

Standing Committee on Social Issues

Safety Net? Inquiry into the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2000 - Final Report: On-line Matters

Recommendations and Government Response

Recommendation 1 *Page 18*

The Committee recommends that the Attorney-General ask the Office of Film and Literature Classification to assist the enforcement of the national on-line regulatory scheme by:

- providing the public with detailed information (including examples) about interpretation of the National Classification Code as it applies to on-line material, and
- offering a timely, low-cost, voluntary classification of on-line material service for non-commercial on-line content providers to use prior to uploading.

Response

'The Office of Film and Literature Classification (OFLC) has been forwarded a copy of the Final Report and has responded to Recommendation 1 with the following conclusions:'

'The [Classification] Board classifies on-line content referred to it by the ABA in the same way that it classifies other material. Classification decisions about ABA referred on-line content are made in accordance with the National Classification Code, which is a schedule to the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act), and the film or computer game classification guidelines, as applicable. The ABA is the agency that retains copies of on-line content that it has referred to the Board for classification, not the OFLC. As such, the OFLC is unable to provide examples of on-line content that the Board has classified as requested.'

'The recommendation that the OFLC offer a low-cost, voluntary classification of on-line material service for non-commercial on-line material providers would require the agreement of all Commonwealth, State and Territory Censorship Ministers, legislative change and additional financial resources. However, if online content providers make use of existing systems set up for distributors of films, computer games and publications, they would be able to have their online content classified without the need for such major changes.'

Recommendation 2 *Page 32*

The Committee recommends that Schedule 2 of the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001* be repealed.

Response

'A statutory review of the Commonwealth's on-line regulatory scheme (contained in Schedule 5 of the *Broadcasting Services Act 1992*) is currently being conducted by the Federal Government and is expected to be completed early in 2003. Schedule 2 of the

Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001 will be neither commenced nor repealed until this review has been completed and the findings have been considered.'

Recommendation 3 Page 34

The Committee recommends that:

- for the time being, Internet content should be regulated using the relevant provisions of the *Crimes Act 1900*, and
- the Attorney-General should review the existing provisions of the *Crimes Act 1900* relating to on-line content with a view to determining whether these provisions provide a sufficient basis for prosecution of people who publish highly dangerous or offensive material on-line.

Response

'Internet content is being regulated using the existing provisions of the *Crimes Act 1900* in conjunction with the national on-line regulatory scheme (contained in Schedule 5 of the *Broadcasting Services Act 1992*).'

'A review of the *Crimes Act 1900* relating to on-line content will be considered once the statutory review of the Commonwealth's on-line regulatory scheme has been completed. This is expected to be early in 2003.'

Recommendation 4 Page 44

The Committee recommends that, in order to increase community awareness of the safe use of the Internet, the Attorney-General should approach his Federal counterpart and the Federal Minister for Communications, Information Technology and the Arts, recommending that NetAlert Limited be provided with additional funding to undertake its vital community educational role.

Response

'The New South Wales Government supports efforts to increase community awareness of the safe use of the Internet. Methods to achieve this will be further considered in the light of the statutory review of the Commonwealth's on-line regulatory scheme. A decision on Recommendation 4 will be made consistent with the decision finalised for Recommendation 2 (concerning the repeal or otherwise of Schedule 2 of the *Classification (Publications, Films and Computer Games) Enforcement Amendment Act 2001*).'

Recommendation 5 Page 46

The Committee recommends that:

- the Attorney-General, through the Standing Committee of Attorneys-General, investigate the constitutionality of the national classification scheme and take any remedial action required,

- the Attorney-General consider either establishing a licensing scheme, similar to that which operates in the ACT to allow controlled premises to sell X-rated material in NSW or taking more enforcement action against breaches of the legislation, and

- the Attorney-General write to the Minister for Communications, Information Technology and the Arts suggesting that the review of the operation of the on-line regulatory scheme consider:

- (a) including a weighted list of objectives of the scheme, and

- (b) developing effective and enforceable nationally uniform enforcement provisions for implementation by States and Territories.

Responses

‘The Standing Committee of Attorneys-General has already considered the constitutionality of the national classification scheme (issues arising from the *R v Hughes* case). Legislative action has been taken by States and Territories, where appropriate, regarding this matter. Following advice from the Crown Solicitor, New South Wales has not pursued any legislative changes regarding this issue.’

‘The Attorney General listed the Final Report for consideration by State, Commonwealth and Territory Censorship Ministers at the Standing Committee of Attorney-Generals meeting in July 2002. That forum provides a venue for ongoing consideration of issues regarding X-rated material.’

‘The Final Report was forwarded to Senator Alston, Commonwealth Minister for Communications, Information Technology and the Arts) for inclusion in the review, by his Department, of Schedule 5 of the *Broadcasting Services Act 1992*.’