

MINISTERIAL INQUIRY INTO PORNOGRAPHY

In late 1987 the Minister of Justice appointed a Committee of Inquiry into Pornography. The Committee was made up of three members. The Chairperson, Joanne Morris, was a law lecturer. The second committee member, Hilary Haines, came from the Mental Health Foundation, and the third, Jack Shallcrass, was an educationalist from Victoria University.

The Committee reported back in December 1988. Their report made 202 recommendations for change. Below is a summary of the Committee's report, published by the Department of Justice in 1989.

February 1989

Department of Justice

A Summary of:

PORNOGRAPHY

Report of the Ministerial Committee of Inquiry into Pornography

Terms of Reference

The Committee of Inquiry into Pornography, comprising Joanne Morris (Chairperson), Hilary Haines and Jack Shallcrass, was appointed by the Minister of Justice late in 1987. Its terms of reference were to:

- (a) Examine the relevant legislation (including the Indecent Publications Act 1963, the Films Act 1983 and the Video Recordings Act 1987), paying special attention to:
 - (i) the criteria for determining whether material should be prohibited or restricted;
 - (ii) the types of restrictions that should apply to different types of materials;
 - (iii) the nature of the body or bodies which should be responsible for determining whether material should be prohibited or restricted; and recommend whether or not changes are desirable in the law;
- (b) Consider what non-legislative measures should be adopted to counter the production and distribution of prohibited or restricted material;

- (c) Consider developments in communications technology and their implications for the transmission of such material across international boundaries;
- (d) Consider whether the presentation of an indecent show or the exhibition of indecent material in a licensed liquor outlet should be a ground for suspending or revoking the operator's licence.

The Process of the Inquiry (Appendix I)

Over 700 written submissions were received from a variety of individuals and groups with nearly 100 of these being presented and discussed at hearings around the country. The Committee had further input from people working with New Zealand's classification laws. Overseas experts were also consulted.

The Viewpoints (Chapter 1)

The Committee identifies 3 strands of thought which have dominated debates about censorship in New Zealand and elsewhere: liberal, conservative and feminist. Maori and Pacific Island views add a distinctly New Zealand perspective.

The Issues (Chapters 2-5)

The issues involved in an inquiry into pornography are discussed and the terminology used throughout the report is explained in Chapter 2. "Pornography" is defined as sexually explicit materials which demean women, and sometimes children, men and transsexuals.

The harm caused by pornography and violent media entertainment is looked at in Chapters 3 and 4. The Committee concludes that there is enough evidence to suggest that pornography may have harmful effects on male attitudes and behaviour. And it is clear that pornography harms women directly, but presenting them in a stereotypical and demeaning way. The evidence justifies at least the current level of legal intervention by means of classification laws, as well as more public education and information about the media.

Guiding Principles for Reform (Chapter 8)

The Committee sets out 5 principles which influenced its recommendations for legal reform and for educational and social changes. They are: equality, responsibility, individual liberty, human dignity and appreciation of sexuality.

Recommendations for Legal Reform (Chapters 9-13)

Prohibition and restrictive classification of works (Chapter 9)

New Zealand's classification laws ("censorship" laws) are explained in Chapter 6 and Appendix III of the latest report.

The Committee recommends that the 3 Acts governing classification of media works in New Zealand – The Indecent Publications Act 1963, the Films Act 1983 and the Video Recordings Act 1987 – be repealed and replaced by one comprehensive Act of Parliament.

One major change recommended is that 4 categories of material should be legally identified as *always* being prohibited. These include child pornography and some extremely violent materials.

Another major recommended change is for 2 other categories of media materials to be legally identified as *presumed* to require prohibition. These include depictions of sexually violent and certain fetishistic behaviours. This material should not be prohibited when the work containing it has *overriding merit*. The merit of a work should be assessed by reference to the 7 factors recommended by the Committee.

These 7 factors would also guide classification decisions on works which do not contain prohibited material. Although this factor-balancing approach to classification is used under the present classification laws, the 7 factors differ in significant respects from the factors prescribed by the present laws. For example, it is recommended that attention should be paid to the way in which a work demeans a class of people identified by their colour, race, ethnic or national origins, sex, sexual orientation, disability or religious beliefs.

Decision-making bodies (Chapter 10)

Here, major reforms are recommended to the personnel and procedures involved in classification decisions. The Committee recommends that one group of people be permanently appointed to classify all printed, filmed and videotaped works which must, or can, be classified. These people would replace the Indecent Publications Tribunal, the Film Censors and the Video Recordings Authority. Having one group of classifiers, backed up by an educational and research team, would streamline the classification process. This would also allow expertise to develop and ensure consistency in decision-making.

Public access to classification (Chapter 10)

The Committee believes that public access to the classification process should be greatly improved. Recommendations deal with the qualities that classification decision-makers should have, the establishment of a formal complaints system, the right of any person to request a classification or review decision through a complaints body, and community representation on the review body.

Rating (Chapter 11)

The Committee explains its recommendation that certain home videos and films for public viewing be *rated* rather than *classified*. Since 1987, ratings have been applied to some home videos released in New Zealand. Despite public confusion about the rating system's operation, the Committee believes that it worked well. With changes

that would tighten up the system, the Committee recommends that rating be extended to non-restricted films for public viewing.

Compulsory classification of certain printed works (Chapter 11)

The Committee recommends that certain serial publications be classified before their release onto the market. Another recommendation is that promotional display material for a work which must be classified or rated, must also be classified or rated. This would make sure that in public places, New Zealanders are not confronted with images and messages which many find offensive.

The remainder of the chapter recommends that the classification and ratings applied to printed, filmed and videotaped works should be as uniform as possible, and should follow most closely those established by the Video Recordings Act 1987. The R16 and R18 age restrictive classifications would continue to be generally available, as well as specialised restrictive classifications, and the ratings (available for home video and filmed works) would be G, PG, Recommended 13 and Recommended 16. For films for public viewing a changed version of the RP classification would also be available.

Cost of Classification (Chapter 12)

The cost and exemptions from normal classification requirements are discussed. The Committee emphasises the need to encourage the distribution of works which may not be commercial hits. As well, it stresses that public access to the classification system should not be discouraged by high costs.

Criminal laws (Chapter 13)

Criminal laws relevant to classification are discussed. Major reforms are recommended in the area of offences involving child pornography. Also recommended are differences between penalties for “casual” offences against classification laws, and those for “systematic” offences. The Committee disagrees with the idea that is promoted by present penalties, that offences against classification laws are victimless crimes.

In line with its earlier recommendations for removing the emphasis on “indecent” in classification laws, the Committee suggests reforming the present criminal laws which focus on the “indecent” or “obscenity” of someone’s behaviour or words. This leads to a discussion of the presentation of “indecent” shows or performances in licensed premises. Here the Committee recommends reforms to the general criminal law which would uphold the right of every person to enjoy, without discrimination, the facilities of certain kinds of venues.

Human Rights (Chapter 14)

The Committee responds to the many submissions calling for recognition that the “pornography problem” is not best dealt with by classification laws. It points out that under the present law, the Human Rights Commission may have a much greater capacity to deal with complaints about pornography than it has so far used. This

capacity should be explored. Also, the coming review of the Human Rights Commission Act should look at the issue of pornography as sex discrimination.

Educational and Social Strategies (Chapter 15)

The Committee believes that educational and social strategies are of great importance. A media-literate public, well-educated about human sexuality, sex stereotyping, the demeaning treatment of women and minorities, and the misuse of violence in entertainment is the best defence against the harmful effects of the media. This is especially important in the face of fast developing communications technologies.

The Committee recommends the support of existing educational strategies (outlined in Chapter 7) and the introduction of new measures directed at children, young people and adults, through educational institutions, non-formal education and public education programmes. The classification body and the Human Rights Commission should play a particularly important role in public education. Other recommendations concern broadcasting standards and community action strategies.