

Speech by Mr Donald McDonald AC, Director, Classification Board Sense and Censorability



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Introduction

- I am very fortunate to have had such a long and varied association with the Arts throughout my working career.
- As a result of my recent appointment to the position of Director of the Classification Board (the Board), I am able to continue this association although it is more closely aligned with the broader entertainment sector.

Some people might question whether *The Simpsons Movie* or the *Grand Theft Auto* computer games series qualify as Art - they are, nonetheless, forms of creative expression!

- My present position is one which some people might view as opposing the Arts – rather than acting as an advocate of the Arts.
- This is particularly the case, when I observe that the Director of the Board is often referred to as the “Chief Censor”; indeed my predecessor and I were both called that in one of the Real Estate gossip columns just two weeks ago.
Chief Censor was the old job title and was always somewhat misleading. One might have preferred Lord Chamberlain.
- “Chief Censor” was likely to conjure up images of someone who would ordinarily be anathema to the Arts!
- My correct title of Director of the Classification Board has a wonderful Orwellian neutrality about it but my job, along with the other members of the Board, is to decide classifications for films, computer games and certain publications by applying the relevant legislation and guidelines.¹
- Australia has certainly come a long way since the early days of censorship – in fact, it was not so long ago that censorship had a very obvious presence in the Arts landscape.

¹ The *Classification (Publications, Films and Computer Games) Act 1995*, the National Classification Code, the Guidelines for the Classification for Films and Computer Games and the Guidelines for the Classification of Publications.

- Today I am going to give you some personal reflections, discuss the philosophy and history of classification and make some observations about art censorship and censorship in theatre – all of which show the evolution of community standards.

Hair – the Rock Musical

- Everyone can remember *Hair – the Rock Musical*.
- Janet and I were in the theatre when the Australian production opened at the Metro Theatre in Sydney's Kings Cross on 4 June 1969. *Hair* was not your average night out at the theatre – it challenged many of the established social norms of the era and it contained nudity, bad language, drugs and depictions of “free love”.
- The controversy surrounding the show was immense – the nude scene particularly aroused the interest of the media and the public.
- This was at a time when under the conventions of the day, public nudity was confined to the visual arts rather than the reality of live theatre.
- Censorship of live theatre was a State responsibility.
The man who had the final say about whether Sydney audiences would see the nude scene at all was the Chief Secretary of New South Wales, Eric Willis.
- Although the Chief Secretary's reported view was that the nudity was completely unnecessary, he concluded that its brevity made its inclusion harmless.
- But during its run *Hair* became mainstream theatre. It became a very successful production – attracting extraordinary reviews.
- According to some commentators, the nude scene in *Hair* is credited with liberating the theatre from repressive censorship laws in both Britain and Australia.
It may have helped make the notorious episodes of *Number 96* acceptable to a wide television public.

Censorship and its evolution

- And yet censorship matters have and continue to be pertinent to the arts, broadcasting and entertainment sectors.
- Censorship issues can arouse significant emotion among the population – especially at times when people consider their freedoms are being eroded or conversely, when people fear that their security and well-being is being compromised by unwelcome material.
- Writing in last week's *Spectator*, the distinguished novelist and essayist Alan Wall had this to say about censorship:

T.S Eliot thought it a curiosity of our culture that we use the word ‘taboo’ purely negatively. The word ‘censor’ is surely similar: the notion that any person or society could survive for long without some forms of censorship is fatuous, and yet it is something that tends to arouse disapproval. It implies political oppression, sexual squeamishness, or even worse, the meddling in other people’s psyches in order to “put them right”. We are far more likely to protest about it (censorship) than celebrate its achievements.”

- Of course, the nature of censorship is evolutionary. Over time, the classification scheme in Australia (including the role of the Board) and the classification tools its members use have evolved to provide for sensible and defensible decisions that also have regard to the “sensibilities” of our community.
- The interesting challenge for both the Government (in formulating classification policy and legislation) and the Board in determining classifications is to appropriately reflect these “sensibilities” or community standards as they are commonly known. Standards which, in reality, are many and varied, and in a state of flux.
- As we all know individuals’ sensibilities do not necessarily coincide and may in fact be in direct opposition to one another– which makes it difficult to determine community standards that are broadly representative of the population.

- For instance, do you ban material simply because the majority consider it offensive even if there are significant minorities that feel differently? Do you act in response to an articulate and vocal minority that may find certain material offensive even though they can choose not to access it?
- We must find the meeting point between a sensible approach that allows individuals to exercise a choice regarding their entertainment options (and for that matter industry to produce material of their choice) and appropriately reflecting current community standards that are quite rightly applied in order to limit access to, and availability of, certain material.
- Let me illustrate how dramatically society's sensibilities can change: In 1931 the Motion Picture Producers and Distributors of America (the body responsible for rating films in that country), in its Code for Industry stated:
 - “Scenes of passion should not be introduced when not essential to the plot. In general, passion should be so treated that these scenes do not stimulate the lower and baser element”.
- Only 75 years later, “scenes of passion”...and then some (!) are routinely and abundantly seen on our screens whether it be on television, DVD or at the cinema. In fact, it would be difficult to name a feature film these days without at least one such “scene of passion” irrespective of the film's actual subject matter. In today's age of reality television, it takes a “turkey slap” to cause a real stir!
- Interestingly, the same organisation, now known as the Motion Picture Association of America (MPAA), recently announced that it will specifically include smoking among the factors to be considered in the rating of films in that country. Films containing pervasive smoking or glamourised depictions of smoking may attract higher ratings.

- Who would have imagined that such a seemingly stark “reversal” of attitudes would occur whereby “scenes of passion” barely raise an eyebrow but smoking raises the ire of censors. It is also interesting to note that smoking is still a legal activity just as passion was in 1931 (at least between some adults)!
- The debate (both in the US and here) that followed the MPAA’s announcement about smoking is indicative of the how much censorship matters – and the spectrum of views it elicits – across all sections of society.
- The differences of opinion and the associated emotions they generate is mirrored in the correspondence I receive as Director of the Board. Everyone has a view, everyone believes they would make better decisions and everyone would more accurately reflect the views of the community!
- There will always be certain material such as child pornography which the community will not tolerate for obvious reasons.
- However, for other material – particularly that at the high-end of the spectrum where decisions may result in material either being released or banned - the views of individuals within a community can often be distinctly at odds with one another.
- The situation today is complicated further because community standards vary significantly across international borders – borders which are increasingly meaningless due to advances in telecommunications technology that provide for instantaneous access to an endless source of material and exchange of information.
- This presents significant challenges for Government in terms of regulating certain activities within a country when the same regulations do not exist outside it and when the exchange of information and communication occurs so rapidly and freely across borders.
- Community standards not only change with the passage of time and the crossing of borders but they can also shift in response to technological advances and significant global events.
- So you can have a situation as now, where there is arguably more freedom around material that is available to adults but an increase in legislative restrictions on certain material that the community has expressed concerns about following events such as the 9/11 and Bali terrorist attacks.

- The amendments to the Classification Act regarding terrorist material² were passed by Parliament only in the last six days. The amendments provide that, if a film, publication or computer game advocates the doing of a terrorist act, it must be Refused Classification.
Importantly, there are significant provisions that protect the Arts and entertainment industries. Material is not captured under these provisions if it “depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire”.
- It is against this background that the notion of sense and censorability is so important.
- Of course, no classification decision made by the Board is ever going to satisfy everyone.
- However, I believe that the principles that underpin Australia’s classification scheme seek to achieve an appropriate balance between sensible classification decision-making and consideration of community standards (ie. sensibilities).

Philosophy of Classification

- Fundamentally, Australia’s classification scheme is based on the principle that adults should be free to choose what they read, hear and see with some limited exceptions.
- The exceptions include certain material such as child pornography, gratuitous or exploitative depictions of sexual violence, cruelty or real violence and detailed instructions in matters of crime or violence.
- This type of material is Refused Classification and therefore is not able to be sold or distributed in Australia.
- Other important principles of the scheme include that:
 - the standards of morality, decency and propriety generally accepted by reasonable adults should be applied in making classification decisions; and
 - minors should be protected from material likely to harm or disturb them.
- Despite regular references to censorship in the media and amongst the community, the National Classification Scheme in Australia (as the name suggests) is largely about classifying material.

² The Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007 was passed by Parliament on 20 September 2007.

- The primary purpose of the scheme is to provide information and advice to the public so that they can make informed choices about entertainment material for themselves and those in their care.
- In fact, the Board does not “censor” material at all and must classify it in the form it is submitted. Unlike schemes in other countries, the Board does not edit material or recommend modifications to publishers or filmmakers – we only determine a classification and consumer advice.
- Today, very few products are Refused Classification and therefore fall within what may traditionally be considered censorship. Of 6097 commercial classification decisions made in the 2006-07 financial year, only 59 items were Refused Classification.
- However, this has not always been the case.

History of the National Classification Scheme

From Censorship to Classification

- In Australia, the Commonwealth has always played a national role in the censorship of material. For most of the 20th century this occurred under Customs legislation³.
- Customs Regulations⁴ prevented the importation of films or publications if they offended against the criteria set out in those regulations.
- Prior to the advent of films the scheme was mainly concerned with the importation of books.
Under the legislation at the time, books could be seized by Customs for being blasphemous, indecent or obscene.
- Commonwealth restrictions on film imports provided for Censors to examine applications for registrations of imported films, refusing registration to any film that was:
 - a) blasphemous, indecent, or obscene;
 - b) likely to be injurious to morality, or to encourage or incite to crime;
 - c) likely to be offensive to the people of any friendly nation; or
 - d) depicts any matter the exhibition of which is undesirable in the public interest.

³The *Customs Act 1901*

⁴The *Customs (Prohibited Imports) Regulations* and the *Customs (Cinematograph Films) Regulations*

- Once imported, the circumstances in which imported material could be sold, exhibited or hired were determined by separate State and Territory legislation.
- There was an expectation that State governments would ensure that unregistered films were not exhibited. These governments were independently able to classify films that had been registered.
- A similar regime applied to publications, with powers held by the States. The Commonwealth regulated works in the Australian Capital Territory and Northern Territory.
- Eventually classification activities were carried out by the Commonwealth Film Censorship Board under the respective State and Territory legislation. An appeal process also existed whereby material could be submitted to the Film and Literature Board of Review.
- For most of the twentieth century, censorship in Australia continued to be a complex affair conducted under disparate regulation with limited uniformity. At one point, the Chief Censor noted that a classification decision about a film involved the administration of up to 13 different pieces of legislation in the various jurisdictions.
- Eventually, recommendations from the Australian Law Reform Commission (ALRC) led to the introduction of new legislation in 1995 which established the fully cooperative National Classification Scheme.
- The ALRC report also recommended that the then Censorship Board and the Censorship Review Board be renamed after noting that:

“... rather than focussing on preventing material from being disseminated, policy now concentrates more on classifying films and publications into defined categories, with restrictions on dissemination only being imposed at the upper limits of what is considered acceptable by the general community.”

The Interface between Classification and Community Standards

- As a result of censorship reforms since the 1970s, community standards are now an important component of the classification scheme and as such, are reflected in the classification tools used today by the Board. For example:
 - The Classification Act states that among the matters to be taken into account when making classification decisions are the “standards of morality, decency and propriety generally accepted by reasonable adults”;

- The Act also stipulates that when appointing members to the Board, “regard is to be had to the desirability of ensuring that the membership of the Board is broadly representative of the Australian community”;
 - The National Classification Code principles include the need to take account of community concerns about “depictions that condone or incite violence, particularly sexual violence; and the portrayal of persons in a demeaning manner”; and
 - The Classification Guidelines are revised from time to time with extensive community input.
- In his 1970 Statement on Censorship, the Hon. Don Chipp MP, the then Minister for Customs and Excise, emphasised the need for classification decisions to be based on community standards.
 - As it happens, Don Chipp, was sitting immediately behind Janet and me at the opening of *Hair* in 1969!
 - In 1970 a book called *Australia’s Censorship Crisis* was published by Geoffrey Dutton and Max Harris neither of whom was given to understatement. The opening line of the preface states that “This book will make cultural history in Australia”. But in fact, things were already on the move.
 - The following year, an important change in the approach to classification in Australia occurred with the introduction of the R 18+ classification on 15 November 1971.
 - For the first time in Australia, the policy position of the rights of adults to access high impact material was articulated and children under the age of 18 were legally prevented from seeing material which was suitable for adults only.
 - The underlying concept for an R 18+ classification was that adults should be able to read, hear and see what they wish subject to certain qualifications concerning material that should be Refused Classification.
 - The policy intention behind the R 18+ classification was that community standards would form the basis for decisions about whether particular material should be made available.

Art Censorship

- Today, the focus of classification is on films, computer games and certain publications.

- The Classification Board does not usually classify live theatre unless it contains video or film elements such as the Spanish production *XXX – La Fura Dels Baus* that toured Australia in 2004.
- That production included video screens displaying film footage of a graphic and sexual nature which the Board classified R 18+.
- The scheme also provides for “bona fide” artwork (if submitted to the Board) to be classified.
- An interesting example from 2001 was the matter involving the book *Pictures* by the American photographer Robert Mapplethorpe which was seized by the South Australian Police and submitted to the Board for classification.
- *Pictures* contained photographs of fetishes such as S & M and other strong images. Nevertheless, the Board decided that the book was a bona fide artwork and classified it ‘Unrestricted’.
- Following a request for review by the Commissioner of the South Australian Police, the Review Board classified the publication ‘Category 1 - restricted’.
- The Review Board also considered *Pictures* to be a bona fide artwork, but felt that some protection would be provided to children by giving it a restricted classification. Material in this category can only be sold to persons 18 years or over and must be sold in a sealed wrapper.
- Censorship of the Arts (in the traditional sense) has almost entirely disappeared. However, looking back on the Arts in Australia, the interface between censorship and shifting community standards is clearly evident.
- Historically, the Arts have been subject to censorship under respective states’ obscenity laws⁵.
- In cases relating to visual art and obscenity, the question of whether an artwork is obscene (ie. whether it offends contemporary community standards) in Australia has been a question for the courts.
- The last blasphemy prosecution launched in an Australian jurisdiction — namely the action initiated by Cardinal George Pell, then Catholic Archbishop of Melbourne, against a photo-montage called *Piss Christ* — failed in the Victorian Supreme Court.
- There was reportedly uncertainty around the law against blasphemy in Victoria and there was a view that the montage was unlikely to cause public unrest.

Although it was most certainly in bad taste we don't have laws that cover abuses of taste.

- This infamous Andres Serrano work - a photograph of a crucifix submerged in urine - was physically attacked in two separate incidents in its opening weekend.
- The exhibition was subsequently closed as a result of a decision of the Director of the Gallery to protect the safety of the gallery and its staff.
- As recently as last month, the media reported on a controversial entry in the Blake Prize for Religious Art, which showed the Virgin Mary dressed in a Burqa and another in which a portrait of Jesus Christ morphed into an image of Osama Bin Laden.
- Although the works drew comments from some members of the community (including political leaders) on the offensiveness of the portrayals, there was no further action.
- To many people these artworks were clearly pointlessly offensive. However, it is perhaps helpful to heed the observation on the matter from the Anglican Bishop of South Sydney, Robert Forsyth, who said that “you should limit the language of outrage to things that are really outrageous”.

⁵ In NSW, for instance, these included the *Crimes Act 1900* (NSW), the common law offences of obscene libel and conspiracy to corrupt public morals and outrage public decency.

Censorship in Theatre

- Last week's presentation to the National Library by the Canadian Prime Minister, of a Sydney playbill from 1796, now the earliest item of published material in Australia, is a reminder of the importance of theatre in the tiny colony, described so wonderfully by David Malouf in *A Spirit of Play*.⁶
- From the outset, the theatre was perceived as a uniquely powerful mechanism for influencing emotions and for the delivery of seditious ideas in a place where people of all social orders mixed freely.

As an aside, each new wave of entertainment including videos, computer games, and the internet has brought with it demands for regulation based on perceptions that the latest form of entertainment is uniquely powerful, particularly attractive to impressionable sections of the community and capable of corrupting otherwise decent individuals.

- Theatre was also particularly amenable to censorship through:
 - licensing of commercial venues
 - prohibitions on commercial performances outside those venues
 - examination and licensing of scripts and monitoring of theatrical productions.
- In the 20th century the relevant legislation in NSW sought to regulate public entertainment that was "fitting for the preservation of good manners and decorum"⁷.
- Yet, censorship and the restrictions it placed upon the performing arts was a reflection of the attitudes of society at the time.
Laws were used not only to ban certain productions due to their content but to regulate how they might be performed.
- A classic example was the Folies Bergere tour of the Tivoli circuit in Australia in 1952, which gave locals their first public sight of bare breasts - as long as the breasts remained static, no movement, as required by law!
- Now, instead of causing a furore, similar and stronger content is a box-office dream. Productions such as the Opera company's *Salome*, a naked Mrs Robinson in the stage version of *The Graduate* and Nicole Kidman in *The Blue Room* create a frenzy of ticket sales rather than frenzied calls to ban them.

⁶ *A Spirit of Play: Boyer Lectures 20 December 1998*

⁷ Section 27 *Theatre and Public Halls Act 1908*

- Community standards in terms of what we find acceptable on stage have changed so dramatically that today, stage shows like *Puppetry of the Penis*, tour nationally even if one is not curious enough to attend.

Conclusion

- In my view the Australian classification scheme serves an important function in providing information to consumers, particularly parents, to enable them to make informed choices about entertainment material.
- Australia is arguably an open and broad-minded place – and this is reflected in a scheme that focuses on classification rather than strict censorship.
- The breadth of the Boards’ task is to balance the requirements that adults should be able to read, hear and see what they want, that minors should be protected from exposure to harmful material and that everyone should be protected from unsolicited material they find offensive.
- While sometimes difficult, every decision involves balancing these competing requirements along with the rights of artists to express themselves freely. It is also one of the points where commercial imperatives and public policy intersect.
- I also believe that the nature of the classification scheme itself and the principles it embodies, recognises the importance of artistic and creative expression and legitimate interests of the Arts community as demonstrated by:
 - the Act’s provision that artistic merit must be taken into account when making classification decisions; and
 - enabling the screening of potentially controversial, high impact material that may not otherwise be seen in Australia, under the Film Festivals Exemption scheme.
- It is a given that the Arts and entertainment industries fulfil a significant role in society – to amuse, move, shock, provoke, reflect, interpret, explain, inform, expose, comment, judge, critique and represent the world we inhabit. They also have the responsibility to be occasionally inspiring, uplifting and simply beautiful. The Arts (broadly speaking) are by nature a vehicle for agitation, pushing boundaries, questioning conventions and raising controversial issues.

- Under our system, as it exists today, there is scope for artistic freedom due to the very broad range of content that is permissible across the spectrum of classifications.
- It is for these reasons that, even in my current role, I continue to consider myself an advocate of the Arts.
- It is important for the Board to continuously seek an appropriate balance in terms of classification decisions and community standards.
- Properly managing this nexus gives certainty to producers and distributors when submitting product, increases the confidence of the community in the scheme and classification decisions and ensures the integrity of the underlying principle that adults should hear, see and read what they choose.
- Apart from being practically impossible to accommodate the entire spectrum of individuals' sensibilities, to attempt to do so would amount to a system of censorship rather than classification.
- It is also not the role of the Board to prevent entertainment material from exploring the spectrum of human behaviour and experience.

- The very small number of decisions annually which attract controversy (comparative to the large number of decisions made by the Board) indicates that we may be getting the balance right between sense and censorability. Indeed the modern day equivalents of Geoffrey Dutton and Max Harris could not reasonably speak of a censorship crisis in Australia today.
- Thank you for the opportunity to take part today.