11. Codes and Co-regulation

Contents

Summary

11.1 In this chapter, the ALRC proposes that the Classification of Media Content Act provide for the development and operation of industry classification codes of practice, consistent with the statutory classification obligations, categories and criteria contained in the Act. 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.

11.2 The chapter examines the possible processes for the development of industry classification codes, and proposes mechanisms for the approval and enforcement of codes by the new Regulator. The ALRC also proposes that where an industry classification code of practice relates to media content that must be classified or access to which 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.

Regulatory forms

11.3 The development and operation of industry classification codes involves elements of co-regulation. Co-regulation is a regulatory form that can be placed on a continuum of government oversight ranging from self-regulation, through quasi-

regulation and co-regulation, to direct government regulation.[1] Some examples of these forms are described below, with reference to aspects of the current classification system.

Self-regulation

11.4 Self-regulation is generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement.

11.5 For example, the content of advertising is subject to a self-regulatory system created by the Australian Association of National Advertisers (AANA) in 1998. The AANA established a Code of Ethics and the Advertising Standards Bureau (ASB), which incorporates an independent Advertising Standards Board to hear complaints regarding advertising content.

11.6 The 'classification' of audio material is also self-regulated, under the *Recorded Music Labelling Code of Practice*.[2] There is no legislation and individual record companies are responsible for labelling recordings under a code that outlines labelling provisions and establishes a complaints-handling mechanism.

11.7 The processes and procedures followed by video-sharing websites and other internet content providers in controlling content that they sell or distribute may also be characterised as a form of self-regulation. These processes include responding to user reporting (or 'flagging') of inappropriate content and methods to detect inappropriate content using algorithms and other technical means. For example, YouTube users click a flag button to report a video which they consider to be inappropriate and flagged videos are routed into 'smart' queues for manual review by a specialist review team before a decision is made whether or not to take the video down, or age-restrict it.[3]

Quasi-regulation

11.8 Quasi-regulation describes those arrangements where government influences businesses to comply, but which do not form part of explicit government regulation.

11.9 An example of quasi-regulation is the agreement by Telstra, Optus and Primus to filter voluntarily a list of child abuse URLs compiled and maintained by the Australian Communications and Media Authority (the ACMA). This arrangement was entered into against the background of the Australian Government's proposed system for mandatory internet service provider level filtering of URLs.[4]

11.10 Arguably, the AANA self-regulatory system for advertising might equally be characterised as quasi-regulation. This is because governments may have regulated this

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1 See Australian Government, *Best Practice Regulation Handbook* (2010). The ALRC's usage of these terms is based on this publication.

2 Australian Music Retailers Association and Australian Recording Industry Association, *Recorded Music Labelling Code of Practice* (2003).

3 Google, *Submission CI 2336*, 22 July 2011.

4 See S Conroy (Minister for Broadband Communications and the Digital Economy), 'Outcome of Consultations on Transparency and Accountability for ISP Filtering of RC Content' (Press Release, 9 July 2010).

area if a self-regulatory regime did not exist—and may regulate here if this regime does not demonstrate its responsiveness to community expectations.[5]

Co-regulation

11.11 Co-regulation typically refers to situations where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced.

11.12 Regulation of radio and television content is co-regulatory. Industry groups have developed codes under s 123 of the *Broadcasting Services Act 1992* (Cth), in consultation with the ACMA. Most aspects of program content are governed by these codes, which include the *Commercial Television Industry Code of Practice* and the *Commercial Radio Australia Code of Practice and Guidelines*. Once implemented, the ACMA monitors these codes and deals with unresolved complaints made under them.

Direct government regulation

11.13 Direct government regulation comprises primary and subordinate legislation. It is the most commonly used form of regulation.[6] Direct government regulation applies to the classification of publications, films and computer games under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (*Classification Act*).

Factors in determining regulatory form

11.14 The Australian Government *Best Practice Regulation Handbook* states that direct government regulation should be considered when, among other things: the problem is high-risk, of high impact or significance; the community requires the certainty provided by legal sanctions; and there is a systemic compliance problem with a history of intractable disputes and repeated or flagrant breaches of fair trading principles, with no possibility of effective sanctions.[7]

11.15 On the other hand, self-regulation—or by extension, more co-regulation—may be a feasible option if: there is no strong public interest concern, in particular no major public health and safety concerns; the problem is a low-risk event, of low impact or significance; and the problem can be fixed by the market itself—for example, if there are market incentives for individuals and groups to develop and comply with self-regulatory arrangements.[8] Practical factors may also favour more self- or co-regulation if the time, effort or cost of government regulation outweighs its benefits.[9]

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5 See, eg, 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), viii, rec 2.

6 Australian Government, *Best Practice Regulation Handbook* (2010), 34–35.

7 Ibid, 35.

8 Ibid, 34.

9 For more detailed discussion of the optimal conditions for self- and co-regulatory arrangements, see Australian Communications and Media Authority, *Optimal Conditions for Effective Self- and Co-regulatory Arrangements* (2010). See also Australian Public Service Commission, *Smarter Policy: Choosing Policy Instruments and Working with Others to Influence Behaviour* (2009).

11.16 In the communications and media context, the ACMA has identified ten 'optimal conditions' for co-regulatory arrangements, including 'environmental' conditions and features of the regulatory scheme. Briefly, the factors favouring co-regulation can be summarised as follows:

- a small number of market players with wide coverage of the industry;
- a competitive market with few barriers to entry;
- homogeneity of products—that is, products are essentially alike or comparable; and
- common industry interest—that is, collective will or genuine industry incentive to co-regulate.[10]

11.17 When used in the right circumstances, it is said that self-regulation and co-regulation can offer a number of advantages over direct regulation. These include:

- greater flexibility and adaptability;
- potentially lower compliance and administrative costs;
- an ability to harness industry knowledge and expertise to address industry-specific and consumer issues directly; and
- quick and low-cost complaints-handling and dispute resolution mechanisms.[11]

Industry codes

11.18 Codes underpinned by legislation are typical of co-regulation. Sometimes legislation sets out mandatory government standards, but provides that compliance with an industry code can be deemed to comply with those standards. Legislation may also provide for government-imposed arrangements in the event that industry does not meet its own arrangements.[12]

11.19 The ACMA has stated that co-regulatory mechanisms can include legislation that:

- delegates the power to industry to regulate and enforce codes;
- enforces undertakings to comply with a code;
- does not require a code but has a reserve power to make a code mandatory;
- requires industry to have a code and, in its absence, government will impose a code or standard;

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10 Australian Communications and Media Authority, *Optimal Conditions for Effective Self- and Co-regulatory Arrangements* (2010), 10–11.

11 Ibid, 5 citing an OECD study: Centre for Regulated Industries, *Self-regulation and the Regulatory State—A Survey of Policy and Practice* (2002).

12 Australian Government, *Best Practice Regulation Handbook* (2010), 35.

- prescribes a code as a regulation but the code only applies to those who subscribe to it—prescribed voluntary codes; and
- prescribes a code as a regulation to apply to all industry members—prescribed mandatory codes.[13]

Existing industry codes

11.20 The *Broadcasting Services Act*, the *Australian Broadcasting Corporation Act 1983* (Cth) and the *Special Broadcasting Service Act 1991* (Cth) provide varying mechanisms for the development of industry codes concerning the regulation of media content.

11.21 These codes are discussed briefly below, with reference to their relationship to the classification requirements of the *Classification Act*.

11.22 In relation to online content, sch 7 of the *Broadcasting Services Act* states that the Australian Parliament 'intends that bodies or associations that the ACMA is satisfied represent sections of the content industry should develop codes (industry codes) that are to apply to participants in the respective sections of the industry in relation to their content activities'.[14]

11.23 Schedule 7 provides a process for registering codes when the ACMA is satisfied that:

- the body or association developing the code represents a particular section of the content industry;
- where the code deals with matters of substantial relevance to the community, the code provides appropriate community safeguards or, in other cases, deals with matters in an appropriate manner; and
- there has been adequate public and industry consultation.[15]

11.24 Compliance with an industry code is voluntary unless the ACMA directs a particular participant in the content industry to comply with the code.[16] Failure to comply with such a direction is an offence punishable by criminal, civil and administrative penalties.[17] In addition, the ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.[18]

11.25 The content of codes dealing with classification of online material is constrained by *Classification Act* concepts. Schedule 7 of the *Broadcasting Services Act* evinces an intention that industry codes provide that content be assessed according to

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13 Australian Communications and Media Authority, *Optimal Conditions for Effective Self- and Co-regulatory Arrangements* (2010), 5.
14 *Broadcasting Services Act 1992* (Cth) sch 7 cl 80.
15 Ibid sch 7 cl 85.
16 Ibid sch 7 cl 89.
17 See Ch 14.
18 *Broadcasting Services Act 1992* (Cth) sch 7 cls 91–94.

Classification Act categories and criteria; and definitions of 'prohibited content' and 'potential prohibited content' in sch 7 reflect *Classification Act* categories.

11.26 Section 81 of sch 7 prescribes matters that must be dealt with in industry codes for commercial content providers.[19] Notably, these include the engagement of trained content assessors and ensuring that unclassified content likely to be classified MA 15+, R 18+, X 18+ or RC by the Classification Board is not released unless a trained content assessor has assessed the content.

11.27 Commercial television and subscription television codes of practice are less constrained by legislation. However, under s 123 of the *Broadcasting Services Act*, these codes of practice must (for films) apply the film classification system set out in the *Classification Act* and, in the case of commercial television broadcasting, must provide specified time-zone restrictions for M and MA 15+ films.[20]

11.28 Under the *Australian Broadcasting Corporation Act* and the *Special Broadcasting Service Act*, the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) have a duty to develop codes of practice relating to 'programming matters' and to notify those codes to the ACMA.[21]

11.29 There are, however, no statutory requirements relating to the content of the code's classification provisions. This reflects that, as compared to commercial broadcasters, the ABC and SBS are public broadcasters subject to special governance and accountability arrangements.[22] In theory, this gives the ABC and SBS flexibility to develop their own classification categories and procedures. In practice, however, the ABC Television Program Classification Standard states that it is 'adapted from' the Classification Board's Classification Guidelines;[23] and the SBS Television Classification Code states that it is 'based on' the Classification Board's Classification Guidelines.[24]

Classification and co-regulation

11.30 In the Issues Paper, the ALRC asked whether co-regulatory models under which industry itself is responsible for classifying content, and under which the government works with industry on a suitable code, would be more effective and practical than current arrangements.[25]

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19 Other matters may also be dealt with: Ibid sch 7 cl 81(3). Such matters include complaint handling and promoting awareness of safety issues: sch 7 cl 82.

20 Ibid s 123.

21 *Australian Broadcasting Corporation Act 1983* (Cth) s 8(e)(i); *Special Broadcasting Service Act 1991* (Cth) s 10(1)(j).

22 See, *Australian Broadcasting Corporation Act 1983* (Cth) pt II; *Special Broadcasting Service Act 1991* (Cth) pt 2.

23 Australian Broadcasting Corporation, *Editorial Policies: Television Program Classification—Associated Standard*, 1.

24 Special Broadcasting Service, *Codes of Practice 2006: 4. Television Classification Code*, [4.1].

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

11.31 Such an approach received considerable support, particularly from industry stakeholders,[26] including those who cited the success of co-regulatory models of content regulation under the *Broadcasting Services Act*.[27] Telstra, for example, stated that it believed that 'the co-regulatory classification arrangements that are currently in operation on a range of different content distribution platforms have worked reasonably well to date and represent regulatory models worth building on in any future scheme'.[28]

11.32 In relation to television specifically, Free TV Australia referred to the 'very low level of complaint' about television content given that nearly 80,000 hours of content are broadcast each year. Free TV Australia noted that, in 2011, only 834 classification complaints were received by members, with only six upheld; and, in 2009–10, the ACMA conducted 85 investigations into commercial television broadcasters, of which only 30 related to classification matters, with only 11 of those resulting in a breach finding.[29]

11.33 Some community groups also saw benefit in co-regulatory approaches. The organisation Bravehearts stated that, while aware of some problems with industry classification, 'the television industry appears to operate successfully under a Code of Conduct and this should be used as the model with severe penalties if breached'.[30]

11.34 Other groups opposed co-regulatory approaches.[31] The Australian Family Association Victoria, for example, observed that:

> Given that the current classification scheme is regularly breached by content providers (and in particular, by publishers, distributors and retailers of restricted magazines), the situation is likely to be worse under a co-regulatory framework.[32]

11.35 Similarly, Collective Shout asked '[w]hen distributors fail to respond to call-in notices under the current regulatory scheme, why should we believe they would comply with community standards if left to regulate themselves?'[33]

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26 Internet Industry Association, *Submission CI 2445*, 28 July 2011; MLCS Management, *Submission CI 1241*, 16 July 2011; ASTRA Subscription Television Australia, *Submission CI 1223*, 15 July 2011; Free TV Australia, *Submission CI 1214*, 15 July 2011; Outdoor Media Association, *Submission CI 1195*, 15 July 2011; Australian Mobile Telecommunications Association, *Submission CI 1190*, 15 July 2011; Telstra, *Submission CI 1184*, 15 July 2011; Australian Federation Against Copyright Theft, *Submission CI 1182*, 15 July 2011; Australian Home Entertainment Distribution Association, *Submission CI 1152*, 15 July 2011; Civil Liberties Australia, *Submission CI 1143*, 15 July 2011; Interactive Games and Entertainment Association, *Submission CI 1101*, 14 July 2011.

27 For example, ASTRA Subscription Television Australia, *Submission CI 1223*, 15 July 2011; Free TV Australia, *Submission CI 1214*, 15 July 2011; Telstra, *Submission CI 1184*, 15 July 2011.

28 Telstra, *Submission CI 1184*, 15 July 2011.

29 Free TV Australia, *Submission CI 1214*, 15 July 2011.

30 Bravehearts Inc, *Submission CI 1175*, 15 July 2011.

31 Collective Shout, *Submission CI 2450*, 7 August 2011; Australian Family Association Victoria, *Submission CI 2279*, 15 July 2011; Australian Christian Lobby, *Submission CI 2024*, 21 July 2011; Australian Council on Children and the Media, *Submission CI 1236*, 15 July 2011.

32 Australian Family Association Victoria, *Submission CI 2279*, 15 July 2011.

33 Collective Shout, *Submission CI 2450*, 7 August 2011.

ALRC's proposals

Codes and co-regulation

11.36 In the ALRC's view, it is not clear that optimal conditions for self- or co-regulation exist in any particular area that is currently subject to classification obligations. While in some areas there may be market incentives for content providers to classify—for example, because distributors and consumers of some products want and expect advice about content—these incentives do not exist in other areas.

11.37 Classification of media content is an area in which the community expects government to set rules in legislation. In the ALRC's view, there is a strong community expectation that government will ensure that at least some media content is reviewed according to statutory classification criteria before being made available, and that access to at least some classified media content should be restricted by law. The *Classification Act* provides a model for the classification of publications, films and computer games based on direct regulation and legislative rules.

11.38 In contrast, schs 5 and 7 of the *Broadcasting Services Act* (and the *Broadcasting Services Act* more generally, including in relation to television content) provide a co-regulatory approach. For example, the commercial broadcast and subscription television industries may develop their own methods of classifying programs that reflect community standards, subject to some legislative requirements.[34]

11.39 The ALRC's proposed new National Classification Scheme combines elements of both approaches. This is consistent with the reform principles that the classification regulatory framework should be adaptive to different technologies, platforms and services; and regulation should be kept to the minimum needed to achieve a clear public purpose.[35]

11.40 For example, the ALRC proposes retaining mandatory classification by the Classification Board of films for cinema release and computer games with content likely to be rated MA 15+ or higher. However, it is proposed that most other content, including broadcast and subscription television content, and television programs and films not for cinema release, would be subject to regimes based on industry classification of content.

11.41 The use of codes would introduce an element of co-regulation not previously present in regulating publications, films and computer games. However, because codes of practice under the new Classification of Media Content Act would have to be consistent with statutory classification obligations and criteria, these codes may be characterised as closer to direct regulation than co-regulation. Industry would only be free to develop its own rules within the constraints of the legislative requirements.

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34 Including specified time zone-based restrictions and a prohibition on broadcasting films that 'portray material that goes beyond the previous "AO" classification criteria': *Broadcasting Services Act 1992* (Cth) s 123.

35 See Ch 4, Principles 4, 7.

11.42 In some areas, classification is a lower level concern for consumers and the effort or cost of government regulation is not justified. Recognising this, the ALRC proposes that some content no longer be subject to any classification obligations—including some publications and computer games likely to be classified lower than MA 15+.

Content of industry classification codes

11.43 In Chapter 9, the ALRC proposes that the new Classification of Media Content Act should provide for one set of statutory classification categories and criteria to be applied across media content, irrespective of the delivery platform. The statutory classification criteria are the factors to be taken into account in the classification decision-making process, including factors currently set out in the *Classification Act*, the Classification Code and Classification Guidelines.

11.44 While the statutory classification criteria would provide some guidance to classification decision makers on how different types of content should be classified and treated, codes of practice could provide more detailed guidance on interpreting and applying these classification categories and criteria in various contexts. For example, statutory classification criteria would provide that there be an R 18+ category for content with high impact violence, across all media. However, a code of practice relating to the classification of films might explain how interactivity should be taken into account in assessing film content specifically; and a code of practice relating to internet content might explain how to assess film sequences embedded in an 'e-book'.

11.45 More generally, there are a range of matters that are too detailed or media-specific to be included in statutory classification criteria. For example, the ALRC proposes that statutory obligations be placed on online content providers to restrict some online content to adults, including by using restricted access technologies. Codes of practice may be used to provide flexible guidance and industry rules on such technologies, including on matters such as the promotion and distribution of parental locks and user-based PC-filtering.

11.46 Codes of practice might also contain guidance on how classification markings should be displayed in different media. The ALRC proposes that the Classification of Media Content Act provide that a suitable classification marking should be displayed on media to the extent that this is reasonable and practicable and consistent with the statutory classification categories. Exactly what this means for marking an online computer game, or an R 18+ website, might be clarified in codes of practice.

11.47 The proposed Act would be silent on whether television programs need to be classified separately or as a series, or about time zone restrictions. Such issues could continue to be addressed in a code of practice for television.

11.48 The proposal for codes of practice would also allow participants in media content industries to develop their own arrangements in areas where statutory classification or other obligations do not apply, provided these are consistent with the proposed single set of classification categories and criteria.

11.49 For example, it is proposed that there be no statutory obligation to classify computer games likely to be classified lower than MA 15+. Participants in the computer game industry might, nevertheless, choose to develop a code of practice governing how industry participants should classify games likely to be classified below MA 15+. Classification of these games might involve, for example, the use of a self-assessment process such as a 'sophisticated questionnaire specifically designed to generate and assign a classification for computer games in the Australian market'.[36] Under the ALRC's proposals, participants in the computer game industry might also choose to use an authorised classification instrument, or have their own instrument approved by the Regulator for this purpose.[37]

11.50 Some existing self-regulatory codes may continue to operate alongside the proposed new Classification of Media Content Act. For example, the *Recorded Music Labelling Code of Practice* developed by the Australian Recording Industry Association (ARIA) and the Australian Music Retailers Association (AMRA)[38] applies a three-tiered labelling scheme (Level 1, Level 2 and Level 3)[39] to CDs and other recorded music products. The *Recorded Music Labelling Code of Practice* is adhered to by ARIA and AMRA members on a voluntary basis.[40]

11.51 Under the new Act there would be, in practice, no statutory obligation to classify music[41]—only an obligation to restrict access to R 18+ content. This obligation is consistent with the obligation under the *Recorded Music Labelling Code of Practice* to restrict access to Level 3 recorded music products. The *Recorded Music Labelling Code of Practice* would continue to operate as a self-regulatory regime.

11.52 However, ARIA and AMRA would also have the option of bringing these arrangements under the new Act as a code. Provided the new code was considered to be consistent with the classification criteria provided by the Act, it could be approved by the Regulator, giving the code a legislative basis, but otherwise leaving the operation of the music labelling scheme untouched.

11.53 The scheme of industry self-regulation applying to advertising under the AANA Code of Ethics could also continue to operate alongside the proposed new Classification of Media Content Act, and the statutory obligation to restrict access to advertising likely to be R 18+.[42] The House of Representatives Standing Committee on

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36 Interactive Games and Entertainment Association, *Submission CI 1101*, 14 July 2011.

37 See Ch 7.

38 Australian Music Retailers Association and Australian Recording Industry Association, *Recorded Music Labelling Code of Practice* (2003).

39 These categories can be seen as broadly consistent with the M, MA 15+ and R 18+ categories of the *Classification Act*.

40 ARIA and AMRA argued for the continuation of self-regulation based on the *Recorded Music Labelling Code of Practice*: The Australian Recording Industry Association Ltd and Australian Music Retailers' Association, *Submission CI 1237*, 15 July 2011.

41 Unless the content would be likely to be rated X 18+ or RC—which would be rare in the case of music.

42 The AANA, Advertising Standards Board and the Outdoor Media Association submitted that advertising should continue to be regulated under the AANA Code of Ethics regime: Australian Association of National Advertisers (AANA), *Submission CI 2285*, 22 July 2011; Outdoor Media Association, *Submission CI 1195*, 15 July 2011; Advertising Standards Bureau, *Submission CI 1144*, 15 July 2011.

Social Policy and Legal Affairs recommended that the Attorney-General's Department review advertising regulation and, 'if the self-regulatory system is found lacking', impose a 'co-regulatory system on advertising with government input into advertising codes of practice'.[43]

11.54 If the Government were to determine that advertising content should be subject to new classification obligations—for example, so that outdoor and billboard advertisements likely to be rated M or higher are not permitted—a code of practice under the Classification of Media Content Act could provide guidance on assessing advertisements using the criteria for this classification category.

Approval and enforcement of codes

11.55 In order to approve a code under sch 7 of the *Broadcasting Services Act*,[44] the ACMA must be satisfied that the body or association developing the code represents a particular section of the media content industry and that there has been adequate public and industry consultation on the code. In this context, the ALRC notes that it may sometimes be problematic to define what constitutes a particular section of the media content industry—particularly in the online environment.

11.56 The ALRC proposes that the Regulator under the new Classification of Media Content Act similarly be empowered to approve a code of practice. The code should also be required to be consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code.

11.57 As discussed above, there are a range of mechanisms by which industry codes of practice may be made enforceable. Under sch 7 of the *Broadcasting Services Act*, compliance with a code is effectively voluntary (or left to the industry to enforce), unless the ACMA directs a particular participant in the industry to comply.[45] In addition, in some circumstances, a code may be replaced with an industry standard that binds all participants in the industry.[46]

11.58 A slightly different approach is taken, for example, under the *Competition and Consumer Act 2010* (Cth), which provides that regulations may declare an industry code, or specified provisions of an industry code, to be mandatory or voluntary.[47]

11.59 The ALRC proposes that, where a code of practice relates to media content that must be classified, the Regulator should have the power to enforce compliance with the code against any participant in the relevant part of the media content industry. Compliance with a code of practice that relates to media content that is not subject to statutory classification obligations should be voluntary. The ALRC remains interested

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43 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), rec 2. See also Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the Right Balance* (2011), rec 23.

44 *Broadcasting Services Act 1992* (Cth) sch 7 cl 85.

45 Ibid sch 7 cl 89.

46 Ibid sch 7 cl 95.

47 *Competition and Consumer Act 2010* (Cth) s 51AE.

in comments on how and when compliance with an industry classification code of practice should be enforceable.

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;

(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.