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5. The Proposed Classification Scheme

Proposal 5–1 A new National Classification Scheme should be enacted regulating the classification of media content.

Proposal 5–2 The National Classification Scheme should be based on a new Classification of Media Content Act. The Act should provide, among other things, for:
(a) what types of media content may, or must be classified;
(b) who should classify different types of media content;
(c) a single set of statutory classification categories and criteria applicable to all media content;
(d) access restrictions on adult content;
(e) the development and operation of industry classification codes consistent with the statutory classification criteria; and
(f) the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws.

Proposal 5–3 The Classification of Media Content Act should provide for the establishment of a single agency (‘the Regulator’) responsible for the regulation of media content under the new National Classification Scheme.

Proposal 5–4 The Classification of Media Content Act should contain a definition of ‘media content’ and ‘media content provider’. The definitions should be platform-neutral and apply to online and offline content and to television content.

6. What Content Should be Classified?

Proposal 6–1 The Classification of Media Content Act should provide that feature-length films and television programs produced on a commercial basis must be classified before they are sold, hired, screened or distributed in Australia. The Act should provide examples of this content. Some content will be exempt: see Proposal 6–3.

Proposal 6–2 The Classification of Media Content Act should provide that computer games produced on a commercial basis, that are likely to be classified MA 15+ or higher, must be classified before they are sold, hired, screened or distributed in Australia. Some content will be exempt: see Proposal 6–3.

Proposal 6–3 The Classification of Media Content Act should provide a definition of ‘exempt content’ that captures all media content that is exempt from the laws relating to what must be classified (Proposals 6–1 and 6–2). The definition of
exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. This content should not be exempt from the proposed law that provides that all content likely to be R 18+ must be restricted to adults: see Proposal 8–1.

Proposal 6–4 If the Australian Government determines that X 18+ content should be legal in all states and territories, the Classification of Media Content Act should provide that media content that is likely to be classified X 18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screened or distributed in Australia.

Proposal 6–5 The Classification of Media Content Act should provide that all media content that may be RC must be classified. This content must be classified by the Classification Board: see Proposal 7–1.

Proposal 6–6 The Classification of Media Content Act should provide that the Regulator or other law enforcement body must apply for the classification of media content that is likely to be RC before:

(a) charging a person with an offence under the new Act that relates to dealing with content that is likely to be RC;

(b) issuing a person a notice under the new Act requiring the person to stop distributing the content, for example by taking it down from the internet; or

(c) adding the content to the RC Content List (a list of content that the Australian Government proposes must be filtered by internet service providers).

Proposal 6–7 The Classification of Media Content Act should provide that, if classified content is modified, the modified version shall be taken to be unclassified. The Act should define ‘modify’ to mean ‘modifying content such that the modified content is likely to have a different classification from the original content’.

Proposal 6–8 Industry bodies should develop codes of practice that encourage providers of certain content that is not required to be classified, to classify and mark content using the categories, criteria, and markings of the National Classification Scheme. This content may include computer games likely to be classified below MA 15+ and music with explicit lyrics.

7. Who Should Classify Content?

Proposal 7–1 The Classification of Media Content Act should provide that the following content must be classified by the Classification Board:

(a) feature-length films produced on a commercial basis and for cinema release;

(b) computer games produced on a commercial basis and likely to be classified MA 15+ or higher;

(c) content that may be RC;
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(d) content that needs to be classified for the purpose of enforcing classification laws; and

(e) content submitted for classification by the Minister, the Regulator or another government agency.

Proposal 7–2 The Classification of Media Content Act should provide that for all media content that must be classified—other than the content that must be classified by the Classification Board—content may be classified by the Classification Board or an authorised industry classifier.

Question 7–1 Should the Classification of Media Content Act provide that all media content likely to be X 18+ may be classified by either the Classification Board or an authorised industry classifier? In Chapter 6, the ALRC proposes that all content likely to be X 18+ must be classified.

Proposal 7–3 The Classification of Media Content Act should provide that content providers may use an authorised classification instrument to classify media content, other than media content that must be classified.

Proposal 7–4 The Classification of Media Content Act should provide that an authorised industry classifier is a person who has been authorised to classify media content by the Regulator, having completed training approved by the Regulator.

Proposal 7–5 The Classification of Media Content Act should provide that the Regulator will develop or authorise classification instruments that may be used to make certain classification decisions.

Question 7–2 Should classification training be provided only by the Regulator, or should it become a part of the Australian Qualifications Framework? If the latter, what may be the best roles for the Board, higher education institutions, and private providers, and who may be best placed to accredit and audit such courses?

Proposal 7–6 The Classification of Media Content Act should provide that the functions and powers of the Classification Board include:

(a) reviewing industry and Board classification decisions; and

(b) auditing industry classification decisions.

This means the Classification Review Board would cease to operate.

Proposal 7–7 The Classification of Media Content Act should provide that the Regulator has power to:

(a) revoke authorisations of industry classifiers;

(b) issue barring notices to industry classifiers; and

(c) call-in unclassified media content for classification or classified media content for review.
8. Markings, Advertising, Display and Restricting Access

Proposal 8–1 The Classification of Media Content Act should provide that access to all media content that is likely to be R 18+ must be restricted to adults.

Proposal 8–2 The Classification of Media Content Act should provide that access to all media content that has been classified R 18+ or X 18+ must be restricted to adults.

Proposal 8–3 The Classification of Media Content Act should not provide for mandatory access restrictions on media content classified MA 15+ or likely to be classified MA 15+.

Proposal 8–4 The Classification of Media Content Act should provide that methods of restricting access to adult media content—both online and offline content—may be set out in industry codes, approved and enforced by the Regulator. These codes might be developed for different types of content and industries, but might usefully cover:

(a) how to restrict online content to adults, for example by using restricted access technologies;
(b) the promotion and distribution of parental locks and user-based computer filters; and
(c) how and where to advertise, package and display hardcopy adult content.

Question 8–1 Should Australian content providers—particularly broadcast television—continue to be subject to time-zone restrictions that prohibit screening certain media content at particular times of the day? For example, should free-to-air television continue to be prohibited from broadcasting MA 15+ content before 9pm?

Proposal 8–5 The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, before broadcasting the content, on packaging, on websites and programs from which the content may be streamed or downloaded, and on advertising for the content.

Proposal 8–6 The Classification of Media Content Act should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

(a) the likely audience of the advertisement;
(b) the impact of the content in the advertisement; and
(c) the classification or likely classification of the advertised content.
9. Classification Categories and Criteria

Proposal 9–1  The Classification of Media Content Act should provide that one set of classification categories applies to all classified media content as follows: C, G, PG 8+, T 13+, MA 15+, R 18+, X 18+ and RC. Each item of media content classified under the proposed National Classification Scheme must be assigned one of these statutory classification categories.

Proposal 9–2  The Classification of Media Content Act should provide for a C classification that may be used for media content classified under the scheme. The criteria for the C classification should incorporate the current G criteria, but also provide that C content must be made specifically for children.

Proposal 9–3  The Classification of Media Content Act should provide that all content that must be classified, other than content classified C, G or RC, must also be accompanied by consumer advice.

Proposal 9–4  The Classification of Media Content Act should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.

Proposal 9–5  A comprehensive review of community standards in Australia towards media content should be commissioned, combining both quantitative and qualitative methodologies, with a broad reach across the Australian community. This review should be undertaken at least every five years.

10. Refused Classification Category

Proposal 10–1  The Classification of Media Content Act should provide that, if content is classified RC, the classification decision should state whether the content comprises real depictions of actual child sexual abuse or actual sexual violence. This content could be added to any blacklist of content that must be filtered at the internet service provider level.

11. Codes and Co-regulation

Proposal 11–1  The new Classification of Media Content Act should provide for the development of industry classification codes of practice by sections of industry involved in the production and distribution of media content.

Proposal 11–2  Industry classification codes of practice may include provisions relating to:

(a) guidance on the application of statutory classification obligations and criteria to media content covered by the code;

(b) methods of classifying media content covered by the code, including through the engagement of accredited industry classifiers;

(c) duties and responsibilities of organisations and individuals covered by the code with respect to maintaining records and reporting of classification decisions and quality assurance;
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(d) the use of classification markings;
(e) methods of restricting access to certain content;
(f) protecting children from material likely to harm or disturb them;
(g) providing consumer information in a timely and clear manner;
(h) providing a responsive and effective means of addressing community concerns, including complaints about content and compliance with the code; and
(i) reporting to the Regulator, including on the handling of complaints.

Proposal 11–3 The Regulator should be empowered to approve an industry classification code of practice if satisfied that:
(a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;
(b) the body or association developing the code represents a particular section of the relevant media content industry; and
(c) there has been adequate public and industry consultation on the code.

Proposal 11–4 Where an industry classification code of practice relates to media content that must be classified or to which access must be restricted, the Regulator should have power to enforce compliance with the code against any participant in the relevant part of the media content industry.

12. The New Regulator

Question 12–1 How should the complaints-handling function of the Regulator be framed in the new Classification of Media Content Act? For example, should complaints be able to be made directly to the Regulator where an industry complaints-handling scheme exists? What discretion should the Regulator have to decline to investigate complaints?

Proposal 12–1 A single agency (‘the Regulator’) should be responsible for the regulation of media content under the new National Classification Scheme. The Regulator’s functions should include:
(a) encouraging, monitoring and enforcing compliance with classification laws;
(b) handling complaints about the classification of media content;
(c) authorising industry classifiers, providing classification training or approving classification training courses provided by others;
(d) promoting the development of industry classification codes of practice and approving and maintaining a register of such codes; and
(e) liaising with relevant Australian and overseas media content regulators and law enforcement agencies.
In addition, the Regulator’s functions may include:

(f) providing administrative support to the Classification Board;

(g) assisting with the development of classification policy and legislation;

(h) conducting or commissioning research relevant to classification; and

(i) educating the public about the new National Classification Scheme and promoting media literacy.

13. Enacting the New National Classification Scheme

Proposal 13–1 The new Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia.

Proposal 13–2 State referrals of power under s 51(xxxvii) of the *Australian Constitution* should be used to supplement fully the Parliament of Australia’s other powers, by referring matters to the extent to which they are not otherwise included in Commonwealth legislative powers.

14. Enforcing Classification Laws

Proposal 14–1 The new Classification of Media Content Act should provide for enforcement of classification laws under Commonwealth law.

Proposal 14–2 If the Australian Government determines that the states and territories should retain powers in relation to the enforcement of classification laws, a new intergovernmental agreement should be entered into under which the states and territories agree to enact legislation to provide for the enforcement of classification laws with respect to publications, films and computer games.

Proposal 14–3 The new Classification of Media Content Act should provide for offences relating to selling, screening, distributing or advertising unclassified material, and failing to comply with:

(a) restrictions on the sale, screening, distribution and advertising of classified material;

(b) statutory obligations to classify media content;

(c) statutory obligations to restrict access to media content;

(d) an industry-based classification code; and

(e) directions of the Regulator.

Proposal 14–4 Offences under the new Classification of Media Content Act should be subject to criminal, civil and administrative penalties similar to those currently in place in relation to online and mobile content under sch 7 of the *Broadcasting Services Act 1992* (Cth).

Proposal 14–5 The Australian Government should consider whether the Classification of Media Content Act should provide for an infringement notice scheme in relation to more minor breaches of classification laws.