The Parliament of the Commonwealth of Australia

SENATE SELECT COMMITTEE ON VIDEO MATERIAL

Report

March 1985

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Parliamentary Paper No. 5/1985
MEMBERSHIP OF THE COMMITTEE

Senator G.N. Jones (Queensland), Chairman
Senator N.A. Crichton-Browne (Western Australia)
Senator R.C. Elstob (South Australia)
Senator B. Harradine (Tasmania)
Senator M.S. Walters (Tasmania)
Senator A.O. Zakharov (Victoria)

Committee Secretary:

R.J. Wiber
The Senate
Parliament House
CANBERRA. A.C.T. 2600
(The following Resolution was agreed to by the Senate on 17 October 1984 - see Journals of the Senate, pp. 1240–1242)

(1) That a select committee, to be known as the Select Committee on Video Material, be appointed to report on the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the Australian Capital Territory 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 and videodiscs 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 Australian Capital Territory 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 6 Senators, as follows:

(a) 3 to be nominated by the Leader of the Government in the Senate;

(b) 2 to be nominated by the Leader of the Opposition in the Senate; and

(c) 1 Independent Senator, to be nominated by the Independent Senator.

(3) That the Committee proceed to the despatch of business notwithstanding that all members have not been duly nominated and appointed and notwithstanding any vacancy.

(4) That the Committee elect as Chairman one of the members nominated by the Leader of the Government.

(5) That the Chairman of the Committee may, from time to time, appoint another member of the Committee to be the Deputy-Chairman of the Committee, and that the member so appointed act as Chairman of the Committee at any time when there is no Chairman or the Chairman is not present at a meeting of the Committee.

(6) That, in the event of an equality of voting, the Chairman, or the Deputy-Chairman when acting as Chairman, have a casting vote.
(7) That the quorum of the Committee be 3 members.

(8) That the Committee and any sub-committee have power to send for and examine persons, papers and records, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(9) That the Committee operate until such time as a Joint Select Committee with terms of reference similar to those proposed in Message No. 359 from the House of Representatives is appointed by both Houses of the Parliament.

(10) That upon the establishment of such Joint Select Committee, the Committee be authorised to release to it the transcript of evidence and other documents received by the Committee relevant to the inquiry of the Joint Committee.

(11) That the Committee have power to appoint sub-committees consisting of 3 or more of its members, and to refer to any such sub-committee any of the matters which the Committee is empowered to consider, and that the quorum of a sub-committee be a majority of the Senators appointed to the sub-committee.

(12) That the Committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

(13) That the Committee be empowered to print from day to day such papers and evidence as may be ordered by it, and a daily Hansard to be published of such proceedings as take place in public.

(14) That, subject to paragraphs (9) and (10), the Committee report to the Senate by 31 March 1985.

(15) That, if the Senate be not sitting when the Committee has completed its report, the Committee may send its report to the President of the Senate or, if the President is not available, to the Deputy-President, who is authorised to give directions for its printing and circulation and, in such event, the President or Deputy-President shall lay the report upon the Table at the next sitting of the Senate.

(16) 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.
RE-APPOINTMENT OF THE COMMITTEE

At the commencement of the new session of the Parliament, following the dissolution of the House of Representatives and the subsequent general election in 1984, the Committee was re-appointed. This was done by Resolution of the Senate on 28 February 1985, as follows (Journals of the Senate, p. 75) -

(1) That the Select Committee on Video Material, appointed by the Senate on 17 October 1984, be re-appointed.

(2) That Senators Crichton-Browne, Elstob, Harradine, Jones, Walters and Zakharov be the members of the Committee.

(3) That the Committee have power to consider the minutes of evidence and records of the previous Committee for the purposes of -

(a) reporting to the Senate, by 31 March 1985, on the work of the previous Select Committee; and

(b) authorising the release of such minutes of evidence and records to any joint select committee which may be appointed by both Houses of the Parliament, with terms of reference relating to the subject of the Select Committee's inquiry.

(4) 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.
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BACKGROUND TO ESTABLISHMENT OF COMMITTEE

1.1 Introduction of the legislation: The new Commonwealth scheme for the censorship of publications and videos commenced on 1 February 1984. On that date the following laws came into operation:

(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.

1.2 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 (IA)(a)(iii) of Regulation 4A.

1.3 On 4 June 1984 additional amendments were made to all the laws under discussion, as follows:

(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 paragraph 4.7 for current text of Regulation 4A).

1.4 Senate consideration of the legislation in 1984: The introduction of the original 'package' was the subject of some considerable debate and other action in the Senate.

On 28 March 1984 Senator Mason gave notices of motion for the disallowance of:

(a) Classification of Publications Ordinance 1983, as contained in Australian Capital Territory Ordinance, No. 59 of 1983;

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

(c) Customs (Prohibited Imports) Regulations (Amendment), as contained in Statutory Rules 1983, No. 331.

On 28 March 1984 Senator Harradine gave notice of motion for the disallowance of the Classification of Publications Regulations, as contained in Australian Capital Territory Regulations 1984, No. 2 and made under the ACT Classification of Publications Ordinance 1983. The purpose of the regulations was to prescribe various matters for carrying out or giving effect to the Ordinance.
1.5 On 9 May Senator Durack gave notice that he would move that the legislation referred to in paragraph 1.1 and the Classification of Publications Regulations be considered by a specially convened inquiry of an expanded Senate Standing Committee on Regulations and Ordinances. Senator Durack's notice was, amended by leave, and agreed to on 10 May 1984.

1.6 The Committee's report was tabled, and debated on 29 May 1984, and 30 May 1984, a.m. (Special Report on Certain Regulations and an Ordinance, dated 29 May 1984. Parliamentary Paper No. 90/1984.) The Committee made a number of observations arising out of its special terms of reference regarding whether the Regulations and the Ordinance, individually or severally:

(a) restrict the Commonwealth's existing powers to prevent the importation of publications, including videotapes -

(i) promoting or encouraging violence,

(ii) promoting or encouraging the use of hard drugs, and

(iii) depicting hard core pornography, sexual violence or other gross obscenities;

(b) restrict the Commonwealth's existing power to require videos not imported for public exhibition to be registered by the Film Censorship Board before release by Customs; and

(c) restrict the power of the Commonwealth to protect children from exposure to publications in (a)(i), (ii) and (iii).

The terms of reference also contained the following:

(3) That the Committee advise the Senate whether, in light of this examination, the Regulations or Ordinance contain matter more appropriate for Parliamentary enactment or revised delegated legislation.
The Committee responded thus:

24. On balance, there is nothing in the Regulations or Ordinance more appropriate for Parliamentary enactment. The Committee's examination when the legislation first came before it revealed nothing which could give rise to invoking any of its principles.

25. As to revised delegated legislation, any consideration of such suggestions would involve the Committee intruding into the policy area, therefore the Committee makes no such recommendation.

1.7 The Report was accompanied by a dissenting Report signed by four of the nine members of the Committee which was substantially at odds with the majority Report, and recommended:

... that the matter contained in the new law be the subject of Parliamentary enactment.

1.8 On 30 May 1984, a.m., Senator Mason's motions, notice of which had been given on 28 March 1984, were put and negatived. On 30 May 1984, a.m., Senator Harradine withdrew, by leave, the notice of motion he had given on 28 March 1984.

1.9 Anticipated Establishment of Joint Select Committee: During the course of the Senate Select Committee's inquiry members were conscious of the anticipated establishment of a Joint Select Committee with similar terms of reference to those proposed in Message No. 359 from the House of Representatives, which was reported in the Senate on 9 October 1984.

1.10 Resolution of the Senate of 17 October 1984 - 'X'-Rated Videos in the ACT: The Committee was mindful that the Senate, on 17 October 1984, had passed the following Resolution:
That the Senate -

(a) recognises the concern in the community in the Australian Capital Territory, New South Wales and other parts of Australia about the influx and importation of X-rated videos for sale, hire, reproduction and distribution;

(b) notes that the New South Wales Government is to ban the sale, hire, reproduction and private distribution of all X-rated videos in that State; and

(c) calls on the Federal Government to place a moratorium on the importation, sale, hire, reproduction and private distribution in the Australian Capital Territory and across Australia of all X-rated and other sexually sadistic and violent videos pending the outcome of the proposed Parliamentary Committee of Inquiry into video material.

After the Senate Committee was established it drew the attention of the Attorney-General to the terms of this Resolution in a letter from the Chairman, dated 2 January 1985.

1.11 Establishment of the Committee: The Senate Select Committee on Video Material was established by Resolution of the Senate on 17 October 1984. The original motion proposing its establishment together with the amendments moved, and agreed to, are recorded in the Journals of the Senate for 17 October 1984 at pages 1240-1242.
CHAPTER 2

WORK OF THE COMMITTEE

Introduction

2.1 At the time of this Committee's establishment the Senate had received, and there was listed for consideration on the Senate Notice Paper, Message No. 359 from the House of Representatives, which proposed the establishment of a Joint Committee on Video Classification. The Message was not further dealt with by the Senate in the last session.

2.2 The terms of appointment of the Senate Committee anticipated the establishment of a Joint Committee. The relevant paragraphs read as follows:

That the Committee operate until such time as a Joint Select Committee with terms of reference similar to those proposed in Message No. 359 from the House of Representatives is appointed by both Houses of Parliament.

That upon the establishment of such Joint Select Committee, the Committee be authorised to release to it the transcript of evidence and other documents received by the Committee relevant to the inquiry of the Joint Committee.

2.3 The terms of appointment of the Committee required it, subject to the two paragraphs quoted above, to report to the Senate by 31 March 1985.

2.4 At midnight on 20 February 1985 the Senate Select Committee ceased to exist, prior to the commencement of the new session of the Parliament.
Re-Appointment of Senate Committee and establishment of Joint Select Committee

2.5 On 28 February 1985 the former Senate Select Committee on Video Material was re-appointed to enable it to report on its work so far, and to enable the release of its evidence and records to the proposed Joint Committee. On 19 March 1985 Message No. 6 was reported from the House of Representatives proposing the establishment of a Joint Committee on Video Classifications. The Senate agreed to the proposal on the same day, with modifications.

2.6 The Committee notes that the Joint Committee will comprise 9 members and will necessarily reflect a wide cross-section of the community.

2.7 On 21 March 1985 the Committee resolved, consistent with the Senate's Resolution of 28 February 1985 re-constituting the Committee, to release its minutes of evidence and other records to the Joint Select Committee.

2.8 The Senate Committee, in deciding how to facilitate the work of the Joint Committee, has compiled a list of some of the significant issues that have become evident during public hearings and other work of the Senate Committee. These are included in CHAPTER 4 - SOME SPECIFIC ISSUES HIGHLIGHTED IN PUBLIC HEARINGS. The Committee hopes that the Background paper appended to the Report, although limited in its scope, will contribute in a small way to a wider understanding of the complexity of the issue of censorship in a democracy, especially that of making law that is both workable and is acceptable to the community at large. It is not the wish of the Senate Committee to restrict in any way the matters which the Joint Committee may wish to investigate, or attempt to restrict it to
a particular method of inquiry. As mentioned in Chapters 3 and 4 below, the Senate Committee, in the interim, has confined its examination in public hearings to aspects of the operation of the Commonwealth law, and has not held public hearings on other aspects of the terms of reference.

Conduct of the Inquiry so far

2.9 At its first meeting the Committee decided on a number of courses of action which determined how the Committee would proceed in the ensuing months. An account of what occurred is outlined below.

2.10 Advertisements and requests for submissions and information: The Committee agreed to advertise the terms of reference very widely to allow maximum community input. Advertisements were therefore placed in newspapers in all major Australian cities. The advertisements appeared in mid-November. In addition, press statements were issued and sent to newspapers in most cities and towns with a population of over 10 000. Prospective witnesses were asked to make their submissions to the Committee by 11 January 1985. In the event, many made submissions throughout February and early March, some after seeking extensions of time. Further submissions are expected. The advertisement contained the following phrase: 'It is anticipated that the work of the Committee will be continued by a Joint Select Committee of both Houses with similar terms of reference in the next Parliament'.

2.11 In addition to advertising widely, the Committee wrote to a number of State and Commonwealth Ministers, industry groups, organisations, community and church groups and individuals seeking views on the matters within the terms of reference. A number of people overseas were also contacted.
2.12 Response to advertisements and invitations to make submissions: The Committee has received a good response to its requests for submissions. Those making written submissions totalled 1143 as at 21 March 1985 which includes pro forma submissions. Prior to the establishment of the Senate Committee, correspondence in 1984, addressed to a 'Joint Select Committee on Video Censorship' or similar are also being included as material having the status of submissions.

2.13 Commonwealth Government submissions and evidence: A number of Government departments and authorities responsible to a variety of Ministers responded to the Committee's request for submissions and assistance. Some have yet to provide oral evidence.

2.14 State and Territory government responses: All State governments and the Northern Territory have offered to participate in the Committee's inquiry in some way except Queensland. In response to the Chairman's invitation to make a submission, the Premier of Queensland, the Hon. Sir Joh Bjelke-Petersen, has indicated that his government would be pleased to forward a copy of Queensland legislation, but would not otherwise participate in the inquiry. The ACT House of Assembly's Standing Committee on Education and Community Affairs has prepared a Report for the Committee's consideration.

2.15 Hearing of witnesses: At its meeting on 24 October 1984 the Committee agreed to hear witnesses as soon as possible commencing with:

(a) Commonwealth departments and authorities; and

(b) State governments

2.16 In the event the Committee did not hear evidence from State governments, but did hear witnesses from Commonwealth departments and authorities, as follows:
12 December 1984:

- Officers of the Attorney-General's Department
- Chief Censor and Deputy Chief Censor, Film Censorship Board

23 January 1985:

- General Vice-President and General Secretary, Customs Officers' Association of Australia
- Erstwhile Chairman, Films Board of Review
- Director, Barrier Policy Development, Department of Industry, Technology and Commerce

24 January 1985:

- Director, Barrier Policy Development, Department of Industry, Technology and Commerce (in continuation)
- Chief Superintendent, A.C.T. Region, Australian Federal Police, and Detective Senior Sergeant in Charge, Gaming and Vice Squad, Australian Federal Police
- Officers of the Attorney-General's Department

In all 504 pages of public evidence were taken, together with 24 pages of in camera evidence from the Customs Officers' Association.

The Committee did hope to hold a meeting with officers of the New South Wales Government in Sydney on 7 February 1985, but the New South Wales Government declined to appear at that time.
2.17 Visit to Trans-Universal Video: On 23 January 1985 the Committee visited the premises of Trans-Universal Video, 73 Oatley Court, Belconnen, ACT, at the invitation of the proprietor, Mr Ian Sharp. The Committee was thus able to see a video library in operation. The restricted area where the video covers containing 'X'-rated material are displayed was inspected. The general area of the library was inspected, and Mr Sharp explained how an attempt was made to display covers of 'R'-rated videos above the eye level of children. This was difficult according to Mr Sharp, as some customers replaced 'R'-rated covers on the shelves at a lower level. Mr Sharp said that approximately 40 per cent of videos did not have a classification affixed to the cover as required by the ACT Classification of Publications Ordinance because they had not yet been classified by the Film Censorship Board. Mr Sharp demonstrated the ease with which copies of any tapes could be made using two VCR machines.

2.18 Visit to Film Censorship Board offices: On 7 February 1985 the Committee visited the Film Censorship Board offices in Sydney for a screening of films and videos. The Committee viewed a selection of material containing violence, sexual violence, and 'consensual sex'. The range included extracts from the 'M', 'R' and 'X' categories. Extracts from material which had been refused classification or declared a prohibited import were also screened. During the visit the Committee discussed with the Chief Censor, Mrs Janet Strickland, and the Deputy Chief Censor, Mr Ken Barton, matters relating to the operations of the Board, and the application and enforcement of the Customs (Prohibited Imports) Regulations, the Customs (Cinematograph Films) Regulations and the Australian Capital Territory Classification of Publications Ordinance. (Hereinafter referred to as the 'ACT Ordinance'.)
2.19 From its brief visit to the Film Censorship Board the Committee did not gain a comprehensive and reliable impression of what video material is permitted in each of the current classifications. The Committee foresees that the Joint Committee may also wish to see, as part of its inquiry, a similar compilation of extracts from the various classifications of film/video, and also from those refused classification. The Joint Committee might also find it appropriate to watch some videos in their entirety so that controversial and potentially objectionable passages can be seen in context. The Board's decisions in relation to such films/videos could thus be evaluated in the context of the whole film/video, taking into account such things as plot, merit, emphasis and character development.
CHAPTER 3

OBSERVATIONS AND RECOMMENDATIONS ARISING FROM THE
PUBLIC HEARINGS AND EVIDENCE

General observations

3.1 After submissions began arriving in significant numbers, it became clear that the overwhelming majority of people making submissions expressed objections to the existence of an 'X'-rated category. The vast majority of these submissions also oppose the proposed 'ER' category. It is therefore clear that there is real concern in the community about the availability of videos so classified, especially in so far as children may have access to, or may be exposed to, such material.

3.2 The problems that exist because of the lack of uniformity between State laws and Commonwealth laws, were highlighted in the public evidence taken by the Committee. In addition, it became clear that problems exist within the Commonwealth law as follows:

(a) the laws are inconsistent;

(b) the laws do not cover a number of possibilities and practices; and

(c) the laws are either not fully enforced, or are not capable of being fully enforced.
3.3 Accordingly the Committee considers that it would be valuable to the Senate and to the Joint Committee for some of the major issues arising from the evidence to be summarized. The summary is set out in CHAPTER 4 - SOME SPECIFIC ISSUES HIGHLIGHTED IN PUBLIC HEARINGS.

The need for interim measures

3.4 Based on the issues raised in evidence and summarized in Chapter 4, the Committee has formed the firm opinion that the current law is unsatisfactory in that it does not adequately control the importation, reproduction sale or hire of violent, pornographic or obscene material. This observation is made leaving aside entirely the question of the best classification system and method of dealing with such material. The Committee has not deliberated long enough to suggest long-term alternatives to the current law, which will remain a task for the Joint Committee.

3.5 The Committee recognises that uniform law, while desirable, is not an end in itself. The end which should be sought is good law. Nevertheless, the Committee notes that because of the situation whereby the law in the Australian Capital Territory permits the sale or hire of videos of a category beyond that which is currently permitted in 'R' at present, problems are likely for the regulation of videos throughout Australia because of the lack of uniformity between the laws of territories and states. While the Australian Constitution foresees the various state communities regulating their affairs independently on a variety of subjects, videos and films are so easily transported across state boundaries, and copied, that each State law, to be effective, is dependent on the law applying in other States or the territories, or in the Commonwealth's case, the law applying to Customs and the ACT.
3.6 The States have clearly indicated through their Parliaments and Governments that they do not wish to model legislation on the ACT Classification of Publications Ordinance. At present the situation in the ACT is clearly at variance with the situation in the States.

3.7 Observations and Recommendations: It is in that context that the Committee makes the following observations and recommendations.

3.8 During its deliberations the Committee:

(a) Noted that the overwhelming majority of written submissions opposed the availability of the 'X'-rated category of videos;

(b) Identified a number of serious inadequacies in the Commonwealth law purporting to regulate videos; and

(c) Noted the initial lack of uniformity between the Commonwealth and State laws, and the later decisions by all States to ban 'X'-rated videos.

3.9 During its deliberations the Committee was also conscious of the Senate's Resolution of 17 October 1984 calling for a moratorium on the availability of 'X'-rated videos in the ACT.

3.10 Because of the preceding points the Committee, especially because of the serious inadequacies in the present law, considers that interim measures are required to regulate videos throughout Australia until the Joint Committee investigates and formulates considered recommendations on the subject, and the Parliament and Government considers those recommendations.
3.11 While the Committee feels obliged to recommend interim measures, it does not wish to prejudice the considered findings of the Joint Committee. This Committee has not deliberated upon the most appropriate scheme for the classification of video material or what material should be refused classification. Nor has it taken public evidence on the topic.

3.12 The Commonwealth's role is especially significant because of its power in relation to the making of ordinances for the ACT and because of its power to regulate imports. At present a great deal of material that would attract an 'X' classification in the ACT or which would be refused classification is entering the country which is not permitted for sale or hire in the States.

3.13 In considering the options for interim measures, the Committee is aware that, whichever option is chosen, no entirely satisfactory result is possible.

3.14 For example the Committee is aware that the banning of the 'X'-rated category of videos for sale or hire in the ACT, and for that matter throughout Australia, would not entirely meet the concerns of those people who are worried about the widespread availability of 'X'-rated videos and the possibility that children may be exposed to such material - many are now in private hands, having been imported, purchased or copied since the advent of videos and VCRs in the late 1970s.

3.15 Nevertheless, because of the States' actions in banning 'X'-rated videos and the inconsistent state of the Commonwealth law, and without prejudice to the considered findings of the Joint Select Committee, the Committee recommends that the following interim measures be taken:
(1) A moratorium be placed on the sale and hire of 'X'-rated videos in the ACT consistent with the Resolution of the Senate of 17 October 1984 as the most practical interim measure to facilitate regulation of videos throughout Australia until the Joint Committee reports.

(2) That the Customs (Prohibited Imports) Regulations be amended, and administrative guidelines issued to Customs officers be revised, to stop the importation of material that would be refused classification under the Committee's proposal for a moratorium of 'X'-rated and similar material.

3.16 The Committee recommends that in drawing up interim measures, the Government have regard to the many problems with the state, application and administration of the law identified in Chapter 4 of this Report, and in the public evidence taken by the Committee.

Resources of the Film Censorship Board

3.17 During the public hearing at which the Film Censorship Board gave evidence, and as a result of the Committee's visit to the Board, it has become clear that the Film Censorship Board lacks the resources to undertake the work it is required to carry out on behalf of the Commonwealth and the States. The problem was highlighted through information received during the Committee's examination in public hearing of evidence from the Australian Federal Police. In the ACT an estimated forty percent of videos for sale or hire have not been classified by the Film Censorship Board as required by the ACT Ordinance.
3.18 On 15 February 1985 the Chairman of the Committee wrote to the Chief Censor, Mrs Janet Strickland, seeking further information regarding the Board's workload. The Chairman's letter and the Chief Censor's replies of 29 February 1985 and 8 March 1985 are appended at Appendixes A, B and C.

3.19 The Committee draws attention to the growing backlog of applications for classifications not yet dealt with by the Board which has accumulated over the last several months. (See also Chapter 4, and especially paragraphs 4.30 and 4.31, for an elaboration of associated issues.)

3.20 The Committee is of the opinion that insufficient resources are allocated to the Film Censorship Board. This is contributing to a situation in which the law purporting to govern the regulation of videos is being brought into disrepute, particularly in the Australian Capital Territory.

3.21 Recommendation: The Committee recommends that the Government, as a matter of urgency, provide the Film Censorship Board with adequate resources to fulfill its statutory and other responsibilities.

Matters requiring further evidence and examination

3.22 Because the Committee has not evaluated the submissions or taken oral evidence other than from officers of certain Commonwealth departments and authorities, no general recommendation on matters which require long-term and detailed investigation can be made this time. The Committee has not addressed itself to matters covered in the terms of reference beyond certain aspects of the state, intention, application and administration of Commonwealth law. There are profound questions of morality and public policy to be considered. In addition, recommendations which propose changes to the law should take into account concepts such as community standards, and advances
in new technology. What the Senate Committee proposes to forward to the Joint Committee, and what it includes in Chapter 4 of this Report for the information of the Senate, is a list of some of the major issues highlighted in the public hearings which the Joint Committee might like to further consider as it commences its work.
SOME SPECIFIC ISSUES HIGHLIGHTED IN PUBLIC HEARINGS

Introduction

4.1 Under s.51(i) of the Commonwealth of Australia Constitution the Commonwealth is given the power to control imports into Australia. Commonwealth laws have been made which purport to regulate the importation of films and videos. States and Territories have powers to make laws with regard to the sale, hire and public exhibition of film/video and other matters relating thereto. This power is exercised by the Commonwealth in respect of the ACT. Since each State and Territory can make different laws, the field is ripe for inconsistency, both between the states and territories, and between the various states and territories and the Commonwealth. What is curious, however, is that the Commonwealth laws are internally inconsistent. In addition the intentions of the laws, as described by the responsible government departments and authorities, are at variance with the outcomes.

The Commonwealth Censorship Classification Scheme

4.2 The Customs (Cinematograph Films) Regulations, the Customs (Prohibited Imports) Regulations and the ACT Classification of Publications Ordinance, together form a 'legislative package' for a film and video censorship classification scheme. On 25 January 1984 the Attorney-General, Senator the Hon G.J. Evans, announced that the legislative scheme was designed to give effect to the Government's policy of the right of adults to see, hear and read what they wish in the
privacy of their own homes, while they, and those under their care are entitled not to be exposed to material that may be offensive or harmful. There are specific prohibitions relating to:

(a) child pornography;
(b) terrorism;
(c) bestiality; and
(d) drugs.

4.3 The ACT Ordinance was originally designed to serve as model legislation for the States in this area. It is complemented by the regulations mentioned above, which are designed to clarify the rules and procedures governing imported films and video tapes.

4.4 The new scheme enables a person to apply to the Commonwealth censorship authorities for classification of films and videos. The Customs (Cinematograph Films) Regulations regulate films for public viewing, the Customs (Prohibited Imports) Regulations are designed to govern films and videos at the point of importation, while the ACT Ordinance governs rules and procedures for films and videos for private use. The ACT Ordinance also covers a broad area relating to video retailing and classification, classification categories, prohibition of the sale and hire of videos of certain classifications to children and regulation of the public display of certain classifications of videos. Set out below are the purposes of the Regulations and the Ordinance as described in evidence by the Departments and authorities.

4.5 Customs (Cinematograph Films) Regulations: The intention of these regulations was described by the Film Censorship Board as follows:
These Regulations seek to control imported film for public exhibition by requiring that such films be registered by the Film Censorship Board before being released from Customs control. Films refused registration (such decisions being open to review by the Films Board of Review and/or the Attorney-General) must be exported or destroyed.

The responsibility for the enforcement of these Regulations rests with the Australian Customs Service.

Under the provisions of Regulation 13(1) of these Regulations, a film shall not be registered, if, in the opinion of the Board, the film is (a) blasphemous, indecent or obscene; (b) likely to be injurious to morality, or to encourage or incite to crime ... or (d) depicts any matter the exhibition of which is undesirable in the public interest.

"Public exhibition", in relation to a film, means the exhibition of the film to members of the public in a place, whether enclosed, partly enclosed or unenclosed, and whether admission to the exhibition of the film —

(a) is open to all members of the public or is restricted to persons who are members of a Club or who possess any other qualifications; and;

(b) is or is not procured by the payment of money or on any other condition.

Since February 1 1984, videotapes for sale/hire are not subject to the provisions of these Regulations, as their application is limited to films for 'public exhibition'.
(Submission No. 38, Evidence, pp. 82-83.)

4.6 Regulation 4A of the Customs (Prohibited Imports) Regulations: In a submission to the Committee the Attorney-General's Department described the effect of this regulation in the following terms (Evidence, pp. 8-9):
As from 4 June 1984 Regulation 4A has prescribed as prohibited imports goods 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) 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.

These amendments to the Customs Regulations have replaced the vaguely worded general obscenity proscriptions with specific categories of material to be prohibited from importation. Such amendments have the following advantages when compared to the previous Regulation:

. Customs officers are now issued with operational guidelines, prepared in consultation with officers of this Department, which, based on the amended Regulations, are easier to interpret and enforce;

. The efforts of Customs barrier officers to intercept prohibited imports are now focussed on five defined areas (child pornography, considerable violence, bestiality and materials inciting or promoting terrorism and drug misuse) thereby allowing for more efficient law enforcement; and
The discrepancy between the Regulations and operational procedures has been resolved. (Submission No. 40, Evidence, pp. 8-9.)

4.7 The Committee however considers this description of Regulation 4A to be at variance with the precise text of the Regulation which is set out below:

4A (1) In this regulation, unless the contrary intention appears —

"film" includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced;

"publication" means any book, paper, magazine, film or other written or pictorial matter.

(1A) This regulation applies to the following goods, that is to say —

(a) publications, other than films that are registered under the Customs (Cinematograph Films) Regulations, that, in the opinion of the Attorney-General or a person authorised by him for the purposes of this sub-regulation

(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.

(b) any other goods that, in the opinion of the Attorney-General or a person authorised by him for the purposes of this sub-regulation -

(i) depict, express or are otherwise concerned 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 to the extent that they should not be imported; or

(ii) depict 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.

(1B) The Attorney-General may, by instrument in writing, appoint a person to be an authorised person for the purposes of sub-regulation (1A).

(2) The importation of goods to which this regulation applies is prohibited unless a permission, in writing, to import the goods, has after the Attorney-General has obtained a report from the person or persons for the time being authorised by the Attorney-General to give such a report for the purposes of this regulation, been granted by the Attorney-General.

(2A) The Attorney-General may, by writing under his hand, after consultation with the Ministers of State of the States with responsibility for censorship, authorise a person or persons to give reports for the purposes of this regulation.
(3) A permission under this regulation shall be subject to such conditions imposing requirements or prohibitions on the person to whom the permission is granted with respect to the custody, use, reproduction, disposal, destruction or exportation of the goods or with respect to accounting for the goods, as the Attorney-General thinks necessary to ensure that the goods are not used otherwise than for the purpose for which he grants the permission.

4.8 Comment: There is a discrepancy between the provisions of sub-regulation (1A) and the provision as described by the Attorney-General's Department. The goods described are not 'prescribed as prohibited imports'. Only the Attorney-General or a person authorised by him can decide whether the goods in question depict, contain, promote or incite certain things. To the extent that there is any obligation on the importer at all not to import certain things, and it is not argued here that there is, it is for him (the importer) to determine, not whether goods depict or promote certain things, but rather, whether 'in the opinion of the Attorney-General or a person authorised by him' the goods depict or promote certain things. (See also paragraph 4.24 to 4.26)

4.9 Australian Capital Territory Classification of Publications Ordinance: The Attorney-General's Department submission described the developments leading to the recent amendment to the ACT Ordinance as follows:

Meeting of Ministers, 13 July 1983 - voluntary Classification System

16. Following a change in Government in March 1983 the Attorney-General decided to pursue proposals discussed at previous Ministerial meetings for a uniform classification scheme for publications which would include literature and videotapes. He convened a meeting of Commonwealth/State Ministers with censorship responsibilities in July 1983 at which it was agreed in principle that such a
uniform scheme would be implemented. It was decided that each State and Territory would introduce legislation based on a model A.C.T. Ordinance. The legislation would provide for five classification categories, these being 'G', 'PG', 'M', 'R', and 'X'. Both Queensland and Tasmanian Ministers indicated to the meeting that 'X' classified material would not be accepted in their States. However, in other respects the legislation would be uniform.

17. Following the meeting, the Commonwealth took immediate steps to draft an Ordinance to incorporate the above proposals and the A.C.T. Classification of Publications Ordinance was implemented on 1 February 1984. This Ordinance, which serves as "model" legislation for adoption by the States and the Northern Territory, contained, as well as the classifications described above, the following features –

- point of sale controls to restrict the access of minors to materials classified 'R' and 'X';

- prescribed markings to be affixed to 'R' and 'X' classified videotapes showing the classification of the tapes for the benefit of consumers; and

- realistic penalties for dealing in videotapes refused classification.

The classification of videotapes and films under the scheme was voluntary. However, the existence of a classification was to be a complete defence for retailers against prosecution under State and Territory obscenity laws.

Meeting of Ministers, 6 April 1984 – Compulsory Classification System

18. Because of concern expressed about the need for greater consumer guidance than that afforded by the model voluntary classification system in force in the Australian Capital Territory a further meeting of relevant Ministers was convened on 6 April 1984. Ministers expressed general support for making the new uniform national videotape classification system compulsory.
The advantages of the compulsory system were that it would give additional consumer guidance as all videotapes for sale/hire would need to bear prescribed markings. Also it would make for easier administration and law enforcement.

19. In accordance with the support expressed by Ministers, the model A.C.T. Classification Ordinance 1983 was amended to make the classification of all videotapes compulsory in the Australian Capital Territory with effect from 4 June 1984.

4.10 Section 25 of the ACT Ordinance, where 'film' is interpreted as including 'a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced', states as follows:

Approval of classification films by Censorship Board

25. (1) Where the Censorship Board decides that a film -

(a) is not an objectionable publication; and

(b) is not unsuitable for viewing by a minor,

the Board shall approve the classification of the film -

(c) as a 'G' film, where it is of the opinion that the film is suitable for general exhibition;

(d) as a 'PG' film, where it is of the opinion that the film should only be viewed by a person under the age of 15 years with the guidance of a parent or guardian of that person; or

(e) as an 'M' film, where it is of the opinion that the film cannot be recommended for viewing by persons under the age of 15 years.
(2) Subject to this section, 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.

(3) The Censorship Board shall refuse to
approve the classification of a film 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 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.

(4) The Censorship Board shall refuse to
approve the classification of 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.

4.11 In relation to 'advertising matter', the ACT Ordinance
provides as follows:

Advertising Matter

28. (1) Where the Censorship Board, a
member of that Board or a Deputy Censor
is of the opinion that advertising
matter relating to a film that is the
subject of an application for
classification under this Division -
(a) depicts, expresses or otherwise deals with matters of 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 approved;

(b) 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

(c) promotes, incites or encourages terrorism,

the Board, member or Deputy Censor shall refuse to approve the advertising matter but otherwise shall approve the advertising matter.

(2) The Censorship Board, a member of that Board or a Deputy Censor may approve advertising matter under sub-section (1) subject to such conditions (if any) in relation to the publication of the advertising matter as the Board, member or Deputy Censor thinks fit.

Section 3(1) of the Ordinance provides that "advertising matter" in relation to a film, means a publication comprising any written or pictorial matter contained or displayed in or on any container or wrapping where that container or wrapping is used to enclose the film".
Problems inherent in the Commonwealth laws

4.12 Criteria for prohibiting imports and refusing classification of videos in the ACT: As can be seen from the previous section, different criteria apply to imports prohibited under the Customs (Prohibited Imports) Regulations from criteria applied to videos refused classification under the Australian Capital Territory Classification of Publications Ordinance. The Chief Censor, Mrs Janet Strickland gave evidence on this matter on 12 December 1984 (Evidence, p. 144). Mrs Strickland noted that 'There is some difficulty ... in there being a gap between the criteria under the A.C.T. Ordinance and Regulation 4A', adding 'We believe that material which is refused classification under the Ordinance should also be prohibited if imported and that is not the case at the moment'. Mrs Strickland did not offer an opinion as to which criteria were preferable, but was concerned that the two should correspond.

4.13 Discussion: At present it is possible for material to enter the country legally, because of Regulation 4A, which may have been, or which subsequently may be, refused classification in accordance with the provisions of the ACT Ordinance. It is fair to assume that a lack of correspondence also exists between what is permitted for sale or hire under other State and Territory laws and what is able to be imported because of Regulation 4A of the Customs (Prohibited Imports) Regulations. Questions which arise from the general lack of correspondence between Commonwealth, State and Territory laws are:

(a) What is the status of material possessed by individuals which has been imported legally but which has been, would be, or is subsequently, refused classification or otherwise proscribed pursuant to State or Territory law;
(b) What is the status of a copy made of the material, the original of which has been, or is, subsequently refused classification and/or declared a prohibited import; and

(c) Do State or Commonwealth laws currently anticipate the situations in (a) and (b) above.

4.14 Criteria applying to films registered for public exhibition, and classification under the ACT Ordinance: Different tests are applied when:

(a) applications are made for a licence to import films for public exhibition pursuant to the Customs (Cinematograph Films) Regulations, (Reg. 13); and

(b) when applications are made for classifications under the ACT Classification of Publications Ordinance (s.25)).

4.15 There may be problems in this lack of correspondence of criteria. For example, while blasphemous and obscene material is proscribed under the Customs (Cinematograph Films) Regulations, no blasphemy test is required to be applied under the ACT Ordinance. A further complication is added because of the failure by either the Film Censorship Board or the Films Board of Review to apply the blasphemy test. (See Evidence, pp. 153-154 and p. 290.) Questions arise as to:

(a) whether the two laws should correspond; and

(b) whether the blasphemy and other tests throughout the law should be enforced, modified, or deleted. (See also paragraph 4.21.)
Some problems of interpretation

4.16 S.25 and S.34 of the ACT Ordinance and the Film Censorship Board's guidelines: During public hearings of the Senate Committee it appeared that the Film Censorship Board did not, when applying section 25 (Approval of Classification of films by Censorship Board), consciously and specifically have regard to sub-section (2) of Section 34 (Criteria for Classification). (See Evidence, p. 128.)

Sub-sections 34(1) and 34(2) read as follows:

34.(1) A prescribed authority shall, in considering whether a publication is an objectionable publication, or is suitable or unsuitable for perusal or viewing by a minor, have regard to the standards of morality, decency and propriety generally accepted by reasonable adult persons.

(2) A prescribed authority shall, in performing his or its respective functions under this Ordinance, give effect, as far as possible, to the following principles:

(a) that adult persons are entitled to read and view what they wish; and

(b) that all persons are entitled to protection from exposure to unsolicited material that they find offensive.

Another point arising from the evidence is that there does not appear to be sufficient clarity in the Ordinance to distinguish between that which is to be refused classification, and that which can be classified 'R' or 'X' (Sub-sections 25(2) and 25(3) refer). (See evidence pp. 126-129.)
4.17 Depicted and actual harm: Regulation 4A of the Customs (Prohibited Imports) Regulations: The Australian Customs Service, in its most recent 'Administrative Arrangements for the Operation of Controls over the Importation of Offensive Publications and Goods', states as follows:

**Identification of Material Subject to Prohibition**

4.5 The power to determine whether particular material falls within the scope of import prohibitions rests with the Attorney-General, who has decided that the following guidelines shall be used by ACS officers to identify suspect material at the Customs barrier;

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(c) publications depicting in pictorial form gratuitous violence or cruelty especially in combination with a sexual element;
  - includes films, videotapes etc.;
  - depicts in pictorial form acts of considerable violence or cruelty, leading to real physical damage of a significant nature to a victim who does not appear to consent to the activities - especially violence with some sexual element.
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(Submission of the Department of Industry, Technology and Commerce, Evidence, p. 329.)

4.18 Regulation 4A of the Customs (Prohibited Imports) Regulations, states, in part as follows:

(1A) This regulation applies to the following goods, that is to say -

(a) publications, other than films that are registered under the Customs (Cinematograph Films) Regulations, that, in the opinion of the Attorney-General or a person authorized by him for the purposes of this sub-regulation -

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(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; ...

4.19 In answer to a question from Senator Walters regarding the application of (iii) above, the Chief Censor, Mrs Janet Strickland said, in part:

We take that as meaning depicted as non-consenting, which is actors. The depictions are of non-consenting people. They are depicted as non-consenting. Whether they are consenting or not actually, is not a matter we take into account ... (Evidence, p. 158.)

4.20 In interpreting Regulation 4A there is therefore, a discrepancy between the Australian Customs Service, which attempts to determine the actuality of the scene depicted, and the Film Censorship Board, which is concerned with the message or image conveyed.

4.21 Sub-section 13(1) of the Customs (Cinematograph Films) Regulations: Provides that 'a film shall not be registered and advertising matter shall not be passed, under this Part, if in the opinion of the Board -

(a) the film or advertising matter is blasphemous, indecent or obscene; ...

As stated in paragraphs 4.12 to 4.15, the criteria for registering and classifying film and video material vary as between the ACT Ordinance, Regulation 4A of the Customs (Prohibited Imports) Regulations and the Customs (Cinematograph Films) Regulations. The Senate Committee was told in evidence that neither the test of 'blasphemy' nor of 'obscenity', as
provided in the Films Regulations, are applied by the Film Censorship Board nor the Films Board of Review. (See Evidence, pp. 150-151, 153 and 282). (See also paragraph 4.15.)

4.22 Regulation 4A of the Customs (Prohibited Imports) Regulations: Sub-paragraph 4A(1A)(a)(ii): In evidence before the Senate Committee the Chief Censor, Mrs Strickland, stated that sub-paragraph 4A(1A)(a)(ii), which is designed to prohibit goods that 'depict in pictorial form bestiality in a manner likely to cause offence to a reasonable adult person', was interpreted to mean any actual bestiality. (See evidence, p. 156.) This suggests a need for clarification of Regulation 4A to distinguish between depictions of actual conduct on the one hand and simulated, inferred or implied activity, where the image conveyed is one of bestiality, on the other. At present the Regulations foresee that a depiction of actual bestiality may not be offensive to a reasonable adult person, but that is not the opinion of the Film Censorship Board.

4.23 Regulation 4A of the Customs (Prohibited Imports) Regulations: Sub-paragraph 4A(1A)(a)(iii): Sub-paragraph 4A(1A)(a)(iii) is designed to prohibit goods which, in the opinion of the Attorney-General or a person authorised by him contain '... explicit and gratuitous depictions in pictorial form of sexual violence against non-consenting persons'. The Chief Censor, Mrs Janet Strickland, told the Senate Committee that the Guidelines under which the Board operates use the words 'explicit and/or gratuitous', which is inconsistent with the wording of the Regulation. (See Evidence, pp. 162-163.)

Application and enforcement of the law

4.24 Enforcement of Regulation 4A of the Customs (Prohibited Imports) Regulations at the Customs Barrier: The Senate Committee took evidence from the Department of Industry, Technology and Commerce (Australian Customs Service) and the
Customs Officers' Association of Australia. A number of the issues that arose are mentioned elsewhere in this Report. What became clear was that there were a number of ways in which material which is the subject of the terms of reference was either not being controlled, was incapable of being controlled or was capable only of being partly controlled. (See Evidence at pp. 180ff.)

4.25 Evidence given by the Department of Industry, Technology and Commerce (Australian Customs Service) and the Customs Officers' Association of Australia to the Committee indicated there were problems in areas of law enforcement and detection of unacceptable material. In particular,

(a) The determination of whether a video is a prohibited import can only be made by the Attorney-General or a person authorised by him (members of the Film Censorship Board have been authorised for this purpose). This is obviously time consuming.

(b) There are guidelines under the regulations for the Customs Officers to assist officers in deciding what material should be passed on for determination, but their interpretation was difficult. (See Evidence, pp. 193-194.)

(c) Other difficulties of enforcement according to the Customs Officers' Association have been brought about by a series of administrative directions given by the Australian Customs Service to its employees at the Barrier, which have lead to restrictions on the action which would normally be taken by Customs Officers. (See Evidence, pp. 190-194.) These directions were explained by the Department of Industry and Commerce as being brought about by a matter of priorities and that the first priority was narcotics. (See Evidence,
pp. 319–320, 346–348.) The Department also indicated there is no instruction now given to Customs Officers to ignore material which falls under Regulation 4A. (See Evidence, p. 349.)

(d) There is also a physical difficulty of time involved in determining whether a video should be passed on for determination. Videos need to be screened as the covering material and the name of the video does not necessarily indicate what it contains.

4.26 An example of the net effect of the current wording of Regulation 4A, and its enforcement, is exemplified in the following recent instance, information about which was supplied by the Customs Officers' Association of Australia:

(a) An individual has in possession an imported film depicting child pornography.

(b) A Customs Officer identifies the film as being one which may 'in the opinion of the Attorney-General or an officer authorised by him' be child pornography, and therefore may be subsequently declared a prohibited import.

(c) The film is referred to the officer authorised by the Attorney-General, who in turn advises Customs that the film is child pornography, as described in Regulation 4A.

(d) The individual is informed of the decision, but because he has committed no offence, he suffers no punishment, except the loss of the film.
This raises the question of whether the law should contain some punitive measures to act as a deterrent. This question does in turn raise the additional question as to whether the public should be informed that they have a duty in relation to prohibited imports (see also paragraph 4.33).

4.27 Section 48A of the ACT Ordinance: Section 48A makes it an offence for a person to sell, offer for sale, let on hire or distribute a video tape or video disc that has not been classified or that has been refused classification. The Committee was told that approximately 40 percent of videos for sale or hire do not carry classification markings because they have not yet been classified by the Film Censorship Board. In evidence before the Senate Committee officers of the Australian Federal Police said that while they had seen unclassified material on the shelves of video outlets and had informed retailers of the provisions of the Ordinance, no prosecutions had taken place. (Evidence, pp. 428ff.) (See also Chapter 3, paragraphs 3.17 to 3.21 and paragraph 4.30).

4.28 Screening of 'X'-rated videos: Sub-section 50(3) of the Australian Capital Territory Classification of Publications Ordinance provides as follows:

(3) A person who is in charge of, or who has the management or control of, a restricted publications area shall not, in that area, screen, or cause or permit to be screened, a film that is classified as an 'R' film or an 'X' film, other than by means of a slot-machine operated by a coin or token.

Sub-section 50(4) provides that a person contravening sub-section 50(3) is guilty of an offence, on conviction.

4.29 Comment: There have been no prosecutions by the Australian Federal Police. (See Evidence, p. 436.)
Administrative matters

4.30 Film Censorship Board: Resources: The effectiveness of legislation, that is, the Customs (Cinematograph Films) Regulations, the ACT Classification of Publications Ordinance and the Customs (Prohibited Imports) Regulations 'to control adequately the importation, sale and hire of pornographic or otherwise obscene material is dependant on the resources made available to implement and enforce it'. This comment was made by the Film Censorship Board to the Committee in its written submission. (See Evidence p. 87.) The submission pointed out that the Board was unable to fulfil its responsibility for the implementation of the legislation, because of inadequate resources to enable it to cope with the increased workload brought about by additional legislative responsibilities. Mrs Janet Strickland described the work of the Board now as 'arguably quantitative rather than qualitative' as a result of the 'enormous increase in administrative responsibility'. (See Evidence, p. 164.) Correspondence from the Board indicates that it has a capacity to process 450 applications per month, while an average of 650 applications per month over the last 12 months had been received. As at 8 March 1985 there was a backlog of 3138 applications and decisions awaiting gazetral. In a private meeting with the Committee on 7 February 1985 the Board said there would be another increase in the workload with the introduction of compulsory classification schemes in Tasmania, Queensland, South Australia, New South Wales and Victoria. Additional Board members were needed and there was a need for the establishment of computer facilities to cope with growing cataloguing and indexing requirements. (Further details are contained in correspondence from the Film Censorship Board at Appendixes B and C.)

4.31 Discussion: The backlog in classifications has repercussions throughout the commercial and law enforcement areas. Video retailers offer unclassified videos for sale and
hire, and police, who are aware of the backlog, are unwilling to prosecute retailers, who in all other respects are mindful of the law.

4.32 Film Censorship Board and Films Board of Review: Power to review previous decisions: At a meeting of Commonwealth and State Ministers on 26 October 1984 it was agreed that the material permitted to be included in the 'X' category of videos in the ACT went beyond acceptable limits, especially in relation to sexual violence. It was also agreed that there was too much violence in the 'M' and 'R' classifications. A majority of Ministers agreed to recommend to their Governments that a new 'ER' category should be introduced to replace the 'X' category. Although the 'X' category was not replaced in the ACT Ordinance, the Film Censorship Board has been applying 'ER' Guidelines to the 'X' category. This has resulted in material classified prior to the application of the new 'ER' Guidelines still being available, and it highlights the complicated procedures necessary for reviews to take place of classifications previously made, particularly when the previous classification is regarded as inappropriate. Certain material in the 'X' category would now be refused classification under the 'ER' guidelines, but is still legally available. Since the new guidelines also limit the level of violence in the 'R' category more so than previously, there is material legally available in that category which is now regarded as unacceptable for inclusion in any classification. At present the Films Board of Review can only review a decision of the Film Censorship Board at the request of an applicant, or upon its own motion after a period of 12 months has elapsed since the Film Censorship Board's original decision. The only other way a review can be conducted within twelve months now is for the Attorney-General to seek a review of a Film Censorship Board's decision by the Films Board of Review, pursuant to s.30 of the ACT Ordinance. The position where neither the Film Censorship Board nor the Films Board of Review consider they have the formal power to 'cut' films is a complicating factor.
4.33 Declaration at Customs Barrier: The law may be more readily enforced with regard to prohibited imports if persons are required to make a declaration under Regulation 4A specifying goods they are bringing in. (See Evidence, p. 203.)

4.34 Customs Officers: Regulation 4A of the Customs (Prohibited Imports) Regulation has not been rigidly enforced. (See also paragraphs 4.24 to 4.26). The Customs Officers' Association of Australia told the Committee that this problem arose partly because no Customs Officer has been appointed by the Attorney-General for the purpose of determining what is a prohibited import under regulation 4A of the Customs (Prohibited Imports) Regulations. Officers of the Attorney-General's Department and the Film Censorship Board are authorised persons. (See Evidence, p. 318.)

4.35 Discussion: There is now no test whereby a Customs Officer (or an importer) can determine whether an import should be prohibited under Regulation 4A. Only goods which 'in the opinion of the Attorney-General or a person authorised by him', come within the categories listed, are prohibited imports. As no Customs Officer has been authorised by the Attorney-General, the administration of Regulation 4A at the Customs Barrier is made extremely difficult. It is acknowledged that the amendments to Regulation 4A did not foresee Customs Officers being appointed by the Attorney-General, but the Customs Officers' Association saw such a step making the operation of the current Regulation 4A more effective.

Failure of the law to cover certain situations

4.36 'Trailers': Under the provisions of the ACT Ordinance it appears advertising with a greater potential to offend is not specifically prohibited from appearing with a film or video with
a lesser potential to offend. It may be argued that paragraph 48(3)(b) of the Ordinance can be used to cover this situation. However there appears to be a need for a specific prohibition in the legislation, as recommended by the ACT House of Assembly in its adoption of Report No. 19 of the Standing Committee on Education and Community Affairs.

4.37  Local production: The production of child pornography is an offence under s.43 of the ACT Ordinance. Otherwise, the law does not cover local production of film/videos, except to the extent where any acts or conduct committed in the making of a film or video may constitute an offence under the law in general. The only other existing control is at the point of sale or hire. (Evidence, p. 322 and 354.)

4.38  Display of video covers: There is at present no prohibition on the display of video covers on display shelves which may show potentially offensive pictorial material, for example in the 'M' or 'R' category, alongside material suitable for children. (See Evidence, pp. 63-65.) (See also paragraph 2.17.)

Other matters

4.39  Transmission of material through the post: The Committee did not take evidence nor receive a submission from the Government relating to the transmission of material through the post. This area is significant for the regulation of the sale and hire of videos, and also because of the possibility of unsolicited and offensive material being transmitted.
Some aspects of an inquiry into the regulation of video material not specifically referred to in the terms of reference

1.1 Introduction: This paper raises some issues which, while not directly referred to in the terms of reference, will inevitably form part of the background to an inquiry into the regulation and censorship of videos. It is not in any way claimed that it is comprehensive, and is only intended as a preliminary exploration of some of the more complex issues involved.

1.2 Arguments for and against Censorship: Most considered arguments regarding the censorship of any material are formulated on foundations which are more profound than mere practicality. Thus some people are opposed to censorship in principle and will only allow it when the object of censorship can be shown to cause demonstrable social harm or significant anti-social behaviour. Others, while they have been in the past and still are opposed to censorship of political material, would argue the need for regulation of erotic, pornographic and/or violent (including sexually-violent) material.

1.3 There is another argument that in framing censorship laws in relation to pornography and violence we should have regard to the 'Judeo Christian ethic' and tradition. There are also those who would argue that Australia is now a multi-cultural and pluralistic society and that the ethic of one culture or religion should not be imposed on others.
1.4 Some argue that community standards should be taken into account and maintained lest there be widespread moral and social disintegration, and this gives rise to the problem of assessing, objectively, just what community standards are. There are those on the other hand who argue that, regardless of majority wishes, minorities also have 'rights' to see, hear and read what they wish.

1.5 Some people fuse a number of arguments together to form their attitudes towards censorship. Others still might, for example, overlay what they see as a basically humanitarian or Christian position with an argument about the need to prevent the degradation and humiliation of people in general, both actors and viewers.

1.6 Some other bases for censorship derive from the law, including the British law. It was once considered sufficient for material to have a tendency to 'deprave and corrupt' for the purveyor of the offending material to be guilty of an offence.

1.7 Attitudes towards 'depravity', violence, and sex are changing, as are attitudes to depicting them. This far from exhausts the arguments under this heading which might be listed and elaborated, but it does give an indication of their profundity and complexity.

1.8 Defining 'Pornography' and Other Terms: One of the major problems in any discussion or examination of violence, obscenity and pornography is determining what is meant by the words. During the taking of evidence it became clear to the Senate Committee that neither the Attorney-General's Department nor the Film Censorship Board had established a working definition of 'pornography'. Its meaning is almost entirely subjective, as are attitudes to the things and conduct portrayed by it. In evidence, the Chief Censor, Mrs Janet Strickland said
'Someone suggested that what is erotic to some people is pornographic to others, and I think that that very clearly shows its subjective nature. I do not think that it can be given a definition'. (Evidence, p. 115.)

1.9 Many individual pieces of research and literature on pornography commence with a definition of what is meant so that the authors' views in the ensuing text will not be misunderstood.

1.10 The difficulty of defining terms is highlighted by the attitude of the United States Report of the Commission on Obscenity and Pornography, which commented as follows:

The area of the commission's study has been marked by enormous confusion 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 material. 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 material', 'sexually oriented material', 'erotica' 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'. (U.S. Government Printing Office, September 1970, fn p. 3.)

1.11 New technology and copyright: Any recommendations of a parliamentary committee on the subject of video material will be deficient if they do not consider the implications of new
technology. Whether there is a desire to restrict more severely or liberalize current laws regarding the availability of videos, the intentions of the Committee may be thwarted by developments in new technology.

1.12 Attention is drawn, in this context, to the criticisms of the U.K. Report of the Committee on Obscenity and Film Censorship (Williams Committee) tabled in the House of Commons in November 1979 (HMSO, Cmnd 777). The Williams Committee has been severely criticised for not foreseeing or addressing the issue of the advent of videos themselves.

1.13 In evidence and submissions made to the Senate Committee it has already become clear that a wide range of areas need to be looked at beyond the hire, sale and screening of videos as is commonly understood in Australia today. New communications technologies have the capacity to carry video material into public places such as hotels, motels, shops and offices as well as into private homes. Overseas, new communications technologies, such as cable television and radiated subscription television, have allowed for direct and discrete access to video entertainment services, not previously available. There are relevant developments to be considered in such developments as direct broadcasting by satellite, multipoint distribution services and so on. There is reason to believe that some television programs screened in overseas countries may not be acceptable under Australian laws, and they may at some time be capable of being received by Australian television receivers, and copied.

1.14 The advent and proliferation of videos since the end of the 1970s indicate the pace at which developments are taking place. The ease by which videos can be copied, including those which might ultimately be deemed to be objectionable, either from tape, or by programs picked up on a television receiver, exemplify the problems in enforcing any laws which are to be
formulated. Ease of copying videos, leading to breaches of copyright and privacy, is a matter which industry associations have addressed in their submissions, and this will require detailed study in itself.

1.15 Problems of law enforcement: In evidence before the Senate Committee it has already been argued that to ban or restrict the availability of material beyond 'R' will result in a black market because of widespread demand, and that organised crime will become involved in the distribution of such material. Whether this is likely or not, and whether or not law makers should be influenced by the likelihood of organised crime becoming so involved, are perhaps matters which need careful examination.

1.16 Positive and Negative consequences of censorship laws: The problem of possible black markets raises a more general and theoretical problem of censorship where the introduction of a law for a positive reason may also be accompanied by negative, unintended, or unforeseen consequences.

1.17 Two very hypothetical and very general examples are posed to illustrate the point.

(a) A situation where all "public discussion of sex (including film and literature) is taboo, might be designed to result in less promiscuity and the undesirable consequences thereof. This may be accompanied, however, by widespread ignorance of what should desirably be known about sex, leading to anxiety, superstition and psychological harm, which could otherwise be averted.

(b) A situation where there are no restrictions or censorship of public discussion of sex may be designed to lead to a freeing of people from inhibitions so that
people can be fully informed and shed their 'hang-ups'. In a situation where there is no censorship this may be accompanied, however, by people, especially children, accepting what might be termed 'deviant', 'promiscuous' and 'harmful' behaviour as normal, or having unrealistic expectations, leading to unforeseen psychological and other actual damage to individuals, and even to society at large.

1.18 Thus it is illustrated, albeit extremely hypothetically, that the prevailing community attitude as expressed in censorship law or lack thereof, can be accompanied, to some extent by the desired goals on the one hand, and by consequences which negate those goals on the other.

1.19 Social, psychological and moral 'harm': The United States Commission on Obscenity and Pornography (U.S. Government Printing Office, September 1970) concluded that there was no reliable evidence for the belief that exposure to or use of pornography plays a significant role in the causation of social or individual harms such as crime, delinquency, sexual or non-sexual deviancy, or severe emotional disturbances. When the United States Commission reported, research in the area of the effects of explicit sex and violence in the visual media was in its infancy. Since the Commission a great deal of scientific research has been done which challenges the findings of the Commission. Those findings generally modify rather than negate the Commission's findings and it would probably be fair to say that what has been found in Canada is also the case for research conducted in North America generally:

The consistent conclusion which has emerged again and again from this research is that violent and degrading pornography has antisocial effects and is unacceptable to Canadians, whereas non-violent, affectionate "erótica" seems to have no negative effects
... (Dr J.V.P. Check, Assistant Professor of Psychology, York University, Toronto, in a letter to the Committee, dated 15 January 1985).

1.20 The Williams Committee, when referring to its review of the research in this area, said 'It will be seen that such research tends, over and over again, to be inconclusive'. (Report of the Committee on Obscenity and Film Censorship, HMSO, November 1979, Cmd 777, p. 4).

1.21 Edward C. Nelson, who has corresponded with the Senate Committee, notes in his introduction to a recent book:

... there is considerable evidence to show that people tend to interpret evidence so as to maintain their initial beliefs - a finding which challenges the simple assumption that data relevant to such beliefs are processed impartially. This research indicates that judgements about the value and meaning of scientific evidence are biased by the consistency of that evidence with the reader's attitudes, beliefs and expectations. Through such biased assimilation, individuals tend to reject empirical evidence that disputes their initial views and to accept and derive satisfaction from evidence that appears consistent with their beliefs. (Maurice Yaffe and Edward C. Nelson, eds, The Influence of Pornography on Behaviour, Academic Press, London, 1982, p. xi)

1.22 In his personal submission to the Committee Dr John Court of South Australia concluded by saying, in part:

There is now ample evidence that the media such as films, TV and video do have significant effects on attitudes, values and behaviour. Such effects can be adverse when material is presented in such a way that anti-social or immoral behaviour is endorsed without indications of negative consequences.

.....
The longer term consequences of explicit materials, which in a home context will inevitably and frequently be viewed by minors, need careful consideration. At the very least, by providing primary sources of sexual information and stimulation they will influence their mores and behaviour. There is a strong likelihood that, for minors and adults, this will include moves toward the uncritical acceptance of promiscuous and deviant sexual practices. (Submission No. 457)

1.23 There are a number of issues arising from these and similar comments which need to be addressed. For example, the need to discuss what constitutes 'immoral behaviour', 'values' and 'promiscuous and deviant sexual practices'. There are a variety of views in the community and among practising psychologists and psychiatrists nowadays concerning what constitutes 'deviant' or 'promiscuous' behaviour, ranging from that where only procreational sex, or sex leading to procreation, is regarded as normal, through to those who believe that it is wrong to apply the word deviant to homosexual activity. There have thus been great changes in attitudes towards sex in the last couple of decades. In addition there is now a considerable literature dealing with 'recreational sex' covering sexual practices which, in an earlier period, might have been termed deviant. Regardless of whether certain activities or practices are regarded as deviant, the further question of whether it is acceptable or not to depict such activities or practices and whether such depictions lead to social, psychological or moral harms, has to be addressed.

1.24 Longterm effects of availability of explicit materials: Related to the above issues is the question of whether indeed the longer term consequences of exposure to explicit materials, especially in a home context, will influence mores and behaviour and will include uncritical acceptance of 'promiscuous' and 'deviant' sexual practices. Do community standards beget the
films and videos we are now seeing, or does literature and video alter community attitudes, or is it a combination of both? The question that arises here is not only what effects the exposure to explicit material might have on individuals, but on society at large.

1.25 Perceived 'social realism' in the visual arts: Associated with this question is the development of what might be called 'social realism' in film and television. Some people writing to the Committee have expressed dismay at the amount of 'indecent' language in all classifications down to and including 'G'. It has been pointed out that to take children to see a 'G' film does not mean they will not be confronted with indecent language, violence, and suggestions of sexual activity. Here the Censor has a difficulty. The depiction of what is perceived to be the real world ('social realism') in film and literature means that a massive volume of material is of the type just described, throughout the entire range of film and video. The type of visual entertainment available in all categories of film and video is therefore of concern to a number of people. The depiction of sex and violence in the higher classifications are naturally of more concern to such people, but may also be seen as a function of the development of 'social realism', except that, to an obvious degree, the level of explicit sex in some 'R' and 'X' category films is far too frequent and sustained to be 'real'. The question for any person participating in decisions on censorship, however, is to decide whether they can, or should try to, modify or regulate such a widespread phenomenon as the development of 'social realism' and frank depictions of matters hitherto regarded as unacceptable for visual display.

1.26 Ethics, moral values and the law: There are complex problems attending the formulation and application of laws which seek to deal with the free expression of ideas, concepts of 'rights', and morality.
1.27 The United States Commission on Obscenity and Pornography, in its 'Legislative Recommendations', stated:

The Commission is of the view that it is exceedingly unwise for governments to attempt to legislate individual moral values and standards independent of behaviour, especially by restrictions upon consensual communication. This is certainly true in the absence of a clear public mandate to do so, and our studies have revealed no such mandate in the area of obscenity. (U.S. Government Printing Office, September 1970, p. 55)

1.28 A quite different view was once put by Archbishop Temple, who stated:

To say that you cannot make folk good by Act of Parliament is to utter a dangerous half-truth. You cannot by Act of Parliament make men morally good; but you can by Act of Parliament supply conditions which facilitate the growth of moral goodness and remove conditions which obstruct it. (Quoted in Pornography: The Longford Report, Coronet, London, 1972, p. 366)

1.29 Merit vs morality: A related issue arises where, although a film or video might be judged to be morally doubtful or measurably harmful and its availability therefore judged not to be for the public good, it might nevertheless be permissible (whether publicly or in a severely restricted context) because it has some redeeming artistic merit, or might be useful scientifically. The test of artistic merit is, naturally, very subjective, and extremely difficult to apply to the satisfaction of all sections of a particular community.

1.30 Conclusion: It is not the role of a Committee of the Parliament to attempt to analyse matters of morality and public policy to the extent that it has to re-examine all that has been written on ethics. On the other hand the arguments regarding the
regulation of videos in particular, and about censorship in general, differ markedly as to how far the law should involve itself in matters of morality. In arguing for or against censoring certain categories of material, judgements have been made in the submissions, on the following:

(a) Whether things or conduct depicted are themselves intrinsically good, neutral, morally wrong and or measurably harmful.

(b) Whether the depiction of the things or conduct is good, neutral, morally wrong and or measurably harmful.

(c) Whether it is appropriate or practical to legislate to censor, restrict or regulate the depiction of certain things or conduct.

While this is not an exhaustive or exclusive list of the processes which are gone through in reaching conclusions and making judgements, it does provide a clue to the conceptual framework attending the reaching of conclusions and the making of judgements in the complex area of censorship.
By order of the Committee

G.N. JONES

Chairman
SENATE SELECT COMMITTEE ON VIDEO MATERIAL

February 1985

Mrs Janet Strickland
Chief Censor
Film Censorship Board
Picadilly Court
222 Pitt Street
SYDNEY NSW 2000

Dear Mrs Strickland,

On behalf of members of the Committee may I thank you for receiving us at your offices on Thursday, 7 February 1985, and for arranging the screening of a selection of videos.

May I take this opportunity to seek some further information from you regarding the operations of the Film Censorship Board. During the course of the Committee's investigations and public hearings so far, it has come to our attention that approximately 40 per cent of videos for sale or hire in the A.C.T. do not carry any marking that they have been classified. One reason why this situation apparently exists is because of the failure of the Film Censorship Board to keep pace with the number of applications being made. The Committee seeks your comment on this matter, and would also be grateful if you would provide the information sought below.

In evidence before the Committee on 12 December 1985 you outlined trends regarding applications made and applications not dealt with for the period 1 February 1984 to 31 October 1984. Would you be kind enough to provide the most up-to-date figures you have in relation to your workload, applications made, and backlogs etc.

In addition, it would assist the Committee if you would provide information regarding the steps that have been taken to cope with the increased workload and your best guess regarding future workload trends for the next twelve months.
The Committee would also be pleased to know what additional resources have been provided to the Board to cope with its additional video classification responsibilities, and your estimate as to what resources will be required in the next twelve months.

The Committee would appreciate an early response to these questions.

As discussed at our recent meeting with you on 7 February 1985, the Committee would be grateful if you would provide early information regarding the X-rated and refused classification videos which you screened. That is, title of film/video, producer, country of origin, distributor, name and company of applicant, directors/principals of company, if known, etc.

Yours sincerely,

(G.N. Jones)
Chairman
The Hon. Senator G.N. Jones  
Chairman  
Senate Select Committee on Video Material  
The Senate  
Parliament House  
CANBERRA A.C.T. 2600

Dear Senator Jones

I am in receipt of your letter, dated 15 February 1985, in which you ask me to provide the Senate Select Committee on Video Material with information relating to the operation of the Film Censorship Board.

The following information is submitted:

(1) "The failure of the Film Censorship Board to keep pace with the number of applications being made."

Answer:

(a) There has been an average monthly submission rate (based on the past 12 months) of 650 applications for classification of videotapes for sale/hire, compared with the capacity to process and Gazette a maximum of 450 decisions per month. At current resource levels, unprocessed applications are accruing at the rate of one month backlog for every two calendar months.

(b) There has been an erosion of turnaround time between application and decision, i.e. February 1984 - two weeks; August 1984 - four weeks; and January 1985 - in excess of 10 weeks.

(c) The administrative workload of processing decisions has increased to the point that it is not possible to Gazette decisions within 30 days as required by Section 29 of the A.C.T. Classification of Publications Ordinance, 1983.
(2) "Provide the most up-to-date figures in relation to workload, applications made, and backlogs, etc."

Answer:
(a) In the 12 months from 1 February 1984 to 31 January 1985 there were (i) 7875 applications submitted for video classification, and (ii) 5466 decisions notified in the Commonwealth Gazette. As at 31 January 1985 there was a backlog of 1974 applications (approximately four to five months work) and a further 435 decisions awaiting gazettal (see Attachment A). An additional 632 applications were submitted between 1 and 19 February 1985.

(b) Since 1 February 1984 the Film Censorship Board has had the responsibility of 'prohibiting' or 'releasing' film submitted to it by the Australian Customs Service for decision in terms of Regulation 4A(1A) of the Customs (Prohibited Imports) Regulations. Between 1 February 1984 and 31 January 1985, 319 films (including videotapes) were submitted, 54 were prohibited and 264 released.

(c) Under State/Territory legislation, on the request of a Police officer, the Chief Censor provides certificates for the purpose of instituting proceedings in relation to offences under 'cinema' or 'video' legislation. In the twelve months ending on 31 January 1985, 176 police submissions were reviewed; 89 from Victoria and 87 from New South Wales. The power of Police officers to detain film/videotapes pending the provision of the Chief Censor's certificate varies in each State/Territory. The most stringent provisions apply in Victoria, where Police must return a film/videotape within 14 days of seizure if a charge is not made. The priority given to process such submissions is at the expense of on-going work, and exacerbates the current backlog problems. Police submissions are expected to increase, as States implement compulsory classification schemes.

(3) "Steps taken to cope with the increased workload."

Answer:
(a) At the meeting of Censorship Ministers, held in Brisbane in July 1983, I provided an estimate of the resources required for the operation of a compulsory video classification scheme. At a subsequent meeting in Sydney in April 1984, agreement was reached to implement a compulsory video classification scheme, predicated on the basis of (i) additional resources being provided to the Board and (ii) the introduction of a fee system to offset the cost of the operation of the Board.

(b) By minute dated 6 January 1984, the Attorney-General's Department requested my advice on the staffing implications and likely cost if the Film Censorship Board were to administer a compulsory classification scheme for videotapes for sale/hire. Advice was provided on 13 January 1984, and my assessment of additional resources required was substantially supported by a Departmental Officer's report dated 13 March 1984.

(c) By minutes dated 18 June 1984, 9 August 1984 and 15 February 1985, I requested additional resources to undertake the compulsory classification of videotapes for sale/hire.
(d) (i) On 24 August 1984, I was advised that no additional resources were to be provided to the Board. By minute dated 24 August, I advised the Department that if no additional resources were provided to the Board within a month, the increasing backlog of video applications would necessitate a re-arrangement of the business of the Board, so that the Board could use its limited resources to discharge its prime statutory responsibilities. This would lead to the Board withdrawing from the classification of imported television programs.

(ii) By minute dated 30 August, I was advised by the Department that action was "in hand" to bring the issues I had previously raised to the attention of the Attorney-General.

(iii) By letter dated 8 October 1984, I wrote to the Attorney-General advising him that as no action had been taken to provide the Board with additional resources to enable it to efficiently discharge its additional statutory responsibilities, I had no option but to reduce the number of hours allocated by the Board for the classification of imported television programs. A copy of this letter was forwarded to the Department.

(iv) By letter dated 17 January 1985, I wrote to the Attorney-General advising him of the Board's resources problems and subsequent backlog of videotape applications, and advised that a further curtailment of the number of hours allocated for the classification of imported television programs was unavoidable. This was to be effective from 11 February 1985. A copy of this letter was forwarded to the Department.

(v) By letter dated 6 February 1985, I again wrote to the Attorney-General advising him that if the status quo in relation to the number of hours allocated for the classification of imported television programs were to be maintained, a further increase in the huge backlog of videotape applications would result, as the time allocated for processing and screening both video and cinema applications would have to be reduced. A copy of this letter was forwarded to the Department.

(e) In an attempt to expedite increasing workloads, a minimum number of censors were initially scheduled for the screening of videotapes. Experience later showed that responsible decision-making, and therefore the public interest, was not best served by this approach. More censors are now scheduled for the screening of videotapes, and as a result, the volume of screening hours available has been reduced by 25%.

(f) As at 19 February 1985, the staff of the Film Censorship Section have worked 120 hours overtime. The allocation for 1984/85 is 120 hours.

(4) "Best guess regarding future workload trends for the next 12 months"

Answer:

The introduction of compulsory video classification schemes in New South Wales, Victoria, Tasmania, Queensland and South Australia will exacerbate workload problems, e.g. volume of applications, processing of video advertising and implementation and collection of fees. It is difficult to quantitatively assess, at the present time, the full impact of future workload.
(5) "What additional resources have been provided to the Board to cope with its additional video classification responsibilities"

(a) The Board has been provided with three Word Processors, on an interim basis, pending the implementation of a 1981 recommendation to computerize the records of the Film Censorship Board.

(b) No additional Board Members or staff have been provided, and one of the three Word Processors cannot be utilized as no operator has been provided.

(6) "Estimates as to additional resources likely to be required in the next twelve months"

Answer:

(a) Permanent Staff

<table>
<thead>
<tr>
<th>Staff Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 x Board Members</td>
<td>$84,000</td>
</tr>
<tr>
<td>1 x Clerical Administrative Cl 7</td>
<td>$28,000</td>
</tr>
<tr>
<td>1 x Word Processing Typist Gr 1</td>
<td>$15,500</td>
</tr>
<tr>
<td>1 x Clerical Assistant Gr 3</td>
<td>$15,000</td>
</tr>
<tr>
<td>1 x Clerical Assistant Gr 2</td>
<td>$14,000</td>
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Total: $156,500

(b) Temporary Staff (up to 12 months)

<table>
<thead>
<tr>
<th>Staff Description</th>
<th>Cost</th>
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<tbody>
<tr>
<td>3 x Deputy Censors (Clerical Administrative Cl 6)</td>
<td>$75,000</td>
</tr>
<tr>
<td>1 x Clerical Assistant Gr 2</td>
<td>$14,000</td>
</tr>
</tbody>
</table>

Total: $89,000

(c) Accommodation/Equipment

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Accommodation (once only cost)</td>
<td>$20,000</td>
</tr>
<tr>
<td>Equipment (video recorders etc)</td>
<td>$17,000</td>
</tr>
</tbody>
</table>

Total: $37,000
(d) On Costs

The 'hidden' cost of establishing a new organisation, i.e. allowing for workers' compensation, furniture, rental on accommodation, etc, is usually assessed as about 80% of salaries. In the case of this proposal it would be less because the additional staff could be absorbed within existing floorspace at the once only cost of $20,000. I would therefore estimate the overall cost as follows:

**Year One: High Cost**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Salaries</td>
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<tr>
<td>On Cost at 40%</td>
<td>98,200</td>
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<tr>
<td>Accommodation/Equipment</td>
<td>37,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$380,700</td>
</tr>
</tbody>
</table>

**Subsequent Years: Low Cost**

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
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</tr>
<tr>
<td>On Cost at 40%</td>
<td>62,600</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$219,100</td>
</tr>
</tbody>
</table>

(e) The 'Temporary Staff', mentioned in the preceding paragraph, would be required on the basis that:

(i) the need for all or part of the staff would be reviewed at 6 and 12 months;

(ii) the Deputy Censors would predominantly screen television material and non-controversial video material, thus allowing the Censors to concentrate on the more complex video material;

(iii) the Clerical Assistant Grade 2 would provide general Registry support, including index checking;

(iv) action is taken in the near future to appoint and train three additional Board Members, thereby raising the membership of the Film Censorship Board to 12, the maximum number permissible under the Customs (Cinematograph Films) Regulations;

(v) a uniform cinema and video classification fee system be implemented in each State/Territory in accordance with the agreement between the Commonwealth and State/Territory Ministers responsible for censorship. The agreement stipulates that a flat fee of $35.00 per State/Territory (a composite fee of $280.00) be collected by the Film Censorship Board - with 50% being retained by the Commonwealth to offset the operational cost of the Film Censorship Board. If the fee system had been in place as of 1 February 1984, the Commonwealth's share of revenue would have been approximately $1.26 million (8,000 video and 1,000 cinema x $140.00).
The information requested in the last paragraph of your letter dated 7 February 1985 has been answered under separate cover.

I hope the information contained herein is helpful to the Committee.

Yours sincerely

Janet Strickland
Chief Censor
The Hon. Senator G.N. Jones
Chairman
Senate Select Committee on Video Material
The Senate
Parliament House
CANBERRA A.C.T. 2600

8 March 1985

Dear Senator Jones

On 20 February 1985, I provided written information to the Senate Select Committee on Video Material, as requested, in relation to the operation of the Film Censorship Board.

Unfortunately, I omitted detailed information relating to the proposal to computerize the Film Censorship Board's records (viz: the F.I.B.R.E. project). This information is as follows:

(1) "The failure of the Film Censorship Board to keep pace with the number of applications being made."

In 1981, following a 1980 Departmental Consultancy and Review Report, I recommended to the Department that the records of the Film Censorship Board be computerized. A feasibility study was conducted and in September 1983 a decision was made to proceed with the project. However, to date, the project has not progressed beyond Stage One. The failure to computerize the Film Censorship Board's records has substantially compounded the administrative workload involved in the processing of applications for the classification of videotapes for sale/hire, thereby exacerbating the current backlog.

(2) "Provide the most up-to-date figures in relation to workload, applications made and backlogs etc."

I enclose a graph of the most recent video workload statistics. You will note that as of 28 February 1985 there was a backlog of 2,501 videotape applications pending decision and a further 637 decisions awaiting gazettal. The backlog therefore currently stands at 3,138.
"Steps taken to cope with the increased workload."

In April 1983, a Steering Committee was formed (with the Chief Censor as the Chairman) to investigate the possibility that the Film Censorship Board acquire word processing/data processing facilities. The project was undertaken by the Systems and Consultancy Section of the Establishments and Planning Branch in the Attorney-General's Department.

In November 1983, I wrote to the Secretary of the ADP Policy Committee requesting that the Committee (i) endorse the September 1984 decision of the F.I.B.R.E. Steering Committee to proceed with the F.I.B.R.E. project and (ii) authorise the next stage of development i.e. the detailed system specification.

In March 1984, the F.I.B.R.E. project was submitted to the ADP Policy Committee and approved in principle, but I was advised that "progression of the Film Censorship Board's system will be dependent on the selection by tender of computer equipment for the Family Court, and development priorities set by the Systems Review Priority Committee".

In October 1984, I wrote to the Department recommending that outside consultants be engaged to expedite the F.I.B.R.E project as the delay in its implementation was creating severe problems for the Board.

As there has been little progress since the original feasibility study was conducted in September 1983, it is now proposed to undertake an up-date study.

"Estimates as to additional resources likely to be required in the next twelve months."

The estimates as to additional staff required, as detailed in my letter to you of 20 February 1985, were those required to continue operating a manual index/record system, based on the presumption that the F.I.B.R.E. project would not be operative within the next 12 months.

If the F.I.B.R.E. project were operative, the following would be required:

(a) Costs, as forecast in 1983, are as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardware</td>
<td>$110,000</td>
</tr>
<tr>
<td>Maintenance</td>
<td>11,000</td>
</tr>
<tr>
<td>Training</td>
<td>5,000</td>
</tr>
<tr>
<td>Back Capture of Data</td>
<td>50,000</td>
</tr>
<tr>
<td>Development</td>
<td>35,000</td>
</tr>
<tr>
<td>Software</td>
<td>10,000</td>
</tr>
<tr>
<td>Accommodation &amp; Works</td>
<td>5,000</td>
</tr>
<tr>
<td>Floppy Discs</td>
<td>500</td>
</tr>
</tbody>
</table>

$226,500
(b) In addition to the cost of implementing the F.I.B.R.E. project, there will also be a need to fund:

- on-going operational costs;
- the development and implementation of limited access to F.I.B.R.E. by Deputy Censors in Regional Offices.

(c) Although the staffing implications are difficult to quantify at the present time, it is likely that the acquisition of a computer will:

- reduce the number of staff required;
- result in variations to the number and grading of staff required;
- enable staff to achieve higher levels of productivity.

I hope this information will be of assistance to the Committee.

Yours sincerely

Janet Strickland
CHIEF CENSOR
**VIDEO WORKLOAD 1984/85**

**ANALYSIS**

- Gazetted Decisions: 5737
- Decisions Pending: 2501
- Decisions Not Gazetted: 637
- Backlog
- Applications Received: 8875

**Graph Details:**

- **Decisions Gazetted During the Month:**
  - February 1984: 908
  - March 1984: 1216
  - April 1984: 998
  - May 1984: 637
  - June 1984: 536
  - July 1984: 695
  - August 1984: 441
  - September 1984: 404
  - October 1984: 479
  - November 1984: 507
  - December 1984: 507
  - January 1985: 1154
  - February 1985: 1100

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Banning 'X'-rated Videos in the ACT

I dissent from that part of the Report, particularly paragraphs 3.4 to 3.16, which makes observations and recommendations about the alleged unsatisfactory state of the law, stated as a premise (false in my view), that there is a need to place a moratorium on 'X'-rated videos in the ACT.

During its limited inquiry the Committee only addressed itself to paragraph 1 and paragraph 1(a) of the terms of reference, and then not sufficiently to draw the conclusions it has done. Some evidence was given at public hearings relating to other terms of reference, for example (g) and (h), but these were not followed up in the limited time available.

Paragraphs 1 and 1(a) of the terms of reference read as follows:

(1) That a select committee, to be known as the Select Committee on Video Material, be appointed to report on the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the Australian Capital Territory 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 ...
The current legislative scheme to control the importation of publications and videos, and to impose point of sale or hire controls came into operation on 1 February 1984. The new arrangements were brought in because it was recognised that the previous law lacked force and was anachronistic because of changing community standards towards what people should be able to see, read and hear. The new arrangements also gave expression to Government policy, which is that 'adults should have the right to read or view what they choose in the privacy of their own homes while they and those under their care are entitled not to be exposed to material that may be offensive or harmful'.

This policy has remained the fundamental basis for Commonwealth Government policy since the Hon. D.L. Chipp MP, then Minister for Customs, made his watershed speech on 11 June 1970 where he said 'censorship is evil and should be condemned'.

While it is clear that there are problems with the present legal arrangements, some of which are referred to in Chapter 4 of the Report, it is my view that the present law is infinitely better than the previous arrangements.

It should be emphasised that there is nothing new or dramatic about the alleged problems that the Committee has identified with the law. After all, when the Government agreed on 20 August 1984 that a Joint Select Committee should be set up to examine how the new arrangements were operating, it was acknowledged, in a press statement released by the Attorney-General, '... there may well prove to be a need for some tuning of the legislation to ensure its effective enforcement'.

To argue, as the Committee has done in paragraphs 3.4 to 3.16, that there is a need to turn the clock back and ban material currently approved under the 'ER' guidelines simply does not follow from the evidence given to the Committee.
Explicit sex on video is now a fact of life. To ban the sale and hire of such videos will not effectively stop their circulation, even if that is regarded as a good intention, because so many have been copied or purchased by private people. It may also encourage organised crime to become involved because of the demand for such material. If this demand cannot be met legally, a black market will seek to meet it.

The Chief Censor, Mrs Janet Strickland, who is eminently qualified to speak on the subject, told the Committee in her submission:

... if there were to be a complete ban on any material above the current 'R' category, fully 30% of videotape material would be pushed underground - thus not only perpetuating, but substantially increasing the large and lucrative black market in this material, which, based on overseas experience, would be controlled by criminal elements in our society. (See Evidence, P. 104.)

The effect of banning all material above 'R' will be to provide rich new fields for organised crime to exploit.

There is a great deal of hypocrisy surrounding the issue of censorship. Amending the law to ban the sale, hire and importation of material above 'R' on the one hand, while acknowledging the widespread private ownership of such material on the other, will make the law a laughing stock. It can be argued that a law which is disregarded or cannot be enforced brings the law in general into disrepute.
Importation

It is envisaged in paragraph 3.15 that complementary changes to the Customs (Prohibited Imports) Regulations will be needed to make them consistent with the banning of 'X'-rated videos in the ACT. This follows, apparently, from the argument that it would be inconsistent to allow people to buy and import overseas material that would attract a rating beyond 'R', or which would be refused classification under State or Territory laws.

In this connection I concur with evidence placed before the Committee by the Australian Customs Service that narcotics and quarantine are of a higher priority than soft core pornography. They are demonstrably harmful - soft core pornography is not.

I also note that the Film Censorship Board provided evidence that only two Australian-made films have been given a video classification above 'R' (ie 0.2% of the videos classified 'X'). The Board also said that no Australian-made films have been refused classification. Given the apparent willingness of crime to become involved in the marketing of video material above 'R' when it is banned in overseas countries, the question needs to be asked as to whether the banning of imports of such material might lead to Australian production of more extreme material, including that which would currently be refused classification.

The Submissions, 'X' and 'ER'

At paragraph 3.7 it is apparently an argument of the majority report that, because an overwhelming majority of submissions to the Committee have sought a ban on 'X'-rated videos, such a ban should be imposed in the ACT.
A number of points need to be made relating to the submissions.

Firstly, a large number of submissions are pro-forma or mere statements that 'X' should be banned without any supporting evidence or argument.

Secondly, it is quite clear that a great many people do not understand that child pornography and snuff movies, or 'video nasties', have never been permitted in the 'X' classification.

Thirdly, it is quite clear that a common thread in arguments against 'ER' is that 95 per cent of videos previously given an 'X' classification will be given an 'ER' rating. What is not properly understood is that the sexual violence which is excluded under the 'ER' guidelines has only ever constituted 5 per cent of the 'X'-rated category.

Fourthly, what is not widely understood is that the 'ER' guidelines are now applied to the 'X'-rated material anyhow. The guidelines for 'ER' are the same as for 'R' except that they permit explicit depictions of sexual acts involving adults.

In a background paper prepared for the Commonwealth and State Ministers' meeting on 26 October 1984, the myths which have been peddled about 'ER' were referred to. It is reprinted here for the public record:

Many people appear to have accepted the propaganda myth that material passed in the 'X' category in Australia is exclusively of a sexually violent nature, and also quite erroneously that 'X' contains extreme material such as 'snuff movies' and other so called 'video nasties' such as child pornography, bestiality and extreme sexual violence and they have therefore demanded the banning of such material on the grounds that it is both 'offensive' and 'harmful.'
The visibility of what was hitherto hidden and covert has forged political alliances amongst those who otherwise would find little common ground but who have been able to effectively and vocally use the media to promote their points of view, to the virtual exclusion of opposing points of view.

A common misunderstanding which arises from some of the dishonesty displayed in this video debate is that those who defend the 'ER' proposal are alleged to be defending the conduct depicted in videos rated 'ER'. It should be pointed out that to defend 'ER' is not necessarily to endorse the conduct depicted any more than to defend the right of people to watch 'whodunnits' is to endorse murder.

Fifthly, while the fact that an 'overwhelming majority' of submissions to the Committee oppose 'X' and 'ER' indicates some concern amongst sections of the community about such material, it is not necessarily an indication of community opinion in general. The numbers are no guide whatsoever to public opinion on the subject. They merely show that a campaign playing on the fears of the uninformed can easily result in a mass write-in.

Sixthly, the debate about censorship in a democracy should not, in any event, be dictated by opinion poll. In a democracy minorities also have rights, both of freedom of expression, and freedom to see, hear and read what may not appeal to the majority. This issue has not been addressed in the majority report.

General Comments

The majority report gives in paragraph 3.8 the following reasons for the imposition of a moratorium on the sale or hire of 'X'-rated material in the ACT:

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(a) ... the overwhelming majority of written submissions opposed the availability of the 'X'-rated category of videos;

(b) ... a number of serious inadequacies in the Commonwealth law purporting to regulate videos; and

(c) ... the initial lack of uniformity between the Commonwealth and State laws, and the later decisions by all States to ban 'X'-rated videos.

In my view the conclusion drawn by the Committee majority from the above, that is, that a moratorium is required on all material beyond 'R', does not follow from the evidence.

In paragraph 3.5 of the majority Report, it is stated:

The Committee recognises that uniform law, while desirable, is not an end in itself. The end which should be sought is good law.

In my view it is bad law to ban the sale or hire of material that would, under present arrangements, attract, effectively, an 'ER' classification. It is also my view that an argument for the formal introduction of 'ER' or something similar in the ACT law flows more logically from the evidence provided to the Committee than the banning of all material beyond that which is currently permitted in 'R'.

I believe no censorship should be permitted of any material unless it can be demonstrated that it causes or may cause anti-social behaviour. The Committee has not received any evidence that material in the 'ER' category does so, and yet there must be an underlying assumption that it may, otherwise, presumably, a moratorium would not be recommended. No supporting evidence has been supplied. Indeed, the vast majority of such research material says the opposite.
I believe that it is unpardonable arrogance for the State to dictate to its adult citizens what they shall or shall not see, read or hear unless cogent reasons are advanced to the contrary.

There are many judgements implicit in the majority report about values, including sexual values, with which I would not necessarily agree, and which, in any event, I would not impose upon others, even for an interim period.

A.O. Zakharov