

Submission on the National Classification Scheme Review: Issues Paper 40 (IP 40) May 2011

To:

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PART A – APPROACH TO THIS INQUIRY:

QUESTION 1: *In this inquiry, should the ALRC focus on developing a new framework for classification or improving key elements of the existing framework?*

The ALRC should focus on only improving the key elements of the existing framework for classification. Arguably, the existing framework is not unsatisfactory; rather it is the auditing of, education on, and enforceability of the current framework that needs improving.

Creating a whole new framework would not only be costly in the time and resources it would take to educate the public, but also in the time and resources spent on recalling material to be reclassified. This would, in all probability, create more confusion within the community rather than clarifying and appropriately adjusting the necessary elements of the current framework.

Recommendation:

For the purpose of simplicity and achieving a framework which reflects community expectations and is cost effective, the ALRC should focus on only improving key elements of the existing framework.

PART B – WHY CLASSIFY AND REGULATE CONTENT:

QUESTION 2: *What should be the primary objectives of a national classification scheme?*

- To protect children and vulnerable members within the community from harmful and/or distressing content;
- To provide individuals with the right to an *informed* choice on material, in particular warning them of content that they may find offensive, distressing or disturbing;
- To restrict all Australians from having access to certain types of content that is harmful to the community at large.

PART C – WHAT CONTENT SHOULD BE CLASSIFIED AND REGULATED:

QUESTION 3: *Should the technology or platform used to access content affect whether content should be classified, and, if so, why?*

The technology or platform used to access content does not change the principles of why classification was instituted in the first place.

It is important to maintain a degree of consistency and simplicity to enable a clear understanding by the community as to the nature of the content.

The classification system should be such that there is no distinction between platforms such as online and offline content. It is recognised there are currently cost issues and limitations associated in achieving this objective, particularly in the online platform. It is, however, important not to undermine the objectives of classification. Furthermore, it should be noted that as technology progresses so should the ability to monitor online streams of material.

Thus the classification system ought to be one which strives to effectively classify all material regardless of the technology or platform used to access it.

Recommendation:

The classification framework, in accordance with its core principals ought to be one which strives to effectively classify all material regardless of the technology or platform used to access it.

QUESTION 4: *Should some content only be required to be classified if the content has been subject of a complaint?*

For practical purposes as well as issues relating to child protection and the rights of individuals not to be offended; classification of content should not occur purely as a result of complaints.

In a report conducted in February 2002 on the portrayal of women in outdoor advertising, the following was found when looking at complaints;

The market research identified the psychology of complaints as a significant issue. In particular the low rate of conversion from seeing something inappropriate to wanting to complain, and then from wanting to complain, to actually making a complaint. Of the female respondents who had seen something inappropriate in outdoor advertising (37%),

almost two in every three (62%) had thought about complaining, but only 4% of those who thought about complaining did so. Thus out of a sample of 281, only three women had actually made a complaint. Amongst male respondents, 22% reported seeing something inappropriate in outdoor advertising, only one in three (32%) had thought about complaining, and, out of a sample of 121 males, none had complained.

Some reasons given for not making a complaint by respondents who had said they had wanted to complain (72 respondents) included: not having the time to complain (39%), not knowing who to contact (22%), thinking no-one would listen (13%), and not knowing how to complain (10%).

The Committee agreed that there was significant dissatisfaction with the community's experience of the complaints process in relation to advertising. It was felt that this issue should be raised with the national complaints-handling body for advertising, the Advertising Standards Board.ⁱ

Given the evident dissatisfaction associated with the complaints process, a system which is based on complaints is contrary to the intent of creating a framework which is enforceable and promotes public trust in the regulatory system. Regarding this, it is important to consider that a classification system which inspires confidence will encourage consumers, particularly concerned parents, to access material under this framework.

It is evident from the aforementioned research that a complaint based system is an inaccurate representation of community standards. Furthermore, the time frame which would occur prior to a complaint being submitted and then processed should be noted. It is logical to infer that for the duration of these periods unsuitable content would remain available and/or without a classification. Given the multitude of research indicating the damaging effect of exposure to violent and sexually explicit material on young people, this is unacceptable.

For example,

the American Psychological Association's 'task force on the sexualisation of girls' reported thatⁱⁱ "Ample evidence indicates that sexualisation has negative effects in a variety of domains, including cognitive functioning, physical and mental health, sexuality and beliefs."

In addition to this, a recent and comprehensive meta-analysis study was conducted in 2010. This study analysed the results of over 130 research reports, based on over 130 000 participants and was conducted over both Eastern and Western countries. This review found that there is indeed a causal link between playing violent video games and aggression.ⁱⁱⁱ

To further this issue; if content was only classified after a complaint was processed, there becomes the obvious problem associated with recalling material to be classified. Inevitably

this will result in material remaining within the community which is inadequately classified. This is contrary to the intent behind this inquiry, in particular; ‘ensuring that appropriate safeguards exist to restrict the availability of inappropriate content, particularly for children’.

Therefore, for the purposes of protecting young people and providing members of the community with clarity as to the content of particular material, content ought to be classified prior to release in the community.

Currently, the online classification framework is a complaint based system. Whilst this assists in targeting the most extreme and offensive content, given the growth of online material and the prominence of it within society, particularly around children, this is no longer sufficient. Despite some suggestions, the present difficulty in maintaining consistency of rating between online and offline material does not negate the need to regulate, nor does it justify deregulation offline.

Therefore the reformed classification framework should strive for consistency by focusing its attention on improving the regulation online rather than deregulating offline.

Recommendations:

For the purpose of creating a framework that is consistent and inspires confidence within the community, content ought to be classified prior to release in Australia.

The reformed classification framework ought to make steps towards ensuring that online classification progresses with technology so that it does not, to the extent possible, remain a complaint based system.

QUESTION 5: ***Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?***

This question challenges the fundamental reasons behind the purpose of the classifications system; the need to protect the community, in particular children and young people, from offensive or harmful media content.

Part of the intent behind the release of this Issues Paper was to ‘reform the classification system, with the aim of advising on a regularity framework that; ***meets community***

expectations'. The majority of research¹ indicates significant concern with the sexualisation of children as a result of exposure to sexually explicit content and the impact of violent material on aggressive behaviour. Accordingly, any reform of the framework should aim to classify *all* content with regard to potential impact across all forms of media in particular content designed for children.

Classification should aim to prevent children from being exposed to material which is harmful, offensive or takes advantage of their inability to understand or resist media techniques.

Recommendations:

That the potential impact of content ought to only affect the level of classification applied to the content, not whether it is classified.

That content which is designed for children be classified across all forms of media.

¹ C Anderson et al, 'Violent Video Game Effects on Aggression, Empathy and Prosocial Behavior in Eastern and Western Countries: A Meta-Analytic Review,' (2010) 136 *Psychological Bulletin* 151, 162. – *Found conclusively that playing violent video games is a causal risk factor for aggressive behaviour.*

C Anderson and B Bushman, 'Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature,' (2001) 12 *Psychological Science* 353. - *Found that violent video games increase aggressive behaviour in children and young adults. Playing violent video games decreases prosocial behaviour.*

C Ferguson, C Miguel and R Hartley, 'A Multivariate Analysis of Youth Violence and Aggression: The Influence of Family, Peers, Depression and Media Violence,' (2009) 155 *The Journal of Pediatrics* 1. – *Found that playing violent video games was a significant predictor of bullying*

American Psychological Association, *Sexualisation of Girls*, 2007:

<http://www.apa.org/pi/women/programs/girls/report.aspx> - *reported that ample evidence indicates that sexualisation has negative effects in a variety of domains, including cognitive functioning, physical and mental health, sexuality and beliefs.*

Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008:

http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf -

Recommended, after finding that the inappropriate sexualisation of children in Australia is of increasing concern, that outdoor advertising standards be rigorously applied to more closely reflect community concern about the appropriateness and parents inability to restrict exposure of children to such material

NSW Commission for Children and Young People, *Submission to the Senate Standing Committee Inquiry into the Sexualisation of Children in the Contemporary Media Environment*, April 2008:

<http://kids.nsw.gov.au/uploads/documents/sexualisation-ccyp-submission.pdf> - *Found that many children and young people are not comfortable with sexual material and would prefer not to be exposed to it.*

QUESTION 6: *Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?*

Given that the purpose behind the formation of the classification system was to protect and inform individuals; content should be classified regardless of the size or market position of particular content producers and distributors, or the potential mass market reach of material.

Due to the large costs associated with obtaining such classifications for all material, it would be reasonable for ‘user generated content’ to be only classified if likely to be rated MA15+ or over.

Recommendation:

That all content regardless of size or market position of particular producers and distributors, or the potential mass market reach of the material be classified.

For the purposes of this submission it is recommended that ‘user generated content’ be defined as the various kinds of media content publically available, that are produced by end users.

That ‘user generated content’ be classified if it is likely to be MA15+ or over.

QUESTION 7: *Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?*

History has shown that the current legislation in some States of Australia, such as NSW is inadequate when it comes to restricting the public display of art considered to be unacceptable by community standards. This issue has been recently highlighted in the situation involving Bill Henson^{iv}. The resolution to the debate was that the law did not provide adequate powers for the police to prosecute Mr Henson, resulting in no charges being laid. In this case it was clear that the community, as demonstrated by the outrage expressed, did not find it acceptable to use children in art in a way that could be used as pornography and for sexual gratification.

Thus in the same way that a director of a film must comply with classification rules and community standards in the creation of his/her film, so ought to (within reason) an artist. Artwork which would likely be classified MA15+ and above ought to obtain a classification prior to being displayed at an exhibition. Any form of artwork expected to be below this rate should not be required to obtain a classification as it would place an unreasonable

burden on the industry and individual artists. Similar to films, artwork should also have a RC classification to prevent for example; artists utilising child pornography in their artwork.

Furthermore it is important to realise that by not classifying artwork, this will continue to discourage parents from taking their children to art exhibitions out of concern of encountering material which is inappropriate for their children.

Recommendation:

That artwork which would likely be classified MA15+ and above obtain a classification prior to being displayed at an exhibition.

QUESTION 9: *Should the potential size and composition of the audience affect whether content should be classified?*

As a result of the development in technology and the ease of accessing material through differing platforms, predicting the size and composition of the potential audience is not a reliable measure.

Thus such a prediction should not determine whether or not material is classified.

Recommendation:

For the purposes of informing and protecting individuals, particularly children, from material which is offensive or disturbing in nature, the classification system should strive to classify all content regardless of the size or composition of the audience.

QUESTION 10: *Should the fact that content is accessed in public or at home affect whether it should be classified?*

The purpose of a classification framework is to inform and protect individuals from material which they may find offensive.

It is logical to infer that individuals within the community will want to be informed of the material, regardless of where it is accessed.

Thus, regardless of whether the material is accessed in public or at home, the classification system ought to strive to classify all content. Nevertheless, special efforts ought to be made to classify content accessed in public.

Recommendation:

That regardless of whether the material is accessed in public domain or at home, all content be classified.

PART D – HOW SHOULD ACCESS TO CONTENT BE CONTROLLED?

QUESTION 12 & 13:

What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

And

How can children's access to potentially inappropriate content be better controlled online?

Given the enormity of the online domain, significant research needs to be implemented by the government in order to better understand how to effectively provide answers to these questions.

Recommendation:

That the government implement a significant research program with the intent of establishing the most effective methods of controlling access to online content, particularly children's access.

QUESTION 14: *How can access to restricted offline content, such as sexually explicit magazines be better controlled?*

Access to offline content restricted under the National classification scheme ought to be restricted by, but not limited to:

- Prohibiting the creation, sale, demonstration, public exhibition, broadcasting and possession of content classified RC;
- Prohibiting the display or advertisement of films inclusive and exceeding classification of R18+ to minors;
- Prohibiting the display or advertisement of publications exceeding the unrestricted M rating to minors;
- Restricting the cover of films inclusive and exceeding the R18+ classification, and publications exceeding M rating to plain packaging.
- Restricting the display of all outdoor advertising to content which is suitable for minors under the age of 15.

PART E – WHO SHOULD CLASSIFY AND REGULATE CONTENT?

QUESTION 16: *What should be the respective roles of government agencies, industry bodies and users in the regulation of content?*

For the purpose of eliminating or significantly restricting the potential for conflict of interest, and with the intent of limiting burden on government agencies and the industry, the following provisions are recommended:

- Government bodies should create code and guidelines, directing how classification of content should be applied;
- A training program should be established by the government, in which employees train individuals to be ‘qualified classifiers’ and then contracts these individuals out to industry or employs them to monitor online content and classify material;
- A board should be created to deal with complaints, disputes and to monitor ongoing classification and misconduct by classifiers or industry. This board ought to be made up of members of the community in particular parents, the relevant Children Commissioners, and community service organisations working in the areas of child and family health and welfare, mental health issues, sexual assault, men and women’s health.

Recommendation:

To avoid conflict of interest government, parent bodies and community service organisations specialising in family health and welfare, mental health, sexual assault and men and women’s health should be involved in the regulation of content, not industry bodies.

QUESTION 17: *Would co-regulatory models under which industry itself is responsible for classifying content, and government works with industry on a suitable code be more effective and practical than current arrangements?*

The industry itself should not be responsible for classifying content as this creates a conflict of interest.

To avoid this conflict of interest, government ought to formulate a code separately from the industry.

In this process government should consult heavily with the relevant Children Commissioners in addition to parental bodies and community service organisations working in the areas of

child and family health and welfare, mental health issues, sexual assault and men and women's health services.

Contracting out trained classifiers employed by the government to assist industry, removes the conflict of interest whilst still remaining cost effective.

Recommendations:

Parental bodies and community service organisations working in the areas of child and family health and welfare, mental health issues, sexual assault and men and women's health services should be included in assisting government in formulating suitable classifying content code.

Industry should have primary responsibility for the formation of a suitable code, and trained classifiers employed by the government and contracted out ought to be used to assist industry meet expected standards.

QUESTION 18: ***What content, if any, should the industry classify itself because the likely classification is obvious and straightforward?***

The industry should not personally classify any content regardless of whether the likely classification is straightforward and obvious, as this creates a conflict of interest.

Recommendation:

The industry should not personally classify any content regardless of whether the likely classification is straightforward and obvious.

PART G – CLASSIFICATION CATEGORIES AND CRITERIA:

QUESTION 20: *Are the existing classification categories understood in the community, which classifications if any cause confusion?*

The classification category which has attracted most controversy recently has been the absence of an R18+ classification for games. One of the main concerns which has brought rise to this issue, is the current misapplication of the MA15+ rating.

The classification board is under the minister for Home Affairs Brendan O’Connor’s portfolio, who has himself admitted; “Over time, we’ve allowed games to get into the hands of 15-year-olds that would not have been available in comparable countries; that should not have happened.” This follows findings by the Cabinet that as many as 50 games, which are rated 18+ overseas are rated MA15+ in Australia.

Additionally it was noted more recently that of the more than 323 games rated MA15+ by Australia's Classification Board over the past few years, 297 of this number were categorized as Adults Only in the US and other countries.^v

Naturally this has brought rise to confusion within the community, particularly amongst concerned parents, as to the content of the current MA15+ rating for games.

However it is a misconception that introducing an R18+ classification for games is going to clean up the current inconsistency within the MA15+ rating.

The only way in which to resolve this issue and bring about some clarity as to the guidelines behind the classification of games is to recall material which has been incorrectly classified under the MA15+ rating and correct the misuse of the classification guidelines.

It is imperative that steps are taken to clean up the current misapplication of classification for games, before any new classification rating is brought in.

Recommendation:

For the purpose of being clear in informing the public, it is recommended that prior to any decision on the introduction of new classifications in the gaming industry, that the existing material be recalled and correctly classified.

QUESTION 21: *Is there any need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?*

There is no need for any additional classifications.

However the X18+ classification for films ought to be removed. Under the current Australian standards, films containing only sexually explicit content are rated “X18+”.^{vi} Due to the pornographic nature of X-rated films, there are grave concerns regarding the adverse effects of such material on individuals within society.

Research teams have performed over 500 studies upon the effects of pornography and have found the following six major effects of such material:

1. Even soft porn is harmful to everyone;
2. All pornography desensitizes the viewer;
3. Pornography is addictive;
4. Pornography degrades marriages;
5. Pornography increases crime in dangerous offenders; and
6. Pornography encourages and facilitates other crimes.^{vii}

One particular study has shown that after brief exposure to pornography, two-thirds of normal male college students would be more willing to force a woman into sexual acts if they could be assured of not being caught or punished. One-third of the students expressed an increased desire to actually commit rape.^{viii}

At least 26 studies have shown definitively that emotionally disturbed individuals and those with a tendency towards violent acts may be significantly desensitized for *several weeks* after exposure to three hours of violent and/or pornographic films.^{ix}

More than 65 studies have shown that dangerous offenders (child molesters, killers, rapists, incest fathers) are not only more likely to commit their crimes if they employ pornography, but they are likely to precede their violent acts with the extended use of deviant materials.^x

A survey of over 400 young prison offenders found that those who had been exposed to a large amount of pornography were much more likely to engage in violent and sexually deviant behaviour than those prisoners who had not been exposed to pornography.^{xi}

Recommendation:

Given the adverse effects of pornographic material, it is recommended that the sale and possession of X-Rated films be Restricted Classification and consequently banned in all States and Territories.

That no more ratings be introduced.

PART H – REFUSED CLASSIFICATION (RC) CATEGORY:

QUESTION 24: *Access to what content, if any, should be entirely prohibited online?*

All content which is classified Refused Classification offline ought to be similarly refused classification online. It would be inconsistent and contradictory to enable differing classifications between the two mediums, particularly as with the progression of technology, most material available offline can now be accessed online.

Recommendation:

That all content which is classified Refused Classification offline ought to be similarly refused classification online.

QUESTION 25: *Does the current scope of the Refused Classification (RC) category reflect the content which should be prohibited online?*

The National Classification code currently assigns the RC classification to publications, films or computer games that:

- Depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or
- Describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- Promote, incite or instruct in matters of crime or violence.^{xii}

In addition the code provides that publications that describe ‘sex, drug misuse or addiction, crime or cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified’ should also be classified RC.

Further, the code provides that computer games that are unsuitable for a minor to see or play should be classified RC.

In addition to the above classification of RC, I recommend that X18+ films be now made RC classification

It is of course not necessarily the current scope of the Refused Classification category that is the problem; rather it is application thereof that lacks adequate rigour.

Recommendation:

It is recommended that the RC category is extended to include X18+ films and that a specific review be undertaken on the present application and enforcement of the RC category.

REFERENCE LIST:

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- ⁱ The Portrayal of Women in Outdoor Advertising, February 2002:
[http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/\\$file/Women%20in%20advertising%20outdoor.pdf](http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/$file/Women%20in%20advertising%20outdoor.pdf)
- ⁱⁱ American Psychological Association, *Sexualisation of Girls*, 2007:
<http://www.apa.org/pi/women/programs/girls/report.aspx>
- ⁱⁱⁱ C Anderson et al, 'Violent Video Game Effects on Aggression, Empathy and Prosocial Behavior in Eastern and Western Countries: A Meta-Analytic Review,' (2010) 136 *Psychological Bulletin* 151, 162.
- ^{iv} Miranda Devine, *Moral backlash over sexing up of our children*, May 2008:
<http://www.smh.com.au/news/opinion/moral-backlash-over-sexing-up-of-our-children/2008/05/21/1211182891875.html>
- ^v Computer Game R18+ Classifications Won't Protect Children *Catholic Communications, Sydney Archdiocese*, 2 Jun 2011 http://www.sydney.catholic.org.au/news/latest_news/2011/201162_396.shtml
- ^{vi} Classification Website, *Classification Markings on Film and Computer Games*:
http://www.classification.gov.au/www/cob/classification.nsf/Page/ClassificationMarkings_ClassificationMarkingsonFilmandComputerGames_ClassificationMarkingsonFilmandComputerGames
- ^{vii} American Life League, *Chapter 134 – The Harmful Effects of Pornography*:
<http://www.ewtn.com/library/PROLENC/ENCYC134.HTM>
- ^{viii} P. Zimbardo. "Sexual Murderers." *Psychology Today*, November 1977, pages 69 to 76 and 148.
- ^{ix} The Hill-Link Minority Report of the Presidential Commission on Obscenity and Pornography.
- ^x The Hill-Link Minority Report of the Presidential Commission on Obscenity and Pornography.
- ^{xi} David A. Scott. "Pornography Its Effects on the Family, Community, and Culture." Published by the Child and Family Protection Institute and Contact America.
- ^{xii} Australian Government, Australian Law Reform Commission; National Classification Scheme Review Issues Paper 40 (IP 40) May 2011
<http://www.alrc.gov.au/sites/default/files/pdfs/publications/IP%2040%20Whole%20pdf.pdf>