

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES)
ENFORCEMENT AMENDMENT (X 18+ FILMS) BILL**

Bill introduced, read a first time and ordered to be printed.

Second Reading

The Hon. PETER BREEN [4.43 p.m.]: I move:

That this bill be now read a second time.

The major objective of the Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill is to remove the current prohibition in relation to the sale and public exhibition of films that are classified X 18+ under the Commonwealth Classification (Publications, Films and Computer Games) Act 1995. The effect of the bill is to legalise the sale and public exhibition of what were generally known 20 years ago as X-rated videos, but today are known as X 18+ videos. That includes, of course, DVDs, which we did not have 20 years ago. In other words, the main purpose of the bill is to turn back the clock 20 years to 1984 when it was perfectly legal to sell and watch X-rated videos in New South Wales. Furthermore, the bill seeks to ensure that films classified X 18+ are sold only from restricted publications areas and it seeks to increase penalties for allowing minors to access adult material.

As I have pointed out to the House on other occasions, the citizens of New South Wales sell and watch X-rated videos and DVDs in vast numbers. This bill simply legalises that activity. Last night in this House the Hon. David Clarke gave a good speech in which he made the point that the right to freedom of religion includes the right to condemn other religions. According to the principle, those of us who believe Islam is a dumb religion and that the prophet Mohammed is the antichrist ought to have the right to say so; those of us who think the Jewish people are guilty of deicide and deserve every punishment they receive should not be restrained in what we say; and those of us who are convinced that Christianity is an elite and exploitative religion and that the founder of Opus Dei, Josemaria Escriva, is the patron saint of fascists should broadcast our convictions as widely as possible.

The principle of unrestricted free speech runs up against other important principles, including the right to privacy and the right to reputation. Nevertheless, within the confines of religious expression the Hon. David Clarke would have us say as we please, and he would label such language as religious tolerance. He is entitled to his opinion, of course, and I admire the conviction with which he expounds it. I would ask, however, that the Hon. David Clarke and others with strong religious convictions extend to others the same tolerance they demand when the argument is about censorship in general and X-rated videos and DVDs in particular. There was nothing harmful or degenerate in X-rated material 20 years ago when it was legal, and nothing has changed with the passage of time, except that DVD and video retailers now sell whatever they please because their industry is not policed. The result is a proliferation of harmful and degenerate material in New South Wales on a scale that is unprecedented.

On the watch of the Carr Labor Government, Sydney has become the porn capital of Australia. Within two kilometres of Parliament House honourable members can purchase every conceivable depravity on video or DVD, and the purchase is both

inexpensive and legal—with one minor exception. I refer to pornographic DVDs and videos depicting children under 18 years of age or depicting adults as if they were children under 18 years of age. Late last year, in the usual rush to legislate before Christmas, this House passed the Crimes Amendment (Child Pornography) Act. The legislation replaced the definition of "child pornography" as it appeared in section 91G of the Crimes Act with a new definition that is impossible to understand because it appears to be in conflict with other provisions in the Crimes Act.

Briefly, "child pornography" in the new section 91H means any offensive material that depicts a person under the age of 16 years engaged in sexual activity or a person so engaged who appears to be under the age of 16 years. However, section 91C of the Crimes Act defines a "child" as a person who is under the age of 18 years. Whether the conflict turns out to be a serious problem for Operation Auxin is something I can only speculate about, although I remind the House that the Government would not allow crossbench and Opposition members access to the Crown Solicitor's advice on the issue when it was before the House. The Government claimed that the advice related to the administration of justice, a spurious claim in the circumstances and one that may come back to haunt the Government. I raised this question about the new definition of "child pornography" because honourable members may recall that late last year I presented to the House a number of videos that I had purchased from retail outlets in George Street and in Darlinghurst. These videos were illegal. In fact, in the five shops that I inspected to purchase the videos I could not find one legal video—in other words, one video that was X-rated and had a classification number on it.

All these stores are packed to the rafters with illegal material and material that, in my opinion, is well beyond the pale. A couple of the videos I presented to the House on a previous occasion and which I attempted to table related to underage child sexual activity. At the time Reverend the Hon. Fred Nile kept interjecting on me, saying that the material was child pornography. I responded to his interjection by saying, "I think child pornography relates to prepubescent children." However, the new definition of "child pornography", which we legislated late last year in the usual rush before Christmas, is now clearly as Reverend the Hon. Fred Nile suggested. It means that any film that portrays a child who is under the age of 16 years or appears to be under the age of 16 years is child pornography. If I were now to bring into the House the material that I brought into the House at that time, I could be charged with child pornography.

Although it is illegal in New South Wales to purchase these DVDs and videos in these various illegal outlets, anyone who purchases a video that portrays a child of 16 years or what appears to be a child of 16 years can be charged and convicted of child pornography. This is a very serious matter. Not only did the Government pass legislation late last year to make the issue even more complicated, it has completely ignored these illegal outlets and will not police the law. In the old days the vice squad comprised good and professional people who knew what the law was and how to enforce it, but there is nobody in the police force today who has any specialised jurisdiction or qualifications to deal with this complex area of film classification and enforcement of laws in relation to X-rated videos and videos that are refused classification. The present law relating to the sale and public exhibition of X-rated DVDs and videos is widely disregarded by the community and its police service. A law that does not enjoy public support is a bad law because it brings the rule of law and the legal system into disrepute.

Disregard for the law in relation to X-rated videos and DVDs is particularly damaging because it means that people sell and watch material that is far more degrading and demeaning than anything that is likely to appear under the X 18+ classification. Indeed, bestiality, child pornography, pain and faeces fetishes are all standard fare in the sex shops and second-hand bookshops that operate illegally but with apparent impunity in the lower end of George Street, in Darlinghurst, in Kings Cross and in the city of Sydney. A similar proliferation of retail outlets selling this material can be seen in most suburbs and towns throughout the State, with the additional problem in country areas that the material is also sold in newsagents, service stations, supermarkets, corner stores and so on. These outlets are not restricted premises, which means children have easy access to the material. Retailers who ignore the law concerning what they sell are unlikely to have scruples about who buys this illegal material.

On the watch of the Carr Labor Government three million illegal videos and DVDs are sold in New South Wales every year. The main purpose of my bill is to get rid of this black market and the corruption and exploitation it necessarily involves. I also happen to know that the issue of illegal DVDs and videos has been to Labor caucus several times and the attitude of the Premier is that the party should let sleeping dogs lie. Although I agree with the Premier that these people who profit from the illegal sale of pornographic material are dogs, it is not true to say that they are sleeping. Organised crime has always operated in the sex industry because of various prohibitions, and the prohibitions involving pornographic videos and DVDs are now so lax that the crooks are working at a frenzied pace. According to an article in the *Sunday Mail* last year by Martin Wallace, every year more than \$200 million is channelled back to terror groups and organised crime gangs in South-East Asia as a result of the sale of illegal pornographic DVDs and videos in Australia. In other words, the people of Australia are funding these terrorist organisations and crime gangs to the tune of \$200 million every year solely from the proceeds of sale of illegal pornographic DVDs and videos.

By properly regulating the industry a smart government could direct much of this illegal profit into consolidated revenue, as happens in the Australian Capital Territory and the Northern Territory, which are both legal outlets under the Commonwealth legislation. They have officers who are engaged full time in policing the outlets to make sure that the only material that is sold is legal and is classified under the Commonwealth classification laws. I should mention that the booming black market in DVDs and videos is a direct result of the decision taken 20 years ago to ban X-rated material.

Reverend the Hon. Fred Nile: A good decision.

The Hon. PETER BREEN: Reverend the Hon. Fred Nile says it was a good decision. I would suggest that the decision was based on a campaign of deception and misinformation. I do not say that it was deliberate deception and deliberate misinformation because the people involved in the campaign were honourable, good people, but they did spread a number of inaccuracies and they deliberately blurred the line between X-rated material and other material, which was far more sinister, far more degrading and far more disgraceful by any definition. The people involved in

the campaign to make X-rated videos illegal included Reverend the Hon. Fred Nile, Lance Shilton, Jim Cameron, Brian Harradine and, most famously, Mary Whitehouse, who was described in the July 1985 edition of the magazine *Outrage* as "the international queen of anti-pawn crusaders". Misinformation and deception were the undercurrent of the campaign.

These so-called video nasties that I have described and that I have attempted to table include child pornography, violence including rape and mutilation, various fetishes, horrors, pain videos and even so-called snuff videos—all this material was lumped into the same basket and definition as "X-rated material". Clearly, all that other stuff could never be classified as X-rated material because "X-rated material" has a specific definition, which is reasonable and sensible, and has been in operation since the 1980s. In my view, the anti-porn crusaders have reaped a whirlwind from their campaign to the extent that the market for pornographic DVDs and videos is now overwhelmingly dominated by video nasties. Mary Whitehouse saved us from a house cat so we could be eaten by a tiger. The guidelines for film classification are listed in the Commonwealth's "Guidelines for the Classification of Films and Computer Games 2003". The X classification prohibits any depiction of violence—there is no violence in X-rated videos—no physical or sexual violence, no sexualised violence and no coercion. The X classification is restrictive and only allows consenting erotica. Sexually assaultive language is banned, as are depictions that purposely demean anyone involved in sexual activity.

Reverend the Hon. Fred Nile: It includes bondage in the videos.

The Hon. PETER BREEN: Fetishes are not permitted, as I understand it.

Reverend the Hon. Fred Nile: Bondage is.

The Hon. PETER BREEN: I would have to defer to Reverend the Hon. Fred Nile on the issue of bondage. I am not even sure that I know what bondage is. Body piercing and the application of substances such as candle wax are certainly precluded. Golden showers and spanking are precluded. With great respect to Reverend the Hon. Fred Nile—

The Hon. Michael Gallacher: We could be real terrors and ask you to define these for us.

The Hon. PETER BREEN: I would have to bring in the videos. Honourable members would have to allow me to table the videos if they want them defined.

Reverend the Hon. Fred Nile: All of that material is unclassified and banned.

The Hon. PETER BREEN: Reverend the Hon. Fred Nile is right, but he deliberately confused unclassified and banned material with X-rated material. That is how the honourable member's campaign ran, which is why it was so successful. The honourable member deliberately blurred the line between X-rated material and all other excluded material. With great respect to the honourable member, bondage is excluded from the X-rated category.

Reverend the Hon. Fred Nile: I've seen labels for bondage.

The Hon. PETER BREEN: They are mislabelled. The Commonwealth definition specifically states that fetishes, such as body piercing, application of substances such as candle wax, golden showers, bondage, spanking and fisting, are not permitted. So anything like that is excluded. The definition of "X-rated" is narrow, and includes erotica and consenting adults. All the other stuff that the honourable member deliberately blurred in the line is now overwhelming the market, and that is why I say that Reverend the Hon. Fred Nile has reaped the whirlwind.

[*Interruption*]

Reverend the Hon. Fred Nile has reaped the whirlwind as a result of his campaign. He won the campaign and lost the war. Some three million illegal videos are sold in New South Wales every year, and they are disgraceful. The problem is that the people of New South Wales are selling and buying them without fear of prosecution.

Pursuant to sessional orders business interrupted.

Debate resumed from 24 February.

The Hon. PETER BREEN [11.16 a.m.]: When this bill was last debated in this House I said that people in New South Wales are selling and buying illegal pornographic material on such a scale that the market for unclassified material in New South Wales is now completely unregulated. I recall that when the film, *Baise-Moi*, was originally banned by the film censor, Premier Carr was one of the outspoken critics of the decision. He said that people should be able to watch whatever they please. That reminded me of the Peter Sellers film *Being There*, and the famous line "I like to watch", which seems to have become the theme for film classification censorship in New South Wales. It seems to me that the Premier has achieved his desired outcome because the people of New South Wales watch whatever they please. The market in illegal DVDs and videos is open slather. One could not successfully prosecute for selling or buying illegal pornographic films in this State for love or money.

I am reliably informed that everybody in New South Wales who has pleaded not guilty to a charge of selling or publicly exhibiting an illegal pornographic film in the past four years has been acquitted. In other words, not one successful prosecution has occurred in New South Wales over the past four years for selling or publicly exhibiting an illegal pornographic video or DVD. According to the New South Wales Bureau of Crime Statistics and Research, just 14 people have pleaded guilty to a charge of selling or publicly exhibiting an illegal pornographic film in the past four years, and the average fine has been approximately \$300.

Reverend the Hon. Fred Nile: Shame!

The Hon. PETER BREEN: Reverend the Hon. Fred Nile says "shame", and I agree with him, particularly given the fact that the maximum penalty for selling or publicly exhibiting an illegal pornographic video or DVD is \$11,000 or imprisonment for 12 months. In terms of a range of penalties, one would have to say that a fine of \$300 is

at the very bottom of the scale.

Reverend the Hon. Fred Nile: It is almost decriminalisation.

The Hon. PETER BREEN: It means that people can sell or publicly exhibit an illegal pornographic video or DVD with impunity. There is no attempt by the Government to enforce the law, so the law is brought into disrepute. If a corporation publicly exhibited or sold an illegal DVD or video, the fine under the legislation would be \$27,500 whereas the average penalty imposed is \$300. It is a disgrace. I mentioned the film *Baise-Moi* and the furore it caused when the censors first banned it and then changed their minds. What actually happened was that the Office of Film and Literature Classification banned the film and that decision was overturned by the Classification Review Board. The film depicts sexualised violence in the name of art. I was so appalled by the film that I had to leave the cinema. One would never find that level of sexualised violence in an X-rated video or DVD because the censor would not allow it. So it is quite incongruous that a film containing sexualised violence, in the name of art, is allowed to be publicly exhibited whereas material watched by people in their own home depicting erotic sex between consenting adults—no violence, no fetishes, no exploitation, no under-age people—is somehow illegal. I will not be surprised to see the arguments being rerun, because another film that is currently before the censor called *Nine Songs*, like *Baise-Moi*, contains sexualised violence—

Reverend the Hon. Fred Nile: It has real sex.

The Hon. PETER BREEN: I again have to defer to Reverend the Hon. Fred Nile on these matters. Someone told me that he has his own private collection of these things.

Reverend the Hon. Fred Nile: No, that is a lie.

The Hon. PETER BREEN: It is a good story. It is part of the urban mythology on the censorship of films and videos.

Reverend the Hon. Fred Nile: You can visit my home—

The Hon. PETER BREEN: In fact, someone said to me yesterday that he has a wall of videos. If he has, I would really like to see it because I get very confused about how these films are classified.

Reverend the Hon. Fred Nile: *My Fair Lady* and all those films.

The Hon. PETER BREEN: I think that is on the same shelf as *Debbie Does Dallas*. I know nothing about the film *Nine Songs* except that there is almost certain to be sexualised violence, exploitation of teenagers and some kind of sexual fetish. That is the genre. That is how it works. That is what the art filmmakers include in order to promote their work. It may be artistic but the point I want to make is that these films are much worse, much further beyond the pale and much more damaging—certainly more demeaning—than X-rated films. The guidelines are very strict as to what can be shown in an X-rated film. I have explained them before. I will not explain them again, particularly with children in the gallery.

The author Helen Vnuk wrote a very good book in 2003 about film classification and censorship in Australia. Published by Random House, the book is titled *Snatched: Sex and Censorship in Australia*. Writing about the book in the *Sydney Morning Herald* on 7 July 2003, Helen Vnuk said that Premier Carr wants to lobby for changes to Federal legislation to allow banned films to be shown at film festivals. But on the subject of introducing legislation to permit the sale of X-rated videos and DVDs the Premier is notably silent. Not one X-rated DVD or video would hold a candle to the graphic depiction of nasty sex exhibited in the art films. Yet the Premier would prefer to leave sleeping dogs lie. As I said earlier in the debate, the people who exploit the Government's inaction by profiting from the black market in pornographic DVDs and videos may be dogs but they are not sleeping.

I understand that approximately 10,000 pornographic videos were produced around the world last year, and about 600 of them were classified by the Office of Film and Literature Classification. The remainder, approximately 94 per cent, do not go unsold but, rather, end up in retail shops with forged classifications on the covers, or indeed no classification. The industry is now so bold that no-one bothers to put a classification on the binder of pirated videos and DVDs since nobody is policing the industry. I will not terrify honourable members again by repeating the titles of the videos I attempted to table but I make the point that the material included under-age material. Since the laws were changed last year relating to child pornography I believe that material would qualify as child pornography.

Most of the erotic and pornographic material sold in New South Wales each year has not been approved by the censor. The stringent guidelines of the Commonwealth are being ignored, and reasonable material is being sold alongside hardcore, offensive, violent and illegal films that do not comply with any guidelines or legislation. If films classified X 18+ by the censor were sold legally the policing of illegal pornography would be made much simpler. The existing law is adequate to enforce film classification legislation but only minimal or no action is taken and, as I said, the fines are minuscule. If it were legal to sell as well as buy legitimate X-rated videos in New South Wales that would enable more effective policing of the illegal industry.

Movies that have received an X 18+ classification from the censor could then be sold legally in sex shops or adult shops and it would be illegal for them to be sold in video shops or the so-called adult bookshops that are so abundant about town. It would dramatically reduce market access for the illegal pornography. All that is required is a label classification on the jacket by the Office of Film and Literature Classification. Any item that did not have an authentic label would be illegal to sell or buy from any outlet. It would be a very simple matter to police and would become a source of revenue for the State.

The argument that legalising the sale of X18+ material will lead to a plethora of erotic material suddenly being made available in the State is flawed. The fact is that there is an overwhelming amount of illegal and highly offensive material currently being sold from a variety of unrestricted premises, with very little policing of the industry. The only way to reduce this black market is to make a clear distinction between what is legal and what is illegal, and in that way provide for greater enforcement than currently exists. Items [2], [5], [8] to [10], [12] and [17] of scheduled increase the penalties for offences relating to allowing minors access to the material and provide for up to two years imprisonment.

Schedule 1 [3] ensures that the legal material must only be displayed in a restricted publications area, only delivered to a person who has made a direct request, and only published if the film displays the determined markings and classification number allocated to the film by the board. Schedule 1 [6] prohibits delivery to a minor and schedule 1 [13] prohibits privately exhibiting the material in the presence of a minor. The bill incorporates the amendments of the Classification (Publications, Films and Computer Games) Enforcement Amendments (Uniform Classification) Bill 2004 passed by the Parliament last year. I supported the amendments to the uniform classification bill because they were aimed at standardising the separate and inconsistent classification systems that exist among the Commonwealth and the States.

The amendments in this bill have a similar purpose. Schedule 1 [1] removes the current prohibition on selling or publicly exhibiting a film classified X 18+. In New South Wales a sharp contradiction still exists in relation to X 18+ films: while it is illegal to sell an X 18+ film in this State, it is not illegal to buy one. Even though they have been the subject of a legal classification by the Commonwealth censor, the sale of these films warrants a penalty of approximately \$11,000 or up to 12 months in gaol. In the case of corporations the penalty is \$27,500. Under Commonwealth law, and in the Territories, it is legal to buy and sell material classified by the censor as X 18+. Schedule 1 [1] will bring New South Wales into line with Commonwealth law and, by enabling more efficient policing of the industry, will reduce the amount of illegal and highly offensive material currently being sold throughout the State. I commend the bill to the House.