ERRATUM

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Second Paragraph, 2nd and 3rd sentence to read.

The work of the Committee staff, especially the Secretary, was made much more difficult by the 'Chairman's Draft' becoming a minority report. This entailed a great amount of extra work in helping prepare a new majority report.
MEMBERSHIP OF THE COMMITTEE
35TH PARLIAMENT

Dr R.E. Klugman, M.P., (Chairman) (New South Wales)
Senator S. Walters, (Deputy Chairman) (Tasmania)

Senate

Senator B. Collins
(Northen Territory)

Senator B. Harradine
(Tasmania)

Senator J.A. Jenkins
(Western Australia)

Senator A.O. Zakharov
(Victoria)

House of Representatives

Hon. A.E. Adermann, M.P.
(Queensland)

Mr D.E. Charles, M.P.
(Victoria)

Ms M.C. Crawford, M.P.
(Queensland)

Mrs C.A. Jakobsen, M.P.
(Western Australia)

Mr D.F. Jull, M.P.
(Queensland)

Secretary

M.M.J. Vincent
The Senate
Parliament House
Canberra ACT 2600
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(1) That a joint select committee, to be known as the Joint Select Committee on Video Material, be appointed to inquire into and report upon the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the ACT Classification of Publications Ordinance 1983 in relation to videotapes and videodiscs and in particular—

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

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

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

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

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

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

(g) whether children under the age of 18 years are gaining access to videotapes/discs containing violent, pornographic or otherwise obscene material;
(h) whether the ACT Classification of Publications Ordinance 1983 should be amended to make it an offence for persons purchasing or hiring videotapes/discs classified above 'R' to allow, suffer or negligently permit children to view such material;

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.
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<th>Abbreviation</th>
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<td>Australian Federal Police</td>
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<td>AFVSO</td>
<td>Australasian Film and Video Security Office</td>
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<tr>
<td>AVIA</td>
<td>Adult Video Industry Association of Australia</td>
</tr>
<tr>
<td>FBR</td>
<td>Films Board of Review</td>
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<td>PCB</td>
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<td>JSCVM</td>
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<td>New South Wales Video Retailers’ Association</td>
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<td>SACCFT</td>
<td>South Australian Council for Children’s Films and Television, Inc.</td>
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<tr>
<td>SAVRA</td>
<td>South Australian Video Retailers Association</td>
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<td>Tvb</td>
<td>Television Bureau of Advertising</td>
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<tr>
<td>VAEIS</td>
<td>Video and Audio Entertainment and Information Services</td>
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<tr>
<td>VIDA</td>
<td>Video Industry Distributors Association</td>
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We, the undersigned, dissent from Recommendation One- 'that a new category NVE (non-violent erotica) be instituted.'

We strongly oppose the introduction of this new category as it entrenches pornographic video material in the community under the misleading title of NVE. Our reasons for this are outlined and incorporated in our dissent from Recommendation Two (see Chapter 17, Volume I).

The Hon. Evan Adermann, M.P., (N.P.)
Mr David Charles, M.H.R., (A.L.P.)
Ms Mary Crawford, M.P., (A.L.P.)
Senator Brian Harradine, (Ind.)
Senator Shirley Walters, (L.P.)
I wish to dissent from Recommendation 2.

My original proposition for the first recommendation was as follows:

A new category, NVE (non-violent erotica) be instituted. This category would include the present R-rated, non-violent material, and would allow the provision of explicit material, portraying adults as fully consenting equal partners, in loving and caring relationships, if deemed by the Film Censorship Board to be appropriate to the context of the film or video in question.

This recommendation, while eliminating much of the current X-rated video material (and their R-rated edited editions) would allow a safety valve for films or videos of some artistic worth, and would also cover the occasional sex education manual type production, which has been the subject of some controversy over the years in Australia.

I found it impossible to support the present Recommendation 2.

David Jull, M.H.R.
In recommending that a maximum period of six years be allowed for members to be appointed to the Film Censorship Board and the Films Board of Review, I believe the Committee has ignored the likely effect of the members becoming desensitised to the acceptable standards of the general community.

Evidence has been given that only a minority of the community presently view X or those strong violent videos in the R category. The majority of the community prefer other types of videos.

As the Committee has already pointed out there is evidence that repeated viewing of X and violent R videos can lead to at least desensitisation of the viewer and it is for this reason I recommend that members of the Film Censorship Board and the Films Board of Review should be appointed for a three year period but in a rotating fashion.

Senator Shirley Walters
Senator for Tasmania
GENERAL DISSENT BY
MR DAVID CHARLES AND MS MARY CRAWFORD

Whilst we have dissented from Recommendations One (1) and Two (2), we wish to point out that we fully support the arguments and conclusions that are contained throughout the Report, (except, of course, the new proposed NVE 'pornography' category).

We encourage people to read the whole Report to gain an overview of what is a complex issue. However, whilst all chapters are important in their own right, we would direct attention to the contents of the following chapters as we believe they are essential reading:

3: Understanding of Terminology: 'Violent, Pornographic or Otherwise Obscene Material'
4: Values & Perspectives
13: 'Likely Effects' of Video Material
14: Access of Minors

Clearly the most important one is Chapter 13: 'Likely Effects' of Video Material. Much of the argument and discussion that is the basis of many of the Committee's recommendations is contained within this chapter and should be read thoroughly to obtain the complete picture of the questions and issues involved. It should be noted that a majority of the Committee support not only the above mentioned chapters but the whole Report and the arguments contained therein.

The dissenting material as presented by the Chairman lacks argument, logic and he has presented a totally one-sided viewpoint, having little regard for the evidence presented to the Committee.

Although we agree with the essence of Recommendations 4, 9, 10, and 11, we would remove the reference to the proposed new 'pornography' category NVE. This, of course, is as a consequence of our dissent from Recommendations 1 and 2; we also dissent from conclusions (b) and (i), where the proposed NVE category is mentioned. We further dissent from conclusion (1), finding it inadequate and would replace it with the following:

As discussed in Chapter 13 theories of behavioural science, laboratory experiments
and anecdotal evidence point strongly to the fact that the effects of pornography and violent material are not aberrations.

Adverse effects upon people, and especially upon children, of exposure to material containing various degrees of violence, pornography, or obscenity have been demonstrated.

Claims have also been made that in some cases it may lead to desensitisation and psychological harm.

Whilst anecdotal evidence, coupled with behavioural science studies in this area do not provide certainty, they do establish theories which can make reliable predictions about human behaviour.

However it would be almost impossible to conclusively prove a direct and sole causal link between the viewing of particular videos and the commission of particular crimes because of the existence of other variables.

We are also concerned to see that the recommendations regarding violent video material are carried out by Governments throughout Australia. The restrictive access of R-rated material, coupled with a change in the classification guidelines and a tighter interpretation of those guidelines should have an impact on the availability to minors of excessively violent video material. We are also pleased that the majority of the Committee supported the proposal for a tighter language criteria for the PG classification. There is considerable concern from parents in the community regarding some of the language presently available for the PG category. Thus, we have deliberately removed the flexibility of the Censorship Board and the Films Board of Review in the aforementioned language category.

Mr David Charles, M.H.R., (A.L.P.)
Ms Mary Crawford, M.P., (A.L.P.)

QUALIFYING COMMENT BY SENATOR HARRADINE

From a study of the majority's response to Recommendation II set out at the conclusion of Chapter 17 my interpretative view of certain conclusions and recommendations of the Report will be obvious and needs no detailed elaboration here.

The reason for this qualifying comment is simply to provide a brief paragraph summarising information provided to me during my discussions with United States law enforcement agencies concerning organised crime in the pornography trade in that country.

Organised crime is heavily involved in the production of video pornography in the United States. The centre for the production of about 85% of this material is Southern California. Except for a weakness which occurred in the distribution chain following the disappearance in June 1986 of a distribution network enforcer, two East Coast crime families have dominated and continue to dominate the bulk of the pornography trade's distribution in the United States.

Although the production and distribution of pornography in the United States is a lucrative business, the pornographic video part of the business is experiencing some difficulties due to the nature of the video productions which it is now realised involve high risk activities exposing performers to AIDS as well as other sexually transmitted diseases.

As has been indicated in evidence to the Committee, the United States is the main source of the supply of video pornography including that which receives the X classification from the FCB. This is still the case since the new ER guidelines for the X category came into effect following the meeting of Attorneys-General in October 1984 because, as conceded in Attorney-General Department's evidence to the Committee, 95% of the pre-October 1984 X material is included in the new ER guidelines. (Evidence, p. 3488)
In introducing the major dissenting Report I draw attention to a number of points:

1. The dissenting Report in Volume II corresponds largely to what was originally the 'Chairman's Draft'.

2. The Committee, by varying majorities, usually 6 to 5 (but on occasions in 'opposite' directions), adopted the 'majority' Report in Volume 1. This has led to contradictions in the majority Report. Nevertheless, the majority Report contains a significant proportion of the 'Chairman's Draft'.

3. Chapters 3 (The Problem of Definition: Violent, Pornographic or Otherwise Obscene Material), 13 (Video Content and Classification), 14 (Harm and Video Material), and 15 (Access of Minors), in this dissenting Report are quite different from the corresponding chapters of the majority Report.

4. The dissenting Report takes a critical look at the evidence and does not come to simplistic 'solutions': as H.L. Mencken put it, 'to every complex problem there is a simple solution and it is always wrong'.

R.E. KLUGMAN
Chairman
SECTION I
OF
DISSENTING REPORT

GENERAL INTRODUCTION
CHAPTER 1

GENERAL APPROACH OF THE COMMITTEE

ESTABLISHMENT OF THE JOINT SELECT COMMITTEE

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

To inquire into and report upon the operation of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations and the ACT Classification of Publications Ordinance 1983 in relation to videotapes and videodiscs and in particular:

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

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

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

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

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

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

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

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

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

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

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

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

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

The members who comprised the Committee upon its formation were:

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

There were two subsequent changes to the Committee membership. Mr E.L. Grace, M.P., (A.L.P., NSW) became a member of the Committee on 9 May 1985 replacing Mr D.E. Charles, M.P. On 31 May 1985 Senator Elstob was discharged from further attendance on the Committee and Senator M. Reynolds, (A.L.P., QLD) was duly nominated a member of the Committee.
Following the double dissolution of 5 June 1987, the Committee lapsed. The Committee was re-appointed on 26 October 1987 with the same Terms of Reference and the membership was expanded by two with a reporting date of 10 December 1987. On 9 December, 1987, the Committee was granted an extension of the reporting date to 28 April, 1988. The members of the Committee in the 35th Parliament were:

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

CONDUCT OF THE INQUIRY

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

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

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

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

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

1.8 We believe we have gained a fairly reliable picture of what the various classification categories contain, and how the law and guidelines are applied in practice to the different types of material.
The Committee, during its deliberations had the benefit of being able to refer to a number of reports of overseas inquiries which are, in varying degrees, relevant to the Joint Select Committee's Terms of Reference. These reports have been influential in what has now become an international debate on the increase of pornography and violence in the visual media. They have included both Government, Parliamentary and non-Government inquiries, and, among others, include the following:


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

Three inquiries, with varying degrees of relevance to this Committee's work, have been conducted in Britain, Canada and the United States. The Committee has been able to refer to the reports of these inquiries, the latest being published in July 1986. The three Reports are:


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

A number of other members of the Committee also spoke to authorities in other countries involved in issues relevant to this Committee's Terms of Reference. The Deputy Chairman, Senator S. Walters, met with relevant authorities whilst visiting London in 1984 and Mr Jull discussed the issues with the Justice Ministry in Denmark in April 1986. In October 1987 Senator Harradine had discussions in the USA with the Chairman of the
Attorney-General’s Commission on Pornography and with senior law enforcement officers from the customs service, the postal service and police, particularly concerning the connection between organised crime and pornography. As with the Chairman’s visit, none of the visits were at the Committee’s expense.

1.12 This minority Report is divided into five sections. We felt it was necessary to provide a detailed section—Section II—covering the law and how it works, to ensure a clear understanding of the law’s intent, operation and effect. We have been mindful of providing a clear understanding of the law but Section III also provides a picture of the video industry, technological developments, Australian production and the role of adult cinemas. The issues are discussed separately in Section IV. The final section contains our conclusions and recommendations.

CHAPTER 2
BACKGROUND TO THE INQUIRY

INTRODUCTION

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

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

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

2.4 The Commonwealth does not have complete power to pass national laws in many areas of public importance. Commonwealth censorship laws derive from the trade and commerce power. Pursuant to this power the Federal Parliament has passed the Customs Act 1901. In the States, Commonwealth control can only extend to imported goods. However, in the Australian Capital Territory, the Commonwealth can pass laws regulating Australian produced material. The External Affairs power of the Constitution (section 51 (xxix)) may enable the Commonwealth to enact legislation in the discharge of its treaty obligations. In this respect the Committee's attention was drawn to the 'International Convention for the Suppression of the Circulation and Traffic in Obscene Publications', the 'International Covenant on Civil and Political Rights' and the 'Convention on the Elimination of all Forms of Discrimination Against Women'. (Australian Parents' Council Evidence, p. 547)

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

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

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

(b) THE LEGISLATION PRE-1984

2.8 The Commonwealth Customs legislation which was operative at the time of the introduction and growth of VCRs did not of course explicitly address the new technology of domestic video and videotapes.

2.9 Successive governments since 1971 have proclaimed the policy that adults should have the basic right to make their own decisions on what they read, hear and see provided that persons should generally be protected from exposure to material that may be offensive, or in the case of children harmful to them.

2.10 The Commonwealth legislation controlling imported film and prohibited goods are the Customs (Cinematograph Films) Regulations (also known as the Films Regulations) and Regulation 4A of the Customs (Prohibited Imports) Regulations.

(i) Customs (Cinematograph Films) Regulations

The Customs (Cinematograph Films) Regulations, prior to 1 February 1984, empowered the Commonwealth Film Censorship Board (FCB) to register, or refuse to register imported films for entry into Australia. By arrangement with the States, those films accepted as suitable for registration, together with locally produced films were classified for the purposes of State legislation governing the exhibition of films. (SSCVM Evidence, p. 6)

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

(ii) Regulation 4A of the Customs (Prohibited Imports) Regulations

Goods entering Australia, prior to 1 February 1984, were subject to import prohibition if they contravened the very general and largely unenforceable obscenity provisions of Regulation 4A of the Customs (Prohibited Imports) Regulations. Under these provisions goods were prohibited if they:

- were blasphemous, indecent or obscene; or
- unduly emphasized matters of sex, horror, violence or crime or were likely to encourage depravity.’ (Attorney-General’s Evidence, SSCVM, p. 7)

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

Although successive governments since 1971 have proclaimed a policy which upheld the individual’s right to decide what to read, see or hear, the policy was not reflected in the Customs Regulations. Customs officers claim they were only given verbal instructions (see SSCVM Evidence, p. 339 and p. 191). The verbal instructions appear to have derived from a policy direction dated 15 June 1973 given on behalf of the Comptroller-General of Customs and addressed to the Collector of Customs in New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania and the Northern Territory. The direction, which remained in effect until February 1984 (SSCVM Evidence, p. 342), noted that a review of earlier arrangements had been undertaken ‘having particular regard to the practical experience gained in implementing the Government’s announced [liberalised] policy in relation to censorship’. Noted also in the direction was the intention that the policy would ‘eventually be implemented by controls at the point of sale and display’ and:

For the time being at least, Customs resources engaged in screening imported goods should be primarily concerned with the detection of prohibited imports other than material which offends Regulation 4A. However, Customs will continue to seize privately imported pornography—

- if it comes to notice because a passenger blatantly but unsuccessfully attempts to conceal it;
- if it is deliberately brought to the attention of an officer;
- if it comes to notice in the course of examination for other Customs purposes; and
if imported by first class mail, the material is known before examination to be unsolicited.

For the time being there are to be no prosecutions under the Customs Act for offences involving pornography. (SSCVM Evidence, pp. 339-340)

The verbal instructions given to Customs officers led to the following practice being endorsed:

If in passengers' baggage when goods subject to Regulation 4A come to notice, provided these goods are for the passengers' own personal use, not duplicates or in commercial quantities, and do not reflect acts of child abuse, they allow the passengers to retain the goods and take no action. (SSCVM Evidence, p. 191)

2.11 The discrepancy between the law - Regulation 4A - and practice - the operational procedures at the barrier - was highlighted by Mr F.J. Mahony in his report Review of Customs Administration and Procedures in New South Wales completed in April 1983. Mr Mahony noted:

...that neither regulation 4A nor the Customs direction is being administered effectively. The direction places Customs officers in a difficult position in requiring them to apply a regulation only in the manner provided in the direction when they are expected to deal with passengers and goods according to law. The Attorney-General's Department stated in January 1983 that regulation 4A had been the subject of discussion between officers of that Department and the Department of Industry and Commerce and that action is proceeding.

In my view it is quite improper that the responsibility placed on Customs officers by the direction should continue. I recommend that the conflict between regulation 4A and the Customs direction be resolved without delay. (p. 105)

2.12 By 1983, it was apparent there were problems with the Commonwealth legislation. As far as import controls were concerned, it was felt that the obscenity provisions of Regulation 4A were unworkable given the discrepancy between the law as expressed in Regulation 4A and its administration. With the Films Regulations, videotapes were being submitted to the FCB by importers and, as they were not intended for public exhibition, they 'were merely registered leaving each State to deal with them according to its particular indecency or obscenity laws'. (FCB Evidence SSCVM, p. 101)

2.13 In the ACT, the sale or hire of objectionable material was virtually unregulated. Moreover, the law in the ACT, as in the rest of Australia, did not explicitly deal with videotape censorship. Open-ended common law and statute (such as the Objectionable Publications Ordinance 1958, police offences provisions and the common law offences of obscene libel and conspiracy to corrupt public morals) applied. As a result, according to the Attorney-General's Department:

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

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

(c) LEGISLATION FROM 1 FEBRUARY 1984

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

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

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

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

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

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

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

However there are absolute prohibitions on material 'considered to be harmful to society', e.g. child pornography, bestiality, detailed and gratuitous depictions of acts of considerable violence or cruelty, explicit or gratuitous depictions of sexual violence against non-consenting persons.

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

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

2.18 Regulation 4A was amended to include specific prescriptions of material to be denied entry into Australia. Instead of the old general categories of 'blasphemous, indecent or obscene' goods or ones that 'unduly emphasize matters of sex, horror, violence or crime, or are likely to encourage depravity it specified material depicting child abuse, promoting or encouraging terrorism or depicting extreme violence or cruelty 'especially when combined with any sexual element'.

2.19 On 4 April 1984 the Customs (Prohibited Imports) Regulations were further amended by Statutory Rules 1984, No. 55. The amendment omitted the word 'extreme' from sub-paragraph (1A)(a)(ii) of Regulation 4A as a qualification on that kind of violent depictions that were to be prohibited. Prohibition now applied to a wider range of goods depicting violence.
2.20 The new laws and guidelines (see Chapter 5) were the subject of debate in the Senate in 1984, and also the subject of consideration by the Senate Standing Committee on Regulations and Ordinances (see SSCVM Report, p.1ff, Parliamentary Paper No. 5 of 1985).

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

(a) **Classification of Publications (Amendment) Ordinance 1984**, as contained in Australian Capital Territory Ordinance No. 17 of 1984. This introduced a compulsory classification scheme in the ACT for videos.

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

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

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

2.23 Changes made to the Film Censorship Board’s guidelines during 1984 tightened the classification guidelines. The November/December 1984 change excluded from the X category any depiction suggesting coercion or non-consent of any kind.

Although the States, with the exception of Queensland and Tasmania agreed in principle to a new and tighter X (or R+) category, by October 1984, it was evident there was an unwillingness on the part of a majority of State governments to legislate to allow the commercial distribution of X material.

**THE SENATE SELECT COMMITTEE ON VIDEO MATERIAL**

2.24 The activities and findings of the Senate Select Committee are recorded in its Report of March 1985. In brief the Committee was established - with Terms of Reference identical to this Committee's - to examine the effectiveness of the Customs (Cinematograph Films) Regulations, Regulation 4A of the Customs (Prohibited Imports) Regulations, and the ACT Classification of Publications Ordinance 1983.

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

2.26 The Minister for Territories transmitted the Report of the Senate Select Committee, which was tabled on 28 March 1985, to the ACT House of Assembly for its advice. But the House of Assembly had debated the issue of a possible ban on X-rated material no less than three times in the preceding nine months, the majority vote being against a ban on each occasion. (ACT House of Assembly, Hansard, 29 May 1984, pp. 682-699; 3 December 1984, pp. 1551-1566; 12 February 1985, pp. 1729-1741) On 28 May 1985 the House took note of the message only and there was no further debate. (ACT House of Assembly, Hansard, 28 May 1985)
In the event, no moratorium was imposed on the availability of X-rated tapes in the ACT. This has allowed the establishment of video mail order businesses in the Territory. Besides X-rated tapes being legally available to ACT residents and visitors, people living interstate have also been able legally to order such tapes through these businesses.

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

This and other matters raised by the Senate Select Committee, have been taken into account by us in our deliberations.

The terms of reference of this Committee require it to examine various matters relating to ‘violent, pornographic or otherwise obscene material’. The use of such terms – ‘violent, pornographic or otherwise obscene material’ – where there is not a clear understanding of their meaning, makes the Committee’s Terms of Reference loaded and, by implication, condemned of much of the material in the M, R and X categories of film and video; the term ‘obscene’ is, in the Terms of Reference, interchangeable with the words ‘violent’ and ‘pornographic’.

The X category of video comprises mainly explicit depictions of adult, human, sexual activities. It was this category’s heightened, public profile, gained through changes to the classification guidelines, that prompted the establishment of the Joint Select Committee and the preceding Senate Select Committee. Thus, there appears to be an assumption that explicit depictions of sexual activities are, by definition, ‘pornographic’. That assumption is not appropriate since the meaning of the word ‘pornographic’ is clearly subjective. What is ‘pornographic’ to one person, may be ‘erotic’ or ‘arousing’ to another, or give rise to a variety of responses in yet others, without necessarily being perceived as ‘pornographic’. Furthermore the terms ‘pornography’ and ‘pornographic’ do not appear in the legislation under review.
3.3 The Committee, like many inquiries conducted abroad, has had to attempt to understand what is meant or understood by the terms 'violent', 'pornographic' and 'obscene' because, despite wide differences among people as to what they mean, they are nevertheless commonly used expressions. In short, the Committee has had to address the question of how to describe what it is that is at issue. There is a wide variety of views not only on definitions of pornography, but also about its very nature. The number of perceptions about pornography are almost limitless and the debate is often acrimonious.

3.4 We feel it is necessary to illustrate the difficulties which confronted us on the matter of definition by pointing to similar problems encountered by other inquiries, and by the courts. We also draw on some of the submissions which give pornography and obscenity various, different meanings.

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3.5 In examining the problem of definition, reference is made in the ensuing paragraphs, to the way in which inquiries overseas tackled the problem together with the way in which 'obscenity' has been defined in law in Australia and overseas.

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

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

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

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

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

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

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

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

3.8 On the other hand, the Committee on Obscenity and Film Censorship (chaired by Bernard Williams and known as the Williams Committee) had no qualms about what was meant by pornography and gave an extremely broad definition:

The term "pornography" always refers to a book, verse, painting, photograph, film, or some such thing - what in general may be called a representation. Even if it is associated with sex or cruelty, an object which is not a representation - exotic underwear, for example - cannot sensibly be said to be pornographic (though it could possibly be said to be obscene). We take it that, as almost everyone understands the term, a pornographic representation is one that combines two features; it has a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity, etc.). A work has to have both this function and this content to be a piece of pornography. (Williams, p. 103)

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

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

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

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

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

... that there is no intrinsic reason why pornography or even obscene works should not be capable of having artistic merit, though there are undoubtedly reasons in the nature of such works, and even more in the general conditions of their production, to make that an unlikely and marginal occurrence, and the works, even when successful, are generally of minor stature. (Williams, p. 108)

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

3.13 In R v Hicklin Chief Justice Cockburn said:

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

This definition of obscenity was incorporated, with variations, into Australian law.
3.14 The Williams Committee recognised the problems in applying the obscenity test in the United Kingdom and the test's resultant loss of credibility and force (see paragraph 3.9). Williams reported:

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

3.15 Given the failure of the obscenity test to regulate material which people in the United Kingdom community wanted banned, it is surprising the Video Recordings Act 1984 assumes continued use of the obscenity test, in that prosecutions may be brought pursuant to the Obscene Publications Act 1959. The Video Recordings Act requires all videos to be classified by the British Board of Film Censors (BBFC) along the same lines as films for cinema, but the Act places a further obligation on 'the authority' (the BBFC), in making arrangements:

(a) for determining for the purposes of this Act whether or not video works are suitable for classification certificates to be issued in respect of them, having special regard to the likelihood of video works in respect of which such certificates have been issued being viewed in the home, (Video Recordings Act 1984, C. 39, Section 4(1)(a)).

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

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

3.17 The same situation is true of Australia. As mentioned in paragraph 3.2, the terms 'pornography' and 'pornographic' do not appear in the legislation under review by the Joint Select Committee. The Canadian Criminal Code at the time of the Fraser Committee's deliberations, dealt with the production, distribution and sale of 'obscene' matter. For the purposes of the Code, any publication is deemed to be obscene if:

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

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

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

and that 'community standards' test developed in response to the use of the term 'undue' in subsection 159(8). The question posed, in the Canadian context, by the community standards test:
...is, essentially, whether the exploitation of sex or of sex and crime, horror, cruelty or violence, is undue in the sense that it exceeds the contemporary Canadian community standards of tolerance. (Fraser, p. 46)

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

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

3.20 We have made the same observations in our examination of the relevant provisions of the ACT Classification of Publications Ordinance, the Customs (Cinematograph Films) Regulations, and the Customs (Prohibited Imports) Regulations. The Customs (Cinematograph Films) Regulations uses the terms 'blasphemous', 'indecent', 'obscene' which are not found in the ACT Classification of Publications Ordinance and the Customs (Prohibited Imports) Regulations.

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

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

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

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

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

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

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

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

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

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

3.25 The Meese Commission saw merit in the approach of the Fraser Committee in Canada which decided that definition was simply futile. In fact, they partially followed that course and minimised the use of the word 'pornography' in their Report. In their Report 'pornographic' meant only that the material was predominantly sexually explicit, and intended primarily for the purpose of sexual arousal.

3.26 The problems encountered by the Meese Commission have been encountered by this Committee. In the course of receiving submissions and taking public evidence, it was clear to us that the term 'pornography' meant different things to different people. To label material as 'pornographic' did indeed imply that it was to be condemned. Those in the community who seek to promote censorship use such terminology to support their point of view.

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

Those who would condemn a war as "obscene" are not misusing the English language, nor are those who would describe as "obscene" the number of people killed by intoxicated drivers. Given this usage, the designation of certain sexually explicit material as "obscene" involves a judgment of moral condemnation, a judgment that has led for close to two hundred years to legal condemnation as well. But although the word "obscene" is both broader than useful here as well as being undeniably condemnatory, it has taken on a legal usage that is relevant in many places in this Report. As a result, we will here use the words "obscene" and "obscenity" in this narrower sense, to refer to material that has been or would likely be found to be obscene in the context of a judicial proceeding employing applicable legal and constitutional standards. Thus, when we refer to obscene material, we need not necessarily be condemning that material, or urging prosecution, but we are drawing on the fact that such material could now be prosecuted without offending existing authoritative interpretations of the Constitution. (Meese, p. 230)

3.28 On the other hand it was the Commission's view that the use of the term 'erotica' was as a mirror image of the broadly condemnatory use of 'pornography', with 'erotica' 'being employed to describe sexually explicit materials of which the user of the term approves'. (Meese, p. 230)

3.29 The Commission also commented that:

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

3.30 They did, however, feel obliged to make the observation that many X-rated depictions could not conceivably be considered legally obscene and that 'there is no plain connection between the words "pornographic" and "X-rated"'. (Meese, p. 231) It should be noted that the voluntary ratings of the Motion Picture Association of America are less restrictive ratings than those allowed in this country, e.g. X allows violence associated with explicit sex.
While Australia initially adopted the Hicklin definition of obscenity, Australian courts since about 1948 have adopted a different test. That test is whether the material in question offends the sensibilities of the citizen by violating the contemporary standards of decency in the community (Bradbury v Staines [1970] Qd. R 76).

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

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

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

The matter was taken even further by Barwick C.J. and Windeyer J. when the meaning of obscenity was considered by the High Court in the 1968 case of Crowe v Graham ([1967-68] 121 C.L.R. 375). The Chief Justice said that the test of indecency was whether the material, having regard to the manner in which it was presented, would offend the modesty of the average man or woman in sexual matters. ([ibid. p. 379] Windeyer J., in his judgement on the case, noted that, 'Despite the obvious unsuitability of this sentence [see paragraph 3.13 for Chief Justice Cockburn's sentence] as a legal definition of obscenity, it, taken from its context, has had a great vogue. It has fostered much misunderstanding ... Yet it has only survived really because, although constantly mentioned, it and its implications have been ignored'. ([ibid. p. 392] He described the judgement of Fullagar J. in Close's case as a most notable contribution.

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

DEFINITIONS IN GENERAL LITERATURE AND IN EVIDENCE

Very few commentators having a close association with the law in the English-speaking democracies accept that defining pornography is a simple matter. Most people clearly have an idea of what is meant by 'pornography', but because that idea is...
always subjective and individual, it is no basis for policy to simply say, as did Justice Potter Stewart of the United States Supreme Court:

I know it when I see it. (Jacobellis v Ohio, 378 U.S. 184 (1964), at 197)

Yet many do see the situation in such simplistic terms, and demand action of the legislature to prohibit what they consider pornographic.

3.36 In a reflection on the work of the Williams Committee, a former member of that Committee, Professor A.W.B. Simpson, objected to any scheme to regulate pornography where:

One is to list the rude bits. (A.W.B. Simpson, Pornography and Politics: A Look Back to the Williams Committee, Waterlow, London, 1983, p. 86)

3.37 Indeed, after endeavouring to find suitable definition of pornography which could find a useful place in the law, Professor Simpson, who is Professor of Law at the University of Kent, in his book concluded:

If at the end of the day the vagueness inherent in all definitions of restricted porn is unacceptable, then that is a case for not attempting to restrict at all. (Ibid. p. 87)

3.38 The problems seen by the government inquiries, the courts, and legal commentators, do not worry those who see 'pornography' as a serious threat to the fabric of society which must be prohibited in law. In an advertisement designed to both alert the people of New South Wales about the evils of pornography, and to lobby politicians, Reverend Fred Nile, MLC used emotive stirring terminology such as 'Keep Video-Filth Out of the Home!', 'Say "No!" to the 'Dirty' Dollar! to the "Dirty" X-Rated Videos! to Organised Crime! to Mr Gommorah!' (Evidence, p. 2261)

3.39 Dr. J.H. Court, an Australian clinical psychologist who gave evidence before the committee, in his book Law, Light and Liberty (Lutheran Publishing House, Adelaide, 1975) quoted with approval D.H. Lawrence's assertion:

Pornography is the attempt to insult sex, to do dirt on it. (p. 56)

He went on to make a distinction between erotica and pornography, and between soft core and hard core pornography, hard core including the element of 'hate'. Dr. Court distinguished between pornography and erotica as follows:

Material identified as arousing but unpleasant may be labelled as pornographic, while erotica is that which is reported to be arousing and pleasant. (Ibid. p. 56)

3.40 Dr Court viewed erotica and pornography as part of a continuum. Quoting the results of surveys done on 'normal' university male populations, and referring to the debate over the grey area between sexually explicit material and hard core material such as bestiality, Dr Court said:

Dispute over what should be done about pornography often arises because one group is defending availability of sexually-explicit material (for example, nudity) while the other side is referring to hard-core representations of bestiality and the like.

The above distinction found with normal male student populations cannot be maintained when material is presented to more deviant populations. It is clear from the vast pornography industry that there are many males who seek after pornography in an addictive fashion, apparently not experiencing either
the revulsion of many normal subjects, or the satiation ("boredom") reported when normals experience forced-feeding. (Law, Light and Liberty, p. 57)

3.41 The point of quoting Dr Court's 1975 work here is that it, like other books written for general consumption, has apparently led many people in the community to believe this type of material is legally available in Australia. Today there is very little complaint about nudity per se. Material depicting bestiality is, of course, a prohibited import and videos containing such material would be refused classification.

3.42 Mrs Beverley Cains who was leader of the Family Team in the former ACT House of Assembly accepted the definition of pornography:

... as the literature of sexual deviants.

(Evidence, p. 19)

This definition is descriptive of a certain attitude to the term 'pornography' rather than a definition stating the precise nature of the thing or the meaning of the word. Such a definition is unsuitable for identifying what is 'pornography'.

3.43 We noted that people concerned about pornography, including video pornography, included some representatives of the women's movement as well as those who generally based their view of pornography or obscenity on a Christian conception of morality and values. However other religions may share these values and some fundamentalist Moslems would go much further.

3.44 The interesting aspect of these groups is that they all oppose pornography and/or obscenity while the meaning of 'pornographic' or 'obscene' is, for each of them, essentially different.

3.45 As an example we refer to the two submissions of Father Peter Murnane, OP of Blackfriars Priory in Canberra. In his original submission (No. 467) to the Committee, Father Murnane gave the Concise Oxford Dictionary entries for 'pornography', 'erotic' and 'aesthetic' (see Evidence, p. 2076).

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

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

And of 'aesthetic':

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

He also gave a 'clarification':

From the definitions given above from the Concise Oxford Dictionary, it will be clear that some aspects of what the dictionary calls "erotic" fall within its definition of pornography: "... especially tending to arouse sexual desire or excitement." Other areas of "erotic" are included within the dictionary's definition of "aesthetic": "Of sexual love, amatory ...".

It is necessary to add this, since some authors make pornography and eroticism mutually exclusive. For greater clarity, pornographic is considered in opposition to aesthetic, throughout this submission. (Evidence, p. 2076)
Father Murnane also provided a definition of 'violent':

**Violent** For the purposes of this submission, 'violent' and "violence" refer to a high level of violence in video or other material, (e.g. mutilation, torture, killing). (Evidence, p. 2076)

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

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

3.50 Dr Jocelynne Scutt, Deputy Chairperson of the Law Reform Commission, Victoria and a noted feminist, does not see the pornography debate as a right-left dichotomy, i.e. censorship vs the right to view. She maintains there is another position which is not being sufficiently articulated - a 'feminist position which accepts quite clearly that depictions of women in situations of subordination involving sex are not positive for women's esteem and not positive in terms of relations between women and men'. (Evidence, p. 2586)

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

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

If you look at definitions of obscenity, which is the closest to pornography, what one finds is that in the law pornography tends to be defined as something that is of prurient interest or titillating or tantalising in a sexual manner. In terms of the pornography that I have seen, I am certainly not tantalised by it or titillated, and it is not of prurient interest to me. In fact, it is quite the opposite. I think that it is subordinating to women, it is derogatory of women as human beings, and in the course of that it is actually derogatory of men also. Therefore, I do not think the current legal definitions of obscenity and pornography are of very much help at all. I think the preferable approach would be to insert in the
Sex Discrimination Act at the Federal level and into State equal opportunity or anti-discrimination legislation, a definition of pornography which makes it very clear or explicit as to what the activity is that the community considers to be unacceptable. (Evidence, p. 2589)

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

The sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:

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

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

3.54 It is clear that although Father Murnane and Dr Scutt share a concern about pornography, their views of the meaning and definition of pornography are different and do not provide any consensus on what is a suitable definition.

DISCUSSION

3.55 It is impossible in this chapter to present a comprehensive list of all the views that abound, both in the submissions and otherwise, on how various people define pornography. The reason for not being able to do so is really very simple - nearly every individual would appear to have a unique view of it, and so to list every perception would be an endless task. What we have sought to do is to illustrate the many differences in definition and perception. The acrimonious nature of the debate about the nature and definition of pornography indicates the difficulty of achieving any consensus about controlling or placing prohibitions upon something where there is no agreement on its definition.

3.56 The wording of the Committee's Terms of Reference does not assist this matter. The terms - 'violent, pornographic or otherwise obscene material' - are understood by many people who made submissions to be descriptive of a type of undesirable material with the terms being interchangeable. During the course of public hearings it became evident to us that some witnesses believe material is 'pornographic' when it contains depictions of sexual activity. They also believe, incorrectly, that explicit sexual depictions in the X classification in Australia may also contain violence and non-consent and therefore is both 'violent' and 'pornographic'. Lastly, because they find sexual material personally offensive, they believe it to be obscene. This interchangeability of the terms 'violent, pornographic, obscene' and the lack of agreement on meaning, proved a handicap for the Committee in seeking a workable definition of pornography. It is
relevant to note that the X classification was altered in November/December 1984 to exclude violence and non-consent and many of the witnesses were unaware of the change. Some withdrew their objections when the change was pointed out.

3.57 As to violence per se, we believe that the term is not subject to widespread differences of meaning because its nature and essence is more easily understood. Violence itself, is generally regarded as anti-social, yet with violence, the taboos which surround sex and representations of it do not exist. While violence is regarded as 'wrong', disagreement exists in respect to depictions of various degrees and forms of violence. The question facing us in relation to representations of violence is whether they can be shown to be harmful. Does the exposure to depictions of violence alter attitudes and/or behaviour of a society, or of children and abnormal people, in ways which would justify censorship?

3.58 There is agreement in the community that 'violence' is often 'obscene' but there is no widespread agreement that 'pornography' is 'obscene' especially if it is taken to include explicit sexual material of an affectionate kind. Indeed violence, especially the relished and gratuitous 'violence for violence sake' depicted in movies of the 'slasher' genre such as Friday the 13th would be more likely to fit within the term 'obscene'.

3.59 It is not possible for us to propose a definition of 'pornography' which would receive general acceptance. We therefore, have not used the terms 'soft core pornography' or 'hard core pornography' to categorise types of pornography. Instead, we have sought to be specific in describing the content of the material under examination and have used, wherever possible in our Report, such terms as explicit sex, consenting sex, affectionate sex and sexual violence. The use of the terms 'pornographic' and 'pornography' is kept to a minimum, being used mainly where witnesses use and refer to them.

3.60 Any use of the term 'pornographic' by us is not by inference a condemnation of the material. It is taken to refer to material of a sexually explicit nature which is intended to arouse the viewer.

3.61 The term 'obscene' is only used where there is a reference in law or where witnesses use the term.

3.62 We have adopted this approach to the problem of definition in an attempt to make it clear to readers what is understood and meant when describing the material available in Australia in the R and X categories.
4.1 Submissions received by the Committee ranged from pro-forma letters requiring a signature only to substantial submissions where the author's viewpoint was supported by detailed argument and/or evidence. A significant number were based on misconceptions about the legislation controlling videos. Changes made during 1983–84 often were not fully understood and the content of the various pieces of Commonwealth legislation was not known in detail. There was a widespread misconception that video material containing child abuse, bestiality, and extreme violence as well as such items as 'snuff' movies, (where an actor/actress is supposedly killed in the making of the film), were entering the country and were being given an X rating. This is not the case, as will be seen in Section II. Moreover, people were unaware of changes to the video classification guidelines, agreed to by the State and Commonwealth Ministers responsible for censorship at the end of 1984. These changes are explained in Chapter 7. Even though the guidelines were last changed in December 1984 to exclude from the X category any depiction suggesting coercion or non-consent of any kind, there was apparently sufficient pressure on the State governments of New South Wales, Victoria and South Australia to make them withdraw from their agreement with the Commonwealth over the X classification.

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

4.3 The Report of the Canadian Special Committee on Pornography and Prostitution in Canada delineated three main perspectives associated with public attitudes towards the management of pornography and prostitution in Canada: the liberal, the conservative and the feminist. (Fraser, p. 15) They analysed them as a prelude to looking at social and legal strategies that would be appropriate to Canada in dealing with the problems of pornography and prostitution.

4.4 Similar streams of thought are present in the case of Australia, although their labels would need to be slightly changed for them to become intelligible in our censorship history. The easily identified perspectives are the traditionalist (conservative) perspective, the civil libertarian and other liberal ones, and, much more recently, a feminist viewpoint. Because each one of these rests on a different set of assumptions about the nature of Australian society, the role of institutions, the individual and the State and the dangers thought to be associated with video material, it may be helpful to examine them here before proceeding to look at the issues confronting the Committee. From such an examination it will be seen that different attitudes to censorship, the role of government and the value of scientific evidence - all matters that are of concern to us - are associated with each perspective. Both attitudes to explicit sex and attitudes to violence will be dealt with in the case of each perspective.

TRADITIONALIST

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

4.6 People who adopt this perspective tend to see a causal relationship between 'pornography' and sexual crimes or, at least, anti-social conduct. Viewing videos that depict explicit sex or some types of violence is seen as leading to social harm. The belief that this is so does not seem to require empirical evidence for it to be sustained. Anecdotal evidence, opinion or statements of principle are generally produced in support of the claim.

4.7 Holders of this view usually exhibit an attitude to law and the role of government which is solidly interventionist. They advocate censorship. They also locate the responsibility for protecting children and the vulnerable firmly with government rather than with parents, whom they see as unable to exercise adequate supervision in contemporary Australian society. In this regard they adopt a view akin to that expressed by Patrick (later Lord) Devlin in 1965:

... an established morality is as necessary as
good government to the welfare of society. Societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government and other essential institutions. The suppression of vice is as much the law’s business as the suppression of subversive activities; it is no more possible to define a sphere of private morality than it is to define one of private subversive activity. (Patrick Devlin, The Enforcement of Morals, Oxford Paperbacks, 1965, pp. 13-14)

All ‘pornographic’ material should be declared illegal, even if doing so impinges on adult freedoms. Depictions of violence of the kind not legitimized by the State should be dealt with in the same way.

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

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

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

Hard pornographic sex teaches that sex is not a beautiful activity expressing love, affection and trust between man and woman. It teaches that women are sex objects, subservient, inferior, degraded. It also robs children of the sense of wonder at the mysterious process by which they came into being. Their abilities to live later as parents and capably nurture and guide the children who will be the next generation’s parents and decision-makers, and to impart to them normal healthy sexuality and concern for others, are impaired... John Stuart Mills [sic] put it very well when he said “The real test of my maturity is my willingness to concede some loss of my personal liberty in order that the total freedom and dignity of the community shall be established.” (Submission No. 553, Girl Guides Association (NSW) Question 1, p. 1)

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

We believe that there are as many people concerned about hard-core pornography as violence in pornography. Promiscuous sexual behaviour... and the promotion of certain sexual acts all have consequences not only for the individual but for society. We believe that many of the ideas promoted in video pornography sets (sic) up tension in human relationships, de-stabilises marriage and family life, leads to unwanted (sic) pregnancies and causes the spread of venereal (sic) diseases. (Submission No. 633, Women Who Want to be Women, Victoria, pp. 1-2)

CIVIL LIBERTARIANS AND OTHER LIBERALS

4.9 From the liberal viewpoint Australian society is seen as a pluralist one with the individual as its basis. Society is not an organic whole as the traditionalists see it but rather an agglomeration of individuals capable of rational thought. Only through free interplay of all competing ideas and values in a situation of complete freedom of information can society operate at its best.

4.10 As the South Australian Council for Civil Liberties acknowledged, the perspective derives from the 19th century philosopher John Stuart Mill who:

said that there were four distinct grounds for stating that freedom of opinion and expression were necessary to the well being of mankind. Firstly, he said, any opinion compelled to silence may well be true and to deny that is to assume our own infallibility.

Secondly, even if the silenced opinion is in error it may contain some truth which will be lost because it is never tested. Thirdly, unless the received opinion is tested against an adverse opinion it will be held as a prejudice with little comprehension or feeling of its rational grounds. Finally... the doctrine will become a mere formal profession of belief rather than a belief gained from reasoned or personal experience. (Submission No. 681, pp. 1-2)

4.11 The view was presented to the Committee by two Civil Liberties groups. They opposed censorship in any but the most exceptional situations. For them it remains open to debate whether children or other vulnerable groups are subject to damage from sexually explicit or violent material in the media. Only demonstrable and unequivocal evidence would establish that harm occurs, and they see the evidence produced to date as not conclusive, since even the experts continue to argue about it.

4.12 Moreover, evidence about harm to children or vulnerable groups, even if it were established, would not provide sufficient grounds to prevent normal adults from having access to the material. An essay on censorship in A Humanist View puts this argument:

We do not usually prevent the normal adult citizen from following certain courses of action because of what might possibly happen to children or weaker members of the community if they were allowed to behave in the same way. We don’t ban cars because of the road toll, or drinking because there are alcoholics. There is something odd about a society which allows itself to be governed by the claims of its weakest, least responsible members. (Ian Edwards (ed.), A Humanist View, Angus and Robertson, Sydney, 1969, p. 130)
A more extreme civil libertarian position was put to the Committee by the New South Wales Council for Civil Liberties which submitted that:

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

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

Our traditional policy has been and continues to be an absolute opposition to censorship in all its forms. The basis of our opposition broadly stated is three-fold:

i) Censorship represents a real and substantial threat to free speech, vigorous discussion of unpopular and minority views and the holding of same. Adults should be free to say, read, discuss and see whatever they like without interference by the police, the courts, and censorship rating systems.

ii) The existence of censorship laws in their various guises intimidates free expression and the fee (sic) exchange of ideas. Self-censorship and timidity are a direct result - particularly amongst editors, journalists, artists, galleries, printers and those who make public affairs programmes for film, T.V. and radio (e.g. the A.B.C. and now the National Times).

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

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

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

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

This position was made even clearer in verbal evidence:

Senator HARRADINE - You say in your document here that persons should be free to read and see what they wish. Mr Horler - That is our absolute position. Senator HARRADINE - That means that you would then say that people should be free to read or see material that depicts child pornography, bestiality, terrorism, and misuse of drugs, for example. Mr Horler - It is not my wish, but if that is their wish then they should be entitled so to do ... If there are people who want to look at that material, then the libertarian position
is that they should be entitled to do so and it is no business of the government to impose a perceived community standard of taste to prevent them from doing so. (Evidence, pp. 659-60)

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

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

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

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

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

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

4.18 Rather than use the law to prevent access by adults to material that might harm children, the Council sees it as the responsibility of parents to protect children. Parents should establish:

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

4.19 Not many groups and individuals who expressed broadly liberal views to the Committee were as unequivocal as the New South Wales Council of Civil Liberties or even as the South Australian Council. A more moderate liberal perspective appears among the submissions.

4.20 Very few people questioned the present banning of child pornography, or of the depiction of bestiality or of violence associated with explicit sex. There has been increasing concern, among those holding liberal views on censorship issues about the level and type of violence in films, television and video. Dr Paul Wilson, who declared himself 'basically a civil libertarian', (Evidence, p. 1055) was not at all worried by depictions of explicit sex without violence, but argued for controls in 'the sexual sadistic area' (Ibid. p. 1054).

4.21 Among those who remained opposed to censorship, some wished the government to take an active role in both education and the provision of information to the consumer. Mr Philip Adams, Chairman of the Australian Film Commission, told the Committee:
What we have to do, as a film industry, as a communications industry, and as a government, is to make the community aware that the stuff exists, what is in it, and to take control and make decisions. (Evidence, p. 2929)

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

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

4.22 A number of factors may have influenced Australian liberals to accept a role for government in the protection of vulnerable groups in relation to video material. The Australian Constitution does not contain anything like the First Amendment to the United States Constitution. The latter declares, at least theoretically, that any government regulation of freedom of speech or publication is unconstitutional. That has not been a legacy here.

4.23 It may also be that the volume of violent material that has appeared in the media in recent years has particularly worried people in this country whether or not it can be shown to be harmful. The level of violence in Australian society has remained low compared to other parts of the world and perhaps Australians fear that this could change.

THE FEMINIST MOVEMENT

4.24 The Committee received submissions from a large number of women and women's groups commenting on the effects of the depiction of women in video material. While most of them felt that X-rated material is degrading to women, the majority of those who made this point did so in combination with a number of other attitudes to video material which added up to a traditionalist perspective as outlined earlier in this chapter rather than one that would be described as feminist in its basic intent.

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

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

Women Against Violence and Exploitation (WAVE) submitted:

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

4.26 An interesting submission was made by the Shop, Distributive and Allied Employees’ Association who saw implications for women’s employment, career opportunities and working conditions in the availability of ‘violent, pornographic and obscene’ video material. This Association opposed any video classification above the current R category on the grounds that such classifications encouraged the view that women were to be valued for their sexual role and physical beauty - a view that is discriminating in employment. (Evidence, pp. 560-566)

4.27 Some feminists were not concerned at all about the X rating under the current guidelines. Mrs Megan Sassi wrote:

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

She made an interesting general point in her main submission:

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

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

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

4.29 Many submissions expressed the view that videos containing scenes of explicit sex between consenting adults, in a context of equal power relationships, and where there was no coercion or violence, were acceptable. Few feminist groups were against the depiction of non-violent, explicit sex, where ‘such acts are depicted as an equal exchange between equal individuals’. (Submission No. 614, Union of Australian Women (Victorian Section), p. 3)

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

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

4.31 As is the case overseas, different sections of the movement recommend different strategies to combat sexual
inequality in video material. A number of submissions found common cause with the traditionalists in advocating more stringent censorship than currently exists, others incorporated a liberal element into their strategy by calling for efforts in community education to change attitudes towards the role of women in society. But most promoted vigorous – if in some cases reluctant – use of strategies involving government and the law.

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

4.33 Dr Scutt’s suggestion was to:

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

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

SUMMARY

4.35 Three general perspectives have been identified among the submissions received by the Committee. The first two may be broadly categorised as traditionalist and liberal, although the lines of demarcation are no longer as distinct on censorship issues as they once were. The third, basing its critique on gender interests, cuts across these philosophical positions. It incorporates both liberal and traditionalist approaches into the one strategy it puts forward to deal with the current situation.

4.36 Most people who made submissions believed that there is a role for government and law in the control of video material, although there was some confusion about what was actually contained in current laws. The traditionalist and some members of the women’s movement wanted more extensive censorship. Many liberals supported the December 1984 guidelines whilst others opposed all censorship in principle.
SECTION II

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

POINT OF ENTRY

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

5.3 The purpose of the amendments was specifically stated to be to 'bring Commonwealth censorship legislation into line with the Government's policy that adults be entitled to read, hear and see what they wish in private and in public, subject to adequate
provisions preventing persons being exposed to unsolicited material offensive to them and preventing conduct exploiting, or detrimental to the interests of children'. (Attorney-General's Explanatory Statement)

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

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

(ii) promote, incite or encourage terrorism; or

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

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

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

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

5.8 The Administrative Arrangements document was designed to replace the verbal instruction based on an earlier direction dated 15 June 1973 given on behalf of the Comptroller-General to the Collectors of Customs in the States and Territories (see Chapter 2, paragraph 2.10 (ii)).

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

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

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

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

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

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

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

CLASSIFICATION FOR SALE OR HIRE

5.14 Legislation to control the manufacture, distribution and
exhibition of video material lies within the power of State
governments and only with the Commonwealth in the case of the
ACT. A summary comparison of the salient features of existing
laws in all states and territories can be found in Chapter 6.
5.15 Commonwealth classification legislation came into force on 1 February 1984 in the form of the ACT Classification of Publications Ordinance 1983. While it would only apply in the ACT, the legislation had been designed to serve as a model for the States after the meeting of Commonwealth and State Ministers with censorship responsibilities in Brisbane on 13 July 1983 had agreed in principle to implement uniform legislation. At the same meeting, however, both the Queensland and Tasmanian Ministers made it clear that neither of their states would adopt an X-rating. (SSCM Evidence, p. 10)

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

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

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

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

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

- dealt with sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena 'in such a manner that it offends against the standards of morality, decency and propriety generally accepted by reasonable adult persons to the extent that it should not be classified';
- depicted a child under 16 'in a manner that is likely to cause offence to a reasonable adult person' (hereafter referred to as child abuse);
- promoted, incited or encouraged terrorism.

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

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

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

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

5.23 The general criteria to be applied in classification were spelt out in the Ordinance. They required that authorities should 'have regard to the standards of morality, decency and propriety generally accepted by reasonable adult persons' in deciding whether a publication was objectionable. Prescribed authorities must give effect to the principles 'that adult persons are entitled to read and view what they wish' with the proviso that 'all persons are entitled to protection from exposure to unsolicited material that they find offensive'. They should take into account whether an item possesses literary or artistic merit, who is its intended audience and the conditions (if any) subject to which it should be published.

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

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

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

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<th>Offences</th>
<th>Penalty</th>
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<tr>
<td>Advertising, selling, offering for sale, hiring or distributing a child abuse videotape - possessing or keeping on premises a child abuse videotape for the purposes of sale - depositing a child abuse videotape in a public place or on private premises - printing, making or producing a child abuse videotape -</td>
<td>up to $10,000 for a corporation; up to $2,000 or 12 months imprisonment or both for an individual.</td>
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<tr>
<td>Advertising, selling, offering for sale, hiring or distributing a refused videotape or one that is unclassified and is subsequently refused classification on grounds other than that it is a child abuse videotape - depositing an R or X videotape in a public place or on private premises without the permission of the occupier -</td>
<td>penalty up to $5,000 for a corporation; up to $1,000 or 6 months or both for an individual.</td>
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<tr>
<td>Breaching the conditions on the sale of R and X videotapes -</td>
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5.27 During 1984 the Ordinance was the subject of considerable scrutiny and debate at the political level while lobbying and campaigns against pornography were taking place in the public arena. Concern was expressed that there was a need for greater consumer guidance than was available under the voluntary system of classification. During a debate in the Senate in April, the Attorney-General undertook to submit a proposal for compulsory classification of videotapes to State Ministers responsible for censorship matters. Later, a meeting of these Ministers, held in Canberra, supported the proposal. In May, the ACT House of Assembly agreed to a recommendation of its Standing Committee on Education and Community Affairs that the ordinance be amended to implement compulsory classification. The ACT Classification of Publications Ordinance was amended to make classification of videotapes compulsory with effect from 4 June 1984.

5.28 The X-rated classification category also became a matter of some notoriety during 1984. By October, an unwillingness on the part of a majority of State governments to legislate to allow the commercial distribution of X material was evident. On 17 October, the Senate, on the motion of Senator M. Reid, passed with amendments, a resolution setting up the Senate Select Committee on Video Material. The Senate also passed a second resolution calling on the Federal Government to place a moratorium on the sale and hire of ‘X-rated and other sexually sadistic and violent videos’ pending the outcome of the inquiry. (Senate, Hansard, 17 October 1984, pp. 1838-45) A further meeting of Commonwealth and State Ministers responsible for censorship was held on 26 October 1984. Discussion at this meeting concerned the possibility of replacing X with a new and tighter category, ER (Extra-Restricted), which would include explicit depictions of sexual acts involving adults, but would not allow any depictions suggesting coercion or non-consent of any kind. A majority of Ministers agreed to recommend this category to their respective Governments, although Queensland and Tasmania remained opposed to
any classification beyond R and the representative of the Western Australian Government, who was not a Minister, undertook only to refer the matter to his Minister. (SSCVM Evidence, p. 12)

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

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

5.31 In the meantime, the Film Censorship Board had altered its guidelines for classification of videotapes/discs for sale/hire; It excluded the sexually violent material previously allowed in the X-rated category that had been of concern to State Ministers (see Chapter 6). The guidelines of December 1984 were now in line with the ER category agreed on at the Ministerial meeting in October. The moratorium on X was not introduced.

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

FILM CENSORSHIP BOARD
ATTORNEY-GENERAL'S DEPARTMENT
GUIDELINES FOR CLASSIFICATION OF VIDEOTAPES/DISCS FOR SALE/HIRE

G General (suitable for all ages)
Parents should feel confident that children may view material in this classification without supervision, knowing that no distress or harm is likely to be caused.
Language: Mild expletives only if infrequent and used in exceptional and justifiable circumstances.
Sex: Very discreet verbal references or implications and only if in a justifiable context.
Violence: Minimal and incidental depictions, and only if in a justifiable context.

PG Parental Guidance (parental guidance recommended for persons under 15)
Material in this classification may contain adult themes/concepts which require the guidance of a parent or guardian.
Language: Minimal crude language if not gratuitous.
Sex: Discreet verbal and/or visual suggestions and references to sexual matters.
Violence: Discreet, inexplicit and/or stylized depictions.
Other: (i) mild supernatural and/or “horror” themes.
(ii) minimal nudity if in justifiable and non-sexual context.
(iii) discreet informational and/or anti-drug references.

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

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

Sex: Depictions of discreetly implied sexual activity.

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

Other: Depictions of drug use if not advocate.

R RESTRICTED (18 years and over)

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

Language: May be sexually explicit and/or assaultive.

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

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

Other: Depictions of drug abuse if not advocate.

X EXTRA-RESTRICTED (18 years and over)

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

REFUSED CLASSIFICATION

Language: No proscriptions.

Sex: Child pornography, bestiality.

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

Other: Instruction "manuals" for

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5.33 The Film Censorship Board uses a key to show the reasons for classifying non-G films and tapes. The key is published in the Commonwealth of Australia Gazette along with the classifications assigned by the FCB to films and videos for sale/hire. The key is as follows:
CHAPTER 6

THE LEGISLATION IN THE STATES

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

6.2 Every State and Territory has acted since 1985 to put into place legislation that is similar to the ACT model legislation. All States now have compulsory classification of videos, and all currently use the Commonwealth Film Censorship Board to undertake the initial classification of films. Two states - South Australia and Queensland - possess bodies of their own which can also exercise independent review or censorship functions either regularly or from time to time. In Western Australia the Minister concerned with censorship matters has the
power to override Commonwealth decisions. The legislation in all States covers the ground that is marked out in the model legislation.

NEW SOUTH WALES

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

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

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

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

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

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

6.8 Significant offences which are declared in the New South Wales legislation while not appearing in the Commonwealth model legislation deal with the procurement of a child for the making of a child abuse videotape, the exhibition of an R videotape in a public place and the attendance of a minor at such an exhibition.
6.9 Classification is compulsory, the classifying and appeal authorities being the Commonwealth bodies where an agreement has been made to that effect, or, where no agreement exists, a New South Wales Censor who would be a Public Service employee. A current agreement authorises the Commonwealth Film Censorship Board and the Films Board of Review to act in these capacities.

VICTORIA

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

6.11 The Victorian Government’s submission gives the history:

The Films (Amendment) Act 1983 introduced amendments to the Films Act 1971 to provide for the classification of video material by the Commonwealth Censor, who already classified films for exhibition in cinemas in Victoria. The cinema classifications of G, NRC, M and R were applied to videos and a further category of X material was introduced in relation to video material for private sale and hire. Point of sale restrictions based on the A.C.T. Ordinance were imposed.

Offences were created for breaching those restrictions in respect of classified material, and also in respect of unclassified material which would, if classified, be given an R or X classification.

The same Act made amendments to the Police Offences Act to ensure that video material was covered by the offences relating to obscene and indecent publications. It was provided that classification would be a defence to a prosecution under those provisions. The amendments to the Police Offences Act came into operation on 13 December 1983, the date of Royal Assent. The amendments to the Films Act 1971 came into operation on 2 May 1984.

Subsequent developments led to policy alterations in two major respects:

(a) the introduction of a compulsory classification scheme;

(b) the banning of X rated videos and development of the ER category.

The Films (Classification) Act 1984 was passed during 1984 Spring Session of Parliament to give effect to these alterations and to enact fully the model legislation in relation to video material. This Act, which is a new principal Act, came into operation on 1 February 1985. (Evidence, p. 1272)

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

6.13 In the event the recommendation was not followed through by the other States, but the Victorian Films (Classification) Act 1984 allows for an ER (or any other new) classification automatically to be introduced in Victoria if the ACT Ordinance is amended to introduce it in that Territory. (Evidence, p. 1273) Section 3(3) of the Act states:
Where under the Ordinance (meaning the Classification of Publications Ordinance 1983 of the Australian Capital Territory) a film is classified as a film of a particular kind, other than as a "G" film, a "PG" film, an "M" film, an "R" film or an "X" film the provisions of the Ordinance relating to the sale, delivery, display, advertising or screening of that film apply as laws of Victoria.

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

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


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

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

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

6.20 The effect of the existence of the South Australian Board is that it provides South Australia with its own review body which may make independent decisions or overrule the Commonwealth Film Censorship Board and the Films Board of Review. The South Australian Board had made fourteen such decisions up to the end of January 1988. Two of these consisted of classificatory decisions about tapes held by a South Australian Government
authority only; eight represented the carrying forward of earlier decisions made by the Board before it accepted Commonwealth classifications, and four constituted a straight overruling of a decision by the Commonwealth classifying bodies.

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

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

"... as far as the Board and the South Australian Government are concerned, we are looking for something which is non-violent and which is explicit and is acceptable pretty well through the main areas of population."

(Evidence, p. 370)

6.23 The South Australian Classification of Publications Act Amendment Act, 1985 created two unique offences. It is an offence to breach the conditions imposed in relation to R films, which include one that 'images from the film shall not be exhibited to a minor (otherwise than by a parent or guardian, or a person acting with the authority of a parent or guardian, of the minor)', as well as the universal condition that R films must not be sold or hired to a minor. The penalty is a maximum of $5,000 or imprisonment for three months. In other States it had become an offence to allow a minor to view R material at a public exhibition, but the South Australian legislation was the first to protect minors in relation to video material in the home. The Act also declared it an offence to exhibit images from a 'prescribed' film to any other person. A 'prescribed' film is one which has not been classified under the South Australian Act or a corresponding law (the ACT Ordinance), has been refused classification under the ACT Ordinance, or has had its classification revoked under the ACT Ordinance. The penalty for exhibiting a prescribed film is a fine of $10,000 maximum or six months imprisonment.

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

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

6.25 There are four levels of maximum penalties under the South Australian Act, with no specific differentiation between individuals or corporations, first or subsequent offences. Breaches of the Regulations governing markings and display draw fines up to $2,000. Penalties for selling unclassified films that are subsequently classified may be imposed to a maximum fine of $5,000 or three months imprisonment. The penalty for selling
either unclassified films that are subsequently refused classification under the South Australian Act, or films that are not classified under the South Australian Act but are classified under a corresponding law otherwise than as a G film, a PG film, an M film or an R film (that is an X film under the ACT Ordinance) is a maximum fine of $10,000 or six months imprisonment. Dealing in prescribed material refused classification under the ACT Ordinance attracts the heaviest penalty of a maximum $10,000 fine or six months imprisonment plus the possible withdrawal of the right to engage in the sale or hire of films for a period up to twelve months.

QUEENSLAND


(a) Censorship of Films Act

6.27 The Censorship of Films Act closely follows the wording of the ACT Classification of Publications Ordinance 1983 except that it allows the initial classification of all films and videotapes only into G, PG, M or R categories. Maximum penalties, however, tend to be higher for most offences. Maximum penalties for offences associated with child abuse films involve penalties of up to a $20,000 fine for a corporation, or $10,000 or 12 months imprisonment or both for an individual. Maximum fines for offences associated with other refused categories are $10,000 for a corporation, or $5,000 or 6 months or both for an individual. Classification is compulsory. The Act includes the common State provision allowing an arrangement with the Commonwealth for classification to be done by the Commonwealth body, and a back-up clause providing for State apparatus should no such arrangement with the Commonwealth exist. Currently Queensland uses the Commonwealth Film Censorship Board for classification in the first instance. The Film Censorship Board's categories of G, PG, M and R are spelt out but no X classification is recognised. It is interesting to note that categories of refusal are worded as in the ACT's refused category except for the phrase 'to the extent that it should not be classified'.

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

(b) Films Review Act

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

6.30 The functions of the Queensland Board are not activated by applications on the part of distributors or members of the public. They are exercised on its own initiative or at the direction of the Minister and involve systematically examining and reviewing films that have already been classified by the Commonwealth Film Censorship Board. The aim is to weed out those films that come into the category defined as 'objectionable' under the Films Review Act.
6.31 According to the Queensland Films Review Act (section 9(2)), films are objectionable when, in the opinion of the Board, they:

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

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

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

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

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

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

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

(iv) generally outrages public opinion

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

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

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

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

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

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

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

TASMANIA


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

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

NORTHERN TERRITORY

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

6.40 While it adopts much from the ACT Classification of Publications Ordinance 1983, there are some differences in the Northern Territory Act. As in other jurisdictions, R and X videos may not be sold, hired or delivered to a person under 18 (in this case described as an 'infant'). The Northern Territory Act also requires that R as well as X-rated material be kept in a separate restricted publications area. At the time the Act was promulgated this was unique in Australian law for video material, and its presence in the Act was described by the representative of the Northern Territory Government as a major step towards keeping R videos away from the eyes of children. (Evidence, p. 404)

According to the Regulations under the Act, the segregated areas are to be subject to the same conditions as in the ACT—that is, no material is to be visible from outside, the area is to have a door or a gate, and a person is to be in attendance nearby at all times. When the Act commenced an exemption was placed on this section but that exemption has now been revoked and from 1 July 1988 X or R-rated material may only be exhibited or displayed in a restricted publication area as the Act states.

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

WESTERN AUSTRALIA

6.42 In Western Australia video material is regulated under the Video Tapes Classification and Control Act 1987. While consistent with Commonwealth legislation, the legislation follows the pattern of the New South Wales Film and Video Tape Classification Act 1984 in many respects, although it refers only to videotapes and video discs and not films. There is no provision for any classification beyond R. Depictions of sex,
drug misuse, crime, cruelty or violence, revolting or abhorrent phenomena 'in a manner that is likely to cause offence to a reasonable adult' are refused, as are child abuse, bestiality of any sort and the promotion of terrorism. It is an offence for a minor of 15 years or over to buy or hire R-rated or refused videotapes, and it is an offence to procure a child for the making of a child-abuse film. Controls on the exhibition of videotapes are the same as in New South Wales.

6.43 There are, however, significant differences from the New South Wales system. Penalties for some offences are more severe - indeed they are the harshest in any State or Territory. For instance, the fine for the procurement or attempted procurement of a child for the making of a child abuse film is $100,000 in the case of a corporation, and $25,000 or imprisonment for 5 years in any other case. The fine for selling or giving an R videotape to a minor by any person other than a parent or guardian of that minor is $15,000 for a corporation and $4,000 or imprisonment for 12 months in any other case. Moreover the Western Australian Act was the last piece of State or Territory legislation for the control of video material to be drawn up and it incorporates a number of features previously unique to other States. As in Queensland, private possession of Refused videotapes is an offence (though the definition of Refused differs in each of the two States). The penalty is $15,000 in the case of a corporation and $4,000 or imprisonment for 12 months in any other case. Also, as in Queensland, in the case of trailers anything above the category of the film itself is not acceptable. Finally, it adopts the Northern Territory practice of requiring R tapes to be housed in a separate restricted area.

6.44 There are, too, some unique provisions in the Western Australian law. At the time the Video Tapes Classification and Control Act was promulgated in February 1988 the then Minister responsible for censorship matters in the State declared that the Act made possession of X an offence in Western Australia. The final say on either the acceptability for classification, or the classification category of video material, rests with the State Minister concerned with censorship matters. The Commonwealth Film Censorship Board and the Commonwealth Films Board of Review may be appointed to act as censor and appeal censor respectively, or the censor and appeal censor may be appointed under the WA Public Service Act. Provision is made, however, in the Video Tape Classification and Control Act for the minister to direct that a classification assigned by the authorised bodies 'shall be ineffective in the State'. He may assign a different classification or he may refrain from assigning a classification, in which case the videotape will be taken to be an unclassified videotape.

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

6.46 This arrangement allows for internal review of Commonwealth decisions, as is the case in Queensland and South Australia, but it is much more directly politicised than is the case in those states. In Western Australia, the Minister alone instigates the review and bears the responsibility for review decisions even though he may refer the matter to the State Advisory Committee on Publications. In Queensland, the Minister may nominate films to the Films Board of Review but it is the Board which holds statutory responsibility for prohibiting the distribution, within the State, of 'objectionable' films as defined in the Films Review Act 1974-84. The South Australian
Classification of Publications Board undertakes the function of review under the South Australian Classification of Publications Act 1974, and while it shall 'have due regard to the views of the Minister' under section 12 (3)(aa) of that Act, it shall also have due regard to other matters including the 'decisions, determinations or directions of authorities of the Commonwealth and of the States of the Commonwealth' relevant to the performance of its functions. The South Australian arrangement is the most open - the Board may meet on a classification matter at its own initiative, to consider a matter referred by the Minister, or 'at the request of any person'.

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

SUMMARY

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

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

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

6.51 Three States have their own review machinery which operates on top of the Commonwealth arrangements. Queensland's works systematically to limit the kind of material available in the State. In other words a secondary censorship function is introduced which automatically raises the threshold of what is banned in that State to include material that the Queensland Board of Review interprets as objectionable under the Queensland Films Review Act 1974. In the process, some material that would be available in other States under the FCB Guidelines for the R category - i.e. 'Adult material ... possibly offensive to some sections of the adult community' - is withdrawn. The South Australian arrangement provides for a review process within the State and is piecemeal. Review of a given Commonwealth classification decision by the South Australian Classification of
Publications Board may be initiated by the Board itself, by the Minister, or by any member of the public in the State. The process might result in a change of classification from the one given by the Commonwealth bodies after a local reinterpretation of Commonwealth Film Censorship Board guidelines, or it could serve as an instrument to inject State concerns into the classification process where it might be considered necessary or desirable to do so. Under the South Australian Act, however, the South Australian Classification of Publications Board must always strive for a reasonable balance between the principles of freedom and protection where the two conflict. In Western Australia the Minister may direct that a classification given by the censor be changed or overturned at any time.

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

6.53 The table in Appendix 12 sums up other differences between the States. In Queensland and Western Australia it is an offence for a private person to possess certain categories of material (in Western Australia, Refused material; in Queensland, material that either has been or would be Refused under the ACT Ordinance). In Western Australia the former Minister has stated that there the Act makes possession of X an offence. In ACT, Northern Territory, New South Wales, Victoria, South Australia and Tasmania selling or hiring this material is illegal but possessing it for personal viewing is not. New South Wales, South Australia, Queensland, Tasmania and Western Australia require that notices giving an explanation of each classification be clearly visible in retail outlets while the ACT, Northern Territory and Victoria do not. New South Wales, Queensland and Western Australia make it illegal for videos to contain trailers for films at specified higher ratings for each classification. If a State censor were performing the classification in Tasmania, this would be an offence there too. However, while there is an arrangement for the Film Censorship Board to undertake classification for the State, it is sufficient for the videotape containers to bear the following marking: 'Warning - This cassette may contain trailers of a higher rating than the feature movie'. The Committee was notified that the ACT House of Assembly also resolved that:

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

However this has not yet occurred.

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

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

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

THE FILM CENSORSHIP BOARD AND THE FILMS BOARD OF REVIEW

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

THE FILM CENSORSHIP BOARD

7.2 Each of the three pieces of Commonwealth legislation appointed the Commonwealth Film Censorship Board, established under Regulation 5 of the Customs (Cinematograph Films) Regulations, as the body to make censorship and classification decisions. The Board now has the responsibility for registering
or refusing to register films for public exhibition under the Customs (Cinematographic Films) Regulations, for making decisions relating to the prohibition of films under Regulation 4A of the Customs (Prohibited Imports) Regulations, and for classifying or refusing to classify films for sale or hire under the ACT Classification of Publications Ordinance 1983. Moreover as noted in the last chapter, the Board is also nominated under State Acts to exercise video and film classification functions on behalf of the States.

7.3 The Film Censorship Board is an independent statutory body made up of a Chief Censor, a Deputy Chief Censor and up to 10 full-time members appointed by the Governor-General. They are aided by Deputy Censors who are members of the Commonwealth Attorney-General's Department in the various State and Territory branches. The Deputy Censors as well as individual members of the Board can make decisions on classifications. However all films containing material which Deputy Censors or Board members believe might be refused classification or material which falls on the borderline of any classification are referred to the Chief Censor who directs that they be screened before the Board where a decision of the majority prevails. The Board writes a report on all videotapes screened, outlining the nature of the material and the reasons for the decision. Decisions are given to the applicant in writing and published in the Commonwealth Gazette along with a code signifying the reasons for the decision (see Chapter 5, paragraph 5.33).

7.4 Under the terms of the Commonwealth legislation, the Film Censorship Board is charged with making decisions in areas that must inevitably involve subjective judgments. The Australian Customs Service stated to the Committee that the test of what is to be allowed into the country under the amended Regulation 4A is objective. (Evidence, p. 2790) However such terms as '... in a manner that is likely to cause offence to a reasonable adult person' or even 'gratuitous depictions ... of acts of considerable violence ... etc.' involve judgment. And certainly the criterion for films to be refused under the ACT Classification of Publications Ordinance, in that they depict matters 'in such a manner that it offends against the standards of morality, decency and propriety generally accepted ... to the extent that it should not be classified' (the test of current community standards), requires interpretation. As the then Chief Censor told the Senate Committee:

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

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

... by talking to people and going and speaking to groups of people, by opening up the process to debate, by giving reasons for our decisions, by encouraging debate over individual decisions.
... [by] producing reports - annual reports - which we are not obliged to do; giving reasons for decisions; producing information brochures; appearing and giving interviews to the Press ... (SSCVM Evidence, p. 121)

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

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

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

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

R Restricted - 18 years and over
Adult material likely to be harmful to those under 18 years and possibly offensive to some sections of the adult community.
Language: Sexually explicit and/or assaultive dialogue.
Sex: Implied, obscured or simulated sexual activity.
Violence: Explicit depictions with some gratuitous and exploitive violence; decapitations, dismemberment, disembowelling, etc. if briefly shown; discreet sexual violence.
Other: Depictions of use of drugs which might be construed as mildly advocacy.

X Extra Point-of-Sale Controls
All overt and explicit material, except such as described under "Refused Classification".
Language: No proscriptions.
Sex: All depictions of sexual acts involving adults (except those of an extreme sexually violent or cruel nature) including explicit penetration, masturbation, ejaculation, fellatio, cunnilingus, insertion of objects in orifices, urolagnia, necrophilia, coprophilia, sado-masochism, fetishism.
Violence: Explicit depictions (except those referred to under "Refused Classification").
Other: Depictions of use of hard drugs which might be construed as advocacy.

Refused Classification
Material considered to be harmful to society.
Language: No proscriptions.
Sex: Child pornography; bestiality.
Violence: Explicit detailed and gratuitous depictions of acts of extreme cruelty including extreme sexual violence.
Other: Instruction manuals for
i) terrorist-type weapons and acts;
ii) abuse of hard drugs.

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

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

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

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

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

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

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

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

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

THE FILMS BOARD OF REVIEW

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

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

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

(a) the person who applied for the classification;
(b) the publisher of the film; or
(c) the Attorney-General.

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

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

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

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

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

(a) REPRESENTATION

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) DESENSITISATION

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

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

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

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

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

(c) ACCESS TO REVIEW

7.28 Under section 39 of the Customs (Cinematograph Films) Regulations, application for review of the classification of a film for public exhibition is open to 'a person aggrieved by a decision of the Censorship Board', while section 30(1) of the ACT Classification of Publications Ordinance gives the right to apply for a review to the person who applied for the classification, the publisher of the film or the Attorney-General.

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

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

7.31 Under the ACT Classification of Publications Ordinance the Commonwealth Attorney-General has access to the Films Board of Review in relation to videotape classifications. The legislation of some States and the Northern Territory also provides direct access to the Films Board of Review for the State...
or Territory Ministers responsible for censorship matters. However if they appeal to the Board directly, any resulting change in the classification would only be valid in that State or Territory. On the other hand, the State or Territory Ministers responsible for censorship can approach the Commonwealth Attorney-General to exercise his access to the Board under the ACT Classification of Publications Ordinance on their behalf. This has already happened once (see paragraph 7.20). The benefit of such an approach is that the review will refer to the whole Commonwealth.

7.32 Submissions have been made to the Committee requesting that the process of review be made more widely accessible. The Family Team in the Australian Capital Territory House of Assembly submitted that 'the correct classification is a matter of public concern and it should be open to any concerned citizen to request a review'. (Evidence, p. 11) The New South Wales Women's Advisory Group to the Premier made a similar request as did others. (Evidence, p. 2852)

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

My personal opinion ... is that I would like to see a mechanism where members of the public could express a view to the Board and ask for a judgement. The problem with that would be to institute a reasonable period and reasonable safeguards against the Board simply tying itself to the movie screen while thousands of groups ask it to reconsider its decision. I would think of the Board as making a judgement in relation to the public and then there would be some mechanism for allowing appeals by representative groups of the public. (Evidence, pp. 1205-6)
SECTION III

VIDEOS - THE PRODUCT, INDUSTRY, TECHNOLOGY, PRODUCTION AND VENUES
CHAPTER 8

THE PRODUCT

INTRODUCTION

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

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

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

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

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

**THE VIDEO CASSETTE RECORDER (VCR)**

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

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

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

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

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

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

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

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

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

8.14 As Brian Wenham observes:

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

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

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

| Obvious differences between video and broadcast systems (Evidence, p. 2175) |
|---------------------------------|---------------------------------|
| Broadcast                      | Videorecorder                   |
| 'Their' control over programmes | User control over programmes    |
| 'Their' choice of programmes    | User choice over programmes     |
| 'Their' taste in programmes     | User taste in programmes        |
| 'Their' timing for programmes   | User timing of programmes       |
| Less freedom of choice          | More freedom of choice          |

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

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

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

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

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

8.19 Teamed with a video camera, the VCR can also play back material filmed by the consumer. The video camera permits the consumer to be his own producer. Previously the producers and
consumers of moving pictures have been relatively distinct and separate. The VCR is breaking that nexus between producer and consumer. (Noble Evidence, p. 2176)

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

8.21 Since the introduction of VCRs on the Australian market, VCR ownership has increased rapidly. According to Dr Noble, figures indicate that ownership of VCRs increased dramatically from 11 per cent or 605 000 units in 1982 to 20 per cent or 1 125 000 units in 1983. (Noble Evidence, p. 2174) He said figures indicate that, in 1984, some 30 per cent of TV homes possessed a VCR unit.

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

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

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

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

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

8.27 In the TvB interview survey, those respondents 14 years and over were canvassed as to the number of hours they had watched a VCR, in the preceding seven days. It was found that over one third of all respondents with a VCR did not view any VCR material in the one week prior to the interview. Of those who owned a VCR, 64.4% viewed it in the seven day period; 21.1% viewed the VCR for 0-2 hours (light); 18.7% for 3-4 hours (medium) and 24.6% for 5+ hours (heavy). 72.8% of respondents who rented a VCR watched it in the week before interview. Of these, 27.3% watched for 0-2 hours (light); 14.9% watched for 3-4 hours (medium) and 30.6% watched for 5+ hours (heavy). The survey
results show renters are significantly heavier users of VCRs than owners. Of those respondents without a VCR, 7.6% had watched a VCR in the seven day period.

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

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

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

...the less privileged young couples buy their first home and discover the dreariness of suburban living. Australians all expect to own their own home on a "quarter acre" block of land which means that new communities are widespread and poorly serviced by transport - deserts of isolation and frustration - especially among the young housewives with a couple of children to communicate with, and young unemployed teenagers.

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

<table>
<thead>
<tr>
<th>YEAR ENDED</th>
<th>1983/84 No.</th>
<th>1984/85 No.</th>
<th>%</th>
<th>1985/86 No.</th>
<th>%</th>
<th>1986/87 No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>JUNE</td>
<td>638</td>
<td>397</td>
<td>-3.6</td>
<td>516</td>
<td>136</td>
<td>-16.1</td>
<td>437</td>
</tr>
</tbody>
</table>

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

SUMMARY

8.33 There is little doubt the VCR is but one more technological development which brings greater choice to home entertainment. The VCR is not the end of a development line. Technology is being developed all the time. With the shifts in home entertainment that came with radio, television and lately the video cassette recorder, consumers now expect improvements and the electronics industry is responding to these market demands and has now developed 8mm and digital videotapes. Equipment improvements are also found in the audio industry where the compact disc is the latest technological development. The content of material does not necessarily change with such technological development. It can be argued that largely it is community demand which determines the type of content to be found in material of a visual and audio nature.
CHAPTER 9

THE VIDEO INDUSTRY

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

PRODUCERS

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

9.3 Companies are releasing films on video at such a rate that the production of top quality movies cannot keep pace. In time more films of the 'B' grade variety will be available on
video and they would not necessarily have been released theatrically. (South Australian Video Retailers Association Evidence, p. 454)

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

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

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

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

DISTRIBUTORS

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

- CBS/Fox Video
- CIC Taft Video
- RCA/Columbia Pictures/Hoyts Video
- Warner Home Video
- Communication and Entertainment Limited
- Roadshow Home Video

which are aligned with major film studios, and

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

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

- theatrical release - cinemas
- non-theatrical public performance, eg in hotels, clubs, trains, hospitals, prisons, motels (in-room by diffusion service)
- home video
- network television
9.9 From a video retailer’s point of view, the time span between release of a film for theatre and availability on video varies. The South Australian Video Retailers Association (SAVRA) said:

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

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

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

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

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

9.13 VIDA claim that:

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

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

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

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

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

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

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

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

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

9.21 Following the amendments to the Copyright Act in 1986 which strengthened anti-privacy provisions, the Australasian Film and Video Security Office noticed a definite decline in piracy. However, in 1987, there was a gradual increase and AFVSO estimates that at the end of 1987 the percentage of the overall market lost to piracy was between 15% and 20%. In 1987, fourteen criminal convictions had occurred and total fines imposed for the year amounted to S$8 246.75. Two hundred and ninety two investigations were initiated and one hundred 'cease and desist' letters had been sent out.

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

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

9.24 VIDA says it is generally felt in the industry:

... that a classification beyond R, provided of course that it was within a certain acceptable standard of guidelines, would be an advantageous way to go, because what we have found in any business is that if we deny people the access to certain material, it
breeds an underground market. One of the biggest problems we have in Australia today is video is the piracy that is occurring. We find that this sort of material tends to find its way, if it is not freely available, into that market-place where the pirates operate - the fringe operators. (Evidence, p. 505)

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

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

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

9.28 VIDA claims that their:

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

RETAILERS

9.29 Retailers are the interface between the home video distributor and the public - the consumer. The phenomenal growth in the popularity of VCRs for domestic use has been matched by consumer demand for pre-recorded video tapes. As a result video cassette rental outlets have grown rapidly.

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

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

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

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

... a retail video shop should present an attractive, clean, well planned environment and offer its customers a wide a choice as is possible. The display is all important to the operation of a video retail shop as the quality of it attracts customers back to the store. (Evidence, p. 585)
9.34 People are looking for entertainment when they hire videos. Mr Grant Peters of the South Australian Video Retailers Association (SAVRA) observed:

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

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

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

9.36 The retailers believe that if material for video release is refused classification, such refusal should also apply to theatrical availability. Films have been given a classification based on the guidelines operating at the time of the classification application. The progressive changes to the guidelines make it possible for films, which previously would have attracted a classification, to be refused a classification now.

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

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

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

SAVRA went on to recommend that:

i) Quarterly Consolidated Lists be made available to all Registered Video Library Operators, at a nominal charge, listing all classifications currently applicable.

ii) Updates to this consolidated list be published regularly (i.e. at pre-determined regular intervals, and not irregularly as seems to happen at present).

iii) In these updates, all changes in previously listed classification be clearly indicated, so it is self-evident which titles have been re-classified. (Evidence, p. 426)

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

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

... that distributors and secondhand dealers should be held to be as responsible as the retailers. I have an example of a slick that came through the other day of a film called 'The Bounty'. Fortunately, this works in a downward trend where the company have placed on it an M rating code - M for mature audiences - and it is legally gazetted as PG. We feel that as retailers we accept that we must still retain responsibility for correctly coding them, but the law should make it necessary for the distributor to get it right in the first place before he sells the product down the line. Likewise, if a secondhand dealer - this is a problem in this State - runs around selling off copies of 'The Exterminator' after it has been banned then he or she should also be prosecuted. So not only the shop owner should be responsible if he inadvertently puts it in his shop without conforming with the law, but there should be a feedback further down the line to make sure that the person selling it to him is also liable. (Evidence, p. 447)

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

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

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

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

9.44 Another concern of the retailers is the small outlet which trades in other goods but has videos as a side-line. SAVRA, for instance, represents 140 shops in South Australia but has estimates of between 750 and 800 shops or outlets in South Australia 'such as service stations, delis, fast food centres that have videos'. (Evidence, p. 442) These outlets are often
unaware of the applicable laws and use the attraction of cheap video cassette rental to draw the customer into their shop:

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

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

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

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

... licensing would be useful to enable us to know who has got them. One of the problems which we have in this State is that we do not know where they are. If you go up the main road to Glenorchy they are all along the main road. That is not so much a problem, but then there are little corner stores all over the place and we have no idea where they are. When we were introducing this legislation, we were not able to advise all those small outlets what they were. We would have to write to them and say: 'This is what you have to do'. We were not able to do that. All we could do was to deal with a videotape association of Tasmania, which only represents a small number of people, and that is all we were able to do. The other people, especially those in the north of the State, have never had any involvement with us at all. I do not know whether they know what is going on. (Evidence, p. 2158)

THE ADULT INDUSTRY

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

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

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

9.50 Companies involved in the adult video industry which are represented by AVIA include wholesalers, retailers, tape duplication plant operators, printers, and tape suppliers. The membership figure '... is around 300 at the moment, with the majority of them being made up of actual video shops nationally'. (Evidence, p. 984)
Mr John Lark, Spokesperson for AVIA, informed the Committee that 'the majority of the people who are associated with AVIA would represent most of the X-rated importers, distributors, or sellers or direct mailers as such. There are a number of individual companies that have not joined, et cetera. They consider it their right to run their own race as such, which is their prerogative, of course. But we would represent the majority of the X-rated industry, I am quite sure.' (Evidence, p. 985).

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

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

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

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

ILLEGAL OPERATORS

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

Brian Norris in InterMedia says:

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

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

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

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

Video pirates are worldwide. It is an international industry which knows no national borders. The international acceptance of VCRs and the portability of video cassettes provide a lucrative market for pirates.
The vast profits to be reaped from piracy have seen the illegal operators set up operations on a significant scale. Gone are the days when video theft was only a cottage industry - ‘back-to-back’ copies made by retailers, copies made at home for private sale. The illegal operator today:

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

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

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

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

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

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

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

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

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

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

The amendments:

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

In other areas the Act was amended to:

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

Mr Bowen said that:

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

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

ALLEGATIONS OF CRIMINAL INVOLVEMENT

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

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

and:

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

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

My understanding is that there is no evidence to suggest that - that is, regarding the types of characters alleged to be coming to this country and to be involved in this type of business. There is nothing to support that. (APP Evidence, p. 3182)
9.70 Businesses in Canberra do buy products from American companies and some of the American production and distribution companies have links with organised crime figures.

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

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

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

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

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

9.74 We believe that if X-rated material is made illegal its sale/hire will go underground and its distribution will become attractive to 'organised crime'.

**SUMMARY**

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

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

9.77 New marketing techniques are being embarked upon. The sell-through packages (videos sold directly to the public by the distributor) are no longer the province of one distributor. CEL paved the way in sell-through in this country, and was much criticised, but other companies have now embarked on sell-through to diversify their marketing strategies.

9.78 Distributors and retailers are concerned to preserve the video market and to ensure consistency and uniformity in marketing requirements throughout Australia. The benefit of uniform requirements would enable what is now a national industry, both at a wholesale and retail level, to provide a consumer product which satisfies a common legal prescription rather than the varying legal prescriptions that apply at present.
CHAPTER 10

IMPACT OF NEW TECHNOLOGY

RESPONSES TO NEW TECHNOLOGY

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

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

Similar studies were done when radio and television first became a mass media. We are now seeing a recurrence of that pattern. Almost identical questions are being asked. (Evidence, p. 2218)
10.3 There were many who foresaw terrible effects on society 'as we know it' when printing became cheap and popular. The views expressed to the Committee about the harmful effects of video and the video material available for viewing in the home must be brought into perspective with ongoing technological development.

OTHER MEDIA AND FORMS OF ENTERTAINMENT

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

(a) CABLE AND RADIATED SUBSCRIPTION TELEVISION

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

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

10.7 Although cable programs are not available to the general public in Australia, limited business video for certain customers is provided via Telecom's cable distribution systems (CDS). The opportunity for home entertainment via cable television will no doubt come with the use of new optical fibres in cable transmission. Similar services to those available on MDS (discussed in (b)) can be offered using a cable distribution system based on copper cable or optical fibres. The Department of Communications noted in its submission that 'Telecom is deferring action on such services until MDS policy is clarified'. (Evidence, p. 1970)

(b) MULTIPONT DISTRIBUTION SERVICES

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

(c) SATELLITE

10.9 Direct broadcasting by satellite (DBS) 'allows for the transmission of signals from one terrestrial source (an uplink) to the satellite where the signals are returned to earth for reception by satellite dishes in the coverage area'. (Evidence, p. 1967) DBS enables radio and television programs to be beamed from a central location to private homes (see paragraph 10.13) without the intervention of traditional terrestrial broadcasting or telecommunications systems.

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

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

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

10.12 Concern was expressed by us at the possibility of overseas programs, which do not meet Australia's censorship requirements, being picked up in Australia by viewers. According to the Department of Communications, it is technologically possible for programs to be beamed to Australia and 'if the transmission method used was one of the world standards - the American NTSC standard, the European and Australian standard PAL or SECAM, the French system - then it is relatively simple to buy a receiver and receive it (the transmission) with a dish costing around $3500 to $4000.' (Evidence, p. 1985)

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

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

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

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

10.16 Video and Audio Entertainment and Information Services can be delivered by one or a combination of several technologies such as AUSSAT satellites, the Teleco network and terrestrial radiocommunications transmitters including Multipoint Distribution Systems (MDS).

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

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

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

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

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

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

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

(e) PAY TELEVISION (PAY-TV)

10.20 The Government announced on 2 September 1986 that the introduction of Pay-TV services to the general public will not be permitted for at least four years.
A review of Pay-TV will be undertaken during the moratorium and this will take into account, amongst other things, developments in optical fibre and communications infrastructure and the second generation of AUSSAT satellites.

ANCILLARY DEVELOPMENTS

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

(a) VIDEO CAMERA

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

(b) TECHNICAL SOLUTIONS TO MONITORING CHILDREN’S VIEWING

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

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

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

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

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

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

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

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

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

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

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

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

11.6 The improper use of a double can occur when a performer says he/she will not appear in a particular nude scene and permission is not sought from the performer to use a double. The body of a double is shown so that it looks as if the performer is appearing nude in the scene. This improper use has happened on at least one occasion and Mr Crosby commented that 'there are some profound possibilities made evident by the possibility of doubling' (Evidence, p. 2348). As an example, Mr Crosby pointed to the case of an actor known to him. He said when this actor was young:

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

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

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

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

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

However they said it is:

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

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

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

The Somssichs:

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

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

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

Because of the uncertainty of the situation one can deduce the following:

(i) No evidence exists of actors or actresses in such films being pressured to participate in them. Again, an educated guess would lead to the conclusion that because of the illegal nature of the activity, the rewards associated with participating far exceed the monetary value of an artistic merit.

(ii) Because productions of this type are illegal, it is reasonable to assume that criminal elements in the community have control of this activity and accordingly it is not possible to comment on the extent of coercion that may be used against participants, particularly children.

Nonetheless, people who have been coerced into participating in such productions should have legal redress against the makers, sellers, exhibitors or distributors, in the form of damages. This is not in the same category as censorship. (Submission No. 686, pp. 12-13)

11.13 The Australian Film and Television School took the same position on legal redress as the Australian Film Institute. The School maintains that:
4. If adults or children are coerced into performing in a violent or pornographic film or video, they should have legal redress in the form of action against the makers, sellers, exhibitors or distributors in the form of damages and/or withdrawal of the material from public exhibition. (Submission No. 687, p. 2)

11.14 Although the Committee did not receive any evidence of coercion, the situation of the actor needs to be understood, as Mr Crosby pointed out. He said:

An actor suffers a ridiculous level of unemployment. There is huge pressure on them. At any time, no matter what boom in the television industry there is, and there is a boom now, there is a huge oversupply of actors and there is, therefore, pressure on the actor to take whatever work he can get. If somebody says 'We want you to do a nude scene', if that is the difference between doing the job and not doing it the pressure is incredible for an actor to sign that contract with the nude scene in it. Indeed, the individual actor would have no chance of getting this level of protection in there. The only way the actor is going to get that in the standard contract is if the union says: 'All right; none of our members will work for you until you agree to that'. That is negotiation at the end of a gun barrel but it is the only way you can redress that imbalance. The position is particularly serious for the young actor. She might be first year out of drama school; she has no work prospects and somebody comes along and says: 'Come on, do this'. The money sounds wonderful, we are talking about $1,000 a week being a low payment. You could find that the performer is out of work, hungry, wants $1,000 a week and will suffer for the rest of her career from the fact that her first movie was 'Fantasm Comes Again'. (Evidence, pp. 2354-2355)

DISCUSSION

11.15 Very few films which merit a classification above R have apparently been produced in Australia. No evidence was presented to the Committee which suggested there were Australian film producers regularly producing such films for public exhibition.

11.16 Possibly films of a sexually explicit nature are being made privately. As to the level of production, we are unable to comment accurately. The technological advantages of portable equipment like the video camera make 'home productions' relatively easy.

11.17 In evidence, there was uncertainty about the term 'pressure' - are Australian men and women adequately protected by existing law from pressure to act in above R films? There is, as Actors Equity points out, the reality of the film industry, in which economic pressure is part and parcel of the industry. Something more than simple economic pressure would be required for proof under the legal doctrines of duress, undue influence and deceitful representations.

11.18 Consent to do a performance must be genuine. Clearly it is not if there is any threat of force or coercion. Existing State legislation does cover non-consensual dealings.

11.19 Under the Constitution - s.51(xxxv) - Federal legislation is limited to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. Within State legislation there are avenues for varying or declaring void a contract. For instance, in New South Wales, section 88F of the Industrial Act (N.S.W.) 1940 enables the Industrial Commission of that State to declare any contract void, either totally or in part, on the ground that it is unfair, harsh or unconscionable or is against the public interest as long as the contract is one by which a person
"performs a work in any industry". (Diana Sharpe, *The Performing Artist and the Law*, The Law Book Co. Ltd, Sydney 1985, p. 21) The Commission sees its jurisdiction as extending to situations "whenever one party to a transaction is at a special disadvantage in dealing with the other party because illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affect his ability to conserve his own interests". (ibid. p. 21)

**CHAPTER 12**

**ADULT CINEMAS**

12.1 The Committee, is required under its Terms of Reference (j), to examine:

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

**THE CURRENT POSITION**

12.2 Cinema audiences are presently controlled in what they can watch. Films with a classification beyond R are not allowed to be shown in cinemas and cinemas are operating illegally if they show a film which has not received a classification.

12.3 At the 6 April 1984 meeting of Commonwealth/State Ministers with responsibility for Commonwealth/State censorship, a proposal to permit cinemas to screen films with an X classification was not agreed to.

12.4 The law as it stands is not even handed with regard to the position of cinemas screening material classified above R. Material above R is available freely on video tape and is allowed legally for sale/hire in the Northern Territory and the ACT. However, cinemas cannot legally screen such material, even though there is no legal restriction on persons above the age of 18 seeing X-rated material.
INDUSTRY ARGUMENTS PRESENTED ON THE OPTION OF 'ABOVE R' SCREENING IN CINEMAS

12.5 The Cinema Action Group (a body of several independent Australian cinema proprietors who have an interest in advancing the cause of independent cinema generally) claims the cinema industry is restrictive in nature and not a real free enterprise system. They complain about the placement of a further restriction on their trade with the imposition of the R classification ceiling. Although a substantial number of cinemas may not wish to show X-rated films, they believe that those who wish to show such films should not be prevented from doing so.

12.6 The majority of support for above R in cinemas, according to the Cinema Exhibitors' Association, comes from the independent cinema owners and very few of these exhibitors:

... would be interested in showing X rated material themselves, but cannot understand any logic in allowing an industry which in commercial terms is less than five years old in having a higher censorship classification, particularly when cinema is the only safe way of ensuring total protection to minors. (Evidence, p. 1684)

12.7 The Cinema Action Group says:

It would be inconceivable that a Government grant a licence to a Hotel [sic] on one street corner allowing them to sell normal alcoholic beverages whilst restricting the hotel on the opposite corner to sell only soft drinks. But this is exactly what has happened between Video tape and the Cinema, particularly those cinemas catering to an Adult market. (Evidence, p. 1689)

12.8 The independent cinema proprietor owners believe that the R ceiling is both inequitable and discriminatory.

12.9 In arguments why cinemas should be allowed to exhibit above R, a number of aspects are raised by the Cinema Action Group. They claim that:

- consideration should be given to the number of Australians already patronising adult style cinemas. The Cinema Action Group claims over half a million admissions were recorded in 1984 in Melbourne alone.
- old age and invalid pensioners and the unemployed have been discriminated against as cinema has not been able to present them with material which is freely available on video tape. The Group says that 25% of adult cinema audiences are admitted on a concessional basis and these include old age and invalid pensioners and the unemployed. They claim that the present position discriminates against them as these citizens, due to their financial status, are not in a position to buy expensive video equipment.
- tourists make up 15% of all admittances. As tourists do not have access to video equipment on their travels, the Group sees cinemas as the provider of 'safe entertainment' whilst away from home.
- a prohibition of X-rated material would not eliminate the material but will have the result of introducing the criminal element to another source of revenue.
- cinema is responsive to changes in public standards. Video is duplicated and reduplicated but with cinema relying on celluloid film this practice is not easily achieved. Therefore, the Group claim, 'in ten years hence if public standards tend to go in another direction, the cinema is compelled to follow these changes by the change in attitude perceived by the censor of the day. However, the videos of today will be readily available in ten years time irrespective of changes in public attitude'. (Evidence, p. 1700)

12.10 Of major concern to a section of the community is the access of children to material beyond the R category. Independent
cinema operators claim they are in a position to restrict the entrance of patrons to those over eighteen years. They believe they currently control their audiences to over eighteen years with the R classified films and argue that the access of minors to unsuitable material is more easily restricted in cinemas.

12.11 In its recommendations to the Committee, the Cinema Action Group recommends a change in the law so that it is legal for cinemas to exhibit above R classified movies, provided that:

a) The cinema has a secure screen, i.e. the screen is not visible to the public except by paid admittance through the ticket box. Therefore, by this description Drive-In theatres would not be eligible.

b) The cinema displays the censorship classification on all advertising material. (Evidence, p. 1704)

12.12 An argument against adult cinemas comes from an association within the cinema industry. The Motion Picture Distributors Association of Australia Limited (MPDA) is strongly opposed to any proposal that cinemas be permitted to screen material classified above R.

12.13 MPDA claims:

Film industry economics have resulted in the development of multi-theatre cinema complexes and it would be clearly inappropriate for one such theatre in a complex to be designated 'X-rated' alongside other theatres showing films of lesser classification.

They believe:

Such a scheme would raise numerous problems concerning the advertising material, access of minors and the inevitable problem of patrons for 'X' movies mixing with young children attending 'G' rated movies. (Submission No. 643, p. 5)

The MPDA represent the large motion picture distributors; multi-theatre complexes have been developed for the screening of their films. Naturally the motion picture distributors have an interest in protecting their investment and are opposed to independent cinemas screening films classified beyond R. The independent cinema operators claim that they need to have the flexibility to screen such material in order to maintain their economic viability in the face of large and multi-theatre cinema complexes.

ATTITUDES TO ADULT CINEMAS

12.14 The Film Censorship Board, in its submission to the Senate Select Committee:

... is of the opinion that if a classification above "R" is allowed for videotapes for sale/hire, cinemas should be permitted to screen for public exhibition material classified above "R" subject to prohibition from entry of persons under the age of 18 years, providing that (i) such material is only permitted to be exhibited in specially designated or licensed premises and (ii) that the criteria for the classification of such material are the same as those pertaining to videotapes for sale/hire. (SSCVM Evidence, p. 106)

12.15 The Board also gave reasons for its belief that cinemas should be able to screen for public exhibition material classified above R. Their reasons are as follows:

- technological advances in film display hardware (such as large screen video units) have "made the distinction between "public" and "private" display/exhibition of films (including videotapes), increasingly difficult to maintain.
- to allow a classification above "R" for videotapes for sale/hire but not to allow...
it for cinema films. (i) disadvantages those adult members of the public who want to see such material but who cannot afford the cost of expensive video recording equipment and (ii) gives the video industry an unfair trading advantage over the cinema industry.

. the special designation and licensing of cinemas to allow for the exhibition of such material would make for more orderly exhibition practices and greater ease of policing of cinemas than presently exists.

. as access to such material by minors could be more easily enforced than the point-of-sale controls applicable to videotapes for sale/hire, it would be anomalous to allow such material to be available for the home video market but not in licensed cinemas.

. as such films would be compulsorily classified, the public would be forewarned of the type of material being exhibited and adults choosing to view such films within the confines of specially designated cinemas are unlikely to be offended by the material exhibited.

. existing illegal operations would be decriminalized.

. if the same criteria apply to films prohibited under Regulation 4A of the Customs (Prohibited Imports) Regulations, refused classification under the A.C.T. Classification of Publications Ordinance, refused registration under the Customs (Cinematograph Films) Regulations and refused classification under the State/Territory legislations relating to public exhibition, officers of the Australian Customs Service would no longer be required to assess the "end use" of imported film. (SSCVM Evidence, pp. 106-107)

12.16 The Victorian Government acknowledges there is some merit in the argument that 'it is easier to restrict access by children to cinemas than it is to control their access to videos sold or hired for private viewing in the home'. (Evidence, p. 1279) However the Government maintains the cinema industry's argument of inequity is no longer relevant now that the majority of States have banned the sale/hire of X-rated material.

12.17 In the light of this ban the Victorian Government said it would not introduce the X classification into cinemas. On the question of an ER classification for cinemas the Government considers it to be a matter for further consideration.

12.18 Allowing cinemas to show material above R has received support from the Working Party on Video Material, Victorian Branch of the Australian Psychological Society. The Working Party recommends:

That the stronger 'R' rated material and material classified above 'R' should be confined to clubs or hard-top cinemas with entry restricted to persons over 18 years, and should not be available for sale or hire to private persons. (Evidence, p. 1429)

12.19 The Australian Film Institute 'believes that materials 'X' or 'ER' should be permitted to be screened for public exhibition subject to prohibition from entry of persons under the age of 18 years'. (Submission No. 686, p. 12)

12.20 The Reverend Fred Nile, MLC, National Co-ordinator of the Australian Federation of Festival of Light Community Standards Organisations, in evidence to the Committee, raised the role of cinemas for screening R-rated films:

... if they want to see R rated films, there are plenty of theatres available, I would say, in every suburb, where people can see them. If they have a real desire to see them, no one is going to interfere. (Evidence, p. 2272)

12.21 Mr Ronald Conway, psychological consultant to the Australian Family Association, also makes the point in relation to R, that cinema entry is easier to control than video viewing if there is no supervision in the home. (Evidence, p. 1350)
12.22 With regard to X-rated material, Reverend Nile said:

We are strongly opposed to any screening of X rated video material in any kind of theatre. We believe that it is legalising hardcore pornography and making it available in our society. We do not believe that there is any argument that would defend such a decision. (Evidence, p. 2291)

12.23 Mrs Beverley Cains, MHA, who was Leader of the Family Team in the former ACT House of Assembly, in answer to a question asked by the Committee concerning the provision of the X-rated or R-rated material in general theatres replied:

I would say that is my fall-back position and, being a realist, I have one. If this Committee found that this society was so hell bent on having X rated material available then perhaps screenings in hard-top cinemas where it can be effectively policed is possible. (Evidence, p. 33)

12.24 The Australian Broadcasting Tribunal points out that the 'screening of such material [above R] in cinemas may represent a suitable solution to the issue'. (Evidence, p. 1590)

SUMMARY

12.25 The evidence received by the Committee concerning the role cinemas could play supported the screening of X-rated material. This evidence, however, involved a number of different arguments. Some were based on inequity and discrimination, others on greater control of the access of minors or on the wish to have R and X-rated material removed from home viewing if such material were not banned outright. Despite the different approaches these various arguments all supported the position that cinemas should be allowed to screen material classified as X or, as we recommend material classified NVE (see Recommendation II).
13.1 One of the major difficulties in this inquiry is to establish what video viewers are actually watching on video and with what frequency. It is clear to us there is an assumption in some people's minds that because VCRs are widespread in Australian society and because pre-recorded tapes of various classifications are available, a large proportion of people view those tapes. People are assumed to watch videotapes of all kinds frequently, including R and X.

13.2 According to a survey conducted in all states in Australia in November 1986 (Television Bureau of Advertising, 1986 Home Video Research, Executive Summary, p. 4), 47.4 per cent of households in Australia owned or rented a VCR (see Chapter 8, paragraph 23). This represented an increase of 10.3 per cent over 1985 (ibid. p. 5) but was lower than the figure of 50 per cent penetration that had been predicted nearly two years earlier for the end of 1986. (ibid. p. 2)

13.3 The survey found that two thirds of all people interviewed had not viewed any VCR material during the preceding seven days, while one third of people with VCRs had not done so. Interestingly those who rented VCRs were significantly heavier users than those who owned them. Renters represented 30.6 per cent of people who spent more than 5 hours viewing compared to 24.6 per cent of owners. (ibid. p. 8) The survey indicated that about 40 per cent of VCR homes watched home-recorded tapes during
the survey period (ibid. p. 9), the ratio of time spent viewing pre-recorded tapes to 'off-air' tapes being 51:49. (ibid. p. 4)

13.4 Sources of home-recorded as opposed to pre-recorded material were not identified. However in so far as they represent 'off-air' material, they are subject to strict classification criteria set down by the Australian Broadcasting Tribunal. Commercial television stations have to abide by these, and although both the ABC and SBS are responsible for their own programming, they accept the Tribunal's Standards as their own minimum standards. (Evidence, p. 1558). The ABT Standards take account of the fact that, compared to the video audience which takes an active role in selecting material for viewing, the television viewing audience is more likely to view programs without deliberate selection and often regardless of their content. The Australian Broadcasting Tribunal told the Committee:

While G material may be very similar for both television and cinema/video, the 'higher' level categories differ widely. Cinema/video PG may contain material which would not be acceptable as television PGR; cinema/video M may contain material which would not be television AO but which would be regarded as unsuitable for television; cinema/video R films would not be allowed on television uncut. (Evidence, p. 1558)

13.5 There is a total embargo on R films in their existing form on television (Evidence, p. 1598) and these can only be shown if they have been modified. Explicit sex is not shown at all.

13.6 Other information on video viewing patterns suggests that because explicit material (X) is legally available in pre-recorded tape form in the ACT and NT, it does not necessarily mean that explicit material is widely viewed. The Attorney-General's Department and the Australian Institute of Criminology noted in their preliminary investigation of video viewing patterns in November 1986, that in the ACT:

... the proportion of X-rated video hirers (8 per cent of total hirers) is not nearly so substantial as popular opinion and some media speculation would suggest. (Video Viewing Patterns: a preliminary investigation. A joint project by the Attorney-General's Department and the Australian Institute of Criminology, November 1986, p. viii).

The report went on to say:

... it is apparent that X-rated videos are rarely hired (6.64 per cent of total hirers [sic], and of these hires, 91.3 per cent of hirers hired only once during the time period of this study (January and July 1984 and June/July 1986). The implication is that initial hiring is most probably governed by a curiosity factor, which, when fulfilled, is not regenerated - at least as measured by the period of this survey. (ibid.) (emphasis theirs)

The Committee was also told by an owner of outlets in Darwin who had kept computer records of hirings, that, according to his records, usage of X which had run at 11-12 per cent in 1985 was down to 5 per cent by mid 1986.

13.7 The proportion of video hirings in the R plus X categories appears to be fairly steady around 30%. Where X is unavailable or the demand for it decreases, R hirings increase.

13.8 Viewing patterns aside, however, what is available among pre-recorded tapes? The debate which has surrounded the Committee's inquiry has told us little about the content people are watching. Material which is available but which is regarded by some as being unacceptable for sale or hire was often described simply as 'pornographic'. Saying something is 'pornographic', however, does not provide a clear indication of its actual content. As we have seen in Chapter 3, 'there is no
agreement on the meaning of 'pornographic': it means different things to different people. 'Pornography' is not a statement of content but rather a statement of the 'objectionable' quality of the material.

13.9 In the submissions 'pornography' was usually felt to be associated with the X category. But there was widespread confusion among witnesses about the actual content of the X classification and this confusion did not make it easy to identify what was felt to be objectionable about X. Some submissions that objected to the availability of X were unaware of the November/December 1984 guideline change which banned sexually explicit violent material. Others believed bestiality and child pornography were legally available in Australia.

13.10 As the South Australian Classification of Publications Board in its submission noted:

The decision in the Eastern States to call the class of videotape beyond the R classification, 'X', was unfortunate in that this term is used in the U.S.A. and U.K. where it includes what are known as video nasties, a generic term for material including child pornography and sexual violence of the worst kind. The public assumed that X rated material in Australia was synonymous with the X rated material constantly mentioned in news items from abroad and this fed the campaign to have X rated material banned. (Evidence, p. 310) (emphasis theirs)

13.11 In fact, as we have seen in Chapter 7, this was never so. Child pornography, the depiction of bestiality and material of an extremely sexually violent or cruel nature were never legally available in Australia. Moreover, by December 1984, the guidelines had excluded from the X category any suggestion of coercion or non-consent of any kind.

13.12 As far as the Film Censorship Board is concerned, what ends up as X is a genre of films which features explicit sex between consenting adults, with nothing that is acceptable to both partners barred in the sexual area unless it involves or suggests sexual violence or coercion of any kind. There can be, of course, a question of interpretation here but the Board maintains that matters such as coercion or non-consent are able to be judged in the context of any particular film.

13.13 It should be noted that what is allowed in X, under the Film Censorship Board guidelines, leaves scope for depictions that have been found unacceptable to some members of the Australian public. Many feminists, for instance, do not like any suggestions of unequal sexual status or the 'objectification' of sex which appear in some material, while traditionalists find depictions of homosexuality, multiple sex and 'recreational' sex distasteful. Whether or not these depictions may be said to be harmful is open to debate and the question of harm is addressed in the next chapter. What needs to be noted here is that equal scope exists within the guidelines for depictions of explicit sex of a 'sharing' and 'caring' kind. In an interview on the ABC Coming Out Show, in August 1987, Candida Royale, an American who describes herself as a feminist producer of adult erotica, revealed that producers of video cassettes of this kind are moving to fill what are felt to be current gaps in the availability of this type of material. It is likely, therefore, that the content of X may change quite substantially in the future under the impact of these developments without any change in the guidelines or the law.

13.14 Although depictions of explicit sex are not allowed in R, what is permitted in this classification has a wide range. Depictions of sexual activity which are 'implied, obscured or simulated' are allowed. Depictions of sexual violence 'only to the extent that they are discreet, not gratuitous and not exploitative' are allowed. Language may be sexually explicit
and/or assaultive while depictions of non-sexual violence may be explicit but not 'detailed and gratuitous depictions of acts of considerable violence or cruelty'.

13.15 As far as violence is concerned, the Film Censorship Board claims that it interprets the guidelines in R conservatively. Where the guidelines disallow 'detailed and gratuitous depictions of acts of considerable violence or cruelty' the Committee was told that the Board interprets it to mean 'detailed and/or gratuitous'. Furthermore, where a film presents non-sexual violence in a sexual context and attempts to elicit sexual titillation from the scene, the Board is likely to consider that this constitutes gratuitous sexual violence and refuse it. We understand from the Board that they view a depiction of violence as gratuitous if it is inessential and extraneous to the story line and has been included only to titillate those who derive pleasure from violence for its own sake.

13.16 Nevertheless, we are aware of the concern that exists in the community over the degree and amount of violent content in video material. The question of violent content in terms of harm is discussed in the next chapter; what we are concerned about here is the level and frequency of depictions of violence. The level of violence permitted in the sexual context was lowered substantially early in the life of the classification system. Only depictions that were 'discreet, not gratuitous and not exploitative' were allowed in R after November 1984. But the number of videos available which show depictions of violence in a general context is high. We were worried with the level of coding for violence in films such as Blood Sucking Freaks and The Texas Chainsaw Massacre.

13.17 When the Film Censorship Board views a film it gives ratings that refer to the frequency, explicitness or intensity and purpose in each of the categories in which it is required to be judged (i.e. sex, violence, language or other). Blood Sucking Freaks and The Texas Chainsaw Massacre were both coded f-m-g for violence, meaning that the occurrence of violence was frequent, of medium intensity/explicitness, and was gratuitous.

13.18 In the latest consolidated list of videotape classifications to January 1986, published as a special Commonwealth Gazette (No. S238, Monday, 26 May 1986), 440 out of 1370 titles in the R category (i.e. nearly one third of the titles) had been given the code f-m-g for violence. This means that if the guidelines for violence in the R category were tightened to exclude videos with levels (though not necessarily kinds) of violence similar to Blood Sucking Freaks or The Texas Chainsaw Massacre, almost one third of the currently listed titles in the R classification would go. If the upper level of permissible violence were reduced to that allowed in the M category - i.e. 'depictions of realistic and sometimes bloody violence but not if gratuitous, exploitative, relished, cruel or unduly explicit', almost 50 per cent of all videos rated R in the consolidated list would be excluded.

13.19 Blanket action to reduce violence levels in the R classification would, however, present a major problem. It would result in the exclusion of some films of merit and serious intent. Some well known films that would be excluded would include: Apocalypse Now, Carrie, The Deer Hunter, Looking For Mr Goodbar, Midnight Express, The Other Side of Midnight, Taxi Driver, The Tin Drum, Turkey Shoot. Depictions about war, even those which promote an essentially anti-war message, that fall into the R category would have attracted a coding on violence denoting 'intense' and 'frequent'. Such depictions can be seen as legitimate as distinct from depictions of violence designed merely to titillate and present the violence for its own sake, and should not be banned. Even a policy of altering, by censoring
out the violent parts in these films, would often destroy their quality and purpose. We believe that the merit of the film should be taken into consideration when interpreting the guidelines.

13.20 The Customs (Cinematograph Films) Regulations, which empower the Film Censorship Board, do not make allowance for it to review previous classifications. Consequently, some films, which were classified before changes in the Film Censorship Board's guidelines in 1984, contain material that would cause them to be refused or classified differently today. We recommend that this anomaly be rectified and that the Regulations be amended to allow for the review of material classified before December 1984.

CHAPTER 14

HARM AND VIDEO MATERIAL

INTRODUCTION

14.1 One of the issues behind the appropriateness of sexually explicit films being available in the Australian community is the question of harm. It is accepted in liberal democracies that government should only intervene in the private behaviour of persons when there is evidence of harm resulting from the actions of those persons. The debate surrounding the question of the harmful effects of 'pornography' is often highly emotional. Invariably, in all the arguments against sexually explicit material, the question of the harmful effects of the material is raised as the justification for censorship.

14.2 People who hold strong views opposing the legal availability of 'pornography' are convinced of its harmful effects. They argue that the filmic portrayal of explicit sex is not natural and maintain that depictions of the sexual act are taken out of the proper loving and sharing context. Such depictions, taken out of context for the gratification of a third party, according to their argument, leads to fantasisation, lack of sexual gratification, deprived feelings and ultimately, if predisposed, to aggression. They maintain social research does show that there is a 'link' between 'pornography' and violence. 'Pornography' is seen as exploitative and degrading and they believe there is no place in society for what it represents and it must not be tolerated.

14.3 There are others who believe that the question of harmful effects has not been answered. For them, there has been no demonstrable link between 'pornography' and harm, either of a
physical, social or moral kind. They maintain there is no scientific support for a causal link to harmful effects.

14.4 The Committee was required to examine:

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

The question of harm is therefore a central component of the Committee's inquiry. The Committee was faced with material which represented the views already outlined. In an endeavour to hear the various points of view about harmful effects the Committee sought evidence from a broad spectrum of witnesses. The evidence ranged from anecdotal, based on personal feelings or a belief about the intrinsic nature of 'pornography', to evidence evaluating social research into the effect of 'pornography' of different kinds.

14.5 What became clear to us was the flexible use of data, both statistical and of a research nature, by protagonists of both the harmful and 'unproven-harm' points of view. The interchangeable use of material, often taken out of context, made us particularly wary of accepting the conclusions of the research. It is widely recognised by researchers that much work in the social, behavioural sciences is invalidated because researchers build into their hypotheses and research models, the biases which lead to their research work supporting their expectations. We have been alert to the warning sounded by Edward C. Nelson, a clinical psychologist, who, in an extract he provided to the Committee from a book he co-edited, said:

... 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 Taffe and Edward C. Nelson, eds, The Influence of Pornography on Behaviour, Academic Press, London, 1982, p. xi)

THE SOCIAL RESEARCH STUDIES

14.6 The harm issue has produced a plethora of studies in the social sciences. As Dr Augustine Brannigan, an Associate professor of Sociology at the University of Calgary, Canada, noted:

This research has become the backbone of current attempts to incite legislative reform and extended regulation of this area, since it is interpreted as providing powerful scientific evidence of harmful effects on innocent third parties, and this particular justification is now widely judged to be sufficient (and possibly necessary) in support of renewed government intervention. (Evidence, p. 1463)

14.7 One aspect of the social research studies which is often misunderstood, is the distinction between 'causational' and 'correlational' relationships. To report that the results of a research study show a correlational relationship does not necessarily mean that a causational relationship has been established. Often this distinction is lost when research studies are cited.

14.8 Much of the research has been carried out in the United States and has focussed on violent sexual material which is not legally available in Australia, i.e. not in any of the current censorship classifications including R and X.
14.9 With the film material used in these studies not available legally in Australia, we found it difficult to make any meaningful judgement on harm, based on the research results, which could be applied to the sexually explicit but non-violent and non-coercive material that is covered by X in Australia. Moreover we were concerned at the interpretation of experimental work mostly using volunteer college students and the assumption that the results could be applied generally.

14.10 Dr Edward Donnerstein, Professor of Communication, Center for Communication Research, University of Wisconsin, USA, told the Committee that in his recent research using video material and viewing the films in their entirety:

... it turns out, of the R rated material which we used not one of those films would be allowed in Australia and if they were, most of the material, and in fact from what I understand all of the material which would have produced any effect, would have been censored out. None of the X rated violent material which we used in our research which produced certain types of effects, would be allowed in Australia or any other country that I am aware of. (Evidence, pp. 62-63)

He went on to say that:

... the sexually explicit X [American] rated material of a very popular nature - films such as "Debbie Does Dallas", "The Other Side of Julie", "Inside Jennifer Wells' and other titles which I cannot remember at the present moment - which do not contain physical violence, did not produce any effects whatsoever. (Evidence, p. 62)

and:

It is those messages about violence, and messages about rape, which tend to produce the effects; not the graphicness of the material and definitely not the sexual explicitness of the material. I think research has been fairly conclusive, particularly in the last year, in trying to systematically identify what the effects, if there are effects, are due to. I do not want to be redundant on the statement, but there is no question that if you are dealing strictly with sexual material, no matter how explicit, there has not been to my knowledge in the last 20 years of research on the topic, any evidence of any type of negative, asocial or damaging effect on individuals so exposed to that material. If we are talking about violent material then that is another issue. (Evidence, p. 63)

A point which has not been noted in pro-censorship arguments is that:

In fact consistently in the research program when we find effects they come from the violent material. I think what is more important to bring out is that the strongest effects which were obtained did not even occur from video material. If one looks at the research, which you have in front of you, by Neil Malamuth and myself, "Pornography and Sexual Aggression", most of that was written material, scenarios about rape. In fact it is written material which one can find in any popular magazine or any popular television show, an example of which I have brought with me tonight. (Donnerstein Evidence, p. 63)

14.11 It is virtually impossible, if one is intellectually honest, to say, based on the research, that one action or activity of human behaviour causes another. As Dr Judith Becker and Ellen Levine, two dissenting Commissioners on the Meese Commission in the US said:

... it is essential to state that the social science research has not been designed to evaluate the relationship between exposure to pornography and the commission of sexual crimes; therefore efforts to tease the current data into proof of a causal link between these acts simply cannot be accepted. Furthermore, social science does not speak to harm, on which this Commission report focuses. Social
science research speaks of a relationship among variables or effects that can be positive or negative. (Kees, p. 204)

14.12 Dr J.H. Court, whose works have been widely cited by those seeking increased censorship, in his submission to the Committee, proceeds from the premise that if something reaches the stage of being taken up as a research study, effects must already exist in the real world. He says:

If exposure to explicit sex and violence in the media has no effects, then there is nothing to explain and we could expect to find no theories emerging, together with a redirection of research to more rewarding areas. That the reverse is true suggests that there are indeed real effects deserving explanation. (Evidence, p. 208)

It is Dr Court’s opinion that:

... those who deny the harmful effects of explicit depictions of sex and violence as currently presented in the media, do so in the face of increasingly strong theoretical arguments, and against an accumulation of evidence which ranges across different research strategies and methodologies, including the anecdotal, the cross-sectional, longitudinal, real-life experiments, laboratory experiments and quasi-experimental studies. (Evidence, p. 207)

14.13 In putting forth his argument to the Committee for not allowing video material which shows explicit sex between consenting adults, Dr Court raises the work of a number of social scientists in an effort to explain patterns of human behaviour. Dr Court claims that the research evidence on sexually aggressive material, even in experiments involving only limited exposure with normal adults, has shown adverse effects. Dr Court maintains the work that he and Professor Donnerstein have conducted on the effects of the visual media ‘does not do justice to the widespread availability of videotapes’. (Evidence, p. 224) He notes that:

Sufficient evidence is not available to determine the effects which such materials are having on young people because the work is carried out exclusively on adults. Similarly, laboratory research can give only limited comment on the effects in different settings, especially in the home, where videotapes are viewed. (Evidence, p. 224)

14.14 Thus, while Dr Court is willing to embrace the results of the research using sexually aggressive material, even though he acknowledges there are limitations in the laboratory setting, he is not willing to accept the finding of Donnerstein that no effects have been found in relation to sexually explicit material. He criticises the artificial nature of the experiments saying he believes ‘that he [Donnerstein] has created an experimental dichotomy which is not comparable to the real world situation’. (Evidence, p. 227)

14.15 Moreover, he claims that Donnerstein’s work cannot ‘relate adequately to the natural environment where real people react to explicit materials freely selected to bring the arousal they seek’. He continues:

If there was really no effect there would be no commercial market. My own introduction to this area was not as a researcher but as a clinician working with people with sexual problems of various kinds like child molestors, transvestites and so on, who presented the material which was for them sexually arousing. The material was clearly sexually explicit material, not sexually aggressive material. They showed distinct arousal on all sorts of measures.

There is then arousal from sexually explicit materials. (Evidence, p. 228)

While few, if any, would deny that sexually explicit materials may have an arousal effect, there would be no agreement that sexual arousal is necessarily harmful.
14.16 There is little doubt that the question of harm is ‘tainted’ by all sorts of perceptions and biases and as Dr Brannigan points out:

When people object to obscene literature, they seem to gravitate naturally towards ideas of its imagined dangers to conduct and displace their feelings over the immediate content to some imagined consequences. The idea that pornography can promote the victimisation of innocent third parties is attractive since it appears to concretise the reader’s worries. (Evidence, p. 1505)

14.17 As McKay and Dolff noted:

... as the debate on any social issues begins to involve wider audiences, people search for some expertise to gain information. As the climate of debate becomes more heated, the requirements for information become more pressing and immediate. To simplify, demands are then placed upon research which is not designed to satisfy these needs, under these circumstances. The researcher is called upon to make clear and definite statements about a body of knowledge that is neither clear or definitive. "Yes or no; pro or con; does it or doesn’t it?"

Since the questions can rarely be formulated in a manner which allows the researcher to answer unequivocally, the inevitable result is a sense of frustration from all interested parties. Unfortunately, as in the case of the debate on pornography, many undesirable consequences ensue. Assumptions are made or accepted as given without close scrutiny. Expert opinion devoid of attempts to explain limitations is sought and found. Published research, appearing in forums where a level of critical expertise is assumed, is surveyed for statements which seem to support or refute arguments. Such consequences can only serve to confound reasoned debate, and lead to the development of social policy lacking a clear and essential long term perspective. (H. B. McKay & D. J. Dolff, The Impact of Pornography: An Analysis of Research and Summary of Findings, Working Papers on Pornography and Prostitution Report No. 3 Department of Justice, Canada, 1984, pp. 23-24)

14.18 Most of the new research literature is directed at the issue of the potential for harm caused by pornography. The studies have concentrated on the supposed harm-doing behaviour of males caused by pornography.

14.19 The researchers have favoured models which presuppose an underlying male tendency to aggression which is released by violent stimuli and as a result the test designs have been built around indices of male aggression. As Dr Brannigan notes this approach means that the most important causal variable is not discovered in the experiments but presumed in the theories. He says:

... the nature of the design of these studies ... which requires all the subjects to be initially angered prior to exposure to the various crucial stimuli – which is the pornography – means that the basic effect studied, the aggression, is always an interaction effect and is not attributable directly to the stimulus. Consequently, it is misleading to speak of the ‘effects of pornographic stimuli’, for these are never studied directly. (Evidence, p. 1500)(emphasis ours)

(The tests use three equivalent groups of subjects constituted from a sample, typically of university students in psychology classes in University in Wisconsin or Manitoba. Groups are created by random assignment. In each of the three groups, subjects are angered by a female confederate who very critically assesses a written assignment prepared by the subjects in what is presented as a learning experiment. Later, these subjects are exposed to one of three kinds of visual stimuli (neutral, erotic, or aggressive pornography). Finally, subjects are asked to ‘teach’ the person who earlier had angered them by administering electric shocks for incorrect responses in a bogus learning experiment in which the subjects choose a shock level on a
and:

As for the aggression, one must surely be surprised that having limited the response of these people in these experiments to an aggressive one, and paying heed exclusively to male subjects shocking of female confederates, the levels of shock given do not seem to be much consistent with the extreme forms of violence for which they are proxy. In the key experiments that we reviewed the highest level of shock was 5.3 out of an eight-point scale. Is this the sort of score from which we want to extrapolate regarding rape and assault? I prefer to see something approaching the very top of the scale, though this is never found. (Evidence, p. 1500)

Regarding the variations in scores of aggression at the shock machine, how seriously can they be taken when we discover in Donnerstein that among angry subjects aggression - if that is the correct word - can be increased by physical exercise, can be increased by noise. (Evidence, p. 1501)

Dr Brannigan points out that the results of the studies are paradoxical:

According to Donnerstein and Berkowitz in their 1981 paper, erotica makes angered subjects aggress more against male than female targets, yet aggressive erotica leads to the reverse. Later studies simplified things by omitting male targets. Yet even so, no single theory can explain the behaviour of angry versus non-angry subjects when it comes to aggressive erotica; nor can any theory predict a priori; nor has any research independently corroborated these findings. (Evidence, p. 150)

The research studies tend to concentrate on extreme behaviour indices and little consideration is given to basic questions. 'Most pornography (excluding that which could be considered as comprising works of 'art') is superficial, often silly, and by common-sense standard reflects atypical physical attributes and behaviour. Further, that the average person would construe even the more sophisticated pornographic fare as representing 'reality' in any shared understanding of that term would constitute a sad comment on the human condition. Whether it offends or titillates is irrelevant in this context.' (McKay and Dolff, op cit. p. 39)

14.21 What has been 'neglected in work on pornography is that adults capable of functioning in contemporary society are also quite able to distinguish the difference between reality and fantasy. That such a point requires stating is indicative of the overly simplistic model of human behaviour which is reflected in this type of work'. (ibid. p. 39) Yet Zillman and Bryant are quoted in paragraph 13.76 of the majority report as stating that:

Presumably, pornography is initially consumed in hopes of increasing sexual satisfaction. But consumers eventually compare appearance and performance of pornographic models with that of their intimate partners, and this comparison rarely favors their intimate partners. The result is the realization that, in sexual matters, others may be more gratified. Dissatisfaction with intimate partners and perhaps with sex at large seems the inevitable result. (Dolf Zillman, Effects of Prolonged Consumption of Pornography, paper prepared for the Surgeon General's Workshop on Pornography and Public Health, Arlington, Virginia, June 22-24, 1986, p. 20)

14.22 The study undertaken by Dr James Check, Assistant Professor of Psychology, Ontario, Canada entitled The Effects of Violent and Nonviolent Pornography for the Canadian Department of Justice is a case in point. Subjects were asked to evaluate constructed videotapes on a number of dimensions designed to measure such things as sexually aggressive attitudes, likelihood of rape/forced sex acts, sex callousness and sexually aggressive behaviour. This study like other research studies is fraught with
sampling and methodology difficulties. What is interesting with this particular study is the use of pre-categorised 'pornographic' film material tailored to reflect the current state of the research art. Research, examining the effects of 'pornography', has over a period of time, expanded from testing for the effect of one supposed stimulus - 'sexually violent pornography' - to testing the effect of material termed 'nonviolent "erotica"' and more lately a category termed 'nonviolent dehumanising pornography'. In using such categories, especially 'nonviolent dehumanising pornography' researchers have tried to follow the most vocal viewpoints on 'harm' and 'pornography' being espoused in the community and to fit them into their aggression-based studies.

14.23 What concerns us, with the use of such categories, is the bias which has been built into the study with the determination of what forms the basis of category content. In an endeavour to lend scientific legitimacy to the harm debate by examining the effects of exposure to these three types of material, it is taken as read that the content fits the category. Dr Check has identified material which he believes fits neatly into his categories and has used the three categories of material as the stimuli to test their effect on people. There is little difficulty in identifying sexually violent material and most people would find agreement on what is violent and what is not. When it comes to deciding what constitutes 'dehumanising pornography' there would be disagreement. Such a term is not defined in the study but is identified by content and this forms the basis of subject response without any scrutiny of the establishment of the category. The use of such categories in research does not itself establish their legitimacy. If researchers are claiming a certain respectability based on scientific rigour then such rigour must also be attached to the determination of what the material is, especially the 'nonviolent dehumanising'. This criticism also applies to Categories II and III postulated in paragraphs 13.46 and 13.50 of the majority report.

14.24 Dr Check, in his report, admitted when discussing the differences between the pornography exposure conditions that

'... subjects' perceptions of the women and the men in the videos were again consistent with what might be expected given the content of the videos. For example, ratings of the women's willingness and pleasure were quite high on the seven-point scales (even though they differed significantly as expected), due no doubt to the fact that the violent and dehumanising videos were selected such that the women [in them] always responded favourably to whatever abuse they experienced'. (op.cit. p. 40)

14.25 We believe that the determination of what is 'dehumanising pornography' needs close scrutiny. Although the three categories of classification of pornography seem plausible and tempt one to unquestioning acceptance of them, even Dr Check in addressing the limitations of his study says 'it would be unwise for the research to recommend broad policy changes on the basis of just one study'. (ibid. p. 86)

14.26 It is important to note, that researchers like Check and Donnerstein are careful to note the limitations of their studies in their professional writings, but as Dr Brannigan points out 'virtually never make this point when speaking to politicians or the media'. (Evidence, p. 1500)(emphasis ours)

14.27 Yet, in spite of the caution even in his own work, (a caution which we share) Dr Check's three category classification of 'pornographic' material was given central consideration in an obscenity case in Alberta, Canada. [see R v Wagner, [Alta Q.B.], 16 January 1985, Criminal Reports 43 C.R. (3d), p. 318ff] Dr
Check’s opinion was one of three opinions brought before the court. The court accepted Dr Check’s classification of material and concurred with his opinion that, of the seven cassette films he viewed, most fell into the category of non-violent but degrading and dehumanising, with some episodes in the sexually violent class.

14.28 Our intent in making known some of the difficulties it perceives with Dr Check’s study, is to point out problems of technical adequacy of the experimental design which limits the applicability of research studies in predicting harmful effects of sexually explicit material. Dr Check’s study - The Effects of Violent and Nonviolent Pornography - is known to the Committee, as Dr Check met with the Committee and provided quite a volume of material during the course of this inquiry. However he did not draw to the Committee’s attention the limitations of his study.

14.29 We believe the social research studies do not resolve the question of harm. The results cannot be relied upon to provide an accurate indication of the harmful effects of ‘pornographic’ material which is being sought. The research designs and definitions used are different and it is not possible to say that ‘pornographic’ material is the prime or even a major factor in eliciting an undesirable response. There is a myriad of intervening factors in the ‘real world’, which the research designs cannot control, and thus the primacy of ‘pornographic’ material in evoking an undesirable response is called into question. There are three main problems with the methodology of most of the experimental studies:

1. almost without exception the research subjects are university students from introductory psychology courses. They are probably aware of the aims and biases of the researchers.
2. there is a coupling of two experimental factors: an erotic stimulus and anger/provocation.
3. the method of aggression constitutes a further concern. Researchers utilise the measurement of electric shock, noise or overinflated blood pressure cuffs as the methods of showing aggression. The student subjects are thus aware that their ‘aggression’ causes no real harm or pain, quite unlike rape or other violent attacks which are allegedly precipitated by such erotic stimuli.

14.30 The Committee did receive a report that some children, who are sexually abused, are required to perform in ways depicted in adult pornographic material. It must be said that the evidence failed to demonstrate a direct causal link between exposure to pornography and the serious abuse of women or children. The Committee is aware of reports that on a number of occasions those who have violated women and children were found with pornography in their possession. What is not known, however, is whether the pornography produced the violence or whether those violence prone people were attracted to pornography. The question of whether Australian type X-rated material is a precipitating factor in illegal and anti-social behaviour has not been addressed in research studies. As the Fraser Committee noted, ‘the untangling of what may be causal or predisposing factors versus factors which are present but simply coincidental to the behaviour being studied, will be difficult. The same argument can be made with respect to those convicted of sexual crimes. The question of whether pornography is a factor in their crimes has not been fully studied and requires further attention’. (Fraser, p. 101)

CRIMINAL EFFECTS AND VIDEO MATERIAL

14.31 Claims have been made that video material and the availability of portrayals of explicit sex between consenting adults has led to an increase in the crime rate, especially of
rape. Although on the face of it, this may seem a plausible conclusion to draw, based on one's perceptions, the evidence does not necessarily support such an assertion. The presentation of such claims to the Committee have generally been vague and on further inquiry by the Committee, they have almost invariably stemmed from the writings of Dr Court.

14.32 Dr Court, in a series of papers dealing with trends in Australian and overseas sex crimes, has stressed the criminal effects of pornography. In a recent published work ('Sex and Violence: A Ripple Effect' in Neil M. Malamuth and Edward Donnerstein (Eds), Pornography and Sexual Aggression, Academic Press, Florida, 1984) Dr Court seeks to establish an association between what he calls porno-violence and rape. He propounds eight propositions for an association between rape and porno-violence. Dr Court, in his first proposition says rape reports have increased where pornography laws have been liberalised. He goes on to say:

In all these places (United States, England and Wales, Copenhagen, Stockholm, Australia, New Zealand) there has been a notable increase in rape reports over the decade 1964-1974 ... All the places noted have an upward trend consistent with the observation that liberalization of pornography laws corresponds to an increase in rape reports. (ibid. p. 158)

14.33 His second proposition maintains that areas where porno-violence is not liberalised do not show a steep rise in rape reports and he cites Singapore as an example.

14.34 In trying to determine the validity of this argument of an association between pornography and sexual offences, we found difficulty in accepting Dr Court's propositions on a number of counts. The interchangeable use of the terms 'pornography' and 'porno-violence' in his findings troubled us. Dr Court lists his propositions under the heading 'Propositions For An Association between Rape and Porno-Violence' (ibid. p. 157), yet in the discussion he maintains 'the case is made for an association between the availability of pornography and the increased incidence of serious sexual offences, specifically, rape'. (ibid. p. 167) Further in his discussion Dr Court says:

... this chapter has highlighted the term porno-violence as a subcategory of pornography in order to identify a circumscribed class of materials that is more readily identifiable than pornography and that for both theoretical and experimental reasons can be linked with indisputable harm. One may argue for the containment of porno-violence while having a quite different view in relation to other forms of pornography. (ibid. p. 169)

14.35 The figures for the period require more explanation than Dr Court gives. Dr Brannigan in his evidence on pages 1502 to 1505 provides a critical analysis of the data used and we suggest this evidence should be read. Dr Brannigan notes that Dr Court:

presents data from several jurisdictions to suggest that rape has increased where pornography laws have been liberalised. As usual, not a jot of data is presented to establish that a change has taken place, nor is there any independent variable reflecting the change in the actual circulation of pornography. One is supposed to presume that something happens between 1964 and 1974 and one is supposed to assume that the change was not already under way prior to this. (Evidence, p. 1502)

Dr Brannigan maintains that Dr Court's use of the statistics 'is a text-book case of how to misrepresent the situation with statistics'. (Evidence, p. 1504) A careful study of the statistical data Court uses shows that the Scandinavian data is urban (Copenhagen, Stockholm) whereas the Commonwealth data is national. Court cites Singapore as a case where rape reports have not risen because of the non-liberalisation of pornography. As Dr Brannigan points out Stockholm has an increase in the frequency of rape reports for the period 1964-1974 of 41 per cent.
Singapore also has an increase, a 69 per cent increase for the same period. Dr Brannigan says:

Court counsels against comparison of the actual levels of rape because of definitional problems across jurisdictions, though this strikes me as rather convenient since Williams [Williams Committee, U.K. 1979] has already reproached Court for contrasting rapes in liberal England with illiberal Singapore when, in fact, the rate of rape is lower in England, where pornography has been available, contrary to everything Court has preached. (Evidence, p. 1503)

14.36 The second point Dr Brannigan makes concerning Dr Court’s 1964-1974 data ‘is that it hides a decline in the rate of rape, also brought to Court’s attention in the Williams report’. (Evidence, p. 1503) Dr Brannigan pointed out to the Committee that the Williams Committee report, clearly showed that there had been a decline in rape and attempted rape through 1972 to 1977. Dr Court, by taking the 1964 figure and the 1974 figure and giving a percentage change, provides an increment figure which in fact misrepresents the overall trend. As Dr Brannigan notes Dr Court’s data ‘falsely depicts an increase where the trend has been the opposite.’ (Evidence, p. 1503)

14.37 In relation to the current debate and video material, the 1964-1974 rape report data, used by Dr Court to support his assertion of an association between the availability of pornography, and the increased incidence of rape cannot be used to show a correlation between pornography and rape in countries from which the data was drawn. His findings can have no reference at all to Australia and even if a correlation were established it does not establish a causal connection.

14.38 Mrs Betty Hocking, the Family Team Member for Fraser on the Education and Community Affairs Committee of the former ACT House of Assembly, drew upon Dr Court’s statistical work to support her position. She said:

Also there is this latest graph which contrasts what has happened in Queensland and in South Australia, where you see that the rape rate has gone up substantially since the availability of pornography in South Australia. I believe that it is harmful to everybody, but that the problem is not so much in the legislation in the ACT or anywhere else; the problem is letting it into the country in the first place. It should be stopped at the point of entry. You cannot police it properly once it is here. (Evidence, p. 2677)

In response to Mrs Hocking’s statement the Committee sought further details:

MR JULL - That graph that you are quoting there; whose statistics are those, just for our reference?
Mrs Hocking - They come from Dr John Court, Director of Spectrum Psychological and Counselling Centre, Adelaide.
CHAIRMAN - What years do they compare?
Mrs Hocking - They are comparing from 1964 to 1977.
CHAIRMAN - Do you know when videos came into Australia?
Mrs Hocking - No.
CHAIRMAN - Would you be surprised to hear that they were not here before 1976?
Mrs Hocking - Yes, but the pornography was gradually increasing on television and in our Hollywood films for many years before that. (Evidence, p. 2678)

14.39 Dr Brannigan, in commenting on Dr Court’s work, says that:

I suspect at times that he is writing for members of the anti-pornography crusade, the critics of pornography, into whose hands such works fall and very speedily are brought to the attention of politicians. (Evidence, p. 1505)

14.40 In examining the view that a correlation exists between the availability of ‘pornography’ and harmful effects as
manifested in the rate of sex crimes, like rape, the Committee took public evidence on two occasions from the Australian Institute of Criminology.

14.41 Professor Richard Harding the then Director of the Australian Institute of Criminology, noted that one of the ways society tries to measure the impact of any phenomenon is by looking at apparently related phenomena and seeing if there are changes as the primary phenomenon, in this case pornography, changes. (Evidence, p. 2028)

14.42 The Institute in commenting on the frequently made assertion 'that the dissemination of violence and/or pornography through the media is associated with an increase in crimes involving sex and/or violence' said:

"Unfortunately, there is no simple way in which one can either refute or confirm the existence of such an association. Too many uncertainties and variables exist, and there are too many hiatuses and inconsistencies in the available information.

The uncertainties include the following:

(a) agreement as to a working definition of pornography; and

(b) precise knowledge as to the amount and nature of pornography being watched in the community. (Evidence, p. 2011)

14.43 To say that certain kinds of offences have increased whilst pornography is increasing is not sustainable according to the Institute. Professor Harding maintains this conclusion cannot be reliably reached given the hiatuses in the data, and the many links that have to be made in the causation.

14.44 The Institute pointed out that there is a sleeping factor in crime statistics - the extent to which crimes are reported. To illustrate this, the example was given of the higher rape figure for South Australia where the then extensive infrastructure - police force, rape crisis services and hospitals - has more than likely contributed to a greater readiness by rape victims to report rapes.

14.45 Dr Brannigan and Dr Kapardis note that:

"As with any comprehensive analysis of criminal behaviour systems, we find there is a tremendous variation in the nature of the acts which are classified as rape - rape of strangers versus acquaintances, planned versus spontaneous rape, rape as the main crime versus rape as ancillary to murder, robbery and burglary, rape by singles versus pack rape, homosexual rape, statutory rape, marital rape and forced acts of 'unnatural' sexuality. Expectations of some single etiological factor seems rather overoptimistic since the only thing these activities have in common is the legislation employed, however unsuccessfully, to control them, and even here we find notorious variation over time, variation between jurisdictions, and from one case to another in the same jurisdiction (A Brannigan & A Kapardis, 'The Controversy over Pornography and Sex Crimes: The Criminological Evidence and Beyond', Australian and New Zealand Journal of Criminology Vol 19 (4), December 1986, pp. 267-268)

14.46 In discussing the alleged increase in violence in Australia, it is worth noting that the murder rate per 100 000 population for Australia in 1973-4 was 1.88 and 1.94 in 1986-7. For N.S.W. the respective figures were 1.94 and 1.77. Proportionately, the biggest increase in the Australian states occurred in Queensland - from 2.00 in 1973-4 to 2.54 in 1985-6 (the 1986-7 figures are not yet available). In a similar period, the rate for 'break, enter and steal' offences increased from 881 to 1747 per 100 000, motor vehicle theft increased from 375 to 663 and fraud from 234 to 437. While rape reports increased from 5.6 to 12.1, it must be noted that the law was changed in N.S.W. as from 1/7/81 to include cases previously not included. (Rape reports in N.S.W. increased from 6.21 to 11.62 per 100 000"
between 1980-1 and 1982-3 - i.e. before the appearance of videos. In the A.C.T. where X-rated videos became legal in 1984 rape reports dropped from 3.91 per 100 000 in 1982-3 to 1.89 in 1986-7). All the above figures are from The Size of the Crime Problem in Australia, Australian Institute of Criminology, ACT, January 1987, plus updated figures supplied by the Institute.

14.47 Based on crime statistics, it is not possible, according to the Institute, to form a conclusion upon which inferences about pornography and videos can be drawn. The Institute did say that the influence of drugs on our society has been very profound in all areas of crime. (Evidence, p. 2742) Mr David Biles, Deputy Director of the Australian Institute of Criminology said:

I would not want to overstate the influence of drugs on criminal behaviour but when we are looking at a broad 10-year pattern in a number of areas of crime that is the one thing that stands out in my mind as the factor that has changed Australian society dramatically, and for the worse - the influence of drugs. (Evidence, p. 2744)

14.48 In response to Senator Walter’s query, ‘Is there anything else that you think we have not asked that we should have asked?’ Mr Biles, replied:

If I could express a personal view about video material, video violence, pornography and so on, I think what is tolerable, what should or should not be allowed in the end result is not a matter of science, it is not a matter of criminology but it is a matter of public taste. Therefore it is most appropriate that a parliamentary committee should be looking at this rather than a group of criminologists. I am sorry that is not very helpful either, but the end result is that I honestly believe that it is a matter of public attitude and public taste rather than proof one way or another of cause and effect. (Evidence, p. 2764)

14.49 In the evidence presented to the Committee, both written and oral, the question of dislike of ‘pornography’ has continually appeared. The arguments against ‘pornography’ have ranged from a dislike based on moral grounds to protection of children from harmful effects. We felt that on occasion those arguing against the depiction of consenting, explicit sex used moral harm and effects on children as arguments to sustain what was essentially to them a personal affront. This is not a condemnation of such a view, but rather an expression of disappointment that some were not willing to express openly that they were themselves personally affronted by the material.

14.50 The concept of moral harm is a difficult one. It is not easily identified, quantified or understood - it is not tangible. Perceptions of moral harm depend to a large extent on a person’s life experience which takes in values, religion, lifestyle and visions of the future.

14.51 It is claimed that the availability of sexually explicit material on video is leading to mass changes in behaviour and is sanctioning promiscuity. This, in turn, is said to threaten family life as we have allegedly known it, leading ultimately to a threat to the very ‘fabric of society’. It is perceived that those things which some consider ‘good’ in society are being harmed. Monsignor Green, member of the Executive, Tasmanian Council of Churches believes that:

... intercourse between a couple is something that is a very sacred, very intimate and very precious sort of thing. Therefore, when it is used or shown publicly, as in the example that you are giving, it would come within that part of dehumanising. To my mind that intimacy and that sacredness of the sexual act is something that would be destroyed. (Evidence, p. 2507)
He also believes:

It is the impact upon those who are viewing it that is also important. (Evidence, p. 2507)

and with regard to its being a necessarily harmful or bad impact, he says:

I think it certainly can be because it is a very intimate and precious thing. In most cases that I would know that certainly would, in the main, be harmful. It is harmful to that sacredness of the act. (Evidence, p. 2507)

14.52 Father Murnane claims that pornography always causes pain and violence and he suggests that:

If you look not only at the minutes spent watching a video but at the long term product in a person's life, it always causes pain and violence. (Evidence, p. 2132)

14.53 Both Monsignor Green and Father Murnane take the view that it is difficult to prove conclusively a causal connection between pornography and anti-social behaviour. As Father Murnane notes:

The question of trying to prove that pornography causes harm is a useless one because sciences deal with particulars. You have heard plenty of talk, I am sure, about the mere association. In such and such, A correlates with B, and therefore A does not necessarily cause B. That is an endless cycle of talk. To think that this kind of proof can be found is completely to misunderstand the nature of the sciences. Sciences deal with particular experiments and that only proves that it did not in this case. (Evidence, p. 2128)

Both maintain however that their work in the community and their commonsense leads them to believe there is a causal connection.

14.54 In an effort to preserve the 'fabric of society' people may in fact be arguing a moral harm position caused not so much by depictions of sexually explicit video material as associated with changes in society itself. Depictions of sexually explicit material may simply be a manifestation of a greater tolerance in the community, with the boundaries of legal tolerance having already been set with the non-acceptance of the sexually explicit violent material, child pornography and bestiality.

14.55 The evidence the Committee received did not address the question of the precise amount and nature of 'pornography' being watched in Australian society. The amount of material used is crucial to the harm debate. It was assumed in evidence that the sexually explicit consenting adult material, being legally available in the community, was pervasive and widely viewed. Claims that use of the material distorts the user's view of sex also assume a wide usage of the material. As we saw in the last chapter, however, recent studies indicate that this is not evidently so.

ATTITUDINAL HARM

14.56 Much of the material in the X category is material without redeeming merit as it usually lacks any significant storyline. It may therefore be criticised on the basis that it degrades women (and men and sexual intercourse) by depicting sex as a mechanical act.

14.57 However, it could be argued that those who take the position as some do that the sex act is only for reproduction also deny women (and men) a human identity beyond their biological role. For example Father Murnane maintains:

Sex is not the "emotional fulfilment system", nor the "meaningful relationship system", nor even the "entertainment system". If we deny this fact - that sex is about babies - we are
being untrue to ourselves and to the very process by which we came to be here.
(Evidence, pp. 2100-2101)

A high proportion of people in the community do not accept that sex is only about babies. It also embraces emotional fulfillment, a meaningful relationship and, even within marriage, sex for some is entertainment. If sex is for reproduction only and does not include the other qualities then there is little to differentiate humans from animals.

14.58 To say that the sexually explicit material dehumanises women, degrades them, or does not allow them to be represented as whole human beings can miss the point that sexually explicit depictions may be a manifestation of changes in the society’s public tolerance of the material (see paragraph 14.54).

14.59 It is very difficult to measure possible harmful effects and long term negative attitudes towards women as a result of X-rated material. We believe it is not the explicitness of the material which is important but the context in which messages about women are portrayed. Offensive and negative messages about women are not the sole jurisdiction of the X category but can be found in all other classifications.

14.60 Objections by women to sexual material have centred on sexually explicit violent material. We believe that the sexually explicit violent material which is currently proscribed under law in Australia is possibly harmful, degrades women and could possibly lead to a wider acceptance of the use of force to impose sexual relationships. The same cannot be said about explicit sexual depictions between consenting adults. In fact, the Fraser Committee recognised the degrading nature of the sexually explicit violent material and recommended criminal sanctions. The Fraser Committee made the point that much of the material which people brought to their attention was presented as material which degrades women. Noting the subjective use of the term ‘degrading’, the Fraser Committee limited its own use of the term to the sexually explicit violent material which they believed was the most subversive of social values.

14.61 Arguments which recommended the banning of X category material on the grounds that it degrades and dehumanises women must take account of social attitudes towards women in the Australian community. Banning the material will remove it from the public arena but such removal will not address the question of dehumanisation and degradation of women which remains a broader social issue. If one is genuinely concerned for the equal status of women, banning will not be sufficient to address the problem. As Dr Jocelynne Scutt notes:

On the issue of banning, some people say that they want community standards to prevail, therefore they want ‘it’ banned and community standards are going to determine what ‘it’ is that should be banned. I would say that quite often the people who are saying that do not seem to recognise that those who are buying the pornography or who are making the pornography are also members of the community. If we are going to enforce community standards we cannot then say that we will just cut those people out of the vote, as to what is and is not to be banned. Those people wanting pornography who vote as to what is going to be allowed may well be significant in percentage terms.

The other point on censorship and banning is that as a feminist I am absolutely under no illusion whatsoever that the standards that I want to see prevail would be the ones that would prevail in terms of censorship. Therefore, I could not be in favour of censorship at all because those censorship standards are not going to be drawn up in accordance with what I think is appropriate, that is, what I think are feminist principles. (Evidence, pp. 2588-2589)
14.62 We are mindful that explicit sexual portrayals can be viewed as being one person's sex while being another person's porn. Some sexual acts may be regarded as normal, good clean sexual fun by some persons but others may consider them kinky, perverse and unclean. Jacky Hyams commenting in Cleo (October 1985) said:

It's a dilemma: how can governments or authorities set down strict laws and rulings on what is or isn't pornographic, when individual preferences are so diverse? Like food, sexual appetites and preferences go right across the board. Some people will try virtually anything once, others prefer to stick to what they know and like, shying away from more exotic or adventurous loveplay. (op.cit. p. 157)

VIOLENCE AND HARM

14.63 The harm most often referred to in the submissions was the supposed harm arising from 'pornographic or otherwise obscene material'. Whether violence of a non-sexual nature could be offensive or so harmful that it should be restricted arose less frequently.

14.64 Most of those who did focus on the issue of violence per se, however, believed that it was far more of a problem than the portrayal of explicit sex. Violence reaches into all areas of community life, and individuals neither have direct control over nor adequate warning of their exposure to it in the media.

14.65 At the end of 1987, the allegedly growing incidence of violence in Australian society had become a source of widespread concern among members of the public and the media. Two street massacres had occurred during the course of the year in which separate gunmen had killed fifteen people. After the second one, police were said to have found several violent videos in the killer's room. However it should be noted that these videos apparently were taped from television material.

14.66 There is no doubt that the amount of violence available in video material has been growing, that it is now quite high and that it occupies a considerable amount of viewing time. The Acting Chief Censor of the Film Censorship Board commented after the second massacre that it was his personal impression 'that violence has become a more popular commodity in films and videos. The technology and quality has improved in horror films and war films ... and they are more impressive'. (Times on Sunday, 27 December 1987)

14.67 People who made submissions to the Committee could point to no research evidence of a causal link between media violence and violent offences. The Australian Institute of Criminology noted that this was so in its 1985 submission to the Senate Select Committee; its research team recently acknowledged that research conducted since that time has 'also failed to conclusively establish such a link', although it added: 'Even so, it appears that many researchers in the area are now convinced that excessive media violence increases the chances that at least some viewers will behave more violently.' (Sex, Violence and 'Family' Entertainment: An Analysis of Popular Videos. A joint project by the Australian Institute of Criminology (Stephen Nugent and Paul Wilson) and the Attorney-General's Department (Terry Brooks and David Fox), Canberra, October 1987, p. 37)

14.68 The Committee received little direct evidence on the effect on adults of watching violent videos. What was presented was evidence which was more often clinical and anecdotal than directly experimental in nature. Dr Thomas Radecki, Research Director for the U.S. National Coalition on Television Violence, made a number of points:
The United States Attorney-General reviewed this subject (that violent entertainment is a major cause of violence in our society) in 1982 and at that time he appointed seven leading experts on aggression research to review the material. That panel of experts said that the evidence that violent entertainment has a harmful effect on viewers is as solid as the evidence that cigarette smoking causes lung cancer. (Evidence, p. 3045)

When people have a gun in their possession they are more likely to act aggressively than if they do not have a gun in their possession. But I think ... it is probably more often that somebody is already angry or very depressed and the gun is there and allows them to follow through. But Dr George Gerbner’s research, for instance, shows that the viewing of a heavy amount of television, which means viewing a large amount of television violence, is associated with an increased rate of gun ownership. (Evidence, p. 3076)

14.69 Most of the evidence given to the Committee dealt with the effect of violent television material on children. One of the earlier studies was undertaken in Britain under the direction of Dr William Belson, Director of the Survey Research Centre in London. It involved a complex investigation of the ‘effects’ of long-term exposure to television violence on a random sample of 1565 London boys. In summary, the findings of the study were:

(a) There was major support for the hypothesis that long-term exposure to television violence increases markedly the extent to which boys do themselves engage in violent behaviour...

(b) Most forms of television violence appear to increase serious violence by boys. But certain types appear to do so more than others. The ‘top five’ producers of serious violence are:

- Violence presented in the context of close personal relations;
- Violence presented as a good cause;
- Fictional violence presented in a realistic way;
- Violence of a kind that seems to be just thrown in for its own sake and is not necessarily a development from the plot;
- Westerns.

On the other hand, some types of television violence do not appear to increase serious violence by boys. These are:

- cartoon violence (though it was productive of violent behaviour at a relatively non-serious level);
- slapstick violence (perhaps because it would cease being funny if really vicious);
- science fiction violence (perhaps because it is so unrealistic);
- sporting presentations with the exception of wrestling and boxing.

(c) A substantial part of the increase in serious violence by boys was in terms of behaviour that is unplanned, unskilled and spontaneous in character.

(d) The increase in serious violence by boys is not immediate, but tends to occur after a moderate degree of ‘intake’ of television violence. What this means is that there is a margin of safety in the presentation of television violence, but that if the ‘intake’ continues serious violence will break out. For lesser levels of violence by boys there is no ‘margin of safety’.

(e) Changes in behaviour are not accompanied by changes in attitudes at the conscious level. (Evidence, pp. 1862-3)

A difficulty with this type of evidence is the question of whether children who watch a large amount of TV violence are already indicating a tendency to violent behaviour. In other words would they have behaved that way even in the absence of watching violence?

14.70 Evidence presented by Professor Peter Sheehan of the University of Queensland based on work which involved data collected from Australian children participating in an
international study did not echo Belson's findings in the Australian situation:

Significant associations occurred between television viewing measures and children's aggressiveness, but these relationships were more evident at some ages, than at others. Overall, data indicated no evidence for any causal connection between television viewing and aggression. The detailed analysis of the content of Australian TV that was conducted gave reasons for concern, but the associations that emerged were clearly temporary rather than permanent at this point in time.

(Evidence, p. 1113)

Later, Professor Sheehan presented the Committee with a paper which claimed that while 'there is no consistent evidence of long-term effects, ...a relationship in the short-term between filmed violence-watching and aggression quite probably exists.' (Evidence, p. 2886) The paper was based on a survey he had undertaken of professional helpers, involved with treating children referred to child guidance clinics for behavioural problems and other disturbances. It explored whether they considered that clinical difficulties resulted from exposure to violent videos:

Half the sample said they had received an account from a parent or guardian about a violent video being influential on the child's emotional state or behaviour, and 73% thought at some time that there was an association between particular children's descriptions of their symptoms (or the symptoms they exhibited) and their viewing violent videos. As many as 91% thought symptoms were possibly precipitated by violent videos, and 80% felt that videos had a harmful effect at least some of the time. A multitude of clinical problems were also reported in the survey. These included sleeping difficulties, aggressive acting out, nightmares, anxiety, fear, phobic activity, and one instance of borderline psychosis. (Evidence, pp. 2884-5)

Based on both his own work and other studies of the effects of exposure of children to TV and video aggression, Professor Sheehan saw problems associated with both the content of violent videos and the frequency of watching them. But he also added:

It is obviously a mistake to focus just on television or video "content". What matters is the impact of the content and how it is construed by the child within the child's personal communication network. The information processing capacities of the child that are brought to the experience of television watching need also to be considered and in close relation to the social context of the viewing experience. The nature of the communication with others will influence how the child construes the content, and the family in particular seems to play a critical role in the child's reaction to what is seen.

(Evidence, p. 2888)

Other witnesses echoed the importance of factors other than content. Dr Patricia Edgar, Director of the Australian Children's Television Foundation told the Committee that:

... it is extremely difficult to isolate media or film as being the particular cause or instigator of anything; that it very much depends on the social context; that it depends on the personality of the child; that it depends on children's relationship with their peer group, with their teachers and with their parents. This varies enormously. These other factors are the ones that are likely to determine their particular response to film or video material.

You will find that your heaviest viewers are the children who have other kinds of problems or your more isolated children. Average [television] viewing for a child in Australia is 22 hours a week ... You find that where ... you have children with low self-esteem who do not do well at school, who have few friends, who do not talk to their parents, then these are your heaviest television viewers. It also emerges that of these children who are
watching television most believe that the television world is much more like the real world and therefore their view of life is distorted. (Evidence, p. 1373)

Dr Edgar pointed out that most children ‘know when something is real and when it is fantasy’ and are able to distinguish between reality and adventures containing a lot of killing:

At a fairly early age they know what is reality and what is fantasy. They tend not to worry about violence in films that they see as adventures, but when it is violence that actually relates directly to their own experience, then they do become very concerned about it. In fact, it is the news, of all programs on television, which is most disturbing to most children — events like murders, fires and accidents — because they can relate to these, they know that they are happening and they are more apprehensive about that sort of thing than they are, say, about watching a program like ‘The A-Team’ or the sort of popular program where you would get the depiction of a lot of violent action. The other thing that emerges from the research is, if something happens within a film that a child can closely identify with, that has happened to them, then that again is more likely to be disturbing when that occurs in a fictional film. But most children most of the time have violence in the media in perspective. (Evidence, pp. 1374-1375)

In her study Children and Screen Violence (University of Queensland Press, St Lucia, 1977) Dr Edgar found that:

... the children in the sample made more sophisticated discriminations about mass media content than many people assume children are capable of. It was clear that violence per se was not disturbing to the children. They interpreted violence within the accepted conventions of the genre of each film.

... the children saw and interpreted content differently from the adult interviewers who were involved in the study. Different things assumed importance for both groups. The research indicates we need to study the things children say are disturbing to them, not what we as adults think will be disturbing to the children. Children have a perspective that is surprisingly different. (p. 212)

Dr Ann Knowles, a lecturer in psychology at the Swinburne Institute of Technology in Victoria, who has undertaken both work for her master’s and doctoral degrees on developmental differences in children’s understanding of television, told the Committee that the effect of violence tends to be weak and tends to be tied up with watching a lot of television, apart from just watching violent television. She noted that ‘aggression seems to be learned early in life and it is learned well in the sense that once established it seems to be a fairly stable characteristic of people.’ (Evidence, p. 3227). She said the research on the effects of violence on children suggests that:

... children who watch more violent television and more television generally tend to be more aggressive.

They tend to achieve less well at school, be less popular, identify more with television characters, believe more strongly in the realism of television violence, believe aggression is an acceptable and effective way to solve interpersonal problems, fantasise more about aggression, and come from lower socio-economic classes. (Evidence, pp. 3227-3228)

but she stressed that:

... these are correlational, not necessarily causal, relationships. That is very important, and I think that sometimes the distinction is lost. In other words, while there is that syndrome — so that you can identify a group of children who fall into that category of not achieving at school, being aggressive, not being popular at school, watching more aggressive television, watching more television altogether — that, by no means, means that the watching of violent television makes them all those other things.
Undoubtedly it is a multicausal process that may well in a sense go the other way, which some of the other problems lead to - an excessive dependence on television. Those sorts of relationships have been found in American and Australian research, and research in other countries. (Evidence, p. 3228)

14.77 Dr Knowles also claimed that children to the age of about thirteen do not interpret television in the same way that adults do (Evidence, p. 3230) although the particular form that their interpretation takes changes in important ways with age and developmental stage. Young children are more likely to be affected by isolated elements in a program. They may not understand the causes and consequences of violence in television programs and they may not understand that certain behaviours are rewarded and others are punished. Their lack of awareness of the consequences of aggressive acts may have effects on whether or not they imitate certain behaviours that they have seen.

14.78 Two things external to the developmental stage of the child seem to be particularly important. The first is the mediating role of the parents:

... parents who prefer violent television, who lack other interests, who do not establish rules about television viewing and who rely on physical punishment may well have children who develop characteristics that children do not develop if their parents do not do that. (Evidence, p. 3231)

and the second is the degree of realism of the material, with aggressive behaviour on television being more likely to be copied the more a child's environment matches the context in which it occurs. (Evidence, p. 3229)

14.79 The significance of the size of the gap between the world as shown on the television screen and the real-life environment of the child away from the TV is a point that was emphasised by Professor Peter Sheehan when he spoke to the Committee about his work on Australian children in an international study on the association between television violence and children's aggressiveness. Professor Sheehan said:

\[\text{Evidence, p. 1177}\]

What seems to differentiate Australia from other countries, and in particular from the USA and Israel, is that there is a link between the extent of violent television watching and the aggressiveness of the child... However the link does not sustain itself over the long term and that is what you refer to as dissipation, whereas in the USA and Israel it does. I think one of the critical factors here is that there is a short-term effect in Australia because the gap between the nature and extent of aggression displayed on Australian television is a much bigger gap between what the child sees on television and what he sees in the real world than there is in America. Unquestionably America is a lot more violent and aggressive society and I think there is a closer fit between the world outside and the world of television. (Evidence, p. 1177)

It is important to note in this regard that most of the violent material that is available in Australia is American in origin.

14.80 We see no difficulty with the current terminology in the Film Censorship Board's guidelines. The problem arises with the Board's interpretation of those guidelines. We acknowledge that there is a difficulty in delineating particular material to be excluded. When making judgements material which some may regard as reasonable may be eliminated and people who choose to view this genre of film may be denied access. However, we suggest to the Board that it look more carefully at the existing violence guidelines with a view to tightening its interpretation of what is allowable, taking into consideration the artistic merit of the film.

14.81 The other aspect of violence which the Committee addressed was sexual violence. In the R category depictions of sexual violence are allowed only to the extent that they are
discreet, not gratuitous and not exploitative. Donnerstein found negative effects when explicit sexual depictions included violence and as he noted (see paragraph 14.10) the material he used in his research is not allowed in Australia. However, there are people who maintain harm is caused by even discreet portrayals of sexual violence which form part of the storyline, such as a rape scene in which rape is alluded to.

14.82 Fundamental to the question of harm is the question of context. You cannot ban the concept of rape but you can ban the context in which it is portrayed. Dr Radecki touched on this aspect too in his evidence. He said:

... it depends on how rape is portrayed. Rape can be portrayed in a variety of ways or alluded to. Rape was even present in an alluded way in the film 'Platoon'. You did not see the rape but you saw the people right around the rape and you got the feeling of the rape and the brutality and the tragedy of the rape, but I do not think that you can just say 'rape'. It has to be the context. If it is very sadistic and gruesome, a horror, I think that puts it in context. When we talk about 'Friday the 13th', about the 'Evil Dead' and about 'Nightmare on Elm Street' everybody knows what we are talking about'. You are not going to get that mixed up with 'Platoon' or even productions like 'Streets of Fire', which is not quite as graphic as rape. It is a movie that is really bad that should be R rated [US] but it is not bad enough to be in that horror category. In the United States it was actually rated PG. (Evidence, p. 3080)

14.83 No censorship system can eliminate all depictions of violence which seem unnecessary and gratuitous. Much of it is a matter of personal choice and ability to watch. Throughout the inquiry, we felt that the public were not aware of the meaning of the classification categories and the level of permissible violence in each category. In choosing video material or going to the cinema, people should have more information about the content of the video so that they can clearly see whether the film contains violence, sex, horror or offensive language. The public needs to be able to gain an indication of the level of such content in the film. Through having further information provided people should be able to make a more informed choice about whether the depictions in the video are to their taste. Parents will be in a better position to assess the suitability of a video for viewing within the family. For example, the PG (parental guidance) classification category currently appears to be a misnomer as the parent/guardian does not know for what reason a film was assigned PG.

SUMMARY

14.84 The social research studies have not been able to present a consistent body of information about the harmful effects of exposure to depictions of consenting explicit sex between adults. In fact the value of such studies for Australia is limited. Although the censorship lobby has embraced these studies to support their view, the type of material traditionally used as the stimulus in the research has not been video material. Only in newer studies have videotapes been used and the content of these tapes has been sexually explicit and violent depictions. This type of video material is banned in Australia.

14.85 The interpretation of available crime data does not support the view that there is a cause and effect relationship between the use of 'pornography' and sex crimes. Although it would seem plausible to many that there is a relationship given the purported 'seediness' of pornography, we could not say, given the evidence, that there is a definite causal connection. It is interesting to note that the Fraser Committee was 'not prepared to state, solely on the basis of the evidence and research it has seen, that pornography is a significant causal factor in the commission of some forms of violent crime, in the sexual abuse of
children, or the disintegration of communities and society.' 
(Fraser, p. 99)

14.86 In our view, any legislative change towards more censorship would need to take account of whether or not the research evidence leads to any conclusions of harmful impact of X-rated material. We believe it does not and, based solely on the research results, we cannot recommend increased censorship to proscribe X-rated material.

14.87 For some, the legal presence of X-rated material in the community is so abhorrent and harmful that immediate action is needed to remove it in spite of current restrictions on access. It would be fair to say that the traditional point of view claims that X-rated material is produced for the purpose of profit, is designed to stimulate sexual feelings or fantasy and is subversive of the moral value of the community. What is undoubtedly a personal affront to some is sincerely portrayed by traditionalists as a harm to the morals of the community.

14.88 We believe that the material which is currently banned - combining sexual explicitness and violence - is possibly harmful and degrades and dehumanises women. It is at least debatable, however, whether sexually explicit consenting depictions are in fact degrading and dehumanising of women. There was no convincing evidence of 'harm'.

14.89 Women’s groups do not necessarily object to depictions of sexual explicitness. They object to the way women are often portrayed as unequal in status. Some women find this unequal portrayal dehumanising and degrading in itself and believe the reasons why it occurs are social ones.

14.90 In the past depictions of unclothed female bodies were regarded as dehumanising and therefore obscene. Obscenity laws are a legacy of this view and these laws tend to be based upon male conceptions of morality and harm.

14.91 It is of concern to us that the advancement of a harm argument based on the premise of degradation and dehumanisation of women may essentially be an effort to ban sexually explicit material because it is regarded as disgusting, morally unacceptable and a personal affront.

14.92 Concern for violence was limited, as most submissions addressed the 'pornographic'. Those who did address violence saw it as a greater problem than that posed by X-rated material. Some form of violence can be found in all classification categories and it also forms a substantial part of program content on television. We believe that the heavy diet of violence provided by the various media has an effect which, in some individuals, may be regarded as harmful. The group which is seen as being the most at risk is children.

14.93 We believe that it is not possible to eliminate all depictions of violence which are seen as unnecessary, gratuitous and abhorrent. To do so would remove from circulation all films showing war, including documentaries. Such a course of action would on the one hand present a false view of the world and on the other would not prevent children viewing what adults believe is unnecessary and undesirable violence. We recommend, firstly that the interpretation of current guidelines by the Film Censorship Board be tightened, and, secondly, that more details of a film's content be made available on the video slick, posters and other advertisements for film/video to help people make an informed choice as to whether or not they wish to view a particular video cassette or film or allow those in their charge to do so (see Chapter 17).

14.94 We believe that Chapter 13 of the majority Report is extremely biased and very selective in its choice of evidence.
The obvious aim is to come to the conclusion that even non-violent erotica is harmful. The distinction between their Categories II and III (both non-violent erotica) is far from clear and no examples are given. There is an underlying belief that a depiction which shows a woman enjoying sexual activity is degrading.

CHAPTER 15
ACCESS OF MINORS

INTRODUCTION

15.1 The access of children to unsuitable video material was frequently addressed in submissions and evidence. Irrespective of one's viewpoint, whether it be a moral, social or personal one, the question of the access of children to unsuitable video material was a major concern. The Committee's Terms of Reference in themselves reflect a concern for children with the availability of video material for home viewing. No fewer than four of the Terms of Reference refer to persons under eighteen years of age.

15.2 In examining 'whether children under the age of 18 years are gaining access to videotapes/discs containing violent, pornographic or otherwise obscene material' (Terms of Reference 1(g)) we were mindful of the definitional problems associated with the terms 'violent, pornographic or otherwise obscene material' (see Chapter 3 - 'The Problem of Definition'). Another difficulty, which frequently arose during public evidence was the lack of information about age when discussing children and minors and the age variation encompassed in the use of the term 'children'. Some people spoke of children as referring to the under 10 age group. Others spoke of children as referring to the pre-puberty and puberty age groups. What struck us was that most of the evidence concerning the access of children was of an anecdotal nature. Time and again we heard that children saw undesirable video material in someone else's house - not at home.
Such anecdotal evidence may go some way to explaining the lack of information about which age groups are viewing video material not suitable for under 18 year olds - minors. In fact there are four classification categories used by the FCB which have age considerations on them. They are:

- **PG** Parental Guidance required for those under 15
- **M** Mature (not recommended for viewing by persons under 15)

and the two categories with restrictions:

- **R** Restricted (not to be sold or hired or delivered to minors or displayed in a public place unless container bears prescribed markings)
- **X** Extra-Restricted (not to be sold or hired or delivered to minors or displayed except in restricted publications area and bearing prescribed markings).

**SOCIAL RESEARCH STUDIES**

(a) **KIDS AND THE SCARY WORLD OF VIDEO: SURVEY BY THE SOUTH AUSTRALIAN COUNCIL FOR CHILDREN’S FILMS AND TELEVISION**

15.3 The South Australian Council for Children's Films and Television, Inc., (SACCFT) undertook a survey of 1498 Adelaide primary (year 6, 9-12 years) school children in order to study their video viewing. The Council appeared before the Committee in June 1985 and provided an interim report of the results. Their final report, received in December 1985, entitled Kids and The Scary World of Video (SACCFT Video Survey) formed part of their submission to the Committee. In early 1986 the Council approached the Committee seeking permission to make public their submission. The Committee granted permission.

15.4 This survey has been cited publicly as evidence of the access of children to pornographic videos. For example, Dr Elizabeth McMahon, the Australian Family Association Vice-President, was reported in The [Melbourne] Sun of 16 February 1987 as saying that children as young as 11 watch pornographic videos in the home. She referred to the survey by the South Australian Council for Children's Films and Television, reporting that it found most children aged 11 or 12 had access to X-rated and R-rated videos. In fact SACCFT actually said in their summary 'there was no evidence of the traditional erotic pornography being in wide circulation amongst children'. (SACCFT Video Survey, p. 16) SACCFT noted that 'it may be that an exposed breast on the cover of a videotape is a clearer signal to parents about content than a small 'R' in one corner'. (ibid. p. 16) A study of the responses does not support the assertion that most children had access to X-rated videos. In fact, of the classified videotapes which SACCFT claim to have identified, only 17 per cent (1 per cent X and 16 per cent R) were X and R-rated tapes (see next paragraph 15.5).

15.5 From such public reporting on the survey many would not be aware of what SACCFT actually say in relation to access. SACCFT maintains:

... of the classified videotapes (a total of 644 of which documentary evidence was available):

- 1% were X classified
- 16% were R classified
- 33% were M classified
- 26% were PG classified
- 23% were G classified

and:

It is clear that 10-11 year old children at home have some limited access to X-rated videos, and ease of access to R-rated material, which they would not be allowed to see in a cinema. They have easy access to M rated material which is also considered unsuitable for this age group. In fact, this is the most commonly reported classification. (ibid.) (emphasis theirs)
15.6 SACCFT also comments that:

It is clear that parents are either unwilling or unable to control their children's access to videotape material. (ibid. p. 14)

According to SACCFT there are a number of possible explanations for this:

Parents and other adults simply do not care.
Parents and other adults are unaware of the influence of videotape material.
Parents don't know what their children see.
Parents and other adults are unaware of the meaning of the classification symbols.
Parents are intimidated/seduced by advertising and peer pressure. (ibid. pp. 14-15)

We note here that 'parents' may mean 'few', 'some' or 'many' and without qualification the statement is not very useful.

15.7 There has been considerable use of SACCFT's survey results to date, with some people misrepresenting and overemphasising the findings in an effort to promote their point of view. Its design should therefore be looked at closely. Self-completion questionnaires were given to the children. One of the difficulties encountered by the Council was the identification of video material and its classification category from the responses children gave to six questions. These questions were:

1. If you have a video-recorder at home, can you write down the names of some videos you really enjoyed watching there? Write them in the screen below.
2. Now can you write down the names of some videos you have enjoyed away from home? Write them in the screen below, and if you remember, will you tell us where you saw each one?
3. Write down the name of any video that you saw at home that you did not like at all. These could have been videos which frightened you, or made you upset, or which you could not understand. Write them in the screen below.
4. Now can you write down the names of any videos you have seen away from home, that you did not like at all? Write them in the screen below, and if you can remember, will you tell us where you saw each one?
5. Sometimes a part of a videotape is so enjoyable that you always seem to remember it. Can you describe a part you have seen which was like that? Write down the part you enjoyed and the name of the video that it came from, in the screen below.
6. And sometimes a part of a videotape is hard to forget, even when you would really like to forget it. Can you describe a part you have seen which was like that, and the name of the video that it came from, in the screen below?

15.8 The design of the survey made identification of the material which the children claim to have seen very difficult. From the children's descriptive answers to these six questions titles had to be interpreted, identification made as to whether they were videotape titles and the classification category of the title ascertained. As the Council noted:

A total of 873 separate titles were identified. However some of these could not be identified by the researchers (which is hardly surprising); some were videotapes of television programs and some may have been generic descriptions rather than titles (e.g. "Spooky Stories"). (ibid. p. 4)

15.9 In evidence to the Committee, SACCFT in discussing their interim survey report, (see next paragraph), described the classification sources they used:

We took a very comprehensive catalogue, which is put out four times a year by one of the leading video magazines - I am talking about
the 'Video Age' of Melbourne, which has been in the business for some years and which also owns a video distributorship. We put those titles against that production - against the latest of the catalogues from the 'Video Age' - and this is the best we could come up with. We did supplement it to some extent with an incomplete set of the State classification board listings. Basically what we discovered was that if we were parents sitting at home with a well-known video magazine, there would be plenty of titles for which we would not be able to establish the classification.

(Evidence, p. 274)

The Video Age listings did not show FCB reasons for the classification decision. These reasons provide the key to content. The listings only gave a one word description of the type of film, that is whether it was action, or adult or family or horror or war or drama and so on.

15.10 The Council also noted in its interim survey report to the Committee that:

We experienced great difficulty in identifying these categories [M, R, X] from the readily available resources because of the children's creative naming of some tapes; the large numbers of tapes cited which do not appear in the listings; and the different categories given to the same movie of the same name.

(Children's Video Viewing Habits, an Interim Report on a Survey of 10/11 year old Students in Year 6 at South Australian Education Department Primary Schools, p. 22)

15.11 Doubt about reliability arises with the survey claim that of the tapes seen at home and liked, more than 75 children (5 per cent of sample) cited having seen a number of films which include:

'X' classified: (1)
Class of '84 (one version)

'R' classified: (6)
Class of '84 (one version)
Evil Dead
Friday 13th

15.12 The Commonwealth of Australia Gazette of 26 May 1986 which gives a consolidated listing of classifications assigned by the FCB to films during the period 1 February 1984 to 31 January 1986, shows two different films with a title similar to 'Class of '84' as identified in the survey. The films are:

R classification
Class of 1984, A. Kent (producer), length 98 mins, Reason for decision - violence (frequent - medium - gratuitous)

X classification
The Class of '84 - Part I, W. Higgins producer, submitted length 90 minutes. Reason for decision - sex (frequent - high - gratuitous)
The Class of '84 - Part II, W. Higgins producer, submitted length 90 minutes. Reason for decision - sex (frequent - high - gratuitous)

A comparison of the survey's 'Class of '84' titles, both R and X with the FCB classification records leaves us in doubt about the accuracy of title and classification interpretation of the children's comments.

15.13 There is little doubt there is a severe difficulty in identifying the classification category of films from the children's descriptions. Even the above listings from the Commonwealth of Australia Gazette clearly indicate how difficult it is to correctly identify film material without having seen it. Furthermore, contrary to their earlier evidence to the Committee, SACCFT claim in their final report that the classifications (644 videotapes, see paragraph 15.5) were determined from the Commonwealth of Australia Gazette. (SACCFT Video Survey, p. 4) Even so, as already noted, there are difficulties with correctly identifying titles and determining their classification.
A similar study was done in the United Kingdom entitled Video Violence and Children (edited by Geoffrey Barlow and Alison Hill, Hodder and Staughton, London 1985). The research was carried out under the auspices of an informal group of individuals including parliamentarians and churchmen and became known as the 'Parliamentary Group Video Enquiry'. The group had nothing to do with Parliament, but was a voluntary, self-funded research group whose stated aim was to present factual evidence for guidance to members of Parliament, but it was accepted that those who organised the enquiry wanted to impose more censorship.

However, there was a strong reaction to its Report, with the Oxford Polytechnic which carried out the research and the Methodist and Roman Catholic representatives on the Group dissociating themselves from the Report, implying that the results (e.g. 37% of children under 7 had seen a video nasty) had been faked.

The Listener carried an article which noted:

The research team originally commissioned to carry out the survey into children's viewing habits publicly dissociated themselves from the Enquiry. Dr Guy Cumberbatch of Aston University has described how he had given the research questionnaire to a number of schoolchildren and had found it much too difficult for juniors and 'absurd' for seven-year-olds. When he gave the questionnaire to a group of 11-year-olds, he included a number of false titles and found that 68 per cent of the children claimed to have seen a video that did not exist. (The Listener, 31.10.85) (emphasis ours)

One aspect that the popular press seized on was that '4 per cent of six-year-olds had seen some video nasties' and '9 per cent of six-year-olds girls had seen Faces of Death and I Spit on Your Grave'. It turned out that this part of the survey was based on a class of 25 boys and a class of 24 girls. It wasn't even clear whether they were in the same school. So, two girls had seen the most 'popular' nasties and one boy had seen them.

Or had they? Little care had been taken to check whether the children really had seen the movies or whether they had heard about them in the playground as part of a 'folklore' of the '80s. Indeed, other researchers have cast serious doubts on surveys of this kind for the very reason that it is impossible to rely on replies which might determine a child's machismo rather than his veracity. It is seen by kids as 'grown-up' to have seen horror movies and to claim to not be affected by them. (p. 17)

It is depressing that the general media, including those in Australia, will run sensational allegations without investigating them. It will be interesting to see how they treat this Report.

Any investigation of the access of children to video material and the effect it has on them is very complex and needs to take account of such influences as siblings, family viewing patterns and peer group pressure.

Moreover attempts to investigate this area amongst children using self-completion questionnaires are clearly inadequate. Self-completion questionnaires offer a poor substitute for the individual personal interview in which full explanation and clarification can be given to the child. The classroom setting works against the individual in need of
reassurance and clarification and it may be subject to peer group influences. There is also likely to be an administrative bias. Many studies have drawn attention to the effects of using an adult reference figure well known to the respondent - for example the teacher in these cases - as the questionnaire administrator. Results have been found to vary according to the orientation of the teachers concerned.

15.21 The Children's Research Unit in the United Kingdom which does research for advertising agencies makes the point that in the case of respondents between the ages of seven and fifteen or sixteen years they should be personally interviewed, respondents should be recruited via a quota sample, where selection requirements such as age and sex are predetermined, and individual interviews should be conducted in the home. All interviews should be conducted with the permission of a parent and the willing participation of the child although in strict confidence and in the absence of either parent.

15.22 It is interesting to note that SACCFT in its parallel survey of parents said:

Response was voluntary and so analysis must be careful. The inescapable problems of voluntary response were exacerbated in this case by an entirely unexpected phenomenon. Some "parent" surveys had obviously been completed by the children themselves, and the authorship of many more was uncertain. We excluded responses which were clearly those of children but included those of which we were unsure. (SACCFT Video Survey, p. 20)

PARENTAL RESPONSIBILITY

15.23 What struck us throughout the evidence relating to children's access to unsuitable video material, was the assumption that 'normal' parents are inherently responsible and aware and the belief that they do provide the kind of parental care society expects. The access of children to unsuitable material invariably was cited as occurring outside the home and therefore deemed beyond the control of the parents.

15.24 The same assumption of parental responsibility was not always made in relation to single or separated parents. References to separated parents arose in evidence received by the Committee concerning children's video viewing. Mrs Dorothy Hawkes of Davenport, Tasmania, noted:

The responsibility for children has been placed solely on parents. Caring parents will endeavour to protect their children, but sadly there are so many opportunities outside the home and even within the homes which parents cannot control. The ever growing number of one parent families and the difficulties associated with supervision has not been considered. (Evidence, p. 2522)

The linking of family status with the watching of undesirable videos by children is not necessarily warranted. We are concerned that such references may impute a value judgement about the parenting ability and responsibility of single or separated parents.

15.25 The danger with such perceptions and the belief that parents cannot control what their children view in other people's homes is that any legislative changes will be based on perceived citizen (parental) inadequacies.

15.26 Two representatives of the Tasmanian Teachers Federation told the Committee of effects they had observed in some of their pupils who watched videos. Ms Vallance recalled that in 1984 when she was teaching at a north-west country school, she had in her kinder-prep class a 'specific group of about three boys whose parents got videos and who had easy access to the video recorder'. (Evidence, p. 2469) She said:
What concerned me at the time was that these boys' behaviour, which previously had been fairly boisterous but on the whole was fairly normal for kindergarten children, suddenly started changing very rapidly. Their playground behaviour became quite vicious and their games suddenly changed from being boisterous and energetic to being quite obsessed with making knives, swords, guns and those sorts of things, with which they victimised everyone else in the playground - everyone else being in this case the other kindergarten children and in particular the girls in my class, of which there were only a few anyway. They started to become quite secretive. (Evidence, p. 2469) and:

Of the children's home backgrounds, two of them were in separated families. The third was in a reasonably stable relationship, but the mother did not have great control over what the child did on the weekends. The parents of these children tended to go out and leave them at home by themselves minded by older teenage children from the district. I suspect that that was where this particular influence came in. The teenage children would get the videos and all of these three particular little boys would sit down and want to be macho and tough and sit up and watch them. I did talk to the mother of the child who was in a reasonably stable relationship about the fact that he was falling asleep in class because he had been up so late. She said that she had trouble getting him to go to sleep and that she would let him sit up and watch the movies with her - she said she had let him sit up until midnight one night. (Evidence, pp. 2470-2471)

15.27 Ms Ryan in talking about her grade 5 children said:

I surveyed my children recently because I started realising that in their journals they were consistently writing about the movies that they saw. I have just got one example here. This is what alerted me to the fact of what was going on; it is what a child has written:

On the weekend I watched a video called 'Demented'. It was about a lady who was raped by four men. One night four kids came into the house and terrified her so the next night she went into their house and chopped them up with meat cleavers and shot them with a shotgun. When her husband came home she was in bed. He went down into the kitchen to get something to eat. She came down and blew his head off with the shotgun.

I asked the child who wrote this whether he had nightmares from movies and he said, yes, that he did have some and I said:'Where do you get these movies from?'. I was expecting him to say that he got them from somebody else, but it was actually his parents who had got them and they had just left them at home and he picked them up and was watching them. They had taken no care to see that it was out of his hands. With this same child I had the parents come to me and complain about the nightmares the child was having because I was trying to teach him multiplication! I found it rather hard to handle that the mother was prepared to have me for supper over that, and yet took no care or concern over this. (Evidence, p. 2472) ['Demented' is classified M (not recommended for viewing by persons under 15) by the FCB and the reason for the decision is Violence (I-m-g; infrequent, medium explicitness/intensity, gratuitous purpose).]

15.28 In commenting about the role of teachers, Ms Vallance believes, 'some parents are not taking due care with the material that their children are seeing and so even though we may not necessarily want to be moral custodians we are virtually forced into that situation'. (Evidence, p. 2487) The teachers feel it should:

... go back to being the parent's responsibility because that is where it really does lie, ... and that we are being forced to pick up something. Often, a teacher, with all the goodwill in the world, does not have the necessary training or expertise to handle it. In a lot of schools you end up having to take on moral education because there is very little coming from home. (Evidence, p. 2488)
Mr Phillip Adams, Chairman of the Australian Film Commission believes it is necessary to provide as much information as possible about film content. He said:

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

He maintains you can make the community and its standard-bearers, including parents and teachers, more concerned by this means.

Senator Walters observed that:

Parents do not have control. Parents can be concerned as they like but if children go off to a birthday party for an eight-year-old and it is shown at that birthday party you do not even know ...

In reply Mr Adams said:

But some other parent is running that birthday party. It is like the Community Watch program, which has, I believe, done something to lower the incidence of robberies around Australia. There are, I think, some signs that an activated and aware community can influence its own destiny. If you do not believe that, you have to give up democracy. Basically you cannot have one without the other. Most countries have. We still have one, bless our hearts. (Evidence, p. 2937)

CENSORSHIP OR SANCTIONS

How far should the state intrude into family life and determine what can or can't be viewed, read or heard in the privacy of the home?

Of those who are concerned about children having access to unsuitable video material, some see it is imperative for Government to become the de facto parent and assume the mantle of control. Others see a need to fine tune the legislation in respect of the access of children to unsuitable material especially the R category.

Most of the concern expressed in evidence about the access of children centred on 'pornographic' video material. Very little addressed the R category. The SACCFT survey, which covers the range of classification categories, has been cited by some (see paragraph 15.4) as providing the necessary evidence of access and harm on which to tighten censorship. As SACCFT acknowledges:

Research is difficult in this area, as in any situation that involves the response of children. The problem, however, is more basic. Empirical research by its very nature, is committed to error. It is not the absolute yardstick of truth that it is sometimes depicted to be. (Supplementary Submission No. 026, p. 2) (emphasis theirs)

We agree with this observation and believe that any legislative change cannot be based solely on the SACCFT survey.

We believe that children and minors need to be protected from seeing material regarded as unsuitable for them. Such protection will not necessarily come from censorship. If a censorship approach is adopted and X-rated material is banned because those under 18 are gaining access to the material then it follows that R material should also be banned and also the X category. To bar such material on access grounds would also necessitate a bar on other things like alcohol and cigarettes to which minors also have access. Hopefully such a course of action would not be acceptable to the Australian community.

We do not believe that parents should be divested of their responsibility for overseeing the actions of their children. Although it has been argued that parents are unable to control what their children see outside the home, we have not
read or heard any evidence which leads us to believe that increased censorship is the answer. There are parents who believe that the rate of development of their offspring make them 'mature' enough to see films classified unsuitable for them. Parents should not be deprived of determining what their children can and cannot see. Such choices rest with the individual and not the state. As discussed earlier videos should be clearly labelled, providing detailed reasons for their classification category.

15.37 We believe that sanctions are the most appropriate way to approach the access problem. Adults who show minors an R or X-rated film, without the consent of the parent or guardian, should be liable for prosecution as are and should continue to be retailers not observing the restrictions. However, we do not believe that minors should be prosecuted for hiring R and X-rated material as minors tend to seek things which are regarded by adults as unsuitable for them.

CHAPTER 16

PUBLIC ATTITUDES

INTRODUCTION

16.1 Reference has been made in this dissenting Report to the large number of submissions that were received by the Committee. They represented the whole spectrum of possible opinions in relation to the Committee's Terms of Reference although they tended to cluster in the categories outlined in Chapter 4. Opinions were expressed on what material should be included in the classification ratings; whether there should be an X category; the impact of violent and 'pornographic' material on women, children and the community generally; the display and presentation of videos in retail outlets; the need for community education about the content of the classification guidelines; the role of the Film Censorship Board; adult cinemas; local production, and so on.

16.2 We wish to stress that the number of submissions for or against issues cannot be taken as constituting an opinion poll in the sense that majority views may be gauged from them. Too many non-random factors may be associated with the decision to make a submission: for example, form letters may be distributed to supporters of a particular position and organized campaigns may account for a bias in favour of a particular set of views on the issue concerned. It may also be only an articulate and particularly motivated person or group who responds to a public advertisement calling for submissions; certainly it is frequently the case that the majority of responses received when public
submissions are called for by advertisement come from critics of current policy and practice or opponents of proposals put forward.

16.3 The Committee therefore sought information from other sources to supplement the submissions it received in an effort to reach a reasonable approximation of current public attitudes on this issue.

OPINION POLLS

16.4 Not many public opinion polls on issues relevant to the Committee's inquiry have been held in Australia. Leading pollsters who use repetitive sampling of public opinion on an interstate scale, such as the Morgan Gallup Poll, Australian Nationwide Opinion Polls, the McNair Anderson Australian Public Opinion Polls and the Age Poll were examined from 1969 on to try to gain some idea of public attitudes on censorship and control. As far as possible the Committee looked at responses on specific matters such as depictions on film, video or television of explicit sex, 'pornography' and violence. The term 'pornography' was used without definition in the polls.

16.5 In October 1969 people interviewed in an Australia-wide survey by the Morgan Gallup Poll were asked 'In your opinion, should censorship of films and literature be increased, left unchanged, decreased, or cut out altogether?'

- 17 per cent said 'increase censorship'
- 43 per cent said 'no change'
- 17 per cent said 'decrease censorship'
- 15 per cent said 'cut it out altogether'
- 9 per cent said 'don't know'. (Morgan Gallup Poll (MGPO) 206, October 1969)

The poll took place before the suggestion of a liberalisation in censorship policy which occurred when Mr Don Chipp, M.P., then Minister for Customs, made a statement in the House of Representatives on 11 June 1970. The pollsters interpreted it as indicating that 60 per cent of Australians favoured the maintenance of censorship with 32 per cent favouring less censorship.

16.6 Later polls suggest that public attitudes towards censorship became more liberal as government policy changed in the early 1970s. A poll was taken in September 1970 after Mr Chipp's statement. It asked exactly the same question as in 1969 and showed a five per cent decrease in the support for the then current levels of censorship (MGPO 213, October 1970):

- 14 per cent said 'increase censorship'
- 41 per cent said 'no change'
- 21 per cent said 'decrease censorship'
- 15 per cent said 'cut it out altogether'
- 8 per cent said 'don't know'.

16.7 Age Polls were taken in 1971 and 1973. The one in 1971 was based on a sample of people in Melbourne and Sydney only. When asked 'Do you condone or condemn censorship in general?' 41 per cent of people condoned censorship, 37 per cent condemned it, and 22 per cent were either neutral or had no opinion (Age Poll published 27 March 1971). In 1973 twice as many people were included in the sample which reached beyond Sydney and Melbourne to both urban and rural electorates in all six States and the ACT. In that poll 46 per cent declared that censorship was either right or very right/harmless, while only 27 per cent found it either wrong or very wrong/dangerous. In this case 26 per cent were neutral and 1 per cent did not know (Age Poll June 1973, printed in The Age Monday July 30, 1973).

16.8 In 1974, the McNair Anderson Australian Public Opinion Polls (Gallup method) asked a representative cross-section of Australians in all electorates of each State the following question:
Some people say pornography should be completely banned - that is, not published for anyone. Others say an adult has the right to decide for himself (sic) what to see or read, and therefore pornography should not be banned to adults. How do you feel?

28 per cent responded that pornography should be completely banned; 70 per cent that it should not be banned to adults, and 2 per cent did not know. (The Herald 20 July 1974; The Advertiser 22 July 1974; The Mercury 22 July 1974)

16.9 For the next ten years there was a lull in polling public opinion in Australia on the issue of censorship or attitudes to 'pornography'. The next significant poll on a relevant issue did not occur until 1984.

16.10 Those interviewed then were asked:

1. Are you concerned or not concerned about the possible harmful effects on children of pornographic and violent video nasties that are available these days?

2. Should there be more or less restriction in Australia on pornographic and violent video movies, or is the present amount of restriction about right? (The Advertiser 10 October 1984)

16.11 In the 1984 poll 77 per cent of a sample taken throughout Australia were in favour of 'more restriction on pornographic and violent video movies', 3 per cent said there should be less restriction, and 18 per cent said the present amount of restriction was 'about right'.

16.12 There are problems associated with the interpretation of this 1984 poll:

The first question is biased in that it assumes that 'pornographic and violent video nasties' are available to children.

We also know that very few people are aware of the current restrictions, referred to in the second question.

Prejudging the issue of harm and focussing on children in the first question in the 1984 poll may have influenced some people to express themselves in favour of more restriction in the second question. As pointed out in Chapter 4, many people of liberal persuasion take the attitude that restraints on freedom may be justified where the exercise of that freedom can be shown to cause harm. Where possible harm - particularly harm to children - is posited, what would normally be a reluctance to embrace a policy of restraint may have seemed less of a problem for them.

16.13 When considering these national opinion polls in general as a source of information on public attitudes in relation to video material a number of difficulties present themselves:

The questions which have been asked have not adequately addressed the subject matter of this inquiry.

The frames of reference of the surveys have mostly differed from each other and the results have therefore not been comparable over time. This makes it difficult to discern any direction in public opinion. Some have covered censorship in general but were undertaken in the early seventies when video material was not an issue in Australia; others have tested attitudes to 'pornography' which, although it is in the Committee's Terms of Reference, is a term which means different things to different people (see Chapter 3); more recently the issue of violence in video material has been introduced without separating it from 'pornography' or sexual explicitness, an approach that in our opinion has confused the issue.
Nationwide responses to general questions which ask whether people would like 'more' or 'less' censorship (1969; 1970) or 'more or less restriction in Australia' (1984) are impossible to interpret as we do not know what specific laws the people who were polled had in mind as a benchmark.

A nationwide survey was undertaken in Canada (in collaboration with the Canadian Broadcasting Corporation) in November - December 1984 which focussed on issues that are appropriate to current Australian Commonwealth law. The survey clearly distinguished between two types of material: 'sexually violent or degrading scenes' and 'scenes of mutually consenting sexual activities, with no violence or degrading content, where the sex is 'explicit' (you can see everything)'. While we do not suggest that the findings of the Canadian survey can be applied to Australia, it is interesting to note the responses that were made in circumstances where depictions of explicit sex of a consenting kind (which is all that is allowed in Australia) were clearly distinguished from depictions involving violence. The survey respondents recommended restrictions on video cassettes for home use. These were as follows:

- Sexually violent or degrading scenes - 60 per cent were in favour of a total ban; 32 per cent were in favour of age restrictions (usually those over 18); and 9 per cent favoured no restrictions.
- Consenting sex (no violence), where the sex is 'explicit' - 25 per cent were in favour of a total ban; 64 per cent were in favour of age restrictions; and 11 per cent favoured no restrictions. (James V. P. Check, Nelson A. Heapy and Oleh Iwanyshyn, A Survey of Canadians' Attitudes Regarding Sexual Content in the Media, York University, Department of Psychology Report No. 151, p. 8)

SURVEYS RELATING TO TELEVISION

A number of surveys concerned with television rather than video material have been conducted in Australia in the last decade and a half.

The former Australian Broadcasting Control Board conducted various surveys asking about the amount of violence being shown on television. Results comparing 1970 and 1974 are available. (Evidence, p. 1570) They reveal that the 43 per cent who had considered that too much violence was being shown in 1970, had increased to 55 per cent by 1974. In 1979 when the Australian Broadcasting Tribunal conducted a National Television Standard’s survey, 68 per cent said that there should be less television programs containing crime and violence; 68 per cent also disagreed with the statement that violence in television programs makes them more interesting and exciting; 59 per cent of people agreed that ‘crime and violence on television teach children and young people about the effects of these things’; 75 per cent agreed that ‘crime and violence on television encourages children or young people to do these things’; and 70 per cent agreed that ‘seeing crime and violence on television makes a difference to how children and young people behave’. (Evidence, pp. 1570-1)

The opinions of the community on sex and nudity on television were sought in the 1979 survey. Twenty three percent said they had seen sex shows on television of a kind they found offensive although only 17 per cent felt that they had done this often while 76 per cent had not; 53 per cent said nudity was suitable for showing in a television documentary while 16 per cent felt it was suitable in a documentary if not pornographic; 34 per cent said it was suitable in movies and shows and 22 per cent said it was suitable in movies and shows if it was not pornographic.
In March and April 1983 a survey based on a random sample of 740 people over 15 years old in both Melbourne and Swan Hill in Victoria was undertaken by the Australian Broadcasting Tribunal. It found that there was substantial tolerance towards allowing the televising of 'more explicit material' defined as 'programs and movies which have more sex and violence or swearing in them than is currently allowed' late at night, with 64 per cent of Melbourne and 51 per cent of Swan Hill respondents in favour. (Evidence, p. 1576)

Although we are concerned about the amount of violence which is portrayed on television without adequate warning, we do not believe it is possible to extrapolate results from surveys of attitudes towards depictions on television and equate them with attitudes towards depictions on video. As the Australian Broadcasting Tribunal pointed out in its submission to the Committee (Evidence, p. 1568), there are differences between the kinds of material seen on television compared with video and also between the degree to which the viewer becomes actively involved in choosing the material he or she watches in either case. These differences may produce very different results in an attitude survey focussed on video material.

Recent surveys on issues related to the Committee's terms of reference

Surveys have been conducted from 1984 on issues related to the Committee's Terms of Reference. Four of them will be highlighted as they refer to attitudes to R and X-rated videos.

In September 1984 the Adult Video Industry Association commissioned a survey using a total sample of 560 respondents in Sydney and Melbourne selected according to a probability sample.
cent and 42 per cent also felt that 'The New South Wales Government is right to ban the hiring and selling of all 'R' rated video movies'. (Evidence, pp. 931-7)

16.24 Speculation and possible explanation are usually undertaken where there are glaring inconsistencies, and this occurred in the AVIA survey. (Evidence, pp. 934-5) The Research Co-ordinator for the AVIA survey, also later told the Committee:

... we think those sorts of contradictory views reflect the confusion that was created in the public mind on this whole issue and that that sort of misinformation campaign which was conducted very vigorously, especially by Mrs Whitehouse on her whirlwind tour of Australia, contributed very largely to that. (Evidence, p. 991)

However the need for more or less interpretation is always present in attitude surveys: amongst other things a great deal depends on how the question is formulated or what is going on in the environment at the time of the survey, some of which may exert an influence on the answers.

16.25 The Cinema Action Group (see Chapter 12, Adult Cinemas) has commissioned a number of surveys covering an above R classification for cinemas. The latest of the surveys, September 1986, was conducted by The Roy Morgan Research Centre Pty. Ltd., and addressed the question of the availability of X-rated movies. An Australia-wide sample of 1607 men and women were asked:

Next about non-violent movies of an erotic nature, with X-ratings or equivalent ratings. The next pink card lists some ways those movies might be available. Which one of those ways best describes how you think X-rated non-violent movies of an erotic nature should be available?

- only 25.4 per cent of respondents indicated that X-rated videos should not be available
- 18.4 per cent indicated that they should be available only on video tape
- 28.9 per cent indicated that they should be available only in controlled cinema where children are not permitted
- 24.5 per cent indicated that they should be available on both video tape and controlled cinema
- 2.9 per cent could not say or had no answer.

Thus, according to the summary of the survey results, 71.8 per cent of respondents favoured an above R classification and there was support for above R to be shown in restricted (hardtop) cinema.

16.26 Results of a survey undertaken by the Australian Institute of Criminology and the Attorney-General’s Department were published in May 1987. (Video Viewing Behaviour and Attitudes Towards Explicit Material: A Preliminary Investigation A joint project by the Australian Institute of Criminology (Tammy Pope and Paul Wilson) and the Attorney-General’s Department (Terry Brooks, David Fox and Stephen Nugent), Canberra, April 1987)

16.27 A questionnaire was mailed to a sample of 558 video hirers who were customers of two video outlets, one in Canberra and one in the surrounding district. The final response rate was 33 per cent or 175 individuals. As the authors point out:

... caution has to be exercised in generalising the findings of the survey to the population in general. The population under consideration consists of video hirers in Canberra and the surrounding district. (ibid, p. 4)
16.28 When these video hirers were asked what action should be taken on the sale or rental of videos dealing with explicit material that depict sexual violence, the majority of responses reflected current policy:

- 62.9 per cent said ban them
- 27.4 per cent said there should be no public display
- 7.4 per cent said there should be no restriction

16.29 Attitudes towards X-rated videos for home viewing were fairly liberal and coincided with current policy in the ACT. When video hirers were asked what action should be taken on the sale or rental of these:

- 5.1 per cent said ban them
- 62.9 per cent said that there should be no public display
- 30.3 per cent said there should be no restriction

16.30 Over 42 per cent of people who had children under the age of 18 said that their children had (or probably had) seen an R-rated movie. The equivalent figure for X-rated videos was 19.1 per cent.

16.31 Approximately half of the respondents agreed that X-rated videos lead some people to sexual crimes and the same number agreed that they lead to crimes of violence. As the report pointed out, since videos with an X classification do not contain any violence, 'It is possible that this [latter] belief is based on an ignorance of what is contained in X-rated movies'. (ibid. p. 33)

16.32 Over a third of respondents either picked an incorrect group of ratings from a series of options or said that they did not know which ratings were used for videos. The report concluded that there was 'a need for further education on videotape censorship classification'. (ibid. p. 36) This conclusion supports our view that there is a need for greater information on the content of video films offered for sale or hire.

16.33 Although, as the report acknowledged, 'the present survey does have some limitations in terms of the population being sampled and the response rate' (ibid. p. 37) it has provided data on video viewing patterns and behaviour which have not been surveyed before.

16.34 It should be noted that after more than three years of X-rated material being legally available in the ACT and NT, there are now very few complaints about this material in the Territories.

16.35 The results of a survey entitled Public Attitudes to Censorship Classification were released by the Film/Video Coalition on 1 June 1987. The Coalition, which includes various film and video associations and companies, commissioned Brown Market Research Pty Ltd., to undertake the survey, with the objective of establishing the:

- public awareness of the 'R' censorship classification and public opinion as to whether this classification should be given more censorship, less censorship or should remain the same as it is now (Film/Video Coalition survey, p. 1)

16.36 The survey conducted by telephone, took a sample of 2025 people of voting age. In looking at public awareness of 'R' censorship classification the respondents were read out the following movie titles:

- The Godfather
- The Deerhunter
- Dirty Harry
- Apocalypse Now
- Straw Dogs
- Death Wish 1, 2 or 3
- Mad Max
- The Omen
- Scarface
- Scum
- Friday the 13th 1, 2, 3, 4, 5, 6
- Midnight Express
and were then asked:

All of these movies carry the same censorship classification - can you tell me what that classification is?

16.37 In total 46 per cent of the sample correctly identified the R censorship classification. Correct identification was higher among males and among people aged 34 years and younger (39 per cent of the sample). 23 per cent of people were unable to give an answer claiming they didn’t know or couldn’t say. (ibid. p. 7)

16.38 To determine public attitudes to the censorship of movies carrying R censorship classification, people in the survey were told:

In actual fact every one of those movies carries an ‘R’ censorship classification.

They were then asked:

Do you think movies like the ones we have mentioned which carry an ‘R’ censorship classification should be given more censorship, less censorship, the same censorship? (op cit. p. 12)

The survey found that:

- 71 per cent of frequent cinema goers (once a month or more often) want censorship to remain at the current level or want less censorship.

- 67 per cent of frequent video viewers (once a month or more often) want censorship to remain at the current level, or want less censorship.

- 57 per cent of total survey (2,025) respondents want either current censorship to remain unchanged or would prefer less censorship. Those who were infrequent video watchers were disposed towards more censorship than others.

- 31 per cent of total survey respondents favoured more censorship.

- 12 per cent of total survey respondents had no opinion on the subject.

Those in favour of more censorship and who were able to correctly identify films as being an ‘R’ classification, represented only 13% of all people surveyed.

- 73 per cent of those surveyed aged between 18 and 34 want the same or less censorship. This age group attends the cinema and watches videos more frequently than other age groups.

- 69 per cent of survey respondents in households with children aged 5 or younger want either no changes or less censorship.

- 59 per cent of survey respondents in households with children of primary school age want either no changes or less censorship.

- 59 per cent of survey respondents in households with teenage children (13 to 17 years) want either no changes or less censorship. (ibid. pp. 2-3)

16.39 Altogether 49 per cent of survey respondents said they would prefer to see the R classification remain unchanged. They were asked their reasons.

Reason Given Respondents Mentioning %

Present rating is adequate 45
Up to parents to supervise under 18s 19
People have the right to choose 18
You know what to expect 9
Some don't need an ‘R’ rating 3
Too much censorship could cause problems 2
Just as much violence on the News 1
Lose too much of story 1
Can’t protect children from real world (ibid. p. 17)

16.40 Thirty one (31) per cent of survey respondents said they would prefer to see more censorship of R classified films. Their reasons were:

- 12 per cent of total survey respondents had no opinion on the subject.

Those in favour of more censorship and who were able to correctly identify films as being an ‘R’ classification, represented only 13% of all people surveyed.

- 73 per cent of those surveyed aged between 18 and 34 want the same or less censorship. This age group attends the cinema and watches videos more frequently than other age groups.

- 69 per cent of survey respondents in households with children aged 5 or younger want either no changes or less censorship.

- 59 per cent of survey respondents in households with children of primary school age want either no changes or less censorship.

- 59 per cent of survey respondents in households with teenage children (13 to 17 years) want either no changes or less censorship. (ibid. pp. 2-3)

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16.40 Thirty one (31) per cent of survey respondents said they would prefer to see more censorship of R classified films. Their reasons were:
Eight (8) percent of survey respondents said they would prefer to see less censorship of films with an R classification. The reasons they gave were:

<table>
<thead>
<tr>
<th>Reason Given</th>
<th>Respondents Mentioning</th>
</tr>
</thead>
<tbody>
<tr>
<td>People have the right to choose</td>
<td>29 (29%)</td>
</tr>
<tr>
<td>Shouldn't be any censorship</td>
<td>19 (19%)</td>
</tr>
<tr>
<td>Some don't need an 'R' rating</td>
<td>18 (18%)</td>
</tr>
<tr>
<td>Present rating is adequate</td>
<td>11 (11%)</td>
</tr>
<tr>
<td>Can't protect children from real world</td>
<td>10 (10%)</td>
</tr>
</tbody>
</table>

SUMMARY

A majority of submissions received by the Committee expressed traditionalist views on the issue of the control and availability of video material in Australia. We are not satisfied that these represented an adequate cross-section of likely views in the public as a whole.

Nationwide public opinion polls have had problems associated with them which range from question design, the unknown effects of unusual publicity on people's responses, and the need to interpret responses to questions in the light of what is happening in the surrounding environment. More focussed surveys have been limited in the populations to which they may be considered to refer. We believe it is not possible to extrapolate a consistent or accurate view of Australian public attitudes to video material through them.
protection from unsolicited exposure to material they may consider offensive. These principles have been supported by all governments since 1973.

17.3 Combining both freedom and protection in law may be expected to cause difficulties. Many submissions rejected the legislation because it does not afford stricter protection at the expense of freedom. However, we believe that the Commonwealth legislation has shown itself to be adequate in the degree to which it has been able to adjust to the particular mix of freedom and protection required as levels of understanding about possible effects have changed (see Chapters 5 and 7).

17.4 An expressed purpose of the legislative package introduced in 1984 was to change the emphasis of control from what had been a reliance on prohibition at the point of entry to a two-pronged approach with its major effort focussed on the point of sale. Commonwealth, State and Territory governments shared the view that it was unrealistic to expect that import controls alone could be sufficiently effective; given the easy and cheap technology of reproduction it would only take a single copy of any undesirable material to slip through Customs to allow the reproduction of sufficient material to flood the domestic marketplace. To prevent this happening would be an impossible task in terms of the resources and costs involved. Further it was accepted that only laws focussed at the point of sale would provide the means to control a domestic industry producing these kinds of materials should one develop.

REGULATION 4A OF THE CUSTOMS (PROHIBITED IMPORTS) REGULATIONS

17.5 During the hearings conducted by both the Senate Select Committee and the Joint Select Committee a number of matters were raised in relation to Regulation 4A.

17.6 The Senate Select Committee reported that the Customs Regulations of 1 February 1984 left both Customs Officers and importers in some doubt about their responsibilities. (SSCUV Report, p. 45) However we are satisfied that since the amendment of 27 June 1985 to Regulation 4A this deficiency has been overcome. As a submission from the Australian Customs Service noted:

The test under the amended regulation is objective and the commission of an offence will not depend, in law, upon any determination made after importation by the Attorney-General. That is to say, if goods fall within one or more of the prescribed descriptions, and no permission to import them has been granted, an offence is committed when those goods are imported. (Evidence, p. 2790)

17.7 According to the figures supplied by the Australian Customs Service a total of 341 detentions and 22 seizures of videotapes took place in all States throughout Australia in the period from 1 July 1985 to 31 May 1986, only one of which resulted in a prosecution. In February 1986, Customs Officers in Queensland conducted a 'one-off saturation exercise' on recorded videotapes imported by post. A total of 336 tapes were intercepted, out of which 58 were detained. Customs Officers then subjected detained tapes to a quick screen. None of the detained videotapes were found to contravene Regulation 4A. Between 1 June 1986 and 28 May 1987 there were two prosecutions - one in New South Wales and one in Victoria. Two hundred and eighty three films were referred to the Film Censorship Board between June 1986 and February 1988 of which sixty four were prohibited and two hundred and nineteen released. There were no prosecutions during this time.

17.8 We suggest that the effectiveness and adequacy of Regulation 4A should be judged in the context of the total package of Federal and State censorship laws. The thrust of the
legislation is that anything that is published and intended for sale or hire that has managed to pass undetected through the customs barrier will be picked up when compulsorily subjected to classification under State or Territory legislation.

17.9 As far as material for private viewing is concerned, there are mechanisms that allow for subsequent seizure of material in private possession if it can be proved that it is a prohibited import. Customs officers may alert Federal and State police to the possible existence of such material and police may investigate. Furthermore it is also open to State or Territory law to outlaw private possession of any kind of video material should it not be acceptable within the jurisdiction. Queensland and Western Australia have chosen to do this with films and videotapes which have been refused classification. It is not an offence to possess X-rated videos in Queensland, but the Minister responsible for censorship matters in Western Australia at the time the Video Tapes Classification and Control Act was promulgated in February 1988, stated that the WA Act made possession of X-rated material an offence in Western Australia.

17.10 A number of suggestions were made in the course of the inquiry about possible ways to improve the present capacity to identify and pick up prohibited video material at the Customs Barrier. Customs Officers Association of Australia representatives pointed out to the Senate Select Committee that unless there is a clear indication on the tape that it may qualify as prohibited material they do not necessarily look at the contents. (SSCVM Evidence, p. 203) The Senate Committee Report followed this up with the comment:

Videos need to be screened as the covering material and the name of the video does not necessarily indicate what it contains. (p. 41)

17.11 In its supplementary submission to the Joint Select Committee the Australian Customs Service pointed out that Customs Officers have much more to go on than video titles when deciding whether videos may fall within the ambit of Regulation 4A. Information to help in making a decision can come from such diverse areas as inward passenger statements, reaction of passengers to questioning, detection of attempts to conceal goods, and information from ACS intelligence files which are compiled as a result of information exchanges with overseas law enforcement agencies on Customs related matters. (Evidence, p. 2791 and pp. 2808-9)

17.12 The Australian Customs Service concluded that, while it:

... agrees that videos which, in the opinion of a Customs Officer, could fall within the ambit of Regulation 4A, should be screened, it is considered that the screening of videos is, as it has always been in the past, the proper function of the Film Censorship Board. (Evidence, p. 2792)

17.13 We agree with the ACS that screening by the Film Censorship Board is more appropriate than screening at the Customs Barrier. Not only is the Film Censorship Board geared to the task, it is also the focus of accountable censorship decisions at the Commonwealth level.

17.14 Mrs Janet Strickland, the then Chief Censor, drew the attention of the Senate Select Committee to a lack of uniformity between Regulation 4A and the ACT Classification of Publications Ordinance:

... we ... get material which has been referred to us and which we ... prohibit. But the other way round, with respect to material which we refuse classification and which is already in the country, if it comes back in again there is no certainty that it will be prohibited unless it is seized and referred to us again. (SSCVM Evidence, p. 144)
A film or videotape will be refused classification under the ACT Ordinance:

... where the Board is satisfied that the film depicts, expresses or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or 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. (section 25(3))

or if it is a film that:

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

b) promotes, incites or encourages terrorism. (section 25(4))

Regulation 4A(1A) of the Customs (Prohibited Imports) Regulations, however, prohibits only publications that:

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

(ii) promote, incite or encourage terrorism;

or:

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

The lack of uniformity in wording still exists. However there have been no significant operational difficulties.

The ACT House of Assembly as a whole, however, was not convinced that it should be prohibited in the absence of clear evidence of harm associated with the material. It recommended that research into the impact on the community of R and X material be conducted. (Evidence, p. 2653)

In November 1985 the Committee was told in evidence by Mr Doyle, the Chairman of the House's Education and Community Affairs Committee, that motions to ban X-rated videotapes had been put to the Assembly a number of times and had been defeated each time.

Both he and the other member of the House of Assembly who gave evidence before the Committee, Mrs Hocking of the Family Team, agreed that the number of complaints and representations from the community had decreased between 1984 and the end of 1985 although they disagreed about the reasons for this. Mr Doyle said:

Apart from the organised campaigns and roneoed letters and so on in particular campaigns, from my point of view they have decreased. I cannot remember any in the last, say, six or eight months. (Evidence, p. 2670)