

5. The Proposed Classification Scheme

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Summary

5.1 This chapter introduces the ALRC’s proposed new National Classification Scheme. The chapter briefly summarises the overall rationale for the establishment of the proposed new scheme, highlighting its key benefits and how the scheme responds to the guiding principles of reform identified in Chapter 4, as well as the current problems and future challenges discussed in Chapters 2 and 3. The chapter presents centrepiece proposals establishing the new scheme, through the enactment of a new Classification of Media Content Act. Under the Act, a single agency (the Regulator) would be responsible for regulating the classification of media content. The proposed content of the new Act, and the functions and responsibilities of the Regulator, are discussed in more detail throughout this Discussion Paper.

The case for reform

5.2 Responses received to the Issues Paper and consultations with industry, government and community stakeholders have affirmed the view that the existing National Classification Scheme is in need of fundamental reform. Stakeholders identified key flaws with the current classification system. As discussed in Chapter 2, the current classification framework is widely seen as resulting from its development in an *ad hoc* and reactive manner, and as poorly equipped to respond to a rapidly changing media environment and the challenges of media convergence.

5.3 In concluding that fundamental reform of the National Classification Scheme is required, the ALRC proposes an approach to reform that recognises the transformative nature of the convergent media environment (as discussed in Chapter 3), and grounded in a set of guiding principles that provide a foundation for the future development of the National Classification Scheme (as discussed in Chapter 4).

Benefits of the proposed new National Classification Scheme

Promoting platform neutrality

5.4 The proposed new National Classification Scheme would promote platform neutrality in classification law, as discussed in Chapter 4. Platform neutrality means that, as outlined in Principle 8, there should be a uniform approach to the same or similar content, regardless of the medium of delivery.

5.5 This helps avoid inconsistencies that are manifest under the current scheme, and makes the framework more adaptive to unanticipated changes in media technologies, products and services. This is in contrast to the existing framework, which has been described as ‘like a bowl of spaghetti ... complex, tangled and, from a media user point of view, impossible to tell which bit of media content connects to which regulatory framework’.¹

5.6 The ALRC proposes a broad definition of media content that covers not only publications, films and computer games, television and online and mobile content, but also other content, such as music, podcasts and user-generated content. However, as discussed in Chapter 6, this broader complement of content will not generally be subject to any obligation to classify.

5.7 Under the proposed Classification of Media Content Act, classification obligations would apply to media content that includes:

- publications, films and computer games currently subject to the *Classification (Publications, Films and Computer Games) Act 1995 (Cth) (Classification Act)*;
- online and mobile content currently subject to the regulatory regime under schs 5 and 7 of the *Broadcasting Services Act 1992 (Cth)*; and
- broadcast and subscription television content currently regulated under the *Broadcasting Services Act*, the *Australian Broadcasting Corporation Act 1983 (Cth)* and the *Special Broadcasting Service Act 1991 (Cth)*.

5.8 Under the proposed new National Classification Scheme, the same content, for example a ‘film’, would be subject to the same basic classification obligation regardless of whether it was originally shown in a cinema, broadcast on television, purchased or hired as a DVD or equivalent format, or streamed from the internet. This would eliminate the current costly ‘double handling’ of the same media content for

¹ Professor Catharine Lumby, Director, Journalism and Media Research Centre, University of New South Wales, statement at launch of K Crawford and C Lumby, *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* (2011), Sydney, 5 May 2011.

different media platforms. Further, all media content that is required to be classified will be classified according to a single set of classification categories and criteria.

5.9 The ALRC considers that ensuring that classification decisions align with community expectations requires some form of benchmarking. In that light, the ALRC proposes that films for cinema release and some computer games continue to be classified by the Classification Board.

5.10 The ALRC envisages that a comprehensive review of prevailing community standards towards media content in Australia would also be undertaken, that would draw upon quantitative and qualitative social research methodologies and undertaken by independent experts, on a five-yearly basis. Over time, the development of such longitudinal research findings may reduce the need for such benchmarking.

Consistent, age-based classifications

5.11 The ALRC proposes replacing the current classification categories and criteria with categories and criteria that recognise more explicitly the relationship between age-appropriate media content and stages of child development.

5.12 The ALRC proposes amending the categories for media content so that they include: C (content specifically for children); PG 8+ (content appropriate for children aged 8 or over, with parental guidance); T 13+ (content appropriate for teenagers, similar to the United States PG 13+ category); and MA 15+ (mature audience), in addition to the current G and R18+ categories. The current M (Mature) category would disappear, and PG would be a more age-specific category.

5.13 As discussed in Chapter 9, there is generally a high level of community awareness of the classification categories. However, the ALRC found considerable confusion about the relationship between the PG, M and MA 15+ categories particularly among parents and care givers. In order to provide better consumer information about the suitability of media content for children, the ALRC is proposing new and more informative age-based categories be applied.

Co-regulatory approaches

5.14 The new scheme proposed by the ALRC would introduce additional elements of co-regulation into the classification system in two ways.

5.15 First, most content that is subject to a classification obligation may be classified by accredited industry classifiers, though subject to regulatory oversight and audit. Under the scheme, industry groups would have an opportunity to develop their own industry-based classification processes and procedures. This allows government agencies to be more focused on the content that generates the most concern in terms of community standards and the protection of children.

5.16 Secondly, the scheme will provide for the development and operation of industry classification codes, consistent with the statutory classification categories and criteria. As discussed in Chapter 11, the intention is that these codes would assist in the interpretation and application of the statutory classification categories and criteria and introduce some additional flexibility to the regulatory scheme. The government

regulator provides a critical ‘back stop’ to the scheme in order to prevent abuse of the co-regulatory scheme by industry participants not concerned with the public interest.

5.17 Industry classification and the extended use of codes will assist classification regulation to be more responsive to technological change and adaptive to new technologies, platforms and services. It also provides the basis for greater ‘buy-in’ by industry players to the classification scheme, thereby allowing industry knowledge and expertise to be directly applied to addressing consumer issues, and building greater trust and knowledge sharing among content providers, distributors and users.²

More effective use of public resources

5.18 At present, some media content is over-classified by the Classification Board — for example, the reclassification of feature films and television programs for DVD release, and the classification of all computer games. At the same time, some content is exclusively classified by industry—for example, television programs—while other content is either not classified at all or is classified only following a complaint or investigation.

5.19 These distinctions are platform-based and historic, and bear little relationship to questions of risk or community concern. There has been little consideration of the costs and benefits arising from questions of who classifies what. The costs include not only the commitment of financial and human resources to current classification decisions, but also opportunity costs—the activities foregone in order to meet classification obligations.

5.20 By enabling industry to take greater direct responsibility for classification decision-making, the ALRC envisages more concentration of public resources on ensuring higher-level media content is properly classified and restricted. Industry classification will also free up resources currently deployed in the classification of publications, DVDs and computer games, which can be redeployed in the fast-growing area of online content.

Formal training and accreditation framework for media classifiers

5.21 A corollary of greater direct engagement of industry and content providers in classification decisions, overseen by a government regulator, is the need for a more formalised and consistent training and accreditation framework for media classifiers, in order to ensure consistent decisions that safeguard the effectiveness and integrity of the National Classification Scheme.

5.22 At present, approved classification training is provided by the Classification Branch of the Australian Government Attorney-General’s Department, allowing individuals to become authorised assessors. This training is not, however, formally accredited, and there is no award attached to such training. The ALRC will work with the Australian Qualifications Council and relevant government agencies to establish a

2 Australian Communications and Media Authority, *Optimal Conditions for Effective Self- and Co-regulatory Arrangements* (2010), 5.

framework for the accreditation of media classification training that is consistent with the Australian Qualifications Framework, as part of the Classification of Media Content Act.

5.23 The development of consistent and rigorous training and accreditation standards for media classifiers, that acknowledge the industry-based classification experience, will help more adaptive and flexible co-regulatory approaches be combined with a high level of public trust in the quality and consistency of classification decisions across different media platforms.

Aligning classification with cyber-safety and media education

5.24 In developing the new scheme, the ALRC recognises that classification is not the only response to concerns about media content, including concerns about protecting children from material likely to harm or disturb them; and ensuring that consumer information about content is provided in a timely and clear manner.

5.25 The new scheme would provide that much content may not need to be classified, as long as access to the content is restricted. What steps are reasonable to take to restrict access will depend on the delivery platform and may be a matter dealt with in industry codes. This approach responds to the reform principle that classification regulation should be kept to the minimum needed to achieve a clear public purpose, and be clear in its scope and application.³

5.26 In addition, the ALRC expects that a range of self-regulatory and other initiatives will continue to be developed to assist consumers to manage their own access to media content, and be able to protect children and others in their care. These measures could include:

- parental locks and other technical means to protect children from exposure to inappropriate media content;
- user reporting (or ‘flagging’) of inappropriate content;
- digital literacy and education programs;⁴ and
- voluntary filtering of online content and the use of internet ‘walled gardens’.

A new National Classification Scheme

5.27 The ALRC proposes that a new National Classification Scheme should be enacted regulating the classification of media content. Essentially, the new scheme would replace the existing classification cooperative scheme for the classification of publications, films and computer games—based on the *Classification Act* and complementary state and territory classification enforcement legislation—and online content regulation under schs 5 and 7 of the *Broadcasting Services Act*.

3 See Ch 4, Principle 7.

4 Such as the Cybersmart program, a national cybersafety education program managed by the ACMA.

5.28 In addition, bringing television content within the scheme would require the new scheme to encompass some matters currently dealt with by other parts of the *Broadcasting Services Act*, the *Australian Broadcasting Corporation Act* and the *Special Broadcasting Service Act*.

5.29 The *Broadcasting Services Act*, and codes under that Act, regulate broadcasting services and the content of television in ways that are not directly related to classification—including, for example, in relation to program standards for children’s content and Australian content.⁵ The new National Classification Scheme would govern television content only in so far as it relates to classification. Other content matters would continue to be regulated by the ACMA under the *Broadcasting Services Act* and codes.⁶

The new Classification of Media Content Act

5.30 The ALRC proposes that a new National Classification Scheme should be established through the enactment of a new Classification of Media Content Act.

5.31 The ALRC proposes that the Act should provide, among other things, for:

- what types of media content may, or must be classified;
- who should classify different types of media content;
- a single set of statutory classification categories and criteria applicable to all media content;
- access restrictions on adult content;
- the development and operation of industry classification codes consistent with the statutory classification criteria; and
- the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws.

5.32 Each of these matters is discussed in more detail in following chapters.⁷ However, the new Act would be likely to draw on concepts already contained in the *Classification Act* (or complementary state and territory enforcement legislation) and the *Broadcasting Services Act*. For example, the new Act would:

- establish a Classification Board, with similar functions to those currently performed by the existing Classification Board (see Chapter 7);
- prescribe a single set of classification categories similar to those currently prescribed by the *Classification Act* for films (see Chapter 9);

5 See *Broadcasting Services Act 1992* (Cth) pt 9.

6 And under the *Australian Broadcasting Corporation Act 1983* (Cth) and *Special Broadcasting Service Act 1991* (Cth).

7 A table summarising what content must be classified and by whom, and what must be restricted, is in Appendix 4.

- establish a mechanism for industry codes similar to those currently provided for under the *Broadcasting Services Act* (see Chapter 11);
- provide for a new Regulator that would exercise a combination of powers currently exercised by the Director of the Classification Board and the ACMA (see Chapter 12);⁸ and
- provide for a regime of offences and penalties based on those currently existing in the *Classification Act* (and complementary state and territory enforcement legislation) and the *Broadcasting Services Act* (see Chapter 14).

5.33 While adapting some existing concepts, the new model should also constitute a significant modification and consolidation of existing regulation. In this context, the ALRC recognises that the arguments made by the ACMA that the process of convergence can be said to have ‘broken, or significantly strained, the legislative concepts that form the building blocks of current communications and media regulatory arrangements’.⁹ Some aspects of the new Act will have to be drafted more or less ‘from scratch’, including, for example, provisions dealing with the framework for the training and accreditation of industry classifiers.

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.

⁸ Such as a power to require that a content provider submit a film for classification (the equivalent of the existing call in power of the Director of the Classification Board): *Classification (Publications, Films and Computer Games) Act 1995* (Cth) s 23A; and a power to issue ‘take-down’ notices with respect to online content: *Broadcasting Services Act 1992* (Cth) sch 7 cl 47.

⁹ Australian Communications and Media Authority, *Broken Concepts: The Australian Communications Legislative Landscape* (2011), 5.

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.

Media content

5.34 The ALRC proposes that, under the new scheme, some media content must be classified and access to other media content restricted to adults.¹⁰ Those with the primary responsibility to comply with these laws are referred to as ‘content providers’. The proposed Classification of Media Content Act will, therefore, require definitions of ‘media content’ and ‘media content provider’. These definitions should be both broad and platform-neutral, and should include content:

- published online;
- published on media such as books, magazines, and DVDs; and
- broadcast on free-to-air and subscription television.

5.35 Schedule 7 of the *Broadcasting Services Act* contains definitions of ‘content’ and ‘content service’, which might form one useful starting point,¹¹ expanded to apply to books, magazines, films and DVDs.¹²

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.

Alternative approaches to implementation

5.36 The proposals set out in this Discussion Paper are framed on the basis that a new Classification of Media Content Act will be enacted. However, in many instances, the provisions that form the basis of a new National Classification Scheme could equally form part of broader content regulation under a revised *Broadcasting Services Act* or successor legislation. Alternatively, the policies behind the ALRC’s proposals may be able to be implemented under the existing classification cooperative scheme, or as amendments to the existing *Broadcasting Services Act*.

5.37 The ALRC’s proposal that the Classification Board should classify online and offline computer games likely to be classified MA 15+ or higher¹³ could be implemented by amendments to the *Classification Act*, with the agreement of the states

¹⁰ See Ch 6.

¹¹ *Broadcasting Services Act 1992* (Cth) sch 7 cl 2.

¹² Including its exclusions for content such as SMS and emails.

¹³ Proposal 6–2.

and territories. Similarly, the ALRC's proposal for a range of offences and criminal and civil penalties relating to contraventions of the Act or codes of practice¹⁴ might also be implemented by amendments to the existing *Classification Act*, together with mirror amendment of state and territory enforcement legislation.

5.38 It is the ALRC's strongly held view, however, that such amendments to the existing framework would be very much 'second-best' options for reform, and that the need has now arisen for a new National Classification Scheme based on new legislation.

14 Proposal 14-3.

