

Submission to National Classification Scheme Review

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Question 1: In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

The existing scheme approaches classification from the position of defining a proscriptive classification regime for content consumed by the public. This position has, over the past 15 years, become inadequate to address the new opportunities for the public to consume content outside the public sphere, and their ability to make an informed choice about media consumption.

The ALRC should focus on shaping and implementing a new framework that approaches classification from a collaborative stance with publishers and retailers, and instead provide only an advisory framework for the public to make an informed decision about content consumption for themselves, and their families. Existing age limits for some classification categories (MA15+, R18+, X18+) should be maintained to limit adverse effects of inappropriate media on youth.

In addition, a number of the terms (*offensive, abhorrent*) in the existing Guidelines¹ are subjective and apply restrictive standards originally intended to limit public exhibition of possibly-offensive media to individuals who choose to consume such content privately. The application of such terms in restricting content availability do not reflect the current reality of individuals consuming content in the home via the Internet, and directly importing physical content.

The classification categories in the existing framework are divergent between different types of content. For example, computer games may not be rated R18+. This means that some games which may otherwise have been rated R18+ is instead released to the public by publishers with a MA15+ rating, and adversely impacts a consumer's ability to make an informed decision about media consumption, in addition to making potentially unsuitable content available to minors. Any new classification framework should unify the set of classification categories used by the Classification Board and other bodies providing classification advice.

Question 2a. What should be the primary objectives of a national classification scheme?

A national classification scheme should firstly aim to provide parents and adults with clear guidance as to suitability for various ages, and to broadly identify content that may be potentially objectionable or inappropriate. For example, the existing classification categories (G, PG, M, MA15+ etc.) along with targeted advisories (e.g. "Contains some nudity") allow parents to make an informed decision about the suitability of content for their children. Any new classification scheme should also continue the current restriction on sale or provision of content unsuitable for youth - the 15+ and 18+ limits serve the community interest in permitting parents to restrict their children's consumption of inappropriate material, while permitting mature individuals to make their own choice at an appropriate age.

¹ Attorney-General's Department, Guidelines for the Classification of Films and Computer Games, <http://www.comlaw.gov.au/Details/F2008C00126>

Where adult content is concerned, the scheme should only aim to inform the adult public about content that may offend, and not restrict the availability of such content. Any classification should justify why the material has been classified as R18+, or X18+. For example, "R18+, includes drug use scenes."

Question 2b. What content should be classified and regulated?

There are two separate issues at hand that must not be conflated; classification of content, and regulation of content. Firstly, regulation of content should apply only to material that is inappropriate for minors to consume, and this regulation should be limited in scope to prevent sale or making available age-restricted content to those who are not of age to consume the content. Any such regulation must not affect adults' informed choice of media, nor should it affect any content being exported from Australia. For example, if a filmmaker creates a short film, or a special effects provider edits or provides footage for foreign exhibition, this material should not be restricted under Classification law, as such restriction would provide an unwelcome barrier on export of Australian content. Any classification-related decisions should be made by the receiving country.

To address classification of content, any media (film, computer game, or publication) that is made available for physical retail sale or public exhibition within Australia should be subject to classification. This ensures that the public is informed about the content of such media, and that inappropriate media is not made available to youth.

Any material that is not sold via physical retail channels - for example, an individual importing content from overseas by post, returning from another country with media in their suitcase, or downloading content from the Internet should not be subject to classification. Obtaining content by such means implies that the consumer is aware of the contents, and has taken an effort to locate and import such content - they are not likely to be offended by such content. Any public exhibition of material obtained by these means should be covered by classification.

Question 3. Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

Choice of technology or platform by which content is obtained and viewed does not significantly affect the impact of content on an individual, and should not be used in the decision to classify or exempt from classification a particular piece of content. Instead, the decision to classify content should rely on the context in which it is sold, or viewed.

As per the prior question, if content is made available for retail sale or public exhibition, classification should apply to the content. If instead the content is purchased online, via telephone, or via mail order, classification should not take effect. The latter situation implies that the viewer will be aware of the content, and has an opportunity to research the content if required.

Question 4. Should some content only be required to be classified if the content has been the subject of a complaint?

Material that is not suitable for persons under 18 should be classified if it is made available by public retail sale, or public exhibition. At a minimum, the determination of classification category should be made in this case, optionally with content advisories (e.g. "Contains sex scenes"). Distributors, retailers and exhibitors should be permitted to self-classify content that is reasonably expected to be suitable for persons under 18, but be subject to a review by the Classification Board in the event of a complaint.

In such a case, the Classification Board should be required to provide justification for the classification category applied to the content.

Question 5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

The typical impact of content on an ordinary individual should be considered when deciding whether content should be made available to youth. For example, if violence in a video game may be considered troublesome in a minority of persons of age 15-17, the classification should reflect that it is suitable for most persons of age 15+.

However, the impact of content on adults should not be the basis of any restriction that is made by the Australian Classification Board on behalf of all Australians - all adults should be able to use their best judgment when considering whether to consume content, but should be made aware of potentially offensive content before viewing the media.

Any guidelines for assessing the impact of content designed for children should not treat interactive media as a special case - there is little evidence to suggest that interactive media, including computer games, have any more negative impact on youth than do passive media (films, TV shows). The guidelines should consider all media types equally.

Question 6. Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

The cost of classification and any appeals against negative classification of content can adversely affect new entrants to the market, and smaller players within the Australian film, TV and computer game industries. Content provided by such players should be subject to the usual complaint/review procedure, but smaller producers and distributors should be permitted to self-classify media that is made available for retail sale or public exhibition. Likewise, content that is exhibited by art galleries and other such bodies should be available to be self-classified.

Question 7. Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?

As per the prior question, art galleries and other bodies exhibiting artworks should be permitted to self-classify content if it is unsuitable for those under 18. The Classification Board should rely initially upon galleries to provide appropriate advice to the public, and only to intervene if the industry is not performing this task adequately.

Question 8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

Audio material and written publications have less impact than films, pictorial publications and other such media. Availability of audio material and written publications should not be subject to classification or regulation, but existing age limits that apply to pictorial publications such as erotica should be maintained.

Question 9. Should the potential size and composition of the audience affect whether content should be classified?

No, the context in which content is presented should be the primary criterion for classification.

Question 10. Should the fact that content is accessed in public or at home affect whether it should be classified?

The context in which content is accessed is of great importance when considering the impact of such content. Over the past couple of decades, the ability for the public to sample a wide variety of content from both Australian content producers and overseas sources has greatly increased with the widespread adoptance of high-speed Internet connections and the availability of foreign mail-order vendors. These new opportunities have made it possible for a large number of people to view content in the home, whereas 10 or 15 years ago, attending public exhibition of content would have been the primary choice for many consumers.

The existing Classification legislation was primarily designed to restrict public exhibition of offensive content. Applying the existing scheme to material that adults choose to view in the home is wholly inappropriate, and a new Classification scheme must consider this new case.

Since the existing Classification legislation was drafted, public expectations have moved significantly, and material that was previously considered taboo is now widely available on the Internet and via other means. To this end, the guidelines for classification categories must be updated.

Firstly, the RC category should be abolished. Material that is illegal to create or distribute, such as child pornography, should be dealt with under existing law rather than create a grey area that includes such material as fetish pornography.

Secondly, the requirement for sex acts to be simulated in R18+ should be removed, and the other guidelines maintained. The existing scheme requires "mainstream" pornography to be classified as X18+, and it is against the best interest of the public to categorise this as X18+.

The scope of the X18+ classification category should be widened to permit depictions of acts previously considered taboo, and the language prohibiting "offensive or abhorrent" sex acts should be struck from the guidelines. Such wording is at best subjective, and does not take into account differing views between various community groups. Specifically, sexual acts that are outside the remit of what is considered "ordinary" pornography, such as bondage, spanking and other such fetishes should be permitted under the X18+ guidelines. Any content classified as X18+ should make it clear to the public what sort of potentially offensive material is included.

It may be that places of public exhibition or retailers are only permitted to carry R18+ material to avoid providing offense, but the scope of adult content in Australian Classification law should be expanded from where it currently stands to permit those viewing works in the home to choose what they want to view without undue influence from a Classification Board that speaks for a minority of the community.

Question 11. In addition to the factors considered above, what other factors should influence whether content should be classified?