NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES

Submission

to the

Senate Environment, Communications, Information Technology and the Arts'

Inquiry into the Provisions of the

Communications Legislation Amendment (Content Services) Bill 2007

All references to 'the censorship Schedules' refer to the existing Schedule 5 of the *Broadcast Services Act 1992* (Cth) and the proposed Schedule 7 of the Communications Legislation Amendment (Content Services) Bill 2007 (Cth).

25 May 2007

Authors: Michael Walton

1. Executive Summary

RECOMMENDATION 1

The New South Wales Council for Civil Liberties recommends that all the provisions that prohibit and restrict what adults can read, hear and see:

(i) in the Content Services Bill not proceed; and,

(ii) in Schedule 5 of the *Broadcasting Services Act* be repealed.

RECOMMENDATION 2

If the Bill proceeds, then Article 19 of the *International Covenant on Civil and Political Rights* should be adopted into the Broadcasting Services Act. This will ensure that freedom of speech is not unnecessarily restricted by the censorship Schedules.

1. The existing Schedule 5, and the proposed Schedule 7, of the *Broadcasting Services Act 1992* (Cth) ('the censorship Schedules') are bad law. They restrict freedom of expression and lawful e-commerce. They are based on false assumptions and unworkable technology. They expose citizens to an unacceptably high risk of identity theft. They are incapable of making the Internet "child friendly".
2. The members of the New South Wales Council for Civil Liberties ('NSWCCL'), like all Australians, agree that children should be protected from unsuitable material on the Internet and other information-delivery technologies. NSWCCL does not object to those parts of the censorship Schedules that require the reporting, investigation and prosecution of unlawful conduct on the Internet. NSWCCL positively supports those parts of the censorship Schedules that provide for the education of parents about child-protection filtering technologies.
3. However, NSWCCL objects to the censorship of lawful expression on the Internet. The prohibition of X18+ material and the restriction of R18+ and MA15+ material is a disproportionate and misguided response to the legitimate end of protecting children. The censorship Schedules place an unnecessary burden on freedom of speech and should be repealed.
4. The censorship Schedules fail to protect children. They cannot prohibit or restrict content that is unsuitable for children but which is hosted overseas. All the censorship Schedules can effectively do is prohibit or restrict what Australian adults and businesses can host on their websites.
5. Age restriction technologies, on which the censorship Schedules rely to restrict access to R18+ and MA15+ material, simply do not work according to a recent US court decision.

6. The only proven and effective technology available to protect children from unsuitable content is internet filtering on end-user devices, such as home and school computers. Such filtering is now built into modern operating systems, free of charge. These filters are configurable, so that older teenagers need not be restricted to the same degree as younger children. Filters can be password protected by parents, making it impossible for children to remove the filters.
7. These filters will protect children whether or not content is banned or restricted on Australian webservers. Content unsuitable for children can be both hosted on the Internet and subsequently filtered by end-user child-protection filters. This means that there is no legitimate reason to restrict or prohibit such lawful content on Australian servers. In other words, **the prohibition and restriction regime of the censorship Schedules is redundant and unnecessary**.
8. NSWCCL notes that filtering technology is not currently available for devices like mobile phones, but that plans are in development. Parents have the choice of disabling internet access on such devices. In fact, parents would be ill-advised to enable such access on their children's mobile phones until such time as effective filtering technology is available.
9. NSWCCL is also concerned that this Bill creates an army of private and unaccountable censors who will determine whether commercial content should be prohibited. It is unclear whether the decisions of these 'trained content assessors' can be referred on appeal to ACMA or the AAT.
10. Any reasonable adult, having examined this issue, will come to the inevitable conclusion that the prohibition and restriction of Australian content does nothing to protect children. All the censorship Schedules do is restrict freedom of speech and lawful e-commerce. The only effective way to protect children is to install filtering software on end-user devices.
11. The members of NSWCCL, like all Australians, believe in free speech and object to the censorship of lawful expression on the Internet. To the extent that they offend freedom of speech, the censorship Schedules should be repealed.
12. Parliament is entrusted to protect freedom of speech. Australia also has international treaty obligations to legislate to protect freedom of expression. If Parliament enacts these censorship Schedules, then it should also adopt Article 19 of the *International Covenant on Civil and Political Rights* into the *Broadcasting Services Act*.
13. Finally, NSWCCL takes this opportunity to protest that the censorship Schedules adopt the National Classification Code's view that only computer games suitable for 15 year olds should be available to Australian adults. NSWCCL encourages the Committee to consider recommending the addition of R18+ and X18+ classifications for computer games.

2. Freedom of speech

2.1 The Bill unreasonably prohibits and restricts freedom of speech

2.1.1 Freedom of speech: the principles

14. NSWCCL believes that the censorship Schedules represent a disproportionate response to the perceived threat to children, and fail to strike the right balance between protecting children and upholding freedom of speech in Australia.

15. Freedom of speech is fundamental to a free and democratic Australia. Among other things, it means that all adult citizens have a right to express themselves and to read, hear and see whatever they want – without government interference.[1]

16. However, freedom of speech is not absolute. The *International Covenant on Civil and Political Rights* (ICCPR) permits laws that restrict speech, where necessary, to protect *inter alia* public order and morals.[2] This power to restrict freedom of speech:[3]

> ...must not be interpreted as license to prohibit unpopular speech, or speech which some sections of the population find offensive. ...The Covenant therefore stipulates that the purpose of protecting [the rights and reputations of others, national security, public order, public health or morals] is not, of itself, sufficient reason to restrict expression. The restriction must be necessary to protect the given value. This requirement of necessity implies an element of proportionality. The scope of the restriction imposed on freedom of expression must be proportional to the value which the restriction serves to protect. It must not exceed that needed to protect that value.

17. In other words, a free and democratic society searches long and hard for alternatives to restricting freedom of speech. It is only after it has failed to find reasonable alternatives, that it reluctantly accepts that it is *necessary* to restrict this precious freedom. When it is necessary to restrict freedom of speech, then a free and democratic society searches long and hard for the most effective and least restrictive method of protecting the value which the restrictions serve to protect.

[1] see, for example, the First Principle of the *National Classification Code*.
[2] Article 19 of the *International Covenant on Civil and Political Rights* [1980] ATS 23 (entry into force: 13 November 1980).
[3] *Faurisson v France* (1996) UN Doc CCPR/C/58/D/550/1993 (Mrs Evatt, Messrs Kretzmer & Klein), 8. See also, *Gauthier v Canada* (2003), UN Doc. CCPR/C/78/D/941/2000, [13.6]: the operation and application of laws that restrict freedom of speech must be 'necessary and proportionate to the goal in question and not arbitrary'.

2.1.2 Prohibition and restriction: the censorship Schedules

18. The censorship Schedules prohibit and restrict freedom of speech online. The censorship Schedules prohibit absolutely the online hosting of sexually-explicit material.[4] The censorship Schedules also restrict free speech by requiring Australian content providers to employ age-verification technology when providing material rated R18+ (restricted) and MA15+ (mature audience) to all users (children and adults).

19. The censorship Schedules prohibit an Australian citizen from sharing their original sexually-explicit stories with others on the Internet. The censorship Schedules also place an illegitimate financial and legal burden on a citizen who wishes to share with others, free of charge on the Internet, material that is not suitable for a minor. This includes films they have made, or even blogs about 'adult concepts'.

20. The prohibition of sexually explicit material restricts consenting adults to the level of expression suitable for the viewing of children. In the United States it is a constitutionally-recognised principle that 'speech within the rights of adults to hear may not be silenced completely in an attempt to shield children from it'.[5] To hold otherwise would impermissibly 'reduce the adult population…to reading only what is fit for children'.[6]

21. The censorship Schedules do not attempt to grapple with the issue of proportionality. They do not acknowledge the gravity of restricting freedom of speech. The Explanatory Memorandum to the Content Services Bill does not address this fundamental issue; nor does the Second Reading Speech;[7] nor do the many reports of the Department of Communications on this issue.[8]

22. The only major document produced by the Department that mentions freedom of expression at all fails to acknowledge Australia's obligations under the *International Covenant on Civil and Political Rights*.[9] The report makes no serious attempt to engage these issues. It is dismissive of free speech and appears to suggest that 'strong community support' is sufficient reason to restrict the rights of individuals.

---

[4] All publications, films and computer games refused classification (RC). Also: films rated X18+; and, publications rated Category 1 & Category 2.

[5] *Ashcroft v Free Speech Coalition* (2002) 535 U.S. 234, 252 (Kennedy J; joined by Stevens, Souter, Ginsburg & Breyer JJ).

[6] *Butler v Michigan* (1957) 352 U.S. 380, 383; quoted in *Ashcroft v Free Speech Coalition* (2002) 535 U.S. 234, 252.

[7] Commonwealth, *Parliamentary Debates*, House of Representatives, 10 May 2007, 7 (Ms Ley, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry).

[8] e.g. Department of Communications, Information Technology and the Arts, *Review of the Regulation of Content Delivered over Convergent Devices* (April 2006).

[9] Department of Communications, Information Technology and the Arts, *Review of the Operation of Schedule 5 to the Broadcasting Services Act 1992*, Report (2004), 14.

2.1.3 The object of the censorship Schedules

23. The Second Reading Speech states that the 'Australian government takes very seriously its responsibility to protect Australian citizens, particularly children, from exposure to illegal and highly offensive content…'.[10] NSWCCL observes that adults do not need such government protection and can decide for themselves what 'offensive content' is. As for 'illegal content', it is not illegal for an adult to view material rated X18+, R18+ and MA15+.

24. The statutory objectives of the censorship Schedules are:[11]

> (ha) to ensure designated content/hosting service providers respect community standards in relation to content; and
>
> …
>
> (l) to restrict access to certain Internet content that is likely to cause offence to a reasonable adult; and
>
> (m) to protect children from exposure to Internet content that is unsuitable for children; …

25. The first two objectives amount to restricting content that some Australians might find offensive. As noted by the UN Human Rights Committee (see above), this is not of itself sufficient reason to restrict free speech.

26. The third objective and the Second Reading Speech both identify the most often cited objective for Australian censorship of the Internet: the protection of children.

2.1.4 The unreasonable burden on free speech

27. Protecting children from harmful material online is an important contemporary value and a legitimate end in itself. However, the truth is that there is a more effective and less restrictive way to protect children than the absolute prohibition and restriction of the free speech of adults online. The alternative is child-protection internet filtering at the end-user device. The existence and proven effectiveness of this alternative is why legislation similar to the censorship Schedules has been ruled unconstitutional in other free and democratic societies.

28. The reasonably appropriate and adapted response to this issue is to encourage and subsidise user-based child-protection filtering. It is both undesirable and impossible to remove *at the source* all material on the Internet that is harmful to children. The only realistic, responsible and technologically-proven method to protect children is to install filters on end-user devices used by children at home and other places such as their schools.

[10] Commonwealth, *Parliamentary Debates*, House of Representatives, 10 May 2007, 7 (Ms Ley, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry).
[11] *Broadcasting Services Act 1992* (Cth) s.3, as it is to be amended by the Content Services Bill.

29. In March 2007, a US court struck down the *Child Online Protection Act* (COPA).[12] COPA sought to enforce age-restriction technologies on commercial content providers of sexually-explicit material in the United States. The judge agreed with Congress that the protection of children is important. But, after hearing all the evidence, the judge found that age-verification technology does not work. The judge found, instead, that a child-protection internet filter on the end-user's PC was a much more effective and less restrictive way to protect children. Therefore, COPA violated freedom of speech more than was necessary, making it constitutionally invalid.

30. In exactly the same way, the censorship Schedules overreach themselves and unreasonably violate freedom of speech in Australia.

2.2 The Bill creates an unaccountable army of censors

31. Section 81 of censorship Schedule 7 mandates the recruitment and training of an army of latter-day censors. These censors are euphemistically referred to as 'trained content assessors'. They will be charged with doing the work of the Office of Film and Literature Classification (OFLC). They will determine whether commercial content would be classified as RC, X18+, R18+ or MA15+.

32. The Bill provides no mandatory referral to ACMA of complaints about the decisions of these private censors. Consequently, there is no right of appeal to the Administrative Appeals Tribunal under Part 8 of censorship Schedule 7. This could mean that the private censors will be unaccountable for their decisions. Aggrieved persons will presumably be put to the expense of applying to the OFLC for official classification.

[12] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), 130.

2.3 The Bill does not protect freedom of speech

33. Australia has ratified the *International Covenant on Civil and Political Rights*, which guarantees freedom of speech in Article 19. As a party to the ICCPR, Australia has an international obligation to ensure that its domestic laws comply with the treaty.[13] As currently drafted, the censorship Schedules do not protect freedom of speech.

34. If the Committee is convinced that the censorship Schedules strike the right balance between freedom of speech and child protection, then NSWCCL recommends (and the Parliament can have nothing to fear from) the insertion of the following section into the *Broadcasting Services Act*:

> **Section 3A**
> Any provision, in whole or in part, of this Act which is incompatible with Article 19 of the *International Covenant on Civil and Political Rights* is inoperative.
>
> **Note:** Article 19 of the ICCPR provides that:
>
> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

35. The Framers of our Constitution did not entrench freedom of speech because they believed that constitutional entrenchment was 'only justifiable when the ordinary organs of legislation cannot be trusted to protect private rights and individual liberty'.[14] The Framers trusted to the Parliament the protection of individual rights and liberties.[15] Section 3A discharges that duty.

[13] ICCPR Article 2(2).
[14] Sir Robert Garran, *Commentaries on the Constitution of the Commonwealth of Australia* (1901) [481].
[15] In 1944 the Australian people were given the opportunity at enshrine *inter alia* freedom of speech in the Constitution (for a period of five years only). The proposal was bundled into one referendum question with many unpopular post-war reconstruction powers. The question was defeated at referendum. See: George Williams, *The Federal Parliament and the Protection of Human Rights* (1999) Parliamentary Research Paper No. 20, <http://www.aph.gov.au/library/pubs/rp/1998-99/99rp20.htm>.

3. Filtering

3.1 Filters are the only technology that protect children

36. There is a way to protect children from sexually-explicit content *without* unreasonably impinging on freedom of speech. The widespread use of child-protection filters on end-user devices used by children will achieve the result the government wants, without prohibiting or restricting the legitimate speech of adults.

37. Child-protection filtering technology is the only proven and effective technology to protect children from sexually-explicit content. Modern operating systems, such a Microsoft Vista, now come with filtering as a built-in feature. This means that parents are no longer required to buy separate software.

38. A US Federal Court judge recently found that filters can block about 95% of all sexually-explicit material.[16] His Honour's conclusion was based partly on Australian research.[17] His Honour observed that:[18]

> Although filters are not perfect and are prone to some over and under blocking, the evidence shows that they are...more effective than [the *Child Online Protection* Act] in furthering Congress' stated goal [of protecting children] for a variety of reasons. For example, ...filters block sexually explicit foreign material on the Web, parents can customize filter settings depending on the ages of their children and what type of content they find objectionable, and filters are fairly easy to install and use.
>
> Reliable studies also show that filters are very effective at blocking potentially harmful sexually explicit materials.

39. NSWCCL believes that the government's money would be best spent on educating parents about how to obtain and configure internet filters. The government could sponsor face-to-face and online seminars to inform parents how to use the technology.

[16] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[110].
[17] see *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[111]; referring to: Paul Greenfield, Peter Rickwood, Huu Cuong Tran, *Effectiveness of Internet Filtering Software Products* (2001) CSIRO, <http://www.acma.gov.au/webwr/aba/newspubs/documents/filtereffectiveness.pdf>.
[18] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), law.[32]-[33].

40. Filtering on end-user devices is the best solution because that is where filtering is most configurable. Filtering can be appropriately configured for the age of the end-user. Filtering can be re-configured as a child matures. If parents are concerned about their children watching *Big Brother Uncut* on the Internet, then the child-protection internet filter can be configured to block the *Big Brother* site. Inevitably, children will become adults and will be able to choose for themselves what they read, hear and see.

41. NSWCCL notes that filtering technology is not currently available for devices like mobile phones, but that plans are in development.[19] Parents have the choice of disabling internet access on such devices. In fact, parents would be ill-advised to enable such access on their children's mobile phones until such time as effective filtering technology is available.

42. NSWCCL notes that the censorship Schedules ultimately seek to provide parents with the option of filtering at the ISP level. NSWCCL can see no objection to this choice, provided that ISPs are *mandated* to provide unfiltered internet access for citizens who wish it.

43. Ultimately, the use of filters provides an effective and proved mechanism for protecting children. The filters will protect children whether or not content is banned and restricted on Australian webservers. The prohibited content can be hosted on the Internet and filtered at the end-user device. This means that the prohibition and restriction regime of the censorship Schedules is redundant and unnecessary.

44. Filters provide a safer, more effective and less restrictive alternative to the prohibition and restriction of the censorship Schedules. The provision of filtering software is a proportionate response to the aim of protecting children – and it does not restrict the freedom of speech of adults. As the Supreme Court of the United States of America observed:[20]

> Filters are less restrictive than [the *Child Online Protection Act*]. They impose selective restrictions on speech at the receiving end, not universal restrictions at the source. Under a filtering regime, adults without children may gain access to speech they have a right to see without having to identify themselves or provide their credit card information. Even adults with children may obtain access to the same speech on the same terms simply by turning off the filter on their home computers.

[19] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), [86].
[20] *Ashcroft v ACLU* (2004) 542 US 656, 667; quoted in *ACLU v Gonzales* (2006) 478 F. Supp 2d 775, law.[26].

4. Restricted Access Systems

45. The censorship Schedules require that Australian content providers employ restricted access systems when providing material rated R18+ and MA15+.

46. The requirement is so broad that a movie or movie trailer rated MA15+ cannot be hosted on an Australian website without age-verification technology being used. Adult Australians are forced to identify themselves before they can access this material.

47. Here are some examples of films that are caught by this legislation:

    (i) *Pulp Fiction* (1994) R18+

    (ii) *Head On* (1998) R18+

    (iii) *Saving Private Ryan* (2001) MA15+

    (iv) *Bad Education* (2005) MA15+

4.1 Age-verification technologies do not work

48. After a month-long trial in the United States which included extensive evidence from technology experts, a Federal Court judge recently concluded that:[21]

> From the weight of the evidence, I find that there is no evidence of age verification services or products available on the market to owners of Web sites that actually reliably establish or verify the age of Internet users. Nor is there evidence of such services or products that can effectively prevent access to Web pages by a minor.

49. ACMA recommends that adult verification systems rely on credit cards and personal information numbers (PIN).[22] However, the US Federal Court judge found that "credit cards, debit accounts, adult access codes, and adult personal identification numbers do not in fact verify age. As a result, their use does not, in good faith, restrict access by minors".[23] Children can easily gain access to credit cards. Personal Identification Numbers (PINs) can be discovered by children. In fact, in the United States, credit card companies prohibit Web sites from using debit and credit cards to verify age.[24]

50. The significance of these findings is that the Australian censorship Schedules are premised on technology that simply does not work.

---

[21] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[138].
[22] Australian Communications & Media Authority, *Restricted Access Systems Declaration 1999 (No. 1)*, <http://www.acma.gov.au/WEB/STANDARD//pc=PC_90159>.
[23] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), law.[17].
[24] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[140].

4.2 Age-verification technologies are intrusive and invite identify theft

51. The US Federal Court judge also noted that restricted-access systems require individuals to identify themselves and to hand over personal information across the Internet.

52. There are many reasons why people are reluctant to hand over such information: they might have an embarrassing medical or sexual question to which they seek answers; or, anonymity is often important for woman seeking information about sexuality.[25]

53. Increasingly, many Internet users are reluctant to handover personal or credit card details because they have legitimate security fears, including identity theft.[26] All of this chills free speech to an unacceptable level.[27]

54. The significance of these findings is that the Australian censorship Schedules, which require the use of restricted access technology, are exposing Australians to an unacceptably high risk of fraud and identity theft on the Internet.

55. Section 84 of the censorship Schedule 7, which provides that content providers must not collect personal information about end-users of content services, is insufficient to protect personal information from identity thieves and conmen.

4.3 Age-verification technologies unreasonably burden e-commerce

56. The US Federal Court judge also noted that requiring content providers to implement age-verification systems imposed a significant and unacceptable economic burden on content providers, by way of setup and administration fees.[28] This was particularly a concern for providers of free content and providers who have millions of visitors a year.

57. The significance of these finding is that the Australian censorship Schedules, by requiring the employment of restricted access systems, place an illegitimate financial and legal burden on providers of commercial content.

[25] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[172].
[26] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[174].
[27] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), law.[21].
[28] *ACLU v Gonzales* (2006) 478 F. Supp 2d 775 (22 March 2007), fact.[161] ff.

5. Restrictions on lawful business

5.1 The Bill prohibits lawful e-commerce

58. The censorship Schedules prohibit absolutely the hosting of sexually-explicit material on Australian websites.

59. The censorship Schedules fail to acknowledge that it is lawful in Australia to view films rated X18+, and publications rated Category 1 and Category 2. This material is available for sale in the Territories and just about every "adult store" in every city in Australia. And, of course, on the Internet. It creates a curious anomaly to permit the sale of such material at a local newsagency or adult store, but ban the sale of such material on the Internet.

60. The Department justifies the prohibition on the grounds that the censorship Schedules' definition of prohibited content is based on the National Classification Code (NCC).[29] While the censorship Schedules make use of the classification system, there is nothing in the NCC that *prohibits* sexually explicit non-violent erotica (X18+). Nevertheless, the censorship Schedules *prohibit* this material.

61. Ultimately, the censorship Schedules prohibit *legitimate* Australian businesses that *lawfully* sell non-violent erotica and other adult products from running on-line enterprises on Australian webservers. There is no reasonable justification advanced for this restriction on trade and commerce, other than 'the protection of children'.

62. The prohibition of legitimate e-commerce is a woefully disproportionate response to the legitimate end of protecting children. Children can be protected from these sites by the use of child-protection filtering. This leaves children protected, adults free to express themselves and e-businesses free to sell their products.

63. In reality, like all prohibition, the censorship Schedules lead to the banned businesses moving out of jurisdiction. The webservers of Australian providers of sexually explicit content are now hosted overseas. This has had an impact on the Australian IT industry by denying jobs to Australian programmers, network managers, hosting services and content providers.[30]

[29] Department of Communications, Information Technology and the Arts, *Review of the Operation of Schedule 5 to the Broadcasting Services Act 1992*, Report (2004), 14.
[30] see Dr Ben Caradoc-Davies, *Submission on the Review of Schedule 5 to the Broadcasting Services Act 1992* (November 2002) 2, <http://www.dcita.gov.au/__data/assets/pdf_file/10903/Dr_Ben_Caradoc-Davies.pdf>.

6. The Bill fails to protect children

64. Despite the promises of the censorship Schedules, prohibiting and restricting content on Australians Internet servers will never make children safe on the Internet. The censorship Schedules are completely incapable of protecting children from content hosted overseas.

65. There is absolutely no evidence that the censorship of the Internet in Australia has made children safer. This is in contrast to the voluminous amounts of research demonstrating that the most effect way to protect children is end-user based filtering.

66. Schedule 5 currently prohibits the hosting of sexually-explicit material on Australian webservers. Does this protect children? The answer is, demonstrably and emphatically: no. Sexually-explicit material is freely available on the Internet *despite* Schedule 5. In fact, Schedule 5 does not and cannot protect children from sexually-explicit material hosted overseas. Anyone who believes that it does, or that it can, does not understand the distributed infrastructure of the Internet.

67. Worse than this, the supporters of this legislation are deceiving parents by claiming that the censorship Schedules protect their children. The only technology that is proven to protect children is filtering technology. It is irresponsible to pretend that prohibition and restriction in Australia makes the Internet child-friendly. In this sense, the Scheme is irresponsible and exposes children to a real risk of viewing unsuitable content.

68. Seen in this light, the censorship Schedules are not about protecting children at all. Rather, they are about restricting what adults can read, hear and see. This is why censorship is unnecessary and disproportionate.

7. The Bill unreasonably restricts the use of computer games

69. NSWCCL has long been a consistent critic of the definitions contained in the National Classification Code (NCC). NSWCCL believes that the definition of material refused classification is far too broad. NSWCCL does not seek to argue this matter here, which is better dealt with in another forum.

70. However, NSWCCL does take this opportunity to protest that there is no R18+ and X18+ classification for computer games. The idea that children are the only consumers of these products betrays an ignorance of the market. NSWCCL encourages the Committee to recommend that R18+ and X18+ rating be made available for the classification of computer games.