

# 1. Introduction to the Inquiry

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## Contents

Introduction	33
Related inquiries	34
Scope of the Inquiry	36
The law reform process	38
Building an evidence base	38
Community consultation	38
Appointed experts	39
Economic impact	40
Report outline	41

## Introduction

1.1 On 24 March 2011, the Australian Law Reform Commission (ALRC) was asked to inquire into and report on the framework for the classification of media content in Australia.

1.2 In considering the effectiveness of the National Classification Scheme, and options for reform, the ALRC was required to consider the extent to which the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (*Classification Act*), state and territory enforcement legislation, schs 5 and 7 of the *Broadcasting Services Act 1992* (Cth), and the Intergovernmental Agreement on Censorship and related laws continue to provide an effective framework for the classification of media content in Australia.

1.3 In performing its functions in relation to this reference, the ALRC was also asked to consider:

1. relevant existing Commonwealth, State and Territory laws and practices
2. classification schemes in other jurisdictions
3. the classification categories contained in the Classification Act, National Classification Code and Classification Guidelines
4. any relevant constitutional issues, and
5. any other related matter.

1.4 In referring the review to the ALRC, the Attorney-General had regard to:

- the rapid pace of technological change in media available to, and consumed by, the Australian community
- the needs of the community in this evolving technological environment

- the need to improve classification information available to the community and enhance public understanding of the content that is regulated
- the desirability of a strong content and distribution industry in Australia, and minimising the regulatory burden
- the impact of media on children and the increased exposure of children to a wider variety of media including television, music and advertising as well as films and computer games
- the size of the industries that generate potentially classifiable content and potential for growth ...

1.5 The Terms of Reference also noted that this is the first comprehensive review of censorship and classification in Australia since 1991. The *Classification Act* and complementary state and territory enforcement legislation (referred to in this Final Report as the ‘classification cooperative scheme’) were enacted following recommendations made by the ALRC in its 1991 report, *Censorship Procedure* (ALRC Report 55). That report recommended establishing a legislative framework that would enable the Commonwealth, states and territories to take a national approach to classification.

## **Related inquiries**

1.6 Since 2010, there have been a significant number of inquiries and reviews covering matters related to the Inquiry. In 2010, the Australian Government Attorney-General’s Department (AGD) conducted a public consultation on an R 18+ classification for computer games.<sup>1</sup> Commonwealth, state and territory censorship ministers subsequently reached in-principle agreement on the introduction of an R 18+ classification for computer games at the July 2011 meeting of the Standing Committee of Attorneys-General (SCAG) (now the Standing Council on Law and Justice).<sup>2</sup> A bill to amend the *Classification Act* to establish an R 18+ classification category for computer games was introduced by the Minister for Home Affairs and the Minister for Justice, the Hon Jason Clare MP, in February 2012.

1.7 In 2010, the Department of Broadband, Communications and the Digital Economy (DBCDE) reported on a review of measures to increase accountability and transparency of the processes that would lead to certain online content being placed on the Refused Classification (RC) Content List for mandatory internet service provider (ISP) filtering.<sup>3</sup> Arising out of this review, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy,

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1 See Australian Government Attorney-General’s Department, *Final Report on the Public Consultation on the Possible Introduction of an R18+ Classification for Computer Games* (2010). This review received over 58,000 submissions, of which 98% favoured the introduction of an R 18+ classification for computer games.

2 B O’Connor (Minister for Home Affairs and Minister for Justice), ‘Draft R 18+ Computer Game Guidelines Released’ (Press Release, 25 May 2011); B O’Connor (Minister for Home Affairs and Minister for Justice), ‘Agreement on R 18+ Classification for Computer Games’ (Press Release, 22 July 2011).

3 Department of Broadband, Communications and the Digital Economy, *Outcome of Public Consultation on Measures to Increase Accountability and Transparency for Refused Classification Material* (2010).

committed the Government to completing a review of the scope of the RC category prior to introducing legislation for mandatory ISP-level filtering of RC content. This legislative change is intended to be accompanied by the suite of transparency and accountability measures, such as mechanisms for independent review of lists of blocked URLs and avenues for the review of classification decisions.

1.8 In June 2011, the Senate Legal and Constitutional Affairs References Committee released its report, *Review of the National Classification Scheme: Achieving the Right Balance*.<sup>4</sup> The Committee, chaired by Senator Guy Barnett, made a total of 30 recommendations, relating to:

- the National Classification Code and Classification Guidelines;
- the classification of art works and removal of the ‘artistic merit’ defence;
- the transfer of classification powers to the Commonwealth;
- classification enforcement, training and accreditation for industry classifiers;
- terms of appointment for members of the Classification Board and the Classification Review Board; and
- the handling of complaints related to classification.

1.9 Also in June 2011, the Joint Select Committee on Cyber-Safety, chaired by Senator Dana Wortley, released its Interim Report, *High-Wire Act: Cyber-Safety and the Young*.<sup>5</sup> The Joint Select Committee investigated young people’s use of the internet and possible cyber-safety threats, including cyber-bullying, exposure to illegal and inappropriate content, inappropriate social and health behaviours in an online environment (technology addiction, online promotion of anorexia, drug usage, underage drinking and smoking), identity theft, and breaches of privacy.

1.10 In July 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs tabled its report, *Reclaiming Public Space: Inquiry into the Regulation of Billboard and Outdoor Advertising*.<sup>6</sup> The Committee, chaired by Graham Perrett MP, made 19 recommendations relating to:

- the effectiveness of industry self-regulation by the Advertising Standards Board;
- codes of practice for outdoor advertising;
- complaints procedures for advertising content; and
- research into prevailing community standards.

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4 Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the Right Balance* (2011).

5 Joint Select Committee on Cyber-Safety—Parliament of Australia, *High-Wire Act: Cyber-Safety and the Young: Report* (2011).

6 House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the Regulation of Billboards and Outdoor Advertising: Final Report* (2011).

1.11 While the *Reclaiming Public Space* report raised issues about the effectiveness of advertising industry self-regulation, it nonetheless ‘rejected the classification system as an inappropriate system for regulating outdoor advertising’.<sup>7</sup>

1.12 Importantly, and in parallel with the ALRC’s Inquiry, the Convergence Review is being undertaken through the DBCDE, and is due to release its final report in the first quarter of 2012. The Convergence Review Committee, an independent committee chaired by Glen Boreham, was given the task of reviewing ‘the operation of media and communications legislation in Australia and to assess its effectiveness in achieving appropriate policy objectives for the convergent era’.<sup>8</sup> The Convergence Review incorporates a statutory review of the operation of sch 7 of the *Broadcasting Services Act*.<sup>9</sup>

1.13 The Convergence Review Committee released a series of five discussion papers for public comment, including a paper dealing with community standards, in September 2011, and in December 2011 released an Interim Report.<sup>10</sup>

1.14 In September 2011, the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy, announced an Independent Media Inquiry, chaired by the Hon Ray Finkelstein QC, to examine the pressures facing newspapers, online publications and their newsrooms, the operation of the Australian Press Council, as well as related issues pertaining to the ability of news media to operate according to regulations and codes of practice, and in the public interest. This inquiry will report to the Government by 28 February 2012.<sup>11</sup>

1.15 Finally, in August 2011, the Office for the Arts in the Department of Prime Minister and Cabinet released its *National Cultural Policy Discussion Paper*.<sup>12</sup> While a National Classification Scheme does not directly promote cultural creativity and innovation, it may have implications for the availability of culturally diverse media content, development of new technologies and the growth of creative industries, so recommendations need to be developed with an awareness of possible cultural policy implications.

## Scope of the Inquiry

1.16 This Inquiry had a potentially very broad scope, as it necessarily referred not only to a diverse and growing array of forms of media content, but also to the complex question of community standards and how they evolve over time. At the same time, the

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7 Ibid, 36.

8 Department of Broadband, Communications and the Digital Economy, *Convergence Review: Terms of Reference* (2010).

9 As required by *Broadcasting Services Act 1992* (Cth) sch 7 cl 118.

10 Department of Broadband, Communications and the Digital Economy, *Convergence Review: Interim Report* (2011).

11 Department of Broadband, Communications and the Digital Economy, *Independent Media Inquiry* <[www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry)> at 23 January 2012.

12 Department of the Prime Minister and Cabinet Office for the Arts, *National Cultural Policy Discussion Paper* (2011).

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ALRC was required under its Terms of Reference to complete its deliberations within a year. The scope of the inquiry therefore needed to be clearly defined.

1.17 The Terms of Reference required the ALRC to review the classification cooperative scheme for publications, films and computer games, based on the *Classification Act* and complementary state and territory enforcement legislation.

1.18 The Terms of Reference also required the ALRC to consider classification as it relates to online and mobile content. The regulation of media content is provided for under the *Broadcasting Services Act*. Schedule 5 of the *Broadcasting Services Act* sets out provisions in relation to internet content hosted outside Australia, and sch 7 does so in relation to online and mobile content hosted in or provided from Australia. Under the *Broadcasting Services Act*, the Australian Communications and Media Authority (the ACMA) investigates complaints about online and mobile content that the complainant believes to be ‘prohibited content’ or ‘potential prohibited content’, with reference to the classification categories in the *Classification Act*.

1.19 In this Report, the ALRC also considered the place of television content in a new National Classification Scheme. Broadcast media is currently classified by industry, subject to co-regulatory arrangements and codes of practice established by industry bodies and approved by, or notified to, the ACMA.<sup>13</sup> In preparing this Report, the ALRC has been aware of the significance of television content in the lives of Australians, and the important role played by television networks in providing information about classification.

1.20 Media convergence has particularly important implications for the regulatory treatment of television. Services such as Internet Protocol television (IP TV), online ‘catch-up’ services, and delivery of TV content through tablet devices and mobile phones, mean that platform-based distinctions between broadcasting and the internet are also becoming harder to sustain.

1.21 In this Report, the ALRC uses the phrase ‘National Classification Scheme’ broadly to refer to the existing classification cooperative scheme for publications, films and computer games, together with classification-related laws applying to online and mobile content and television under the *Broadcasting Services Act*. This Report also refers to the ‘new National Classification Scheme’, or ‘the new scheme’. This is the scheme recommended in this Report, to be based on a new Act, the Classification of Media Content Act.

1.22 The ALRC has also discussed other media content in relation to possible classification obligations. This included areas where there are industry self-regulatory models currently in place, such as music and advertising, as well as areas where the relevance of classification principles has been more contested, such as art works, books and eBooks, and user-created content provided on a non-commercial basis.

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<sup>13</sup> *Broadcasting Services Act 1992* (Cth); *Australian Broadcasting Corporation Act 1983* (Cth); *Special Broadcasting Service Act 1991* (Cth).

## The law reform process

### Building an evidence base

1.23 Law reform recommendations cannot be based upon assertion or assumption and need to be anchored in an appropriate evidence base. A major aspect of building the evidence base to support the formulation of ALRC recommendations for reform is community consultation, acknowledging that widespread community consultation is a hallmark of best practice law reform.<sup>14</sup> Under the provisions of the *Australian Law Reform Commission Act 1996* (Cth), the ALRC ‘may inform itself in any way it thinks fit’ for the purposes of reviewing or considering anything that is the subject of an inquiry.<sup>15</sup>

1.24 The process for each law reform project may differ according to the scope of inquiry, the range of key stakeholders, the complexity of the laws under review, and the period of time allotted for the inquiry. For each inquiry the ALRC determines a consultation strategy in response to its particular subject matter and likely stakeholder interest groups. The nature and extent of this engagement is normally determined by the subject matter of the reference—and the timeframe in which the inquiry must be completed under the Terms of Reference. While the exact procedure is tailored to suit each inquiry, the ALRC usually works within a particular framework, outlined on the ALRC’s website.<sup>16</sup>

### Community consultation

1.25 The Terms of Reference for this Inquiry directed the ALRC to consult with ‘relevant stakeholders, including the community and industry, through widespread public consultation’. Other stakeholders listed included the Commonwealth AGD, the DBCDE, the ACMA, the Classification Board and Classification Review Board as well as the States and Territories.

1.26 After an initial period of research and consultation, an Issues Paper was released in May 2011,<sup>17</sup> to raise the issues surrounding the inquiry and suggest principles which could guide proposals for reform, as well as to educate the community about the range of issues under consideration, and invite feedback in the form of submissions. The ALRC received over 2,300 submissions in response. The public submissions and an analysis using qualitative data analysis software can be viewed on the ALRC website.

1.27 The ALRC released its Discussion Paper in September 2011.<sup>18</sup> The Discussion Paper provided a more detailed account of the ALRC’s proposals for reform, arising

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14 B Opeskin, ‘Measuring Success’ in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (2005) 202.

15 *Australian Law Reform Commission Act 1996* (Cth) s 38.

16 Australian Law Reform Commission, *Law Reform Process* <[www.alrc.gov.au/law-reform-process](http://www.alrc.gov.au/law-reform-process)> at 30 November 2011.

17 Australian Law Reform Commission, *National Classification Scheme Review*, ALRC Issues Paper 40 (2011).

18 *Ibid.*

out of consultations and submissions undertaken and received. The ALRC received 77 submissions in response. The public submissions can be viewed on the ALRC website.

1.28 The ALRC also undertook 63 consultations with relevant companies and industry associations, government agencies, community stakeholders, academic experts and other interested individuals, in the period from May 2011–January 2012, in Sydney, Canberra, Melbourne, Brisbane and Adelaide. In addition, there were meetings with visiting delegations from Singapore and Malaysia. A full list of consultations is provided in Appendix 1.

1.29 Internet communication tools—including an e-newsletter, blog, and online forums—were used to provide information and obtain comment. The ALRC also made use of a Facebook page and Twitter feed to provide information on relevant media reports, as well as to provide a further avenue for community engagement.

1.30 The ALRC acknowledges the contributions of all those who participated in the Inquiry consultation rounds and the considerable amount of work involved in preparing submissions. It is the invaluable work of participants that enriches the whole consultative process of ALRC inquiries and the ALRC records its deep appreciation for this contribution.

1.31 In this Inquiry, the ALRC also commissioned Urbis Pty Ltd to undertake a pilot study into community attitudes towards higher-level media content (content classified MA15+ and above, including RC) across films, publications, DVDs and computer games. The ALRC gratefully acknowledges the support provided by the Classification Branch of the AGD in facilitating this study.

### **Appointed experts**

1.32 In addition to the contribution of expertise by way of consultations and submissions, specific expertise is also obtained in ALRC inquiries through the establishment of its Advisory Committees and the appointment of part-time Commissioners. While the ultimate responsibility for the final Report and recommendations remains with the Commissioners of the ALRC, the establishment of a panel of experts as an Advisory Committee is an invaluable aspect of ALRC inquiries. Advisory Committees assist in the identification of key issues, provide quality assurance in the research and consultation effort, and assist with the development of reform proposals. The Advisory Committee for this Inquiry had 17 members, listed at the front of this Report, and met in Sydney on 25 August and 15 December 2011.

1.33 In this Inquiry the ALRC was able to call upon the expertise and experience of its two standing part-time Commissioners, both judges of the Federal Court: the Hon Justice Susan Kenny and the Hon Justice Berna Collier. The ALRC was also assisted by Peter Coroneos and Nick Gouliaditis as expert readers who commented upon specific aspects of this Report.

## Economic impact

1.34 Under s 24(2)(b) of its Act, the ALRC is required to have regard to the impact of its recommendations on ‘persons and businesses who would be affected by the recommendations (including the economic effect, for example)’.

1.35 The economic impact of the new National Classification Scheme may be understood at three levels:

- likely impact on regulated industries;
- likely impact on government revenue and expenditure;
- likely overall impact on the Australian economy.

1.36 The likely economic impact on currently regulated media content industries is expected to be positive. Based upon the framework outlined in the Australian Government *Best Practice Regulation Handbook*,<sup>19</sup> the following can be identified as likely positive impacts for industry:

- reduced mandatory requirements to submit content to the Classification Board and pay classification fees;
- greater industry capacity to flexibly manage classification costs; and
- fewer legal restrictions on the distribution of content.

1.37 In addition, the greater use of co-regulatory arrangements and industry-based classification of media content is likely to reduce the time and administrative costs or ‘paper burden’ on businesses.

1.38 It may be that some media content providers will choose to have in-house classifiers, while others will continue to have their content classified by the Classification Board. All industry classifiers will be required to be authorised by the Regulator, and industry participants will therefore need to consider training costs and economies of scale in determining who classifies their content. However, the possible use of authorised classification instruments and authorised classification systems would also be expected to reduce the unit cost of classification decisions.

1.39 A greater role for industry codes and co-regulation will allow government agencies more time to focus their efforts on the classification and restriction of media content where there are potentially greater community concerns

1.40 To deliver an effective classification scheme, the Regulator’s activities identified in this Report, including compliance and enforcement of classification laws under a co-regulatory regime, will need to be adequately funded. This is currently budget-funded through appropriations to various government agencies and departments involved in classification and media content regulation, including the AGD, the Australian Customs and Border Protection Service, DBCDE and the ACMA.

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19 Australian Government, *Best Practice Regulation Handbook* (2010).

1.41 At the same time, a greater role for industry classification under the new National Classification Scheme will mean that government may receive less in classification fees. Decision-making by the Classification Board is currently fully cost-recovered through fees charged to applicants for classification. If only a narrow segment of industry is required to submit content to the Classification Board and pay fees set at a level to fully recover classification costs, it may be more equitable under a new scheme to recover from industry only part of the costs of making classification decisions.

1.42 Under the new scheme, it is also possible that more of the work of the Classification Board will involve classifying online media content submitted by the Regulator, in response to complaints or for the purpose of taking enforcement action. Many of these content providers are located outside of Australia and the content itself may not be legal to distribute in Australia. The cost of this work will usually not be recovered through fees charged to the content provider.

1.43 There may, therefore, be a need for more government funding of the Classification Board's ongoing classification activities. It is arguable that a public interest case could be made for increased budget funding of classification decision-making. As argued in Chapter 7, it is in the public interest to have an independent body that sets benchmarks for classification decisions. It may also be in the public interest to require the Board to classify content before enforcement action is taken, particularly with respect to Prohibited content.

1.44 The likely overall economic impact of adopting the ALRC's recommendations is hard to project. At a general level, it can be expected that a reduction in direct government regulation of media content classification, and greater application of industry codes and co-regulatory frameworks, will enhance dynamic efficiencies as part of what Deloitte Access Economics refer to as 'a policy framework that supports investment and innovation in the internet economy'.<sup>20</sup>

## Report outline

1.45 This chapter provides an outline of the background to the Inquiry and an analysis of the scope of the Inquiry as defined by the Terms of Reference. It also describes the development of the evidence base to support the law reform response as reflected in the recommendations of this Report.

1.46 Chapter 2 describes the historical background to current classification laws, and the framework of the current National Classification Scheme, including the classification cooperative scheme for publications, films and computer games, and classification laws as applied to broadcasting, online and mobile content under the *Broadcasting Services Act*. The roles of the AGD, Classification Board, the Classification Review Board and the ACMA are outlined, along with that of industry under co-regulatory codes of practice for online and broadcast content. The chapter

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20 Deloitte Access Economics, *The Connected Continent: How the Internet Is Transforming the Australian Economy* (2011), 46.

assesses the current scheme, looking at aspects that work reasonably well and those that are not working well and are in need of reform. The chapter concludes by noting the strong arguments made to the ALRC about the need for fundamental reform and for a new classification scheme.

1.47 Chapter 3 outlines factors in the media environment that necessitate reform of classification law and the development of a new scheme. It identifies the range of trends that have been associated with media convergence, including increased access to high-speed broadband internet, digitisation, globalisation, accelerated innovation, the rise of user-created content and the changing nature of the media consumer, and the blurring of distinctions between public and private media consumption. The chapter also draws attention to recent work undertaken by the ACMA on ‘broken concepts’ in existing broadcasting and telecommunications legislation, and their relevance to media classification.

1.48 Chapter 4 identifies eight guiding principles for reform directed to providing an effective framework for the classification of media content in Australia, and the context in which the guiding principles relate to law reform and media policy. It is proposed that these principles inform the development of a new classification scheme that can best meet community needs and expectations, while being more effective in its application and responsive to the challenges of technological change and media convergence.

1.49 Chapter 5 presents the ALRC’s central recommendations to establish a new scheme regulating the classification of media content, through the enactment of a new Classification of Media Content Act. Under the Act, a single agency would be responsible for regulating the classification of media content and other classification-related laws. The new Act will impose obligations to classify and restrict access to some content. Chapter 5 also explains the obligations of content providers under the new Act, including online content providers.

1.50 Chapter 6 outlines what content should be required to be classified under the new scheme. It is recommended that the question of whether something must be classified should no longer turn upon the platform on which the content is accessed, but rather on whether the content is made and distributed on a commercial basis and has a significant Australian audience.

1.51 The ALRC recommends that the following content should be required to be classified before it is sold, screened, provided online or otherwise distributed to the Australian public: feature films; television programs; and computer games likely to be classified MA 15+ or higher. However, this content should only be required to be classified if it is both made and distributed on a commercial basis, and likely to have a significant Australian audience. The classification of most other media content—for example, books, magazines, websites, music and computer games likely to be G, PG and M—should become or remain voluntary, but industry bodies should develop codes of practice that promote classification of some of this other content.

1.52 Chapter 7 outlines who should be responsible for making classification decisions and mechanisms for appropriate review and regulatory oversight of classification

activities. The ALRC recommends that the Classification Board should continue to have sole responsibility for classifying certain media content, including films for Australian cinema release and computer games likely to be MA 15+ or higher. The remaining media content that must be classified, including feature films not for cinema release and television programs, may be classified by authorised industry classifiers.

1.53 The chapter also discusses how the classification scheme may respond more flexibly to the evolving media content environment, recommending that the Regulator have powers to: determine the media content that must be classified by the Board; and determine that certain media content that has been classified under an authorised classification system may be ‘deemed’ to have an equivalent Australian classification. The ALRC also recommends the introduction of authorised classification instruments, such as online questionnaires that reflect Australian classification criteria.

1.54 Chapter 8 deals with laws that attach to content that must be classified—laws which prescribe how such content should be marked, packaged and advertised, and when and where this content may be screened. The ALRC recommends that the new Act should provide that, for content that must be classified, content providers must generally display a classification marking, but that the detail concerning precisely when and how such markings should appear should be provided for in industry codes approved by the Regulator. The chapter also discusses when classified content is changed in such a way that it should be reclassified, or given new consumer advice, proposing a more flexible modifications policy. The ALRC also considers the phasing out of time-zone restrictions imposed on commercial broadcasting services, in the context of the digital switchover and as parental locks become used more widely.

1.55 Chapter 9 discusses classification categories and criteria for making classification decisions. The ALRC recommends that the existing classification categories should be harmonised and classification criteria combined, in order to ensure that the same categories and criteria are applied to the classification of all media content. The objective of these changes is that all classifiers use the same classification tools to make decisions, so that consumers can be assured of receiving clear and consistent classification information that has the same meaning no matter what the media content or the platform from which it is accessed.

1.56 The ALRC recommends the following statutory classification categories for uniform application across all media content: G, PG, M, MA 15+, R 18+, X 18+ and Prohibited. This recommendation involves several changes, including: the abolition of the publications-specific classifications, ‘Unrestricted’, ‘Category 1 Restricted’ and ‘Category 2 Restricted’; the abolition of the MAV 15+ and AV classifications used by some television broadcasters; and renaming of the RC category as ‘Prohibited’.

1.57 Chapter 10 discusses ‘adult content’ (media content that has been, or is likely to be, classified R 18+ or X 18+) and how content providers will be expected to take reasonable steps to restrict access to the adult content they distribute to the Australian public. The R 18+ and X 18+ classifications are high thresholds, but when the thresholds are met, the ALRC recommends that such content should be restricted across all platforms, both online and offline. While it is acknowledged that restricting

access to this content presents difficulties online, the ALRC considers that providers of this content should have some obligation to try to warn potential viewers and help prevent minors from accessing it, irrespective of the platform used to deliver the content.

1.58 The chapter reviews various methods of restricting access, noting that some methods may only be suitable for some content providers. It is also noted that protecting minors from adult content will continue to rely to a significant degree upon parental supervision and the effective use of PC-based filters and parental locks, and promoting the use of these tools may be one important way content providers can comply with their statutory obligation to take reasonable steps to restrict access to adult content. The ALRC recommends that methods of restricting access to online and offline content should be set out in industry codes and Regulator standards, enforced by the Regulator.

1.59 Chapter 11 discusses the scope of the current RC category and the legislative framework defining RC content. Under the current framework, RC content is essentially banned, and its sale and distribution is prohibited by Commonwealth, state and territory enforcement legislation. The ALRC recommends that, under the Classification of Media Content Act, the RC category should be named 'Prohibited', to better reflect the nature of the category. The ALRC also recommends that the Classification of Media Content Act should frame the 'Prohibited' category more narrowly than the current RC category, and suggests a range of possible changes to the existing criteria, that government might consider.

1.60 Chapter 12 discusses prohibitions on the distribution of Prohibited content, including the existing mechanisms both 'offline' and 'online'. The ALRC recommends that the Classification of Media Content Act should provide that content providers must not distribute Prohibited content (whether so classified or likely to be so classified). The ALRC also recommends that content must be classified Prohibited by the Classification Board before a person can be charged with a relevant offence under the Act or issued a notice to stop distributing the content. Further, the ALRC recommends that the Act should enable the Regulator to notify Australian or international law enforcement agencies or bodies about Prohibited content without having the content first classified by the Classification Board. The chapter also discusses voluntary and mandatory internet filtering, and debates about the scope of Prohibited content online.

1.61 In Chapter 13, the ALRC recommends that the Classification of Media Content Act should provide for the development and operation of industry classification codes, consistent with statutory obligations to classify and restrict access to media content and with statutory classification categories and criteria. The chapter examines the possible processes for the development of industry classification codes, and recommends mechanisms for the approval and enforcement of codes by the new Regulator.

1.62 Chapter 14 discusses the establishment of a single Regulator with primary responsibility for regulating the new classification scheme. The Regulator would be responsible for most regulatory activities related to the classification of media

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content—both offline and online. The Classification Board would be retained as an independent statutory body responsible for making some classification decisions and reviewing decisions.

1.63 Chapter 15 discusses the legislative and constitutional basis for the existing classification cooperative scheme and the *Broadcasting Services Act*. The ALRC recommends that the new Classification of Media Content Act be enacted pursuant to the legislative powers of the Parliament of Australia and not as part of any new cooperative scheme.

1.64 Chapter 16 discusses enforcement of classification laws under the classification cooperative scheme. While the enforcement of classification laws has primarily been the responsibility of states and territories, these arrangements contribute to problems of inconsistency in offence and penalty provisions between Australian jurisdictions and lack of compliance with classification laws. The ALRC concludes that the Australian Government should be responsible for the enforcement of classification laws and makes recommendations for a regime of offences and penalties.

