



## **Submission from Eros Association in Response to ALRC Recommendations in Discussion Paper 77.**

1. The following is a brief response and does not address all recommendations or issues raised in the discussion paper. This is not because we agree with all other recommendations but have chosen to focus on issues deemed most important by our members.

### **Chapter 9, Restricted Publications.**

2. When moving or merging adult or restricted publications into a film or 'screen' set of guidelines, it is important that no content is lost from the publications guidelines. Since Gareth Evans introduced the guidelines for adult publications and films in 1983, our records show that there have been half a dozen changes to the Cat 1, Cat 2 and X ratings that have left the genres more restricted after each round. There has never been an official broadening or widening of the guidelines around adult media in Australia. Clearly this can only go so far before the classifications become so emasculated that there is nothing left.

3. We note that in point 9.32 of the discussion paper "Most publications that are currently required to be classified are sexually explicit magazines. Under the scheme proposed by the ALRC, these publications would be classified X 18+, rather than Category 1 restricted or Category 2 restricted. In the ALRC's view, this is the appropriate classification for this content, because the X 18+ classification is specifically for depictions of consensual sexually explicit activity."

4. We are extremely concerned by the suggestion that Category 1 and 2 publications should both fall into the X classification. This would mean the collapse of at least five Category 1 magazines produced in Australia, with all the attendant economic fallout for businesses and families to say nothing of the civil liberties of the million or so readers of this genre.

5. Already the W.A. Attorney General, Christian Porter (submission CI 2465), has signaled his unwillingness to support handing enforcement powers to the Commonwealth in his submission to this enquiry. He stated that he is determined to keep the X rating illegal in his state. If Cat 1 and 2 Restricted magazines become X rated and the states continue to enforce outdated and unpopular laws around this category, adult publications that have been legal

around Australia (with the exception of Qld from the late 1990s to now) for over 30 years, will become illegal except in the NT and the ACT. We are sure that this sort of outcome is not what the ALRC would intend from its recommendations.

6. We are concerned that the definition of 'explicit' used in Recommendation 9.32 does not match the publications guidelines for Category 1 publications. Eros members who produce Category 1 magazines like Penthouse (Horwitz), Hustler (Adult Media Group) and Picture Premium (ACP Magazines) etc, do so without including any 'explicit' sexual content as the Guidelines and the Classification Code both spell out. 'Explicit nudity' is not 'explicit sex' or 'sexually explicit' as 9.32 states.

7. We also believe that it is an important principle that some adult sexual concepts and imagery, at the lower end of the spectrum (Category 1 Restricted publications) continue to be available from non age-restricted premises. This includes a growing amount of sex education publications that are explicit and are moving into the psychology of sex or deal with contentious issues like female ejaculation and prostate stimulation. These need to be sealed and sold to adults but not everyone has access to restricted premises in Australia and they form an important part of the mix in many newsagents and bookshops.

8. It would be breathtaking to continue to allow hunting magazines which show explicit depictions of animals being killed for sport or detective thrillers which depict and describe people being murdered (unsealed and on open view) to continue to stay in newsagents while a magazine which shows explicit nudity, is sold only to adults and is sealed in plastic with an Unrestricted cover, is forced into adults only premises. There has to be some sort of averaging of the intensity amongst the different types of publications on sale in unrestricted premises and not just singling out 'sex' for special treatment or a huge act of official censorship takes place for no real reason.

9. The ALRC statement that, "Most publications that are currently required to be classified are sexually explicit magazines" is simply untrue. The Submittable Publication Scheme states that any publication that:

*contains depictions or descriptions likely to cause offence to a reasonable adult, is unsuitable for a minor to see or read, or is likely to be refused classification*

is required to be submitted. This says nothing about sex per se and can include any genre. The truth is that this scheme has been flouted by the major publishing houses since its inception and has been selectively 'applied' only to adult sex magazines by the Classification Board and the Classification Liaison Service.

10. This has resulted in major publishers like Penguin being able to re-publish year after year, novels and coffee table books with content that would never be allowed in an 'adult' magazine. For example, Anais Nin's classic erotic anthology, Delta of Venus (Penguin), opens with a graphic short story about a 40 year old man having sex with 12 and 14 year old sisters. How is this not 'unsuitable for a

minor to read'? A shooting magazine that shows a freshly slaughtered deer with blood running down its neck being cradled in the lap of a shooter, is a common image on magazine covers in the shooting section. How is this not 'unsuitable for a minor to see'? In fact, these depictions cause offence to many people who walk into a newsagent but these publications are never submitted and the CB never enforce the scheme around this sort of material. We could give many more examples if asked.

11. The real effect of banning Category 1 Restricted magazines from newsagents and bookshops, by reclassifying them as X rated, (even if the states ceded enforcement powers to the Commonwealth) would simply be to further ensconce this double standard and encourage mainstream book publishers to seek out more and more material that pushes the top end of the R Rated border.

12. Category 1 Restricted publications do not neatly fit the Guidelines for R18+ films in the same way that Category 2 Restricted guidelines do not fit the X18+ classification. The Classification Board (and before that, the OFLC) are on record for many years quoting research that shows that the 'still' image does not impact the reader as much as the moving image and therefore publications guidelines need to be set slightly higher than film for consistency. This logic, apparently backed up by qualified research, cannot just be overturned or labelled as outdated because a new scheme is being implemented. Either the various Chief Censors and Directors of the OFLC and the CB were to be believed in what they were saying or they were not. If they are, then it holds that there should still be a difference in the levels of intensity around the still image as to the moving one, even when it is online. And there are plenty of publications on line and read as books, as witnessed by the rise of the Kindle and iPad for downloading and reading books from the internet.

**13. The R18+ classification must be modified to incorporate material that is currently classified as Category 1 Restricted and the X18+ classification must be modified to incorporate material that is currently classified as Category 2 Restricted. This should not be beyond the ability of competent parliamentary draftspersons to develop into the legislative framework of the new Act.**

14. We support proposal 9-5 and consider a comprehensive review of community standards as very important and one that would back our position above. Despite repeated requests from this industry to government, there has never been a community standards review of the X classification. It is our belief that such a review had been proposed more than once but blocked by the state Attorneys General because of the embarrassment that the results would cause their prohibitionist stance.

15. Overall we are supportive of a new Classification Scheme and Classification of Media Content Act.

16. However we believe that material that is produced for people under 15 should undergo the most scrutiny. Material developed for people over 15, and in

particular adults, should require the least government scrutiny. This is especially the case if content is restricted in some form to adults only.

17. We are concerned that some of the proposals in the discussion paper do not draw enough distinction between adult media for private use and adult media of a commercial nature. People should have the freedom to distribute private material between one another without sanction unless that material contains content where illegal acts have taken place.

### **Chapter 7. Who should classify content?**

18. This industry association supports industry classifiers with proper training. Indeed, if a new Classification Scheme is to work for the adult industry then classifiers from the industry must be able to classify X content. It will be an impossible task for many adult websites to have their content classified by the regulator. For example one of our members produces 15, five-minute films every week, as well as 14 photo folios. This company could not afford the cost or the time to submit each of these films for classification. These films, as with most web content, have a very short shelf life – sometimes a matter of a few weeks. There are hundreds of similar producers in Australia so it is just not feasible for this content to be classified by the Classification Board.

**19. The Act should provide that commercial content providers of R18+ and X18+ media are able to use authorised industry classifiers.**

### **Chapter 14. Enforcing Classification Laws.**

20. We support 14-1 that enforcement should be a commonwealth matter. The adult industry, more than any other branch of media, can support the claim that state-based enforcement of classification laws is more likely to lead to official corruption, inconsistency of application and a waste of public resources. New laws in NSW (CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT ACT 1995 Section 58A) which give police the power to set the classification level of an adult film that they seize without even watching it and without reference to any official data or records, is alarming. All the police need to do is get the agreement of the seller that their evaluation of the film is right and that is what is prosecuted in the courts, whether the film is a G rated cartoon or an X rated adult feature. Most shop owners agree to the police assessments because if they don't they are then liable to pay for the costs of the classification process. The potential for corruption in this system is clear.

21. Proposal 14-2 in our opinion is simply not an option if the ALRC and the Australian government wish to claim a truly uniform classification scheme across all jurisdictions and platforms. If, after this review we still end up with a two-tiered system of enforcement (and by default a two-tiered system based on delivery platform) Australia will be seen by the democratic world as having one foot in the modern world of communications technology and one in the Victorian

era of old style morality and religious thought. The problems of yesterday will simply continue for another few decades.

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