fact "fetishes" - videos which have a very narrow clientele and likely to represent only 1 or 2 percent of the total market for "X" rated videos hired and sold. Material to be excluded for other reasons can easily be modified and rebadged as NVE without affecting the pornographic nature thereof (e.g. if an "X" video runs for 115 minutes and has 1 ½ seconds of aggressive language it can easily be cut and be classified NVE). Hence the minimal effect on the porn industry.[5]

The Attorney-General stated publicly that a new category title NVE was required with new guidelines "in order to exclude demeaning material".[6] The Report fails to raise the question as to why this material has not already been excluded from "X" if it is "demeaning" as indicated by the Attorney-General. Under the Act demeaning material should be refused

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1 *Explanatory Memorandum*, p.7.

2 "The Lobbyist", November/December 1999, p.12.

3 Information provided by OFLC.

4 See *Submission No.36*, Coalition Against Trafficking in Women, Submissions, Volume 1, pp.362-365, and the evidence of its representative, Professor Jeffreys, (References to Submissions in these comments are to the printed volume of submissions available from the Secretariat).

5 *Explanatory Memorandum*, p.7.

6 Attorney-General, *Press Release*, 8 April, 1997.

classification.[7] To remove such material from "X" does not require a legislative change of title according to the Attorney-General's Department.[8]

What then is holding up action to place these videos into the Refused category? The OFLC in answer to a question on notice blandly states that it applies the demeaning test. Does this mean it does not consider as being "demeaning" what the Attorney-General does. And what of the States/Territories? Which of the Censorship Ministers do not consider as demeaning "certain fetishes, the use of sexually aggressive language and the portrayal of persons over the age of 18 as minors" in "X"? I asked this question of the Attorney-General's Department and was told SCAG meetings were private and we were not entitled to know.

This raises questions about the accountability of Ministers and whether the system is consistent with the principles of Parliamentary democracy. The NVE proposal was developed by the Department, the Federal Minister and SCAG. It is promoted as the Federal Government's response to its 1996 election promise to ban "X" rated videos.[9] The banning of the title "X" and placement of the bulk of "X" in NVE is not what electors were entitled to expect.[10] It sounds like a particularly autocratic Sir Humphrey solution.

There appears to be no serious attempt to have a special "NVE" category for "Erotic" as distinct from pornographic material. If this was so then the category would not include the bulk of material currently in the "X" category but would include some material from the "R" category. It would also ensure the Act would be amended to require the title NVE to effectively be used as an aid to the administration and interpretation of the law.

The OFLC and the Attorney-General's Department have made it perfectly clear that some "R" videos would not be included in the proposed "ER" category because though "erotic", they are not "explicit". A similar reason was given by the OFLC in answer to a Question on Notice as to why other video titles classified "R" whose pornographic theme, content and intent is the same as those classified "X", save only genitalia are somewhat obscured, are not classified "X". It seems therefore that the key determinant for material proposed to be included in the "ER" category is that it is "explicit", i.e. "X". Then why not retain the "X" title? Clearly the reason is that the porn industry has since at least 1986/87 campaigned to replace the "X" title with the more marketable "NVE".

It was rather disingenuous for the Attorney-General's Department to tell the Committee that the current proposal for an NVE classification has its origins in the findings of the Joint Select Committee on Video Material in 1988. In fact, a majority could not be obtained for the proposed NVE title unless the material to be contained therein depicted only a "loving, caring relationship which is integral to the context of the video". I confirmed this week with the key member of the Committee that the "caring relationship" referred to couples only. This was not acceptable to those promoting the NVE title and therefore the majority of the Committee opposed the NVE title.

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7 Schedule, National Classification Code, *Classification (Publications, Films and Computer Games) Act 1995*, Acts of the Parliament of the Commonwealth of Australia 1995, AGPS 1996, Volume 1, p.316.

8 See *Submission No.33*, Commonwealth Attorney-General's Department, Submissions, Volume 1, p.313.

9 *Explanatory Memorandum*, p.3.

10 See, for example, *Submission No.26*, The Festival of Light (SA), Submissions, Volume 1, p.208; and *Submission No.6*, Australian Family Association (WA), Submissions, Volume 1, p.20.

More importantly, those witnesses who were involved in counselling young people seriously affected by exposure to the material contained in "X" rated videos which it is proposed would be included in the NVE category urged the Committee not to use the harmless sounding "NVE" title. They all expressed the view that if the Government insists in retaining this material it should continue to be under the "X" title.

The Report has not taken full account of the views expressed by witnesses at the hearings regarding their preference for a title. This is clear from the transcript of evidence.

I am unable to accept the recommendation of the Committee's report that the Government's Bill proceed without amendment.

It is unfortunate that although the Committee was advised by the Attorney-General's Department that the Government was in discussions with State and Territory Governments over the title, the draft report was dealt with in a perfunctory manner to meet a deadline without the benefit of the final position of the Government being known. The legislation is not likely to be in the Senate until after Easter – so why the hurry.

While I agree with the spirit of the Committee's recommendations regarding labelling of video covers, I am concerned that these have not gone far enough. Such warning labels should state unequivocally that the contents are dangerous, presenting real hazards especially to young people. I consider that the penalties under existing legislation for sale or hire of these videos to young people, and exposing them to their contents, need to be significantly increased further.

I also consider, because of its vital importance, that the full definition of the word demean in the Macquarie Dictionary, should be included in the definitions in section 5 of the *Classification (Publications, Films and Computer Games) Act 1995*. The Macquarie Dictionary definition of demean is "to lower in dignity or standing; debase". The Committee was told a meeting of SCAG would not agree to include the words "to lower in dignity or standing". Information as to which Ministers objected was refused.

Further random and necessarily brief comments on responses made to the Committee by persons responding to invitations for submission to be made

Term of reference (a), the reasons for the change in the classification of films and videos, from X to NVE

The Report states that little direct evidence was put before the Committee with regard to the reasons behind the change. I agree that this was the case and the evidence presented sheds little light on this issue.

In November 1998, the Director of the OFLC informed a Senate Committee that there was no need for a new NVE category to exclude demeaning material. It was already proscribed by the National Classification Code. If this were so, the Attorney-General ought to have directed his efforts to the removal of "demeaning material" from the 'X'-rated category.

The "demeaning" material referred to by the Attorney-General is in fact only a very small percentage of 'X' videos in current circulation which depict certain fetishes, use of sexually aggressive language and portrayal of persons over 18 as minors and any violence in a non-sexual context (sexual or sexualist violence or coercion are already excluded). But the Attorney-General's Department has advised the Senate that the bulk of 'X' material (which a former Chief Censor has described as "hard core porn") will simply be transferred to the deceptive title of NVE. This is an outcome that results from the hard lobbying efforts of the porn merchants.

I consider that we need reminding that the words, unanimously agreed to by, the Joint Select Committee on Video Materials:

> To make the claim that the term 'pornography' really refers to the subjective reactions of individuals to particular representations of sex, rather than to the representations themselves and their intent, involves a serious misuse of language. It is clear that the term 'pornography' does not refer to the interior dispositions of the viewers. Both the person who experiences outrage and the person who experiences arousal of sexual desire from viewing exploitative depictions of sexual activities aimed at sexual arousal know what kind of material is being referred to when they hear the term 'pornography'.
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> The term refers to the nature of the material themselves – their content and apparent or purported intention to arouse the sexual desires of its target audience.

Term of reference (b), all advice provided to the Government on this change and what public consultation took place prior to the Bill being introduced

The Report notes that various groups expressed concern about the availability and presumably the nature of advice to government; and the extent of public consultation. The Report records that a number of organisations believed that there had been little consultation.

However, more needs to be said of the extent and depth of the concern expressed to the Committee in many of the submissions made, which overall indicated that there had been no public consultation.

Term of reference (c), the nature and possible effects of the pornographic material to be included in NVE

The Report notes the range of views in submissions expressing opposition to the new NVE category because of the nature and possible effects of pornography that will be included. They considered the NVE title to be deceptive and harmful.

Ms Jari Evertsz, Program Coordinator of the Centre for Children, Australians Against Child Abuse, gave evidence at a hearing based on her experience as a Clinical Psychologist. She stated clearly her concern that the NVE category will be less understood than the current 'X'-rating by the sorts of people who set poor boundaries in controlling access by their children of sexually explicit videos. Ms Evertsz commented:

> I think that perhaps, as a psychologist, I can answer that most people, when you ask them in detail about it, do understand that X is a particular category that is set apart from other mainstream classifications and that is not intended for viewing by children. However, some of the parents and caregivers that we might see might tend to perhaps minimise the extent to which they agree with that.

Professor Jeffreys of the Coalition Against Trafficking in Women (Australia), as the Report states, argued her organisation's opposition to the proposed NVE on the grounds that all such material is pornography, and that pornography violates the human rights of women. Professor Jeffreys was unequivocal at the public hearing in putting forward this view, stating that:

> [I]t is a very important battle of semantics, because erotica means something very different from pornography. 'Erotica' is a whitewashing word which will allow an industry to market its products in different places and in different ways and give it a kind of social acceptability which I think the word 'pornography' does not. … I would rather that none of this [non-violent pornography] were allowed into the country, but since we will have to reach a compromise, I assume, in this legislation, and since a lot of people seem determined to allow this particular kind of material in, I think it is important that it is called pornography and not erotica, for reasons I have already suggested.

In answer to questions, Professor Jeffreys indicated that if the Government insisted on retaining the availability of the material, it should retain the 'X' title. Her position was that the 'X' classification for explicit material be retained.

The Report also records the view of the Salt Shakers Christian Ethics Action Group that NVP is a "big improvement" on NVE. However, Salt Shakers also expressed a strong preference for retaining the 'X'-rating (if the material could not be banned altogether) instead of any new classification. The organisation explained at hearing the reason for this preference, stating:

> It is on the basis that the states currently ban the X-rated videos being sold, and I think there would be less confusion among the states if the X was retained … .

Finally, in this context, the evidence at hearing of Mr Spencer Gear, a counsellor with the Youth Counselling Service of Bundaberg, also needs to be considered in greater detail.

In response to a question that I put to him that he appeared to be saying that the title NVE is more harmless sounding than X, Mr Gear also stated, that:

> My recommendation to you would be to scrap anything that involves non-violent, because it does give a better image to the industry, and I do not believe that that should be happening.

Term of reference (d), whether the change from X rating to NVE would support moves to make the bulk of material now classified X more accessible throughout the States

The Report comments that there is insufficient evidence to conclude that the effect of changing the classification to NVE would have any marked impact on the current black market dealing in illicit videos.

While this may be so, it is clear from the above discussion that the NVE classification completely serves the interests of the purveyors of porn. Their support for this title is totally based on the perception of their commercial advantage, namely that there will be significantly greater access throughout the States to the wares that they peddle.

In conclusion, I draw again on the unanimous views of the Joint Select Committee on Video Material, which observed:

> When the principle that adults be free to see, hear and read what they choose was originally stated as public policy the number of video tapes entering Australia was insignificant and there was not the widespread availability of objectionable video publications as exist today as the result of a flood of these materials into Australia.
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> This principle is often stated but not adhered to in practice since adults are not free to view video material depicting inter alia child pornography, bestiality and sexually explicit violent pornography as these are banned under censorship guidelines and prohibited from entry into Australia under Customs Regulations.
>
> The principle that adults be free to see, hear and read what they choose is dependent on the pornographers' claimed right to freedom of expression and the balancing of this claimed right against requirements fundamental to the common good which legislators are bound to uphold.
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> The issue now is not whether there should be censorship as was the case in 1973 when the principle was first stated as public policy but where to draw the line. The Committee considers that the current line is not appropriately drawn.

These words have as much currency and applicability today as they did when stated in 1988.

Senator Brian Harradine