THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

REPORT OF THE JOINT SELECT COMMITTEE ON VIDEO MATERIAL

April 1988

Volume I

ERRATUM

Volume I, page xvii

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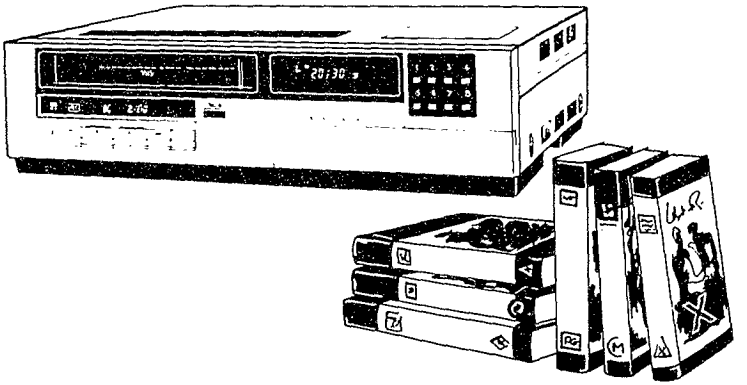
Volume One



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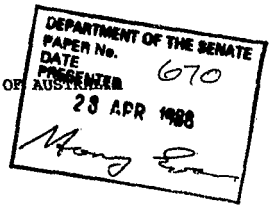

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MEMBERSHIP OF THE COMMITTEE
35TH PARLIAMENT

Dr R.E. Klugman, M.P., (Chairman) (New South Wales)

Senator S. Walters, (Deputy Chairman) (Tasmania)

Senate	House of Representatives
Senator B. Collins (Nothern Territory)	Hon. A.E. Adermann, M.P. (Queensland)
Senator B. Harradine (Tasmania)	Mr D.E. Charles, M.P. (Victoria)
Senator J.A. Jenkins (Western Australia)	Ms M.C. Crawford, M.P. (Queensland)
Senator A.O. Zakharov (Victoria)	Mrs C.A. Jakobsen, M.P. (Western Australia)
	Mr D.F. Jull, M.P. (Queensland)

Secretary

M.M.J. Vincent
The Senate
Parliament House
Canberra ACT 2600

Members of the Joint Select Committee on Video Material

Back row left to right:

Mr D.E. Charles, M.P., Senator B. Collins, Senator J.A. Jenkins, Jane Vincent *(Secretary)*, Ms M.C. Crawford, M.P., Hon. A.E. Adermann, M.P., Senator B. Harradine.

Front row left to right:

Senator A.O. Zakharov, Mrs C.A. Jakobsen, M.P., Dr R.E. Klugman, M.P., *(Chairman)*, Senator S. Walters, *(Deputy Chairman)*, Mr D.F. Jull, M.P.

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ACKNOWLEDGEMENTS

On behalf of the Committee, I would like to thank those who contributed to the inquiry, by written submissions, personal appearance or the provision of documentary material. Those who forwarded submissions or letters but did not appear before the Committee may be assured that their contributions were taken into account during the Committee's deliberations.

I wish to acknowledge the outstanding assistance the Committee has received from the Secretary, Jane Vincent, the Research Officer, Rosemary Brissenden, Sarah Drysdale the Steno-Secretary and her predecessor, Janice Paull. The work of the Committee staff, especially the Secretary, was made much more difficult by changes in the Committee membership following the Federal election in 1987. This resulted in the 'Chairman's Draft' becoming a minority report, and entailed a great amount of extra work in helping prepare a new majority report in very limited time.

I also would like to thank the other officers of the Senate Committee Office who assisted the Committee during the period of its inquiry; Mr R.J. Wiber, who was Secretary of the Senate Select Committee for providing continuity at the beginning of this Committee's inquiry; Mr Terry Brooks, Director, Censorship Section, Attorney-General's Department and the Film Censorship Board for their ready assistance at the various stages of the inquiry and finally the Parliamentary Reporting Staff for providing transcripts of evidence.

R.E. KLUGMAN
Chairman

TERMS OF REFERENCE

(Journals of the Senate Nos. 17, 18 and 36 of 23 October 1987, 26 October 1987 and 9 December 1987 respectively and Votes and Proceedings Nos. 9, 16 and 33 of 24 September 1987, 26 October 1987 and 9 December 1987 respectively.)

(1) That a joint select committee, to be known as the Joint Select Committee on Video Material, be appointed to inquire into and report upon the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the ACT Classification of Publications Ordinance 1983 in relation to videotapes and videodiscs and in particular-

(a) the effectiveness of such legislation to adequately control the importation, production, reproduction, sale and hire of violent, pornographic or otherwise obscene material;

(b) whether the present classification system, as applied by the Film Censorship Board, is adequate as a basis for import and point of sale controls;

(c) whether video retailers are observing the conditions of sale or hire attached to classified material, particularly in relation to children under 18 years;

(d) whether 'R' rated videos should be permitted to be displayed for sale or hire in the same area and side by side with 'G', 'PG' and 'M' rated videos and, if not, what restrictions should be imposed on the display of 'R' rated material;

(e) whether Regulation 4A of the Customs (Prohibited Imports) Regulations is adequate in identifying categories of prohibited material, and operating effectively in preventing the importation of videotapes/discs falling within the prohibited categories;

(f) examine the extent to which videotapes/discs containing pornographic and violent material are available to the community in general;

(g) whether children under the age of 18 years are gaining access to videotapes/discs containing violent, pornographic or otherwise obscene material;

(h) whether the ACT Classification of Publications Ordinance 1983 should be amended to make it an offence for persons purchasing or hiring videotapes/discs classified above 'R' to allow, suffer or negligently permit children to view such material;

(i) whether the sale, hire, distribution or exhibition of films and videotapes/discs that would, under existing laws, be accorded a classification above 'R' should be made unlawful;

(j) whether cinemas should be permitted to screen for public exhibition material classified above 'R', subject to prohibition from entry of persons under the age of 18 years;

(k) whether films which would merit a classification above 'R' are being produced in Australia and if so whether Australian men and women are adequately protected by existing law from pressure to act in such films; and

(l) the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material.

(2) That the committee consist of 11 members, 4 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 2 Senators to be nominated by any minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the committee elect a Government member as its chairman.

(5) That the committee elect a deputy chairman who shall act as chairman of the committee at any time when the chairman is not present at a meeting of the committee and at any time when the chairman and deputy chairman are not present at a meeting of the committee the members present shall elect another member to act as chairman at that meeting.

(6) That 5 members of the committee constitute a quorum of the committee.

(7) That the committee have power to send for persons, papers and records.

(8) That the committee have power to move from place to place.

(9) That the committee report by 28 April 1988.

10) That the committee have power to consider and make use of the evidence and records of the Senate Select Committee on Video Material appointed during the 33rd Parliament and the Joint Select Committee on Video Material appointed during the 34th Parliament.

(11) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

ABBREVIATIONS

AFP	Australian Federal Police
AFVSO	Australasian Film and Video Security Office
AVIA	Adult Video Industry Association of Australia
FBR	Films Board of Review
FCB	Film Censorship Board
Fraser Committee/ Fraser	Pornography and Prostitution in Canada, Report of the Special Committee on Pornography and Prostitution, Canadian Government Publishing Service, Ottawa, Canada, 1985.
JSCVM	Joint Select Committee on Video Material
Meese Commission/ Meese	Attorney General's Commission on Pornography, Final Report, U.S. Department of Justice, Washington, D.C., July 1986.
NSWVRA	New South Wales Video Retailers' Association
SACCFT	South Australian Council for Children's Films and Television, Inc.
SAVRA	South Australian Video Retailers Association
SSCVM	Senate Select Committee on Video Material
SSCVM Report	Majority Report of the Senate Select Committee on Video Material
TvB	Television Bureau of Advertising
VAEIS	Video and Audio Entertainment and Information Services
VIDA	Video Industry Distributors Association
Williams Committee/ Williams	Report of the Committee on Obscenity and Film Censorship, HMSO, London, 1979.

PREFACE

This Report has been extremely difficult to prepare because of basic philosopical disagreements among Committee members. These were not on political party lines and many sections of the Report were accepted (or deleted) by varying 6-5 majorities.

The issues are extremely complex and do not lead to an easy consensus.

SECTION I

GENERAL INTRODUCTION

CHAPTER 1

GENERAL APPROACH OF THE COMMITTEE

ESTABLISHMENT OF THE JOINT SELECT COMMITTEE

1.1 The Joint Select Committee on Video Material was formed on 19 March 1985 and the Committee's Terms of Reference are identical to those of the Senate Select Committee, these being:

> To inquire into and report upon the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the ACT Classification of Publications Ordinance 1983 in relation to videotapes and videodiscs and in particular -
>
> (a) the effectiveness of such legislation to adequately control the importation, production, reproduction, sale and hire of violent, pornographic or otherwise obscene material;
>
> (b) whether the present classification system, as applied by the Film Censorship Board, is adequate as a basis for import and point of sale controls;
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> (c) whether video retailers are observing the conditions of sale or hire attached to classified material, particularly in relation to children under 18 years;
>
> (d) whether 'R' rated videos should be permitted to be displayed for sale or hire in the same area and side by side with 'G', 'PG' and 'M' rated videos and, if not, what restrictions should be imposed on the display of 'R' rated material;

(e) whether Regulation 4A of the Customs (Prohibited Imports) Regulations is adequate in identifying categories of prohibited material, and operating effectively in preventing the importation of videotapes/discs falling within the prohibited categories;

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(j) whether cinemas should be permitted to screen for public exhibition material classified above 'R', subject to prohibition from entry of persons under the age of 18 years;

(k) whether films which would merit a classification above 'R' are being produced in Australia and if so whether Australian men and women are adequately protected by existing law from pressure to act in such films; and

(l) the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material.

MEMBERSHIP OF THE COMMITTEE

1.2 The Terms of Reference set out the composition of the Committee. The Committee:

> ... is to consist of 9 members, 3 Members of the House of Representatives to be nominated by either the Prime Minister, the Leader of the House or the Government Whip, 1 Member of the House of Representatives to be nominated by either the Leader of the Opposition, Deputy Leader of the Opposition or the Opposition Whip, 1 Member of the House of Representatives to be nominated by either the Leader of the National Party, the Deputy Leader of the National Party or the National Party Whip, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or any independent Senator or independent Senators.

The members who comprised the Committee upon its formation were:

Dr R.E. Klugman, M.P., (A.L.P., NSW) Chairman
Senator S. Walters, (L.P., TAS) Deputy Chairman
Senator R.C. Elstob, (A.L.P., SA)
Senator B. Harradine, (Ind., TAS)
Senator A.O. Zakharov, (A.L.P., VIC)
Hon. Mr A.E. Adermann, M.P., (N.P., QLD)
Mr D.E. Charles, M.P., (A.L.P., VIC)
Mrs C.A. Jakobsen, M.P., (A.L.P., WA)
Mr D.F. Jull, M.P., (L.P., QLD)

There were two subsequent changes to the Committee membership. Mr E.L. Grace, M.P., (A.L.P., NSW) became a member of the Committee on 9 May 1985 replacing Mr D.E. Charles, M.P. On 31 May 1985 Senator Elstob was discharged from further attendance on the Committee and Senator M. Reynolds, (A.L.P., QLD) was duly nominated a member of the Committee.

Following the double dissolution of 5 June 1987, the Committee lapsed. The Committee was re-appointed on 26 October 1987 with the same Terms of Reference and the membership was expanded by two with a reporting date of 10 December 1987. On 9 December 1987 the Committee was granted an extension of the reporting date to 28 April 1988. The members of the Committee in the 35th Parliament were:

Dr R.E. Klugman, M.P., (A.L.P., NSW), Chairman
Senator S. Walters, (L.P., TAS), Deputy Chairman
Hon. A.E. Adermann, M.P., (N.P., QLD)
Mr D.E. Charles, M.P., (A.L.P., VIC)
Ms M.C. Crawford, M.P., (A.L.P., QLD)
Mrs C.A. Jakobsen, M.P., (A.L.P., WA)
Mr D.F. Jull, M.P., (L.P., QLD)
Senator B. Collins, (A.L.P., NT)
Senator B. Harradine, (Ind., TAS)
Senator J.A. Jenkins, (A.D., WA)
Senator A.O. Zakharov, (A.L.P., VIC)

CONDUCT OF THE INQUIRY

1.3 The Joint Select Committee was given access to all the records, documents and submissions of the Senate Select Committee after the latter tabled its report. The Senate Committee had advertised its Terms of Reference very widely in the metropolitan and provincial press. Since the Terms of Reference of the Joint Select Committee were identical to those of the Senate Select Committee, the Joint Select Committee did not re-advertise for submissions.

1.4 The Committee, conscious of the role of State law in the regulation of film and video, sought submissions and/or evidence from all State governments. Queensland was the only State not to provide a submission.

1.5 Submissions were received from several Commonwealth departments, State (except Queensland) and Territory governments, academics, business, industry groups, church groups, and other interested organisations and individuals. In all the Committee received 230 substantial submissions, 1321 expressions of interest, 166 pro-forma letters. The people and organisations who presented evidence at hearings are listed at Appendix 11.

1.6 Early in its deliberations the Committee decided to allow individuals and organisations as much access to the Committee as possible. To this end the Committee held public hearings in each State capital city, as well as Canberra, and held briefings in Darwin. A number of witnesses gave evidence in private. In all, 26 public hearings were held, and the Committee took 3530 pages of public evidence.

1.7 In order for the Committee to become familiar with the content of the film classification categories, the Committee asked the Film Censorship Board (FCB) to show some extracts from the various classification categories, together with examples of prohibited material. The FCB provided the Committee with a number of screenings. The Committee was also provided with visual material in the R and X categories by several witnesses and was given the opportunity to view an educational tape used in sex therapy. Because of the difficulty in getting members together to view a comprehensive number of videos, arrangements were made with a Canberra video retail outlet to enable individual members of the Committee to view a wide selection of videos throughout the entire classification range.

1.8 The Committee believes that it has gained a fairly reliable picture of what the various classification categories contain, and how the law and guidelines are applied in practice to the different types of material.

1.9 The Committee, during its deliberations had the benefit of being able to refer to a number of reports of overseas inquiries which are, in varying degrees, relevant to the Joint Select Committee's Terms of Reference. These reports have been influential in what has now become an international debate on the increase of pornography and violence in the visual media. They have included both Government, Parliamentary and non-Government inquiries, and, among others, include the following:

The Obscenity Laws: A Report by the Working Party set up by a Conference convened by the Chairman of the Arts Council of Great Britain, Andre Deutsch, London, 1969.

The Report of the Commission on Obscenity and Pornography, US Government Printing Office, Washington, September 1970.

Pornography: The Longford Report, Coronet, London, 1972.

Working Party on Vagrancy and Street Offences - Working Paper, HMSO, London, 1974.

Report of the Committee on the Future of Broadcasting [Annan Committee], HMSO, London, March 1977.

Report of the Committee on Obscenity and Film Censorship [Williams Committee], HMSO, London, 1979.

Although most of these reports were published prior to the growth of video, they do deal with trends in the visual media and in visual display.

1.10 Three inquiries, with varying degrees of relevance to this Committee's work, have been conducted in Britain, Canada and

the United States. The Committee has been able to refer to the Reports of these inquiries, the latest being published in July 1986. The three Reports are:

Video Violence and Children, Geoffrey Barlow & Alison Hill (eds), Hodder and Stoughton, London, 1985.

Pornography and Prostitution in Canada, Report of the Special Committee on Pornography and Prostitution, Canadian Government Publishing Service, Ottawa, Canada, 1985. [Fraser Committee]

Attorney General's Commission on Pornography, Final Report, U.S. Department of Justice, Washington, D.C., July 1986. [Meese Commission]

1.11 The Chairman visited the United States in mid-1985, though not at the Committee's expense, to speak to a number of people involved in the pornography debate. The Chairman spoke with Mr Alan E. Sears, Executive Director, US Attorney General's Commission On Pornography; Andrea Dworkin, feminist writer and co-drafter of the Minneapolis Ordinance; Mrs Harriet Pilpell, Co-Chair of the National Coalition Against Censorship and General Counsel, American Civil Liberties Union; Dr Carole S. Vance, Medical Anthropologist, Columbia University and Ms Mary K. Blakely, writer and author in April 1985 Ms Magazine of 'Is One Woman's Sexuality Another Woman's Pornography'. The Chairman also had the opportunity to speak with Mr Richard D. Heffner, Chairman, Classification and Rating Administration, Motion Picture Association of America.

A number of other members of the Committee also spoke to authorities in other countries involved in issues relevant to this Committee's Terms of Reference. The Deputy Chairman, Senator S. Walters, met with relevant authorities whilst visiting London in 1984 and Mr Jull discussed the issues with the Justice Ministry in Denmark in April 1986. Most recently in October 1987

Senator Harradine had discussions in the USA with the Chairman of the Attorney-General's Commission on Pornography and with senior law enforcement officers from the customs service, the postal service and police, particularly concerning the connection between organised crime and pornography. As with the Chairman's visit none of the visits were at the Committee's expense.

1.12 This Report is divided into five sections. The Committee felt it was necessary to provide a detailed section - Section II - covering the law and how it works to ensure a clear understanding of the law's intent, operation and effect. Not only has the Committee been mindful of providing a clear understanding of the law but Section III provides a picture of the video industry, technological developments, Australian production and the role of adult cinemas. The issues are discussed separately in Section IV. The final section contains the Committee's conclusions and recommendations.

CHAPTER 2

BACKGROUND TO THE INQUIRY

INTRODUCTION

2.1 Australian consumers embraced the advent of domestic video cassette recorders (VCRs) with great enthusiasm. This enthusiastic response saw a rapid rise in the availability of VCRs on the domestic market in the early 1980s (see Chapter 8). Accompanying the growth in VCR ownership has been a rapid increase in the availability of pre-recorded video cassette tapes.

2.2 With the introduction of VCRs and the desire of Australians to possess a VCR there was no accompanying guidance for consumers as to what the video material contained and whether material was suitable for viewing by children.

2.3 Classifications, which would provide for guidance to consumers as to the content and suitability of video tapes for home viewing as distinct from films for public exhibition, were not specifically contained in the legislation of the States or the Territories. Therefore, it was possible to view at home film material (X-rated) which was not permitted in the cinema. This was bound to pose political, legal and philosophical problems as it made this material potentially available to a wide audience.

THE COMMONWEALTH CENSORSHIP LEGISLATION

(a) CONSTITUTIONAL AND REGULATION-MAKING POWER PURSUANT TO THE COMMONWEALTH

2.4 The Commonwealth does not have complete power to pass a national law in many areas of public importance. Commonwealth

censorship laws derive from the trade and commerce power and pursuant to this power the Federal Parliament has passed the Customs Act 1901. In the States, Commonwealth control can only extend to imported goods. However in the Australian Capital Territory the Commonwealth can pass laws regulating Australian produced material. The External Affairs power of the Constitution (section 51 (xxix)) may enable the Commonwealth to enact legislation in the discharge of its treaty obligations. In this respect the Committee's attention was drawn to the 'International Convention for the Suppression of the Circulation and Traffic in Obscene Publications', the 'International Convenant on Civil and Political Rights' and the 'Convention on the Elimination of all Forms of Discrimination Against Women'. (Australian Parents' Council Evidence, p. 547)

2.5 The main provisions for conferring power to the Commonwealth are section 51(i) of the Constitution and sections 50 and 51 of the Customs Act 1901 (see Appendix 1).

2.6 Under section 51(i) of the Australian Constitution the Commonwealth has the power to control imports. Sections 50 and 51 of the Customs Act 1901 cover respectively the prohibition of the importation of goods and prohibited imports. Powers that cover exhibition and sale or hire remain within the jurisdiction of the States.

2.7 The main provisions in relation to the ACT are section 122 of the Constitution and section 12 of the Seat of Government (Administration) Act 1910 (see Appendix 2).

(b) THE LEGISLATION PRE-1984

2.8 The Commonwealth legislation controlling imported film and prohibited goods relevant to this Committee's Terms of Reference are the Customs (Cinematograph Films) Regulations

(also known as the Films Regulations) and Regulation 4A of the Customs (Prohibited Imports) Regulations.

(i) The Customs (Cinematograph Films) Regulations, prior to 1 February 1984, contained provisions which: prohibited the importation of a film, (the definition of which specifically included 'a video tape'), or advertising matter unless a licence to import that material had been granted by or on behalf of the Chief Censor; required a film not to be delivered from the control of Customs unless registered by the Film Censorship Board; required that the film not be registered and advertising material not passed if in the opinion of the Board:

- the film or advertising matter was blasphemous, indecent or obscene;
- the film or advertising matter was likely to be injurious to morality, or to encourage or incite to crime;
- the film or advertising matter was likely to be offensive to the people of a friendly nation or to the people of a part of the Queen's dominions; or
- the film or advertising matter depicted any matter the exhibition of which is undesirable in the public interest.

The Film Regulations also enabled the Film Censorship Board (FCB) to attach conditions to its certificate of registration and provided for the establishment of a Board of Review and review procedures.

By arrangement with the States, those films accepted as suitable for registration, together with locally produced films were classified for the purposes of State legislation governing the

exhibition of films. (SSCVM Evidence, p. 6) According to the Attorney-General's Department (SSCVM Evidence, p. 6) up until the late seventies the FCB was principally concerned with films for public exhibition although a trickle of films (usually 8mm) came to its attention which were imported privately or commercially but which were not intended for public exhibition. In the late seventies with the advent of domestic VCRs, quantities of videotapes started to be submitted to the Board by importers and were either registered or refused registration. State legislation did not provide for these tapes to be classified.

(ii) Prior to 1 February 1984, Regulation 4A of the Customs (Prohibited Imports) Regulations contained provisions prohibiting the importation into Australia of certain types of goods unless permission in writing had been granted by the Attorney-General who could attach conditions on the use of the imported material. The Regulation applied to written, recorded or reproduced work, or work capable of being reproduced which:

- was blasphemous, indecent or obscene; or
- unduly emphasized matters of sex, horror, violence, or crime or were likely to encourage depravity;

and to the advertising matter relating to such goods.

Customs officers who suspected that goods (for example, videotapes) were pornographic would detain them and refer them to censorship officers of the

Attorney-General's Department for a decision on whether they contravened Regulation 4A. According to the Attorney-General's Department, the ruling of the censorship officers when they received detained materials would be exercised in accordance with their assessment of contemporary community standards. If the ruling were positive Customs would seize the goods and issue a notice to the importer informing him/her that they would be destroyed unless he/she wished to take court action to have them declared not to be obscene. (SSCVM Evidence, p. 7)

2.9 However in order to understand more accurately the operation of the censorship laws from 1973 to 1984 it is necessary to refer to the year 1973 when the number of video tapes entering Australia was insignificant.

In that year the then Attorney-General announced a policy on censorship which has been variously stated but which in its original form read as follows:

> ... federal laws to conform with the general principles that adults should be entitled to read, hear and view what they wish in private and in public and that persons - and those in their care - be not exposed to unsolicited material offensive to them. (Statement by the Attorney-General of Australia, Censorship - A Question of Balancing Individual Rights 19/73, Canberra, February 26, 1973)

By contrast, according to a submission by the Attorney-General's Department to the Senate Select Committee on Video Material, the policy as espoused in 1973 and in effect followed by successive Governments was '...with regard to the importation of pornography that adults should have the basic right to make their own decisions on what they read, hear and see provided that persons should generally be protected from exposure to material that may

be offensive - or in the case of children harmful - to them.' (SSCVM Evidence, p. 7) This submission appears to modify the original policy by limiting it to pornography and mentions the concept of harm.

2.10 In his statement of 26 February 1973 the then Attorney-General also declared that:

> In order to put these principles into practice a judicial tribunal will be established to hear public hearings [sic] and give public reasons for action at Federal level. Federal laws governing imported publications, records and films will need to be altered accordingly. If necessary, existing laws will be amended to increase penalties against those responsible for deliberately exposing unwilling persons to material offensive to them.(op. cit. p. 1)

Following this statement a series of meetings took place involving officers of the Australian Customs Service and the Attorney-General's Department concerning censorship policy. Documents pertaining to these meetings were provided by the Attorney-General's Department. Among these documents is one entitled 'Censorship Policy' which is attached to a minute dated 30 May 1973 to the then Attorney-General from his Department seeking his direction on legislative action to be taken to give effect to the censorship policy.

In referring to the Attorney-General's statement that a judicial tribunal would be established to hold public hearings and to give published reasons, the document noted:

> Although the proposed legislation is self-regulating it may be considered desirable to set up a tribunal to establish what publications are to be "restricted" and what are not. This takes responsibility away from the trade and gives the appearance at least of community involvement.

The document also noted that for the policy to become law amendments would be required to the Customs (Prohibited Imports) Regulations and the Customs (Cinematograph Films) Regulations and a new law drafted to cover advertising, display, distribution and sale to adults of obscene material. However the document warns that such legislative measures would meet resistance and could lead to the negation of the policy and commented that:

> It is considered that almost all the States would be hostile to a policy which could lead to the circulation of so-called hard core pornography and material dealing with hard drugs and extreme violence, anarchy and sedition.

The document raised for consideration the question of whether the policy announced by the Attorney-General should be brought fully and immediately into effect or by stages. It stated:

> You would need to have regard to repercussions in the electorate; the Australian public is notoriously conservative, whatever its political affiliations.
>
> The Government's policy might best be achieved by a strategy of hastening slowly - gradually broadening the standards of imported material so that public opinion can be developed to embrace the principles embodied in the policy.
>
> In immediate practical terms the greatest hindrance to radical change could be the Senate, which may disallow any amending regulations.

In the event the policy was given effect to, not by amendments to legislation but by administrative direction.

2.11 On 15 June, 1973 the Comptroller-General of Customs, after consultation with officers of the Attorney-General's Department, issued a written direction to all Customs officers the relevant portions of which were:

> For the time being at least, Customs resources engaged in screening imported goods should be primarily concerned with the detection of prohibited imports other than material which offends Regulation 4A.

and:

> For the time being there are to be no prosecutions under the Customs Act for offences involving pornography. (SSCVM Evidence, p. 340)

In evidence to the Senate Select Committee on Video Material the Australian Customs Service agreed that it would be fair comment to deduce that in view of this direction given to Customs officers, Regulation 4A was not systematically enforced. (SSCVM Evidence, p. 345)

Difficulties mounted within the Australian Customs Service concerning this and other issues, and in 1981 the Willet Task Force Inquiry into allegations about the Customs Service in New South Wales examined problems resulting from the conflict between the Customs law and the direction issued by the Comptroller-General of Customs on 15 June 1973 and generally followed by successive administrations. The Report of the inquiry said:

> The Task Force is of the view that the administrative difficulties caused by the inconsistent policy and treatment of pornography should be remedied by the issue of clear and precise instructions to officers. It is the Task Force's view that the only instruction that could be issued consistently with present legislation is one to the effect that officers should detain any goods coming to their notice which appear to them to fall within the terms of the regulations, for referral to Attorney-General's Department. (Review of Customs Administration and Procedures in N.S.W. April 1983, p. 105)

The problem was further examined by Mr F.J. Mahony who was appointed in April 1982 to conduct a Review of Customs Administration and Procedures in New South Wales and reported on 13 April 1983. The Mahony Report sets out in full the Customs direction issued on 15 June 1973 and after reviewing submissions made to the inquiry concerning problems arising from this direction the Mahony Report concluded:

> The submissions and views mentioned show clearly that neither regulation 4A nor the Customs direction is being administered effectively. The direction places customs officers in a difficult position in requiring them to apply a regulation only in the manner provided in the direction when they are expected to deal with passengers and goods according to law. The Attorney-General's Department stated in January 1983 that regulation 4A had been the subject of discussion between officers of that Department and the Department of Industry and Commerce and that action is proceeding.
>
> In my view it is quite improper that the responsibility placed on Customs officers by the direction should continue. I recommend that the conflict between regulation 4A and the Customs direction be resolved without delay. (p. 105)

After noting that 'the Chief Censor was critical of standards of Customs control procedures relating to importations of films and videotapes and their movement and storage prior to either registration or rejection by the Board established under the Customs (Cinematograph Films) Regulations', the Mahony Report cast doubt on whether the arrangements to move goods subject to Regulation 4A under the provisions of Section 40AA of the Customs Act could be said to be operating efficiently or effectively and made certain recommendations thereon. (p. 105)

2.12 According to the evidence of the Chief Censor to the Senate Select Committee on Video Material over five thousand imported videotapes had been registered by the Board for entry

into Australia by the end of 1981. In the absence of any agreement similar to that in respect of films for public exhibition, these tapes were merely registered but not classified thus leaving each State to deal with them according to its particular indecency or obscenity laws. (SSCVM Evidence, pp. 83 and 101).

2.13 In the ACT the sale and hire of objectionable material was subject to the provisions of the Objectionable Publications Ordinance 1958 as well as to the common law offences of obscene libel and conspiracy to corrupt public morals. There was no classification contained in that Ordinance. According to the Attorney-General's Department:

> ... the provisions were little enforced, not least because of the consequential difficulties posed for law enforcement officers in applying the general obscenity law to the burgeoning new video retail industry and because the nature of the product meant that it was not amenable to regulations in the manner that publications can be regulated. (SSCVM Evidence, p. 10)

2.14 A meeting of Commonwealth/State Ministers was convened in July 1983 to pursue proposals (last discussed in 1981) for a uniform classification scheme for publications including videotapes and literature. Ministers agreed on the implementation of a voluntary scheme for the classification of videotapes and that the classification would be carried out by the FCB. Each State and Territory would introduce legislation based on a model ACT Ordinance. Five classification categories would be provided for in the legislation, these being G, PG, M, R and X (see Appendix 5). Both the Queensland and Tasmanian Ministers indicated to the meeting that X-classified material would not be accepted in their States. (SSCVM Evidence, p. 10) This agreement meant that imported videotapes for home use would no longer be subject to compulsory registration but would be classified by the FCB at the request of the importer, distributor or retailer.

(c) LEGISLATION FROM 1 FEBRUARY 1984

2.15 Based on the July 1983 discussions between Commonwealth/State Ministers responsible for censorship, a new Commonwealth scheme for the censorship of publications and videos came into operation on 1 February 1984. On that date the following laws became effective:

(a) Classification of Publications Ordinance 1983, as contained in Australian Capital Territory Ordinance No. 59 of 1983, and made under the Seat of Government (Administration) Act 1910;

(b) Customs (Cinematograph Films) Regulations (Amendment) as contained in Statutory Rules 1983 No. 332, and made under the Customs Act 1901; and

(c) Customs (Prohibited Imports) Regulations (Amendment), as contained in Statutory Rules 1983 No. 331, and made under the Customs Act 1901.

According to the Explanatory Memoranda this legislative package was designed to address the previous inadequacies of Commonwealth censorship legislation by providing that:

(i) adults be entitled to read hear and see what they wish in private and in public, subject to adequate provisions preventing persons being exposed to unsolicited material offensive to them and preventing conduct exploiting, or detrimental to the interests of children.

(ii) controls over censorable goods - including films and videocassettes for other than public exhibition - should be concentrated at the point-of-sale rather than at the point of importation.

However there are absolute prohibitions on material 'considered to be harmful to society', e.g. child pornography, bestiality, detailed and gratuitous depictions of acts of considerable

violence or cruelty, explicit or gratuitous depictions of sexual violence against non-consenting persons.

2.16 The ACT Classification of Publications Ordinance 1983 provided for the classification of videotapes for sale/hire and intended for private use.

2.17 The Customs (Cinematograph Films) Regulations were amended to restrict the registration of film (including videotapes) to material for public exhibition.

2.18 Regulation 4A was amended to include specific prescriptions of material to be denied entry into Australia (see Chapter 5). However the Customs (Prohibited Imports) Regulations are no longer capable of prohibiting the importation of videotapes of a blasphemous nature. (Australian Customs Service, SSCVM, Evidence p. 394)

2.19 On 4 April 1984 the Customs (Prohibited Imports) Regulations were further amended by Statutory Rules 1984, No. 55. The amendment omitted the word 'extreme' from sub-paragraph (1A)(a)(iii) of Regulation 4A as a qualification on the kind of violent depictions that were to be prohibited. Prohibition now applied to a wider range of goods depicting violence.

2.20 The new laws and guidelines (see Chapter 5) were the subject of debate in the Senate in 1984, and also the subject of consideration by the Senate Standing Committee on Regulations and Ordinances (see SSCVM Report, p. 1ff, Parliamentary Paper No. 5 of 1985.).

2.21 On 4 June 1984 additional amendments were made to the three pieces of legislation:

(a) Classification of Publications (Amendment) Ordinance 1984, as contained in Australian Capital Territory Ordinance No. 17 of 1984.

This introduced a compulsory classification scheme in the ACT for videos.

(b) Customs (Cinematograph Films) Regulations (Amendment), as contained in Statutory Rules 1984, No. 103. This increased the size of the Film Censorship Board from 7 to 10.

(c) Customs (Prohibited Imports) Regulations (Amendment), as contained in Statutory Rules 1984, No. 102. This included extra provisions relating to bestiality and the promotion and incitement to the misuse of drugs, and amended the wording relating to violence, cruelty, sexual violence and terrorism (see Appendix 3 for current Commonwealth legislation).

2.22 The Senate responded to continuing expressions of concern in the community about the availability of videos, the material they contained including the X category, and the laws introduced to regulate them, by establishing in October 1984 a Select Committee on Video Material. The purpose of the Senate Select Committee was to commence an inquiry, which was ultimately continued by a Joint Select Committee of both Houses.

2.23 Changes made to the Film Censorhip Board's guidelines during 1984 tightened the classification guidelines. The November/December 1984 change excluded from the X category any depiction suggesting coercion or non-consent of any kind. Although the States with the exception of Queensland and Tasmania agreed in principle to a new and tighter X (or R+) category, by October 1984 it was evident there was an unwillingness on the part of a majority of State governments to legislate to allow the commercial distribution of X material.

THE SENATE SELECT COMMITTEE ON VIDEO MATERIAL

2.24 The activities and findings of the Senate Select Committee are recorded in its Report of March 1985. In brief the Committee was established, with Terms of Reference identical to this Committee's - to examine the effectiveness of the Customs

(Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations, and the ACT Classification of Publications Ordinance 1983.

2.25 The Senate Select Committee was established on 17 October 1984 and continued with the inquiry until the establishment of the Joint Select Committee in March 1985. The Senate Committee's majority report, the recommendations of which were limited to a discussion of the effectiveness of the law, and not to the general philosophy of censorship, recommended a moratorium be imposed on the availability of X-rated videos in the ACT until at least after the Joint Committee reported. It also drew attention to a number of problems in the law and noted that the transmission of material through the post is a matter of significance for the regulation of the sale and hire of videos.

2.26 In the event, no moratorium was imposed on the availability of X-rated tapes in the ACT. This has allowed the establishment of video mail order businesses in the Territory. Besides X-rated tapes being legally available to ACT residents and visitors, people living interstate have also been able to receive such tapes through these mail order businesses.

2.27 Perhaps in partial recognition of the Senate Committee's observations regarding the unsatisfactory wording of Regulation 4A of the Customs (Prohibited Imports) Regulations, an amendment was made on 27 June 1985 (Statutory Rule No. 160 of 1985) to provide an objective test as to what was prohibited to be imported (see Appendix 3 for current Regulation 4A). Previously only the Attorney-General or a person authorised by him could decide whether goods were a prohibited import. By ommitting the phrase "in the opinion of the Attorney-General or a person authorised by him for the purpose of this sub-regulation" the responsibility for knowing what is prohibited rests with the importer.

2.28 This and other matters raised by the Senate Select Committee, have been taken into account by the Joint Select Committee in its deliberations.

CHAPTER 3

UNDERSTANDING OF TERMINOLOGY: 'VIOLENT, PORNOGRAPHIC OR OTHERWISE OBSCENE MATERIAL'

INTRODUCTION

3.1 The terms of reference of this Committee require it to examine various matters relating to 'violent, pornographic or otherwise obscene material'. The use of the terms 'violent, pornographic or otherwise obscene material', where there is not a clear understanding of their meaning, may make the Committee's Terms of Reference appear, by implication, to be condemnatory in advance of much of the material in the M, R and X-rated categories of video; the term 'obscene' in the Terms of Reference, is interchangeable with the words 'violent' and 'pornographic'.

3.2 With the possible exception of the term obscene, the legal history of which is dealt with later (see paragraphs 3.29, 3.30, 3.31, 3.32), these terms are in common usage and both Government and public witnesses before the Committee generally used the terms 'violent' and 'pornographic' in a commonly understood manner.

3.3 However before examining the meaning of these terms in common usage in Australia, the following outline of the manner in which some overseas inquiries have dealt with the question of definition/description may be of interest.

THE UNITED KINGDOM, THE UNITED STATES OF AMERICA AND CANADA

3.4 In referring to the American reports it is assumed that the reader of this report will be familiar with the history of 'obscenity' laws in the United States.

(a) REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY (UNITED STATES), 1970

3.5 In the report of the Senate Select Committee on Video Material, it was noted that the 1970 United States Commission on Obscenity and Pornography declined to use the word 'pornography':

> The area of the Commission's study has been marked by enormous confusions over terminology. Some people equate "obscenity" with "pornography" and apply both terms to any type of explicit sexual materials. Other persons intend differences of various degrees in their use of these terms. In the Commission's Report, the terms "obscene" or "obscenity" are used solely to refer to the legal concept of prohibited sexual materials. The term "pornography" is not used at all in a descriptive context because it appears to have no legal significance and because it most often denotes subjective disapproval of certain materials, rather than their content or effect. The Report uses the phrases "explicit sexual materials," "sexually oriented materials," "erotic," or some variant thereof to refer to the subject matter of the Commission's investigations; the word "materials" in this context is meant to refer to the entire range of depictions or descriptions in both textual and pictorial form - primarily books, magazines, photographs, films, sound recordings, statuary, and sex "devices." (The Report of the Commission on Obscenity and Pornography, Bantam Books, New York, 1970, p. 5)

3.6 Since the Commission, the United States Supreme Court has defined 'obscenity' in the context of describing what does not constitute free speech, and which does not therefore attract the protection of the First Amendment to the Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (First Amendment to the Constitution) (emphasis ours)

3.7 The Supreme Court, in Miller v California gave a definition of obscenity which has remained the point of reference for succeeding cases:

> ... whether "the average person, applying the contemporary community standards" would find that the work taken as a whole, appeals to the prurient interest, ... whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and ... whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value - 413 U.S. 15 (1973), at 24.

(b) REPORT OF THE COMMITTEE ON OBSCENITY AND FILM CENSORSHIP (UNITED KINGDOM), 1979

3.8 The Committee on Obscenity and Film Censorship (chaired by Bernard Williams and known as the Williams Committee) had no qualms about what was meant by pornography and gave the following definition:

> The term "pornography" always refers to a book, verse, painting, photograph, film, or some such thing - what in general may be called a representation. Even if it is associated with sex or cruelty, an object which is not a representation - exotic underwear, for example - cannot sensibly be said to be pornographic (though it could possibly be said to be obscene). We take it

> that, as almost everyone understands the term, a pornographic representation is one that combines two features: it has a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity, etc.). A work has to have both this function and this content to be a piece of pornography. (Williams, p. 103)

3.9 The Williams Committee said of the word 'obscene':

> We suspect that the word "obscene" may now be worn out, and past any useful employment at all. It is certainly too exhausted to do any more work in the courts. However, leaving aside the peculiar legal deprave and corrupt definition we have considered in earlier chapters, it seems to us that, insofar as it is not just used as a term of abuse, it principally expresses an intense or extreme version of what we have called "offensiveness". It may be that it particularly emphasises the most strongly aversive element in that notion, the idea of an object's being repulsive or disgusting: that certainly seems to be the point when a person or animal is said to be, for instance, "obscenely" ugly or fat. (Williams, p. 104)

3.10 The Williams Committee also attempted to distinguish what was meant by 'erotic' as compared to 'pornographic':

> The term "erotic" sometimes seems to be used just as an alternative to "pornographic", being milder with regard to both the content and the intention: the content is by this interpretation more allusive and less explicit, and what is intended is not strong sexual arousal but some lighter degree of sexual interest. (Williams, p. 104)

3.11 Since there is an argument that works of artistic merit can also be pornographic or obscene, the Williams Committee addressed this issue, and concluded:

> ... that there is no intrinsic reason why pornography or even obscene works should not be capable of having artistic merit, though

> there are undoubtedly reasons in the nature of such works, and even more in the general conditions of their production, to make that an unlikely and marginal occurrence, and the works, even when successful, are generally of minor stature. (Williams, p. 108)

3.12 The observations of Williams in 1979 were made against the background of the classic English definition of obscenity laid down in the 1868 case of R v Hicklin.

3.13 In R v Hicklin Chief Justice Cockburn said:

> ... I think the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

This definition of obscenity was incorporated, with variations, into Australian law.

3.14 The Williams Committee recognised the problems in applying the obscenity test in the United Kingdom and the test's resultant loss of credibility and force (see paragraph 3.9). Williams reported:

> So far as the deprave and corrupt test is concerned, then, it seems to us that there are two different factors at work, probably equally important, in the way the obscenity laws have in recent years left unchecked an increasingly wider range of material. The first is that the literal sense of the statutory test of obscenity has been ignored, and the courts have applied their own assessment of what the public at large are prepared to accept and tolerate. The second is that the courts have been increasingly pressed to consider the actual words of the statute, and that when they have done so, they have become increasingly confused about how the statute should be applied, and increasingly reluctant to convict. (Williams, p. 12)

(c) THE REPORT OF THE SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION (CANADA) [FRASER COMMITTEE], 1985

3.15 The Fraser Committee believed it was necessary to ask 'What is Pornography?' (Chapter 4 of their Report). They discussed the terminology used in the law, and also asked 'What is obscenity?' besides discussing the distinction between pornography and erotica. The Canadian Report noted:

> Although the term [pornography] is widely used in popular and academic literature, it does not appear in Canadian criminal law, nor is this term used in other federal legislation dealing with the control of offensive material. (Fraser, p. 45)

3.16 The Canadian Criminal Code at the time of the Fraser Committee's deliberations, deals with the production, distribution and sale of 'obscene' matter. For the purposes of the Code any publication is deemed to be obscene if:

> ... "a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence" (subsection 159(8) Canadian Criminal Code) (see Fraser, pp. 45-46).

3.17 The term 'obscene' is used in other sections of the Code. The Fraser Committee reported that in all sections of the Code:

> ... the key test invalues [sic] the application of "community standards". (Fraser, p. 46)

and that this community standards test developed in response to the use of the term 'undue' in subsection 159(8). The question posed, in the Canadian context, by the community standards test:

> ... is, essentially, whether the exploitation of sex or of sex and crime, horror, cruelty or violence, is undue in the sense that it exceeds the contemporary Canadian community standards of tolerance. (Fraser, p. 46)

3.18 In reviewing the various provisions of the Criminal Code dealing with obscene and indecent materials, the Canadian Customs Tariff, and the Broadcasting Act, Fraser concluded:

> One of the clear impressions is of the lack of uniformity in the terminology. (Fraser, p 47)

3.19 This Joint Select Committee has made the same observations in its examination of the relevant provisions of the ACT Classification of Publications Ordinance, the Customs (Cinematograph Films) Regulations, and the Customs (Prohibited Imports) Regulations. The Customs (Cinematograph Films) Regulations uses the terms 'blasphemous', 'indecent', 'obscene' which are not now found in the Customs (Prohibited Imports) Regulations nor in the ACT Classification of Publications Ordinance.

3.20 The Canadian Committee reported that it was 'strongly inclined' towards the view of the Williams Committee 'that the word "obscene" may now be worn out, and past any useful employment at all'. (Fraser, p. 49.) (see paragraph. 3.9 of this Report for full text of Williams' observation). The Fraser Committee in its first Recommendation suggested a complete revision of the law of obscenity:

> The term "obscenity" should no longer be used in the Criminal Code, and the heading "Offences Tending to Corrupt Morals" should also be removed. (Fraser, p. 261)

3.21 In making this recommendation the Canadian Committee acknowledged that while there was a use for the word 'pornography' it did not propose to make it central to its proposed amendments to the Criminal Code:

> It is simply too elusive to provide the precision needed in the criminal law. However, we do not consider it worthwhile to eschew the term altogether. It does convey an idea about the material we are seeking to control and an entirely new term is not only difficult to find but may not be as accurate. Accordingly, we use the term pornography in our proposed sections, although we have been sparing in that use. The most obvious use is that in the various headings we have given to proposed sections. We see as quite acceptable the use of the term pornography in this way, because any elasticity in the title is limited by the specific terms of the section or subsection. Moreover, in the title, it serves as a useful indicator of the shift in approach from a traditional moral concern with obscenity, to our more functional social concern with pornography. (Fraser, p. 261)

(d) REPORT OF THE ATTORNEY-GENERAL'S COMMISSION ON PORNOGRAPHY, U.S. DEPARTMENT OF JUSTICE [MEESE COMMISSION], JULY 1986

3.22 The Meese Commission found that the questions of terminology and definition were recurring problems in their hearings and deliberations. Foremost among the definitional problems encountered by the Commission was the difficulty in coming up with some definition for the word 'pornography'. The Commission noted that:

> The range of materials to which people are likely to affix the designation "pornographic" is so broad that it is tempting to note that "pornography" seems to mean in practice any discussion or depiction of sex to which the person using the word objects. (Meese, p. 227)

3.23 They believed this was unsatisfactory as was any attempt to define 'pornography' in terms of regulatory goals or condemnation, as the Canadians have done in their proposed Bill. The Commission said:

> To call something "pornographic" is plainly, in modern usage, to condemn it, and thus the dilemma is before us. (Meese, p. 228)

and:

> If we try to define the primary term of this inquiry at the outset in language that is purely descriptive, we will wind up having condemned a wide range of material that may not deserve condemnation. (Meese, p. 228)

3.24 The Meese Commission saw merit in the approach of the Fraser Committee in Canada which decided that definition was simply futile in the regulatory context. In fact, they partially followed that course and minimised the use of the word 'pornography' in their Report. Any reference to material in their Report as 'pornographic' was taken by the Commission to mean only that the material was predominantly sexually explicit and intended primarily for the purpose of sexual arousal.

3.25 With regard to the word 'obscenity' the Meese Commission found it difficult because 'obscenity' need not necessarily suggest anything about sex at all. They said:

> Those who would condemn a war as "obscene" are not misusing the English language, nor are those who would describe as "obscene" the number of people killed by intoxicated drivers. Given this usage, the designation of certain sexually explicit material as "obscene" involves a judgment of moral condemnation, a judgment that has led for close to two hundred years to legal condemnation as well. But although the word "obscene" is both broader than useful here as well as being undeniably condemnatory, it has taken on a legal usage that is relevant in many places in this Report. As a result, we will here use the words "obscene" and "obscenity" in this narrower sense, to refer to material that has been or would likely be found to be obscene in the context of a judicial proceeding employing applicable legal and constitutional standards. Thus, when we refer to obscene material, we need not necessarily be condemning that material, or urging prosecution, but we are drawing on the

> fact that such material could now be prosecuted without offending existing authoritative interpretations of the Constitution. (Meese, p. 230)

3.26 For the term 'erotica' the Commission clearly saw the term's use as a mirror image of the broadly condemnatory use of 'pornography' with it 'being employed to describe sexually explicit materials of which the user of the term approves'. (Meese, p. 230)

3.27 The Commission also commented that:

> Various other terms, usually vituperative, have been used at times, in our proceedings and elsewhere, to describe some or all sexually explicit materials. Such terms need not be defined here, for we find it hard to see how our inquiry is advanced by the use of terms like "smut" and "filth". (Meese, p. 231)

3.28 The Meese Commission also observed that X-rated films (a voluntary rating of the Motion Picture Association of America) are not necessarily synonomous with sexually explicit films. Such films may be X-rated because they contain 'particularly extreme qualities of violence' and no one under the age of seventeen may be admitted to a cinema exhibiting an X-rated film. (Meese, p. 279) It is thus more comparable to Australia's R category. The Commission also observed that 'only in rare cases will anything resembling standard pornographic fare be submitted to the MPAA for a rating. More often such material will have a self-rated "X" designation or will have no rating or will have some unofficial promotional rating such as "XXX"'.

(e) AUSTRALIA - THE COURTS

3.29 While Australia initially adopted the Hicklin definition of obscenity, Australian courts since about 1948 have adopted a different test. That test is whether the material in question

offends the sensibilities of the citizen by violating the contemporary standards of decency in the community (Bradbury v Staines [1970] Qd. R 76).

3.30 The trend away from the classic English definition began with the case of R v Close ([1948] V.L.R. 445). There the Victorian Supreme Court, by majority amended the Hicklin test by requiring not only that material have a tendency to deprave or corrupt, but also that it be offensive according to current standards of decency. Fullagar J. in the Close case said:

> As soon as one reflects that the word "obscene", as an ordinary English word, has nothing to do with corrupting or depraving susceptible people, and that it is used to describe things which are offensive to current standards of decency and not things which may induce to sinful thoughts, it becomes plain, I think, that Cockburn C.J., in the passage quoted from R v Hicklin was not propounding a logical definition of the word "obscene", but was merely explaining that particular characteristic which was necessary to bring an obscene publication within the law relating to obscene libel. The tendency to deprave is not the characteristic which makes a publication obscene but is the characteristic which makes an obscene publication criminal. ([1948] V.L.R.; at p. 463)

Decency or indecency, he said, could not depend on the nature of the subject matter treated but on the method of treatment. (ibid. p. 465)

3.31 The matter was taken even further by Barwick C.J. and Windeyer J. when the meaning of obscenity was considered by the High Court in the 1968 case of Crowe v Graham ([1967-68] 121 C.L.R. 375). The Chief Justice said that the test of indecency was whether the material, having regard to the manner in which it was presented, would offend the modesty of the average man or woman in sexual matters (ibid. p. 379). Windeyer J., in his judgement on the case, noted that 'Despite the obvious

unsuitability of this sentence [see paragraph 3.13 for Chief Justice Cockburn's sentence] as a legal definition of obscenity, it, taken from its context, has had a great vogue. It has fostered much misunderstanding ... Yet it has only survived really because, although constantly mentioned, it and its implications have been ignored'. (ibid. p. 392) He described the judgement of Fullagar J. in Close's case as a most notable contribution.

3.32 Barwick's and Windeyer's view then, was that once material in the particular circumstance offended contemporary standards of decency in the community, it was presumed to tend to deprave and corrupt. Things which would offend the modesty of the average man in the particular circumstances are conclusively presumed to be liable to deprave and corrupt and, conversely things which do not so offend are not to be so presumed, irrespective of their subject matter. If this is so, then 'the tendency to deprave and corrupt has dwindled into a legal fiction arising conclusively from affronts to community standards of decency and not from anything else'. (Bray C.J. [1972] 46 A.L.J. at p. 105)

USAGE OF THE TERMS 'VIOLENT' AND 'PORNOGRAPHIC' IN AUSTRALIA

3.33 As indicated in paragraph 3.2 the terms 'violent' and 'pornographic' fare in common usage in Australia and both Government and public witnesses before the Committee generally used these terms in a commonly understood manner.

3.34 The former Chief Censor, in evidence to the Senate Select Committee on Video Material, said: 'I think it is easier to define pornography than violence'. (SSCVM Evidence, p. 1161) However the term violence is defined in the Macquarie Dictionary specifically as it is used and understood in the Australian cultural context.

3.35 The definition reads in part:

- rough or injurious action or treatment
- any unjust or unwarranted exertion of force or power, as against rights, laws ...
- rough or immoderate vehemence, as of feeling or language ...
- a distortion of meaning or fact.

3.36 The fact of pervasive video violence in the form of excessive unwarranted force against property, objects, possessions was understood and used by witnesses and needs no elaboration.

3.37 Violence against persons can be depicted as physical and/or psychological. Rough or injurious and unjustified action, or treatment of this kind, is often referred to in the literature as aggression. ['My interest is human aggression'. Donnerstein Evidence, p. 85] The aggressor may adopt unwarranted force or display vehemence through assaultive verbal abuse which denigrates or denies the basic human rights of others. Such violence distorts those intra-personal relationships or breaches that rule of law which underpin a stable society by unjustly usurping others' freedom of action or right to treatment which respects their human worth and personal dignity. Ultimately, violence can be brutalising if the perpetrator acts in a cruelly inhuman manner.

3.38 The guidelines used by the Film Censorship Board (FCB) in classifying or refusing to classify video material refer to forms of violence which range from 'minimal, incidental, discreet, inexplicit or stylized' through to 'realistic, horror, considerable, bloody, gratuitous, exploitative, explicit, detailed, cruel, relished'. In making a classification decision,

the Board distinguishes non-consenting sexual violence from other forms of aggression.

3.39 Since it was the legalisation of the distribution of X-category videos in the ACT which caused the heightened public concern and prompted the establishment of the Joint Select Committee and its predecessor the Senate Select Committee, it is not surprising that most submissions addressed the issue of pornography and pornographic video materials. An examination of the submissions and evidence indicates that most submissions and witnesses had no problem with the terms 'pornographic' or 'pornography' which they used to refer to materials with common identifiable features.

3.40 The official Government evidence included the working definition of pornography used by the Film Censorship Board:

> Verbal or pictorial material devoted overwhelmingly to the explicit depiction of sexual activities in gross detail, with neither acceptable supporting purpose or theme, nor redeeming features of social, literary, or artistic merit. (SSCVM Evidence, p. 96)

Indeed the Explanatory Memorandum attached to the Classification of Publications Ordinance 1983 states that the 'additional classificaton - "X" - is applied to hardcore pornography'.

3.41 It is interesting to note that while some witnesses held somewhat different views on censorship and generally on moral issues their description of what is meant by pornography is remarkably similar.

3.42 As an example the Committee refers to the two submissions of Father Peter Murnane, OP of Blackfriars Priory in Canberra. In his original submission (No. 467) to the Committee, Father Murnane gave the Concise Oxford Dictionary entries for

'pornography' 'erotic' and 'aesthetic' (see Evidence, p. 2076).

3.43 He added some examples of what he meant by 'pornographic':

> A video depicting explicit details of a man and woman having sexual intercourse, where the sole or main aim of the film is the sexual arousal of the viewer. (Evidence, p. 2076)

And of 'aesthetic':

> A video attempting to portray real life in a dramatic and artistic manner, in which sexual intercourse or even rape is suggested or even fairly graphically simulated. But the sexual act is shown as having realistic causes and consequences, involving whole persons and plausible emotional consequences. Specific examples: sex as depicted in plays and novels by literary craftsmen; motion pictures up to and including the "R" rating. (Evidence, p. 2076)

He also gave a 'clarification':

> From the definitions given above from the Concise Oxford Dictionary, it will be clear that some aspects of what the dictionary calls "erotic" fall within its definition of pornography: "... especially tending to arouse sexual desire or excitement." Other areas of "erotic" are included within the dictionary's definition of "aesthetic": "Of sexual love, amatory ...".
>
> It is necessary to add this, since some authors make pornography and erotica mutually exclusive. For greater clarity, pornographic is considered in opposition to aesthetic, throughout this submission. (Evidence, p. 2076)

3.44 In his supplementary submission (No. 027) to the Committee, which Father Murnane submitted to clarify the first submission and to incorporate some relevant new material, he called for the need to define terms. He said:

> Among those who have appeared before this Committee so far [16 October 1985], different people have sometimes given different meanings to the same word. It seems astonishing that the committee has not settled on a definition of PORNOGRAPHY, at least for the purposes of its own working. (Evidence, p. 2103)

3.45 To help the Committee, Father Murnane offered the following definitions, based on the Oxford Dictionary:

> AESTHETIC: Concerning the beautiful. That which opens one to experience more of life and its mystery.
>
> EROTIC: Concerning love and sexual passion. [This was the original meaning; the word is now much abused by being used to refer to scenes etc that have little to do with love at all, but are in fact pornographic. I make no apology for trying to return to the original meanings of these words. There is urgent need to stand against the destructive "doublespeak", *so familiar to us from Orwell's* "1984", and from the Nazi regime that the chairman of this committee spoke so strongly against recently.]
>
> PORNOGRAPHIC: originally, and essentially this means prostitution, which is THE SELLING OF PEOPLE'S BODIES AND THE PLEASURE TO BE HAD FROM THEM. Pornography is any depiction of this with the same exploitative intent. (Evidence, p. 2103-4)

Speaking to his submissions Father Murnane presented to the Committee his observations about the exploitative nature of pornography. He said that:

> To separate sex or any part of the person from the rest of life is to do serious violence to the human being. In the pornography trade the woman is often called 'meat' ... Women are reduced to their sexual parts and treated as such; they are bought and sold as such - that is, out of the context of human friendship and love, where sex belongs.

> ... pornography is really about the breaking of harmony, seeing the person as an isolated bit rather than a whole person. (Evidence, p. 2127)

He went on to say:

> Pornography claims ... to be extending the range of human feeling but in fact it produces brutalisation and loss of emotion. (Evidence, p. 2131.)

3.46 Dr Jocelynne Scutt, Deputy Chairperson of the Law Reform Commission Victoria and a noted feminist, came to a remarkably similar descriptive position as that of Father Murnane, although from a different perspective and in more detail. Each emphasised exploitation as the essential characteristic of pornography.

3.47 Unlike Father Murnane, Dr Scutt is not in favour of censorship at all because 'those censorship standards are not going to be drawn up in accordance with what I think is appropriate, that is, what I think are feminist principles'. (Evidence, p. 2589)

3.48 She believes it is possible to take a human rights approach to pornography and that the main difficulty is defining what is actually being discussed when talking about pornography. She said:

> If you look at definitions of obscenity, which is the closest to pornography, what one finds is that in the law pornography tends to be defined as something that is of prurient interest or titillating or tantalising in a sexual manner. In terms of the pornography that I have seen, I am certainly not *tantalised by it or titillated, and it is* not of prurient interest to me. In fact, it is quite the opposite. I think that it is subordinating to women, it is derogatory of women as human beings, and in the course of that it is actually derogatory of men also. Therefore, I do not think the current legal definitions of obscenity and pornography are of very much help at all. I think the

> preferable approach would be to insert in the Sex Discrimination Act at the Federal level and into State equal opportunity or anti-discrimination legislation, a definition of pornography which makes it very clear or explicit as to what the activity is that the community considers to be unacceptable. (Evidence, p. 2589)

3.49 In her terms, Dr Scutt said, the definition would be that pornography is:

> The sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:
>
> Women being presented dehumanised as sexual objects, things or commodities; or women being presented as sexual objects who enjoy pain or humiliation; or women being presented as sexual objects who experience sexual pleasure in being raped; or women being presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or women being presented in postures of sexual submission or sexual servility, including by inviting penetration; or women's body parts including but not limited to, vaginas, breasts and buttocks, being exhibited such that women are reduced to those parts; or women being presented as being penetrated by objects or animals; or women being presented in scenarios of degradation, injury or torture, shown as contaminated or inferior, bleeding, bruised or hurt in a context that makes those conditions sexual. (Evidence, pp. 2589-2590)

This definition, as Dr Scutt acknowledges, is basically the Indianapolis-Minneapolis Ordinances drawn up by Professor Catherine MacKinnon and Andrea Dworkin in the United States. It is worth noting that the Minneapolis Ordinance was passed by the city council but vetoed by the mayor. The similar Indianapolis law was passed, but later declared unconstitutional in federal court.

3.50 The Committee is aware of a view that the terms 'pornography' and 'pornographic' are subjective concepts. This

view is expressed in such dismissive statements as 'What turns you on may not turn me on'. Any perceived difference of view over the meaning of the term 'pornography' based on that subjective approach denies the possibility of a clearly identifiable reality corresponding to the term 'pornography' which would be capable of reasonable understanding by both sexes, young and old.

3.51 The belief that there can be no clearly identifiable reality corresponding to the term 'pornography' would make the work of a Committee such as this impossible. Indeed it would blur the distinction between pornography and other sexually explicit material designed for educative, health or scientific purposes.

3.52 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 desires from viewing exploitative depictions of sexual activities aimed at sexual arousal knows what kind of material is being referred to when they hear the term 'pornography'.

3.53 The term refers to the nature of the materials themselves - their content and apparent or purported intention to arouse the sexual desires of its target audience.

3.54 When using the term 'pornography' in this Report the Committee means to speak of video material which is predominantly sexually explicit and intended primarily for the purpose of sexual arousal.

3.55 This is the same working definition/description of pornography used by the Meese Commission and essentially that of the Williams Committee and Fraser Commission.

3.56 The phrase 'sexually explicit' unless otherwise qualified in this Report is meant to refer as much to the theme of the material as to its depictions. This approach is necessary to avoid any misunderstanding as to the nature of some of the material in the R category. The Committee refers in particular to some sexually violent materials which are able to escape being refused classification because inter alia the depictions of sexual activity are not 'explicit'. Similarly the Committee has noted that a number of R classified videotapes are identical in theme, representation, intent and title as their X counterparts save only for 'explicit' closely detailed depictions of genitalia.

3.57 The Committee does not intend to use the division of pornographic videotapes into 'hard core' and 'soft core' based on the 'explicitness' or, as is the term in the U.S., the 'graphicness' of the detailed depictions of genitalia. The Committee considers that it is the theme, the message and the intent - certainly given impact by the 'explicitness' or 'graphicness' of the depictions - that are crucial in our consideration.

3.58 However in view of the history of the considerations of pornography overseas and more recently in Australia including the formulation by the Film Censorship Board of its guidelines, and to enable the reader of this Report more readily to understand our summary of the research by behavioural scientists into the likely effects of violent and/or pornographic video materials the Committee has found it useful to divide pornographic videotapes into three categories:

Category I Pornography or violent pornography;

Category II Pornography or non-violent degrading pornography; and

Category III Pornography.

(See Chapter 13 for elaboration of each Category).

3.59 So that readers will be in no doubt about the content of the materials which are the subject of this inquiry, the Committee intends to use, where necessary, specific descriptions of the themes and activity depicted in each category.

3.60 Terms and phrases to describe dominant themes of pornography such as 'objectification', 'commodification' and the portrayal of women as 'malleable, obsessed with sex, and willing to engage in any sexual act with any available partner', 'promiscuous', 'female initiated' will be used where necessary.

3.61 Specific terms will be used to describe, where necessary, the sexual activites in video pornography including vaginal penetration, masturbation, ejaculation, fellatio, cunnilingus, anal penetration, insertion of objects in orifices, homosexual acts, coprophilia, necrophilia and fetishes.

3.62 The 'rape myth' theme of some violent pornography will also be addressed and specific terms will be used, where necessary, to describe activities depicted in Category I materials such as 'threatening', 'beating', 'raping'.

3.63 In adopting this descriptive method the Committee has not ignored the existence of child pornography and videotapes depicting bestiality. However since these are wholly prohibited in Australia the Committee will not be addressing the issue of their likely effects and therefore finds it unnecessary to catalogue in detail their theme, message content and intent.

3.64 Notwithstanding its specific legal applications to

pornography the term 'obscene' is commonly used to describe some actions or words which are abominable, disgusting or repulsive but have no sexual content. For example, particular wars are described as 'obscene'. Some violent videotapes and films, especially the relished, gratuitous, exploitative 'violence for violence sake' type can in common usage be described as 'obscene'.

3.65 However the term 'obscene' is used in this Report where there is a reference in law or where witnesses use the term.

CHAPTER 4

VALUES AND PERSPECTIVES

4.1 Submissions received by the Committee ranged from pro-forma letters requiring a signature only to substantial submissions where the author's viewpoint was supported by detailed argument and/or evidence. This chapter provides a brief overview of the more general attitudes expressed. Evidence of a specific kind will be referred to in appropriate chapters throughout the Report.

4.2 There was a wide spectrum of opinion on what members of the public considered to be acceptable video content. At one end people sought the removal of all material containing explicit sex as well as the banning of violent material of any kind. There were also people who felt that entertainment whether films, theatre or books should always promote positive values. At the other end there were those who supported a policy of free choice for adults of what they see, hear or read, leaving parents to exercise all control over what their children see without government interference.

4.3 One prominent view held that certain values are fundamental to Australian society and that any threat to them must be seen as leading to social disintegration. The values are the primacy of family life and the institution of marriage, monogamy, the sanctity of the sexual act only within marriage and its legitimacy only between heterosexuals, the protection of the innocence of children and the belief that human dignity and respect - particularly for women - precludes people in general but especially women from being associated with commercialised depictions of sexual acts. It is held to be fundamentally

important to preserve community sensitivity to these values. All 'pornographic' material must be declared illegal, even if doing so impinges on adult freedoms.

4.4 The majority of the submissions received by the Committee embraced this view. About 90 per cent of these were limited to short letters containing an expression of opinion. They came primarily from church groups, church leaders, women's groups and parents. The following are examples of the views expressed:

> Increased availability of pornography will be accompanied by an increase in the number and rate of sexual offences being committed against women and children, the dissolution of the tradition of marriage, abortions, and the disillusionment and ethical confusion of teenagers and young adults. (Submission No. 208, Mr Marc Bevilacqua, p. 2)

> Morality nowadays is not considered in the context of whether the matter is right or wrong per se, but whether it is right or wrong according to the current standards of decency within the community. Over the last twenty years there has been a change in attitudes as a result of the growing freedom from restrictions in the publication or exhibition of indecent material, to the extent where there is a marked deterioration in what is described, depicted and enacted in the public arena. The result is that we have become desensitised to that which we once considered offensive, and require more explicit doses to arouse our shock system sufficient for us to call the matter offensive. What we would put to the Committee is that material which is obscene remains so regardless of what are our subjective responses to it and, further, that such obscenity is harmful to us, in that it affects our character and conduct. (Submission No. 326, Christian Revival Crusade of Victoria, p. 1)

> Hard pornographic sex teaches that sex is not a beautiful activity expressing love, affection and trust between man and woman. It

> teaches that women are sex objects, subservient, inferior, degraded. It also robs children of the sense of wonder at the mysterious process by which they came into being. Their abilities to live later as parents and capably nurture and guide the children who will be the next generation's parents and decision-makers, and to impart to them normal healthy sexuality and concern for others, are impaired ... John Stuart Mills [sic] put it very well when he said "The real test of my maturity is my willingness to concede some loss of my personal liberty in order that the total freedom and dignity of the community shall be established." (Submission No. 553, Girl Guides Association (NSW) Question I, p. 1)

> No one with integrity can doubt the phenomenal escalation of the video industry. I am told that a great percentage of it, probably over half, is becoming pornographic or violent or both. There is no doubt that children, even of tender years, are currently being allowed such viewing in someone's home if not in their own. Their minds lack the maturity and discernment to select critically what might be safer or healthier for them, and after some years of progressive exposure their critical faculties become blunted; anything and everything becomes, in the children's phrase 'all right'. They become desensitised to physical and emotional violence, sexual deviance and to degrading and possibly fatal life-styles ...
>
> For such video children, people come to be viewed as sources of pleasure or experience. Relationships do not matter. The institution, let alone the sacrament, of marriage does not matter; you do your own thing and let the world go hang. Females and children are no longer of respect or dignity to males; they are seen and caricatured as mere means to a selfish end. Sadly, the victims' sufferings and rights are rationalised away and the offender glibly argues that they brought it on themselves. Even more sadly, our society and our laws are coming to share this no fault, no blame attitude. (Dr Eric Seal, Australian Family Association Evidence, p. 1354)

> We believe that there are as many people concerned about hard-core pornography as violence in pornography. Promiscuous sexual

> behaviour ... and the promotion of certain sexual acts all have consequences not only for the individual but for society. We believe that many of the ideas promoted in video *pornography sets [sic] up tension* in human relationships, de-stabilises marriage and family life, leads to un wanted [sic] pregnancies and causes the spread of veneral [sic] diseases. (Submission No. 633, Women Who Want to be Women, Victoria, pp. 1-2)

4.5 Another view saw Australian society as a pluralist one with the individual as its basis. Society is not an organic whole but an agglomeration of individuals: *only through a process* of free interplay of all competing ideas and values in a situation of complete freedom of information can it operate at its best.

4.6 The perspective derives from the 19th century philosopher John Stuart Mill who:

> said that there were four distinct grounds for stating that freedom of opinion and expression were necessary to the well being of mankind. Firstly, he said, any opinion compelled to silence may well be true and to deny that is to assume our own infallibility.
>
> Secondly, even if the silenced opinion is in error it may contain some truth which will be lost because it is never tested. Thirdly, unless *the received opinion is* tested against an adverse opinion it will be held as a prejudice with little comprehension or feeling of its rational grounds. Finally ... the doctrine will become a mere formal profession of belief rather than a belief gained from reasoned or personal experience. (Submission No. 681, South Australian Council for Civil Liberties, pp. 1-2)

4.7 *The view was presented* to the Committee by two Civil Liberties groups. They opposed censorship in any but the most exceptional situations. For them it remains open to debate whether children or other vulnerable groups are subject to damage from sexually explicit or violent material in the media. Only demonstrable and unequivocal evidence would establish that harm

occurs, and they see the evidence produced to date as not conclusive, since even the experts continue to argue about it.

4.8 An extreme example of this position was put to the Committee by the New South Wales Council for Civil Liberties who submitted that:

> ... not only should 'X' be retained but it should be expanded to allow adults freedom the [sic] watch what they choose in the privacy of their own homes. The State should not intrude into the supervision of children in these adults [sic] own homes. If parents have the care and supervision of electricity outlets, sharp knives and poisons in the home, then supervision of adult videos is not beyond them. (Evidence, p. 648)

4.9 In a letter to the Attorney-General of New South Wales which was appended to its submission, the New South Wales Council for Civil Liberties outlined its position on censorship:

> Our traditional policy has been and continues to be an absolute opposition to censorship in all its forms. The basis of our opposition broadly stated is three-fold:-
>
> i) Censorship represents a real and substantial threat to free speech, vigorous discussion of unpopular and minority views and the holding of same. Adults should be free to say, read, discuss and see whatever they like without interference by the police, the courts, and censorship rating systems.
>
> ii) The existence of censorship laws in their various guises intimidates free expression and the fee [sic] exchange of ideas. Self-censorship and timidity are a direct result - particularly amongst editors, journalists, artists, galleries, printers and those who make public affairs programmes for film, TV. and radio (e.g. the A.B.C. and now the National Times).

iii) The argument that exposure to erotic, lewd and violent material is the direct and sole cause of criminal, anti-social and aberrant conduct is unscientific not proven [sic]. In fact there is a body of respectable opinion the other way. Very often this argument, which is no more than an emotional assertion, is a thinly veiled attempt to repress unpopular political opinion and to coerce life style dissidents ...

There is much material which may be offensive to some and in bad taste. The argument is not about protecting adults and children against their own baser instincts or the greed of commercial pornographers, but it is an argument about freedom of choice. The choice is between a society in which everyone must tolerate some offensiveness at the price of diversity, or a society that permits only expression and opinions that are offensive to no one. (Evidence, p. 650)

4.10 The Council's position on the range of material to be allowed was expressed as follows:

> Not only should the current FCB's classifications be kept, there should be some forward movement to allow adults greater access to all kinds of video material. (Evidence, p. 646)

This position was made even more clear in verbal evidence:

> Senator HARRADINE - You say in your document here that persons should be free to read and see what they wish.
> Mr Horler - That is our absolute position.
> Senator HARRADINE - That means that you would then say that people should be free to read or see material that depicts child pornography, bestiality, terrorism, and misuse of drugs, for example.
> Mr Horler - It is not my wish, but if that is their wish then they should be entitled so to do ... If there are people who want to look at that material, then the libertarian position is that they should be entitled to do so and it is no business of the government to impose

a perceived community standard of taste to prevent them from doing so. (Evidence, pp. 659-60)

4.11 On the access of children, Mr Horler of the New South Wales Council had this to say:

> ... I want to resist this sort of argument which the CCL has heard in other places. Parents are free to choose, they may hire, for the weekend, some sexually explicit video - and I do not understand this Committee to be arguing against their right to see it. It is not very hard to operate those machines, and the video is around, and the children come home from school, and so the argument goes. The videotape is put on; the children are watching something that concerns this Committee. Just let me say this: That is a comment about parental neglect, not about changing the law. (Evidence, p. 664)

4.12 The views of the South Australian Council for Civil Liberties though close to those of the New South Wales Council, did not go so far as to advocate the legalisation of the depiction of child abuse, bestiality, terrorism, etc. They submitted that:

> Unless people can communicate their ideas to one another there will not be the frank exchange of views between individuals and groups which ensures the progress of civilisation and the creativity of human culture. (Submission No. 681, p. 1)

They declared their belief that freedom of expression is as important as freedom of opinion and should not be subject to any restrictions imposed in the interest of protecting public morals or maintaining 'community standards':

> Whilst the protection of children, vulnerable people and community standards are laudable motives it must first be established that they are at risk when exposed to this material ...

> The cost to society in providing protection from the perceived risks may well outweigh any benefit afforded to society by such protection. (ibid. p. 3)

4.13 Rather than use the law to prevent access of adults to material that might harm children, the South Australian Council saw it as the responsibility of parents to protect children by establishing:

> ... a relationship with their children that allows (1) a child to have confidence in accepting its parents' directives on what it may see; (2) encourages a child to approach its parents after exposure to such materials so that they may deal with the situation; and (3) ensuring that videos brought into the home are safely secured. (ibid. pp. 3-4)

4.14 Many other people expressed broadly liberal views to the Committee which were by no means as unequivocal as the New South Wales Council of Civil Liberties or even as the South Australian Council. Very few of them questioned the present banning of child pornography, or the depiction of bestiality and violence associated with explicit sex. Moreover there has been increasing concern about the level and type of violence in films, television and video among those holding liberal views on censorship issues. Dr Paul Wilson who declared himself 'basically a civil libertarian' (Evidence, p. 1055) and not at all worried by depictions of explicit sex without violence, argued for controls in 'the sexual sadistic area'. (Evidence, p. 1054)

4.15 Many who remained opposed to censorship in any form wished the government to take an active role in both education and the provision of information to the consumer. Mr Phillip Adams, Chairman of the Australian Film Commission, told the Committee:

> What we have to do, as a film industry, as a communications industry, and as a government,

> is to make the community aware that the stuff exists, what is in it, and to take control and make decisions. (Evidence, p. 2929)

> My dilemma is that I am increasingly disturbed, as I think you all are, by what we see pouring out of the media. But I have no belief that a censorial mechanism is going to do much to change it. It seems to me we have a long hard slog ahead of us ... I would like to see an educational program taking place throughout the community. I used to laugh at anyone who advocated censorship. I no longer do because I am concerned by it. (Evidence, pp. 2930-1)

> What you have to get on to is labelling. Labelling is different. Labelling says: 'This film contains these elements and ingredients. Be cautious'... (Evidence, p. 2937)

4.16 Church groups, family-orientated groups, women's groups of various kinds and individual women objected to the effect on women of the portrayal of explicit sex on video:

> Pornography portrays women as a gender ordained for sexual pleasure of men. While not all pornography is violent, even the "softest" pornography objectifies women's bodies. Because of this, women are not seen as human beings but as things, chattels, robots, toys for a moments sport; pornography thrives off this and feeds it. Violence against women is the consequence...
>
> In addition to the risk of violence, pornography demeans a woman's self image, affects them psychologically and affects their relationships with others. (Conference of Churches of Christ in NSW Evidence, p. 2306)
>
> It has been argued that erotica which does not involve, or appear to involve, coercion of women does not exploit or degrade women. Apart from the prostitution of the actresses, such material creates false ideas about women in general. The Family Team calls on the Government to take action against such material, as would be consistent with its

> responsibilities under the Convention on the Elimination of All Forms of Discrimination Against Women. (Mrs B. Cains Evidence, p. 6)

4.17 Feminist groups who contacted the Committee divided into different schools in relation to video material, though all felt unhappy when women were portrayed as not enjoying equal power to men. Some saw all X-rated films - even the ones that have remained in the classification since December 1984 when the guidelines were refined to remove any suggestion of coercion or non-consent of any kind - as degrading to women and damaging to their self-esteem. These women felt that X-rated videos convey the message that women are inferior and occupy a limited role in society. The videos do this through depicting women merely as objects of male sexual pleasure, rather than as creatures with sexual needs and appetites of their own. The Women's Electoral Lobby of South Australia said in its submission:

> The portrayal of women as one-dimensional characters becomes more prolific in the higher classification videotapes, as it does in cinematic film ... (Submission No. 567, p. 1)

Women Against Violence and Exploitation (WAVE) submitted:

> Non violent explicit erotica can still exploit, degrade and abuse women. It is a subtle form of institutionalised violence against women, even if it does not include specific representation and promotion of physical and sexual violence against women. (Evidence, p. 1011)

4.18 An interesting submission was made by the Shop, Distributive and Allied Employees' Association who saw implications for women's employment, career opportunities and working conditions in the availability of 'violent, pornographic and obscene' video material. This Association opposed any video classification above the current R category on the grounds that

such classifications encouraged the view that women were to be valued for their sexual role and physical beauty - a view that is discriminating in employment. (Evidence, pp. 560-566)

4.19 Some women were not concerned at all about X under the new guidelines. Mrs Megan Sassi wrote:

> The acceptance of material that would be classified ER would seem to be a sensible and wise compromise that most reasonable people would see as being within current community standards. (Supplementary Submission No. 022) [ER - Extra Restricted - see guidelines November 1984 in Appendix 5. This became X in December 1984]

She made a general point in her main submission:

> I believe that the committee should be rather wary of the extreme feminist view that most video material depicts degradation of women. Certainly many of them apparently present stereotypical images of women, but that is only a reflection of present day society after all. To say that all videos degrade women is akin to saying that all sex degrades women. (Submission No. 405, p. 2)

4.20 The Office of the Status of Women (OSW) in the Department of the Prime Minister and Cabinet and the Women's Advisory Council to the New South Wales Premier formally accepted the X or Extra-Restricted classification as expressed in December 1984. However they each expressed some residual concern on the matter of inequality. The OSW was concerned over 'subordination and exploitation' (Evidence, p. 2826), while the Chairperson of the Women's Advisory Council to the New South Wales Premier said:

> I think the basis of our understanding of sexually explicit is a one to one relationship. (Evidence, p. 2866)

4.21 Many submissions expressed the view that videos containing scenes of explicit sex between consenting adults in a context of equal power relationship where there was no coercion or violence were acceptable. Few feminist groups were against the depiction of explicit sex without violence where 'such acts are depicted as an equal exchange between equal individuals'. (Submission No. 614, Union of Australian Women, (Victorian Section), p. 3)

4.22 Many in the women's movement are concerned with the violence towards women which can still be seen in the R category (i.e. non-explicit sexual depictions):

> Under the proposed R category, sexual violence is permissible as long as it is discreet, not gratuitous and not exploitative. As sexual violence is always exploitative and usually gratuitous and is never discreet in real life, it is abhorrent that it should be allowed to be shown in any manner which encourages the legitimisation or acceptance of it. Sexual violence is an outrage against women whether it is boldly represented or hidden behind shadows and indistinct through fuzzy focuses. These guidelines encourage the viewer to see the victim as a symbol representing all women rather than as a fictitional character, and encourage the viewer to believe that sexual violence is condoned by society if it is hidden in the dark and carried out by an unidentifiable assailant. (Submission No. 645, Toora Single Wimmin's Shelter, pp. 1-2)

4.23 As is the case overseas, different sections of the women's movement recommend different strategies to combat sexual inequality in video material. A number of submissions found common cause with those advocating more stringent censorship than currently exists while some adopted a liberal element to their strategy in calling for efforts in community education as a means of changing community attitudes towards the role of women in society. But most promoted vigorous - if in some cases reluctant - use of strategies involving government and the law.

4.24 Most of the strategies they recommended focused on the laws included in the Committee's Terms of Reference. However a different kind of approach was made by Dr Jocelynne Scutt who advocated using sex discrimination legislation to control sexist video material.

4.25 Dr Scutt's suggestion was to:

> ... insert in the Sex Discrimination Act at the Federal level and into State equal opportunity or anti-discrimination legislation, a definition of pornography which makes it very clear or explicit as to what the activity is that the community considers to be unacceptable. (Evidence, p. 2589)

4.26 In her view this would enable women who believe they have been sexually exploited to put the incident before the Equal Opportunity Board, a sex discrimination tribunal or a like forum and argue the issue on a roughly equal basis with those who argue the action is perfectly acceptable. It would also lead to the entire episode being publicly debated and the end result could be that people would come to understand that the activity is one which the community does not like. Freedom of speech would not have been curtailed, as would be the case with censorship. (Evidence, p. 2601)

SUMMARY

4.27 The Committee received only a few clear messages overall. Most people who made submissions believed that there is a role for government and law in the control of video material, although there was some confusion about what was actually contained in current laws. The more conservative groups and some members of the women's movement wanted more extensive censorship than currently exists. Many liberals supported the December 1984 guidelines whilst others opposed all censorship in principle.

SECTION II

THE CURRENT LAW AND ADMINISTRATIVE ARRANGEMENTS

CHAPTER 5

CURRENT COMMONWEALTH LAWS

5.1 On 1 February 1984 the Commonwealth Government brought into effect a legislative package designed to address the difficulties in the existing control system for videotapes. The package introduced a two-pronged system designed to control video material both at the point of entry and at the point of sale or hire. It included an amendment to the Customs (Prohibited Imports) Regulations to allow for the apprehension of certain types of videotapes at the point of entry into the country, an ACT Classification of Publications Ordinance 1983 that was designed as model legislation to govern video retailing and classification for the states, and an amended Customs (Cinematographic Films) Regulations to take care of material for public viewing.

POINT OF ENTRY

5.2 Regulation 4A of the Customs (Prohibited Imports) Regulations was amended taking effect from February 1984 to replace the broad obscenity provisions that had been contained in it previously with specific classes of video material to be denied entry into Australia.

5.3 The purpose of the amendments was specifically stated to be to 'bring Commonwealth censorship legislation into line with the Government's policy that adults be entitled to read, hear and

see what they wish in private and in public, subject to adequate provisions preventing persons being exposed to unsolicited material offensive to them and preventing conduct exploiting, or detrimental to the interests of children'.(Attorney-General's Explanatory Statement)

5.4 The new Regulation 4A proscribed publications that 'in the opinion of the Attorney-General or a person authorized by him ...

(i) depict in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person;

(ii) promote, incite or encourage terrorism; or

(iii) gratuitously depict in pictorial form extreme violence or cruelty, especially when combined with any sexual element, to the extent they should not be imported;'

5.5 Members of the Film Censorship Board were appointed by the Attorney-General as authorised officers for the purpose of this sub-regulation in so far as it related to films. (SSCVM Evidence, p. 85)

5.6 There was much debate in the Senate on the amendments in the following months, as well as some widely publicised community concerns and these resulted in further changes. In April 1984 the words 'gratuitously depict in pictorial form extreme violence' in the Regulation were amended to delete 'extreme' with the result that any sexual violence against non-consenting persons was clearly prohibited under section (1A)(a)(iii). From 4 June 1984 bestiality depicted in a manner 'likely to cause offence to a reasonable adult person' and promotion of the misuse of drugs

were also banned. Prohibited imports now covered materials that 'in the opinion of the Attorney-General or a person authorized by him ...

(i) depict in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person;

(ii) depict in pictorial form bestiality in a manner likely to cause offence to a reasonable adult person;

(iii) contain detailed and gratuitous depictions in pictorial form of acts of considerable violence or cruelty, or explicit and gratuitous depictions in pictorial form of sexual violence against non-consenting persons;

(iv) promote or incite terrorism; or

(v) promote or incite the misuse of a drug specified in the Fourth Schedule.' [The Fourth Schedule is one of a number of schedules in the Regulations which describes goods prohibited from importation.]

5.7 Written arrangements drawn up between the Australian Customs Service and the Attorney-General's Department to cover the operation of import controls had been circulated to Customs officers at the end of January 1984 to take effect from 1 February. They were amended and recirculated on 7 June 1984 to introduce the new categories of restrictions. (Administrative Arrangements for the Operation of Controls Over the Importation of Offensive Publications and Goods)

5.8 The Administrative Arrangements document was designed to replace the verbal instruction based on an earlier direction dated 15 June 1973 given on behalf of the Comptroller-General to the Collectors of Customs in the States and Territories which said:

> Customs resources engaged in screening imported goods should be primarily concerned with the detection of prohibited imports other than material which offends Regulation 4A ...
>
> For the time being there are to be no prosecutions under the Customs Act for offences involving pornography. (SSCVM Evidence, p. 340)

However the Administrative Arrangements did not usher in a preoccupation with pornography. The arrangements noted that the regulations reflected government policy in the censorship area, and set up an order of priorities for officers at the Customs barrier:

> ACS has as its major priority enforcement of laws regarding narcotics, quarantinable items and dangerous goods, and ensuring the correct application of the Customs Tariff and other assistance arrangements for Australian industry. ACS second priority concerns other prohibited imports and exports and minor revenue evasion matters. Enforcement of censorship controls falls to the latter category. (SSCVM Evidence, p. 328)

5.9 In accordance with this priority, officers were to apply only normal checks to imported material and, in making decisions about whether to investigate, they were to 'take into account resource availability and the existence of higher priority tasks'. (SSCVM Evidence, p. 330)

5.10 With regard to Regulation 4A the Senate Committee Report commented (p. 29) on a discrepancy in the actual provisions compared to the description of the Regulation in the Attorney-General's Department's submission to the Committee. The submission had said 'As from 4 June 1984 Regulation 4A has prescribed as prohibited imports' goods under paragraph 1A (SSCVM Evidence, p. 8), whereas, as the Report pointed out, in reality the goods described would not be 'prescribed or prohibited imports' until the Attorney-General or a person authorised by him

had decided whether they depict, contain, promote or incite certain things.

5.11 It recommended (SSCVM Report, p. 19) 'that in drawing up interim measures, the Government have regard to' certain identified difficulties associated with Regulation 4A. These, amongst other things, included the discrepancy referred to and the extreme difficulty of administering Regulation 4A at the Customs barrier when no Customs officer had been authorised by the Attorney-General to give an opinion on whether goods come within the categories listed as prohibited imports. (SSCVM Report p. 45 and the whole of Chapter 4)

5.12 Following the Report, Regulation 4A was amended again in June 1985 to remove the words 'in the opinion of the Attorney-General or a person authorized by him', the aim of the amendment being to objectify the test of what was a prohibited import. An importer henceforth would be expected to know by consulting the Regulation whether or not the video he was planning to import was banned.(Evidence, p. 2795)

5.13 The current Administrative Arrangements between the Australian Customs Service and the Attorney-General's Department were issued in July 1986 (see Appendix 4). A comparison between this document and the Administrative Arrangements dated 1 February 1984 sums up how far the legislation had been tightened in the intervening period. Although the Preamble and Priorities remain the same in both documents, the section on the Scope of the Legislation is very much wider in the latter compared to the earlier one. Where the 1984 version covered child pornography, terrorism, gratuitous pictorial violence only of an extreme kind and especially in combination with a sexual element, the 1986 arrangements clearly spell out that considerable gratuitous violence and any level of gratuitous sexual violence

are prohibited; bestiality is also added to the previous prohibitions of child abuse and terrorism and so is the promotion of illegal drugs.

CLASSIFICATION FOR SALE OR HIRE

5.14 Legislation to control the manufacture, distribution and exhibition of video material lies within the power of State governments and only with the Commonwealth in the case of the ACT. A summary comparison of the salient features of existing laws in all states and territories can be found in Chapter 6.

5.15 Commonwealth classification legislation came into force on 1 February 1984 in the form of the ACT Classification of Publications Ordinance 1983. While it would only apply in the ACT, the legislation had been designed to serve as a model for the States after the meeting of Commonwealth and State Ministers with censorship responsibilities in Brisbane on 13 July 1983 had agreed in principle to implement uniform legislation. At the same meeting, however, both the Queensland and Tasmanian Ministers made it clear that neither of their states would adopt an X-rating.(SSCVM Evidence, p. 10)

5.16 The 1983 draft Ordinance had been referred to the ACT House of Assembly for its consideration and advice before it was promulgated. The House of Assembly had passed it on to its Standing Committee on Education and Community Affairs for enquiry and report, and on 13 December 1983 the House of Assembly held a cognate debate on the Classification of Publications Regulations and the Education and Community Affairs Committee's report on the Classification of Publications Ordinance. The House of Assembly approved the Committee's recommendation that the Ordinance be agreed to in principle. It approved the Regulations with one amendment which was subsequently taken into account. (ACT House of Assembly, Hansard, 13 December, 1983, pp. 4210-4218)

5.17 At their meetings during 1983 Commonwealth and State governments had agreed that the point of sale would be the principal point in the distribution chain at which controls could be imposed effectively, and this is where the ACT Classification of Publications Ordinance was designed to locate them.

5.18 With the advent of the ACT Ordinance, imported video tapes for home use would no longer be subject to registration by the Film Censorship Board under the Customs (Cinematograph Films) Regulations. Any person could make an application to the Film Censorship Board for classification of a film or video item under the ACT Ordinance although normally such applications would be made by importers and distributors. Accordingly the Customs (Cinematograph Films) Regulations were amended to restrict the registration of film (including videotape) to material for public exhibition.

5.19 At first, classification was voluntary, although there was a strong incentive for importers, distributors and retailers to adopt the practice since the Ordinance abolished the common law offence of obscene libel in relation to material that had been classified.

5.20 Classification was to be refused to films and advertising matter that:

- dealt with sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena 'in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be classified';

- depicted a child under 16 'in a manner that is likely to cause offence to a reasonable adult person' (hereafter referred to as child abuse);

- promoted, incited or encouraged terrorism.

5.21 Classification categories outlined in the Ordinance included G (general exhibition), PG (parental guidance) and M (not recommended for people under 15). Where the Censorship Board decides that a film:

a) depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person; or

b) is unsuitable for viewing by a minor the Board shall approve the classification of the film as an 'R' film or an 'X' film.

5.22 Two differences in the wording of the Ordinance between R and X and Refused should be noted: R and X films are likely to cause offence to 'a reasonable adult person' while a Refused (banned) film will offend against 'standards of morality, decency and propriety generally accepted by reasonable adult persons'. The latter is a community standards test while the former acknowledges that individuals may have different personal tastes. Moreover the Refused category relates to material that offends against standards 'to the extent that it should not be classified'.

5.23 The general criteria to be applied in classification were spelt out in the Ordinance. They required that authorities should 'have regard to the standards of morality, decency and propriety generally accepted by reasonable adult persons' in deciding whether a publication was objectionable. Prescribed authorites must give effect to the principles 'that adult persons

are entitled to read and view what they wish' with the proviso that 'all persons are entitled to protection from exposure to unsolicited material that they find offensive', and they should take into account whether an item possesses literary or artistic merit as well as the people for whom it is intended and the conditions (if any) subject to which it should be published.

5.24 Clauses allow for a process of independent review. An applicant for classification, the film's publisher or the Attorney-General is entitled to apply to the Films Board of Review set up under the Customs (Cinematograph Films) Regulations for a review of the Film Censorship Board's decision with regard to classification.

5.25 Point of sale controls under the Ordinance restrict access of minors to R and X videos. The classification category must be clearly marked on the container of G, PG, M and R tapes and on the 'publication' (i.e. the tape itself) in the case of X for the benefit and guidance of the consumer. X-rated videos are to be kept in a restricted area which, under the Regulations accompanying the Ordinance, means a separate room with a gate or door that is able to be closed. On the outside of the room there must be a notice of prescribed size which reads 'Restricted publications area - persons under eighteen years of age may not enter. The public is warned that some material displayed herein may cause offence.' A manager is to be in attendance at or near the area at all times when it is open to the public.

5.26 Main offences in the Ordinance and the penalties associated with them are as follows:

offences
- advertising, selling, offering for sale, hiring or distributing a child abuse videotape -
- possessing or keeping on premises a child abuse videotape for the purposes of sale -
- depositing a child abuse videotape in a public place or on private premises -

. printing, making or producing a prescribed videotape for the purpose of selling or otherwise publishing it -

penalty up to $10 000 for a corporation; up to $2000 or 12 months imprisonment or both for an individual.

offences . advertising, selling, offering for sale, hiring or distributing a refused videotape or one that is unclassified and is subsequently, refused classification on grounds other than that it is a child abuse videotape -

. depositing an R or X videotape in a public place or on private premises without the permission of the occupier -

penalty up to $5000 for a corporation; up to $1000 or 6 months or both for an individual.

offences . breaching the conditions on the sale of R and X videotapes -

. selling, offering for sale, hiring or distributing an unclassified videotape marked as classified -

. selling, offering for sale, hiring or distributing a film in association with any advertising matter that has been refused approval -

. publishing advertising matter in relation to a film that is not in accordance with the conditions (if any) to which the approval is subject -

. contravention of requirements associated with a restricted publications area -

penalty up to $2500 for a corporation; up to $500 or 3 months or both for an individual.

offence . selling, offering for sale, hiring or distributing a videotape that has not been classified but is subsequently classified G -

penalty up to $500 for a corporation; up to $100 for an individual.

offence . selling, offering for sale, hiring or distributing a videotape that has not been classified but is subsequently classified PG -

penalty up to $1000 for a corporation; up to $200 for an individual.

offence . selling, offering for sale, hiring or distributing a videotape that has not been classified but is subsequently classified M -

penalty up to $2000 for a corporation; up to $400 for an individual.

offence . selling, offering for sale, hiring or distributing a film that has not been classified but is subsequently classified R -

penalty up to $3000 for a corporation; up to $600 for an individual.

offence . selling, offering for sale, hiring or distributing a film that has not been classified but is subsequently classified X -

penalty up to $4000 for a corporation; up to $800 for an individual.

offence . exhibiting or displaying a G, PG or M film without the prescribed marking -

penalty up to $1000 for a corporation; up to $200 for an individual.

offence . publishing advertising matter that falsely indicates the classification of a videotape -

penalty $500 for a corporation; $100 for an individual.

5.27 During 1984 the Ordinance was the subject of considerable scrutiny and debate at the political level while lobbying and campaigns against pornography were taking place in the public arena. Concern was expressed about the need for greater consumer guidance than was available under the voluntary system of classification. During a debate in the Senate in April, the Attorney-General undertook to submit a proposal for compulsory classification of videotapes to State Ministers responsible for censorship matters. Later a meeting of these Ministers held in Canberra supported the proposal, and in May the ACT House of Assembly agreed to a recommendation of its Standing Committee on Education and Community Affairs that the Ordinance be amended to bring compulsory classification about. The ACT Classification of Publications Ordinance was amended to make classification of videotapes compulsory with effect from 4 June 1984.

5.28 The X-rated classification category also became a matter of some notoriety during 1984. By October an unwillingness on the part of a majority of State governments to legislate to allow the commercial distribution of X material was evident. On 17 October the Senate, on the motion of Senator M. Reid, passed with amendments a resolution setting up the Senate Select Committee on Video Material and also another one calling on the Federal

Government to place a moratorium on material described as 'X-rated and other sexually sadistic and violent videos' pending the outcome of the inquiry. (Senate, Hansard, 17 October 1984, pp. 1838-45) A further meeting of Commonwealth and State Ministers responsible for censorship was held on 26 October 1984. Discussion at this meeting concerned the possibility of replacing X with a new and tighter category, ER (Extra-Restricted), which would include explicit depictions of sexual acts involving adults, but would not allow any depictions suggesting coercion or non-consent of any kind. A majority of Ministers agreed to recommend this category to their respective Governments, although Queensland and Tasmania remained opposed to any classification beyond R and the representative of the Western Australian Government, who was not a Minister, undertook only to refer the matter to his Minister. (SSCVM Evidence, p. 12)

5.29 When the Senate Committee reported in March 1985 it recommended with one dissent that, without prejudicing the finding of the Joint Committee which had already been set up to look at the issue more fully, 'A moratorium be placed on the sale and hire of 'X'-rated videos in the ACT ... as the most practical interim measure to facilitate regulation of videos throughout Australia until the Joint Committee reports'. (SSCVM Report, p. 19)

5.30 The Minister for Territories transmitted the Report of the Senate Select Committee to the ACT House of Assembly for its advice. But the House of Assembly had debated the issue of a possible ban on X-rated material no less than three times in the preceding nine months, the majority vote being against a ban on each occasion. (ACT House of Assembly, Hansard, 29 May 1984, pp. 682-699; 3 December 1984, pp. 1551-1566; 12 February 1985, pp. 1729-1741) On 28 May 1985 the House took note of the message only and there was no further debate. (ACT House of Assembly, Hansard, 28 May 1985)

5.31 In the meantime, the Film Censorship Board had altered its guidelines for classification of videotapes/discs for sale/hire in a way that was designed to exclude the sexually violent material in the X-rated category that had been of concern to State Ministers (see next chapter). The guidelines of December 1984 were now in line with the ER category agreed on at the Ministerial meeting in October. The moratorium on X was not introduced.

5.32 The December 1984 guidelines currently in force (see Appendix 5 for the previous guidelines) are:

FILM CENSORSHIP BOARD

ATTORNEY-GENERAL'S DEPARTMENT

GUIDELINES FOR CLASSIFICATION OF VIDEOTAPES/DISCS FOR SALE/HIRE

G General (suitable for all ages)

Parents should feel confident that children may view material in this classification without supervision, knowing that no distress or harm is likely to be caused.

Language: Mild expletives only if infrequent and used in exceptional and justifiable circumstances.

Sex: Very discreet verbal references or implications and only if in a justifiable context.

Violence: Minimal and incidental depictions, and only if in a justifiable context.

PG Parental Guidance (parental guidance recommended for persons under 15)

Material in this classification may contain adult themes/concepts which require the guidance of a parent or guardian.

Language: Minimal crude language if not gratuitous.

Sex: Discreet verbal and/or visual suggestions and references to sexual matters.

Violence: Discreet, inexplicit and/or stylized depictions.

Other:
(i) mild supernatural and/or "horror" themes.
(ii) minimal nudity if in justifiable and non-sexual context.
(iii) discreet informational and/or anti-drug references.

M MATURE (suitable for persons 15 years and over)

Material which is considered likely to disturb, harm or offend those under the age of 15 years. While most adult themes may be dealt with, the degree of explicitness and exploitativeness of treatment will determine what can be accommodated in this classification.

Language: Crude language that is excessive, assaultive or sexually explicit is not acceptable.

Sex: Depictions of discreetly implied sexual activity.

Violence: Depictions of realistic and sometimes bloody violence but not if gratuitous, exploitative, relished, cruel or unduly explicit.

Other: Depictions of drug use if not advocatory.

R RESTRICTED (18 years and over)

Adult material which is considered likely to be possibly harmful to those under 18 years and possibly offensive to some sections of the adult community.

Language: May be sexually explicit and/or assaultive.

Sex: Implied, obscured or simulated depictions of sexual activity; depictions of sexual violence only to the extent that they are discreet, not gratuitous and not exploitative.

Violence: Explicit depictions of violence, but not detailed and gratuitous depictions of acts of considerable violence or cruelty (see "Refused Classification").

Other: Depictions of drug abuse if not advocatory.

X EXTRA-RESTRICTED (18 years and over)

Material which includes explicit depictions of sexual acts involving adults, but does not include any depiction suggesting coercion or non-consent of any kind.

REFUSED CLASSIFICATION

Language: No proscriptions.

Sex: Child pornography, bestiality.

Violence: Detailed and gratuitous depictions of acts of considerable violence or cruelty; explicit or gratuitous depictions of sexual violence against non-consenting persons.

Other: Instruction "manuals" for

(i) terrorist-type weapons and acts.
(ii) abuse of hard drugs.

5.33 Thus the subject matter drawing an X classification in December 1984 can include what was spelled out in the May 1984 guidelines - i.e. 'explicit penetration, masturbation, ejaculation, fellatio, cunnilingus, insertion of objects into orifices; miscellaneous other sexual activities and fetishes'.

5.34 The Film Censorship Board uses a key to show the reasons for classifying non-G films and tapes. The key is published in the Commonwealth of Australia Gazette along with the classifications assigned by the FCB to the films and videos for sale/hire. The key is as follows:

	Frequency		Explicitness/Intensity			Purpose	
	Infrequent	Frequent	Low	Medium	High	Justified	Gratuitous
S (Sex)	i	f	l	m	h	j	g
V (Violence).	i	f	l	m	h	j	g
L (Language).	i	f	l	m	h	j	g
O (Other)							

CHAPTER 6

THE LEGISLATION IN THE STATES

6.1 In all States in Australia the highest classification allowed currently is R, although there is provision in the Victorian legislation for any new classification category to be introduced automatically should one be written into the ACT Classification of Publications Ordinance. Only the Northern Territory has followed the ACT in adopting a classification known as X. The X category consists of material containing explicit depictions of sexual acts involving adults but nothing suggesting violence, coercion or non-consent of any kind. Such material is classified according to the Film Censorship Board's revised guidelines of December 1984 where the X or Extra Restricted category expresses new, more limited criteria than previous guidelines. The adoption of ER or any other similar category in the Victorian legislation would require a corresponding change in the nomenclature of the X category in the ACT legislation before it can proceed.

6.2 Every State and Territory has acted since 1985 to put legislation that is similar to the ACT model legislation into place. All of them now have compulsory classification of videos, and all currently use the Commonwealth Film Censorship Board to undertake the initial classification of films although two of them - South Australia and Queensland - possess bodies of their own which exercise independent review or censorship functions either regularly or from time to time and Western Australia allows the Minister concerned with censorship matters to override

Commonwealth decisions should he so choose. The legislation in all States covers the ground that is marked out in the model legislation.

NEW SOUTH WALES

6.3 In New South Wales the exhibition, sale and hire of films and videos is governed by one piece of legislation, the Film and Video Tape Classification Act, 1984 which was passed following the discussions at the Commonwealth/State Ministerial meetings in 1983-84. Previously, control of video material in New South Wales had required police prosecutions under the 'indecent article' provisions of the NSW Indecent Articles and Classified Publications Act 1975.

6.4 The video provisions in the Film and Video Tape Classification Act, 1984 are largely modelled on the ACT Classification of Publications Ordinance. In keeping with New South Wales government policy at the end of 1984, however, material that is classified X under the ACT Ordinance falls into the refused category in NSW and therefore cannot be exhibited, sold or hired.

6.5 The markings to be exhibited on the covers of video tapes have requirements under the New South Wales regulations additional to those current in the ACT. Not only must the box show a symbol of the same minimum size and design as the ACT, but also there must be a verbal component as follows:

G	For general exhibition
PG	Parental guidance recommended
M	For mature audiences
R	Restricted exhibition. Not available to persons under 18 years.

6.6 Penalties for breaches relating to the R classification and above are higher than in the ACT although they are lower for the lower classifications. The display, sale or hire of unclassified material which is later classified as R, or the sale of an R film to a minor can result in a maximum fine of $5000 for a corporation or $1000 or imprisonment for 12 months in any other case. Dealing in material that has been refused classification or is unclassified and later refused classification (and this would include material classified X) can result in a maximum fine of $15 000 for a corporation or $4000 or up to two years imprisonment in any other case. In addition in New South Wales, not only is it an offence for anyone other than a parent or guardian to sell or hire R films to a minor, it is also an offence for a minor who has attained the age of 15 years to buy or hire an R film or one which has been refused classification. The penalty is $200. It is an offence to procure a child to be involved in the making of a child abuse film with a penalty of $15 000 for a corporation or $4000 or imprisonment for two years in any other case.

6.7 In the New South Wales legislation penalties for offences in relation to advertising can be much more severe than is the case in the ACT Ordinance. Conditions governing trailers specify that G films shall not contain trailers advertising M, R or unclassified films; PG shall not contain R or unclassified film advertisements; M shall not advertise a film classified R or unclassified, and R shall not carry advertisements for unclassified films. Breaches of these conditions attract a fine of $10 000 in the case of corporations or $2000 or two years imprisonment in any other case.

6.8 Significant offences which are declared in the New South Wales legislation while not appearing in the Commonwealth model legislation deal with the procurement of a child for the making of a child abuse videotape, the exhibition of an R videotape in a public place and the attendance of a minor at such an exhibition.

6.9 Classification is compulsory, the classifying and appeal authorities being the Commonwealth bodies where an agreement has been made to that effect, or, where no agreement exists, a New South Wales Censor who would be a Public Service employee. A current agreement authorises the Commonwealth Film Censorhsip Board and the Films Board of Review to act in these capacities.

VICTORIA

6.10 In Victoria, the first step in implementing the uniform scheme recommended by the meeting of Commonwealth and State Ministers concerned with censorship matters held on 13 July 1983 was taken with the passing of the Films (Amendment) Act 1983 in November 1983. Before this time there had been no provision for the classification of video material for sale or hire in the State, and there was even some doubt as to whether videos were covered by the obscenity provisions of the Police Offences Act of 1958. (Evidence, p. 1271)

6.11 The Victorian Government's submission gives the history:

> The Films (Amendment) Act 1983 introduced amendments to the Films Act 1971 to provide for the classification of video material by the Commonwealth Censor, who already classified films for exhibition in cinemas in Victoria. The cinema classifications of G, NRC, M and R were applied to videos and a further category of X material was introduced in relation to video material for private sale and hire. Point of sale restrictions based on the A.C.T. Ordinance were imposed.
>
> Offences were created for breaching those restrictions in respect of classified material, and also in respect of unclassified material which would, if classified, be given an R or X classification.
>
> The same Act made amendments to the Police Offences Act to ensure that video material was

> covered by the offences relating to obscene and indecent publications. It was provided that classification would be a defence to a prosecution under those provisions. The amendments to the Police Offences Act came into operation on 13 December 1983, the date of Royal Assent. The amendments to the Films Act 1971 came into operation on 2 May 1984.
>
> Subsequent developments led to policy alterations in two major respects:-
>
> (a) the introduction of a compulsory classification scheme;
>
> (b) the banning of X rated videos and development of the ER category.
>
> The Films (Classification) Act 1984 was passed during 1984 Spring Session of Parliament to give effect to these alterations and to enact fully the model legislation in relation to video material. This Act, which is a new principal Act, came into operation on 1 February 1985. (*Evidence*, p. 1272)

6.12 The Victorian Act recognises the X classification given to films under the ACT Classification of Publications Ordinance 1983, but declares it an offence to sell, deliver or advertise X-rated video films. The ban on X was the result of the Government's concern to maintain uniformity among the States when other States refused to legislate to allow an X category. However it was the Victorian government that had requested the meeting of Ministers on 28 September 1984 which resolved to explore a new category of non-violent, sexually explicit material beyond R and this had led to the ER category recommended by the majority of States at the subsequent meeting in October.

6.13 In the event the recommendation was not followed through by the other States, but the Victorian Films (Classification) Act 1984 allows for an ER (or any other new) classification automatically to be introduced in Victoria if the ACT Ordinance is amended to introduce it in that Territory. (Evidence, p. 1273) Section 3(3) of the Act states:

> Where under the Ordinance [meaning the Classification of Publications Ordinance 1983 of the Australian Capital Territory] a film is classified as a film of a particular kind, other than as a "G" film, a "PG" film, an "M" film, an "R" film or an "X" film the provisions of the Ordinance relating to the sale delivery display advertising or screening of that film apply as laws of Victoria.

6.14 Penalties in Victoria are not set out in legislation so as to distinguish between individuals and corporations. Moreover they specify lighter penalties for first offences. It is an offence to sell or deliver to any person an unclassified video film. Fines range from $100 (for a first offence) or $200 (subsequent offences) in the case of a film subsequently classified as G to $2000 (first offence) or $2500 (subsequent offences) for a film subsequently classified as X. In the case of a film that has been or is subsequently refused classification the fine is $2500 or imprisonment for 12 months or both (first offence) and $3500 or imprisonment for 18 months or both (subsequent offences) in relation to a video subsequently refused classification as it 'offends against the standards of morality, decency and propriety generally accepted ...' or that 'promotes, incites or encourages terrorism', and $5000 or two years imprisonment or both for a child abuse film as defined under section 25(4)(a) of the ACT Ordinance.

6.15 In addition to offences which echo the model legislation, Victoria has added two distinctive ones. It is an offence to invite or procure anyone under 16 to be involved in the making of either an 'objectionable' (i.e. a film not being classified as an R film which deals with matters in a manner that is likely to cause offence to a reasonable adult person or one that promotes, incites or encourages terrorism or one classified under the Films Act 1971 as being not for general exhibition) or a 'highly objectionable' (i.e. child abuse) film. It is also an offence to make an 'objectionable' film for sale.

SOUTH AUSTRALIA

6.16 South Australia's current system for the classification of films and video tapes rests on the Classification of Publications Act, 1974 as amended to 29 March 1985.

6.17 Classification is compulsory. A major difference from the Commonwealth system is that South Australia has its own Classification of Publications Board which may classify material under its own initiative or by application from any person. The system had operated in the State since the early seventies in relation to the written word, and in the eighties was extended to embrace video material.

6.18 The Board consists by law of six members - a legal practitioner, a child psychologist and an educationist plus three other members 'who possess ... other proper qualifications' and are appointed for a term of three years which may be renewed.

6.19 The amended Act relates South Australia to the model system by declaring the ACT Classification of Publications Ordinance 1983 and Classification of Publications Regulations (1984 No. 2 and 1984 No. 11) a 'corresponding law'. By this means a classification assigned to a film by the Commonwealth classificatory bodies is deemed to have been assigned to it by the South Australian Classification of Publications Board unless a different classification is deliberately given to it by the South Australian Board.

6.20 The effect of the existence of the South Australian Board is that it provides South Australia with its own review body which may make independent decisions or overrule the Commonwealth Film Censorship Board and the Films Board of Review. The South Australian Board had made such decisions on fourteen occasions up to the end of January 1988. Two of these consisted of classificatory decisions about tapes held by a South

Australian Government authority only, eight represented the carrying forward of earlier decisions made by the Board before it accepted Commonwealth classifications, and four constituted a straight overruling of a decision by the Commonwealth classifying bodies.

6.21 The Classification of Publications Act Amendment Act, 1985 amends the original Act to stipulate that a film classified under a corresponding law as other than a G, PG, M or R film is unsuitable for classification as an R film. In effect a film classified as X is therefore not allowed in South Australia and there is a fine of up to $10 000 or 6 months imprisonment for selling or hiring it. This was done in acknowledgement of the concern expressed over the violent content of some of the material that had been classified X by the Australian Film Censorship Board before December 1984. (Official Reports of the Parliamentary Debates (South Australia), Session of 1984-85, Forty-Fifth Parliament, Third Session, p. 1790) When the Bill was first presented it made provision for the new ER classification of the Film Censorship Board - explicit sex without violence - but the provision was removed in February 1985 after the Legislative Council refused to pass the legislation with the inclusion of an ER category.

6.22 Nevertheless, Mr John Holland, a member of the Classification of Publications Board of South Australia, when giving evidence before the Committee in June 1985 said:

> ... as far as the Board and the South Australian Government are concerned, we are looking for a class beyond R ... We are looking for something which is non-violent and which is explicit and is acceptable pretty well through the main areas of population. (Evidence, p. 370)

6.23 The South Australian Classification of Publications Act Amendment Act, 1985 created two unique offences. It is an offence to breach the conditions imposed in relation to R films, which include one that 'images from the film shall not be exhibited to a minor (otherwise than by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor)' as well as the universal condition that R films must not be sold or hired to a minor. The penalty is a maximum of $5000 or imprisonment for three months. In other States it had become an offence to allow a minor to view R material at a public exhibition, but the South Australian legislation was the first to protect minors in relation to video material in the home. The Act also declared it an offence to exhibit images from a 'prescribed' film to any other person. A 'prescribed' film is either one which has not been classified under the South Australian Act or a corresponding law (the ACT Ordinance), has been refused classification under the ACT Ordinance, or has had its classification revoked under the ACT Ordinance. The penalty for this is a fine of $10 000 maximum or six months imprisonment.

6.24 It is mandatory under the South Australian law, as in the New South Wales case, for markings to include words. For R films there is an extra clause to cater for the special conditions that apply to R in that State, viz:

> Restricted - Not to be available to persons under 18 years. Images from this film not to be exhibited to persons under 18 years.

6.25 There are four levels of maximum penalties under the South Australian Act, with no specific differentiation between *individuals or corporations, first or subsequent offences.* Breaches of the Regulations governing markings and display draw fines up to $2000. Penalties for selling unclassified films that are subsequently classified may be imposed to a maximum fine of $5000 or three months imprisonment. The penalty for selling either unclassified films that are subsequently refused

classification under the South Australian Act, or films that are not classified under the South Australian Act but are classified under a corresponding law otherwise than as a G film, a PG film, an M film or an R film (that is an X film under the ACT Ordinance) is a maximum fine of $10 000 or six months imprisonment. Dealing in prescribed material refused classification under the ACT Ordinance attracts the heaviest penalty of a maximum $10 000 fine or six months imprisonment plus the possible withdrawal of the right to engage in the sale or hire of films for a period up to twelve months.

QUEENSLAND

6.26 Video distribution, sale and hire is governed in Queensland by two acts: the Censorship of Films Act 1947 and the Films Review Act 1974. Amendments that specifically refer to videotapes commenced on 1 April 1985.

(a) Censorship of Films Act

6.27 The Censorship of Films Act closely follows the wording of the ACT Classification of Publications Ordinance 1983 except that it allows the initial classification of all films and videotapes only into G, PG, M or R categories. Maximum penalties, however, tend to be higher for most offences. Maximum penalties for offences associated with child abuse films involve fines of up to $20 000 for a corporation or $10 000 or 12 months imprisonment or both for an individual while maximum fines for offences associated with other refused categories are $10 000 for a corporation or $5000 or 6 months or both for an individual. Classification is compulsory. The Act includes the common State provision allowing an arrangement with the Commonwealth for classification to be done by the Commonwealth body, and a back-up clause providing for State apparatus should no such arrangement with the Commonwealth exist. Currently Queensland uses the Commonwealth Film Censorship Board for classification in the

first instance. The Film Censorship Board's categories of G, PG, M and R are spelt out but no X classification is recognised. It is interesting to note that categories of refusal are worded as in the ACT's refused category except for the phrase 'to the extent that it should not be classified'.

6.28 The Queensland classification legislation differs from the model legislation in some significant ways. It is an offence merely to possess a film that has been or is subsequently refused classification under the ACT Ordinance. Also there is a clause similar to the one in New South Wales which makes it an offence for a person from 14 to 18 years of age to purchase or hire a videotape or film that is classified R. Finally, distributors are required to be registered.

(b) Films Review Act

6.29 The Films Review Act 1974 provides for an intra-State culling of films 'with a view to prohibiting the distribution in the State of objectionable films'and 'to prohibit the exhibition in the State of certain films'. It sets up a Films Board of Review *consisting of seven to nine paid members appointed for a* three year term after which they may be reappointed. In effect the Board exists to exercise a secondary censorship function at State level over and above that carried out by the Commonwealth Film Censorship Board.

6.30 The functions of the Queensland Board are not activated by applications on the part of distributors or members of the public. They are exercised on its own initiative or at the direction of the Minister and involve systematically examining and reviewing films that have already been classified by the Commonwealth Film Censorship Board. The aim is to weed out those films that come into the category defined as 'objectionable' under the Films Review Act.

6.31 According to the Queensland Films Review Act (section 9(2)), films are objectionable when, in the opinion of the Board, they:

(a) are of an indecent nature or suggest indecency;

(b) portray, describe or suggest acts or situations of a violent, horrifying, criminal, or immoral nature.

6.32 In determining whether a film is objectionable, the Board has regard to:

(a) the nature of the film generally and in particular whether it -

(i) unduly emphasizes matters of sex, horror, terror, crime, cruelty or violence;

(ii) is blasphemous, indecent, obscene, or likely to be injurious to morality;

(iii) is likely to encourage depravity, public disorder or the commission of an indictable offence; or

(iv) generally outrages public opinion

(b) the persons, classes of persons and age groups to or amongst whom the film is intended or is likely to be exhibited;

(c) the tendency of the film to deprave or corrupt the persons, classes of persons or age groups or any of them referred to in subparagraph (b), notwithstanding that other persons or classes of persons or persons in other age groups may not be similarly affected thereby;

(d) the circumstances in which the film is exhibited or intended to be exhibited in the State;

(e) the scientific or artistic merit or importance of the film,

6.33 The Queensland Films Board of Review receives prompt reports from the Commonwealth Film Censorship Board on all X and R-rated films which have been classified. X-rated films have never been allowed in Queensland. From the information it receives, the Queensland Board is able to pick out any R-rated films that might be deemed to be objectionable under the Queensland Act. According to the Queensland Government publication Classification of Films/Videos for Sale or Hire approximately 101 films below X were prohibited by the Films Board of Review between April 1985 and the end of May 1987.

6.34 Affected parties do not appear before the Queensland Board and need not be forewarned of an intended prohibition. A decision that a film is a prohibited film may be revoked if the film is reconstructed to satisfy the Board that it is no longer objectionable.

6.35 A person who is aggrieved by a decision of the Board may apply to the Supreme Court for a review of the Board's decision. If the judge decides to grant the order, the review is heard before the Court which may confirm, discharge, vary or amend the Board's decision or send it back to the Board 'with or without a direction in law' (section 11(2)). There have been no cases to date.

TASMANIA

6.36 Sale and hire of video material in Tasmania is governed by the Classification of Publications Act 1984 and the Films Act 1971 as amended in 1984. The provisions relating to films which follow the Commonwealth classification model came into operation on 1 September 1985.

6.37 The Tasmanian Classification of Publications Act refuses classification to films defined as objectionable, which include those which depict child abuse, bestiality and terrorism as well

as films dealing with 'matters of sex, drug misuse or addiction, crime, cruelty, violence, or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult'. This is interpreted as films rated X by the Film Censorship Board. The Tasmanian Government 'considers that its responsibility for the overall well-being of the community overrides the principle that adults ought to be able to read and view what they wish where videotapes and films are concerned.' (Evidence, p. 2429)

6.38 Maximum penalties in Tasmania range from $500 for failure to bear prescribed markings to $5000 or 12 months imprisonment or both for selling or hiring refused videotapes and $10 000 or two years or both for making or reproducing a film concerned with child abuse or bestiality. It is an offence in Tasmania to screen an R film on the premises of sale or hire outlets. While it is not illegal to possess objectionable material, it is an offence to sell or deliver, display publicly, or screen any of it that would be classified above R in the presence of a minor. The Tasmanian Act also declares it an offence to make or reproduce a film concerned with child abuse or bestiality or to procure a child for the purpose of making a child abuse film. This draws the heaviest penalty under the Act.

NORTHERN TERRITORY

6.39 The Northern Territory is the only State or Territory in Australia other than the ACT that currently allows X-rated video material. Its legislation, the Classification of Publications Act 1985, commenced operation on 1 July 1986.

6.40 While it adopts much from the ACT Classification of Publications Ordinance 1983, there are some differences in the Northern Territory Act. As in other jurisdictions, R and X videos may not be sold, hired or delivered to a person under 18 (in this case described as an 'infant'). The Northern Territory Act also

requires that R as well as X-rated material be kept in a separate restricted publications area. At the time the Act was promulgated this was unique in Australian law for video material, and its presence in the Act was described by the representative of the Northern Territory Government as a major step towards keeping R videos away from the eyes of children. (Evidence, p. 404) According to the Regulations under the Act, the segregated areas are to be subject to the same conditions as in the ACT - that is, no material is to be visible from outside, the area is to have a door or a gate, and a person is to be in attendance nearby at all times. When the Act commenced an exemption was placed on this section but that exemption has now been revoked and from 1 July 1988 X or R-rated material may only be exhibited or displayed in a restricted publication area as the Act states.

6.41 Under the Classification of Publications Act 1986 the Northern Territory establishes a Publications and Films Review Board with a clearly defined membership which may perform the function of reviewing decisions made by classification officers. However the Minister may also make an arrangement with the Commonwealth for the exercise of these functions or he may appoint an appeal censor, and it is only when either of these two options has not been exercised that the Board would be called upon to act in this capacity. At present the Northern Territory Government has established an arrangement with the Commonwealth bodies for both classification and review.

WESTERN AUSTRALIA

6.42 In Western Australia video material is regulated under the Video Tapes Classification and Control Act 1987. While consistent with Commonwealth legislation, the legislation follows the pattern of the New South Wales Film and Video Tape Classification Act 1984 in many respects, although it refers only to videotapes and video discs and not films. There is no provision for any classification beyond R. Depictions of sex,

drug misuse, crime, cruelty or violence, revolting or abborrent phenomena 'in a manner that is likely to cause offence to a reasonable adult' are refused, as are child abuse, bestiality of any sort and the promotion of terrorism. It is an offence for a minor of 15 years or over to buy or hire R-rated or refused videotapes, and it is an offence to procure a child for the making of a child-abuse film. Controls on the exhibition of videotapes are the same as in New South Wales.

6.43 There are significant differences from the New South Wales system, however. Penalties for some offences are more *severe - indeed they are the harshest in any State or Territory.* For instance, the fine for the procurement or attempted procurement of a child for the making of a child abuse film is $100 000 in the case of a corporation, and $25 000 or imprisonment for 5 years in any other case; the fine for selling or giving an R videotape to a minor by any person other than a parent or guardian of that minor is $15 000 for a corporation and $4000 or imprisonment for 12 months in any other case. Moreover the Western Australian Act was the last piece of State or Territory legislation for the control of video material to be drawn up and it incorporates a number of features previously unique to other States. As in Queensland private possession of Refused videotapes is an offence (though the definition of Refused differs in each of the two States). The penalty is $15 000 in the case of a corporation and $4000 or imprisonment for 12 months in any other case. Also as in Queensland, in the case of trailers anything above the category of the film itself is not acceptable. Finally it adopts the Northern Territory practice of requiring R tapes to be housed in a separate restricted area.

6.44 There are, too, some unique provisions in the Western Australian law. At the time the Video Tapes Classification and Control Act was promulgated in February 1988 the then Minister responsible for censorship matters in the State declared that the

Act made possession of X an offence in Western Australia. The final say on either the acceptability or the classification category of video material rests with the State Minister concerned with censorship matters. The Commonwealth Film Censorship Board and the Commonwealth Films Board of Review may be appointed to act as censor and appeal censor respectively or the censor and appeal censor may be appointed under the WA Public Service Act, but provision is made in the Video Tape Classification and Control Act for the minister to direct that a classification assigned by the authorised bodies 'shall be ineffective in the State'. He may assign a different *classification or he may refrain from assigning a classification,* in which case the videotape will be taken to be an unclassified videotape.

6.45 The Minister may refer 'any matters arising out of the administration of the Act' to the State Advisory Committee on Publications appointed under the Indecent Publications and Articles Act 1902 for a report. The State Advisory Board consists of up to seven people appointed by the Governor for a term of five years of whom at least one should be a woman, at least one a recognised expert in literature, art or science, and one should be a legal practitioner. The Committee shall include in its report the reasons for and matters taken into consideration in formulating its decision on the matter referred.

6.46 This arrangement allows for internal review of Commonwealth decisions, as is the case in Queensland and South Australia, but it is much more directly politicised than is the case there. In Western Australia the Minister alone instigates the review and bears the responsibility for review decisions even though he may refer the matter to the State Advisory Committee on Publications. In Queensland the Minister may nominate films to the Films Board of Review but it is the Board which holds statutory responsibility for prohibiting the distribution of 'objectionable' films as defined in the Films Review Act 1974-84

within the State. The South Australian Classification of Publications Board undertakes the function of review under the South Australian Classification of Publications Act 1974, and while it shall 'have due regard to the views of the Minister' under section 12 (3)(aa) of that Act, it shall also have due regard to other matters including the 'decisions, determinations or directions of authorities of the Commonwealth and of the States of the Commonwealth' relevant to the performance of its functions. The South Australian arrangement is the most open - the Board may meet on a classification matter at its own initiative, to consider a matter referred by the Minister, or 'at the request of any person'.

6.47 Under the Western Australian Act it is an offence for any person other than a parent or guardian to 'give' an R-rated videotape to a minor as well as to sell or hire one. There is also provision for persons authorised in writing by the Minister as well as for police officers to enter the premises of shop owners or distributors to inspect any videotapes and 'examine all registers, books, records and documents on the premises without a search warrant'. It is an offence to refuse to admit, obstruct or delay such an authorised person or a member of the police force with a penalty of $500. However an authorised person is only given the power to inspect and detect; any seizure must be done by a member of the police force. In the case of unclassified material this may be undertaken without a warrant; in all other cases of suspected breach of the Act, it is necessary for the police to be armed with a warrant which may be issued 'where a complaint is made on oath to a justice' (Justice of the Peace) and the 'justice' is satisfied that the belief of the complainant is well founded.

SUMMARY

6.48 By 1988 all States and Territories within Australia possess legislation that legitimises classification categories from G to R. Only the two Territories - ACT and Northern Territory - allow a category beyond R, currently known as X.

6.49 The Northern Territory's approach to the Committee is that banning X would merely drive it underground; Victoria's legislation is designed to accept the Film Censorship Board's Extra-Restricted classification should the letter X currently associated with it be changed to ER and South Australia may also reconsider its position in relation to a non-violent category containing explicit sex should this Committee recommend an acceptable one. On present indications Queensland, Western Australia, New South Wales and Tasmania would not embrace any classification beyond R.

6.50 All States currently have arrangements with the Commonwealth to use the Commonwealth's censorship authorities - the Film Censorship Board and the Films Board of Review - at least in the first instance.

6.51 Three States have their own review machinery which operates on top of the Commonwealth arrangements. Queensland's works systematically to limit the kind of material available in the State. In other words a secondary censorship function is introduced which automatically raises the threshold of what is banned in that State to include material that the Queensland Board of Review interprets as objectionable under the Queensland Films Review Act 1974. In the process, some material that would be available in other States under the FCB Guidelines for the R category - i.e. 'Adult material ... possibly offensive to some sections of the adult community' - is withdrawn. The South Australian arrangement provides for a review process within the State and is piecemeal. Review of a given Commonwealth

classification decision by the South Australian Classification of Publications Board may be initiated by the Board itself, by the Minister, or by any member of the public in the State. The process might result in a change of classification from the one given by the Commonwealth bodies after a local reinterpretation of Commonwealth Film Censorship Board guidelines, or it could serve as an instrument to inject State concerns into the classification process where it might be considered necessary or desirable to do so. Under the South Australian Act, however, the South Australian Classification of Publications Board must always strive for a reasonable balance between the principles of freedom and protection where the two conflict. In Western Australia the Minister may direct that a classification given by the censor be changed or overturned at any time.

6.52 There is a discrepancy which should be noted between the wording of the legislation in some States and the exercise of classification that is undertaken on their behalf by the Commonwealth Film Censorship Board. The FCB guidelines pick up the wording from the ACT Ordinance and state clearly that the R classification category is to include not only material 'which is considered likely to be possibly harmful to those under 18 years' but also material that is 'possibly offensive to some sections of the adult community'. However only the ACT, Northern Territory, Victoria and South Australia include the latter in their definition of R. The other States' legislation does not.

6.53 The table in Appendix 12 sums up other differences between the States. In Queensland and Western Australia it is an offence for a private person to possess certain categories of material (in Western Australia, Refused material; in Queensland material that either has been or would be Refused under the ACT Ordinance). In Western Australia the former Minister has stated that there the Act makes possession of X an offence. In ACT, Northern Territory, New South Wales, Victoria, South Australia and Tasmania selling or hiring this material is illegal but

possessing it for personal viewing is not. New South Wales, South Australia, Queensland, Tasmania and Western Australia require that notices giving an explanation of each classification be clearly visible in retail outlets while the ACT, Northern Territory and Victoria do not. New South Wales, Queensland and Western Australia make it illegal for videos to contain trailers for films at specified higher ratings for each classification. If a State censor were performing the classification in Tasmania, this would be an offence there too. However, while there is an arrangement for the Film Censorship Board to undertake classification for the State, it is sufficient for the videotape containers to bear the following marking: 'Warning - This cassette may contain Trailers of a higher rating than the feature movie'. The Committee was notified that the ACT House of Assembly also resolved that:

> the Classification of Publications Ordinance 1983 be amended to make it an offence for trailer material of a higher classification to be included on any video material; (Evidence, p. 2642)

however this has not yet occurred.

6.54 The Northern Territory legislation requires that R as well as X classified videos be located in a separate restricted area in video outlets and Western Australia also requires this for R. Some States have taken other measures to attempt to keep X-rated videos beyond the reach of children apart from making it an offence for video shops to hire R-rated videos to minors: in New South Wales, Queensland and Western Australia it is an offence for adolescents to hire an R film. In Tasmania it is an offence for anyone other than a parent or guardian to show a film above R to a minor. Legislation is even more protective in South Australia: there it is an offence for any person other than a parent or guardian to show an R film to a minor.

6.55 The States all currently exercise a commitment to a nationwide system of control at the point of sale by using the Commonwealth bodies to classify video material into uniform categories - at least in the first instance. However, some policing authorities have found their effectiveness limited as a result of the shortness of time allowed between seizure of unclassified material and prosecution. Some States (e.g. South Australia, Queensland) acknowledge the possibility of delays occurring when material is sent to the Commonwealth Film Censorship Board for confirmation of classification by merely requiring 'summary' disposal of proceedings. Tasmania allows two years for prosecution after an offence has been detected. Victoria, ACT and the Northern Territory, however, require charges to be laid within 14 days of police seizure of goods. The Victorian Police Force saw the requirement of sending material to the Commonwealth Censor for checking as a problem, and indicated to the Committee that they were pressing for changes:

> We are seeking to have our Government change that to a three-month period and also we are seeking to have the Victorian Office of the Censor [sic] able to do our films.' (Evidence, p. 1282)

CHAPTER 7

THE FILM CENSORSHIP BOARD AND THE FILMS BOARD OF REVIEW

7.1 The new legislation in Australia set up an explicit framework for censorship which was more limiting than anything that was in place in the United Kingdom or the United States at the time. In the United States there was no comparable federal legislation and the United Kingdom was still at the point where a lot of offensive material was able to slip through a protective net based on a loose definition of obscenity under the Obscene Publications Act 1959. The new Australian system introduced statutory provisions that prohibited specific classes of material from entering the country and banned certain kinds of videos from being sold or hired within the Commonwealth jurisdiction, imposing conditions on others. The system further set out to inform consumers about the type of material they were hiring or buying. A successful exercise of Commonwealth/State co-operation resulted in the same basic system being adopted throughout the country with the variations that were noted in the last chapter.

THE FILM CENSORSHIP BOARD

7.2 Each of the three pieces of Commonwealth legislation appointed the Commonwealth Film Censorship Board, established under Regulation 5 of the Customs (Cinematograph Films) Regulations, as the body to make censorship and classification decisions. The Board now has the responsibility for registering

or refusing to register films for public exhibition under the Customs (Cinematographic Films) Regulations, for making decisions relating to the prohibition of films under Regulation 4A of the Customs (Prohibited Imports) Regulations, and for classifying or refusing to classify films for sale or hire under the ACT Classification of Publications Ordinance 1983. Moreover as noted in the last chapter, the Board is also nominated under State Acts to exercise video and film classification functions on behalf of the States.

7.3 The Film Censorship Board is an independent statutory body made up of a Chief Censor, a Deputy Chief Censor and up to 10 full-time members appointed by the Governor-General. They are aided by Deputy Censors who are members of the Commonwealth Attorney-General's Department in the various State and Territory branches. The Deputy Censors as well as individual members of the Board can make decisions on classifications. However all films containing material which Deputy Censors or Board members believe might be refused classification or material which falls on the borderline of any classification are referred to the Chief Censor who directs that they be screened before the Board where a decision of the majority prevails. The Board writes a report on all videotapes screened, outlining the nature of the material and the reasons for the decision. Decisions are given to the applicant in writing and published in the Commonwealth Gazette along with a code signifying the reasons for the decision (see Chapter 5, paragraph 5.34).

7.4 Under the terms of the Commonwealth legislation, the Film Censorship Board is charged with making decisions in areas that must inevitably involve subjective judgments. The Australian Customs Service stated to the Committee that the test of what is to be allowed into the country under the amended Regulation 4A is objective. (Evidence, p. 2790) However such terms as '... in a manner that is likely to cause offence to a reasonable adult person' or even 'gratuitous depictions ... of acts of

considerable violence ... etc.' involve judgement. And certainly the criterion for films to be refused under the ACT Classification of Publications Ordinance, in that they depict matters 'in such a manner that it offends against the standards of morality, decency and propriety generally accepted ... to the extent that it should not be classified' (the test of current community standards), requires interpretation. As the then Chief Censor told the Senate Committee:

> ... we still in the end come down to a subjective interpretation of what we consider is offensive to the reasonable man or woman. (SSCVM Evidence, p. 115)

7.5 The composition of the Film Censorship Board allows for general public representation as members may come from any section of the community. Moreover membership terms have covered different periods so that there is change in the FCB's composition. The current Chief Censor is Mr John Dickie who has a background as a journalist and public servant in the Commonwealth Attorney-General's Department. He was appointed on 1 February 1988. The position had been vacant since August 1986 when the then Chief Censor, Janet Strickland resigned after seven years in the position. She had previously been a teacher and a member of the Australian Broadcasting Tribunal. Other Board members have served for periods of three, five, six, seven or ten years and the periods of appointment and termination have been staggered. As of 1 February 1988 the Board has eight members including a relief member (see Appendix 9, Attachment B for current FCB members). Three of the members are women. Board members assess community attitudes and exercise accountability:

> ... by talking to people and going and speaking to groups of people, by opening up the process to debate, by giving reasons for our decisions, by encouraging debate over individual decisions

> ... [by] producing reports - annual reports - which we are not obliged to do; giving reasons for decisions; producing information brochures; appearing and giving interviews to the Press ... (SSCVM Evidence, p. 121)

7.6 Uncertainty about the way in which the Board carries out its classificatory task and about its public accountability was addressed at the beginning of 1984 when guidelines which had been drawn up in consultation with Commonwealth and State Ministers with censorship responsibilities were made public. (see Guidelines for Classification of Videotapes/Discs for Sale/Hire, January 1984, Appendix 5) The guidelines are more explicit and particular than the ACT Ordinance, giving substance to its broadly worded provisions. As the then Chief Censor explained to the Committee:

> These are guidelines to help us interpret the regulations. They are for the guidance of classifying officers. (SSCVM Evidence, p. 133)

7.7 An obvious advantage of such guidelines is that they would be able to be adapted as understanding of current community standards changed. In fact they changed quite substantially between February and December 1984 probably as a consequence of increased public awareness of video material.

7.8 The original guidelines issued in January 1984 allowed assessments in a number of sub-categories within each classification: language, sex, violence and other, with a specific mix of what would be allowed in each category. Categories R, X and Refused classification read as follows:

> R *Restricted - 18 years and over*
> Adult material likely to be harmful to those under 18 years and possibly offensive to some sections of the adult community.
> Language: Sexually explicit and/or assaultive dialogue.
> Sex: Implied, obscured or simulated sexual activity.

> Violence: Explicit depictions with some gratuitous and exploitive violence; decapitations, dismemberment, disembowelling, etc. if briefly shown; discreet sexual violence.
> Other: Depictions of use of drugs which might be construed as mildly advocatory.
>
> X Extra Point-of-Sale Controls
> All overt and explicit material, except such as described under "Refused Classification".
> Language: No proscriptions.
> Sex: All depictions of sexual acts involving adults (except those of an extreme sexually violent or cruel nature) including explicit penetration, masturbation, ejaculation, fellatio, cunnilingus, insertion of objects in orifices, urolagnia, necrophilia, coprophilia, sado-masochism, fetishism.
>
> Violence: Explicit depictions (except those referred to under "Refused Classification").
> Other: Depictions of use of hard drugs which might be construed as advocatory.
>
> Refused Classification
> Material considered to be harmful to society.
> Language: No proscriptions.
> Sex: Child pornography; bestiality.
> Violence: Explicit detailed and gratuitous depictions of acts of extreme cruelty including extreme sexual violence.
> Other: Instruction 'manuals' for
> i) terrorist-type weapons and acts;
> ii) abuse of hard drugs.

7.9 Early in 1984 the guidelines were tightened in relation to violence. In April the Refused category was changed in keeping with the amendment (of that month) to delete the word 'extreme' from the kind of violence that would be refused under Regulation 4A of the Customs (Prohibited Imports) Regulations. Regarding violence the April guidelines for Refused classification now included:

> Detailed and gratuitous depictions of acts of significant cruelty; explicit and gratuitous depictions of sexual violence against non-consenting persons.

X was reworded to exclude sexual violence against non-consenting persons but otherwise remained the same and the level of permissible violence in R was amended to include only non-sexual violence. In May the Refused classification regarding violence was further modified to include 'Detailed and gratuitous depictions of acts of considerable violence or cruelty;' etc. rather than 'significant' cruelty.

7.10 Towards the end of the year the guidelines were changed again in response to the developing unwillingness of most State Governments to include an X classification in their legislation. On 26 October the Commonwealth Attorney-General issued a press statement announcing revised guidelines to which the meeting of Commonwealth and State Ministers responsible for censorship matters meeting in Sydney that day had agreed.

7.11 One of the things the new guidelines were designed to do was to limit the violence permissible in the M and R categories even further than before. 'Gratuitous' depictions of violence were now no longer allowed in either R or M, and the word 'very' was deleted before 'cruel' in the M category.

7.12 The most significant change in these guidelines was that the previous *category X Extra Point-of-Sale Controls (18 years* and over) was abolished and an entirely new tighter classification initially entitled ER Extra-Restricted (18 years and over) was put in its place. (ER Extra-Restricted was changed to X Extra-Restricted in December). The new Extra-Restricted guidelines would allow only:

> Material which includes explicit depictions of sexual acts involving adults, but does not include any depictions suggesting coercion or non-consent of any kind.

7.13 The majority of Ministers at the meeting on 26 October agreed to recommend the adoption of this new category to their Governments, and it seemed this would become an aspect of the new system of uniform legislation for those States prepared to go beyond R in their legislation. Accordingly, the Film Censorship Board informed the Committee in December 1984 that the ER Extra-Restricted criteria were the ones which were now being applied to X under the ACT Ordinance. (SSCVM Evidence, p. 131)

7.14 The category was called Extra-Restricted in order to eliminate any misunderstandings about the category above R which may have hung over from what had previously been allowed in X in Australia or from what was currently included in X in the United States. During the course of taking evidence the Committee found that the name change for the sexually explicit category created further misunderstanding. People assumed that the new *Extra-Restricted category was merely the previous X Extra* Point-of-Sale Controls material put under a new name, failing to register that the old classification had been replaced by a different category embracing sexually explicit material without any depiction suggesting coercion or non-consent of any kind. They still read the December X classification as the earlier one.

THE FILMS BOARD OF REVIEW

7.15 Under section 39 of the Customs (Cinematograph Films) Regulations and Section 30 of the Act Classification of Publications Ordinance 1983 the Films Board of Review is the body to which application may be made for a review of a Film Censorship Board classification decision. State legislation also allows for arrangements with the Commonwealth body in this regard and all States have such an arrangement.

7.16 The Films Board of Review was originally set up under the Customs (Cinematograph Films) Regulations in 1971. It is made up of 5-6 part-time members (of whom one must be a woman) who are appointed by the Governor-General for any period up to six years. The term is renewable. Board members meet when an application for review is submitted (see Appendix 10 for current members of the Films Board of Review).

7.17 Unless an exception is granted by the Chairman, applicants must apply to the Board of Review within 14 days of a decision by the Film Censorship Board to impose a certain classification on a film or to refuse to classify it. 'A person aggrieved by a decision of the Censorship Board on a matter arising under these Regulations' may apply in the case of the Customs (Cinematograph Films) Regulations while, in the case of the ACT Classification of Publications Ordinance, the following may apply:

(a) the person who applied for the classification;

(b) the publisher of the film; or

(c) the Attorney-General.

After an application is received, as many Board members as possible are brought together to view the film and discuss it. The appellant has the right to appear in front of the Board, accompanied by up to two people, in order to make a personal representation but this right is rarely taken up. It is a working principle that a woman member be sought to be present in the group that views the film under appeal. (Evidence, p. 2906)

7.18 After the Board has seen the film and heard from the applicant should he/she choose to be there, the members discuss the relevant issues. Decisions are made by a majority of those present. The Chairman prepares a statement of the Board's views

and the applicant is notified in writing of the Board's decision. Decisions are also notified in the Commonwealth Government Gazette.

7.19 The extent to which decisions of the Film Censorship Board are overturned by the Films Board of Review varies from year to year, but it has ranged over the years from 0 per cent to 69 per cent of appeals. In 1986 11 out of 16 appeals resulted in a decision of the Film Censorship Board being overturned. (Film Censorship Board and Films Board of Review, Reports on Activities 1986, p. 29) The total number of applications for appeal appear to have numbered between 12 and 20 each year. (SSCVM Evidence, p. 276; Evidence, p. 2905) The majority of appeals relate to R films that distributors want reduced from R to M. (Evidence, p. 2909)

7.20 One appeal that was aimed at a more restrictive classification was heard in August 1987. This was the only time an appeal has been initiated by the Commonwealth Attorney-General. It was done at the request of the Tasmanian Attorney-General who had asked the Commonwealth Attorney-General to call for an appeal against the R classification given by the Film Censorship Board to the film I Spit on Your Grave. It was felt in Tasmania that the level of violence in the film might have justified a complete ban. In fact under Tasmanian legislation the Tasmanian Attorney-General could himself have appealed directly to the Films Board of Review but he chose to work through the Commonwealth as an exercise in Commonwealth/State co-operation. The Films Board of Review dismissed the appeal and the film retained its R classification.

7.21 When discussing a film the Films Board of Review will have the guidelines of the Film Censorship Board before it, but the guidelines are not binding and the Board is not unconscious of its independence. (Sir Richard Kingsland SSCVM Evidence, p. 304; Professor Sheehan Evidence, p. 2907)

DISCUSSION

(a) REPRESENTATION

7.22 The deliberations of the Film Censorship Board and the Films Board of Review take place under legislation and guidelines which are expressions of policy decided at government level. But within this framework subjective judgment is called into play.

7.23 The Committee considered whether the members of the Film Censorship Board and the Films Board of Review should more visibly represent the community as a whole or otherwise be seen to reflect community standards. Witnesses were asked how, in their view, this might be achieved.

7.24 Many suggestions were made in evidence to the Committee as to how the representation and the Board's understanding of community attitudes might be improved. Faye Lo Po', Chairperson of the Women's Advisory Council to the New South Wales Premier considered that the Board should have at least fifty per cent female participation. (Evidence, p. 2854) The National Council of Women of Australia also 'would like to see the appointment of several women to the Board, at least one of whom should have had practical experience of raising a family'. They would further suggest that at least two of the full-time appointments become four half-time appointments:

> This would increase the representation of the Board, by an increase in the number of people actively engaged in this work. It would allow the inclusion of people of ethnic background and would open the way to single or married parents still actively engaged in bringing up a family, to enter the workforce on a part-time basis. (Submission No. 222, pp. 2-3)

7.25 The Australian Parents' Council submitted to the Committee that it should recommend:

> ... that a Senate Select Committee should take the responsibility for being the censor for video tapes and discs. These persons have direct responsibility to the Australian community. (Evidence, p. 531)

Mr David Grace, Vice-President, Australian Family Association (Queensland Division), advocated something like a jury system which would provide:

> ... the opportunity of including many members of the community from time to time on your committee of censorship ... In a country which has multicultural interests you have the opportunity of having wide cultural interests represented and you have the further benefit - we believe it is a benefit - that people are not subjected to continuous viewing of this material such as to cause possible attitudinal change in them with a consequent effect on the material which gets to the community. (Evidence, p. 1249)

7.26 The then Chairman of the Films Board of Review expressed the opinion to the Committee that any structure that was created to represent rather than reflect the views of citizens in a pluralist society would be 'an enormous, heterogeneous, multicultural, multirepresentative board'. (Evidence, p. 1205) For him, the important quality for Board members is:

> ... that people be educated because I think they have to communicate a difficult judgment and make that judgment. (Evidence, p. 2911)

In reference to the Films Board of Review, he believed that:

> The diversity of opinion that exists in the current board structure is somewhat underestimated ... I would claim that given the requirement of education, there currently is a very strong diversity of expertise. (Evidence, p. 1203)

He did, however add:

> I would like to see - and I have made this point to this Committee at another time - a research function built in and recognised that collects data on what community attitudes are. I believe then that a board such as ours would have tangible data to look to and to take account of. (Evidence, p. 2912)

(b) DESENSITISATION

7.27 A number of submissions made the point that frequent exposure to certain kinds of video material could have the effect of desensitising members of the Film Censorship Board, leading them to find some movies less upsetting than they might be to people not so exposed. The Baptist Union of Tasmania noted that the number of R-rated films coming into Australia declined from 340 in 1982 to 169 in 1983 [figures are for cinema features], and asked:

> Could this drop ... be because they are being given a lesser classification because of desensitisation?

It was their opinion that all members of the Board would be subject to desensitisation, and their appointments should be rotated. (Submission No. 459, pp. 2 and 3) The Australian Children's Television Action Committee shared this view:

> The growing permissiveness demonstrated in their guidelines reflects the insensibilities of the censors rather than public opinion. We have for some time been advocating a more rapid turn-over in Censor Department personnel to avoid this obvious occupational hazard. (Submission No. 461, p. 4)

However it should be noted that the changes made to the guidelines during 1984 were to tighten the type of material allowed in the categories and the Committee describes these changes in paragraphs 7.8 - 7.14.

(c) ACCESS TO REVIEW

7.28 Under section 39 of the Customs (Cinematograph Films)

Regulations application for review of a film for public exhibition is open to 'a person aggrieved by a decision of the Censorship Board', while section 30(1) of the ACT Classification of Publications Ordinance gives the right to apply for a review to the person who applied for the classification, the publisher of the film or the Attorney-General.

7.29 Until recently it was believed tht 'a person aggrieved' restricted standing to appeal to the Films Board of Review under the Customs (Cinematograph Films) Regulations to the industry only. However a decision brought down on 13 February 1987 after an appeal to the Full Court of the Federal Court successfully challenged that belief. A Roman Catholic priest and an Anglican priest were held to have standing as 'persons aggrieved' in the case of the film Je Vous Salue Marie ('Hail Mary'). The judges held that as ministers of religion the appellants were in a special position compared with ordinary members of the public 'in that it is their duty and vocation to maintain the sanctity of the Scriptures, to spread the Gospel, to teach and foster Christian beliefs and to repel or oppose blasphemy'.

7.30 As a result of this case it now seems that standing under the Customs (Cinematograph Films) Regulations may be open to people who can demonstrate to the court's satisfaction that they have suffered special damage arising out of spiritual concern. However, getting to this point would be sufficiently costly to discourage many people.

7.31 Under the ACT Classification of Publications Ordinance the Commonwealth Attorney-General has access to the Films Board of Review in relation to videotape classifications. The legislation of some States and the Northern Territory also provides direct access to the Films Board of Review for the State or Territory Ministers responsible for censorship matters. The difficulty for the States and the Northern Territory, however, is that if they were to appeal to the Board directly any resulting

change in the classification would only be valid in that State or Territory. On the other hand, the State or Territory Ministers responsible for censorship can approach the Commonwealth Attorney-General to exercise his access to the Board under the ACT Classification of Publications Ordinance on their behalf. This has already happened once (see paragraph 7.20). The benefit of such an approach is that the review will refer to the whole Commonwealth.

7.32 Submissions have been made to the Committee requesting that the process of review be made more widely accessible. The Family Team in the Australian Capital Territory House of Assembly submitted that 'the correct classification is a matter of public concern and it should be open to any concerned citizen to request a review'. (Evidence, p. 11) The New South Wales Women's Advisory Group to the Premier made a similar request as did others. (Evidence, p. 285)

7.33 When asked whether it would be feasible for groups to be given access to the Films Board of Review its then Chairman Professor Sheehan replied that he did not favour such an approach on the grounds that the Board would be 'open to accusations of selectivity and bias in deciding who comes on and who does not come on'. (Evidence, p. 2919) On an earlier occasion when he was still Deputy Chairman and was appearing before the Committee as a researcher, Professor Sheehan told the Committee:

> My personal opinion ... is that I would like to see a mechanism where members of the public could express a view to the Board and ask for a judgement. The problem with that would be to institute a reasonable period and reasonable safeguards against the Board simply tying itself to the movie screen while thousands of groups ask it to reconsider its decision. I would think of the Board as making a judgement

> in relation to the public and then there would be some mechanism for allowing appeals by representative groups of the public. (Evidence, pp. 1205-6)

SECTION III

VIDEOS - THE PRODUCT, INDUSTRY, TECHNOLOGY, PRODUCTION AND VENUES

CHAPTER 8

THE PRODUCT

INTRODUCTION

8.1 Videos are yet another advance of many in the development of high technology electronic equipment. Like television in the 1950s videos have heralded a new era in home entertainment.

8.2 InterMedia (the journal of the International Institute of Communications), in its survey on Home Video in 1983 commented that:

> The video cassette recorder starts with a contradiction. It is private television. It is television as and when you want it. Even better: it is film as and when you want it. It is radical chic. It is expensive. It is international. And it is often illegal. ('Home Video: an InterMedia survey,' InterMedia, July/September 1983, Vol. 11, No. 4/5, p. 17)

8.3 A large number of households - 47.4% - in Australia in 1986 owned or rented a VCR (see paragraph 8.23). Video offers people a further choice in their entertainment repertoire. The potential of home video to change people's use of their entertainment time is enormous. Videos can compete with other forms of entertainment such as a night out, going to the movies or the visit to the pub.

8.4 InterMedia observes:

> ... few governments are much concerned with the business of VCRs and cassettes. Conversely, for the public, the VCR's independence from the "official" television systems and schedules is its chief attraction. (ibid. p. 17)

THE VIDEO CASSETTE RECORDER (VCR)

8.5 The advent of the video is a recent phenomenon in terms of production for the consumer market. However, videos have been around for a long time. They have been used in Australia for educational and training purposes since the late 1960s.

8.6 The British, Japanese and Dutch pioneered video for the home market. The first video cassette recorder (VCR) for the consumer market was made in Britain in the 1960s, although it never reached the marketplace.

8.7 Sony produced the world's first colour VCR, the U-Matic 3/4 inch, which went on sale in 1970. This format is still widely used especially in television stations. With the success of the U-Matic established, Sony were able to turn their attention to the development of a fully fledged VCR for the home. In 1975 Sony launched the Betamax which is still a current format for home video. (Nobutoshi Kihara, 'Putting Cassettes into the Home', InterMedia, op. cit. p. 30)

8.8 The first VCR for the Australian consumer market was launched in mid-1978. The machine was the Sony Betamax and it led the wave of VCR machines for domestic use in Australia. National released a VCR in October 1978 using the now, market-dominant VHS system.

8.9 The VHS system is by far the most favoured system in Australia as it is in Japan, USA and Britain. VCR ownership in Australia is divided about 70/30 in favour of VHS over Beta. (Stewart A. Fist, 'Australia - The Suburban Dream', InterMedia, op. cit. p. 41)

8.10 The VCR offers consumers a large degree of independence in what they watch. They can watch movies from pre-recorded tapes which can be either bought or hired. Also consumers can view television programs recorded through their VCR machine.

8.11 A major use of VCRs is time-shifting; the recording of a television program for viewing at a more convenient time. People can be their own program schedulers. There is no doubt viewers are often frustrated to find competing television stations have scheduled interesting programs for the same time. The Director of Programmes of BBC TV, Mr Brian Wenham (Brian Wenham, 'The Broadcasters are Learning to Live with Home Video', Intermedia, op. cit. p. 28) raises the question of how much the VCR is used to 'unscramble the mess that four competing channels occasionally make of our evenings'and asks ... 'is the time-shifting for enrichment, or for evasion?'

8.12 Using the VCR to time-shift programs can present a problem of program regulation for children - for example, late night movies for 'adults only' may be watched at any time if recorded.

8.13 In Australia, the Australian Broadcasting Tribunal (ABT) formulates and administers the Television Program Standards. One of the purposes of the Program Classification Standards is to ensure that children can be protected from unsuitable material which is not to be screened when large numbers of children are expected to be viewing. By using the VCR as a time-shift device the viewing time of programs are rearranged to suit the viewer.

All those television classificiation categories and appropriate viewing times to protect children are thus potentially rendered less effective.

8.14 As Brian Wenham observes:

> The truth would seem to be that the spread of new in-house technology will steadily move the burden of morality away from the broadcaster and into the home, leaving the broadcaster with the limited residual duty not to broadcast those things which should not be broadcast at all. (ibid. p. 29)

Dr Grant Noble, Associate Professor of Psychology, University of New England, also notes 'that videorecorders shift the locus of control from external broadcasters' choice to internal user selection'. (Evidence, p. 2194)

8.15 Dr Noble pointed (see Table 1 below) to some relatively obvious differences between the broadcasting system and video recorder which he believes is supplanting and supplementing broadcast:

Table 1

Obvious differences between video and broadcast systems
(Evidence, p. 2175)

	Broadcast		Videorecorder
1.	'Their' control over programmes	1.	User control over programmes
2.	'Their' choice of programmes	2.	User choice over programmes
3.	'Their' taste in programmes	3.	User taste in programmes
4.	'Their' timing for programmes	4.	User timing of programmes
5.	Less freedom of choice	5.	More freedom of choice

6.	Uncontrolled interruptions	6.	Controlled interruptions
7.	Censured 'public' taste	7.	Uncensured private taste
8.	Audience chooses as a mass	8.	Audience chooses as individuals
9.	Collective behaviours occur at the same time	9.	'Collective' behaviours occur at different times
10.	Debatably producer orientated	10.	Debatably consumer oriented

8.16 Dr Noble says the one resounding element which recurs throughout this table is the notion that rather than having to accept the TV schedules dictated by the broadcasting companies, users can pick and choose programs which they wish to view when they want to watch. (Evidence, p. 2176)

8.17 Besides using the VCR for time shifting, the machine is also used to view pre-recorded home video cassettes. This has led to a proliferation of video cassette rental outlets. It is estimated on a national basis that the time spent watching pre-recorded to home-recorded - 'off air' - tapes is in the ratio of 51:49. (Television Bureau of Advertising, 1986 Home Video Research, Executive Summary, p. 4)

8.18 Noble in evidence to the Committee cited a recent survey in the Television New England viewing area where it was found:

> Far more of the younger owners used their videos mainly for hired movies (53%) than the older owners (20%). Over half of older video owners tended to use their videos for both hired movies and off air recording (53%), while only a quarter of the younger owners did this. (Evidence, p. 2164)

8.19 Teamed with a video camera, the VCR can also play back material filmed by the consumer. The video camera permits the consumer to be his own producer. Previously the producers and consumers of moving pictures have been relatively distinct and

separate. The VCR is breaking that nexus between producer and consumer. (Noble Evidence, p. 2176)

8.20 Another feature of the VCR is its portability. A VCR machine can be readily moved from location to location wherever there is a television set.

VCR OWNERSHIP

8.21 Since the introduction of VCRs on the Australian market, VCR ownership has increased rapidly. According to Dr Noble. figures indicate that ownership of VCRs increased dramatically from 11 per cent or 605 000 units in 1982 to 20 per cent or 1 125 000 units in 1983. (Noble Evidence, p. 2174) He said figures indicate that in 1984 some 30 per cent of TV homes possessed a VCR unit. In 1983, Australia was third or fourth in the developed world in terms of video ownership behind only the UK (30 per cent) and Japan (26 per cent).

8.22 According to the NSW Video Retailers' Association in 1985 'forty per cent of Australian households with colour television are now deemed to have a video recorder in the home. If it is not quite 40 per cent it is very close'. (Evidence, p. 614)

8.23 Late in 1984 and early 1985 most forecasters according to the Television Bureau of Advertising (TvB) were predicting a VCR penetration of over 40 per cent by the end of 1985 and 50% by the end of 1986. The TvB commissioned McNair Anderson Associates to do their 1986 survey on home video penetration and usage and it was found VCR penetration (includes 'owned' and 'rented' VCRs) had reached only 47.4 per cent of all households. The survey also showed there was not a significant difference in the proportion of VCR homes when metropolitan areas were compared to non-metropolitan areas.

8.24 VCR penetration increased by only 6.5 per cent in the year October 1984/October 1985. For the previous year (October 1983/October 1984) the percent increase in VCR homes was 12.8 per cent. This variance indicates a slowing down in the home penetration of VCRs.

8.25 The 1986 survey indicates that New South Wales, Queensland, South Australia and Western Australia grew in line with or marginally below the national level. The highest percentage of households with VCRs was recorded in Western Australia (56.0 per cent). Adelaide (54.2 per cent) recorded the highest metropolitan penetration. Victorian non-metropolitan areas (39.7 per cent) recorded the lowest percentage of households with VCRs. (Television Bureau of Advertising, 1986 Home Video Research, Executive Summary, p.7)

8.26 The Committee, on its visit to Darwin in July 1986, was told by a retailer that he believed VCR penetration to be about 70 per cent of households in the Northern Territory and VCR penetration peaked in 1984. This percentage penetration is approximately 30 per cent higher than the percentage figure for Australia generally. Interestingly the 1986 TvB survey, shows South Australia to have the second highest VCR penetration percentage and for statistical accounting the Northern Territory was included with the South Australian total.

8.27 In the TvB interview survey those respondents 14 years and over were canvassed as to the number of hours they had watched a VCR in the preceding seven days. It was found that over one third of all respondents with a VCR did not view any VCR material in the one week prior to the interview. Of those who owned a VCR 64.4% viewed it in the seven day period; 21.1% viewed the VCR for 0-2 hours (light); 18.7% for 3-4 hours (medium) and 24.6% for 5+ hours (heavy). 72.8% of respondents who rented a VCR watched it in the week before interview. Of these 27.3% watched for 0-2 hours (light); 14.9% watched for 3-4 hours (medium) and

30.6% watched for 5+ hours (heavy). The survey results show renters are significantly heavier users of VCRs than owners. Of those respondents without a VCR, 7.6% had watched a VCR in the seven day period.

8.28 The source of VCR tape material was also canvassed in the survey. There was no significant difference in the use of pre-recorded tapes and home-recorded tapes by the respondents who had a VCR. Of those respondents 24.1% used pre-recorded tapes only, 25.2% used only home-recorded tapes and 14.9% used both.

8.29 The 1985 TvB survey, based on Roy Morgan Research Centre data, showed VCR distribution by income group. The under $15 000 family income bracket recorded a 40 per cent VCR distribution, by far the highest percentage distribution. The next highest distribution was in the $15 000 - $19 000 income group with 19.7 per cent followed by the $20 000 - $24 999 income bracket with a distribution of 17.6 per cent. The succeeding income brackets, $25 000 - $29 999 and $30 000 - $34 999 showed a continuing decrease in distribution - 11.3 per cent and 5.1 per cent respectively. There was a small increase in the last income bracket of $35 000 +, the percentage distribution being 6.4 per cent.

8.30 The Committee heard various explanations as to why the lower socio-economic groups in the community were heavy users of video. Stewart A. Fist, a consultant in communications and media, noted in his InterMedia article, 'Australia - The Suburban Dream', that:

> ...the less privileged young couples buy their first home and discover the dreariness of suburban living. Australians all expect to own their own home on a "quarter acre" block of land which means that new communities are widespread and poorly serviced by transport - deserts of isolation and frustration - especially among the young housewives with a couple of children to communicate with, and young unemployed teenagers.
>
> For these people, video seems to assume the status of "necessity": like colour television before it. (op. cit. p. 41)

8.31 The Australian import statistics for the period 1983/84 to 1986/87 provide a guide to market penetration:

Table 2

IMPORTS OF MAINS OPERATED VIDEO CASSETTE RECEIVERS INTO AUSTRALIA

	1983/84	1984/85		1985/86		1986/87	
YEAR ENDED	No	No	%	No	%	No	%
JUNE	638 397	615 120	-3.6	516 136	-16.1	437 478	-15.2

8.32 These statistics support the TvB 1985 research finding that a significant slow down of VCR penetration had occurred.

SUMMARY

8.33 There is little doubt the VCR is but one more technological development which brings choice to home entertainment. The VCR is not the end of a development line. Technology is being developed all the time. With the shifts in home entertainment that came with radio, television and lately the video cassette recorder, consumers now expect improvements and the electronics industry is responding to these market demands and has now developed 8mm and digital videotapes.

Equipment improvements are also found in the audio industry where the compact disc is the latest technological development. The content of material does not change with such technological development.

CHAPTER 9

THE VIDEO INDUSTRY

9.1 The arrival of the VCR on the Australian market marked the beginning of the home video industry. According to the Video Industry Distributors Association (VIDA) home video in Australia in the mid 1980s was the newest and fastest growing sector in the entertainment industry. The industry has developed rapidly to the point where a range of new marketing strategies are being implemented to further expand the industry. Involved in the industry are producers, importers and distributors, and retailers.

PRODUCERS

9.2 Most of the video material available in Australia has been produced overseas. Movies produced for the cinema are being put on video tape. The big suppliers of pre-recorded video cassettes are the film studios and they are releasing their old classics such as Gone with the Wind on video cassette. Other companies are also doing well out of video. CBS/Fox paid the film producer, Mr George Lucas, $12m for the video rights to The Empire Strikes Back and has more than recouped its initial investment. (The Economist, October 12, 1985, p. 86)

9.3 Companies are releasing films on video at such a rate that the production of top quality movies cannot keep pace. In time more films of the 'B' grade variety will be available on video and they would not necessarily have been released

theatrically. (South Australian Video Retailers Association Evidence, p. 454)

9.4 Television is another source of new videos. The children's television program Sesame Street is being packaged for home video.

9.5 Programs are being made for first release on home video such as sporting and specialised material. In the UK, equestrian videos are being produced for the equestrian market world-wide. Cookbooks are being reproduced in video form. The Special Broadcasting Service (SBS) has released its cooking programs on video cassette. The ABC also markets a range of its programs on video.

9.6 Video industry representatives believe that the video industry has assisted the theatrical industry. The Committee was informed that:

> A lot of comment has been made about the impact of home video on the theatrical industry. It would be crazy to deny that it has not had an impact; it has in certain areas. On the other hand, it has provided for the owner of that particular piece of celluloid an opportunity to participate in a wider choice of revenues. In some cases films have not worked theatrically and yet have been very successful on video. (VIDA Evidence, pp. 517-518)

DISTRIBUTORS

9.7 In Australia there are six major home video distribution companies. These are:

- CBS/Fox Video
- CIC Taft Video
- RCA/Columbia Pictures/Hoyts Video
- Warner Home Video

which are aligned with major film studios, and

- Communication and Entertainment Limited
- Roadshow Home Video

whose product comes from local suppliers and overseas suppliers such as Disney, MGM/United Artists, Rank and Thames. These six companies are members of the Video Industry Distributors Association (VIDA). There are two smaller independent distributor members, Palace Home Video and Seven Keys Video and in August 1987 Crystal Screen Entertainment joined VIDA as an associate member. The Association also represents the Video Motion Picture Industry in Australia. VIDA claims that its members account for around 90% of the home video market and dealer purchases for rental to consumers of new video cassettes is in excess of $100 million gross, annually. Sales directly to the public amounts to approximately $30 million net annually. The video industry in Australia now, according to VIDA, directly employs more than 8000 people. (Evidence, p. 479)

9.8 Film studios made films for first release in theatres. Over the years these films have often been televised following their theatre release. With the development of technology the range of outlets for films has increased. VIDA informed the Committee that a motion picture could have the following release pattern in Australia, which is, in sequence:

- theatrical release - cinemas
- non-theatrical public performance, eg in hotels, clubs, trains, hospitals, prisons, motels (in-room by diffusion service)
- home video
- network television
- in due course possibly satellite or cable television transmissions.

9.9 From a video retailer's point of view the time span between release of a film for theatre and availability on video varies. The South Australian Video Retailers Association (SAVRA) said:

> Sometimes a film can be showing at the drive-in and come out on video. Sometimes it can be 12 or 18 months. A film like 'ET', for instance, still has not come out legally on video. I understand that there are plenty of pirate copies around but that it is not legally available on video. I expect to wait at least another 12 months before it is made [available] because it will have a further re-release at the theatre and obviously be a successful money spinner there again. The periods vary. Sometimes it comes out immediately, within a month of it being on at the theatre; sometimes it is three months and in other cases a very long period of time. (Evidence, p. 451)

9.10 The distributor Communication and Entertainment Ltd (CEL) was the first to introduce a new approach to marketing videos. Rather than limiting home video sales to rental outlets the company is selling selected videos directly to the public. The move is a shift away from the rental libraries which have been the consumers' main source for home video cassettes. Consumers can now choose to buy their own video movie rather than renting it. The price set for the sale of these video cassettes has been made competitive with the costs of renting (see paragraph 9.31 for renting costs). The cassettes usually retail for under $30. New titles for sale are released on a regular basis and include first-release movies. Other companies are now selling directly to the public especially children's products.

9.11 The main market for pre-recorded video cassettes is still mainly a rental one. Copies of tapes are provided by distributors, on a bought or rented basis, to small businesses which operate rental libraries to members of the public.

9.12 The matters of infringement of copyright or piracy are of major concern to distributors. According to VIDA, the owner of copyright in a film has the exclusive right to control all or any of the following rights:

- the making of copies of the film
- the playing of it in public
- the broadcasting of it on television
- the transmission of it by a diffusion service.

9.13 VIDA claim that:

> By virtue of the copyright owner's control over the making of copies of his film, coupled with the remaining rights referred to above, the copyright owner can control and direct the distribution and use of the film. (Evidence, p. 481)

9.14 VIDA members have been licenced by the relevant copyright owners, as their distributors, with the right to make copies of films for public domestic use.

9.15 The difficulty with video is that copies of videos can easily be made by hooking up to another VCR. It has been alleged some video retailers have made 'back-to-back' copies of videos after buying one legitimate copy. The extra copies are put on their shelves for hire. In fact every video cassette is a potential mastercopy.

9.16 It is estimated by the distributors that between 10 and 20 per cent of video tapes are pirate copies. The Committee was told that The Man from Snowy River appeared on a pirate video cassette prior to its theatrical release. The film ET was also available on pirate video before its Australian theatrical release. (VIDA Evidence, p. 485) The motion picture industry is so concerned about piracy that the Motion Picture Association of America (MPAA) funds a world-wide program to combat the pirating of films and pre-recorded video tapes. The Australasian Film and

Video Security Office (AFVSO) was founded as part of this world-wide program.

9.17 VIDA claimed in evidence that pirate videos reach Australia because of inadequate penalties for infringement of copyright and the low priority given to criminal prosecution. They maintained there was no provision in the Copyright Act for Customs Officers to seize infringing copies at their point of entry into Australia. (Evidence, pp. 485-486) Since then there have been amendments to the Copyright Act 1968 with an increase in the penalties for infringement of copyright (see paragraph 9.67).

9.18 With regard to the private individual having a pirate copy this is an area the distributors say they do not normally become involved in. It is very difficult to prove that the individual has made the copy or under the Copyright Act has 'knowledge as to whether he knows the product is not the original'. (VIDA Evidence, p. 511)

9.19 The distributors concentrate on the piracy problem at the dealer or retailer level where they are 'made aware that a product is available for hire and it is, for example, a title that may have been released in the UK and not released in Australia yet'. (VIDA Evidence, p. 510) VIDA point out that when such films come to their attention the Australasian Film and Video Security Office is alerted and provides assistance in the gathering of evidence.

9.20 Stewart Fist writing in InterMedia says piracy is a growing industry. He cites the ET example of piracy and says:

> It is estimated that 25% of all cassettes circulating are illegal. This figure is probably grossly inflated by the video distributors (who are trying to get tougher laws) and is certainly not supported by the record of prosecutions. (op. cit. p. 41)

9.21 Following the amendments to the Copyright Act in 1986 which strengthened anti-privacy provisions, the Australasian Film and Video Security Office noticed a definite decline in piracy. However in 1987 there was a gradual increase and AFVSO estimates that at the end of 1987 the percentage of the overall market lost to piracy was between 15% and 20%. In 1987 fourteen criminal convictions had occurred and total fines imposed for the year amounted to $58 246.75. Two hundred and ninety two investigations were initiated and one hundred 'cease and desist' letters had been sent out.

9.22 Fist makes the point that the time lapse between home video release in the US and legal release in Australia provides an obvious opening for pirate cassettes to fill the gap. PAL (the television system used in Australia) versions of new American releases are available legally over the counter in the US and these can readily be brought to Australia by travellers.

9.23 The Australasian Film and Video Security Office told the Committee that the majority of pornographic videos are pirated. (Evidence, p. 1941) AFVSO claim they 'have received reports from distributors of pornographic video tapes that a nominated person was illegally copying and distributing their product. On numerous occasions, the person complained of, later contacted us to make a similar complaint. In other words, there have been claims and counter claims as to the ownership of copyright in these pornographic products.' (Evidence, p. 1932)

9.24 VIDA says it is generally felt in the industry:

> ... that a classification beyond R, provided of course that it was within a certain acceptable standard of guidelines, would be an advantageous way to go, because what we have found in any business is that if we deny people the access to certain material, it breeds an underground market. One of the

> biggest problems we have in Australia today in video is the piracy that is occurring. We find that this sort of material tends to find its way, if it is not freely available, into that *market-place where the pirates operate - the* fringe operators. (Evidence, p. 505)

9.25 There is another matter of concern to the distributors and it relates to the question of national uniformity in legislation. The distributors claim that it is difficult to code the video cassettes with the correct classification as the States have varying labelling requirements.

9.26 It was put to the Committee, for instance, that the ACT, Queensland and Victoria require only the symbols - G, PG, M and R - whereas New South Wales and South Australia require wording to be placed beside the symbols to further explain their meaning.

9.27 These anomalies, according to VIDA, present not only an unnecessary cost to the industry but also confusion at the dealer and consumer level.

9.28 VIDA claims that their:

> member companies have gone to great pains to follow the developments in all states but as has been pointed out to all of you [State Ministers] on previous occasions, duplication, packaging, labelling and dispatch are all carried out from one central point. When one does not know how many cassettes of a certain title will be ordered by each separate state, difficulties arise when the tapes reach the destination, where they may not bear the exact wording prescribed by that particular state. (Letter to State Ministers, VIDA Evidence, p. 494)

RETAILERS

9.29 Retailers are the interface between the home video distributor and the public - the consumer. The phenomenal growth

in the popularity of VCRs for domestic use has been matched by consumer demand for pre-recorded video tapes. As a result video cassette rental outlets have grown rapidly.

9.30 It is estimated (VIDA Estimate, October, 1986) there are about 2500 'dedicated' videomovie libraries in Australia including department stores. It is impossible to estimate with accuracy the number of convenience outlets such as newsagents, petrol stations, chemists and corner stores who hold video cassettes as part of their normal stock-in-trade (see Evidence, p. 1542).

9.31 The market for these outlets is predominantly a rental one. Consumers can hire home video movies on a nightly rate or weekly rate from as low as 99c up to $5.00 plus depending on the popularity of the title.

9.32 The speciality videomovie outlet (as distinct from other outlets in which video cassette hire is but one line) is laid out so that the titles held are readily displayed on shelves. The plastic case is put on the shelf for display and it has a 'wraparound slick'. This slick gives the details of the tape. It displays the title of the movie, pictures of the characters in the film, identification of the distributor and a censorship classification.

9.33 The NSW Video Retailers' Association (NSWVRA) points out that:

> ... a retail video shop should present an attractive, clean, well planned environment and offer its customers as wide a choice as is possible. The display is all important to the operation of a video retail shop as the quality of it attracts customers back to the store. (Evidence, p. 585)

9.34 People are looking for entertainment when they hire videos. Mr Grant Peters of the South Australian Video Retailers Association (SAVRA) observed:

> A G film such as 'Phar Lap' they will sit and watch and enjoy, of course, but it seems to me that the films that I see hired out the most are probably in the M category and then possibly the R and then the PG and the G last of all ... As new releases come in they are obviously the most popular. (Evidence, p. 462)

9.35 The retailers have a number of concerns which cover the retailing aspect of the industry. One of their concerns is the anomaly in classification which has arisen with the tightening of the classification guidelines during 1984. The retailers claim that on occasions a film which is to be released on video has been refused a classification whereas the same film still has been available for viewing in theatres as the classification for theatre release was given prior to a change in the guidelines. Both the South Australian Video Retailers Association and the NSW Video Retailers' Association cited instances of this happening. SAVRA said:

> Another thing that I did raise in the report was the anomaly in the situation. Taking *'Death Wish II' as an example, once it does* get into the Gazette and is banned on video, it is still not banned in theatres. I believe there is a need to tie up that problem, so that once the Film Censorship Board bans a film from video use, then it should be banned simultaneously from theatre release. We have an anomaly here in that 'Bloodsucking Freaks', was banned as a video, but shown at the drive-in; just recently, 'I Spit On Your Grave' *was banned as a video, but shown at a* theatre in Hindley Street. (Evidence, P. 457)

9.36 The retailers believe that if material for video release is refused classification, such refusal should also apply to theatrical availability. With the various changes in the Film Censorship Board's guidelines films have been given a

classification based on the guidelines operating at the time of the classification application. The progressive changes to the guidelines make it possible for films which would have attracted a rating earlier to be refused a classification rating now.

9.37 Not only are the retailers concerned about the classification disparities which have arisen because of guideline changes, but they are concerned about difficulties with the Commonwealth of Australia Gazette.

9.38 SAVRA was critical of the delays and inaccuracies in the publication of the Gazette:

> In the S.A. legislation the Commonwealth Gazette is the only place to ascertain whether a video movie has been classified and we support the continuance of this system, however every Gazette must be examined to locate the correct classification in order to comply with the legislation and this is a very hap hazard [sic] procedure. (Evidence, p. 426)

SAVRA went on to recommend that:

> i) Quarterly Consolidated Lists be made available to all Registered Video Library Operators, at a nominal charge, listing all classifications currently applicable.
>
> ii) Updates to this consolidated list be published <u>regularly</u> (i.e. at pre-determined regular intervals, and not irregularly as seems to happen at present).
>
> iii) In these updates, <u>all changes in previously listed classification be clearly indicated</u>, so it is self-evident which titles have been re-classified. (Evidence, p. 426)

9.39 The retailers were not alone in their criticism of the Commonwealth of Australia Gazette. The Tasmanian Government also drew the Committee's attention to inadequacies:

> May I also say something else which is very difficult and which I would like you to put in your inquiry? We cannot get a consolidated list from the Commonwealth as to all the classifications of videos. It is hopeless. To know what classification a video is, I think there is one list that is complete up to March this year and unfortunately they have them in G, PG, M and R lists. It would be much better to put them in alphabetical order. So you have to go through four lists, then you have to go through the 'Gazette' and everything that comes out to find out what the classifications are. (Evidence, pp. 2456-2457)

9.40 The inadequacies of the Gazette provide the retailer with further difficulties when it comes to coding the videos. It has been recommended to the Committee that distributors should be held responsible to provide their product with the appropriate classification markings. (Evidence, p. 429) Responsibility for the classification markings on the slick and videotape should not rest solely with the retailer. Mr Grant Peters of SAVRA commented:

> ... that distributors and secondhand dealers should be held to be as responsible as the retailers. I have an example of a slick that came through the other day of a film called 'The Bounty'. Fortunately, this works in a downward trend where the company have placed on it an M rating code - M for mature audiences - and it is legally gazetted as PG. We feel that as retailers we accept that we must still retain responsibility for correctly coding them, but the law should make it necessary for the distributor to get it right in the first place before he sells the product down the line. Likewise, if a secondhand dealer - this is a problem in this State - runs around selling off copies of 'The Exterminator' after it has been banned then he or she should also be prosecuted. So not only the shop owner should be responsible if he inadvertently puts it in his shop without conforming with the law, but there should be a

> feedback further down the line to make sure that the person selling it to him is also liable. (Evidence, p. 447)

9.41 The problem was also highlighted in later evidence given by the Tasmanian Government:

> The stickers [classification symbols] are available. They are standard stickers for the whole of Australia. They should be put on by the distributors when they send them down here. If I were a video operator, I would not accept any video unless it had the right sticker on it. I would say: 'You are distributing it; you put it on. You are the ones who have submitted it for classification'. (Evidence, p. 2452)

9.42 The Commonwealth of Australia Gazette was published in a consolidated form on 26 May 1986 and covered classifications pursuant to the ACT Classification of Publications Ordinance 1983 during the period 1 February 1984 to 31 January 1986. It came to the Committee's attention there were some inaccuracies in the consolidated list. For instance, the film French Finishing School is listed as X-Extra-Restricted as well as Refused, when in fact the latest classification put on the film was Refused.

9.43 The Committee is hopeful that such proof reading mistakes will not occur when the Film Censorship Board's computer system is fully operational by May 1988. Such inaccuracies in the list make it difficult for retailers to discharge their responsibility with regard to the correct classification of videos and makes it difficult for law officers to know what is legal or not legal.

9.44 Another concern of the retailers is the small outlet which trades in other goods but has videos as a side-line. SAVRA, for instance, represents 140 shops in South Australia but has estimates of between 750 and 800 shops or outlets in South Australia 'such as service stations, delis, fast food centres that have videos'. (Evidence, p. 442) These outlets are often

unaware of the laws which are to be complied with and use the attraction of cheap video cassette rental to draw the customer into their shop:

> It is just another gimmick, if you like, to draw a customer in. While he is there he might fill his tank with petrol. He might buy some cough syrup, or whatever. ... You have people who are dealing in this product and are not all that interested and do not care much what they are dealing in. You can certainly have X-rated material going through there. They do not care enough about it to worry what they are presenting. (AFVSO Evidence, p. 1945)

9.45 The retailers recommended to the Committee the licensing of dedicated video outlets to stock and sell or rent both R-rated and X-rated video cassettes. They believe that such licensing, whereby the professionals would handle R and X material, would limit its availability to minors and a proper description of program content would be given to the customer:

> We do not have any objection to regulation where it is seen that the regulations are reasonable in terms of what our customers want. There is nothing worse than to have a guy walk into the shop and say 'Have you got so and so?' and you say 'No, because it has been outlawed now and we abide by the law so we take it off', but he says: 'But I can get it up at Joe Blow's garage'. That is happening more and more frequently now. (NSWVRA Evidence, p. 605)

9.46 Just the sheer number and variety of shops and outlets handling videos makes any sort of policing extremely difficult. The Tasmanian Government highlighted the difficulty with regard to the introduction of their legislation in 1985:

> ... licensing would be useful to enable us to know who has got them. One of the problems which we have in this State is that we do not know where they are. If you go up the main road to Glenorchy they are all along the main road. That is not so much a problem, but then

> there are little corner stores all over the place and we have no idea where they are. When we were introducing this legislation, we were not able to advise all those small outlets what they were. We would have to write to them and say: 'This is what you have to do'. We were not able to do that. All we could do was to deal with a videotape association of Tasmania, which only represents a small number of people, and that is all we were able to do. The other people, especially those in the north of the State, have never had any involvement with us at all. I do not know whether they know what is going on. (Evidence, p. 2458)

THE 'ADULT' INDUSTRY

9.47 The 'adult' industry comprises small to medium sized individual operations which are in direct competition with each other.

9.48 The companies which are now the most prominent in the distribution of 'adult' video material have been involved for some years in the print side of the market - importation, printing and distribution of books and magazine. (AVIA Evidence, p. 769)

9.49 In September 1984 the Adult Video Industry Association of Australia (AVIA), was formed to 'represent the interests of importers, distributors and others involved in the marketing of adult videos classified X and R by the Commonwealth Film Censor ...'. (Evidence, p. 764)

9.50 Companies involved in the 'adult' video industry which are represented by AVIA include wholesalers, retailers, tape duplication plant operators, printers, and tape suppliers. The membership figure '... is around 300 at the moment, with the majority of them being made up of actual video shops nationally'. (Evidence, p. 984)

9.51 Mr John Lark, Spokesperson for AVIA, informed the Committee that 'the majority of the people who are associated with AVIA would represent most of the X-rated importers, distributors, or sellers or direct mailers as such. There are a number of individual companies that have not joined, et cetera. They consider it their right to run their own race as such, which is their prerogative, of course. But we would represent the majority of the X-rated industry, I am quite sure.' (Evidence, p. 985).

9.52 AVIA, in their submission to the Committee estimated that the 'adult' sector of the whole video industry is worth between $20-$25 million in annual turnover. AVIA calculated this figure 'on the generally accepted estimate that adult video depicting explicit sexual activity make up between 15% and 25% of total video sold on the Australian market'. (Evidence, p. 772) In later evidence AVIA advised that these figures had been estimated before X-rated material had been banned in all the States. The Committee was told by a major Northern Territory retailer that X-rated videos constituted 11% of hiring rates two years ago but hirings are currently running at 5%. The retailer attributed this fall in hirings to a decrease in interest by consumers once the novelty factor had worn off.

9.53 Employment in the 'adult' industry, and as a direct result of its existence, is estimated by AVIA to be around 1750 to 2000 men and women. 'These people are employed as wholesale and retail sales people, clerks and administration staff, couriers, packers, tape duplicators and slick printers'. (Evidence, p. 773)

9.54 Direct employment with regard to Association members is estimated at 200 to 300 people and most of them would be located in the ACT. (Evidence, p. 987)

9.55 The high proportion of Association members in the ACT reflects the establishment within the Territory of 'adult' video mail order businesses which service consumers in the States where the sale/hire of X-rated material is banned.

ILLEGAL OPERATORS

9.56 The film industry had not anticipated the consumer demand for the VCR in the late 1970s and therefore very few pre-recorded tapes were available. This provided an ideal opportunity for video thieves to become established in what was to become a lucrative market.

9.57 Brian Norris in InterMedia says:

> The key to the success of the illegal operator was, and still is, his access either to the film print or to the master video tape which has been made from the print. The most common means of obtaining the print is either by stealing it from a cinema or by bribing a cinema projectionist to lend the print overnight. (Brian Norris, 'A Thieves' Bonanza of a Million Pounds a Year', InterMedia, op. cit. p. 25)

9.58 The duplicated video cassettes are then sold to video retailers for renting to the consumer.

9.59 The Australasian Film and Video Security Office informed the Committee of an instance in the United States:

> ... where a projectionist was offered $2,000. As he finished the reel he simply put the reel down near the door for the pirate to pick up. In the back lane he had a panel van which had sophisticated enough equipment to transfer that from film to video....Now that is one we know of. (Evidence, p. 1956)

9.60 Video pirates are worldwide. It is an international industry which knows no national borders. The international acceptance of VCRs and the portability of video cassettes provide a lucrative market for pirates.

9.61 The vast profits to be reaped from piracy have seen the illegal operators set up operations on a significant scale. Gone are the days when video theft was only a cottage industry - 'back-to-back' copies made by retailers, copies made at home for private sale. The illegal operator today:

> ... has a bank of several hundred VCRs which are duplicating illegal copies twenty-four hours a day, seven days a week. He will have his own representatives who sell and deliver the tapes to retailers, or, indeed, anyone else who will pay without invoice or wanting to know their origin. (Brian Norris, InterMedia, op. cit. p. 25)

9.62 The problem of the unauthorised use of feature films is not a new one for the film industry, which has been dealing with the theft of prints for over sixty years. (ibid. p. 25) The Motion Picture Association of America (MPAA) is funding a program to combat film and videotape piracy on a world-wide basis. Australia is not isolated from this international piracy. In fact:

> We are faced with the problem now of having excellent counterfeit products in Australia. I recently attended an international anti-piracy meeting in London and much to my dismay, I found that we Australians are not only the best confidence men in the world, but apparently we are the best counterfeiters in the world. Our counterfeit product was by far the best presented. When I say 'best' I mean the hardest to pick. We have counterfeit product now which we have to take to experts to find out if it is counterfeit because it is so good. (AFVSO Evidence, p. 1938)

9.63 The illegal operator does not pay royalties to the copyright owner and sales taxes are not paid on the tape. To estimate the revenue lost to State and Federal Government through piracy is very difficult:

> If we say that piracy is at a level in excess of 20 per cent, we are probably talking about $35m or $36m that has been lost to the industry. Then we have to try to work out the taxes and so forth that should have been paid on that....Also, there is the employment situation - how many people could be employed if the industry was getting that much. (AFVSO Evidence, p. 1950)

9.64 The figure of 20 per cent could be a conservative one:

> Because of the sophisticated counterfeit product that we have on the market at the moment, it [the product] could be everywhere and we would not know. (AFVSO Evidence, p. 1956)

9.65 According to the AFVSO the distributors in the pornographic trade are not as well organised as the legitimate trade. (Evidence, p. 1941) As mentioned in paragraph 9.23, there have been claims and counter claims as to the ownership of copyright of pornographic material.

9.66 AFVSO has found people are going up and down the country with pirated 'pornographic' tapes as well as other pirated tapes. According to Australasian Film and Video Security Office the trade in second-hand tapes, including 'pornographic' material, is enormous and this apparently makes it difficult for them to pursue the copyright aspects and piracy of tapes. In recent times video distributors have taken steps to make the counterfeiters job more difficult through the use of such devices as customised cassettes, reflective security stickers, coloured dustcover boxes, etc. According to AFVSO, the result has been that the pirates have moved on to products not bearing these safeguards or have dealt with indifferent proprietors.

9.67 The Attorney-General, the Hon. Lionel Bowen, announced on 28 January 1986 that the Government had approved the introduction of several amendments to the Copyright Act 1968, in particular to strengthen anti-piracy provisions. The Copyright Amendment Bill 1986 received Royal Assent on 24 June 1986. The amendments:

- facilitated proof of ownership of copyright and, in prosecutions, proof of the defendant's knowledge that he was dealing in pirate copies;
- created new offences; and
- increased and provided additional penalties. [Penalties have been increased from $10 000 to a new level of $250 000. A pirate is now liable to a fine of $1500 for each of the offences of possessing, making, selling, hiring, etc for one copy of one title. This is multiplied with each copy. (VIDA press release 13 August 1986)]

In other areas the Act was amended to:

- extend the Act expressly to satellite broadcasts;
- increase access to audiovisual materials for the handicapped, libraries and archives;
- permit "fair dealing" in audiovisual materials for purposes of criticism or review, and reporting news; and
- apply Federal Court costs rules to the Copyright Tribunal.

Mr Bowen said that:

> ... because home taping had raised complex issues (including tax policy questions) it would be the subject of further consultations and consideration by Government, along with consideration of recent suggestions that there should be a rental right for copyright owners of records and movies.

> Further work will also be done in the difficult area of educational use of audiovisual materials.

ALLEGATIONS OF CRIMINAL INVOLVEMENT

9.68 Mr Bob Bottom, author of the book Connections II suggested to the Committee that there may be links between some people 'involved in the pornographic films' in Australia and organised crime figures who are also 'principals of the pornography trade' in the United States. (*Evidence, pp. 3007* and 3010). In particular he claimed some people who are involved in the distribution business in Canberra have such associations:

> ...the problem that has arisen that has made the current system attractive for the Americans is that they have a product, so to speak, to get rid of. More particularly, the operations in the Australian Capital Territory are using this as a base, in conjunction with the Americans, to export, so to speak, by mail order and the like. (Evidence, p. 3011)

and:

> ...I think the basis of my appearance here and the fact that you do have these sorts of connections with the United States is that, if there is a situation here different from other [Australian] States which is attractive to people like that outside, they are not necessarily going to run it legally anyway. They will certainly take the law to the limit, and in compliance with that they will go further. In fact, they will break the law. (Evidence, p. 3013)

9.69 Evidence about Mr Bottom's charge in relation to any interest on the part of specified US organised crime figures in Canberra has not been substantiated by the Australian Federal Police:

> My understanding is that there is no evidence to suggest that - that is, regarding the types of characters alleged to be coming to this country and to be involved in this type of

business. There is nothing to support that. (AFP Evidence, p. 3182)

9.70 Businesses in Canberra do buy products from American companies and some of the American production and distribution companies have links with organised crime figures.

9.71 The former Chief Censor, Mrs Janet Strickland told the Senate Select Committee in December 1984 that:

> We were told in Canada by the Ontario police that the Mafia owned and controlled the production and distribution houses for most of the hard core porn that was produced in America. (SSCVM Evidence, p. 169)

9.72 The Committee has received some claims that criminals and organised crime are a part of the world-wide piracy business. It has been estimated that the movie business currently loses one billion dollars each year as a result of film and video piracy:

> If we add to this the piracy of pornographic films, it is understandable why organised crime is part of this very lucrative illegal business. (AFVSO Evidence, p. 1932)

9.73 Australia, according to VIDA, has been subjected to the infiltration of overseas piracy operations concomitant with other operations such as drugs. The fringe operators, 'are basically, in lots of cases, criminal organisations. They are involved with all kinds of activities.' (Evidence, p. 505)

9.74 The Committee believes that if X-rated material is made illegal its sale/hire will go underground. Mrs Janet Strickland told the Senate Select Committee that:

> From the material which is referred to us by the New South Wales Police and by Customs it is fairly evident that already there is quite an amount of criminal involvement in the importation and circulation of hard core porn

> in those States where it is illegal.' (SSCVM evidence, p. 165)

SUMMARY

9.75 The law finds it difficult to keep pace with technological development and Australia was no exception in its unpreparedness for the birth of a whole new consumer industry. Responses to the increasing video market saw the rapid development of video cassette outlets. Such outlets virtually sprang up overnight with owners hoping to capitalise on the rising wave of VCR ownership.

9.76 The growth in VCR ownership has slowed with growth levels being significantly lower in 1986 than forecast. The industry has, especially in the last year, begun to rationalise with mergers taking place among distributors. It is becoming evident there is a levelling and coming of age in the industry particularly at the retail level.

9.77 New marketing techniques are being embarked upon. The sell-through packages (videos sold directly to the public by the distributor) are not the province of one distributor. Although CEL paved the way in sell-through in this country and was much criticised, other companies are embarking on sell-through to diversify their marketing strategies.

9.78 Distributors and retailers are concerned to preserve the video market and to ensure consistency and uniformity in marketing requirements throughout Australia. The benefit of uniform requirements would enable what is now a national industry, both at a wholesale and retail level, to provide a consumer product which satisfies a common legal prescription rather than the varying legal prescriptions that apply at present.

CHAPTER 10

IMPACT OF NEW TECHNOLOGY

RESPONSES TO NEW TECHNOLOGY

10.1 Whenever new media technology arises, like television or video, a proportion of the population invariably believes that the new technological development will change the whole fabric of society for the worst. Radio and television in their early years were not immune from such beliefs. Negative reaction by some people to the introduction of radio and television was based on fear of the unknown and was expressed in terms of the harm that might be done by listening to radio and watching television.

10.2 Cinema, when it was the new form of entertainment, did not escape the dire notes of warning about the effects it might have on the populace. Dr Noble in his evidence cited studies done by the Payne Foundation in the United States in the 1920s and 1930s which looked at the harmful effects of the new media of the cinema. He went on to say:

> Similar studies were done when radio and television first became a mass media. We are now seeing a recurrence of that pattern. Almost identical questions are being asked. (Evidence, p. 2218)

Undoubtedly there also were many who foresaw terrible effects on society 'as we know it' when printing became cheap and popular.

OTHER MEDIA AND FORMS OF ENTERTAINMENT

10.3 The VCR is not the only new technological development to use video material. There are also other new communication technologies which have the potential to carry video material into the home and into public places such as hotels, shops and offices. Technological developments such as cable television (CTV) and radiated subscription television (RSTV) are already in operation on a commercial basis overseas. These media have allowed for direct and discrete access to video entertainment services, not previously available via the traditional over-the-air television industry and have encompassed a wide range of programing including 'adult-oriented' material. (Evidence, p. 1964)

(a) CABLE AND RADIATED SUBSCRIPTION TELEVISION

10.4 Both cable and radiated subscription television provide service on a subscriber basis. In the case of radiated subscription television, terrestial broadcasting and direct satellite broadcasting methods are used to transmit the television signal. Users of the system subscribe to the service by leasing a decoder which enables viewing of the original signal. (Evidence, p. 1968) Cable television programs are delivered by cable and a range of services are carried by the network. The services provided by the cable network are usually available upon payment of a connection fee. Some services on the network can only be accessed by paying additional fees.

10.5 In the US the two technologies compete with the ordinary television networks by 'carrying high-appeal programming, such as recently released movies usually in the less censored form as shown in cinemas'. (Evidence, p. 1968)

10.6 Although cable programs are not available to the general public in Australia, limited business video for certain customers

is provided via Telecom's cable distribution systems (CDS). The opportunity for home entertainment via cable television will no doubt come with the use of new optical fibres in cable transmission. Similar services to those available on MDS (discussed in (b)) can be offered using a cable distribution system based on copper cable or optical fibres. The Department of Communications noted in its submission that 'Telecom is deferring action on such services until MDS policy is clarified'. (Evidence, p. 1970)

(b) MULTIPOINT DISTRIBUTION SERVICES

10.7 The Committee received evidence from the Department of Communications that 'applications and expressions of interest have been received for permission to offer a range of services via Multipoint Distribution Service (MDS)' - including news, sporting results, real estate information, tourist information, radio interpreter services and video entertainment services for offices, shops, hotels, motels, apartment blocks, schools, libraries and retirement villages. (Evidence, p. 1970) This communication medium uses an omni-directional microwave transmitter to provide a line-of-sight signal over-the-air to multiple receiving points within a radius of approximately 30 kilometres. (Evidence, p. 1969) The subscriber requires special reception equipment to pick up the signal. 'MDS technology, which can carry data, audio and video material, is used extensively in the US to deliver educational information and entertainment services to offices, shops, hotels, schools and homes, usually for a monthly subscription'. MDS licences have been issued in Australia, under the Radiocommunications Act 1983, to AAP-Reuters Communications Pty Ltd for data based services in five capital cities and to Corporate Data Service Pty Ltd in Melbourne, Sydney and Brisbane for real estate video services. (Evidence, p. 1970 and Submission No. 626c, Attachment C)

(c) SATELLITE

10.8 Direct broadcasting by satellite (DBS) 'allows for the transmission of signals from one terrestrial source (an uplink) to the satellite where the signals are returned to earth for reception by satellite dishes in the coverage area'. (Evidence, p. 1967) DBS enables radio and television programs to be beamed from a central location to private homes (see paragraph 10.12) without the intervention of traditional terrestrial broadcasting or telecommunications systems.

10.9 In the US and Canada limited forms of DBS systems are in operation providing 'high appeal programming, such as recent release movies, without advertising and in "uncut" form not normally used on [network] television, so that they can compete with over-the-air-services'. (Evidence, p. 1968)

10.10 The Committee was informed by the Department of Communications that Australia's communications satellite system, owned and operated by Aussat Pty Ltd., commenced operations in late 1985:

> It is providing ABC radio and network television services to areas previously not receiving them, using a limited form of DBS. The first of four Remote Commercial Television Services (RCTS) commenced on 18 October 1986 serving Western Australia. RCTS licences to serve Central Australia, North-East Australia and South-East Australia have been awarded and the operators are expected to commence providing a service from mid-1987. (Submission No. 626c, p. 2)

10.11 Concern was expressed by the Committee at the possibility of overseas programs which do not meet Australia's censorship requirements, being picked up in Australia by viewers. According to the Department of Communications it is technologically possible for programs to be beamed to Australia and 'if the transmission method used was one of the world standards - the American NTSC standard, the European and

Australian standard PAL or SECAM, the French system - then it is relatively simple to buy a receiver and receive it [the transmission] with a dish costing around $3500 to $4000.' (Evidence, p. 1985)

(d) VIDEO AND AUDIO ENTERTAINMENT AND INFORMATION SERVICES (VAEIS)

10.12 The Department of Communications sees the need for new video entertainment services to complement existing broadcast services and to have the ability to attract sufficient audiences to provide a viable return on investments. Further, it would be necessary for the programing to be sufficiently attractive to households and other groups or organisations to subscribe to the service - preferably on a long term basis. (Evidence, p. 1970)

10.13 In line with this view the Government announced, on 2 September 1986, the introduction of new Video and Audio Entertainment and Information Services (VAEIS) to non-domestic environments such as hotels, licensed clubs and TABs. The then Minister for Communications, Hon Michael Duffy, MP said he was glad that these innovative services could now be provided by entrepreneurs around Australia. He commented 'there has been plenty of interest in these new services and there should be valuable spin-offs in the form of investment and program production'. (Press Release No. 89/86 of 2 September 1986)

10.14 This new service is being directed at closed-user groups rather than the general public to which traditional broadcasting directs its services. In other words, VAEIS are transmissions of programs by telecommunications technology on a point to multi-point basis to identified categories of non-domestic environments. VAEIS may be funded by advertising revenue and/or charge for service and/or lease of equipment.

10.15 Video and Audio Entertainment and Information Services can be delivered by one or a combination of several technologies

such as AUSSAT satellites, the Telecom network and terrestrial radiocommunications transmitters including Multipoint Distribution Systems (MDS).

10.16 VAEIS is not at present governed by legislation but by a self-regulatory code of practice based on guidelines which service providers are to observe under an agreement with the Commonwealth. The Minister has warned that should VAEIS providers fail to honour the agreement and the self-regulatory regime proves inadequate, then new legislation could be introduced to regulate these services. (Minister for Communications, Press Release No. 89/86, p. 2)

10.17 The Department of Communications clearly stated to the Committee in discussing new technologies that:

> ... the Minister or some licensing authority would always retain ultimate control over such technologies as they would need to be licensed under some broadcasting or radiocommunications legislation. Moreover, where there is any doubt as to the likely conformity of programming with the censorship standards endorsed by the Federal Government, licences could be withheld until appropriate State legislation is in place. (Evidence, p. 1971)

The Department went on to say that where the film censorship approach to material provided via these new technologies is not adequate, the Radiocommunications Act, section 25(1)(d) provides a basis for dealing with undesirable material not covered by censorship. 'For services licensed under the Broadcasting Act, section 118, a licensee shall not broadcast or televise matter which is "blasphemous, indecent or obscene"'. (Evidence, p. 1971 and Submission No. 626c, p. 2) In summing up, the Department not unexpectedly, considering the history of the introduction of black and white and later colour television in Australia, said:

> Because of the immense potential for benefit as well as for harm of the new technologies, it is desirable that new transmission and delivery systems should be widely discussed and debated before decisions are taken to introduce them. (Evidence, p. 1972)

The guidelines for VAEIS providers were outlined in a subsequent statement to Parliament by the Minister for Communications in October 1986. According to the Minister (Press Release 106/86 of 17 October 1986) the guidelines refer to relevant broadcasting standards of the Australian Broadcasting Tribunal (ABT) as the basis of the content and advertising requirements. VAEIS providers are also subject to relevant Commonwealth, State and Territory legislation in particular concerning copyright, gaming and betting, defamation, obscenity and blasphemy, classification and exhibition of films and video program material, trade practices, privacy and consumer protection.

10.18 Under the guideline provisions films or other material that is classified R or X cannot be carried under the authority of a VAEIS licence or contract. Authorisation of VAEIS is under the Radiocommunications Act 1983 and/or the Telecommunications Act 1975, depending on the method of delivery.

(e) PAY TELEVISION (PAY-TV)

10.19 The Government announced on 2 September 1986 that the introduction of Pay-TV services to the general public will not be permitted for at least four years.

10.20 A review of Pay-TV will be undertaken during the moratorium and this will take into account, amongst other things, developments in optical fibre and communications infrastructure and the second generation of AUSSAT satellites.

ANCILLARY DEVELOPMENTS

10.21 Technological advances are not confined to the new communication mediums alone. One advance is the development of a piece of equipment which increases the utility of the VCR - the video camera.

(a) VIDEO CAMERA

10.22 The development of the video camera has provided the consumer with greater flexibility in home film making. Video has superseded the home movie camera. Video cameras are increasing in popularity for the recording of a variety of events. An advantage of the video recorded film is the instant replay capacity. The VCR and the video camera make it possible for anyone to create their own tapes for private use. If people choose to make tapes of sexual acts between consenting adults in the home then it is a privacy matter as distinct from a censorship matter. It is hard to see in such instances how any censorship law could be applied.

(b) TECHNICAL SOLUTIONS TO MONITORING CHILDREN'S VIEWING

10.23 One of the realities of technological advances is the development of solutions to the problems that are supposedly caused by the technology. Additional technology has been developed to enhance parental control over the access of their children to video material.

10.24 A video lock device, invented in the UK is available on the market for parents concerned about their children using the VCR. This key-controlled device prevents the insertion of a video into the VCR. The viewing by minors of certain programs on RSTV or CTV also can be controlled by restricting access to the service by use of a key or a 'turned on' request by the owner or lessee of the receiver for particular programs. In the US the Cable Communications Policy Act requires that every cable

operator provide, upon request, a 'lock-box' capable of restricting access to any channels which parents consider unsuitable for their children.

10.25 Another device, which has been developed in Australia, is a CV Guide or Children's Viewing Guide (Submission No. 689, Mr Dennis Wild, SA). This technical device is designed to assist parents who cannot fully monitor their child's viewing as they would wish. It is possible for the CV Guide to monitor continuously television and video material provided there is co-operation from the respective industries. The device is designed to utilise a signal system which would provide program classification identification. The classification codes of programs would be sent out with the television signals or in the case of video, encoded on the tape. The CV Guide would interpret these signals and either block or unblock the program depending on the classification choice of the user.

SUMMARY

10.26 Although there is concern in the community about the access of children to what is seen as undesirable video material, especially explicit sexual depictions, there is as much or even greater concern about the everyday exposure of children to violent television programs and news reports.

10.27 Through Australia's censorship laws material depicting child pornography, bestiality, detailed and gratuitous depictions of acts of considerable violence or cruelty, explicit and gratuitous depictions of sexual violence against non-consenting persons is banned. The importation of such material is illegal and any such material produced in Australia would be refused a classification.

10.28 It is evident to the Committee that many believe that such material is still being classified X in this country and

that video technology has contributed to its availability to a wider viewing audience. It should be noted that movie camera technology also provided home entertainment and sexually explicit material was available for viewing on home projectors. Video, ingeniously capitalises on existing ownership of television receivers and hence its wide appeal. Such material has become the object of greater public awareness with the introduction of video and with the material now legally available in the ACT and NT.

10.29 With the arrival of video there has been a shift in the medium the material is presented in - from movie film to video film. Such medium shifts, which are not confined to a specific category of film, will occur in the future as new presentation formats for entertainment are developed.

10.30 The Committee believes it is imperative for Governments to ensure that new communication technologies comply with Commonwealth, State and Territory laws and that the material transmitted meet existing program standards and censorship requirements.

CHAPTER 11

AUSTRALIAN FILM/VIDEO PRODUCTION

11.1 The Committee received little evidence on the question of film production in Australia and whether there is a 'home-grown' industry producing films of a sexually explicit nature.

11.2 The Committee, under its Terms of Reference (k) was required to examine:

> (k) whether films which merit a classification above 'R' are being produced in Australia and if so whether Australian men and women are adequately protected by existing law from pressure to act in such films.

11.3 With so very little information forthcoming in relation to production of material above R, it is difficult to comment accurately on the level of such production in Australia.

11.4 What did become apparent to the Committee was the lack of public knowledge about local production of films which would attract an X rating. Mr Michael Crosby, Federal Secretary of Actors Equity of Australia, which represents actors and actresses, told the Committee that:

> ... to our knowledge, none of our members are involved in the production of programs which would merit more than an R certificate. I should say that it is not absolutely certain that I would know whether they were involved in that kind of production and that it certainly could happen. (Evidence, p. 2348)

He said moreover that the level of protection which Actors Equity provides to its members, including those involved in the production of R-rated material, is deficient. He pointed out to the Committee that:

> Australian performers have no copyright protection at all. They have no economic rights over their performances. The only rights they have are what the union can get for them. They have to go on strike to get any repeat or residual payments. (Evidence, p. 2349)

11.5 The Chairman asked if it depends on the contract that is signed and Mr Crosby replied:

> Yes, and indeed even if the union has a collective agreement which provides for repeat and residual payments, if the production company employing an actor has not signed that agreement, and if that agreement is not incorporated into the artist's personal contract, then our provisions just do not apply to that. But from the point of view of this inquiry, we do not have any protection of what are known as moral rights - 'moral' not in the sense of morality but in the sense of non-economic rights. It is a French expression. That means that you can suffer the unauthorised exploitation of your work in forms that you have not authorised. So, for example, the improper use of a double is an example of a breach of a moral right. (Evidence, p. 2349)

11.6 The improper use of a double can occur when a performer says he/she will not appear in a particular nude scene and permission is not sought from the performer to use a double. The body of a double is shown so that it looks as if the performer is appearing nude in the scene. This improper use has happened on a least one occasion and Mr Crosby commented that 'there are some profound possibilities made evident by the possibility of

doubling' (Evidence, p. 2348). As an example Mr Crosby pointed to the case of an actor known to him. He said when this actor was young:

> ... he was not given a contract that specified nudity and he had a love scene. There were two cuts made of it, one an extremely explicit cut and the other just barely an R rated cut. He then had a success in 'The Sullivans'. He happened to be going past one of these skin flick joints and there his name was, up in lights - so and so appearing in what would certainly be an X rated production. He has no redress; he has no rights over that producer. (Evidence, p. 2350)

11.7 The Film Censorship Board in its submission to the Senate Select Committee advised that their records, at that time, showed only two Australian-made films had been given a video classification above R. The Board also noted that no Australian-made films had been refused classification.

11.8 There are now four Australian-made films which have been given an X classification according to the Board's records and one which was re-submitted with cuts and given an R classification. Four of the films, including the re-submitted film, were given classification certificates before the December 1984 guideline change and the fifth film was given its X classification certificate in December 1984. There have been no registrations since.

11.9 According to the Adult Video Industry Association of Australia (AVIA) there are no adult films or videos being 'produced in Australia on a commercial basis involving the employment of Australian directors, writers, technicians, actors or actresses at this time'. To their knowledge none are planned. (Evidence, p. 771) AVIA maintain:

> It is conventional industry wisdom that it is more economical to import American or European adult films for Australian consumption because of the prohibitive cost, relatively small market and lack of experience in this cinematographic area. (Evidence, p. 771)

However they said it is:

> ... reasonable to speculate, given the vast number of blank tapes sold each year in Australia, and the wide ownership and availability of portable video cameras and VCRs, that amateur erotic videos made for private consumption by men and women exist to a considerable extent. (Evidence, p. 771)

11.10 Mr George Somssich and Mrs Camille Somssich, who appeared before the Committee as people interested in the subject of the inquiry, said:

> Attempts were made in the past to produce pornographic films in Australia. These were all "shorties" with only the barest of story-line, restricted to the portrayal of sexual organs and sexual action. They were all of low technical quality, done with 8 mm cine equipment, produced under the most primitive conditions, often in suburban backyards and sheds. Still, they found a market. They were sold in sex-shops, exhibited in small unlicensed theaterettes. They were hired out to "buck parties", clubs for "private showing", etc. We know of one particular person who owned a large collection of these movies and hired them out. (Evidence, p. 718) (emphasis theirs)

The Somssichs:

> ... believe that present legislation in Australia (criminal law, common law, antidiscrimination legislation, the trade practices act, etc protects both men and women adequately from pressure (except financial pressure due to lack of income from other acting venues) in connection with the possible local production of ER material. (Evidence, pp. 718-719) (emphasis theirs)

11.11 No evidence was received by the Committee that Australian actors or actresses had been coerced into performing in sexually explicit film productions.

11.12 The Australian Film Institute in its submission maintains it is impossible to quantify the extent of production of films above R in Australia as it is contrary to current legislation. However it does maintain it is possible to make an educated guess and to say that such films are being produced. The Institute went on to argue:

> Because of the uncertainty of the situation one can deduce the following:
>
> (i) No evidence exists of actors or actresses in such films being pressured to participate in them. Again, an educated guess would lead to the conclusion that because of the illegal nature of the activity, the rewards associated with participating far exceed the monetary value of an artistic merit.
>
> (ii) Because productions of this type are illegal, it is reasonable to assume that criminal elements in the community have control of this activity and accordingly it is not possible to comment on the extent of coercion that may be used against participants, particularly children.
>
> Nonetheless, people who have been coerced into participating in such productions should have legal redress against the makers, sellers, exhibitors or distributors, in the form of damages. This is not in the same category as censorship. (Submission No. 686, pp. 12-13)

11.13 The Australian Film and Television School took the same position on legal redress as the Australian Film Institute. The School maintains that:

4. If adults or children are coerced into performing in a violent or pornographic film or video, they should have legal redress in the form of action against the makers, sellers, exhibitors or distributors in the form of damages and/or withdrawal of the material from public exhibition. (Submission No. 687, p. 2)

11.14 Although the Committee did not receive any evidence of coercion, the situation of the actor needs to be understood as Mr Crosby pointed out. He said:

> An actor suffers a ridiculous level of unemployment. There is huge pressure on them. At any time, no matter what boom in the television industry there is, and there is a boom now, there is a huge oversupply of actors and there is, therefore, pressure on the actor to take whatever work he can get. If somebody says 'We want you to do a nude scene', if that is the difference between doing the job and not doing it the pressure is incredible for an actor to sign that contract with the nude scene in it. Indeed, the individual actor would have no chance of getting this level of protection in there. The only way the actor is going to get that in the standard contract is if the union says: 'All right; none of our members will work for you until you agree to that'. That is negotiation at the end of a gun barrel but it is the only way you can redress that imbalance. The position is particularly serious for the young actor. She might be first year out of drama school; she has no work prospects and somebody comes along and says: 'Come on, do this'. The money sounds wonderful, we are talking about $1,000 a week being a low payment. You could find that the performer is out of work, hungry, wants $1,000 a week and will suffer for the rest of her career from the fact that her first movie was 'Fantasm Comes Again'. (Evidence, pp. 2354-2355)

DISCUSSION

11.15 Very few films which merit a classification above R have apparently been produced in Australia. No evidence was presented to the Committee which suggested there were Australian film producers regularly producing such films for public exhibition.

11.16 Possibly films of a sexually explicit nature are being made privately. As to the level of production the Committee is unable to comment accurately. The technological advantages of portable equipment like the video camera make 'home productions' relatively easy.

11.17 In evidence, there was uncertainty about the term 'pressure' - are Australian men and women adequately protected by existing law from pressure to act in above R films? There is, as Actors Equity points out, the reality of the film industry, in which economic pressure is part and parcel of the industry. Something more than simple economic pressure would be required for proof under the legal doctrines of duress, undue influence and deceitful representations.

11.18 Consent to do a performance must be genuine. Clearly it is not if there is any threat of force or coercion. Existing State legislation does cover non-consensual dealings.

11.19 Under the Constitution - s.51(xxxv) - Federal legislation is limited to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. Within State legislation there are avenues for varying or declaring void a contract. For instance, in New South Wales, section 88F of the Industrial Act (N.S.W.) 1940 'enables the Industrial Commission of that State to declare any contract void, either totally or in part, on the ground that it is unfair, harsh or unconscionable or is against the public interest as long as the contract is one by which a person

"performs a work in any industry".' (Diana Sharpe, The Performing Artist and the Law, The Law Book Co. Ltd, Sydney 1985, p. 21) 'The Commission sees its jurisdiction as extending to situations "whenever one party to a transaction is at a special disadvantage in dealing with the other party because illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affect his ability to conserve his own interests"'. (ibid. p. 21)

CHAPTER 12

ADULT CINEMAS

12.1 The Committee, is required under its Terms of Reference (j), to examine:

> whether cinemas should be permitted to screen for public exhibition material classified above 'R', subject to prohibition from entry of persons under the age of 18 years.

THE CURRENT POSITION

12.2 Cinema audiences are presently controlled in what they can watch. Films with a classification beyond R are not allowed to be shown in cinemas and cinemas are operating illegally if they show a film which has not received a classification.

12.3 At the 6 April 1984 meeting of Commonwealth/State Ministers with responsibility for Commonwealth/State censorship, a proposal to permit cinemas to screen films with an X classification was not agreed to.

12.4 The law as it stands is not even handed with regard to the position of cinemas screening material classified above R. Material above R is available freely on video tape and is allowed legally for sale/hire in the Northern Territory and the ACT. However cinemas cannot legally screen such material even though there is no legal restriction on persons above the age of 18 seeing X-rated material.

INDUSTRY ARGUMENTS PRESENTED ON THE OPTION OF 'ABOVE R' SCREENING IN CINEMAS

12.5 The Cinema Action Group (a body of several independent Australian cinema proprietors who have an interest in advancing the cause of independent cinema generally) claims the cinema industry is restrictive in nature and not a real free enterprise system. They complain about the placement of a further restriction on their trade with the imposition of the R classification ceiling. Although a substantial number of cinemas may not wish to show X-rated films they believe that those who wish to show such films should not be prevented from doing so.

12.6 The majority of support for above R in cinemas, according to the Cinema Exhibitors' Association, comes from the independent cinema owners and very few of these exhibitors:

> ... would be interested in showing X rated material themselves, but cannot understand any logic in allowing an industry which in commercial terms is less than five years old in having a higher censorship classification, particularly when cinema is the only safe way of ensuring total protection to minors. (Evidence, p. 1684)

12.7 The Cinema Action Group says:

> It would be inconceivable that a Government grant a licence to a Hotel [sic] on one street corner allowing them to sell normal alcoholic beverages whilst restricting the hotel on the opposite corner to sell only soft drinks. But this is exactly what has happened between Video tape and the Cinema, particularly those cinemas catering to an Adult market. (Evidence, p. 1689)

12.8 The independent cinema proprietor owners believe that the R ceiling is both inequitable and discriminatory.

12.9 In arguments why cinemas should be allowed to exhibit above R, a number of aspects are raised by the Cinema Action Group. They claim that:

- consideration should be given to the number of Australians already patronising adult style cinemas. The Cinema Action Group claims over half a million admissions were recorded in 1984 in Melbourne alone.
- old age and invalid pensioners and the unemployed have been discriminated against as cinema has not been able to present them with material which is freely available on video tape. The Group says that 25% of adult cinema audiences are admitted on a concessional basis and these include old age and invalid pensioners and the unemployed. They claim that the present position discriminates against them as these citizens, due to their financial status, are not in a position to buy expensive video equipment.
- tourists make up 15% of all admittances. As tourists do not have access to video equipment on their travels, the Group sees cinemas as the provider of 'safe entertainment' whilst away from home.
- a prohibition of X-rated material would not eliminate the material but will have the result of introducing the criminal element to another source of revenue.
- cinema is responsive to changes in public standards. Video is duplicated and reduplicated but with cinema relying on celluloid film this practice is not easily achieved. Therefore, the Group claim, 'in ten years hence if public standards tend to go in another direction, the cinema is compelled to follow these changes by the change in attitude perceived by the censor of the day. However, the videos of today will be readily available in ten years time irrespective of changes in public attitude'. (Evidence, p. 1700)

12.10 Of major concern to a section of the community is the access of children to material beyond the R category. Independent cinema operators claim they are in a position to restrict the

entrance of patrons to those over eighteen years. They believe they currently control their audiences to over eighteen years with the R classified films and argue that the access of minors to unsuitable material is more easily restricted in cinemas.

12.11 In its recommendations to the Committee, the Cinema Action Group recommends a change in the law so that it is legal for cinemas to exhibit above R classified movies, provided that:

a) The cinema has a secure screen, i.e. the screen is not visible to the public except by paid admittance through the ticket box. Therefore, by this description Drive-In theatres would not be eligible.

b) The cinema displays the censorship classification on all advertising material. (Evidence, p. 1704)

12.12 An argument against adult cinemas comes from an association within the cinema industry. The Motion Picture Distributors Association of Australia Limited (MPDA) is strongly opposed to any proposal that cinemas be permitted to screen material classified above R.

12.13 MPDA claims:

> Film industry economics have resulted in the development of multi-theatre cinema complexes and it would be clearly inappropriate for one such theatre in a complex to be designated 'X-rated' alongside other theatres showing films of lesser classification.

They believe:

> Such a scheme would raise numerous problems concerning the advertising material, access of minors and the inevitable problem of patrons for 'X' movies mixing with young children attending 'G' rated movies. (Submission No. 643, p. 5)

The MPDA represent the large motion picture distributors: multi-theatre complexes have been developed for the screening of their films. Naturally the motion picture distributors have an interest in protecting their investment and are opposed to independent cinemas screening films classified beyond R. The independent cinema operators claim that they need to have the flexibility to screen such material in order to maintain their economic viability in the face of large and multi-theatre cinema complexes.

ATTITUDES TO ADULT CINEMAS

12.14 The Film Censorship Board, in its submission to the Senate Select Committee:

> ... is of the opinion that if a classification above "R" is allowed for videotapes for sale/hire, cinemas should be permitted to screen for public exhibition material classified above "R" subject to prohibition from entry of persons under the age of 18 years, providing that (i) such material is only permitted to be exhibited in specially designated or licensed premises and
> (ii) that the criteria for the classification of such material are the same as those pertaining to videotapes for sale/hire. (SSCVM Evidence, p. 106)

12.15 The Board also gave reasons for its belief that cinemas should be able to screen for public exhibition material classified above R. Their reasons are as follows:

- technological advances in film display hardware (such as large screen video units) have made the distinction between "public" and "private" display/exhibition of films (including videotapes), increasingly difficult to maintain.

- to allow a classification above "R" for videotapes for sale/hire but not to allow it for cinema films (i) disadvantages those adult members of the public who

want to see such material but who cannot afford the cost of expensive video recording equipment and (ii) gives the video industry an unfair trading advantage over the cinema industry.

- the special designation and licensing of cinemas to allow for the exhibition of such material would make for more orderly exhibition practices and greater ease of policing of cinemas than presently exists.

- as access to such material by minors could be more easily enforced than the point-of-sale controls applicable to videotapes for sale/hire, it would be anomalous to allow such material to be available for the home video market but not in licensed cinemas.

- as such films would be compulsorily classified, the public would be forewarned of the type of material being exhibited and adults choosing to view such films within the confines of specially designated cinemas are unlikely to be offended by the material exhibited.

- existing illegal operations would be decriminalized.

- if the same criteria apply to films prohibited under Regulation 4A of the Customs (Prohibited Imports) Regulations, refused classification under the A.C.T. Classification of Publications Ordinance, refused registration under the Customs (Cinematograph Films) Regulations and refused classification under the State/Territory legislations relating to public exhibition, officers of the Australian Customs Service would no longer be required to assess the "end use" of imported film. (SSCVM Evidence, pp. 106-107)

12.16 The Victorian Government acknowledges there is some merit in the argument that 'it is easier to restrict access by children to cinemas than it is to control their access to videos sold or hired for private viewing in the home'. (Evidence,

p. 1279) However the Government maintains the cinema industry's argument of inequity is no longer relevant now that the majority of States have banned the sale/hire of X-rated material.

12.17 In the light of this ban the Victorian Government said it would not introduce the X classification into cinemas. On the question of an ER classification for cinemas the Government considers it to be a matter for further consideration.

12.18 Allowing cinemas to show material above R has received support from the Working Party on Video Material, Victorian Branch of the Australian Psychological Society. The Working Party recommends:

> That the stronger 'R' rated material and material classified above 'R' should be confined to clubs or hard-top cinemas with entry restricted to persons over 18 years, and should not be available for sale or hire to private persons. (Evidence, p. 1429)

12.19 The Australian Film Institute 'believes that materials 'X' or 'ER' should be permitted to be screened for public exhibition subject to prohibition from entry of persons under the age of 18 years'. (Submission No. 686, p. 12)

12.20 The Reverend Fred Nile, MLC, National Co-ordinator of the Australian Federation of Festival of Light Community Standards Organisations, in evidence to the Committee, raised the role of cinemas for screening R-rated films:

> ... if they want to see R rated films, there are plenty of theatres available, I would say, in every suburb, where people can see them. If they have a real desire to see them, no one is going to interfere. (Evidence, p. 2272)

12.21 Ronald Conway, psychological consultant to the Australian Family Association, also makes the point in relation to R, that cinema entry is easier to control than video viewing if there is no supervision in the home. (Evidence, p. 1350)

12.22 With regard to X-rated material, Reverend Nile said:

> We are strongly opposed to any screening of X rated video material in any kind of theatre. We believe that it is legalising hardcore pornography and making it available in our society. We do not believe that there is any argument that would defend such a decision. (Evidence, p. 2291)

12.23 Mrs Beverley Cains, MHA, who was Leader of the Family Team in the former ACT House of Assembly, in answer to a question asked by the Committee concerning the provision of the X-rated or R-rated material in general theatres replied:

> I would say that is my fall-back position and, being a realist, I have one. If this Committee found that this society was so hell bent on having X rated material available then perhaps screenings in hard-top cinemas where it can be effectively policed is possible. (Evidence, p. 33)

12.24 The Australian Broadcasting Tribunal points out that the 'screening of such material [above R] in cinemas may represent a suitable solution to the issue'. (Evidence, p. 1590)

SUMMARY

12.25 The evidence received by the Committee concerning the role cinemas could play supported the screening of X-rated material in them. However it is clear to the Committee that such support was not arrived at for the same reasons. Arguments were based on inequity and discrimination, on greater control of the

access of minors and on the wish to have R and X-rated material removed from home viewing if such material were not banned outright. One's point of view and desire to effect a preferred outcome shaped these various arguments in support of the position that cinemas should be allowed to screen material classified above R.

SECTION IV

ISSUES

CHAPTER 13

'LIKELY EFFECTS' OF VIDEO MATERIAL

13.1 Clause, (1)(l) of the Committee's Terms of Reference obliges the Committee to inquire into:

> the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material.

13.2 Almost all witnesses and submissions addressed this issue on the basis of personal or professional experience, common-sense and intelligent assessment, or on the basis of behavioural science studies. They submitted that exposure, particularly repeated exposure, to violent, pornographic or otherwise obscene material can have effects on the viewer. The question asked of this Committee by Parliament is: what are these effects?

13.3 The Committee has surveyed the very large number of research studies relating to the clinical, correlational, and laboratory investigations undertaken on the effects of the visual media on viewers and the even greater array of reviews of this research. It is not the function of this Committee to add to this array of reviews but rather to report to the Parliament on the range of effects found to exist from the evidence and from the research studies available to it.

13.4 In addition to these studies there is much information from the courts and police, and studies done on convicted criminals which suggest that videos can have an influence on criminal behaviour. This evidence from court and police sources has often been dismissed on the ground that it is a ploy of

defence counsel to draw such a link in order to establish mitigating circumstances for the accused. The Committee understands the force of this argument. An astute judge and a perceptive counsel for the prosecution would be even more aware of the possibility of this ploy than the reviewers of this material, yet the influence of video material on criminal behaviour has been noted in court judgements (e.g. Cosgrove J).

13.5 The Committee considers that it would be imprudent to ignore these studies and in particular it would be a mistake to dismiss the views of professionals gained through clinical experience as to the effect of violent, pornographic or otherwise obscene videos on the attitudes and behaviour of individuals.

13.6 It is not the intention of the Committee to adopt a narrow criminological perspective which requires evidence to demonstrate that exposure to video material produces 'measurable' harm to society based on a causative link between videos and particular criminal offences.

13.7 Because of the operation of other influential variables the Committee is of the view that it would be almost impossible to prove a direct and sole causal link between the viewing of a specific video and the commission of a particular crime and therefore it would be unwise for action to be delayed pending evidence to satisfy such an impossibly unattainable standard of proof.

13.8 The Committee notes that frequent public statements have been made by publicists and others demanding an unreasonable standard of proof before acknowledging the harmful effects of violent, pornographic or otherwise obscene video materials.

13.9 Assertions similar to those made by Dr Paul R. Wilson, Assistant Director, Australian Institute of Criminology (Crime and Violence in the Media in the Future, paper delivered to AIC

Seminar, Hobart, 19-21 October 1987; The Mercury 19 January 1988) that there is no 'convincing' evidence to 'demonstrate' that exposure to sexually explicit materials devoid of violence produces 'measurable harm to society' or that 'the research available (at least in 1985) could not be said to establish a causative link between media violence and violent offences' or that there is 'no conclusive link that films which portrayed explicit acts of violence or sexual violence caused some people to carry out crimes of aggression', presuppose a standard of proof not demanded of other areas of behavioural science research.

13.10 In Appendix 8 there is an analysis of the claim that behavioural science studies in this area do not provide certainty. It notes that what science attempts to do is to establish theories which make reliable predictions about how the world works. If behavioural science, by rigorous academic tests supported by clinical and correlational studies, establishes in this area of research reliable predictions of human behaviour it would be unenlightened for Parliament to ignore them.

VIOLENT MATERIAL

13.11 The Committee first turns to studies (mostly clinical or correlational) and inquiries on violence, mainly conducted in the United States. The bulk of these conclude that the viewing of violent material makes a contribution to aggressive behaviour. The 1982 Report of the U.S. National Institute for Mental Health, entitled Television and Behaviour: Ten Years of Scientific Progress and Implications for the Eighties stated (p. 6):

> After 10 more years of research, the consensus among most of the research community is that violence on television does lead to aggressive behaviour by children and teenagers who watch the programs. This conclusion is based on laboratory experiments and on field studies. Not all children become aggressive, of course,

> but the correlations between violence and aggression are positive. In magnitude, television violence is as strongly correlated with aggressive behaviour as any other behavioural variable that has been measured. The research question has moved from asking whether or not there is an effect to seeking explanations for the effect.

13.12 Among the most significant of the American research studies is that of Drs Leonard Eron and Rowell Huesmann. They were interested mainly in how aggressive behaviour, in terms of adult criminal convictions, is related to the type of child-rearing practices parents use. Their 22 year longitudinal study began in 1960 by interviewing 875 boys and girls, and 85 per cent of their parents. After a follow-up study in 1970 and another in 1982, they concluded that:

> ... there is a significant relation between television viewing at age eight and the seriousness of criminal convictions by the time you are an adult of age thirty. (David Scott (ed.), Symposium on Media Violence and Pornography. Proceedings and Resource Book, Media Action Group, Inc. (MAGIC), Toronto, 1984)

13.13 The Eron and Huesman study found that children reared on a heavy diet of television violence had 150 per cent more chance of being convicted for a criminal offence by the time they were thirty, than did the children reared with little exposure to television violence. They found that television violence viewing does relate to aggression, that it increases a child's 'aggression scores' regardless of his/her initial level of aggression, and that those children who identified with violent television characters are those most likely to be affected by television violence. In their study they observed that there are many things that produce violent responses in children and adults, and that television violence is one significant factor among others.

13.14 In evidence before this Committee the Australian Council for Children's Films and Television quoted the findings of The Australian Broadcasting Tribunal's Research Department:

> All of these inquiries [that is, those quoted by the ABT] concluded that television violence represents a danger to society. They all accepted research evidence pointed in this direction and generally express the view that the amount of television violence currently shown is undesirable.

The Council drew the Committee's attention to the fact that as the level of violence in some comparable video categories 'is substantially higher than that on broadcast television, the effects would be at least as great, maybe worse.' (Evidence, p. 291)

13.15 Dr Thomas Radecki, Research Director of the National Coalition on Television Violence (U.S.) appeared before the Committee to submit evidence on the matter. Dr Radecki noted that 21 out of the 22 studies conducted since 1976 have concluded that there is enough evidence to suggest that violent entertainment has a damaging effect on some viewers. (Evidence, p. 3081) It is his view that televised violence is having a harmful effect even upon 'normal' individuals, and that it makes a significant contribution to the high level of violence in Western society.

13.16 He estimates that at least 25 per cent of the murders in the United States are 'due to the diet of violent entertainment in our country' (Evidence, p. 3076), and is concerned with the relationship of television violence and violent crime with social problems in society:

> In the United States the average adult, by the age of 21, will have watched 10 000 hours of violent entertainment over television. You cannot watch that amount of violent entertainment - select it out and enjoy it - without being affected. (Evidence, p. 3062)

Radecki went on to say:

> ... children who are becoming brutalised by violent entertainment and who develop anti-social values are indeed more likely to get into drugs. (Evidence, p. 3065)

Dr Radecki told the Committee that a similar phenomenon may develop in Australia if the proliferation of violent entertainment is not checked.

13.17 Dr William Belson, a prominent researcher on video violence, also appeared as a witness before the Committee. His study Television Violence and the Adolescent Boy (Gower Publishing Co., London, 1978) formed the basis of his evidence. This study was based on 1,565 London boys aged from 13 to 16 years, all of whom were extensively questioned, and consequently divided into two groups according to the extent of their exposure to televised violence. The two groups were then matched with a set of 217 variables associated with violent behaviour.

13.18 His findings gave strong support to the hypothesis that long-term exposure to televised violence increases the degree to which boys engage in violent behaviour. (Evidence, p. 1862) In his view the effect of exposure to televised violence is:

> ... to 'wear down' boys' training or conditioning against being violent, so that they tend to act as if that training had not occurred. (Evidence, p.1863)

Dr Belson's study also found that the program features more likely to stimulate serious violence in boys were:

1) Programs where violence appears to be sanctioned by showing it being done in a good cause;
2) Programs that make it easy for boys to identify with the violent person;

3) Programs depicting large scale violence;
4) Programs where the law enforcer uses considerable violence to defeat villians;
5) Programs in which violence is presented in a context where personal relationships are a major theme;
6) Programs where 'serious' televised violence is taken out of its developmental context;
7) Programs that depict violence of such realism that it may be accepted as normal. (Evidence, p.1885)

13.19 Dr Belson recapitulated his major findings in the evidence he gave before the Committee. He stated that:

> ...long term exposure to television violence increases boys' participation in violent behaviour, increases their preoccupation with violent acts shown on television, makes them more callous in their reactions to the spectacle of violence in the world around them, produces sleep disturbances, reduces respect for authority, makes them feel more willing to use violence to solve their problem ... (Evidence p.1889)

Like Eron and Huesmann, Dr Belson found that boys' inhibitions against violent behaviour were broken down by a constant bombardment of television violence and that after such exposure, their violence level increased regardless of what it was prior to exposure.

13.20 In one of his submissions to the Committee Professor Peter Sheehan acknowledged that Bandura's social learning theory (that people can learn new behaviours, and modify or reinforce old ones, by modelling observed behaviours) applies to filmed violence, concluding that there is a relationship between a child's viewing patterns (in turn largely influenced by parental viewing patterns) and his aggressive behaviour. He is concerned however with the fact that its causal character is as yet unspecified. Later Professor Sheehan presented the Committee with

a paper which claimed that while 'there is no consistent evidence of long-term effects, ... a relationship in the short-term between filmed violence-watching and aggression quite probably exists.' (Evidence, p. 2886) The paper was based on a survey he had undertaken of professional helpers involved with treating children referred to child guidance clinics for behavioural problems and other disturbances. It explored whether they considered that clinical difficulties resulted from exposure to violent videos:

> Half the sample said they had received an account from a parent or guardian about a voilent video being influential on the child's emotional state or behaviour, and 73% thought at some time that there was an association between particular children's description on their symptoms (or the symptoms they exhibited) and their viewing violent videos. As many as 91% thought symptoms were possibly precipitated by violent videos, and 80% felt that videos had a harmful effect at least some of the time. A multitude of clinical problems included sleeping difficulties, aggressive acting out, nightmares, anxiety, fear, phobic activity, and one instance of borderline psychosis. (Evidence, pp. 2884-5)

13.21 Contrary to Eron and Huesman's longitudinal study, Sheehan, in his 'Age Trends and the Correlates of Children's Television Viewing' (Evidence, p.1070), indicates that media influence wanes over time in Australia. Professor Sheehan believes that the reason television's effects are temporary in Australia is that Australian society is not as violent as other countries in which studies were conducted (U.S., Israel), and therefore the child does not view his actual reality as reflecting that depicted on the television screen. (Evidence, p.1082) The child consequently views most television violence as unrealistic and no identification is formed with it. Sheehan adds uneasily, however, that as Australian society becomes more violent, children will increasingly begin to view screened violence as a reflection of their real-life situation:

> ... I think the warning is that, as the gap closes between how aggressive our society is, and how much aggression the child sees, I think we have the risk of a long term effect. (Evidence, p.1178)

13.22 Amongst all the variables that Sheehan lists as working in tandem with television aggression to elicit violent responses, he sees the influence of filmed violence on children as quite significant. Based on his own work and other studies of the effects of exposure of children to TV and video aggression, Professor Sheehan saw problems associated with both the content of violent videos and the frequency of watching them. But he also added:

> It is obviously a mistake to focus just on television or video "content". What matters is the impact of the content and how it is construed by the child within the child's personal communication network. The information processing capacities of the child that are brought to the experience of television watching need also to be considered and in close relation to the social context of th viewing experience. The nature of the communication with others will influence how the child construes the content, and the family in particular seems to play a critical role in the child's reaction to what is seen. (Evidence, p. 2888)

13.23 Dr Paul Wilson, now Deputy Director of the Australian Institute of Criminology, appeared before the Committee in Brisbane to elaborate on his studies in the child killing and serial killing area. With 'a great deal of caution' Dr Wilson told the Committee that:

> ... while I find no evidence that sadistic sexual pornography causes serial killing, lust killing or child killing, depending on the terms that one uses, in my own mind, and reluctantly, I have found evidence that in the

> killer's background there is, first of all, a preoccupation with this material, secondly, a feeling that their sexual and sadistic fantasies are fuelled by this material and, thirdly, a feeling in some cases that the material is not strong enough and that their fantasies are not satisfactorily fulfilled. Those are the only three statements at this stage that I am prepared to make. I am not drawing a cause and effect relationship, but I am fairly deeply concerned. (Evidence, p. 1041)

13.24 Dr Wilson told the Committee that it was his view that with particular personalities, material of a sadistic, sexual kind which interwines sex and violence reinforces existing predisposition towards the sadistic acts that are carried out. 'I use the word 'reinforce' rathern than 'cause' deliberately", he added (Evidence, p. 1041) He went on to explain his use of the word 'reluctantly' (see paragraph 13.23):

> Again I say 'reluctantly' because my basic philosophical position has always been one of allowing adults to read what they want in private, or, more relevantly, to view what they want; I believe there is a strong case for censoring material which combines sex and sadism, even though I am at the same time concerned about what effect that censoring will have on opening up a black market. (Evidence, pp. 1041-2)

13.25 Dr John Court, Director of the Spectrum Psychological and Counselling Centre, who appeared before the Select Committee in 1985 pointed to the large body of evidence which indicates that explicitly violent sequences on television can generate negative social consequences, and adds that with the introduction of the video-tape, persons predisposed to aggression can select entertainment to reinforce this predisposition, and replay this material as frequently as they wish. Referring to the limitations of current research on effects of visual media, he states:

> The research takes little account of the technical aspects of the videotape, including the capacity to stop and start segments of choice ... it is clear ... that many young people do take the opportunity to replay the more powerful segments many times, and in my clinical work I hear young people refer to the terrors they sometimes experience. (Evidence, p. 224)

13.26 Court notes that aggressively disturbed individuals are likely to select the more extreme video material for gratification, and that such viewing will reinforce their distorted views of reality. (Evidence, p.213) The nature of video, in his view, is such that it has a marked capacity to encourage the predilections of a disturbed minority whose preferences must be duly considered by society at large.

13.27 Dr Patricia Edgar, Director of the Australian Children's Television Foundation, appeared before the Committee in July 1985. In considering the effect of the visual media violence on viewers, Doctor Edgar suggested that the critical factor is whether the screened depictions of violence fit into the social norms of the viewer.

13.28 She notes that it is extremely difficult to isolate visual media as one of the causes of violence in our society, but admits that those predisposed to aggression, those who consider what they see on television to reflect their own social reality, may be adversely affected by televised violence:

> It is extremely difficult to isolate media or film as being the particular cause or instigator of anything; that it very much depends on the social context; that it depends on the personality of the child; that it depends on children's relationships with their peer group, with their teachers and with their parents ... These other factors are the ones that are likely to determine their particular response to film or video material. (Evidence, p.1375)

Like Sheehan, Edgar is concerned with how TV is used to construct the viewer's social world, how program content is interpreted within the viewer's immediate communication network.

13.29 Dr Edgar acknowledges, however, that video violence can have a disinhibiting effect on certain personality types, that if a viewer inclined to aggression has an inhibiting factor working against this predisposition, the video breaks it down by making violence appear more normal, and thus more acceptable. (Evidence, p.1381) She sees it as 'feasible' that some individuals may select materials that exaggerate their aggressive tendency and hence allow the committal of a violent crime, a crime that otherwise may not have occurred.

13.30 Dr Ann Knowles, from the Psychology Department of the Swinburne Institute of Technology, while basically adhering to the views of Dr Patricia Edgar (quoted at paragraph 13.29), told the Committee that '... American, British and some other research does suggest that viewing television violence can, in some children, subsequently increase aggressive behaviour.' (Evidence, p. 3228.) Dr Knowles, who is a researcher in the area of children's understanding of television, reported that realistic violence is more likely to be imitated than fantasy violence. (By 'fantasy violence' she meant such programs as 'Masters of the Universe'.) While noting the paucity of equivalent Australian research, she stated that one 'can have a certain amount of confidence' in the long term studies in America 'demonstrating a weak but significant causal link between watching violence on television and later aggressiveness in some children, who are probably somewhat predisposed to aggression in the first place.' (Evidence, p. 3237)

13.31 A rather uncommon view was presented to the Committee in a submission by Dr Grant Noble, Associate Professor in Psychology at the University of New England. Dr Noble said:

> As the [Committee] well knows there is a voluminous literature on the effects of film and video violence on the consumer viewer. The general academic consensus appears to be that it is moderately harmful in terms of prompting viewers to be violent. I however dissent from this view since I feel violence is unfortunately a basic constituent of human nature which cannot be removed simply by eliminating violence from the television screen. (Evidence, p. 2171)

He added that 'X rated violence [sic] in my view is so revolting and horrific that is has a salutary effect on the viewer by inducing feelings of horror and revulsion', and that aside from initial curiosity value, such material is unlikely to be viewed repeatedly by a non-pervert. (Evidence, p. 2171)

13.32 Dr Noble has suggested elsewhere (Children in Front of the Small Screen, Constable, London, 1975, p. 143) that stylised aggression helps free aggressive boys for more imaginative play. According to Sheehan, this is consistent with Dr Noble's opinion that the catharsis theory is more applicable to current data on television violence, than is modelling theory. (Evidence, p. 1127) However most modern researchers (including Professor Sheehan), see Appendix 6, have cast serious doubt upon the validity of the catharsis theory.

13.33 The Committee has noted that the bulk of research suggests that many viewers, especially younger ones, far from being repelled by filmic violence, become desensitised to the extent that violence is seen as an acceptable and legitimate means of attaining social ends. This has been found to be especially the case in more violent societies, where television violence reflects actual reality.

13.34 Much of the evidence presented to the Committee was submitted by academics and clinical psychologists. Equally

important, however, is the evidence presented by individuals with first hand experience of the influence of the visual media, especially upon children. Ms Amanda Ann Vallance, a primary school teacher appeared before the Committee in October, 1985 on behalf of the Tasmanian Teachers Federation, voicing her concern over negative effects violent videos had on some boys, noted that:

> Their [the boys in her class with access to videos] playground behaviour became quite vicious and their games suddenly changed from being boisterous and energetic to being quite obsessed with making knives, swords ... with which they victimized everyone else in the playground ... and in particular the girls in my class... (Evidence, p. 2469)

13.35 Ms Sonya Ryan, who taught on Tasmania's West-coast for six years, became disturbed when she noticed a similar phenomenon occurring amongst boys of her Grade 5 class. Ms Ryan observed that some boys, after watching R rated videos, became 'obsessed with violence, and began to treat the girls just as objects.' (Evidence, p.2471) She concluded her own survey when she was transferred to Bridgewater Primary School, and found that '75 per cent of the children watch horror movies regularly'. (Evidence, p.2473)

13.36 Ms Ryan observed that some children exposed to video violence had difficulty in separating their dreams from the videos they watch, causing great anxiety and confusion, and that violent videos directly influenced the behaviour patterns of those in her class who watched them. She concluded that many videos engender anti-social behaviour, manifested in an attitudinal change toward the girls in the class, the teacher, and their mothers.

13.37 As will be noted, most of this chapter has dealt with likely effects on children of visual media deptictions of violence. This is because most of the evidence given to the Committee on the subject of violence related to effects on children.

13.38 The Committee is of course aware that at the end of 1987 the allegedly growing indicence of violence in Australian society had become a source of widespread concern among members of the public and the media. Two street massacres had occurred during the course of the year in which separate gunmen had killed fifteen people. After the second one, police were said to have found several violent videos in the killer's room and there were suggestions being made by politicians on all sides and by members of the public that violence on television and films may be a factor in increasing violence in Australian society.

13.39 There is no doubt that the amount of violence available in video material has been growing, that it is now quite high and that it occupies a considerable amount of viewing time. The Acting Chief Censor of the Film Censorship Board commented after the second massacre that it was his personal impression 'that violence has become a more popular commodity in films and videos. The technology and quality has improved in horror films and war films ... and they are more impressive'. (Times on Sunday, 27 December 1987)

PORNOGRAPHIC VIDEO MATERIAL

13.40 Pornographic video material evoked even more approaches to the Committee in the form of written submissions and verbal evidence from individuals and representatives of community groups and associations. This emphasis is understandable in part because it was community disquiet caused by the Commonwealth legislation which in 1984 legalised for the first time in Australia the importation of 'hard core' pornography and its commercial distribution which then led to the establishment of the Senate Select Committee and subsequently this Committee.

13.41 The Committee now turns to the behavioural science studies undertaken on the effects of pornographic video materials on viewers which were presented to it and then to other submissions made by witnesses concerning this matter.

13.42 The video pornography which the Committee studied fell into three categories:

Category I video pornography or violent pornography;

Category II video pornography or non-violent degrading pornography; and

Category III video pornography

13.43 Before proceeding to study the kind of influences which these different categories of material can exert on pornography viewers, the Committee provides in the next eight paragraphs a very brief outline of how human beings and human sexuality are portrayed in these categories (refer also to paragraphs 3.50-3.62).

CATEGORY I VIOLENT PORNOGRAPHIC VIDEO MATERIAL

13.44 The dominant theme of this material is that it 'objectifies' women. This means that, rather than treating women as free and responsible initiators of human activity (as human subjects with full human rights), these forms of pornography portray women as (principally sexual) commodities. Women, this pornography suggests, are things to be used to satisfy male sexual urges. The 'objectification' or 'commodification' of women, which occurs in Category I or violent pornography, sanctions threatening, beating, raping, and even torturing, maiming, and killing women.

13.45 Violent forms of pornography sometimes depict women as harbouring a secret wish to be raped, as achieving sexual fulfilment through rape, and as winning kudos among other women for having been raped.

CATEGORY II NON-VIOLENT DEGRADING PORNOGRAPHIC VIDEO MATERIAL

13.46 The dominant theme of this material also is that it 'objectifies' and 'comodifies' women. Rather than treating women as free and responsible initiators of human activity, the material in this category, although non-violent, treats women as sexual commodities to arouse the sexual desires of its target audience. Thus sexual intercourse is typically depicted as a mechanical act devoid of love or human consequences, fellatio, cunnilingus are explicitly and voyeuristically portrayed, as is masturbation, ejaculation, penetration of the female anus and diverse other acts or fetishes. It contains explicit depictions of female masturbation and male homosexual acts including anal penetration.

13.47 The bulk of all pornographic video materials commercially available in Australia falls within this category. In general, there is little or no plot or character development and if there is a story line it is an excuse for the sex exploits contained in the material.

13.48 The Committee, as did the Meese Commission, also refers to this material as degrading in that it frequently 'depicts people, usually women, as existing solely for the sexual satisfaction of others, usually men, or that depicts people, usually women, in decidedly subordinate roles in their sexual relations with others, or that depicts people engaged in sexual practices that would to most people be considered humiliating.' (Meese, p. 331).

13.49 Women are often depicted as sexually malleble for the purpose of satisfying male sexual desires. This is sometimes manifested by themes involving workplaces sexual favours. Women are frequently depicted as eager for sexual experience of any kind and ever ready for any opportunity for sexual activity. This is frequently manifested in the group sex scenes depicting diverse sexual activity, which are a feature of much of the material in this category.

CATEGORY III PORNOGRAPHIC VIDEO MATERIAL

13.50 The third category of video pornography examined by the Committee is a very small category which depicts two adults participating as fully consenting equal partners in reciprocal sexual activity of a heterosexual nature in a one to one relationship. As with Category II pornography this material - unless used as exploitative scenes in videos of a different character - contains little plot or character development. The sex scenes in Category III material are contrived; they do not contribute to the unfolding of any larger story. There is no reasonable context to which the scenes belong and little if any superstructure to which they might add or from which they might detract.

13.51 As its exploitative intent is to arouse the sexual desires of its viewers, Category III material should not be confused with that designed specifically to meet legitimate educative, health or scientific requirements. The kind of material which falls into Category III is material whose focus on the details of bodily and sexual activity indicates that an appeal is being made to nothing other than a prurient interest in sexual matters. A significant factor in policy considerations concerning Category III video pornography is the fact that sexual intercourse, which in all cultures is essentially regarded as the domain of personal sexual privacy, is voyeuristically portrayed as though public property.

BEHAVIOURAL SCIENCE EVIDENCE

13.52 According to the evidence given to this Committee and the research undertaken by social and behavioural scientists, pornography, under certain conditions, can stimulate aggression in, and exercise an influence over the attitudes of, pornography users. The mechanisms by which these effects are brought about features prominently in research material.

13.53 Social or behavioural science researchers who appeared personally to assist the Committee with information on the effects of pornography, included the following (in order of appearance): Professor Edward Donnerstein, (Evidence, pp. 59-109) Dr John Court, (Evidence, pp.204-209) Dr Paul Wilson, (Evidence, pp. 1038-1065) Professor Peter Sheehan, (Evidence, pp. 1066-1211), Professor James Check, Mr Frank Horwill (Evidence, pp. 1425-1454) and Associate Professor James Weaver (Evidence, pp. 3190-3225). Taken together, their evidence was to the effect that violent pornography in the media in general, and Category I video pornography in particular, have marked tendencies, under certain conditions, to break down inhibitions to aggression. (A representative selection from evidence, written submissions and published material available to the Committee is contained in Appendix 6)

13.54 The Film Censorship Board relied on a limited range of research in its document attached to the Attorney-General's press release following the meeting of Attorneys-General on 26 October 1984. After that meeting it was decided inter alia that sexually explicit violent pornography (Category I) should be removed from X but the other categories of sexually explicit video pornography (Categories II and III) should remain available in X.

Having declared that:

> Unless it can be demonstrated, to the satisfaction of a substantial majority of the population, that the "pornographer's" view of sexuality, as depicted in filmic images, produces tangible social harm, such views should be allowed to take their place in the market place - besides other views depicting different life-styles, attitudes and values.

The FCB paper asserted that:

> Whereas recent research by such eminent social scientists as Ed Donnerstein, Neil Malumuth and Dan Linz (of the U.S.A.) has fairly conclusively pointed to the socially deleterious effects (even amongst clinically "normal" persons) of being exposed to "substantial amounts" of "aggressive pornography", there appears to be no unequivocal and uncontested research currently available which draws the same conclusions in relation to exposure to "traditional" hard core pornography of the non-sexually violent kind.

Since that time further behavioural science research has been published.

13.55 The evidence as to aggressive effects, provided both by witnesses and from behavioural science research, was not, however, limited only to Category I pornography. As will be observed throughout this chapter and its appendices, evidence was submitted to the Committee to the effect that standard fare pornography - Category II or non-violent degrading video pornography - is at least as effective as Category I violent video pornography in stimulating aggressive behaviour. Evidence was also submitted to the effect that both violent and non-violent pornography can seriously influence viewers to accept the values portrayed in pornography. The evidence came from behavioural science researchers as well as from clinical psychologists, and other professional and lay witnesses.

13.56 There is plenty of anecdotal evidence about the effects of pornography, and a growing body of evidence from courts of law

about a connection between pornography and rape and sexual offences. Research conducted by behavioural scientists into the effects of pornography has yielded experimental evidence which complements this anecdotal and other evidence. However the Committee refers again to the points made in paragraphs 13.6-13.10.

13.57 Professor James Check who undertook research for the Fraser Committee on Pornography and Prostitution in Canada (James V.P. Check, The Effects of Violent and Non-violent Pornography, submitted to the Department of Justice for Canada, 1985) met with members of the Committee in Sydney and elaborated on his research. Check's experimental data revealed that those who had been exposed to Category II non-violent pornography subsequently reported a higher likelihood to rape, and to force unwanted sexual acts on women, than subjects who had not been so exposed. In fact, more than twice as many men indicated at least some likelihood of raping after exposure to non-violent degrading pornography than after no such exposure. (ibid. pp. 56-57)

13.58 Contrary to the views held by Donnestein, Check found that the effects of exposure to pornography (such as self-reports of increased likelihood to rape, and high acceptance of rape myths and adversarial sex roles) were strongest and most pervasive in the case of exposure to Category II (non-violent degrading) pornography. Check and his assistants observed during the selection of materials to be used in the study, that this kind of pornography seemed to be the most common. (ibid. p. 76)

13.59 Check also found that the anti-social effects of both Category I and II pornography were the most pronounced in individuals who already possessed a certain 'sexual aggressivity'. Moreover, the data revealed that it was the frequent users of pornography who had the most striking inclinations to sexually aggressive behaviour, and that this same group was the most influenced by Category II pornography. High

consumption users (i.e. those who viewed this type of non-violent videos or filmic pornography at least once a month) were, relative to those who rarely viewed these materials, more ready to accept rape myths and to use violence against women; they were more sexually calloused, more disposed to endorse adverserial sex beliefs, and more likely to report that they would rape or force on women unwanted sexual activity. (ibid. p.74)

13.60 Under experimental conditions, the high consumers of pornography, relative to low consumers, 'rated the videos as more exciting, stimulating, educational, realistic and affectionate, as well as less boring and offensive...'(ibid. p. 44) It became clear that the frequent users of pornography had come to accept and to endorse the values represented by pornography.

13.61 The Committee's attention was drawn to a body of behavioural science research testing theories of human behaviour predicting that pornography markedly affects the aggressiveness or attitudes of pornography users whether violence or non-violent. (see Appendix 7)

13.62 An example of these theories was the social cognition theory put before the Committee by Dr James Weaver, Assistant Professor, College of Communications, University of Kentucky (see Appendix 7). Dr Weaver concluded that 'the pattern of perceptual responses (obtained from his research) suggest that exposure to media portrayals of female sexual permissiveness can activate cognition that reflect a general "loss of respect" for female sexual autonomy and self determination.' Elsewhere he noted that the:

> ... repeated exposure to such depictions is thought to result in the generalization and misattribution of characteristics associated with sexually promiscuous women to other women'. (James B. Weaver III, Effects of Portrayals of Female Sexuality and Violence

> against Women on the Perceptions of Women, Ph.D. thesis, Indiana University, July 1987, p. 34)

13.63 In his evidence before the Committee, and in his articles on the subject, Donnerstein was adamant that sexually explicit non-violent materials had no anti-social effects. (Evidence, pp. 61-62) Wilson also told the Committee that he was 'not convinced' that this material had any harmful effects. By 'harm' he meant 'criminal activity'. He went on to say: 'The issue of whether it causes harm in other ways is an issue that I am not really particularly concerned about at this stage.' (Evidence, p. 1045)

13.64 Court and Horwill, however, argued strongly before the Committee in support of the view that the sort of material found in Category III does do serious, if more subtle, harm. (Evidence, pp. 1435-1445 and pp. 204-249) Court's arguments offered a detailed critique of Donnerstein's no-harm findings in relation to non-violent pornography.

13.65 A third position was adopted by Sheehan. In his evidence to the Committee he claimed that the case against 'consenting, non-violent' pornography was 'not proven'. However Sheehan went on to advise that the case is 'sufficiently strong ... that some control seems advisable.' (Evidence, p. 1104)

13.66 Sheehan argued that:

> ... the critical thing in whether or not there will be these so-called effects of sexually explicit material is how aggressive the person is in the first place...
>
> There is no question that a lot of people are stimulated mildly or strongly by seeing sexually explicit material. When one is aroused one tends to behave as a consequence of that arousal and I think if the person is aggressive aggression will out...In and of itself, I do not think that sexually explicit

> material divorced from aggression leads to strong negative effects. Once you combine sexually explicit material with aggression you have a different kettle of fish...The critical thing is how much someone is aroused and how aggressive he is in the first place.(Evidence, p. 1192)

13.67 Part of the problem springs from doubts about precisely what kinds of non-violent pornography have been subjected to investigation. Donnerstein claims that findings on the effects of non-violent pornography are relevant only to certain types of materials contained in Category II and has no implications for Category III. (Evidence, p. 62) Court has contested this view. (Evidence, pp. 228-229, 245-246)

13.68 A piece of research which has figured prominently in the debate over non-violent pornography is one conducted by Zillman and Bryant.(Dolf Zillman and Jennings Bryant, 'Effects of Massive Exposure to Pornography', in Neil M. Malamuth and Edward Donnerstein (eds), Pornography and Sexual Aggression, Academic Press, London, 1984, pp. 115-138) Zillman and Bryant tested the predictions made by another behavioural scientist, Byrne, that increased exposure to 'erotic' material would lead to the adoption of what might be termed the 'sexual lifestyles' portrayed in pornography.

13.69 Byrne foreshadowed that repeated exposure to what he called 'erotica' would lead to increased enjoyment and approval of, as well as preoccupation with, these materials through the process of 'excitatory habituation'. Byrne based his prediction on another prediction (made by Zajonc) that repeated exposure to any stimulus results in a more favourable evaluation of that stimulus. Even though, initially, people might be disturbed and offended by 'erotica,' Byrne theorised that 'excitatory habituation' would prompt sexual fantasies and, ultimately, would

lead to the adoption of offensive behaviours 'because of the promise of pleasure from erotica-induced imaginative rehearsals.' (Cited in Zillman and Bryant, op.cit. pp. 121-122)

13.70 The Zillman and Bryant research showed 'rather compellingly that massive exposure to pornography promotes acceptance of such material.' As Byrne predicted, early responses of abhorrence and disgust eventually did give way to enjoyment. (ibid. pp. 129-130)

13.71 As for effects on aggressive arousal, Zillman and Bryant found that the materials used in their experiment affected aggressiveness in females in much the same way as it did in males. They also found that the changes in aggression were 'non-transitory and potentially long lasting.' (ibid. p. 131) The experiment showed that this state of lingering heightened aggression was caused by 'excitatory habituation' and 'valence changes' -- i.e. the positing of new behavioural goals. Zillman and Bryant came up with many other findings. Exposure to pornography causes both males and females to trivialise rape, to lose faith in the values supported by the feminist movement, to increase male callousness towards women, and, in general to form beliefs 'that are not conducive to respect for the opposite (or same) sex.' (ibid. pp. 134-135)

13.72 Donnerstein has responded to this conclusion by claiming that the materials which Zillman and Bryant used belonged to types of material to be found in Category II rather than Category III. He argued that, although the material used was non-violent, it portrayed women in submissive and objectified roles. (Edward Donnerstein, 'Pornography: Its Effect on Violence against Women', in Malamuth and Donnerstein (eds), 1984, op. cit. p. 62)

13.73 Due to the fact that the materials used in their research were not aggressive, Zillman and Bryant themselves had concluded that it must have been the portrayal in pornography of

females as being highly promiscuous and available which led to the development in their experimental subjects of attitudes sympathetic to sexual aggression:

> It can only be speculated that this effect results from the characteristic portrayal of women in pornography as socially non-discriminating, as hysterically euphoric in response to just about any sexual or pseudo-sexual stimulation, and as eager to accommodate seemingly any and every sexual request. Such portrayal, it seems, convinces even females of the hyperpromiscuous, accepting nature of women ... Since the massive exposure treatment did not entail depictions of sexual access through coercion, it is difficult to see how the trivialization of rape could have been mediated by changing views concerning the use of power and/or violent means in a sexual context. (Zillman and Bryant, op.cit. p. 134)

13.74 In a later experiment, constructed along similar lines to that already described, Zillman and Bryant set out to confirm the findings already made and to determine what, if any, further effects long-term exposure to pornography has on social and sexual mores. To do this Zillman and Bryant focused on three areas:

> (a) perceptions and attitudes concerning sexually intimate relationships, especially marriage and the family as essential societal institutions, (b) personal happiness and sexual satisfaction, and (c) possible shifts in erotic appetite. (cited in Dolf Zillman, Effects of Prolonged Consumption of Pornography, paper prepared for the Surgeon General's Workshop on Pornography and Public Health, Arlington, Virginia, June 22-24, 1986, p. 15)

13.75 Zillman and Bryant found that prolonged consumption of pornography - one hour per week for six consecutive weeks - besides confirming the results of their earlier research, had a powerful adverse effect on evaluations of the desirability and

viability of marriage. Among the subjects of the experiment, endorsements of marriage dropped from 60 per cent in the control groups to 38 per cent in the treatment groups. The effect was comparable whether the subjects were males or females, students or non-students:

> The most astonishing effect of prolonged pornography consumption on family values, however, concerns the desire to have children ... exposure to pornography reduced the desire to have children and it did so in a uniform fashion ... The desire to have male offspring dropped 31%. The desire for female offspring ... dropped by twice that margin: 61%. This reduction proved specific to gender. Male respondents expressed little desire for female offspring altogether. It is the desire of females for offspring of their own kind that, after consumption of pornography, shrank to one third of its normal strength...(ibid. p. 19)

13.76 Zillman and Bryant also found that prolonged consumption of pornography 'reduced sexual satisfaction and sex-related personal happiness markedly.' They also pointed to the paradox raised by this finding:

> Presumably, pornography is initially consumed in hopes of increasing sexual satisfaction. But consumers eventually compare appearance and performance of pornographic models with that of their intimate partners, and this comparison rarely favors their intimate partners. The result is the realization that, in sexual matters, others may be more gratified. Dissatisfaction with intimate partners and perhaps with sex at large seems the inevitable result.(ibid. p. 20)

Finally, the results of the experiment showed:

> ... that consumers of pornography that depicts the more common forms of sexuality are not likely to limit themselves to these forms when given the opportunity to consume material

featuring less common sexual practices, including sadomasochistic and violent sexual behaviours. (ibid. p. 21)

13.77 These results were obtained from research into the prolonged consumption of pornography at a rate of consumption commensurate with that in the U.S. film and video materials market place. Pursuing this theme of the 'longitudinal effects' of pornography consumption, Zillman recently conducted a detailed survey of experimental research designed to measure the effects of prolonged pornography consumption. After reviewing this literature Zillman formulated a summary of 'experimentally demonstrated' effects of prolonged consumption of pornography devoid of violence:

> The experimentally demonstrated effects of prolonged consumption of pornography can be summarized as follows:
>
> (a) Excitatory responses to pornography, both specifically sexual and general ones, diminish with prolonged consumption. Some degree of recovery occurs spontaneously. It remains unclear, however, which conditions might facilitate or hamper such recovery.
>
> (b) Repulsion evoked by common pornography diminishes and is lost with prolonged consumption.
>
> (c) Prolonged consumption of common pornography does not lead to increased enjoyment of the frequently consumed material. Only less common forms of pornography that depict less common forms of sexuality tend to elevate enjoyment.
>
> (d) Prolonged consumption of common pornography fosters a preference for pornography featuring less common forms of sexuality, including forms that entail some degree of pseudoviolence or violence.

> (e) Prolonged consumption of common pornography distorts perceptions of sexuality. Specifically, it fosters presumptions of popularity for all less common sexual practices and of health risks from sexual hypoactivity.
>
> (f) Prolonged consumption of common pornography promotes increased acceptance of pre- and extramarital sexuality. Although it increases distrust among intimates, the violation of sexual exclusivity is more readily tolerated. Moral condemnation of sexual improprieties diminishes altogether.
>
> (g) Prolonged consumption of common pornography spawns doubts about the value of marriage as an essential societal institution and about its future viability.
>
> (h) Prolonged consumption of common pornography leads to diminished desire for progeny. The strongest effect of this kind concerns the desire of females for female offspring.
>
> (i) Prolonged consumption of common pornography breeds discontent with the physical appearance and the sexual performance of intimate partners. To a lesser degree, it breeds discontent with these partners' affectionate behavior.
>
> (j) Prolonged exposure to nonviolent and violent pornography promotes insensitivity toward victims of sexual violence.
>
> (k) Prolonged consumption of common pornography trivializes rape as a criminal offence.
>
> (l) Prolonged consumption of nonviolent and violent pornography, especially of the former, promotes men's propensity for forcing particular sexual acts on reluctant female partners.

(m) Prolonged consumption of nonviolent and violent pornography increases men's propensity for committing rape. This effect is pronounced for normal men manifesting some degree of psychoticism; it is negligible for men with minimal psychotic tendencies.

(n) Habitual consumers of common pornography, in contrast to occasional consumers, are at risk of becoming sexually callous and violent. (ibid. pp. 26-28)

13.78 The Committee considers that the research of Zillman and Bryant is relevant to its consideration of the question of the likely effects of the small Category III pornography.

13.79 The work by Zillman and Bryant provides significant confirmation of the effectivenesss of behavioural theories in predicting how pornography can shape human attitudes and behaviour. These same theories cannot be ignored when considering the effects of Category III.

13.80 There appears to have been a rather narrow interpretational focus of pornography research generally. The preoccupying issue seems to be whether pornography mediates aggressive arousal. For example, Donnerstein stated clearly to the Committee:

> ... my interest is human aggression; my interest is in trying to find ways to reduce the incidence of rape. (Evidence, p. 85)

Though the findings on aggressive responses to pornography are of very great importance (and we will refer to these again), aggression is not the only harmful effect pornography can have. Research by Zillman and Bryant, for instance, confirmed Byrne's theory of excitatory habituation. Their experimental subjects showed a marked increase in aggressive attitudes; but this change would not have been caused by dehumanisation.

13.81 According to social learning theory, the dehumanisation 'determinant' (the term can be misleading) is a condition of or agent for changes in aggression. But the actual source of these changes is a setting of new goals for sexual behaviour. To put it in social learning terms, dehumanisation is only a 'self-disinhibiting justification' for actions which ensure that new erotic goals are achieved. It appears that there is something here more fundamental than the development of aggressive attitudes: namely, the objective which gives direction and purpose to aggressiveness which is to achieve self-gratification through sexual arousal; to attain, as Byrne predicted, 'the promise of pleasure from erotica-induced imaginative rehearsals.'

13.82 We touch here precisely on the major selling point of Category III pornography. It is this prospect of sexual stimulation and gratification which attracts the pornography user and is exploited by the pornographer. The material is produced to ensure viewer identification. It purports to define the character of desirable arousals and to demonstrate how to achieve them. All this 'information' is communicated with the powerful suggestion that these sources of pleasure are readily tapped.

13.83 The question which arises whether there are any dangers in conjuring up sexual fantasies under the influence of Category III pornography to the point that it modifies or sets new sexual goals.

13.84 Bandura's social learning theory makes an important distinction between acquiring behavioural potential and the overt expression of learned behaviour.(James V.P. Check and Neil M. Malamuth, Pornography and Sexual Aggression: A Social Learning Theory Analysis, paper presented at the meeting of the Internation Society for Research on Aggression, Mexico City, August 1982, p. 8) So, a change in sexual objectives, and a consequent hardening of attitudes toward the opposite sex, are factors which contribute to the development of a new or mutant

behavioural potential; it is a separate issue whether this potential is ever realised. One view would seem to be that an unexpressed capacity for anti-social behaviour is not harmful.

13.85 This appears to be the position taken by Sheehan. (Evidence, p. 1192) He gave evidence to the Committee that 'in and of itself' material which falls within Category III is not harmful. He did state, however, that, when combined with an aggressive personality, this species of pornography could trigger anti-social behaviour.

13.86 It would appear then that the arousal-affect theory has implications for the use of Category III pornography. The basis of the theory is 'that any dominant response may be "energized" by a state of increased arousal.' (Neil M. Malamuth and Ed Donnerstein, 'The Effects of Agressive-Pornographic Mass Media Stimuli', Academic Press, Orlando, Florida, 1982, p. 123, (Advances in Experimental Social Psychology, Vol. 15, 1982)) This implies that, even if the Committee were to accept that 'in and of itself' the effects of Category III material on behavioural goals were not harmful, the frequent use of this material can, nevertheless, be socially undesirable, given its capacity to intensify aggressive responses and to unleash latent aggressions.

13.87 It might be thought that the chances of this happening are so low that no precautions need to be taken. Given, however, a society in which levels of aggression are perceived to be high and getting higher, and given that some of the possible causes of aggression are not abating (we refer, for example, to youth unemployment, family break down, and the despair inherent in drug addiction), to permit the development of widespread resort to Category III pornography could have the effect of pushing many males with strong aggressive drives over the aggression threshold.

13.88 Theories of behaviour like the arousal-affect theory are not confined to describing deviant behaviour; they describe the mechanisms of general human behaviour. The arousal-affect theory would predict that, in a society where levels of aggression are high, the frequent use of Category III pornography will break down the inhibitions of normal males to violence. The theory predicts that such responses will not be a manifestation of deviance, but something within the ambit of normal behaviour.

13.89 Another theory, excitation transfer theory, also predicts the same kind of outcome. In his submission to the Committee, Horwill explained Zillman's theory. It suggests that:

> ... some of the effects of nervous system arousal or excitation can be transferred from one emotional state to another, so that, for example, a state of anger may contribute to enhanced sexual arousal and satisfaction, and conversely, increased sexual arousal may result in exaggerated aggressive behaviour when persons are faced with barriers to the satisfaction of their desires. (Evidence, p. 1435)

13.90 This last point is relevant to a consideration of the risks of using Category III pornography. Horwill suggested that it could be expected that males under the influence of this material would be, quite apart from any direct effect of increased sexual desire, more aggressive in overcoming the reluctance of a potential sexual partner.

13.91 However it should be noted that Sapolsky has argued that the arousal-affect theory is superior to the excitation transfer theory because the former accounts better for the different effects which different kinds of pornography can have on different personalities.(Barry S. Sapolsky, 'Arousal, Affect, and the Aggression-Moderating Effect of Erotica,' in Malamuth and Donnerstein, 1984, op.cit. pp.85-113).

13.92 Even if the Committee were to draw the conclusion that Category III pornography, in and of itself, was not harmful, reliable scientific theories would still predict that, when combined with aggression, of which there is clearly much in our community, materials in Category III could intensify aggressive responses.

13.93 There is still the question of this material to be considered in and of itself and, given such consideration, the Committee is of the view that exposure to Category III has potential dangers.

13.94 By way of underscoring the importance of this conclusion, we recapitulate some of the points which already have been made about the behavioural impact of pornography. Two points need to be made:

(1) Zillman and Bryant have indicated that massive exposure to pornography can produce increased sexual aggression and callousness in experimental subjects; and

(2) these changes in aggressiveness and callousness entail the adoption of new erotic goals for sexual behaviour--a fact which has been confirmed by Zillman and Bryant's further researches (discussed above) into the role of prolonged consumption of pornography in changing sexual and social mores. (Zillman, op.cit. pp.19-21)

13.95 Material of the kind found in Category III has been used in a social learning context under clinical conditions to reorientate sexual interests and to change sexual behaviour. (Evidence, p. 249 and 1435)

13.96 It is significant to note that Weaver's research found that materials drawn from (American) R-rated films, such as Lady Chatterly's Lover, did modify the attitudes of experimental subjects in socially undesireable ways. He found that male subjects who had watched this kind of material, compared to men who had watched neutral materials, 'perceived the nonpermissive female peers to be substantially more Permissive [sic]' (Weaver, op.cit. p. 69) and that males who had been subjected to the R-rated material 'perceived the nonpermissive female peers to be more Permissive [sic] than did female subjects' who had been treated to the same materials. (ibid. p. 70) If materials made up from (American) R-rated films can have this effect, then it is not unreasonable to assume that materials in Category III can likewise affect male attiudes towards females in a sexually hostile manner.

13.97 It is possible then, that people can learn the implicit messages and behaviours communicated by Category III pornography, particularly when responses to stimuli are rewarded, for example, by masturbation. The question now is whether these messages are dangerous in and of themselves, and whether these dangers might be enhanced by the ready access which people (e.g. children and adolescents) have to video recorders and video-materials.

13.98 The Committee considers that Category III video pornography is not only likely to cause harm as a trigger mechanism for aggressive reactions, but should also be regarded as harmful in itself. This is because this material promotes a sexual mythology which would be a threat to mature human development, particularly if these illusions were fostered during formative years. The danger of this happening is a real one because of the theoretical and practical power of Category III material to fashion behavioural goals through the agency of the video.

13.99 This conclusion does not rest on a claim that a case has been firmly established on the basis of experimental evidence. It can be based on a prudential judgement formed on the strength of predictions about human behaviour. These predictions can reasonably be made in the light of theories of human behaviour whose reliablity has been established in related fields of behavioural research.

RELEVANCE OF BEHAVIOURAL SCIENCE EVIDENCE

13.100 The Committee received a submission from Dr Augustine Brannigan, an Associate Professor of Sociology at the University of Calgary, Canada, who appeared before the Committee.

13.101 According to Dr Brannigan the major problem with the behavioural science approach is that 'the most causal variable is presumed in all the theories, not discovered in the experiments'. (Evidence, p. 1501)

13.102 The Committee has carefully considered the arguments that behavioural science is unhelpful in the consideration of likely effects of video material and has included a detailed response in Appendix 8.

13.103 In short, the Committee observes that behavioural science does not aim to 'prove causation' but tests and establishes theories which make reliable predictions about human behaviour and is therefore relevant to the question which is the subject of this chapter. The Committee considers that the outcome of behavioural science research is only one factor amongst many of which account must be taken in policy considerations relating to the Committee's Terms of Reference. The Committee observes that some behavioural science research involving exposure of

persons to certain types of video materials raises ethical questions. Our observations about certain behavioural science outcomes should not necessarily be taken as an ethical endorsement of the methods used in every case.

DISCUSSION OF OTHER EVIDENCE

13.104 Many of the findings and predictions of behavioural scientists discussed above were supported and augmented by a further large body of evidence presented in written submissions to the Committee or in person by witnesses before its hearings, both public and in camera.

13.105 This body of evidence, referred to as anecdotal, arises in non-laboratory settings, and includes reports from such professionally qualified persons as practising psychologists, psychiatrists, family doctors, welfare workers, police officers, ministers of religion, school teachers; it includes evidence from parents and organisations of parents and teachers, from government-sponsored women's groups, youth organisations, and unions. Overall it represents a comprehensive range of experienced people in the field who are dealing day-to-day with practical situations. All reported with concern their observation of the apparent and logical connection between exposure to the values and actions portrayed in violent and/or pornographic video material and the entrenchment in the viewer of serious anti-social behavioural problems.

13.106 These persons do not claim that exposure to violent and/or pornographic videos is the only factor contributing to harmful effects, but they judged from their first-hand experience that exposure to such material is often a major contributing factor and, at times, the apparent catalyst in precipitating harmful outcomes. Indeed, the Committee is aware from the increasing number of reported instances in our community where members of the police and judiciary have noted the juxtaposition

of the possession of violent videos and violent behaviour and exposure to video pornography and sexual offences.

13.107 The focus of the submissions, however, was not so much on the criminal aspects of likely harmful effects as - most insistently - on the potential of the video material under discussion to form attitudes and values, and evoke imitative behaviour, likely to have harmful outcomes for the psychological and physical welfare of persons, especially children. Of particular concern was a generally perceived influence detrimental to the establishment or maintenance of happy and healthy interpersonal relationships, especially relationships of equality and respect between male and female, and the consequences for the Australian community of likely harmful effects.

13.108 The Australian Family Association quoted Dr John Court. After an extensive survey of the social and behavioural science evidence, and the confirmation in his clinical experience of many of its predictions about learning theory and human behaviour, he concluded that individual and social ill-effects arose from the essential nature of pornography:

> ... pornography is anti-relationship and thus anti-family. Through its obsession with sexual function, pornography carefully avoids any recognition of the value of family relationships. Marriage is ridiculed, promiscuity promoted, homosexual relationships glamorised and group sex endorsed. (Evidence, p. 1247)

13.109 The Committee stresses that its Terms of Reference rightly direct it to inquire into and report upon 'likely effects' of exposure to specific forms of video material; the Committee therefore has been obliged to examine all of the available evidence from behavioural science sources and other academic fields of endeavour. The Committee was provided with a substantial number of academic publications dealing with the

social and behavioural science examination of the evidence of the harmful effects of video violence and pornography.

13.110 The organisation Women Against Violence and Exploitation commented to the Committee on this subject:

> Why are women always required to prove that pornographic material affects the perceptions and actions of the viewer...?
>
> Why does this proof always have to be of an academic nature under a controlled environment? Why are these studies given credibility when women's social realities are ignored or trivialised?
>
> The reality is that pornography contributes to and reflects a climate of opinion in which violence against women is becoming more acceptable...
>
> Videos depicting images which <u>may</u> incite to acts of terrorism and drug abuse are prohibited. It is therefore inconsistent to demand <u>conclusive</u> proof that 'tangible social harm' to women's lives is produced by videos depicting women as objects to degrade and exploit, even where these images are not graphically violent. (Evidence, pp. 1011-1012)

13.111 In seeking to determine the likely effects on persons, especially children, of exposure to video material which constantly depicts men and (especially) women in the manner indicated, the Committee rejects claims that the outcome is consistently neutral in viewers. The evidence before it indicates otherwise.

13.112 The bulk of pornography, as already observed, portrays the objectification, dominance, exploitation or degradation of women. Attention is directed to the consolidated list of video classifications in the special <u>Commonwealth of Australia Gazette</u> No. 5238, Monday 26 May 1986, for titles and a coded summary of contents.

13.113 Evidence of effects likely to be detrimental to women - and, by extension, to families and society - was received from numerous sources.

13.114 This degradation was the theme underlined by the NSW Women's Advisory Council to the Premier:

> We see that women being used as sexual objects for the gratification predominantly of males is degrading. We see that it lowers the status of women... (Evidence, p. 629)

In a subsequent submission the N.S.W. Womens's Advisory Committee told the Committee that its previous submission was based on the May 1984 guidelines for X-rated videos but that it now agreed with the December 1984 guidelines which allow for explicit depictions of sexual acts involving adults but excludes any suggestion of coercion or non-consent of any kind. It said that this type of 'sexually explicit' material was similar to the E category which it had proposed to the N.S.W. Government (Evidence, p. 285). However, in further evidence it became clear that the N.S.W. Womens Advisory Committee's understanding of 'sexually explicit' means 'a one to one relationship' and did not encompass the range of current sexually explicit material allowed in the X-rated category. (Evidence, p. 2866)

13.115 Again, degradation was an actual effect reported in a submission which contained this observation:

> ... to zero in on the effects of pornographic videos on their viewers to the exclusion of focussing on the videos themselves denies the effect such videos have on millions of nonviewers, on many women like myself who are humiliated, degraded and threatened, physically and otherwise by the portrayal of women in such videos. (Submission No. 399, Mrs Helen Grutzner, p. 1)

13.116 In view of pornography's attack on the status of women, and the workplace sexual harrassment theme of some video pornography, the Committee was not surprised to receive a submission from the largest affiliate of the Australian Council of Trade Unions. The Shop, Distributive and Allied Employees Association summed up a comprehensive submission thus:

> If video material of this [pornographic] nature is widely available for home viewing, thousands of Australian men will be encouraged to regard women generally as targets for sexual harassment.
>
> The availability for sale and hire of pornographic video material is therefore likely to undermine attempts by unions and others to eliminate problems of sexual harassment at work. (Evidence, pp. 564-565)

13.117 The Shop Distributive and Allied Employees' Association was expressing the concerns of its members, the majority of whom are female. It is supported in its conclusions about likely harmful effects of pornographic material by a practising psychologist, Dr John Court who appeared before the Committee:

> There is now ample evidence that the media such as films, TV and video do have significant effects on attitudes, values and behaviour ...
>
> The importance of disinhibition, increased callousness and habituation is stressed since all have implications for social behaviour. (Evidence, p. 211)

13.118 Dr Court presented to the Committee a resume of research by social scientists and investigations by various government committees on the subject of pornography, but as well appeared as a witness (as he had been called upon to do before the US Meese Committee). He provided anecdotal evidence based on his clinical experience. Humiliation and hatred were the two effects of pornography which he emphasises when he concludes:

> Videoporn is not about sex - or violence - ultimately. It is about people - and conveys ideas on how we relate to one another. I want neither adults nor children to believe that society endorses humiliation and hate as the norm in human conduct; nor do I believe we can afford to have such themes widely disseminated in the name of home entertainment. (Evidence, p. 222)

LIKELY EFFECT ON CHILDREN - FURTHER OBSERVATIONS FROM THE EVIDENCE

13.119 Because of their impressionability and relative immaturity, children are subject to greater intensity of psychological, attitudinal and modelling effects, short-term and long-term, than are normal adult persons:

> Significantly, video cassette viewing emerged as the end point for some children in that for them the gap appeared to be closing between the world of TV and the child's conception of his or her reality away from the television screen. Clinical case observations tell us that for some children, fantasy may well be closing that gap with negative, pathological results. (Sheehan Evidence, p. 2886)

13.120 The spokesman for The Australian Council for Children's Films and Television submitted:

> ... many children report lurid scenes of sexuality, violence or horror from which they find themselves unable to rid themselves, even though they wish to. I would like to make a side comment on Donnerstein's comments that it has no effect. His results are not from children and they are not looking at long term, gradual exposure to this material in the comfortable home setting... (Evidence, p. 281)

13.121 Dr Thomas Radecki, National Coalition on Television Violence, U.S.A., told the Committee:

> I have had mothers in my psychiatric practice who were very concerned about their

> desensitised husbands entertaining their children with extreme and brutal graphically violent and sexually-degrading material...
>
> ... evidence is overwhelming from aggression researchers that normal adults and normal children can be harmfully affected when they entertain themselves with violent or sexually degrading material. (Evidence, pp. 3069 and 3070)

13.122 A distilling of evidence presented to the Committee shows that children and young adolescents who are exposed to pornographic videos through absence of supervision, or with deliberate intent, are likely to be subject to serious short-term and probable cumulative long-term effects. These effects can range from disquiet and confusion, shock and fear, to a distorted and false representation of interpersonal relationships, to the lesson that females are inferior beings to be used by males at any time for whatever pleases them:

> ... pornographic material can be used to coerce children into sexual activity, and pornography can frighten, confuse, and excite children who may feel trapped by the experience. It may also be that pornography can persuade the child that the acts shown are normal, and hence set the stage for deviant adult development. Finally, the impressionability of the child may accentuate or enhance the negative effects that are observed with adults. (Sheehan Evidence, p. 1103)

The Australian Council for Children's Films and Television asks:

> ... what are you going to measure as a negative effect of this material?...
>
> ... I think you can come at it from another direction. When we are looking at children we do know ... a lot about the way children develop and what influences them and how they develop their values, their attitudes and that sort of thing. If you are feeding in material which establishes violence as an appropriate response to conflict situations, and children are seeing that presented in an approving way - as you will find in things like 'First

> Blood' - then that is establishing a climate for them to build up attitudes of that kind. If you are showing them an approach to sexuality that basically demeans women, sees women in terms of being the objects of male exploitation, you are establishing that in boys as an expectation of the way sexual behaviour should be carried out, and also in girls - that there is no other possible sexual behaviour and therefore it is acceptable to be the object of a quasi-rape situation. (Evidence, pp. 288-289)

13.123 Based on anecdotal evidence the overall effect on children appears to be twofold: some children and young adolescents can become gradually disinhibited to violence, and accepting of it as a socially acceptable means to a desired end. They become increasingly disinhibited to sexual advances, for they see adults portrayed as responding positively. This impression can be reinforced when pornographic videos are viewed in the company of adults who watch the various sexual activities with approval.

13.124 Behavioural scientists have demonstrated in the laboratory setting the likely effects of video material designed for sexual arousal. When this occurs in situations where no willing adult sexual partner is available, there is the possibility that some children may be at risk of sexual abuse, including incest.

13.125 As for the already disturbed personality, Inspector Johnson of the Victorian Vice Squad reported, inter-alia:

> We have evidence from the Child Exploitation Unit, which I am in charge of now, that ... paedophiles watch films and stimulate themselves and then they go out and have intercourse with children, or they bring the child in to watch the film and get the child excited and then the crime is committed...
>
> ...you must realise that charging people and knowing are two different things; you must have hard evidence to put before a court. Those whom we charge are only the tip of the iceberg. (Evidence, p. 1313)

13.126 The Australian Parents' Council, representing parents of approximately 750,000 children in non-government schools throughout the nation, advised the Committee:

> ... parents at the Australian Parents' Council Annual Conference reported that both they and teachers in their schools had repeatedly observed the growing tendency to aggressive and violent behaviour in children after viewing violent and pornographic videos... (Evidence, p. 531)

13.127 The Tasmanian Teachers Federation submitted that teacher observation and experience indicated such likely effects on children as deterioration in social relationships in the playground and obsession with violence. (Evidence, pp.2471, 2484)

SUMMARY

13.128 There is clear evidence before the Committee that excessive exposure to violent material can have deleterious effects upon some people, particularly children and those predisposed to aggression (e.g. paragraphs 14.12-20 and 14.31). The potential desensitisation of the community to such material is also of concern and in particular how it relates to adverse social behaviour.

13.129 Quite obviously, a restriction in the access of R-rated material is desirable, and a tighter interpretation of the guidelines in tune with community concerns is appropriate.

13.130 Analysis of the concept of pornography, combined with a thorough examination of the evidence made available to this Committee, establishes quite clearly the likely effects of pornography and what conditions mediate those harmful effects. These have been summarised in their proper context within the

body of this Chapter as they relate to Categories I and II, as well as the more subtle Category III and it would require a lengthy duplication to summarise them here. Although, as we have indicated, Category III material is more subtle, it is also harmful in that it fosters illusions about sex, reduces persons to objects or occasions of sexual pleasure and conveys a message substantially the same as that found in other forms of pornography.

13.131 Theories of behavioural science, laboratory experiments and anecdotal evidence point strongly to the fact that the effects of pornography are not aberrations. Responses to pornographic stimuli fall within the range of human behaviour. It cannot logically be argued that the effects of pornography can safely be ignored because, supposedly, only deviants would respond to pornographic influences. While behavioural science studies in this area do not provide certainty they do establish theories which make reliable predictions about human behaviour. It would therefore be unenlightened for Parliament to ignore them.

13.132 One point needs particular attention, and that concerns the social character of the harm done by pornography. By their very nature the effects of pornography are social, and therefore can affect social attitudes and behaviour.

CHAPTER 14

ACCESS OF MINORS

INTRODUCTION

14.1 The access of children to unsuitable video material was frequently addressed in submissions and evidence. To all persons - irrespective of background - who made submissions or appeared before the Committee, the question of the access of children to unsuitable video material was a major concern. The Committee's Terms of Reference in themselves reflect a concern for children with the availability of video material for home viewing. No fewer than four of the Terms of Reference refer to persons under eighteen years of age.

14.2 There are four classification categories used by the FCB which have age considerations. They are:

PG Parental Guidance required for those under 15

M Mature (not recommended for viewing by persons under 15)

and the two categories with restrictions:

R Restricted (not to be sold or hired or delivered to minors or displayed in a public place unless container bears prescribed markings)

X Extra-Restricted (not to be sold or hired or delivered to minors or displayed except in restricted publications areas and bearing prescribed markings).

14.3 In examining 'whether children under the age of 18 years are gaining access to videotapes/discs containing violent, pornographic or otherwise obscene material' (Terms of Reference 1(g)) the Committee was conscious of the age variations encompassed in the use of the terms 'children' and 'minors' when witnesses addressed this issue. Some people spoke of children referring to the under 10 age group. Others spoke of children while referring to the pre-puberty and puberty age groups. Notwithstanding any difficulty in determining the correct or appropriate terminology to be applied to people under 18 years of age, the evidence, both anecdotal and empirical, indicates that a significant number of these young Australians are watching video material classified as unsuitable.

RESEARCH FINDINGS

14.4 The South Australian Council for Children's Films and Television, Inc., (SACCFT) undertook a survey of 1498 Adelaide primary (year 6, 9-12 years) school children to study their video viewing. The Council appeared before the Committee in June 1985 and provided an interim report of the results. Their final report, received in December 1985, entitled Kids and the Scary World of Video (SACCFT Video Survey) formed part of their submission to the Committee. In early 1986 the Council approached the Committee seeking permission to make public their submission. The Committee granted permission.

14.5 Although this survey has been cited publicly as evidence of the access of children to pornographic videos, in fact SACCFT actually said in their summary 'there was no evidence of the traditional erotic pornography being in wide circulation amongst children'. (SACCFT Video Survey, p. 16) SACCFT noted that 'it may be that an exposed breast on the cover of a videotape is a clearer signal to parents about content than a small 'R' in one

corner'. (ibid. p. 16) A study of the responses does not support the assertion that most children had access to X-rated videos. In fact, of the classified videotapes which SACCFT claim to have identified, only 17 per cent (1 per cent X and 16 per cent R) were X and R-rated tapes (see next paragraph 14.6).

14.6 From such public reporting on the survey many would not be aware of what SACCFT actually say in relation to access. SACCFT maintains:

> ... of the classified videotapes (a total of 644 of which documentary evidence was available):
>
> 1% were X classified
> 16% were R classified
> 33% were M classified
> 26% were PG classified
> 23% were G classified
> (ibid. p. 5)

and:

> It is clear that 10-11 year old children at home have some limited access to X rated videos, and ease of access to R rated material, which they would not be allowed to see in a cinema. They have easy access to M rated material which is also considered unsuitable for this age group. In fact, this is the most commonly reported classification. (ibid.) (emphasis theirs)

14.7 Access of minors to videos depends, in the first instance, on their access to video recorders. The children surveyed had a high access to videotapes at home (61%), and an even greater access outside the home at the houses of their friends (85.7%). (ibid. p.2)

RELIABILITY OF FINDINGS

14.8 One of the difficulties encountered by the South

Australian Council for Children's Films and Television was the identification of video material and its classification from the responses children gave to six questions. As the Council noted:

> ... some were videotapes of television programs and some may have been generic descriptions rather than titles (e.g. "Spooky Stories") (ibid. p. 4)

14.9 In their interim survey report to the Committee, SACCFT noted:

> We experienced great difficulty in identifying these categories [M, R, X] from the readily available resources because of the children's creative naming of some tapes; the large numbers of tapes cited which do not appear in the listings' and the different categories given to the same movie of the same name. (Children's Video Viewing Habits, an Interim Report on a Survey of 10/11 year old Students in Year 6 at South Australian Education Department Primary Schools, p. 22)

14.10 However in its final report the Council stated that it had gained access to the Commonwealth Gazettes. Once the Council gained access to the Commonwealth Gazettes, the problem of identification was largely overcome. Of 873 titles given by children, 644 (74%) were readily identified in the Gazette listings. All figures quoted in the report refer only to the 644 clearly identified titles.

14.11 A further potential difficulty concerned the so-called 'reverse halo effect'. In such a situation, children respond to peer group pressure and indicate that they have seen a film when in fact they have not. In response to such a criticism, the SACCFT in evidence to the Committee stated:

> ... there is no way that you can check whether a child is telling the truth in an open survey. I would be prepared to say that the figures may be rubbery...but not to that

> extent. If we are finding a third of the children reporting it, you would be on safe ground saying that at least a quarter have seen the film. (Evidence, p. 277)

ANECDOTAL EVIDENCE

14.12 The Committee was presented with much evidence of an anecdotal nature concerning the access of minors to video material classified as unsuitable for their viewing. This proved to be a particularly valuable source of first-hand evidence, and tended to reinforce the empirical findings of the SACCFT Video Survey.

14.13 The Committee frequently heard that children saw undesirable material in someone else's house - not at home.

14.14 A number of people submitting evidence indicated that they had little confidence in the ability and/or willingness of many video outlets to deny access to minors wishing to hire restricted videos. A submission by Trans Universal Video, however, stated that their staff had 'always been under strict instructions to ask for additional proof of age whenever there is any doubt.' (Submission No. 632, p. 6). However the submission makes the following qualification:

> We do stress, however, that attempts by persons under 18 to hire X or R rated material cannot be policed by library staff if they are based on disguises such as heavy make-up on women, extraordinary height, and/or the misuse of parents' cards. (ibid. p. 6)

14.15 Even if point-of-sale controls were 100% effective in preventing minors from hiring restricted video material, anecdotal evidence presented to the Committee indicated that, with respect to access, the critical problem remains: the material may still end up in the hands of minors.

PARENTAL RESPONSIBILITY

14.16 The role of parents in facilitating or denying access to their children to video material deemed unsuitable was of major concern to the Committee. In its submission, SACCFT make the point that:

> It is clear that parents are either unwilling or unable to control their children's access to videotape material. (op. cit. p. 14)

According to SACCFT there are a number of possible explanations for this:

> Parents and other adults simply do not care.
>
> Parents and other adults are unaware of the influence of videotape material.
>
> Parents don't know what their children see.
>
> Parents and other adults are unaware of the meaning of the classification symbols.
>
> Parents are intimidated/seduced by advertising and peer pressure. (op. cit. pp. 14-14)

14.17 Two representatives of the Tasmanian Teachers Federation told the Committee of effects they had observed in some of their pupils who watched videos. Ms Vallance recalled that in 1984 when she was teaching at a north-west country school, she had in her kinder-prep class a 'specific group of about three boys whose parents got videos and who had easy access to the video recorder'. (Evidence, p. 2469) She said:

> What concerned me at the time was that these boys' behaviour, which previously had been fairly boisterous but on the whole was fairly normal for kindergarten children, suddenly started changing very rapidly. Their playground behaviour became quite vicious and their games suddenly changed from being boisterous and energetic to being quite obsessed with making knives, swords, guns and those sorts of things, with which they victimised everyone else in the playground - everyone else being in this case the other kindergarten children and in particular the girls in my class, of which there were only a few anyway. They started to become quite secretive. (Evidence, p. 2469)

and:

> Of the children's home backgrounds, two of them were in separated families. The third was in a reasonably stable relationship, but the mother did not have great control over what the child did on the weekends. The parents of these children tended to go out and leave them at home by themselves minded by older teenage children from the district. I suspect that that was where this particular influence came in. The teenage children would get the videos and all of these three particular little boys would sit down and want to be macho and tough and sit up and watch them. I did talk to the mother of the child who was in a reasonably stable relationship about the fact that he was falling asleep in class because he had been up so late. She said that she had trouble getting him to go to sleep and that she would let him sit up and watch the movies with her - she said she had let him sit up until midnight one night. (Evidence, pp. 2470-2471)

14.18 Ms Ryan in talking about her grade 5 children said:

> I surveyed my children recently because I started realising that in their journals they were consistently writing about the movies that they saw. I have just got one example here. This is what alerted to me the fact of what was going on; it is what a child has written:
>
> On the weekend I watched a video called 'Demented'. It was about a lady who was raped by four men. One night four kids came into the house and terrified her so the next night she went into their house and chopped them up with meat cleavers and shot them with a shotgun. When her husband came home she was in bed. He

went down into the kitchen to get something to eat. She came down and blew his head off with the shotgun.

I asked the child who wrote this whether he had nightmares from movies and he said, yes, that he did have some and I said: 'Where do you get these movies from?' I was expecting him to say that he got them from somebody else, but it was actually his parents who had got them and they had just left them at home and he picked them up and was watching them. They had taken no care to see that it was out of his hands. With this child I had the parents come to me and complain about the nightmares the child was having because I was trying to teach him multiplication! I found it rather hard to handle that the mother was prepared to have me for supper over that, and yet took no care or concern over this. (Evidence, p. 2472) ['Demented' is classified M (not recommended for viewing by persons under 15) by the FCB and the reason for the decision is Violence (i-m-g; infrequent, medium explicitness/intensity, gratuitous purpose).]

14.19 In commenting about the role of teachers, Ms Vallance believes, 'some parents are not taking due care with the material that their children are seeing and so even though we may not necessarily want to be moral custodians we are virtually forced into that situation'. (Evidence, p. 2487) The teachers feel it should:

> ... go back to being the parent's responsibility because that is where it really does lie, ... and that we are being forced to pick up something. Often, a teacher, with all the goodwill in the world, does not have the necessary training or expertise to handle it. In a lot of schools you end up having to take on moral education because there is very little coming from home. (Evidence, p. 2488)

14.20 In evidence concerning children's video viewing, Mrs Dorothy Hawkes of Davenport, Tasmania, noted:

> Caring parents will endeavour to protect their children but sadly there are so many opportunities outside the home and even within the homes which parents cannot control. (Evidence, p. 2522)

14.21 The Australian Parents' Council, which represents at Federal level parents whose children attend non-government schools, called for the Government to '...complement the efforts of parents to nurture and educate their children and to assist them to obtain their full human potential'. (Evidence, p. 530) It rejected the view that governments should continue to allow X-rated videos and discs into the country. It suggested that much R-rated material might need to be in the refused classification category. The Australian Parents' Council reported that children who had not seen objectionable video material '... would often be told explicit details of unsuitable video material by some children who had seen it, quite often without their parents' knowledge.' (Evidence, p. 530)

14.22 Mr Phillip Adams, Chairman of the Australian Film Commission believes it is necessary to provide as much information as possible about film content. He said:

> What you have to get on to is labelling. Labelling is different. Labelling says: 'This film contains these elements and these ingredients. Be cautious.' 'This film contains these'. (Evidence, p. 2937)

He maintains that the community and its standard-bearers, including parents and teachers, can be made more concerned by this means, but admits that he is not 'wildly optimistic' that it will stop children from obtaining such material. (ibid. p. 2937)

14.23 Senator Walters observed that:

> Parents do not have control. Parents can be concerned as they like but if children go off to a birthday party for an eight-year-old and it is shown at that birthday party you do not even know ...

14.24 In reply Mr Adams said:

> But some other parent is running that birthday party. It is like the Community Watch program, which has, I believe, done something to lower the incidence of robberies around Australia. There are, I think, some signs that an activated and aware community can influence its own destiny. If you do not believe that, you have to give up democracy. Basically you cannot have one without the other. Most countries have. We still have one, bless our hearts. (Evidence, p. 2937)

14.25 The Committee considers that the labelling of video material with more accurate information as to content may assist parents in selecting appropriate videos for their children. However the Committee is concerned to ensure that such a labelling system is devised which would not do an injustice to the merits of a particular video while, at the same time, ensuring that it is not used as an advertising gimmick to promote the violent or sexual content of a particular video.

14.26 The Committee acknowledges that the labelling of video material cannot be seen as the solution to the problem of the access of minors to video material classified as unsuitable for their viewing.

14.27 The Committee expresses concern that R-rated material is freely displayed and promoted in many video outlets and is freely available in the home hire system. Based upon evidence submitted to the Committee, such material is easily borrowed by minors. Labelling, alone, will not solve this problem. Furthermore, the media, in publicising video titles, rarely give classification information, and in glamorising many violent titles act as though classifications are irrelevant.

14.28 The Committee considers that a number of videos currently classified as M or PG should be reclassified into a higher category. In addition, the Committee considers that the language permitted by the FCB guidelines for inclusion in "G" is not appropriate for that category.

CHAPTER 15

PUBLIC ATTITUDES

INTRODUCTION

15.1 Reference has been made in the Report to the large number of submissions that were received by the Committee. They represented the whole spectrum of possible opinions in relation to the Committee's Terms of Reference. Opinions were expressed on what material should be included in the classification ratings; whether there should be an X category, the impact of violent and 'pornographic' material on women, children and the community generally; the display and presentation of videos in retail outlets; the need for community education about the content of the classification guidelines; the role of the Film Censorship Board, adult cinemas, local production, and so on.

15.2 The Committee wishes to stress that the number of submissions for or against issues cannot be taken as constituting an opinion poll in the sense that majority views may be gauged from them. Too many non-random factors may be associated with the decision to make a submission: for example, form letters may be distributed to supporters of a particular position and organized campaigns may account for a bias in favour of a particular set of views on the issue concerned. It may also be only an articulate and particularly motivated person or group who responds to a public advertisement calling for submissions; certainly it is frequently the case that the majority of responses received when public submissions are called for by advertisement come from critics of current policy and practice or opponents of proposals put forward.

15.3 The Committee therefore sought information from other sources to supplement the submissions it received in an effort to reach a reasonable approximation of current public attitudes on this issue.

OPINION POLLS

15.4 Not many public opinion polls on issues relevant to the Committee's inquiry have been held in Australia. Leading pollsters who use repetitive sampling of public opinion on an interstate scale, such as the Morgan Gallup Poll, Australian Nationwide Opinion Polls, the McNair Anderson Australian Public Opinion Polls and the Age Poll were examined from 1969 on to try to gain some idea of public attitudes on censorship and control. As far as possible the Committee looked at responses on specific matters such as depictions on film, video or television of explicit sex, 'pornography' and violence. The term 'pornography' was used without definition in the polls.

15.5 In October 1969 people interviewed in an Australia-wide survey by the Morgan Gallup Poll were asked 'In your opinion, should censorship of films and literature be increased, left unchanged, decreased, or cut out altogether?'

- 17 per cent said 'increase censorship'
- 43 per cent said 'no change'
- 17 per cent said 'decrease censorship'
- 15 per cent said 'cut it out altogether
- 9 per cent said 'don't know'. (Morgan Gallup Poll (MGPO) 206, October 1969)

The poll took place before the suggestion of a liberalisation in censorship policy which occurred when Mr Don Chipp, M.P., then Minister for Customs, made a statement in the House of Representatives on 11 June 1970. The pollsters interpreted it as indicating that 60 per cent of Australians favoured the maintenance of censorship with 32 per cent favouring less censorship.

15.6 Later polls suggest that public attitudes towards censorship became more liberal as government policy changed in the early 1970s. A poll was taken in September 1970 after Mr Chipp's statement. It asked exactly the same question as in 1969 and showed a five per cent decrease in the support for the then current levels of censorship (MGPO 213, October 1970):

- 14 per cent said 'increase censorship'
- 41 per cent said 'no change'
- 21 per cent said 'decrease censorship'
- 15 per cent said 'cut it out altogether'
- 8 per cent said 'don't know'.

15.7 Age Polls were taken in 1971 and 1973. The one in 1971 was based on a sample of people in Melbourne and Sydney only. When asked 'Do you condone or condemn censorship in general?' 41 per cent of people condoned censorship, 37 per cent condemned it, and 22 per cent were either neutral or had no opinion (Age Poll published 27 March 1971). In 1973 twice as many people were included in the sample which reached beyond Sydney and Melbourne to both urban and rural electorates in all six States and the ACT. In that poll 46 per cent declared that censorship was either right or very right/harmless, while only 27 per cent found it either wrong or very wrong/dangerous. In this case 26 per cent were neutral and 1 per cent did not know (Age Poll, June 1973, printed in The Age Monday July 30, 1973).

15.8 In 1974, the McNair Anderson Australian Public Opinion Polls (gallup method) asked a representative cross-section of Australians in all electorates of each State the following question:

> Some people say pornography should be completely banned - that is, not published for anyone. Others say an adult has the right to decide for himself what to see or read, and therefore pornography should not be banned to adults. How do you feel?

28 per cent responded that pornography should be completely banned; 70 per cent that it should not be banned to adults, and 2 per cent did not know. (The Herald 20 July 1974; The Advertiser 22 July 1974; The Mercury 22 July 1974)

15.9 For the next ten years there was a lull in polling public opinion in Australia on the issue of censorship or attitudes to 'pornography'. The next significant poll on a relevant issue did not occur until 1984.

15.10 Those interviewed then were asked:

1. Are you concerned or not concerned about the possible harmful effects on children of pornographic and violent video nasties that are available these days?
2. Should there be more or less restriction in Australia on pornographic and violent video movies, or is the present amount of restriction about right? (The Advertiser 10 October 1984)

15.11 In the 1984 poll 77 per cent of a sample taken throughout Australia were in favour of 'more restriction on pornographic and violent video movies', 3 per cent said there should be less restriction, and 18 per cent said the present amount of restriction was 'about right'.

15.12 When considering these national opinion polls in general as a source of information on public attitudes in relation to video material a number of difficulties present themselves:

- The questions which have been asked have not adequately addressed the subject matter of this inquiry.

- The frames of reference of the surveys have mostly differed from each other and the results have therefore not been comparable over time thus making it difficult to discern any direction in public opinion. Some have

covered censorship in general but were undertaken in the early seventies when video material was not an issue in Australia; others have tested attitudes to 'pornography' although this term was not used or perceived in a consistent manner (see Chapter 3); more recently the issue of violence in video material has been introduced without separating it from 'pornography' or sexual explicitness, an approach that in the Committee's opinion has confused the issue.

- Nationwide responses to general questions which ask whether people would like 'more' or 'less' censorship (1969; 1970) or 'more or less restriction in Australia' (1984) are impossible to interpret as we do not know what specific laws the people who were polled had in mind as a benchmark.

15.13 A nationwide survey was undertaken in Canada (in collaboration with the Canadian Broadcasting Corporation) in November - December 1984 which focussed on issues that are appropriate to current Australian Commonwealth law. The survey clearly distinguished between two types of material: 'sexually violent or degrading scenes' and 'scenes of mutually consenting sexual activities, with no violence or degrading content, where the sex is 'explicit' (you can see everything)'. While the Committee does not suggest that the findings of the Canadian survey can be applied to Australia, it is interesting to note the responses that were made in circumstances where depictions of explicit sex of a consenting kind (which is all that is allowed in Australia) were clearly distinguished from depictions involving violence. The survey respondents recommended restrictions on video cassettes for home use. These were as follows:

- Sexually violent or degrading scenes - 60 per cent were in favour of a total ban; 32 per

cent were in favour of age restrictions (usually those over 18); and 9 per cent favoured no restrictions.

- Consenting sex (no violence), where the sex is 'explicit' - 25 per cent were in favour of a total ban; 64 per cent were in favour of age restrictions; and 11 per cent favoured no restrictions. (James V. P. Check, Nelson A. Heapy and Oleh Iwanyshyn, A Survey of Canadians' Attitudes Regarding Sexual Content in the Media. York University, Department of Psychology Report No. 151, p. 8)

SURVEYS RELATING TO TELEVISION

15.14 A number of surveys concerned with television rather than video material have been conducted in Australia in the last decade and a half.

15.15 The former Australian Broadcasting Control Board conducted various surveys asking about the amount of violence being shown on television. Results comparing 1970 and 1974 are available. (Evidence, p. 1570) They reveal that the 43 per cent who had considered that too much violence was being shown in 1970, had increased to 55 per cent by 1974. In 1979 when the Australian Broadcasting Tribunal conducted a National Television Standard's survey, 68 per cent said that there should be less television programs containing crime and violence; 68 per cent also disagreed with the statement that violence in television programs makes them more interesting and exciting; 59 per cent of people agreed that 'crime and violence on television teach children and young people about the effects of these things'; 75 per cent agreed that 'crime and violence on television encourages children or young people to do these things'; and 70 per cent agreed that 'seeing crime and violence on television makes a difference to how children and young people behave'. (Evidence, pp. 1570-1)

15.16 The opinions of the community on sex and nudity on television were sought in the 1979 survey. Twenty three percent said they had seen sex shows on television in a way they found offensive while 76 per cent had not although only 17 per cent felt that they had done this often; 53 per cent said nudity was suitable for showing in a television documentary while 16 per cent felt it was suitable in a documentary if not pornographic; 34 per cent said it was suitable in movies and shows and 22 per cent said it was suitable in movies and shows if it was not pornographic.

15.17 In March and April 1983 a survey based on a random sample of 740 people over 15 years old in both Melbourne and Swan Hill in Victoria was undertaken by the Australian Broadcasting Tribunal. It found that there was substantial tolerance towards allowing the televising of 'more explicit material' defined as 'programs and movies which have more sex and violence or swearing in them than is currently allowed' late at night, with 64 per cent of Melbourne and 51 per cent of Swan Hill respondents in favour. (Evidence, p. 1576)

15.18 Although the Committee is concerned about the amount of violence which is portrayed on television without adequate warning, it does not believe it is possible to extrapolate results from surveys of attitudes towards depictions on television and equate them with attitudes towards depictions on video. As the Australian Broadcasting Tribunal pointed out in its submission to the Committee (Evidence, p. 1568), there are differences between the kinds of material seen on television compared with video and also between the degree to which the viewer becomes actively involved in choosing the material he or she watches in either case. These differences may produce very different results in an attitude survey focussed on video material.

RECENT SURVEYS ON ISSUES RELATED TO THE COMMITTEE'S TERMS OF REFERENCE

15.19 Surveys have been conducted from 1984 on issues related to the Committee's Terms of Reference. Four of them will be highlighted as they refer to attitudes to R and X-rated videos.

15.20 In September 1984 the Adult Video Industry Association commissioned a survey using a total sample of 560 respondents in Sydney and Melbourne selected according to a probability sample. People were asked to select the position on a scale of 0 - 10 from strong disagreement to strong agreement on a variety of propositions.

15.21 Some results were as follows:

- 'Adults should be able to watch X-rated video movies in the privacy of their own homes.'
  - 75 per cent of Sydney respondents and 81 per cent of Melbourne respondents chose a score of 5 or above (68 per cent and 72 per cent respectively choosing a score of 6 or above).
- 'Adults should be able to watch 'R' rated movies in the privacy of their own homes.'
  - 82 per cent of Sydney respondents and 89 per cent of Melbourne respondents chose a score of 5 or above (75 per cent and 83 per cent respectively choosing a score of 6 or above).
- 'Should there be strong penalties for hiring, supplying or copying unclassified tapes or films which have not been classified by the Commonwealth Censor?'
  - 83 per cent of Sydney respondents and 79 per cent of Melbourne respondents agreed that there should at the level of 5 or above (75 per cent and 67 per cent respectively chose a score of 6 or above).

15.22 The problem of interpreting survey results is revealed in this case. Two questions focussing on the same issue from different directions produced significantly different responses: while 75 and 81 per cent of people in Sydney and Melbourne respectively felt that adults should be able to watch X-rated video movies in the privacy of their own homes, 65 per cent of Sydney respondents and 50 per cent of Melbourne respondents also felt 'The New South Wales State Government is right to ban the hiring and selling of all 'X' Rated video movies'. An inconsistency was also apparent in relation to R-rated movies: while 82 per cent and 89 per cent of people in Sydney and Melbourne respectively felt that adults should be able to watch R-rated video movies in the privacy of their own homes, 51 per cent and 42 per cent also felt that 'The New South Wales Government is right to ban the hiring and selling of all 'R' rated video movies'. (Evidence, pp. 931-7)

15.23 Speculation and possible explanation are usually undertaken where there are glaring inconsistencies, and this occurred in the AVIA survey. (Evidence, pp. 934-5) The Research Co-ordinator for the AVIA survey also later told the Committee:

> ... we think those sorts of contradictory views reflect the confusion that was created in the public mind on this whole issue and that that sort of misinformation campaign which was conducted very vigorously, especially by Mrs Whitehouse on her whirlwind tour of Australia, contributed very largely to that. (Evidence, p. 991)

However the need for more or less interpretation is always present in attitude surveys: amongst other things a great deal depends on how the question is formulated or what is going on in the environment at the time of the survey some of which may exert an influence on the answers.

15.24 The Cinema Action Group (see Chapter 12, Adult Cinemas) has commissioned a number of surveys covering an above R classification for cinemas. The latest of the surveys, September 1986, was conducted by The Roy Morgan Research Centre Pty. Ltd., and addressed the question of the availability of X-rated movies. An Australia-wide sample of 1607 men and women were asked:

> Next about non-violent movies of an erotic nature, with X-ratings or equivalent ratings. The next pink card lists some ways those movies might be available. Which one of those ways best describes how you think X-rated non-violent movies of an erotic nature should be available?

- only 25.4 per cent of respondents indicated that X-rated videos should not be available
- 18.4 per cent indicated that they should be available only on video tape
- 28.9 per cent indicated that they should be available only in controlled cinema where children are not permitted
- 24.5 per cent indicated that they should be available on both video tape and controlled cinema
- 2.9 per cent could not say or had no answer.

Thus, according to the summary of the survey results, 71.8 per cent of respondents favoured an above R classification and there was support for above R to be shown in restricted (hardtop) cinema.

15.25 Results of a survey undertaken by the Australian Institute of Criminology and the Attorney-General's Department were published in May 1987. (Video Viewing Behaviour and Attitudes Towards Explicit Material: A Preliminary Investigation. A joint project by the Australian Institute of Criminology (Tammy Pope and Paul Wilson) and the Attorney-General's Department (Terry Brooks, David Fox and Stephen Nugent), Canberra, April 1987)

15.26 A questionnaire was mailed to a sample of 558 video hirers who were customers of two video outlets, one in Canberra and one in the surrounding district. The final response rate was 33 per cent or 175 individuals. As the authors point out:

> ... caution has to be exercised in generalising the findings of the survey to the population in general. The population under consideration consists of video hirers in Canberra and the surrounding district. (ibid. p. 4)

15.27 When these video hirers were asked what action should be taken on the sale or rental of videos dealing with explicit material that depict sexual violence, the majority of responses reflected current policy:

- 62.9 per cent said ban them
- 27.4 per cent said there should be no public display
- 7.4 per cent said there should be no restriction

15.28 Attitudes towards X-rated videos for home viewing were fairly liberal and coincided with current policy in the ACT. When video hirers were asked what action should be taken on the sale or rental of these:

- 5.1 per cent said ban them
- 62.9 per cent said that there should be no public display
- 30.3 per cent said there should be no restriction

15.29 Over 42 per cent of people who had children under the age of 18 said that their children had (or probably had) seen an

R-rated movie. The equivalent figure for X-rated videos was 19.1 per cent.

15.30 Approximately half of the respondents agreed that X-rated videos lead some people to sexual crimes and the same number agreed that they lead to crimes of violence. As the report pointed out, since videos with an X classification do not contain any violence, 'It is possible that this [latter] belief is based on an ignorance of what is contained in X-rated movies'. (ibid. p. 33)

15.31 Over a third of respondents either picked an incorrect group of ratings from a series of options or said that they did not know which ratings were used for videos. The report concluded that there was 'a need for further education on videotape censorship classification'. (ibid. p. 36) This conclusion supports the Committee's view that there is a need for greater information on the content of video films offered for sale or hire.

15.32 Although, as the report acknowledged, 'the present survey does have some limitations in terms of the population being sampled and the response rate' (ibid. p. 37) it has provided some valuable data on video viewing patterns and behaviour which have not been surveyed before.

15.33 The results of a survey entitled Public Attitudes to Censorship Classification were released by the Film/Video Coalition on 1 June 1987. The Coalition, which includes various film and video associations and companies, commissioned Brown Market Research Pty Ltd., to undertake the survey, with the objective of establishing the:

> ... public awareness of the 'R' censorship classification and public opinion as to whether this classification should be given more censorship, less censorship or should remain the same as it is now. (Film/Video Coalition survey, p. 1)

15.34 The survey conducted by telephone, took a sample of 2025 people of voting age. In looking at public awareness of 'R' censorship classification the respondents were read out the following movie titles:

The Godfather	Mad Max
The Deerhunter	The Omen
Dirty Harry	Scarface
Apocalypse Now	Scum
Straw Dogs	Friday the 13th 1, 2,
Death Wish 1, 2 or 3	3, 4, 5, 6
	Midnight Express

and were then asked:

> All of these movies carry the same censorship classification - can you tell me what that classification is?

15.35 In total 46 per cent of the sample correctly identified the R censorship classification. Correct identification was higher among males and among people aged 34 years and younger (39 per cent of the sample). 23 per cent of people were unable to give an answer claiming they didn't know or couldn't say. (ibid. p. 7)

15.36 To determine public attitudes to the censorship of movies carrying R censorship classification, people in the survey were told:

> In actual fact every one of those movies carries an 'R' censorship classification.

They were then asked:

> Do you think movies like the ones we have mentioned which carry an 'R' censorship classification should be given more censorship, less censorship, the same censorship? (ibid. p. 12)

The survey found that:

- 71 per cent of frequent cinema goers (once a month or more often) want censorship to remain at the current level or want less censorship.
- 67 per cent of frequent video viewers (once a month or more often) want censorship to remain at the current level, or want less censorship.
- 57 per cent of total survey (2025) respondents want either current censorship to remain unchanged or would prefer less censorship. Those who were infrequent video watchers were disposed towards more censorship than others.
- 31 per cent of total survey respondents favoured more censorship.
- 12 per cent of total survey respondents had no opinion on the subject.
- Those in favour of more censorship and who were able to correctly identify films as being an 'R' classification, represented only 13% of all people surveyed.
- 73 per cent of those surveyed aged between 18 and 34 want the same or less censorship. This age group attends the cinema and watches videos more frequently than other age groups.
- 69 per cent of survey respondents in households with children aged 5 or younger want either no changes or less censorship.
- 59 per cent of survey respondents in households with children of primary school age want either no changes or less censorship.
- 59 per cent of survey respondents in households with teenage children (13 to 17 years) want either no changes or less censorship. (ibid. pp. 2-3)

15.37 Altogether 49 per cent of survey respondents said thay would prefer to see the R classification remain unchanged. They were asked their reasons.

Reason Given	Respondents Mentioning %
Present rating is adequate	45
Up to parents to supervise under 18s	19
People have the right to choose	18
You know what to expect	9
Some don't need an 'R' rating	3
Too much censorship could cause problems	2
Just as much violence on the News	1
Lose too much of story	1
Can't protect children from real world	1

(ibid. p. 17)

15.38 Thirty one (31) per cent of survey respondents said they would prefer to see more censorship of R classified films. Their reasons were:

Reason Given	Respondents Mentioning %
Too much violence shown	61
Not suitable for children	48
Too much sex/nudity	16
Moral standards are being lowered	16
Too much bad language	9
Too easy for children to hire	7
Stricter guidelines because of easy access to videos	2

(ibid. p. 18)

15.39 Eight (8) percent of survey respondents said they would prefer to see less censorship of films with an R classification. The reasons they gave were:

Reason Given	Respondents Mentioning %
People have the right to choose	29
Shouldn't be any censorship	19
Some don't need an 'R' rating	18
Present rating is adequate	11
Up to parents to supervise under 18s	10
Can't protect children from real world	5

(ibid. p. 18)

SUMMARY

15.40 A majority of submissions received by the Committee expressed traditionalist views on the issue of the control and availability of video material in Australia. The Committee is not satisfied that these represented an adequate cross-section of likely views in the public as a whole.

15.41 Nationwide public opinion polls have had problems associated with them which range from question design, the unknown effects of unusual publicity on people's responses, and the need to interpret responses to questions in the light of what is happening in the surrounding environment. More focussed surveys have been limited in the populations to which they may be considered to refer. The Committee believes it is not possible to extrapolate a consistent or accurate view of Australian public attitudes to video material through them.

CHAPTER 16

THE EFFECTIVENESS OF CURRENT COMMONWEALTH LAWS

16.1 In its Terms of Reference, the Committee was required to inquire into and report on certain matters relating to the adequacy of current legislation. This chapter attempts to address the matters covered by:

1(a) the effectiveness of such legislation to adequately control the importation, production, reproduction, sale and hire of violent, pornographic or otherwise obscene material;

1(b) whether the present classification system, as applied by the Film Censorship Board, is adequate as a basis for import and point of sale controls;

1(c) whether video retailers are observing the conditions of sale or hire attached to classified material, particularly in relation to children under 18 years;

1(d) whether 'R' rated videos should be permitted to be displayed for sale or hire in the same area and side by side with 'G', 'PG' and 'M' rated videos and , if not, what restrictions should be imposed on the display of 'R' rated materials;

1(e) whether Regulation 4A of the Customs (Prohibited Imports) Regulations is adequate in identifying categories of prohibited material, and operating effectively in preventing the importation of videotapes/discs falling within the prohibited categories.

16.2 The Committee is of the opinion that one's view of whether current legislation is adequate will to a large extent depend on whether the principles behind the legislation are tenable or accepted. The principles are that adults be free to see, hear and read what they choose providing that children are protected from material that may be harmful to them and that

everybody is afforded protection from unsolicited exposure to material they may consider offensive. These principles have been supported by all governments since 1973. When the principle that adults be free to see, hear and read what they choose was originally stated as public policy the number of videotapes entering Australia was insignificant and there was not the widespread availability of objectionable video publications as exists today as the result of the flood of these materials into Australia (see paragraph 2.9). 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 (see paragraph 5.32) and prohibited from entry into Australia under the customs regulations (see paragraph 5.6). 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 unhold. 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.

16.3 Combining both freedom and protection in law may be expected to cause difficulties. Many submissions rejected the legislation because it does not afford stricter protection at the expense of freedom. However the Committee believes that the Commonwealth legislation has shown itself to be adequate in the degree to which it has been able to adjust to the particular mix of freedom and protection required as levels of understanding about possible effects have changed (see Chapters 5 and 7).

16.4 An expressed purpose of the legislative package introduced in 1984 was to change the emphasis of control from what had been a reliance on prohibition at the point of entry to

a two-pronged approach with its major effort focussed on the point of sale. Commonwealth, State and Territory governments shared the view that it was unrealistic to expect that import controls alone could be sufficiently effective: given the easy and cheap technology of reproduction it would only take a single copy of any undesirable material to slip through Customs to allow the reproduction of sufficient material to flood the domestic marketplace. To prevent this happening would be an impossible task in terms of the resources and costs involved. Further it was accepted that only laws focussed at the point of sale would provide the means to control a domestic industry producing these kinds of materials should one develop.

REGULATION 4A OF THE CUSTOMS (PROHIBITED IMPORTS) REGULATIONS

16.5 During the hearings conducted by both the Senate Select Committee and the Joint Select Committee a number of matters were raised in relation to Regulation 4A.

16.6 The Senate Select Committee reported that the Customs Regulations of 1 February 1984 left both Customs Officers and importers in some doubt about their responsibilities. (SSCVM Report, p. 45) However this Committee is satisfied that since the amendment of 27 June 1985 to Regulation 4A this deficiency has been overcome. As a submission from the Australian Customs Service noted:

> The test under the amended regulation is objective and the commission of an offence will not depend, in law, upon any determination made after importation by the Attorney-General. That is to say, if goods fall within one or more of the prescribed descriptions, and no permission to import them has been granted, an offence is committed when those goods are imported. (Evidence, p. 2790)

16.7 According to the figures supplied by the Australian Customs Service a total of 341 detentions and 22 seizures of videotapes took place in all States throughout Australia in the period from 1 July 1985 to 31 May 1986, only one of which resulted in a prosecution. In February 1986, Customs Officers in Queensland conducted a 'one-off saturation exercise' on recorded videotapes imported by post. A total of 336 tapes were intercepted, out of which 58 were detained. Customs Officers then subjected detained tapes to a quick screen. None of the detained videotapes were found to contravene Regulation 4A. Between 1 June 1986 and 28 May 1987 there were two prosecutions - one in New South Wales and one in Victoria. Two hundred and eighty three films were referred to the Film Censorship Board between June 1986 and February 1988 of which sixty four were prohibited and two hundred and nineteen released. There were no prosecutions during this time.

16.8 The Committee suggests that the effectiveness and adequacy of Regulation 4A should be judged in the context of the total package of Federal and State censorship laws. The thrust of the legislation is that anything that is published and intended for sale or hire that has managed to pass undetected through the customs barrier will be picked up when compulsorily subjected to classification under State or Territory legislation.

16.9 As far as material for private viewing is concerned, there are mechanisms that allow for subsequent seizure of material in private possession if it can be proved that it is a prohibited import. Customs officers may alert Federal and State police to the possible existence of such material and police may investigate. Furthermore it is also open to State or Territory law to outlaw private possession of any kind of video material should it not be acceptable within the jurisdiction. Queensland and Western Australia have chosen to do this with films and videotapes which have been refused classification. It is not an offence to possess X-rated videos in Queensland, but the Minister

responsible for censorship matters in Western Australia, at the time the Video Tapes Classification and Control Act was promulgated in February 1988, stated that the WA Act made possession of X-rated material an offence in Western Australia.

16.10 A number of suggestions were made in the course of the inquiry about possible ways to improve the present capacity to identify and pick up prohibited video material at the Customs Barrier. Customs Officers Association of Australia representatives pointed out to the Senate Select Committee that unless there is a clear indication on the tape that it may qualify as prohibited material they do not necessarily look at the contents. (SSCVM Evidence, p. 203) The Senate Committee Report followed this up with the comment:

> Videos need to be screened as the covering material and the name of the video does not necessarily indicate what it contains. (p. 41)

16.11 In its supplementary submission to the Joint Select Committee the Australian Customs Service pointed out that Customs Officers have much more to go on than video titles when deciding whether videos may fall within the ambit of Regulation 4A. Information to help in making a decision can come from such diverse areas as inward passenger statements, reaction of passengers to questioning, detection of attempts to conceal goods, and information from ACS intelligence files which are compiled as a result of information exchanges with overseas law enforcement agencies on Customs related matters. (Evidence, p. 2791 and pp. 2808-9)

16.12 The Australian Customs Service concluded that, while it:

> ... agrees that videos which, in the opinion of a Customs Officer, could fall within the ambit of Regulation 4A, should be screened, it is considered that the screening of videos is,

> as it has always been in the past, the proper function of the Film Censorship Board. (Evidence, p. 2792)

16.13 The Committee agrees with the ACS that screening by the Film Censorship Board is more appropriate than screening at the Customs Barrier. Not only is the Film Censorship Board geared to the task, it is also the focus of accountable censorship decisions at the Commonwealth level.

16.14 Mrs Janet Strickland, the then Chief Censor, drew the attention of the Senate Select Committee to a lack of uniformity between Regulation 4A and the ACT Classification of Publications Ordinance:

> ... we ... get material which has been referred to us and which we ... prohibit. But the other way round, with respect to material which we refuse classification and which is already in the country, if it comes back in again there is no certainty that it will be prohibited unless it is seized and referred to us again. (SSCVM Evidence, p. 144)

16.15 A film or videotape will be refused classification under the ACT Ordinance:

> ... where the Board is satisfied that the film depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolving or abhorrent phenomena in such a manner that it offends against the standards of morality, decency, and propriety generally accepted by reasonable adult persons to the extent that it should not be classified. (section 25(3))

or if it is a film that:

> a) depicts a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person; or
> b) promotes, incites or encourages terrorism. (section 25(4))

16.16 Regulation 4A(1A) of the Customs (Prohibited Imports) Regulations, however, prohibits only publications that:

> (i) depict in pictorial form a child (whether engaged in sexual activity or otherwise) who is, or who is apparently, under the age of 16 years in a manner that is likely to cause offence to a reasonable adult person;
> (ii) promote, incite or encourage terrorism;

or:

> (iii) gratuitously depict in pictorial form extreme violence or cruelty, especially when combined with any sexual element to the extent they should not be imported;

16.17 The lack of uniformity in wording still exists. We recommend that Regulation 4A(1A) be changed to correspond with the ACT Ordinance.

ACT CLASSIFICATION OF PUBLICATIONS ORDINANCE

(a) X-RATED VIDEOS

16.18 The existence of a category beyond R in the ACT Classification of Publications Ordinance was a source of some concern in submissions to the Committee. The Family Team in the then ACT House of Assembly sought the prohibition of X (ER) rated material (Evidence, p. 10), as did many other submissions, on the grounds that such material was harmful.

16.19 The ACT House of Assembly as a whole, however, was not convinced that it should be prohibited in the absence of clear evidence of harm associated with the material. It recommended that research into the impact on the community of R and X material be conducted. (Evidence, p. 2653)

16.20 In November 1985 the Committee was told in evidence by Mr Doyle, the Chairman of the House's Education and Community Affairs Committee, that motions to ban X-rated videotapes had been put to the Assembly a number of times and had been defeated each time.

16.21 Both he and the other member of the House of Assembly who gave evidence before the Committee, Mrs Hocking of the Family Team, agreed that the number of complaints and representations from the community had decreased between 1984 and the end of 1985 although they disagreed about the reasons for this. Mr Doyle said:

> Apart from the organised campaigns and roneoed letters and so on in particular campaigns, from my point of view they have decreased. I cannot remember any in the last, say, six or eight months. (Evidence p. 2670)

Mrs Hocking said:

> ... in the last six months I have not had the same number of complaints that I had earlier on X

but added:

> I think it could be because people realise that the Senate Committee is looking at the matter and that something is likely to come out of that, so they are not quite so anxious to make representations as they were previously. (Evidence, p. 2672)

16.22 Referring to inquiries that the Assembly's Education and Community Affairs Committee had undertaken, Mr Doyle also said:

> The fact is that we have not found it to be a problem. The Australian Capital Territory includes a quarter of a million people who have access to X rated material. The fact that there is no objective assessment that can be made that the ruination of society has happended is fair enough indication that the ordinance has worked as it was suggested it would work. (Evidence, p. 2670)

16.23 As was explained in Chapter 7, what is allowed in the X classification for the ACT is material listed under the category X Extra-Restricted in the Film Censorship Board's Guidelines, that is:

> Material which includes explicit depictions of sexual acts involving adults, but does not include any depictions suggesting coercion or non-consent of any kind.

The evidence in relation to harm from this type of material was discussed in Chapter 13.

(b) UNIFORMITY

16.24 An argument against continuing to allow an X category in the ACT Ordinance that has been presented to the Committee is that, except for the Northern Territory, no other jurisdiction in Australia currently allows it.

16.25 In July 1983 Commonwealth and State Ministers with censorship responsibilities agreed in principle to set up a uniform system of classification for video material throughout Australia. The ACT Ordinance was designed not only to control video material at the point of sale in the ACT but also to act as a model for the States to follow in setting up their own legislation. While all States have now passed legislation which accepts the Commonwealth classification categories as its basis and which allows for the use of the Commonwealth Film Censorship Board as its classifying agency, uniformity cannot be said to have been achieved (see Chapters 5 and 6).

16.26 The Northern Territory is strongly in favour of X. As Mr Donald Dale, MLA, Northern Territory, representing the Attorney-General of the Northern Territory told the Committee:

> The Territory's approach is still that banning X would merely drive it underground. ... There will always be a market for X, we believe, and the material is particularly popular in the Northern Territory. One of the reasons, of course, is that we have a large number of single males and also we have a number of mining towns and places like that where this type of entertainment is well and truly looked for. (Evidence, p. 391)

South Australia has indicated that it will again consider a classification beyond R following the report of the Committee; Victoria would be happy with the modified X category that has existed since November 1984 if it should be labelled other than X in the ACT Ordinance. There is no indication from the remaining States as to any different future arrangement. Uniformity is therefore unlikely to be achieved in the near future.

16.27 The Committee does not accept that uniformity is important in itself. What matters is that the laws which are in existence throughout the country should not make it difficult for any jurisdiction to achieve its own goals. In fact the existence of varying laws may enable legislators to test their beliefs with regard to the absence of or likelihood of harmful effects.

(c) MAIL ORDER

16.28 An outcome of the fact that the States have not legislated for X-rated videos to be sold or hired although it is permitted under the ACT Classification of Publications Ordinance is that a mail order industry has developed in the ACT for the purpose of supplying material to individual customers in the States. Evidence was given to the Committee that 'up to 13 firms

based in the A.C.T. ... are currently involved in duplicating and/or distributing video material interstate.' (Australian Federal Police Evidence, p. 2971)

16.29 Private possession is not a matter that has been held to be of proper concern to governments in Australia (except in Queensland where private possession of material refused under the ACT Ordinance is an offence, or in Western Australia where possession of Refused material is an offence and the where former Minister responsible for censorship matters has stated that X-rated material is included). The Committee acknowledges that there may be an undesirable side effect associated with the existence of a mail order industry of this kind.

16.30 It was brought to the Committee's attention that it was not hard for minors to gain access to restricted material through mail order since the signed order itself has to be taken as sufficient indication that the person concerned is over 18. (Evidence, p. 2994) In New South Wales and Western Australia it is an offence for a minor who has attained the age of fifteen years to purchase a videotape classified as R or above and in Queensland it is an offence for anyone aged fourteen to eighteen to do so. These laws however are unlikely to be effective in the case of mail order goods as detection and prosecution would probably require a complaint to be lodged by someone associated with the offence.

16.31 It was also suggested by Mr Bob Bottom that the situation is one that is attractive to organised crime and may already have attracted the interest of specific criminals from the United States in Canberra (Evidence, pp. 3024-5) although hard evidence for this is lacking. Mr Bottom's evidence has not been substantiated by the Federal Police Bureau of Criminal Intelligence study of mail order trade out of the ACT. (Evidence, p. 3182)

16.32 At the present time there appears to be little impediment to the operation of a mail order trade in the ACT or the sending of X-rated video tapes to persons claiming to be over the age of 18 who request them. Postal Services regulations 53 and 53A provide that no article may be sent by post which contains 'matter not solicited by the person to whom it is sent, being matter of an indecent, obscene or offensive nature'. However anything that is solicited now lies outside the scope of the regulations. It is not a breach of the regulations and there is no qualification in the regulations that confines the solicitation to adults. (Evidence, p. 1994) Moreover the Minister for Communications wrote to the Committee that:

> ... Australia Post plays only a minor role in cases dealt with under Regulations 53 and 53A, and considers that it should not be involved in policing laws of an essentially non-postal nature. Its conclusion, and mine also, is that the responsibility for such matters should be placed with the Commonwealth law enforcement agency - the Australian Federal Police - rather than with Australia Post. (Evidence, p. 1975)

16.33 The Australian Federal Police reported that mail order is very difficult to police:

> The only ones involved in such a transaction, of course, are the distributor, in most cases Australia Post and/or reputed courier services and the person who has ordered the tape. If a complaint does not arise from any one of those it is highly unlikely that the matter will be brought to police attention. (Evidence, p. 2976)

16.34 Whether section 92 of the Constitution (freedom of trade between the States) would preclude a State law preventing the transmission of X-rated videos by mail order from the ACT into States where their sale or hire is illegal, although possession is not, has been given consideration.

16.35 Some argue that section 122 of the Constitution (the Territories power) would allow a State law prohibiting the sale in the ACT by mail order of X-rated videos, either generally or where the address for delivery was in a State or the Northern Territory. Section 92 of the Constitution would have no application to such a law. That section provides that trade, commerce and intercourse between the States shall be absolutely free. It is not relevant to laws relating to trade, etc., between a Territory and a State and between Territories.

16.36 Others argue that the case of Pilkington v. Frank Hammond Pty. Ltd. (1974) 131 C.L.R. 124 casts considerable doubt on its correctness. In Pilkington it was argued that section 92 did not apply to carriage of goods from Tasmania to Victoria because their ultimate destination was London and the carriage was therefore carriage in the course of overseas rather than inter-State trade.

16.37 The majority of the High Court held that, even though it was overseas trade, passage through Melbourne also made it inter-State trade.

16.38 Dixon C.J. stated in Lamshed v. Lake (1958) 99 C.L.R. 132, p. 143 - 'Again, section 92 itself, while on its very terms it does not protect trade between a State and a territory, may well protect trade, commerce and intercourse between two States during its passage through a territory'.

16.39 Therefore Pilkington could well be relied on to found an argument that the commencement within the Australian Capital Territory of a movement of goods destined for a State other than New South Wales is part of, or is inseparably connected with, inter-State trade in the goods constituted by the movement of the goods from New South Wales to the other State.

16.40 In summary one senior counsel advised that 'I think it quite possible that the transmission of goods from the ACT to the States other than New South Wales would be held to be protected by section 92. If this be the case, it follows that any controls on such transmissions would therefore have to be examined to consider their compatibility with section 92's declared freedom'.

16.41 In the case of trade originating in the Northern Territory, section 49 in the Northern Territory (Self Government) Act 1978 is applicable. That section protects trade between the Northern Territory and the States.

(d) PROTECTION OF ADULTS

16.42 The general thrust of the ACT Ordinance is to provide protection for adults from material which may be offensive to them through self-regulation aided by segregation of sexually explicit material and by labelling in categories that denote general content. As was discussed in Chapter 7 the guidelines that determine the specific content in some classification categories have changed as the perception of possible effects of certain kinds of video material has altered. The currently operative guidelines do not appear to be well known to the general public.

16.43 Some submissions across the full range of perspectives were received by the Committee which expressed concern over the amount of violence that is portrayed in classifications below X (violence is prohibited in X), in particular in R and to a lesser extent, M. A few people were also offended by the language contained in some video material.

16.44 The Committee believes that it is most important for potential consumers to be informed about the content of each particular video tape. If free choice is to work properly then

the content of classification and labelling on which it is based must be well known and understood by consumers and as much information as possible should be included in labels on video containers.

16.45 When the Film Censorhsip Board publishes its decisions in the Commonwealth Gazette, all non-G films and videos are accompanied by a shorthand code which indicates the reasons for the judgments the Board makes. An explanatory key to the code is also published as follows:

	Frequency		Explicitness/Intensity			Purpose	
	Infrequent	Frequent	Low	Medium	High	Justified	Gratuitous
S (Sex)	i	f	l	m	h	j	g
V (Violence).	i	f	l	m	h	j	g
L (Language).	i	f	l	m	h	j	g
O (Other)							

16.46 Examples of notifications in each category together with the full explanation of the reasons for the classification are:

Miracles classified PG because of
O (sexual allusions)
L (f-l-j) [Bad] language that is frequent, of low intensity/explicitness and justified;
V (i-l-g) Violence that is infrequent, of low intensity/explicitness and gratuitous.

Young Blood classified M because of
O (i-m-g) Violence that is infrequent, of medium intensity/explicitness and gratuitous;
L (i-m-g) [Bad] language that is infrequent, of medium intensity/explicitness and gratuitous;

S (i-m-g) Sex that is infrequent, of medium intensity/explicitness and gratuitous.

The Fly classified R because of
O (horror)
V (i-m-j) Violence that is infrequent, of medium intensity/explicitness and justified;
S (i-m-g) Sex that is infrequent, of medium intensity/explicitness and gratuitous.

Intimate Lessons classified X because of
S (f-h-g) Sex that is frequent, highly intense/explicit and gratuitous;
O (mild sexual fetish)

16.47 The ACT Ordinance is worded in a way that increases the opportunities for adults to protect themselves. Section 25(2) acknowledges that R films as well as X films may depict 'matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in a manner that is likely to cause offence to a reasonable adult person'. The classification legislation in Northern Territory, Victoria and South Australia also does this, but the legislation in New South Wales, Western Australia, Tasmania and Queensland defines R only as not suitable for children (in Queensland, the Queensland Films Board of Review subsequently prohibits R films which they judge 'objectionable' under their Films Review Act).

16.48 Only the Northern Territory and Western Australia require R films to be separated out from those of lower classifications and displayed in a separate restricted area. The Committee believes that it would be in keeping with the spirit of Clause 25 of the ACT Ordinance to require that R videos be displayed in a separate room from G, PG and M material, or where the retailer chooses to do so there be no display but sale/hire from catalogues available to those over 18.

(e) PROTECTION OF MINORS

16.49 According to the law in every State and Territory in Australia, neither R- nor X-rated videos (even where the latter are an accepted classification) may be sold, hired or delivered to a minor.

16.50 Evidence of children being supplied with restricted material in video shops was presented to the Committee by a number of groups and individuals (Australian Parents' Council Evidence, pp. 530 and 543; Mrs Beverly Cains Evidence, p. 11; Submission No. 459, Baptist Union of Tasmania) Most of this evidence was of an anecdotal nature. A number of submissions referred to one particular incident in Canberra where a fourteen year old girl obtained two X-rated videos and two R-rated ones at the request of her mother. (Australian Family Association Evidence, p. 1327; Australian Family Association (Queensland Division) Evidence, p. 1243) According to the Australian Federal Police, who did not proceed with a prosecution following the mother's complaint, the girl was 180 cm tall, well-developed for her age, acted casually, and when asked her age replied that she had just turned eighteen. (SSCVM Evidence, pp. 420-1)

16.51 The Committee is conscious that it is often impossible for staff of video outlets to tell whether a person who claims to be over 18 years of age is in fact so. It has proved a problem in other areas of law enforcement such as alleged underage drinking in hotels and does not lend itself to easy management where the legal responsibility rests with the vendor.

16.52 Evidence of harm resulting from exposure of minors to adult material remains equivocal. There is no doubt, however, from the submissions the Committee received on this issue that the possible access of minors to X and R-rated material in video shops is a matter of concern to many people, as is the fact that parents do not have control over what children might see in other

people's homes. These concerns are discussed in chapter 14. It will suffice here to point out that should some amendment to the ACT law be found desirable, models are available in state legislation. In New South Wales and Western Australia the classification legislation declares it an offence for a person 15-18 years of age to buy or hire R films and those refused classification. The same is the case for 14-18 year olds in Queensland. Under the South Australian Act it is an offence for anyone other than a parent or guardian to exhibit images from an R film to a minor, and in Western Australia it is an offence for anyone other than a parent or guardian to 'give' an R-rated film to a minor. It is also an offence in South Australia to exhibit images from a refused film to any other person (a prescribed film being one that has been refused classification or had its classification revoked under the ACT Classification of Publications Ordinance 1983 as a corresponding law under section 14(5) of the Classification of Publications Act Amendment Act 1985).

(f) TRAILERS

16.53 A number of submissions called for the exclusion of trailers advertising material of higher classifications from all video-tapes sold or hired. As the Girl Guides Association of New South Wales commented:

> It is occurring that families are unwittingly being exposed to objectionable trailer material on otherwise suitable films. People should be protected from this unsolicited intrusion into their homes of objectionable offending material. (Submission No. 553, p. 3)

16.54 Unlike legislation in some States, the ACT Classification of Publications Ordinance currently makes no specific reference to trailers attached to videotapes which advertise other titles. According to the definition of 'film' in the Ordinance, the whole videotape should be regarded as a total

entity and should therefore be given the classification of the highest material that is on it. In practice the Film Censorship Board who view this as cumbersome, point out to the distributors that they may choose to remove any trailer of a higher classification which is attached to a feature. However video features are often classified before they have trailers attached, and it therefore could be possible for tapes to appear in sale or hire outlets with higher trailers attached. Although this strictly speaking contravenes the law and renders the distributor liable, it is not a satisfactory situation.

16.55 New South Wales, Queensland and Western Australia specify classifications of films the trailers for which should not be attached to features of a particular classification and the Tasmanian Act requires a sticker to be attached to films classified under the ACT Classification of Publications Ordinance warning consumers that there may be trailers of higher classification attached.

16.56 The ACT House of Assembly on 14 February 1985 recommended to the Senate Select Committee on Video Material that:

> ... the Classification of Publications Ordinance 1983 be amended to make it an offence for trailer material of a higher classification to be included on any video material; and the distributors of video material be responsible for ensuring that all video cassettes only contain trailer material that is either the same or a lower classification.

16.57 A difficulty that the House of Assembly foresaw at that time was that, because major distributors are based outside the ACT they would not need to comply with ACT legislation. However, as can be seen from the table summing up the major features of State and Territory legislation (see Appendix 12), distributors already have to comply with restrictions on higher trailer

material imposed in at least three States, two of which demand a complete ban on any higher classifications. What the ACT House of Assembly saw as a problem should no longer be so and we support its recommendation.

(g) MARKINGS

16.58 The existence of difficulties in relation to markings was raised in evidence from a number of sources. The Australian Federal Police reported an incident in mid-September 1985 in an adult shop in Canberra where 'almost all of the video tapes on display were bearing more than one type of classification and that the majority also had attached labels applicable to magazines and not video tapes'. (Evidence, p. 2969) The Manageress was newly appointed and displayed a lack of knowledge of the requirements of the Ordinance. In a situation where videos are available for sale or hire in a large number of outlets ranging from specialised shops dealing in videos only to petrol stations, chemists, clubs and milk bars some of which employ temporary or casual staff, it is difficult to ensure that staff will always be aware of what is required of them in selling video material. The solution must lie both in the provision of information to the retailers and in adequate policing to remind proprietors of their responsibilities.

16.59 Different States and Territories have many different requirements with regard to markings in their legislation. Moreoever the various requirements make it impossible for the ACT Ordinance to be amended in favour of uniformity. The Committee believes that any recommendations for changes in required markings on video cassettes in the ACT Classification of Publications Ordinance should focus on effective ways of delivering adequate information to consumers in order that they may make an educated choice of material to hire or buy. We recommend that the States decide on similar requirements.

16.60 A requirement that the tape itself be marked as well in every classification has something to commend it. One problem in particular would be solved by adopting this practice; it would reduce the risk that tapes that are left out of their boxes either at home or in video shops might be replaced accidentally in boxes of another classification, thus preventing them from being recognised for what they are. At present there is a risk that tapes of this kind might be seen by groups of people or individuals for whom their content would be unwelcome.

(h) POLICING

16.61 Adequate policing of the conditions of sale and hire of video material is important in a situation where management is focussed on point-of-sale controls.

16.62 Detection of breaches rests with the police in all States and Territories with the possible exception of Western Australia 'where persons authorized in writing by the Minister' may inspect premises.

16.63 The Australian Federal Police reported that between January 1985 and September 1986 police in Canberra received eleven or twelve complaints involving alleged breaches of the Classification of Publications Ordinance. Complaints which were able to be substantiated included two cases of wrong marking or failure to bear a classification sticker relating to G and PG films, a complaint about health risks associated with viewing booths in an adult shop, haphazard labelling of adult movies by a new manageress of an adult shop, and problems associated with mail order. Investigations in relation to the sale by a mail order house, which has since closed down, of a video which had been refused classification, were being undertaken at that time. (Evidence, pp. 2968-70)

16.64 Since September 1986 three further matters have come under investigation. In October 1987 the Attorney-General's Department initiated an inquiry which currently is the subject of a "brief of evidence" against a mail order house in Canberra for advertising and selling videotapes that had been refused classification under the ACT Classification of Publications Ordinance. The Attorney-General's Department also referred to the Australian Federal Police a letter of complaint from a 15 year old in Queensland that a Canberra mail order firm had sent him an X-rated video. It was discovered on investigation that the minor concerned had signed the usual order form and had supplied his own cheque. Finally a complaint was received from a member of the public concerning a video cassette in a hire outlet which was marked PG when it should have been marked M. None of these matters have yet been brought to prosecution.

16.65 Detective-Sergeant Lawler, Criminal Investigation Branch of the Australian Federal Police, in a submission to the Committee on 16 September 1986, reported that:

> Random inspections have been made of approximately 60 video outlets in the past 18 months and I have not witnessed or had reported to me, apart from the one incident of distributing a video that had been "Refused Classification" and previously referred to, any evidence of blatant disregard of the provisions of the ordinance. (Evidence, p. 2971)

16.66 There were, however, still:

> ... occasions when inspections of video hire outlets disclose that not every tape in stock is appropriately labelled. (Evidence, p. 2971)

16.67 The Committee was told that other aspects of police work receive a higher priority than does direct policing of the control of video material (SSCVM Evidence, p. 428; Evidence, p. 2933) and that only two officers are attached to the gaming and vice squad which undertakes the policing of Commonwealth video material legislation in the ACT. (Evidence, pp. 2977-8)

16.68 The AFP recommended 'that all video traders be licensed and distributing points be registered'. (Evidence, p. 2972) This would help police to locate outlets in a situation where:

> ... we seem to have the full spectrum in operation. We have those which you would describe as being large-scale and organised; endeavouring obviously to comply with the law. There are other smaller outlets ... They can be single-man or two-men-type operations. (Evidence, p. 2979)

16.69 The Adult Video Industry Association has also supported licensing of importers and retailers of adult video material, i.e. material that would be rated R or X. (Evidence, p. 860 and p. 865) It is to be noted that this would mean a significant increase in bureaucracy and would also have the effect of protecting licensees from competition. The nature of most complaints substantiated by police in the ACT suggest that mounting and maintaining an educational campaign aimed at both the public and video proprietors should be sufficient to meet current needs.

THE FILM CENSORSHIP BOARD AND THE FILMS BOARD OF REVIEW

16.70 The role of these bodies and comments on them received in submissions were discussed in Chapter 7.

16.71 As far as the Film Censorship Board is concerned, what appears to be at issue in this inquiry is its capacity adequately to make the judgments necessary to give administrative substance to legislation governing the importation and classification of video material.

16.72 Submissions received by the Committee showed that people assess the adequacy of the Film Censorship Board according to whether they approve of the Board's guidelines and its intrepretation of them.

16.73 The guidelines for the classification of videotapes for sale/hire were drawn up in consultation with Commonwealth and State Ministers with censorship responsibilities and have been accepted as viable for the purposes of a general Australia-wide classification system. They have altered as national perceptions have appeared to change. State Governments which choose to allow for the exercise and imposition of different judgments or impose limitations on what is to be prohibited from sale, hire or possession within State borders have done so through their own legislation.

16.74 While disagreeing with some of the decisions of both the Film Censorship Board and the Films Board of Review, some submissions questioned whether the Boards are representative of the wider community or are sensitive to community attitudes. Many suggestions were made on ways to improve their shortcomings (see Chapter 7).

16.75 Members of the Film Censorship Board are appointed for terms that expire at different times. While appointments are able to be renewed in order to ensure a necessary continuity, rotation of members is also possible which allows for reflection of community interests. On the Board in May 1987 there were teachers, script-writers, people involved in film and videotape work in educational, editorial production and research capacities, a tool-maker and a youth and drug-worker. Four of these were women and five men, while the relief member was a woman. The position of Chief Censor is currently vacant. The Deputy Chief Censor who is Acting Chief Censor at the moment, holds an appointment that is due to expire in June 1988. Of the

ordinary Board members two appointments expired in June 1987, four are due to expire in December 1987, one in June 1988 and two in December 1988. It is not known how many Board members have children.

16.76 The Films Board of Review has six members. The Chairman is a professor of psychology with research interests in the effects of exposure to film violence on children; the Deputy Chairman is a senior lecturer in sociology at La Trobe University and a woman; members include a retired public servant associated for twenty years with literature censorship and others. They all serve part-time. It is always ensured that at least one woman member is present when a film is being viewed and discussed.

16.77 The Committee recognises that particular qualifications such as recent experience with teenagers could be emphasised more publicly in the selection of Board members. However we are satisfied that the structures of both the Film Censorship Board and the Films Board of Review are sufficient in principle to enable them to meet their responsibilities satisfactorily.

16.78 In Chapter 15 the difficulty of determining general public attitudes on video material was pointed out. Clearly what is required is a body which is able to evaluate the information that is available and exercise a responsibility to extrapolate a 'general' view for working purposes. The Committee believes that the Film Censorship Board, currently operating under public guidelines that render it accountable for its decisions, is the appropriate body for the task.

16.79 One matter concerning the Film Censorship Board which needs to be addressed urgently is the problem of reclassifying material which was previously classified under different guidelines from those which operate currently. There is no mechanism under the Customs (Cinematograph Films) Regulations to allow the Film Censorship Board to review previous classification

decisions. When there are changes in guidelines as there were throughout 1984 when the violence in the M and R categories was more strictly limited and sexual depictions suggesting coercion or non-consent of any kind were completely banned from X, this becomes a limiting factor. The Committee recommends that the Customs (Cinematograph Films) Regulations be amended to allow for the review by the Film Censorship Board of all previously classified videos so they can be brought into line with current guidelines. We believe that under such arrangements distributors should be responsible for ensuring that retailers are provided with notification and relevant stickers and these classifications should be published in the Commonwealth of Australia gazette with all relevant details and information.

16.80 The Committee also believes that locus standi to lodge an appeal with the Films Board of Review against a classification of the Film Censorship Board should be extended to members of the public as well as the video industry. We appreciate that this may bring about a large increase in the number of appeals and therefore the workload of the Films Board of Review, but we have found throughout the inquiry that it is a matter of sufficient widespread public concern to require such action.

SUMMARY

16.81 The three pieces of legislation which control video material at Commonwealth level are based on a set of principles the proper balance between which may be interpreted differently by different people.

16.82 The Committee is satisfied that the level of protection the legislation currently affords is generally adequate. The Committee acknowledges, however, as does the wording of the ACT Classification of Publications Ordinance 1983 in relation to R-rated material, that there is a need to afford protection to those who are affronted by certain kinds of material. Some

submissions received by the Committee suggest that, in the case of adults, affront can occur at classification levels below R.

16.83 While the Committee judges the law to be generally appropriate in prohibiting certain types of material from entering the country and then allowing control largely through the exercise of consumer choice, there are areas where the ACT Classification of Publications Ordinance could be amended further to reduce the risk of people being exposed to material they may consider offensive. Those areas are greater provision of information to the consumer and education of the industry. The area in which the Committee acknowledges that further offences may be added to the legislation is that which deals with minors outside the sphere of parental control. We recommend that the clause 'images from an R or X shall not be exhibited to a minor (otherwise than by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor)' be inserted in the Ordinance as conditions imposed on R and X videos.

16.84 Interpretation of current community standards lies very much at the heart of Commonwealth legislation controlling video material. The Committee is satisfied that the Commonwealth Film Censorship Board appointed under the Customs (Cinematograph Films) Regulations with its accountable guidelines and statutory role in relation to the ACT Classification of Publications Ordinance 1983 remains the appropriate body to perform this task.

SECTION V

CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 17

CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

17.1 The Committee, in this chapter, presents its conclusions and recommendations following consideration of the issues raised in the submissions it received and the evidence presented at the public hearings held throughout Australia.

17.2 In relation to the Committee's Terms of Reference we have come to the following conclusions and make the following recommendations:

CONCLUSIONS

Terms of Reference

(a) the effectiveness of such legislation to adequately control the importation, production, reproduction, sale and hire of violent, pornographic or otherwise obscene material;

As discussed in the report there are significant problems with the phrase 'violent, pornographic or otherwise obscene material'. There are various degrees of violence, differing views on what pornography is and differences on what constitutes otherwise obscene material. We do not believe that it is physically possible totally to control the

importation, production or reproduction of non-classifiable material.

Provided the classified material includes the vast majority of videos sought by Australian consumers then it should be possible to prevent to a large extent the sale and hire of non-classifiable material. If on the other hand a greater proportion of material were banned to include material in the X category then it could be attractive for criminal elements to operate a black market in this material resulting in a failure of any control at the point of sale or hire.

(b) whether the present classification system, as applied by the Film Censorship Board, is adequate as a basis for import and point of sale controls;

Although we consider the present classification system to be a reasonable basis for coding and registering material and categorising for point of sale controls, the Committee feels that there is a need for a new restricted category for non-violent erotica and that X should be removed.

Some depictions of explicit sexual behaviour such as anal intercourse, or some fetishes may be extremely objectionable to a large proportion of the population. This should be dealt with by the classification system being much more specific thus warning potential viewers of a film's content. We recommend that

film and video viewers be made aware of the Film Censorship Board's reasons for classifications above G.

The Committee recommends the adoption of the proposed labelling system as outlined in Attachment F of the Film Censorship Board's submission (see Appendix 9) provided that it be made a requirement that all video retailers provide upon request the detailed synopsis of the Film Censorship Board's classification reasons.

While the Committee members share an abhorrence of violence, we feel that the difficulties in identifying suitable guideline terminology to delete excessively violent films may in fact result in the unintended deletion of films of merit. The current guideline terminology used by the Film Censorship Board to determine the definition of different degrees of violence - gratuitous, discreet and exploitative - is not without interpretative difficulty. We have recommended certain changes (see Recommendation XXV) to the guidelines and believe that the Film Censorship Board can achieve a reduction of the level of violence by a tighter interpretation of the relevant guidelines.

We recommend the establishment of a new category, to be called NVE (non-violent erotica). This category is to be restricted to those over 18.

(c) whether video retailers are observing the conditions of sale or hire attached to classified material, particularly in relation to children under 18 years;

There was some evidence to show that video retailers were not observing the conditions of sale or hire. The question of proof of age is a fairly difficult problem for the video retailer and this problem is also encountered by retailers of tobacco and alcohol. The enforcement of the age conditions is one which rests with the local police and the responsibility for the age conditions rests with the retailer. We recommend that the retailer have the right to demand proof of age.

(d) whether 'R' rated videos should be permitted to be displayed for sale or hire in the same area and side by side with 'G', 'PG' and 'M' rated videos and, if not, what restrictions should be imposed on the display of 'R' rated material;

We believe that R and NVE-rated videos should be displayed in a separate area or, where the retailer chooses to do so, there be no display, but sale or hire from catalogues available to those above 18 years.

(e) whether Regulation 4A of the Customs (Prohibited Imports) Regulations is adequate in identifying categories of prohibited material, and operating effectively in preventing the importation of videotapes/discs falling within the prohibited categories;

The Committee recommends that Regulation 4A could be strengthened by the closing of any

criteria gap. (see Recommendation XIX)

(f) examine the extent to which videotapes/discs containing pornographic and violent material are available to the community in general;

Videotapes/discs which have been refused classification are not available to the community in general. If there are differences in the legality of NVE between States and Territories there could be trading. The legal (constitutional) position as to banning such trade is not clear and remains untested. The Committee notes the recent developments in some States to make the possession of explicit video material currently legally available in the ACT and Northern Territory an offence.

(g) whether children under the age of 18 years are gaining access to videotapes/discs containing violent, pornographic or otherwise obscene material;

Children under the age of 18 years have some access to R and X videos, particularly R. The amount of access is difficult to quantify.

(h) whether the ACT Classification of Publications Ordinance 1983 should be amended to make it an offence for persons purchasing or hiring videotapes/discs classified above 'R' to allow, suffer or negligently permit children to view such material;

In this regard we cannot see a need to distinguish between R and above R.

The question of government intervening where we are dealing with the parents or guardians of the children is a complex one. We recognise that parents have the ultimate responsibility for those in their care. Therefore, we recommend that it be an offence to show a minor an R-rated or NVE-rated film without the consent of a parent or guardian. (see Recommendation IX)

(i) whether the sale, hire, distribution or exhibition of films and videotapes/discs that would, under existing laws, be accorded a classification above 'R' should be made unlawful;

There is currently no classification above R for films (see Term of Reference j).

The Committee's view is that, consistent with Recommendation X, there be no new category above R. We recommend that NVE and R be given equal restricted status.

(j) whether cinemas should be permitted to screen for public exhibition material classified above 'R', subject to prohibition from entry of persons under the age of 18 years;

There is no good reason for preventing cinemas screening X-rated (NVE-rated) films. It has been argued that it is much easier to control the age of viewers in the case of cinemas. We refer to our Recommendation XII.

(k) whether films which would merit a classification above 'R' are being produced in Australia and if so whether Australian men and women are adequately protected by existing law from pressure to act in such films;

We had no evidence of commercial production of such films in Australia.

(l) the likely effects upon people, especially children, of exposure to violent, pornographic or otherwise obscene material.

This is the most difficult Term of Reference.

Adverse effects upon people, and especially upon children, of exposure to material containing various degrees of violence, pornography, or obscenity have been demonstrated.

Claims were made that in some cases the viewing of such videos may lead to aggressive behaviour, and in others may lead to desensitisation and psychological harm.

Because of the number of variables in the subjects of such studies, it is almost impossible to prove conclusively, a direct or sole causal link between viewing particular videos and the commission of crime.

RECOMMENDATIONS

Recommendation I

The Committee recommends that a new category, NVE

(non-violent erotica) be instituted.

Recommendation II

The new NVE category will contain that material as defined in the current classification of X.

The Committee draws attention to the fact that the majority of the Committee disagrees with the proposal contained in this Recommendation and abstained from voting on it in the light of certain procedural constraints. Their response and recommendation are set out at the conclusion of this chapter.

Recommendation III

The Committee recommends that the specific reasons for classifying a non-G film be displayed on the front cover of video slicks as part of the prescribed markings. (see Term of Reference b) The specific reasons must also be shown on all posters, advertising material and trailers. Films must also exhibit the specific reasons as a preface to the film.

Recommendation IV

The Committee recommends that the prescribed classification markings G, PG, M, NVE and R also bear a description of age suitability. The Committee recommends the following description appear along with the classification symbol on the tape, container and all advertising material:

- G (*suitable for all ages*)
- PG (parental guidance recommended for persons under 15)
- M (not recommended for viewing by persons under 15)
- NVE (non-violent erotica - not to be sold or hired or delivered to a person under 18 years
- R (restricted - not to be sold or hired or delivered to a person under 18 years.)

Recommendation V

The Committee noted the difficulty in finding the classification symbol on many video containers. The Committee recommends that the symbol including the age description be placed in the top right hand corner of the container and distributors be responsible for the application of the correct classification symbol to the tape, the container and advertising material.

Recommendation VI

The Committee recommends that the video cassette bear a classification marking as well as the container.

Recommendation VII

The Committee recommends that under the Ordinance a video outlet be required to display a notice giving an explanation of each classification category (see Recommendation III) and the explanatory key for the reasons.

Recommendation VIII

The Committee recommends that no videotape should have a trailer of higher classification than the titled feature and that it be made an offence for the distributor to include one. We further recommend that in the case of R and NVE only trailers of the same classification be allowed.

Recommendation IX

The Committee recommends that it be an offence to show a minor an R-rated or NVE-rated film without the consent of a parent or guardian.

Recommendation X

The Committee recommends that all R-rated material along with NVE-rated material be displayed in a restricted room and if not displayed be made available to those over 18 by catalogues at the counter.

Recommendation XI

The Committee recommends that all promotional material related to R and NVE-rated videos be similarly restricted.

Recommendation XII

The Committee recommends that hardtop cinemas be permitted to screen for public exhibition material classified NVE subject to prohibition from entry of persons under 18 years, provided that no cinema shall display explicit promotional material for R and NVE.

Recommendation XIII

The Committee recommends the Customs (Cinematograph Films) Regulations be amended to give the Film Censorship Board the power to review its own decisions following changes in the guidelines or community attitudes.

Recommendation XIV

The Committee believes that the Films Board of Review should be maintained as a review body.

Recommendation XV

The Committee recommends that members of the Film Censorship Board and Films Board of Review be appointed for a

period of three years but not for more than two consecutive 3 year terms. The Committee recommends that the rotation of Board members be staggered to take into account continuity.

Recommendation XVI

The Committee believes that the Film Censorship Board should have a research capacity to assist in the maintenance of its awareness of 'community standards'.

Recommendation XVII

The Committee recommends that where a State Minister for Censorship or Attorney-General makes a direct appeal to the Films Board of Review on a film or video the review decision is to have effect in all States and Territories.

Recommendation XVIII

The Committee recommends the regular publication of lists of Film Censorship Board classifications assigned to videos for sale/hire. To date there has only been one (May 1986) consolidated list of classifications assigned by the Film Censorship Board to videos for sale/hire. The Committeee believes this is unsatisfactory.

Recommendation XIX

The Committee recommends the closing of any criteria gap between 4A of the Customs (Prohibited Imports) Regulations and section 25(3) of the ACT Classification of Publications Ordinance 1983. The Committee believes that material refused a classification under the Ordinance should also be then prohibited from importation.

Recommendation XX

The Committee recommends that all video outlets including mail order outlets be registered under the Ordinance, and it be made an offence to trade without a certificate of registration.

Recommendation XXI

As a condition of registration the Committee recommends that the proprietors demonstrate a knowledge of their legal requirements under the Ordinance. Non-compliance with the legal requirements shall result in withdrawal of registration.

Recommendation XXII

The Committee recommends the removal of the necessity for the Attorney-General's written consent to prosecute under the Ordinance.

Recommendation XXIII

The Committee believes that the requirement under the Ordinance for charges to be laid within 14 days of police seizure of goods is unrealistic. The Committee recommends a longer period to enable the Film Censorship Board to determine the classification of the material.

Recommendation XXIV

The Committee recommends that the language criteria for PG be the same as for G.

Recommendation XXV

The Committee recommends that the current guidelines for

R violence be altered. The R violence guidelines would now read: explicit depictions of violence but not detailed, relished or gratuitous depictions of acts of considerable violence or cruelty.

Recommendation XXVI

We see the advantages of a single central classification system, however, the Committee respects the rights of the States to review the classifications in the light of their own view of their community standards.

Recommendation XXVII

The Committee recognises the value of part-time appointees to the Board and the Committee recommends that the current position of their appointment at the discretion of the Attorney-General be maintained.

Recommendation XXVIII

The Committee strongly recommends that a widespread education campaign with input from the Film Censorship Board, relevant Federal and State authorities and the film and video marketing and distribution industry be mounted to combat a lack of community awareness about the meaning of classification categories and their content. In the education campaign particular emphasis should be given to drawing the attention of the public to the avenue of access to the Films Board of Review for possible nation-wide reclassification through State Ministers requesting the fiat of the Commonwealth Attorney-General.

Recommendation XXIX

The Committee recommends that as the provisions of the ACT Classification of Publications Ordinance are matters of major

public policy it is more appropriate that they be dealt with by substantive legislation.

# # #

MAJORITY RESPONSE TO PROPOSAL CONTAINED IN RECOMMENDATION II

1. Recommendation II proposes that a new NVE category will contain that material as defined in the current classification of X.

2. We, the majority of the Committee, strongly oppose that proposition. It would entrench X-rated video pornography (described officially as 'hard core pornography' - see paragraph 3.40) in the community under the guise of the misleading title of NVE.

3. The proposal runs counter to the overwhelming burden of evidence submitted to the Committee concerning the harmful effects of this material and is inconsistent with the findings of the Committee thereon (see Chapter 13).

4. Almost all of the current X-rated video pornography (and their R equivalents) fall within Category II Non Violent Degrading Pornography and some in Category III (see paragraphs 13.46-13.51 of the Report). Rather than entrenching this material into the community we recommend that the Commonwealth Government introduce substantive legislation to ensure that this material is refused classification for the purposes of Commonwealth laws.

5. If the above recommendation were adopted it would not refuse classification to video materials which are gratuitous in regard to sexual matters to the extent that they are crude, tasteless and vulgar, rather than pornographic. Nor would it apply to those video materials which include simulated dramatic depictions of sexual acts in the development and treatment (whether serious or

humorous) of themes involving human sexuality which in context and intent are not pornographic. The video materials referred to in this paragraph fall within at least the scope of the current R category.

6. One of our number (Mr Jull) would extend the depictions of video materials referred to in the second sentence of paragraph 5 to include explicit (as distinct from obscured - both terms are here used as meant in FCB guidelines) depictions where there is a loving, caring relationship which is integral to the context of the video. Such 'explicit' depictions would not fall within the guidelines of the R category and below. There would, in his view, need to be an NVE category to cater for this explicit material and the more extreme of the non-explicit video material referred to in the first sentence of paragraph 5.

7. The remaining five members are opposed to the institution of a new category NVE even for a limited purpose. Unless specified in legislation a new NVE category could in the future be used to include more extreme video materials. In light of perceived changes in community standards or following Ministerial expression of views as to the appropriateness of where the censorship line is drawn, the FCB can change, and indeed on occasion has changed, its guidelines and thus its interpretation of legislation without any change having occurred in the legislation.

8. Whilst the recommendations we have all made in paragraph 4 relate to Commonwealth laws, the question of where to draw the line is also of vital interest to and the responsibility of the States, the Northern Territory, and their respective legislatures. It is noted that the forthcoming meeting of Attorneys-General and Censorship Ministers scheduled for 29 June, 1988 will provide an opportunity for uniform changes to be recommended having regard not only to our recommendation in paragraph 4 above relating to video pornography but also the recommendations we have advocated concerning the need to tighten up substantially in areas of video violence.

9. In arriving at our conclusions we are conscious of the need in our pluralist society

to take into account such factors as the dignity of the human person; freedom of the individual (including freedom of expression); equality (including equality of the sexes); tolerance; realism; the reasonable adult person and the community standard test; and society's right to uphold the common good when the basis for its peaceful cohesion is endangered.

10. Balancing these factors was no simple task. We found it to be not only necessary but indeed our duty. As we constitute the majority of the Committee it follows that the majority of the Committee opposes Recommendation II.

The Hon. Evan Adermann, M.P., (N.P.)
Mr David Charles, M.H.R., (A.L.P.)
Ms Mary Crawford, M.P., (A.L.P.)
Senator Brian Harradine, (Ind.)
Mr David Jull, M.H.R., (L.P.)
Senator Shirley Walters, (L.P.)