

Ratings Scheme Doesn't Rate Well

Written by New Matilda | Robbie Swan
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When Attorneys-General from around the country meet next month, reform of the Classification Act is on the agenda. They'll have their work cut out for them, writes Robbie Swan.

When I was a lad, "scag" was a euphemism for heroin. Something that lulled you into a deep sense of "everything's all right with the world, man" — when really you were totally divorced from reality. These days the term SCAG is an acronym for the State and Commonwealth Attorneys-General" — although over the last few years you could be forgiven for thinking it was tantamount to a stroll through a poppy field. There's not a lot of action or constructive thinking going on.

SCAG meets every four months and to show that all the states are treated equally, they hold it in a different state each time. They discuss the pressing legal matters of the day and generally devote an afternoon session to censorship issues. Unanimous agreement from all Attorneys is required for any legislative changes. One state attorney with a religious agenda can hold up national censorship law reform — as former South Australian Attorney General Michael Atkinson did when he refused to agree to an R rating for computer games for the entire time he was A-G.

The upcoming SCAG meeting on 7 December will tackle major reform of Australia's federal Classification Act for the first time in 15 years.

Labor MPs around the country are still trying to come to grips with the extraordinary actions of NSW Legislative Council President, Amanda Fazio, in crossing the floor and voting with the Greens against a Bill to toughen up adult and non violent pornography laws last month. Why would she risk it all for such a seemingly irrelevant and edgy issue? The answer is that, like many in the ALP, she had simply had enough of government interference in people's private lives.

This Bill gave NSW police the power to classify adult (potentially X rated) films simply by looking at their covers. They didn't have to play the film to see what was on the disk and it didn't matter if the disk inside was in fact, a Disney cartoon. The Bill (brainchild of NSW Attorney General John Hatzistergos and strongly supported by NSW Police Commissioner Andrew Scipione) simply gave police the power to make a determination about the classification of the DVD.

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As long as the owner of the DVD agreed with the police assessment, then the case went ahead. If the owner didn't agree with the plods, the new laws made shop owners pay for every film that was submitted for classification to prove the case. In some cases this could be up to 1000 DVDs — and at \$850 per film, the NSW police had already bankrupted you before you went to court.

Amanda Fazio and the Greens simply couldn't come at this nonsense and voted in line with a Parliamentary Committee that said that the Bill was totally flawed and gave police too much power. This was not enough for the religious ideologues who hold sway on civil liberties in both the NSW Liberal and Labor parties, and they gladly held hands to pass this one together in a rare show of unity.

This legislation is not part of the federal Classification Act and nowhere in the preamble or in the Explanatory Memorandum to that Act is it stated or implied that state or federal police officers will be responsible for making any classification decisions about films, publications or computer games in Australia. The NSW law effectively undermines the national cooperative scheme that we are said to have, by allowing the possibility of a film being given one classification by the Australian Classification Board and a different one by the NSW Police. SCAG will need to address this issue very quickly.

They will also have to consider that for the first time in over 60 years, an Australian has been sent to jail for a censorship offence. With no prior convictions, a 40-year-old adult shop manager was sent to jail earlier this year in a NSW court, for selling films that had already been classified as X18+ by the federal Classification Board. Transcripts of the case clearly show that the District Court judge who heard the case and the Crown Prosecutor both had flawed understandings of the Classification Scheme. When he got out of jail, he was a broken man. Not content to let him try and rebuild his life, the NSW government then hit him with over \$40,000 worth of classification fees from the police investigation.

The man has lost his business, been thrown into prison and then asked to come up with a year's salary or risk being incarcerated again — all for selling material that was legal at a federal level. In reality, this is not a long way from the censorship regimes of Iran and China. It is one thing to be lightly fined for selling Commonwealth classified adult pornography in an Australian state. Being sent to jail is another.

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The problem for SCAG is that it must address the basic philosophical and legal issues behind these appalling inconsistencies. Who says that state morality is different to a national morality? In 2010, how can any intelligent person say that Queenslanders or Victorians have a different morality to "other" Australians — because that's exactly what the conflicting laws suggest. If you live in NSW you are governed by a set of moral standards that say people should be sent to jail for selling erotic films. In the ACT or NT you can run a business selling them.

Conroy is on record [saying](#) that the government will review the Refused Classification (RC) rating — a job which will ultimately fall to SCAG as well.

At present the RC category contains images and depictions of such things as legal acts like consenting bondage and discipline, instructions on criminal acts, instructions on euthanasia and terrorism. In the erotic sphere, the rules are very tough. Almost 90 per cent of erotic DVDs from the US and Europe have to be modified in some way to get an X rating in Australia — something that Conroy and SCAG will need to consider when rating the 600,000,000 websites that feature sex or sexual themes on the world wide web.

Here's how it works: You can say "f*ck me" in an erotic film but you can't say "f*ck you" with any intensity or the film will get an RC rating for its "assaultative" language alongside the explicit sex. Similarly, a gun or a knife simply sitting on a table next to an explicit sex scene can cause the film to be Rated RC. A scenario where an actor who is clearly over 18 for most of an adult movie, dresses up in pig tails and a mini skirt for one particular scene and plays an innocent teen, puts the film at risk of being rated RC or worse — child p*rnography. Fetishes like leather and rubberist s*xual themes, foot worship, golden showers, tied up and tickled and fem dom can all be banned as offensive.

Female ejaculation, a bodily function recognised by the scientific and medical community is still said to be a form of urination by the Classification Board and given the dreaded RC rating as an offensive fetish. This "flat earth" interpretation of basic female biology was used to convict Australia's largest producer of X rated content earlier this year. One of the films which police used in evidence to convict the Melbourne-based Abbywinters.com was said to be an RC film requiring a tougher penalty than an X film because it showed a young woman masturbating to orgasm and then inexplicably urinating as she came. While the biology that underpins all this media may seem below the brief of nine suited and saintly SCAG members, it is exactly this attitude that is seeing people fined and jailed on spurious 19th century notions of moral propriety. (As a postscript to this story, the AbbyWinters company fled Australia days after they were fined and relocated in Europe where everything they were doing was perfectly legal).

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The increasing numbers of young women presenting for labiaplasty because they only see Photoshopped images of vaginas in their partner's adult publications is also a matter for SCAG to address as well. Why do the Classification Guidelines state that depictions of women with "outies" are more offensive than women with a neatly zipped pudenda? Its like saying that an image of a circumcised man is more offensive than one who is not. Who made this ruling and why is it not subjected to some sort of rational review?

Classification fees are also in dire need of review. If you own a nightclub or a gay sauna and have a business card with a drawing of a naked man or women on it, by law you must submit the business card for classification as a "Submittable Publication". You will also have to send in a cheque for \$700. Classifying a business card is not rocket science. It takes a few seconds. Classification is a "fee for service", or so we are told in the Classification Act. This is not an equitable fee for service as is the case with most classification fees. Only big companies like Sony and Warner Brothers can afford the \$10,000 fee to review or appeal a classification. The fee is beyond the reach of independent or small entertainment or media businesses and so a lot of bad decision making is simply left unchallenged. SCAG needs to look at the "economic" censorship that is being caused by the exorbitant cost of classifying materials these days.

It's about time that SCAG looked at doing what the Americans, the Europeans and the Japanese have been doing for years: self regulation. In Japan the government hands the classification/censorship administration over entirely to the entertainment industry and the country hasn't been overrun with serial killers and rapists. In Europe and the US entertainment companies classify or label their material according to government guidelines but do so voluntarily. If you make a mistake and step outside the guidelines you are punished. All the costs of self-classifying are borne by industry and they generally do it at about half the price that government charges.

Australia would save in the order of \$5 million per year by allowing the classification functions of the Classification Board to be performed by the businesses which require them. This includes the adult end of the spectrum as well.

Unless SCAG starts heading down this road, the annual budget for checking and classifying media and entertainment of all sorts will start looking like that of China or Burma. In a modern democracy there are limits to the amount of money you throw at classification. Over a certain threshold and official classification becomes official censorship. We've just about reached that tipping point.

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