

**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**CLASSIFICATION (PUBLICATIONS, FILMS AND  
COMPUTER GAMES) ENFORCEMENT AMENDMENT BILL 2012**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 15 OCTOBER 2012**

**SESSION TWO**

**Members**

**Hon Adele Farina (Chair)  
Hon Donna Faragher (Deputy Chair)  
Hon Nick Goiran  
Hon Robin Chapple**

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**Hearing commenced at 1.24 pm****SCOTT, MS MICHELLE****Commissioner for Children and Young People, sworn and examined:**

**The CHAIRMAN:** I would like to welcome the Commissioner for Children and Young People to today's hearing, and thank you for making your time available at short notice to meet with the committee to assist us with our inquiry into this bill. I have some formalities that I need to go through to begin with. You are required to take either an oath or affirmation.

[Witness took the affirmation.]

**The CHAIRMAN:** You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**Ms Scott:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please also be aware of the microphones and try to talk into the microphones and not cover them with papers. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Do you have any questions in relation to that?

**Ms Scott:** No.

**The CHAIRMAN:** The committee notes that you have made a submission to the committee and we thank you for that. Are there any opening statements that you would like to make to the committee?

**Ms Scott:** The committee will probably note that my submission is quite broad and it does not deal with the detail of the current bill before you; it is really consistent with the submissions that I have made to the commonwealth and to the Australian Law Reform Commission, and it is consistent with my colleagues' submissions as well.

**The CHAIRMAN:** As far as you are aware, what consultations, if any, were undertaken pursuant to the guidelines for assessing the impact of the proposed legislation on children and young people in relation to this bill?

**Ms Scott:** The Australian commissioners for children and young people and guardians made submissions in relation to the guidelines and I think I might have provided a copy as an appendix to the committee.

**The CHAIRMAN:** But other than those submissions, you are not aware of any of the instructing officers or the instructing departments actually undertaking any consultation with children or young people?

**Ms Scott:** I am not aware of any, no.

**The CHAIRMAN:** Are the interests of children who may be exposed to R 18+ computer games adequately protected by the proposed new enforcement provisions of the bill in your opinion?

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**Ms Scott:** The position that I have taken as the Commissioner for Children and Young People, similar to my colleagues in other states, is basically that we are concerned about children being exposed to computer games that are violent and, as you know from our submissions, we oppose the introduction of an R 18+ category and we believed that the commonwealth should not introduce that level of classification. The commonwealth has made that decision, but our view is that that is not in the best interests of children and young people.

**The CHAIRMAN:** I do not know if you have a copy of the bill before you.

**Ms Scott:** Yes.

**The CHAIRMAN:** I might just turn you to some of the offence provisions.

**Hon NICK GOIRAN:** Commissioner, I just wanted to make sure I heard that correctly. Did I hear you correctly that you are part of a unanimous group of children's commissioners across the nation who oppose the introduction of this new classification?

**Ms Scott:** Yes, that is correct.

**Hon NICK GOIRAN:** So the group of individuals who took a contrary view to yourself and your colleagues would have been, I take it, then, the group of Attorneys General across the nation?

**Ms Scott:** I think you can see from the very submissions that were made to the commonwealth that many people in the community have supported the changes. However, my view and the view of my colleagues is that we do not support the change.

**Hon NICK GOIRAN:** Has there been any discussion amongst the children's commissioners across the nation about this decision by the Attorneys General and the commonwealth?

**Ms Scott:** Other than we remain opposed to it.

**The CHAIRMAN:** I just draw your attention to clause 9 of the bill and the proposed new section 88 amendment, which provides —

A person must not sell or supply to a minor a computer game classified R 18+ unless the person is a parent or guardian of the minor.

Do you think that the defence that is provided within that provision, which actually allows a parent or a guardian to provide a minor a computer game with a classification of R 18+, is warranted or justified or in the best interests of children?

**Ms Scott:** I think it would be fair to say, Madam Chair, that I have not considered that in detail. I would be happy to consider that if would like me to. I note that the penalties are quite low in the bill. I note from the previous evidence that was given that this is to make it consistent with other requirements in the legislation. I am concerned, and it is one of the things that the commissioners raised in our submissions to the commonwealth. We were opposed to the introduction of the new classification and we also feel there needs to be much better information to parents about the supervision of children and young people in relation to computer games. I do not think that that has really been attended to in any legislation or in any additional programs or information to parents.

**Hon NICK GOIRAN:** Commissioner, are you aware of any implications in the event that the bill that is currently before the Western Australian Parliament is not passed by the end of this year?

**Ms Scott:** I am not aware of any implications.

**Hon NICK GOIRAN:** Because the evidence we have received from the departmental staff prior to your arrival is that if the bill does not pass by 1 January 2013, Western Australian law will be silent with respect to enforcement of this new classification of R 18+ games. In other words, it was particularly put to the committee that it would be possible post 1 January for a retailer to sell an R-rated game to a minor because our legislation will be silent on the issue. I imagine, in your position, that would be a point of concern.

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**Ms Scott:** It would be of great concern to me.

**Hon NICK GOIRAN:** I take it, then, that you would encourage Parliament to pass some form of legislation before the end of the year?

**Ms Scott:** My view is obviously that is a matter for the Parliament. I have not got the same advice that the committee has in relation to that matter, but I would be very concerned if that was the case—that children and young people could be exposed to these computer games.

**Hon NICK GOIRAN:** Could I ask you, through Madam Chair, to take that on notice and just to indicate to the committee your view on the urgency of the passing of the legislation in light of that?

**Ms Scott:** I will take it on notice.

**The CHAIRMAN:** Our advisory clerk to the committee will be in contact with you either late today or early tomorrow morning just to confirm any questions that are taken on notice and the due date for providing those answers, which I expect will be the end of the week. I am sorry to put that pressure on you, but we have a tight time line that the committee is working to.

The committee heard evidence today that a number of computer games are currently being classified under the MA 15+ classification that arguably have been pushed into that category that contain levels of violence or other themes that would not, by the view of most people, appropriately fit within the MA 15+ category, and that has occurred because there has not been an R 18+ category. Does it concern you that the guidelines are so flexible?

**Ms Scott:** It concerns me if the level of violence in a particular computer game has resulted, in the absence of an R18+ category, in that level of violence manifesting itself in a computer game that has an M+ rating; that is of great concern to me. I think that we can say about the evidence—I notice some discussion about the evidence about the impact of the level of violence on children and young people—it has been argued that it has not yet been determined what the impact is. I do not think that is a sufficient reason to expose children and young people to violence. I am concerned about the level of violence that children and young people experience, whether it is family and domestic violence or in relation to films, computer games or television.

**Hon NICK GOIRAN:** Commissioner, what would you say to someone who suggested that your concerns are overstated on the basis that under this legislation such computer games are only able to be sold to someone over the age of 18?

**Ms Scott:** I am concerned about the enforcement, firstly, and how that will occur in practice. We already have legislation here in Western Australia in relation to the sale of alcohol and that the sale of alcohol should not occur to someone under the age of 18. We know from children's and young people's evidence that they often obtain it from an outlet. I am concerned about that. I am also concerned, which is an issue that was raised in our submission to the commonwealth, that a household may have access to these computer games and particularly vulnerable and disadvantaged children may be exposed to them in the family home. I am concerned about that.

**Hon ROBIN CHAPPLE:** I come back to clause 9, "Section 88 amended", and this whole issue of "unless the person is a parent or guardian of the minor". I am making an assumption here in proposed subsection (1A) that the reason for putting that in is that in a home, there is an inability to control what mum and dad have got and what the kids might get their hands on. Do you think there should be some penalty for parents who leave material that is inappropriate lying around? How do we deal with that social context within a home?

**Ms Scott:** It is an area I have not really fully explored, but I think it is a very important consideration. Insofar as my colleagues were concerned about it, it was: what education is going to be provided to parents about the impact of a child having access to this level of violence? I do not see any of that reflected in the commonwealth legislation or in the state legislation. Whether you go

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down the track of increasing penalties or imposing a penalty on a parent, or better education, there has really not been a lot of discussion about that, I think. That is concerning to me.

**Hon ROBIN CHAPPLE:** Like you say, it also relates to alcohol and a whole range of things.

**Ms Scott:** It does. It is something we think there needs to be much greater emphasis on in relation to alcohol and in relation to the sexualisation of children and young people. Parents sometimes are looking for support and greater information about the impact of these matters on their children.

**Hon ROBIN CHAPPLE:** Thank you.

**Hon NICK GOIRAN:** Commissioner, it has been suggested that once this new classification of R18+ comes into effect on 1 January, there will have been no dilution of the current RC classification—in other words, refused classification. Do you have a view of whether that is the case or not?

**Ms Scott:** The short answer is that I do not have a view, but my main concern is really that we are now going to introduce the level of violence in computer games that children and young people were not exposed to before. That is my main concern.

**Hon NICK GOIRAN:** So if they were not exposed to it before—or, in other words, at present—I take it, then, that is because such things would be refused classification.

**Ms Scott:** That is right.

**Hon NICK GOIRAN:** So if they are going to be subjected to it in the future, would that not then mean that the RC classification has been diluted in some way?

[1.40 pm]

**Ms Scott:** To some extent that is correct. As Madam Chair was explaining, some of the computer games that are currently classified under M+ rating would now go into the R+ rating, but children and young people will be exposed to more than they were previously.

**Hon NICK GOIRAN:** You would not want any of the members of Parliament considering this bill, then, to be under the understanding that there is going to be no dilution of the RC classification.

**Ms Scott:** No. I understand the point the member is making, yes.

**Hon ROBIN CHAPPLE:** Just on another matter, I note that you made a submission to the federal inquiry in relation more specifically to the guidelines. Have you received anything at a federal level that advises you that you will be involved or will be privy to the guidelines once they are established?

**Ms Scott:** I do not recall receiving that advice, but I would have to just check my correspondence.

**Hon NICK GOIRAN:** Commissioner, just back to this issue of dilution, given that there will be some dilution of the RC classification, and you indicated some concern about that, I imagine that that creates a dilemma for you because in one sense you do not want to see more violent and more sexually explicit video games accessible to children but also, as I mentioned earlier, you would not want there to be no enforcement legislation in effect as of 1 January.

**Ms Scott:** That is correct.

**Hon NICK GOIRAN:** Would you have any recommendation to Parliament, given that there is this dilemma of doing nothing and finding that there will be no enforcement legislation for children or agreeing to the current bill and finding that there will be more violent and more sexually explicit material available to children in any event?

**Ms Scott:** With respect to Parliament, it is a matter for Parliament what Parliament decides. Obviously, the commonwealth government and the commonwealth Parliament decided that they did not concur with the view of the commissioners for children and young people throughout the country. They took a different policy decision. It is open to this Parliament to do the same. All I can

do as an independent commissioner is raise my concerns about exposing children and young people to a greater degree of violence than they are currently exposed to.

**Hon NICK GOIRAN:** Do the commissioners around the country consider it a vote of no confidence in their position that the commonwealth has taken such a position?

**Ms Scott:** I have not discussed that with them, but I do not consider it a vote of no confidence.

**Hon NICK GOIRAN:** Commissioner, it has been suggested this morning that there is actually a third option for the WA Parliament—that is, to amend the current bill so that it would be prohibited for people to possess or sell R18+ games. In your opinion, is that something that you would recommend?

**Ms Scott:** I cannot say that I would recommend that. I would be happy to consider it, though.

**Hon NICK GOIRAN:** You would take it on take notice, then?

**Ms Scott:** Yes.

[1.45 pm]

**Hon ROBIN CHAPPLE:** Can I, as a subset to that, Commissioner, ask your advice on this? Because most games are now downloaded onto mobile phones and apps like that, if we had a situation where it was illegal to have R 18+ here but it was legal everywhere else, would this not almost drive it underground? I am remembering my own childhood when it was quite exciting to do something that was naughty, you know; in that context can I get your consideration of that as well?

**Ms Scott:** Yes. I think, if I could say, Madam Chair, I appreciate the commonwealth has passed legislation here and the states have been asked to pass legislation which supports what the commonwealth and state Attorneys General basically have reached agreement on. Many states and other jurisdictions have already passed legislation, and I understand from the honourable members' questions that there is a time limit here and you are concerned about the new year. I am also concerned about on the hop, if you like, giving advice to the parliamentary committee, and I would like to consider that in more detail. I understand the point that you are making. It is true that in this global sort of world it would be very difficult to control that. And how would you regulate that sort of environment?

**The CHAIRMAN:** I take it that you are happy to take that as question on notice 3.

**Ms Scott:** Yes.

**The CHAIRMAN:** Just in having a review of the proposed amendments to the code that the commonwealth is proposing to take in, there is an analysis in relation to the compatibility of the code amendment with the human rights. It states in that analysis that —

... the R 18+ Bill ... was found to engage the human right of freedom of expression in Article 19 of the International Covenant on Civil and Political Rights.

It then went on to say —

The right to freedom of expression carries with it special responsibilities, and may be restricted on several grounds including classification of material, where this is necessary to protect public health and morals, or the rights of others, including protecting children and young people against harm caused by age-inappropriate material.

It then goes on to say —

It was concluded that the R 18+ Bill advances the protection of human rights and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

It just seems to me that we do not have any detail as to how that assessment was made, but it then goes on to justify the statement that will appear in the code, that adults should be able to read, hear,

see and play what they want. I was just wondering whether you wanted to make any comment about that, and about whether limitations should be imposed on that insofar as they may impact on the wellbeing of children and young people.

**Ms Scott:** I think it is always dangerous when we talk about international human rights and any of the instruments if we just choose one clause. You have to look at the instrument in totality. And we have to weigh up, in my case, whether it is in the best interests of the child or young person. My legislation requires me to act in the best interests of the child and young person and, more than that, that their interests are paramount. The commissioners actually throughout Australia suggested that the guidelines say that. So not just take them into account and their best interests be taken into account, but the best interests of children and young people would be paramount. Our concern is we do not believe that the guidelines and the policy decision to introduce the new classification is consistent with that. Obviously it is open for the Parliament, for the commonwealth government, for the state government and for state Parliament to enact what legislation they consider appropriate. But as independent commissioners, we do not consider the best interests of the child or children and young people are paramount in this legislation.

**The CHAIRMAN:** Commissioner, I think that concludes the questions the committee has for you. Again, I would like to thank you for attending at such short notice before the committee and for assisting the committee with the inquiry. I just draw to your attention that there are three questions that have been taken on notice. Kimberley will be in contact with you to confirm the detail of those questions and also the due date for those answers, which I expect will be the end of the week. Thank you very much.

**Hearing concluded at 1.49 pm**