



Submission for ALRC National Classification Scheme Review

The Art Gallery of New South Wales (the **Gallery**) is pleased to have the opportunity to respond to the ALRC issues paper regarding the National Classification Scheme Review (IP 40) (**NCS Review**).

1 The Art Gallery of New South Wales

The NSW Gallery was established in 1874 and is one of the most popular art museums in Australia with over 1.3 million visitors in the 2010/2011 financial year.

Aside from the permanent collection the Gallery is host to more than 30 temporary exhibitions each year. Many of these exhibitions consist of examples of the most important works in art history. It is the reputation of the Gallery as a world class art facility that allows it to continue to provide its visitors with access to exceptional local and international art.

The *Art Gallery of New South Wales Act 1980* constituted the Art Gallery of New South Wales Trust (the **Trust**). The key obligations of the Trust are to:

- develop and maintain a collection of works of art; and
- propagate and increase knowledge and appreciation of art.¹

The NSW Gallery takes these obligations seriously and supports freedom of expression for artists and freedom of access and choice for those wishing to view or learn about art and artistic expression.

2 The NCS Review

The NCS Review issues paper includes a list of questions outlining the approach by the ALRC to the inquiry process. The Gallery has both standing and expertise regarding the questions raised by the NCS Review as to whether the classification system (in whatever form it may take) should be applied to art.

The Art Gallery of New South Wales will in particular address question 7 from the NCS Review list:

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

¹ *Art Gallery of New South Wales Act 1980, Part 2, s7(1)*

In the opinion of the Gallery art should not be required to be classified before exhibition for the following key reasons:

- the art industry is effectively self-regulated such that there is no need for a system of classification for art;
- a classification system is not cost effective or practical; and
- there are significant dangers associated with the introduction of a classification system to art.

3 Submission

3.1 Effective self-regulation

The Gallery believes that art is already effectively self-regulated and that works of art should not be subject to classification.

The Gallery's view is that art history has not failed in making just and adequate criticism of art in a way that effectively self-regulates the industry. It has in fact maintained a very high and objective standard throughout history and proven that time is the great critic. The standards and the parameters of art are ultimately defined by rigorous objective art history and scholarship undertaken by artists, collectors, galleries and other institutions, and the market place.

Artistic process

In the experience of the Gallery, the art community exercises a very strong tradition of self-regulatory thinking from the point of inception of a work of art. Artists filter their artistic message through a process of experience, research, investigation and interpretation. The artist turns the thought, the idea and the reaction into some kind of formal visual shape and that process assists to distil the work into an acceptable and readable form.

A huge amount of work goes into a work of art before it makes it to the gallery wall. Artists do not create works on a whim but go through a process of consideration and constant reassessment of the intention and form of the work. A serious thought in an artists mind is often whether a work will be acceptable to a public or commercial gallery. This thought may play a significant role in the creative process. By the time a work is exhibited it has already moved through the first step of self-regulation that the artists themselves impose.

Gallery discretion

All galleries, both public and commercial, are sensitive to their audience and to the value of their reputation. In our experience, galleries self-regulate by exercising discretion in:

- choosing works to exhibit;
- managing exhibitions in terms of audience information and complaints handling; and
- judging when to remove a work from an exhibition.

The Gallery is governed by a board of trustees who are appointed to be representative of the community and must include at least 2 people who are knowledgeable and experienced in the visual arts. Any areas of contention are brought to the attention of the board of trustees and their guidance is sought. Informed decisions about which works to exhibit are made after proper consultation. In our experience galleries, both public and private, utilise processes for managing potentially contentious subjects because it is in their best interests to do so. Gallery visitors and the galleries themselves are protected by these processes.

In 1997 a work entitled 'Piss Christ' by artist Andres Serrano was exhibited in the National Gallery of Victoria (NGV). The image of a crucifix submerged in yellow liquid did not in itself

inspire controversy but the description by the artist that the yellow liquid was his own urine attracted significant public attention. The NGV (of its own volition) cancelled the Serrano retrospective and removed the work after it became clear that the controversy surrounding it may harm not only other exhibits in the gallery but possibly the reputation of the gallery itself.

The furore over the Bill Henson photographs exhibited in the Roslyn Oxley9 gallery in 2008 seemed to suggest that the art industry had failed to properly self-regulate and had released unacceptable images to the public. The fact that, when referred to the Classification Board the photographs were classified PG and Unrestricted indicated that in fact the art industry's internal system of self-regulation, of measuring and critiquing art, is robust and effective.

It is interesting to note that between January and April of 2005, the Art Gallery of New South Wales ran a Bill Henson retrospective covering the entire range of his work. Approximately 80,000 people visited the exhibition and not one complaint was received. The process of self-regulation operating in the art industry was as effective in 2005 as it was in 2008, and it continues to be so today.

The Gallery has had occasion not to show a work of art because, although the work may be of value and may affect a truth of what happens in the course of human life, that work nonetheless could offend the very eclectic democratic audience that the Gallery enjoys in what is an important public exhibition space. Galleries throughout Australia exercise their discretion and constantly self-regulate to protect their standards and reputation. A system of classification for art is unnecessary in this context.

Measures taken to inform

In its submission to this inquiry, the NGV has described its practice of providing advice to gallery visitors if particular works contain images that may offend. The practices of the NGV include advice at the point of ticket sale and information made available to visitors prior to entering a particular exhibit.² Similarly, the submission by the National Gallery of Australia (**National Gallery**) points out that the state and regional cultural institutions in Australia exercise 'due diligence' to determine how to present works and how to give visitors the information they need to make informed viewing decisions.³

The Gallery exercises considerable discretion in deciding what works to exhibit and what information should be provided to audiences. Like its peers, the Gallery exercises measures including advice about the content of the exhibition at the point of ticket sale and appropriate signage at the exhibition. For example, the Sulman Prize for 2011 was awarded to a painting that depicted certain violence. The Gallery ensured that signage was placed at the point of entry to the room giving people prior warning regarding the painting. Special information and guidance was provided to teachers leading school groups through the exhibition to allow them to make their own decision about viewing the work.

The various submissions to this inquiry from galleries including the NGV, the National Gallery and Museum of Contemporary Art (**MCA**) indicate that complaints received by Australian galleries are few. The National Gallery stated that it receives approximately 5 letters of complaint annually.⁴ The Gallery receives on average 2 complaints each year and remembers several years in which we have received none at all. Complaints received by the Gallery are carefully considered and responded to.

The Gallery is visited by approximately 1.3 million people each year. The National Gallery receives some 720,000⁵ people annually through its doors, the MCA 580,000⁶ and the NGV 1.5 million⁷. We consider the number of complaints received in the context of the number of

² Submission to the National Classification Scheme Review (IP 40) from the National Gallery of Victoria pg 2

³ Submission to the National Classification Scheme Review (IP 40) from the National Gallery of Australia pg 1

⁴ Ibid pg 3

⁵ Ibid pg 1

⁶ Submission to the National Classification Scheme Review (IP 40) from the Museum of Contemporary Art pg 1

⁷ Submission to the National Classification Scheme Review (IP 40) from the National Gallery of Victoria Attachment 1, pg 5

people who visit these galleries to be evidence of the very strong level of guidance and self-regulation in what galleries do.

Institutional sensitivities

It is not only art galleries that contribute to the self-regulation of the art industry. Early this year fundraisers for the Sydney Children's Hospital cancelled a charity art exhibition at the hospital. The decision came after the hospital viewed a work by artist Del Kathryn Barton, a photo in which the artist's 6 year old son was naked from the waist up.

Understandably, the Sydney Children's Hospital is incredibly sensitive to the conditions of a children's hospital. In everything it does, including the choice of art it supports or displays, the hospital goes through a rigorous self-imposed assessment process and takes into account the concerns of parents, children, nurses, doctors etc. The Sydney Children's Hospital made the decision not to show the work due to its own internal considerations and assessment. The suggestion that there is need for anything else could be interpreted as insult to all the intelligence invested in that assessment process.

The reaction of the Sydney Children's Hospital could be interpreted as a sign of the damage that can be done by demands for heavier regulation of the art industry. The hospital reacted to what it believed were public perceptions in the aftermath of events like the Bill Henson controversy in 2008. The Gallery is aware, however, that like galleries, institutions that are involved with art have their own commercial and community sensitivities to consider. For better or for worse, the awareness of these sensitivities contributes to the effective self-regulation of the art industry.

Market pressure

The art world is very competitive. A great deal more art is produced than the market can absorb. Literally millions of works of art are produced each year, most of which will never be seen in a public forum. This means that the market is strong in terms of self regulation and self criticism. In the experience of the Gallery, of the art produced at any one time, most of it goes by the board. It is only the art that has stood up to the almost abstract tests that are applied by the market place (the critics, the curators, the collectors, the art historians) that ever make it to exhibition. Those few works have been through a rigorous analysis before they are seen by the public. The system of self-regulation is strong, in part because supply far exceeds demand and this is a powerful filtering tool.

The issues paper released by the NCS Review notes that self-regulation may be feasible if, among other things, potential problems can be fixed by the market itself.⁸ The above point illustrates that there are sufficient market incentives for individuals and groups to effectively self-regulate.

3.2 Administrative difficulties

The NCS Review issues paper clearly sets out the difficulties associated with imposing a classification scheme. Those difficulties seem to apply particularly to the application of such a scheme to art. Much has been said about the impracticalities of a system of classification for art in submissions to the NCS Review and related inquiries. We will touch briefly on our main concerns in this area.

Cost

As noted in the NCS Review issues paper, excessive regulation may place an unreasonable burden on industry and in particular sole traders or small enterprises.⁹ This is particularly true of the art industry. The submission by the Arts Law Centre of Australia (**ALCA**) notes that the average income of a visual artist in Australia in the 2007/08 financial year was

⁸ National Classification Scheme Review (IP 40) issues paper pg 18

⁹ Ibid pg 20

\$34,900.¹⁰ The ALCA points out that the costs associated with classification are prohibitive for small independent screen creators and the same would be true for emerging artists. Classification costs imposed on artists would certainly restrict artistic expression and as a result reduce access for Australians to a broad artistic experience.

We have described above a system of self-regulation within the art industry which we believe is effective. In the opinion of the NSW Gallery it would not be cost effective to apply a classification system to art when there is already a functioning process in place. The NCS Review should not underestimate how much art is created and the magnitude of the task of classifying each piece.

Constitution of the board

Who would constitute the board for classification of art and against what criteria would they measure works? In order to classify art a regulatory body would need to call on people in the industry for assistance. Classification would need to be undertaken, at least in part, by the people who are employed in the realm of art criticism, art curatorship and art criticism. As set out above, it is our belief that the industry is already conducting this process of analysis and self-regulation.

As the NCS Review issues paper points out, the answer to who should classify any material depends largely on:

- the regulatory model chosen; and
- whether there are more effective ways to assess materials.

The NSW Gallery maintains that the self-regulatory model currently operating in the art industry is effective and that the industry is best placed to assess and deal with inappropriate materials.

3.3 Inherent dangers

The NSW Gallery believes that the imposition of a classification system poses significant dangers to the art industry in Australia.

Self-censorship

The NCS Review issues paper admits that any classification scheme is likely to involve some censorship.¹¹ This is not only due to art potentially being refused classification and kept from the public view but due to the 'chilling effect' that classification may have on artistic expression. Art would be censored by a classification system that places a cloud of uncertainty upon the creative community.

There is suggestion from sectors of the art community that artists are already self-censoring to avoid possible controversy and may do so even more if they fear that they will be classified out of general public exhibitions.

As noted above, the annual income of visual artists is very modest. Completely aside from the costs of classification, an emerging artist with limited means will be less likely to produce a challenging work if it reduces their chances of exhibiting to the public and potentially commercialising their work.

The NSW Gallery believes that the role of the artist is to declare the veracity of the world we live in. If we give the creative artist the opportunity to carry out their role, to investigate and question, interpret and record the truth of the world around us, then we must do so without threatening censorship. The NSW Gallery agrees with the submission to the Senate Inquiry into the Australian Film and Literature Classification Scheme by the National Association for the Visual Arts Ltd (**NAVA**). NAVA's submission states that artists are deterred by policy and legislation from exploring difficult ideas and subjects. NAVA points out that as a result artists

¹⁰ Submission to the National Classification Scheme Review (IP 40) from the Arts Law Centre of Australia submission pg 15

¹¹ National Classification Scheme Review (IP 40) issues paper pg 29

are self-censoring in a way that diminishes Australia's participation in international intellectual debate and may result in cultural stagnation.¹²

An additional layer of bureaucracy in the form of a classification system will deter artists from taking on the kinds of subjects that need to be challenged but which may spark controversy.

Creative artists live and thrive in a community that throws challenges at them, but also in a community where they feel that they have the freedom to respond with a completely open opportunity and an open imagination. Imposing a system of classification would no doubt prejudice that. It is not just the specifics of such a system that poses a threat; artists would feel that they were working in a culture that was antipathetic to their spirit and imagination. The sense of being in a slightly hostile culture, a culture that was hostile to an open creativity would encourage artists to self-censor to an even greater degree than they are currently. The Australian art industry and public will suffer in an artistic environment that is stifled by unnecessary regulation.

Driving artists away

A key consideration in imposing a system of classification on artists is the risk that they will simply leave Australia. NAVA's submission to the Senate Inquiry into the Australian Film and Literature Classification Scheme compares the Australian approach to classification with other jurisdictions.¹³ It appears from that submission that applying a classification system to art will make Australia a highly restrictive environment compared to the UK, USA and Europe. The NSW Gallery fears that if a classification system is applied to art, Australian artists, both established and emerging, will find a more artistically conducive environment outside of Australia. This would be incredibly damaging for our artistic heritage.

Applying a classification system to art would be a huge impediment to the creative activity of the country. Like everything the benefits need to be measured against the cost and the cost comes in two forms. Not only in the actual cost of creating a bureaucracy to manage an unnecessary system of regulation, but also the cost of the imposition on natural creative energy. Ultimately we consider it a real risk that people will just leave Australia. Based on our conversations with both emerging and established artists, this is a serious risk that needs to be considered.

Impact on exhibitions

It is not clear to us how international exhibitions would be classified if the proposed system was put in place. As several of the submissions to this NCS Review have noted, there is a great deal of historical as well as modern art that is blood thirsty or rapacious. How will this art be classified under the system? If an important historical work is classified such that it is unable to be exhibited or access is restricted, how will this be explained to the Australian public and how will Australia be perceived internationally as a result?

The NSW Gallery has an international reputation that allows it to borrow and exhibit some of the finest art in the world. It would be damaging to the reputation of the NSW Gallery and Australia to have to refuse an exhibition for fear that certain works would be given a restricted classification.

The NSW Gallery is opening a show in the near future that we have been working on for 4 years. It is an investigative, scholarly exhibition representing the art of the Weimar from 1910 to 1937 - a hugely important part of European art history. The exhibition includes works by George Grosz, Christian Schad and Rudolf Schlichter. Some of the imagery in this exhibition is confronting and approaches very difficult ideas and parental guidance advice will be provided at the point of ticket sales and at the NSW Gallery website.

We consider that despite the fact that the images in this exhibition may challenge some people there should be no restriction on the ability of people to access the exhibition if they

¹² Submission to the Senate Inquiry into the Australian Film and Literature Classification Scheme from National Association for the Visual Arts Ltd pg 8

¹³ Ibid pg 14

choose to. One of the defining traditions of western art is what happened in Germany particularly in the 1920s and 30s, when there was an explosion of imaginative creativity and energy in a social, political and cultural climate that was increasingly dogmatic and threatening. The collision of these elements produced the art comprised in this exhibition and that art has had a huge influence around the world. In fact it had a particular influence on the art of Melbourne in the 1950s and 60s. This exhibition should be available to anyone who wants to see it.

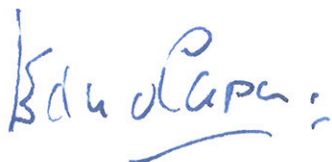
In the opinion of the NSW Gallery the proposed system of classification may impede the ability of Australian galleries to attract or exhibit important international art. This can only hurt the Australian public, culturally and intellectually.

Another area of concern is the treatment of exhibitions of the work of emerging artists, for example the ARTEXPRESS exhibition featured annually by the NSW Gallery. Since 1983 the NSW Gallery has been the primary venue for ARTEXPRESS which showcases the art of school students in both metropolitan and regional NSW.

The NSW Gallery is concerned about the impact of a classification system on an exhibition like ARTEXPRESS. In its current form the exhibition encourages school children to explore and express the things that are important to them in whatever artistic form they choose. It seems a difficult thing to explain the specifics of an art classification system to a school student and still expect them to challenge and question and produce brave and vital work. The cloud of uncertainty would hang over a young emerging artist to an even greater extent than it would over an established artist. Stifling creativity in young people is another possible negative result of a system of unnecessary regulation.

4 Conclusion

Art must not be subject to classification. The self-regulation inherent in both the creative and critical processes and in the market place are, and have been for centuries, valid and effective.



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Director & Chief Curator

The Art Gallery of New South Wales

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