



AUSTRALIAN CATHOLIC UNIVERSITY

19 February 1999

Ms Kathryn Paterson
Chief Censor
Office of Film and Literature Classification
1st Floor
255 Elizabeth Street
SYDNEY NSW 2000

Dear Ms Paterson,

Publications Guidelines Review

I am writing with respect to the meeting held at the OFLC on Friday, 12 February. My report on the submissions to the Publications Guidelines Review was discussed with yourself [REDACTED]

At the meeting, as you recall, we discussed a number of specific recommendations and queries made in my report; also, general comments and queries were discussed. A number of new recommendations were made in relation to these discussions and the outcomes of the meeting are summarised in my attached document.

I recognise that some points made in my report were not discussed at that meeting. For example, in my report I refer to the term 'promote' and suggested it be defined or dropped from the Guidelines. As we discussed, it is a term used in the National Classification code and I realise that it cannot be dropped. I note that the OFLC is currently seeking legal advice on the application of the term in law.

Also in my report I refer to the relationship between the covers and contents of publications in both the 'Unrestricted' and 'Category 2 - Restricted' categories. I was interested to hear that covers of submittable publications will be discussed with censorship officials prior to the forthcoming meeting of the Standing Committee of Attorneys General (SCAG) in next April.

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But I am grateful to learn that further consideration will be given to the gap between the covers and the contents of 'Unrestricted' publications.

Other queries raised in my report were clarified to my satisfaction in our meeting and have not warranted recommendations being made by me. These include my queries on how one acts on publications which 'promote' violence; how one judges 'simulated' sexual activity, and 'consenting adults' by description; and the difference between (g) and (h) of the 'RC' criteria.

My final recommendations, following our discussions on 12 February and suggesting specific changes to the Guidelines based on the submissions are set out in the attached document.

I hope this feedback is helpful.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Peter W Sheehan', written in dark ink.

Peter W Sheehan AO
Vice-Chancellor

RECOMMENDATIONS FROM DISCUSSIONS

12 FEBRUARY 1999

1. ****GENERAL (p6)** "The new set (of Guidelines) is undoubtedly more conservative. This reflects the tenor of most of the submitted material, and even considering the unrepresentativeness of the sample, I agree with its thrust."

2. ****UNRESTRICTED (p6)** "I remain conscious of the enormous gap between what appears on the front page of some magazines and the accompanying label 'Unrestricted' which is stamped there by the Office. I am signalling here especially the sample illustration given in Submission 138. Such a gap focuses necessarily on public perception of the credibility of the Office and its classification process and represents a problem that needs rectifying."
****Recommendation:** add a criterion to the 'Violence' criteria in the 'Unrestricted' category following the first two criteria , which reads 'Prominent and frequent realistic depictions of violence will not be permitted'.
****Recommendation:** add a third sentence to the first 'Nudity' criteria in the 'Unrestricted' category which reads 'Prominent and/or frequent realistic depictions of sexualised nudity containing genitalia will not be permitted'.
****Recommendation:** delete the words 'and descriptions' from the second criterion in the 'Sex' criteria in 'Unrestricted'. Add a third criterion which reads 'Realistic descriptions of sexual activity should not be gratuitous or very detailed'.

3. **UNRESTRICTED/COVERS (p3)** "If a publication is unrestricted and its cover is not, then Government is putting a system in place where the publication fits one category, but the material as a whole (incorporating its cover) fits another (ie is actually restricted). I think the conflict here is confusing and sends potentially ambiguous messages about the nature of what is meant by a publication'.

4. **UNRESTRICTED (p3)** Not clear what is meant by "career context".
Recommendation re 'Violence' criteria on page 9: clarify 'career context' by inclusion of words 'such as the armed forces'.

5. **UNRESTRICTED (p3)** P10 Adult themes makes use of 'depictions' and 'descriptions' whereas matching text on p11 does not.
Recommendation: re-word page 11 to achieve consistency.

6. **UNRESTRICTED** (p3) Do not use double negatives such as: "Will not be unsuitable"
Recommendation: though generally it is preferable *not* to use double negatives, keep this double negative where necessary, to avoid sounding like the material is being *recommended* for minors.
7. **UNRESTRICTED** (p3) Use 'shown' and 'describe' as in drug use p10, over 'depictions' and 'descriptions'.
Recommendation: where a distinction is not necessary between 'depictions and description' and the terms could, on occasion, be replaced with more 'user friendly terms', use substitute terminology .
Recommendation: final sentence of *Impact* section of *Guidelines Contents and Use* (page 5) should be repeated in definition of 'descriptions' in the Glossary.
8. **UNRESTRICTED** (p3) 'Publication' is used in a generic sense eg p9. Seems to substitute for many other terms.
 (Other generic "Publications" statements have been moved to the preamble for clarity of meaning).
Recommendation: in the Glossary, refer to the definition of 'publication' in the Commonwealth Act.
Recommendation: move the generic criteria for 'publications' from current location in specific element criteria to be with other generic 'publications' statements in the 'Unrestricted' introduction.
9. **UNRESTRICTED** (p5) Why not state under Nudity that "Publications which emphasise nudity and which also emphasise violence will not be permitted"?
Recommendation - See point 8.
10. **UNRESTRICTED** (p3) Reference on p9 to "in which sexual excitement is apparent..." "too vague":
Recommendation: amend 'sexual activity' definition to replace the word 'arousal'. Definition should read 'Matters pertaining to sexual acts but not limited only to portrayals of sexual intercourse'.
11. **UNRESTRICTED** (p3) Internal inconsistency between eg p8 "Generally depictions and descriptions of violence should not have a high impact" and then "Depictions and descriptions of violence with a high impact will only be permitted if..."
Recommendation re 'Violence' criteria in 'Unrestricted': insert the word 'Therefore' before the sentence 'Depictions and descriptions of violence with a high impact...'

12. **UNRESTRICTED** (p5) With regard to bona fide artworks, elaborate the phrase "when set in a historical or cultural context" p8.
Recommendation: reword phrase on page 8 to read '...when authentically set in a particular cultural or historical context.'
Recommendation: define 'cultural context' to include an example, as follows: 'In relation to bona fide works of art, includes works of literary note'.
Recommendation: define "historical context" to include an example, as follows: 'In relation to a bona fide work of art, includes a documentary or biography'.
13. ****UNRESTRICTED-M** (p2) "If some 'Unrestricted' material is not suitable for immature readers, one can wonder about the general understanding of, or appropriateness of, the term 'Unrestricted'".
14. ****UNRESTRICTED - M** (p 2) "The Guidelines imply that there are levels of 'Unrestricted'.... The revision seems in contradiction to the Guidelines that exist for films and videotapes where each distinction in level is defined carefully".
****Recommendation** re the 'Unrestricted' category and the appropriate labelling of 'submittable publications': Reword the 'Unrestricted-M' label to read "Not Recommended For Readers Under 15 Years".
15. **CATEGORY 1**(p4) Does "obvious sexual excitement" first para p13 conflict with first para p12 under 'Sex'?
Recommendation: reword the definition of 'sexual activity' – see point 10.
16. **CATEGORY 1** (p4) Give some examples of "revolting and abhorrent phenomena" and improve glossary definition.
Recommendation: italicise the phrase 'revolting and abhorrent phenomena' to indicate legislative terminology.
Recommendation: add 'revolting' to RC criteria (k) (page 16).
17. **CATEGORY 1/CATEGORY 2** (p4) How is nudity in Category 2 different from nudity in Category 1?
Recommendation: rewording the definition of 'sexual activity' (see point 10) will help with this.

18. **CATEGORY 1/CATEGORY 2 (p4)** How is 'detailed description of sexual activity involving consenting adults may be permitted' on p14 distinguished from the similar section on p12: ie intensity. Say more about intensity on page 14.
Recommendation: refer to intensity level of thematic content in 'Sex' criteria as follows: 'Detailed descriptions of sexual activity involving consenting adults may be permitted. However sexual themes with a very high degree of intensity should not be described'.
Recommendation: Also refer specifically to permissible level of intensity in 'Adult Themes' criteria, as follows: 'Some themes with a very high degree of intensity may be referred to but not described in detail, and should not be exploitative'.
19. **CATEGORY 2 (p4)** In elaboration of Category 2 (Restricted) the relevance of how the content is highlighted by the cover is not signalled as obviously as it might be.
20. **RC/GLOSSARY (p4)** Define the term 'promote' or drop it from the Guidelines.
21. **RC (p4)** Unclear what 'other value' means on page 15.
Recommendation: change 'value' to 'values'.
22. **RC (p4)** What does "violence in a sexual context" mean on p16?
Recommendation: add to Glossary definition of 'sexual context' to clarify distinction between 'sexual violence' and 'violence in a sexual context' as follows: 'Violence in a sexual context, as distinct from sexual violence, refers to a relationship between the elements of violence and sex/sexualised nudity. The relationship may be established by the placement, style or content of images and text, and/or by a story-line'.
23. **RC (p4)** What does the term "other fantasies" mean in clause k?
Recommendation: either delete the word "abhorrent" or add "revolting" to be consistent with 'revolting and abhorrent phenomena'.
24. **RC (p5)** What is the distinction between (g) and (h) on p15-16?
25. **GLOSSARY (p4)** Why is the term 'demean' linked to 'depictions' but not 'descriptions' in the glossary definition?
Recommendation: include the word 'descriptions' in the Glossary definition.
26. **GLOSSARY (p4)** Definition of nudity appears too conservative. What is the problem with "rear above waist visuals"?
Recommendation: delete the words 'above and' from the Glossary definition.

27. **GLOSSARY** (p5) Why is 'strong' prominence given to the term 'emphasis'? 'Prominence' by itself carries the same connotations.
Recommendation: reword definition to read 'Given prominence or strong focus'.
28. **GLOSSARY** (p5) The definition of 'violence' seems too broad – including threat of violence and weapons.
Recommendation: reword definition to read '...Includes not only acts of violence but also the obvious threat of violence or its result'.
29. **GLOSSARY** (p4) Definition of 'disturbing' is too strong.
Recommendation: reword definition to insert the words 'or anguish' after 'trauma'.
30. **GLOSSARY** (p4) Something more needs to be said about 'simulation' – the definition is problematic.
Recommendation: re-insert notion of 'obscured' sexual activity into relevant part of Category 1 'Sex' criteria to read 'Simulated or obscured sexual activity involving consenting adults may be shown in realistic depictions'.
31. **GLOSSARY** (p4) Definition of 'harm' is problematic – why is it linked to development?
Recommendation: reword definition to read 'Cause damage. In relation to minors, affecting their level of maturity'.
32. **CONSISTENCY** (p3) The Guidelines refer to 'depictions' and 'descriptions', however, reference is also made to 'photographs' eg p9. Use of such multiple terms is problematic.
Recommendation: replace 'photographs' on page 9 with 'realistic depictions'.
33. **CONSISTENCY** (p2) The term 'offense' on p8 of the Guidelines is targeted towards adults whereas the glossary definition refers to 'most people'. **Recommendation:** amend the first sentence of the introduction to the 'Unrestricted' category to read 'The 'Unrestricted' classification encompasses a range of material which may be suitable for children, or adolescents, or adults, but is not likely to offend a reasonable adult to the extent that it should be restricted.
Recommendation: amend the first introductory paragraph to 'Category 1 – Restricted' and 'Category 2 – Restricted' to read 'This classification is legally restricted to adults. Material which is given a restricted classification is unsuitable for those under 18 years of age and is likely to cause offence to a reasonable adult and therefore may offend some sections of the adult community'.

34. **GENERAL (p3)** "It seems clear also that 'depictions and 'descriptions' pertains mostly to violence and sex and not to adult themes and drugs."

Recommendation: achieve consistency where possible.

35. **GENERAL (p6)** Consideration should be given to three 'different' preambles to explain what follows for particular audience groups (eg Board, Industry and Public)

Recommendation: insert the following two paragraphs under the heading 'Purpose' as the first section of 'Guidelines Contents and Use'(page 5):

The Board is legally required to apply both the Code and the Guidelines when making classification decisions. The role of the Guidelines is to amplify the criteria set out in the Code. Board members are therefore the primary audience for the Guidelines.

The Guidelines are also of interest to, and used by, members of the publications industry and members of the general public.

Recommendation: insert the following sentence into the second paragraph of page 3 of the Preamble so that the paragraph reads: 'The Guidelines describe in more detail the scope and limits of material suitable for each classification category. Separate guidelines exist for the classification of films (including videos) and computer games. Both the Code and the Guidelines are agreed to by Commonwealth, State and Territory Ministers with censorship responsibilities.

Recommendation: insert a sentence before "In general, stylised depictions..." sentence in the 'Impact' section to create a new paragraph which reads 'The Guidelines clearly delineate between 'depictions' and 'descriptions' and in some cases 'references' in order to be able to describe, where appropriate, the different impact levels of images and text. In general, stylised depictions are considered to have less impact than realistic depictions, especially photographs. Generally, descriptions of classifiable elements may contain more detail than depictions, if the level of impact does not increase as a result. Move this paragraph below the existing first paragraph.

36. **GENERAL (p2,6)** "My main problem...is inconsistent phrasing, use of multiple terms for the same reference (eg depiction/description, see/hear, photograph and publication) and lack of tightness in the ordering of the criteria."

Recommendation: tighten up inconsistent phrasing/multiple terms where possible and order criteria in the same way where possible.

37. **GENERAL (p6)** "A final revised set of definitions should be internally consistent, reliably coherent and, as far as possible, unambiguous".

Recommendation: address in revisions.

38. **GENERAL (p6)** "The Guidelines are probably most adequate for distribution to members of the OFLC's board who regularly make decisions on classification and are very familiar with the terms and concepts expressed in the document. The Guidelines do not appear nearly as adequate for the general public and industry."
See point 35.

39. **GENERAL (p6)** A translation device needs to be found to make the guidelines more 'user-friendly'.

Recommendation: explicitly recognising the different audiences will help achieve this (see point 35).

40. **GENERAL (p3)** "There are some key terms that seem unenforceable. How does one act upon publications which 'promote' violence, and how does one judge 'simulation' in photographs?"

41. **GENERAL (p4)** How does one judge 'consenting adults' by description?

Other Comments

42. **SUBS GENERAL (p1)** Clarification problems in the public exposure draft have led to confused interpretations of the guidelines. "For example, 19 submissions from individuals (17.5%) referred only to concerns with aspects of television program classification. These respondents tended to be part of a group from Wagga Wagga." "It appears that there are a substantial number of people who misunderstood the purpose of the review (e.g. the number of comments about film and video violence and sex), although these comments could be useful measures of public opinion in the future

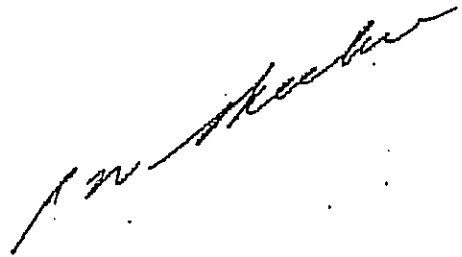
43. **UNRESTRICTED-M (p2)** "Industry also raised concerns over the legal force of such a category since it really only applies to unsubmitable publications... Presumably, the most effective way of creating such a category would be to include publications in it that warrant assessment for classification according to the law, but do not warrant restriction."

44. **UNRESTRICTED-M (p2)** It should be noted that placing these publications in the Unrestricted M category would not be a satisfactory way of alleviating parents' concerns over children's access to such material."

45. **UNRESTRICTED-M (p2)** "It should also be noted that many individuals want greater clarification of the contents of the publications, but do not want the Unrestricted-M category."

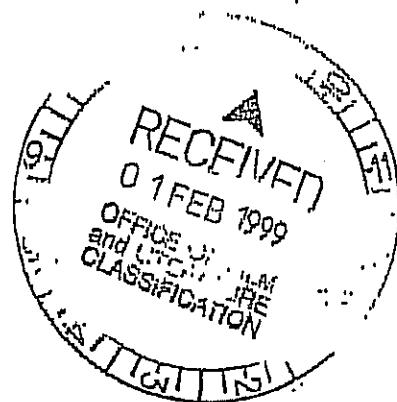
46. **SUBS GENERAL (p5)** "Major issues of concern generally, expressed by the submissions, are about what effects violent and sexually explicit material have on children and the effects of television on the young."

47. **SUBS GENERAL (p5)** "Other issues of concern were raised by Industry groups: these included the impact on business of delays in classification, the new fast-tracking priority fee (see sub 35), the perceived increase in restrictions that the new guidelines place on publications, and the effects on advertising."
48. **SUBS GENERAL (p6)** "A major criticism levied (in particular by industry groups) against the guidelines is their lack of uniformity. In particular, there are strong objections to the different standards of regulation in Queensland; the (perceived) arbitrary nature of South Australian Classification decisions; and the fact that Western Australia and Tasmania operate their own systems."
49. **SUBS GENERAL (p7, 8)** Representativeness of sample "...certain groups could be having a disproportionately large impact on the way community attitudes are being perceived by others. Less than 10% of the Industry groups who were contacted responded. Less than 1% of the government departments and parliamentarians contacted responded (the figure is 0.3%). However, 32% of the community groups contacted responded (the figure is a combination of the number of community interest and church groups contacted.) Of the community interest groups, at least 40% are clearly identifiable as religious groups. Of the individuals sent submission packages, approximately 30% responded. This figure is similar to the percentage of community interest groups which responded. However, due to the fact that the individuals selected for inclusion in the study are people who have contacted the OFLC before (354 submission packages were sent to individuals who had previously contacted the OFLC), they are not representative sample of the community – these people are likely to be those who have had specific concerns that they have raised with the OFLC in the past." ... "Of the individuals who did make a submission, 94 (86%) are readily identifiable as pro-censorship, 43 (39.5%) are identifiable as being married and 30 (27%), are identifiable as having children. A possible cause for the views taken by this group may be as a result of concern for their children...It might also be noted that there are three occupational categories that seem to recur amongst this group: they are teachers,(primary school), counsellors, and priests or religious ministers."





AUSTRALIAN CATHOLIC UNIVERSITY



29 January, 1999

Ms Kathryn Paterson
Chief Censor
Office of Film and Literature Classification
1st Floor
255 Elizabeth Street
SYDNEY NSW 2000

COPY
for information

Dear Ms Paterson,

KP 1/2/99

1. Introduction

As for the task I did for your Office in January 1996, the current requirements seemed to me to be related to four main components. First, the existing Guidelines must ultimately be compared with the final set of revised Guidelines. The second and related component is to comment on the latest revised set in relation to the submissions you have received; I note that the submissions heavily emphasised clarification, meaning, the appropriateness of the language used, and a variety of issues associated with classifiable elements. The third is to signal issues which, while not technically contained within the revised Guidelines, are nevertheless relevant to the submissions; these, for the most part, relate to sundry issues which those who submitted thought should be addressed. Fourthly, you asked for brief comment on the Report that analysed the submissions themselves.

Because the final Guidelines are not formally in place, I will move to discuss components 2 and 3.

2. Components 2 and 3

I believe clarification problems in the public exposure set have led some people to offer confused interpretations of those Guidelines. There were quite a number of misunderstandings made in submissions from a wide range of people or groups. For example, 19 submissions from individuals (17.5%) referred *only* to concerns with aspects of television program classification. These respondents tended to be part of a group from Wagga Wagga. As these people only referred to their concerns with television, it suggests that (when individual issues are addressed) the submissions generally had nothing to say about the inclusion of the violence, sex, nudity, coarse language and drug use elements in the Guidelines. Those people who did comment on these issues are outnumbered disproportionately by those who did not, simply because many were not commenting on the publication guidelines at all.

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To the extent that there is any misunderstanding of the Guidelines by the public, then the Guidelines can be said to be inadequate. It appears that there are a substantial number of people who misunderstood the purpose of the review (e.g. the number of comments about film and video violence and sex), although these comments could be useful measures of public opinion in the future. Twenty-five of the individuals who made submissions demonstrated at least one misunderstanding of the Guidelines. (The figure is probably much higher when the number of issues in the Guidelines that received no comment at all is taken into account.) Three community interest groups also misunderstood at least one part of the Guidelines. The submissions made by individuals on artistic merit also generally misunderstood this section:

2.1 Clarity and Meaning of the Guidelines

My main problem relates to the clarity of the Guidelines and to the consistency of the language used to express their meaning. To help most constructively, I will pass comment on your latest revision of the Guidelines that is based on submissions in response to the public exposure draft. In making the following comments, I am guided by the content of the submissions as well as my own perception of their adequacy.

Overall, I found the comments of those who responded to the survey constructive; surprisingly few were extremely negative or rejecting. Not unexpectedly, reference is made heavily to the *Unrestricted M Category*, there being two categories of the term "unrestricted".

2.1.1 Unrestricted M Category. The Guidelines imply that there are levels of unrestricted, but I agree with some submissions in their comments about the criteria for the M level. The revision seems in contradiction to the Guidelines that exist for Films and Videotapes where each distinction in level is defined carefully. If some "unrestricted" material is not suitable for immature readers, one can wonder about the general understanding of, or appropriateness of, the term "unrestricted"? If some material is not intended for some persons over 15 but who are not mature, is the category labelled most appropriately as "unrestricted"? And (see page 8) why is the term "offense" targeted to adults in the opening paragraph, when it is defined in reference to most people in the Glossary?

I note that there is a range of opinion on this particular issue. One industry group hoped that it would allow for an easing of restrictions in this category that would mean a lessening of restrictions on category one publications. Industry also raised concerns over the legal force of such a category since it really only applies to unsubmitable publications. (They were concerned that it would lead to an increase in the sphere of influence of the OFLC.) Presumably, the most effective way of creating such a category would be to include publications in it that warrant assessment for classification according to the law, but do not warrant restriction. It should be noted that placing these publications in an unrestricted M category would not be a satisfactory way of alleviating parents' concerns over children's access to such material. It should also be noted that many individuals want greater clarification of the contents of the publications, but do not want the unrestricted M category.

If a publication is unrestricted and its cover is not, then Government is putting a system in place where the publication fits one category, but the material as a whole (incorporating its cover) fits another (ie is actually restricted). I think the conflict here is confusing and sends potentially ambiguous messages about the nature of what is meant by a publication.

2.1.2 Variability of Language. The language used in the Guidelines is actually very variable and quite confusing. The Guidelines refer to "depictions" and "descriptions". However, reference is also made to "photographs" (less so in the latest draft which is based on submissions and where the term "realistic depiction" frequently replaces the term "photograph") which implies what is seen but not heard, while the text at other times implies what is seen vs what is read. Use of multiple terms from one category to another (within categories themselves, and between levels) creates problems in the Guidelines which will confuse readers and perhaps threaten coherence of the set as a whole.

I think it is confusing to use the double negative (eg "will not be unsuitable", page 8).

It seems clear also that reference to "depictions" and "descriptions" pertains mostly to violence and sex, and much less so to adult themes and drugs.

There is still internal inconsistency in the Guidelines. Consider page 8, for example. Under the violence category it is stated that "Generally, depictions and descriptions of violence should not have a high impact"; the next paragraph, however, says that "Depictions or descriptions of violence with a high impact will only be permitted if..." These two statements appear contrary and do not clearly communicate what is actually intended by the Guidelines.

On page 9 it is not clear what is meant by "career context" for violence; this term is not in the Glossary. It is on page 9, also, that there is a shift to the term "photographs", and page 9 (and elsewhere) uses "publication" in a generic sense that seems to substitute for many other terms.

My general problem throughout the description of categories is the inconsistent phrasing, use of multiple terms for the same reference, and lack of tightness in the ordering of criteria. I am sure that some of the confusion is caused by the text having to cover both what is seen and what is read, but I believe the Guidelines seem to be obviously having trouble and are forced at times into inadvertently appearing redundant.

I find the reference on page 9 to "in which sexual excitement is apparent" too vague to be easily understood by those who pick up the Guidelines. Also on page 9, it is not clear why use of the terms "descriptions", "depictions" and "publications" occur in the same section (see Nudity, page 9). Adult themes on page 10 make use of both "depictions" and "descriptions", whereas on page 11 the matching text does not. Also, on page 10 (under Drug Use) the references are "shown" and "described"; these two terms seem much better than "depiction" and "description" and (at times) "publication".

There are some key terms that seem unenforceable. How does one act upon publications which "promote" violence, and how does one judge "simulation" in photographs? Also,

could "obvious sexual excitement" (top paragraph on page 13) be seen to be in conflict with the first paragraph on page 12 under "Sex"? Note again the use of "depictions" and "descriptions" on page 12.

In elaboration of *Category 2 (Restricted)* the relevance of how the content is highlighted by the cover is not signalled as obviously as it might be.

How does one judge "consenting adults" (by description)? How is nudity in this category really distinguishable from nudity in the previous category? How is "detailed description of sexual activity involving consenting adults may be permitted" on page 14 distinguished from the similar section on page 12: a comment on intensity appears on page 12, but not on page 14 and there needs to be more said on page 14 to distinguish the essential point about "intensity".

Examples are needed on page 13 of "revolting and abhorrent phenomena". This was a problem to submitters and greater specificity seems to be required in definition of this term in the Glossary. The Glossary should also attempt to define "promote"; otherwise this ambiguous term should be dropped from the Guidelines.

In the text on the *Refused Classification Category*, there is continued use of the term "promote" and it is not clear what the reference to "other value" means on page 15. What does violence in a "sexual context" mean on page 16? What does the term "other fantasies" mean in clause k?

2.1.3 Glossary. There are obvious problems with the Glossary. The meaning of terms in it is critical to the Guidelines and many submissions have highlighted this fact. I agree with the new entries to the Glossary but meanings have not been altered in their phrasing to reflect some of the constructive suggestions made by submitters.

The term "demean" seems especially important. However, in the Glossary it is linked only to "depiction" – why not "description"? Shouldn't such a term be referenced with respect to what is read as well as what is seen?

There is too strong a definition of "disturbing". Serious disturbance more probably causes emotional trauma. This problem was noted in the submissions, and it raises a valid point.

The definition of nudity appears over-conservative. What is the signalled problem with "rear above waist visuals"?

The definition of "simulation" is also problematic. The text in the Glossary refers to "looks realistic" but "is not real". How does the viewer (or reader) know? I realise this is a difficult problem, but submissions have raised a relevant issue and something more needs to be said.

The definition of "harm" is problematic also. It is linked in the Glossary to causing "development damage". Why link harm necessarily to "development"? And how does one define "development" in this context?

Why is "strong" prominence given to the term "emphasis"? The term "prominence" by itself carries the right connotation. Qualifying it in this way will create difficulties.

The definition of "violence" seems too broad. The definition offered in the Glossary includes threat or result of violence, and also includes "weapons". This is a very inclusive definition and I think it will cause problems in the implementation of the Guidelines.

2.1.4 Other Differences. There are also some differences in relation to the latest set of Guidelines as related to the public exposure set:

The response to "bona fide artworks" – an issue in submissions – refers to "when set in an historical or cultural context" (page 8). This requires elaboration; the reference is not clear.

Why not state under Nudity (page 9) that publications which emphasise nudity and which also emphasise violence will not be permitted? This classification was in the public exposure set and appeared sensible.

Finally, what is the distinction between g and h on pages 15 and 16? This was not in the public exposure set.

2.2 Issues of Concern to Industry

Major issues of concern generally, expressed by the submissions, are about what effects violent and sexually explicit material have on children and the effects of television on the young. Management of children-access is not just an issue for government and many facets of this problem are not (and should not be) directly within the OFLC's control. Other issues of concern were raised by Industry groups: these included the impact on business of delays in classification, the new fast-tracking priority fee (see sub.35), the perceived increase in restrictions that the new guidelines place on publications, and effects on advertising.

A major criticism levied (in particular by industry groups) against the guidelines is their lack of uniformity. In particular, there are strong objections to the different standards of regulation in Queensland; the (perceived) arbitrary nature of South Australian classifications decisions; and the fact that Western Australia and Tasmania operate their own systems. Two of the calls for increased parity came from individuals (one wanted the parity to reflect adoption of Queensland's standards of classification), two came from community interest groups and four came from Industry groups. No mention was made of the matter in the submissions made by parliamentarians. Perhaps this is an issue that needs more discussion in the Report (see Section 3).

Some industry groups raised additional concerns with the fees charged by the OFLC for classification of materials. One (sub. 35) suggested that periodicals or magazines with the same format should only have to submit one publication for classification to reduce the associated business costs. This suggestion was also made in the submission from Queensland Pride. They are either unaware of, or ignore the fact that if it is left up to

publishers to decide which issues to submit for classification, then there are opportunities for them to select issues that will not be restricted for classification by the OFLC and then sell later issues that are possibly more extreme in content.

2.3 Overall Commentary on Submissions

The latest revised set attempts commendably to elaborate on terms and to define the separate criteria in the Guidelines in more detail and I largely agree with the thrust of the new inclusions. I think, however, there will remain a significant problem in the new set's clarity, as perceived by industry and the general community. Multiple terms (depiction/description; see/hear; photograph; and publication) should be scrutinised further for internal consistency and clarity. The criteria used under the separate categories are not defined tightly and appear inconsistent and redundant in places. Perhaps the basic issue is how one can arrive at a single set of Guidelines for what is seen and what is read. The definition of "context", for instance, may vary with respect to the meaning of concepts used (eg "promote") across both seeing and hearing. The Glossary requires special re-examination in this respect. One obviously can't have three revisions of the Guidelines, but consideration should be given to three "different" preambles to explain what follows for specific audience groups.

In my opinion, a final revised set of definitions should be internally consistent, reliably coherent and, as far as possible, unambiguous. These criteria are not met by the suggested revised set of Guidelines, despite their improvement. The latest set of Guidelines aim clearly to clarify and help with general understanding, but I think they inadvertently confuse and the confusion will vary according to the "audience" groups (OFLC, community, and Industry) involved. A translation device needs to be found to make the Guidelines more uniformly "user-friendly".

It is because of these problems that I have mentioned, that I find it difficult to conclude upon the general thrust of the original set as compared with the intended thrust of the latest version. The new set is undoubtedly more conservative. This reflects the tenor of much of the submitted material, and even considering the unrepresentativeness of the sample, I agree with its thrust. Despite this, I remain conscious of the enormous gap between what appears on the front page of some magazines and the accompanying label "unrestricted" which is stamped there by the Office. I am signalling here especially the sample illustrations given in Submission No 138. Such a gap focuses necessarily on public perception of the credibility of the Office and its classification process and represents a problem that needs rectifying.

3. The Report

The adequacy of the Guidelines is complicated by the fact that the revised Guidelines really do serve a number of different groups. There appears to be a general feeling that the revised or final draft is inadequate, but different groups cite different reasons for this inadequacy. The Guidelines are probably most adequate for distribution to members of OFLC's board who regularly make decisions on classification and are very familiar with the terms and concepts expressed in the document. The Guidelines do not appear to be nearly as adequate for the general public and industry. It is important in this respect to note that both the public and industry have expressed concern over the adequacy of the definitions in the glossary (see Section 2.1.3).

The Report that has been written is comprehensive and objective in its summary of the submissions received. Very few could pick it up and fail to appreciate its detail, inclusiveness and scope. Paradoxically, however, these same features may produce a significant problem for the Office. There is very little in the Report by way of interpretation to guide readers to an understanding of the rationale for the final set of Guidelines. The Report is statistical, quantitative and actuarial, but not interpretative, explanatory or argumentative. Yet the public will certainly want to know why some changes are made and others not, and what were the reasons that steered the final set of Guidelines. Many of those who submitted are clearly concerned about the communication of rationale, and the factual nature of the Report is likely to be misunderstood. The summary of changes made will help, but the Report itself needs to say more.

I have some suggestions which may help to address this issue.

At the start of the Report (in the key issues section), certain issues need emphasising, or at least deserve comment. For example, I think a comment should be made about the representativeness of the sample which responded.

3.1 Representativeness of Sample

A shortcoming of the Report is that although it states clearly in the method section how many and what type of respondents were sent submissions, it does not clearly state what percentage of each type of respondent returned a submission. This is particularly relevant given the number of submissions received in total. It means that certain groups could be having a disproportionately large impact on the way community attitudes are being perceived by others. Less than 10% of the industry groups who were contacted responded. Less than 1% of the government departments and parliamentarians contacted responded (the figure is 0.3%). However, 32% of the community groups contacted responded. (This figure is a combination of the number of community interest and church groups contacted.) Of the community interest groups, at least 40% are clearly identifiable as religious groups. Of the individuals sent submission packages, approximately 30% responded. This figure is similar to the percentage of community interest groups which responded. However, due to the fact that the individuals selected for inclusion in the study are people who have contacted the OFLC before (354 submission packages were sent to individuals who had previously written to the OFLC), they are not a representative sample of the community - these people are likely to be those who have had specific concerns that they have raised with the OFLC in the past. On reading these submissions such appears to have been the case.

Both concerned individuals and groups who are predictably positive and negative in relation to the thrust of the Guidelines have responded. The sample was selective in the final run on other grounds as well (as inevitably will be the case): Predictable issues, for example, were not raised, and there was too much division with respect to the basic principles (adult persons have a right to read, see and hear what they want; and minors should be protected from harmful material).

3.2 Other Issues of Substance

In the opening sections, the issue of the consistency between the Guidelines and the Act ought to be addressed, and greater recognition given to the importance of defining appropriate terms. The early sections of the Report should also highlight better something of the range of matters/issues raised by those who responded. Such include: the compatibility of the two basic principles (which is a change now made), the appearance of being a minor (which also guides a number of changes between the last two sets of Guidelines), state-based differences, explicitness of advertisement for sexual services (which is now recognised), the impending influence of the Internet, the issue of "submittable publications", and censor-free sex education. Some of these are mentioned in the Report at some time or other, but what is needed is an up-front (and also perhaps a concluding) section that implicitly at least highlights the rationale lying behind the changes that have been made.

3.3 Suggested Explanations

Although it is not possible in this type of Report to attribute cause and effect to particular variables, it should be possible to suggest tentatively in it why a particular pattern of results was found. Reasonable hypotheses could then be explored further in future reviews of this kind.

3.3.1 Evidence. Perhaps some comment on the evidence needs also to be provided. A vast majority of the individuals who submitted said that there is a connection between sex, violence and the perceived social ills of this decade. For example, 60 individuals commented on this link. Forty-four did not specifically mention this connection and five did not think that there was a link between perceived social ills and sex and violence. Industry made no comment on this issue. However, nine community interest groups, one Parliamentarian and three petitions made the link. The reasons given for the existence of this link were very similar and were not very convincing as arguments. They tended to take the form of a general statement that presumed that everyone accepted the link. Another type of argument was of the form that serial killers and rapists often admit to using this material before committing their crimes. Persons making these arguments have ignored the fact that these people were probably not capable of coping socially, and that there are many others who read these publications who are not murderers or rapists. The nature of the link is very complex and social scientists do differ among themselves on how best to define it.

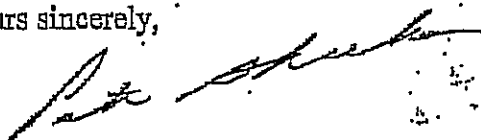
3.3.2 Concern for Children. Of the individuals who did make a submission, 94 (86%) are readily identifiable as pro-censorship, 43 (39.5%) are identifiable as being married and 30 (27.5%), are identifiable as having children. A possible cause for the views taken by this group may be as a result of concern for their children. It should be noted that these figures are not absolute – that is, there may be more people in the sample who are married or have children, and they simply may not have specifically mentioned this fact in their submission. It does, however, raise the issue of how many unmarried people contributed submissions and how many people who do not have children responded. To the extent that these groups did not make submissions, the sample might be said to be unrepresentative of community opinion. It might also be noted that there are three occupational categories that seem to recur among this group: they are teachers (primary school), counsellors, and priests or religious ministers.

3.4 Other Detail

Three detailed points remain: I think the Report is too long; if the current length is maintained it needs an Executive Summary. I don't think the table on page 19 is needed; it distracts from the flow. Finally, I think the reference to me as a cleric ought to be formally acknowledged in the Report as false.

I hope this feedback is helpful.

Yours sincerely,



Peter W Sheehan, AO
Vice-Chancellor

