National Classification Scheme Review

Response to Issues Paper

12 July 2011

Mark Newton PO Box 8138 Station Arcade, SA 5000 **T** 0416-202-223 **F** 08-8235-6937 newton@atdot.dotat.org

Introduction

Thank you for this opportunity to provide input into the Australian Law Reform Commission's National Classification Scheme Review.

The current National Classification Scheme (NCS) was devised twenty years ago, to suit an environment which implicitly carried the following attributes:

- In the absence of permissive parallel importing rules, books and magazines were only available from Australian publishers and distributors;
- Without electronic systems of distribution, films were only available from Australian distributors, usually only following Australian cinematic release; and
- Computer games simply weren't on anyone's radar at all.

In that environment, the NCS's focus on domestic distribution and points of sale made a modicum of sense, and was probably at least partially effective in achieving the system's aims.

Since then, we've witnessed a number of contending parallel streams of change which interlock to affect the operation of the NCS:

- Our society has become vastly freer and more liberalized than it was 20 years ago, making the NCS's restrictiveness seem as quaint and out of place in today's Australia as the previous system's banning of *Lady Chatterly's Lover* did in the 1980's;
- Those left on the margins of social change, who might perhaps prefer the good ol' days, have started to view the NCS as a source of proscriptive moral guidance, inflating its perceived importance and influence well beyond its designers' intentions, and well beyond the legitimate role of a liberal democratic government.

While those social changes have been taking place, the technological and legal worlds have moved forward. Parallel importing laws and online distribution mean that Australians no longer need to obtain published content from Australian sources at all, negating any opportunity the NCS might have to opine about the content's suitability. Publishers of content which is heavily restricted in Australia can and do engage in jurisdiction shopping to choose a more suitable country for their operations (almost invariably the United States of America, which exhibits no Government-administered censorship scheme at all), at which point they can sell to Australians every bit as effectively as they could if they were "locals."

Technology also enables richer and more expressive information about content to be delivered to Australians prior to content consumption, undercutting a significant rationale for the NCS's existence. The purpose of standardized classification symbols and consumer advisory warnings is to provide unsophisticated consumers with reliable and easily recognizable information about the nature of content before they've seen it for themselves. In 2011, there are so many places to obtain such information for free that it's difficult to justify the expenditure of millions of dollars in public money to sustain an NCS that will, at best, simply add one more voice to the din.

I believe it's time for a wholesale re-evaluation of the purpose of the NCS, and the government's role in regulating content. In this submission I will outline the basis of my belief by reference to the operation of the current NCS and the way that the Australian public approaches it, and I will offer an alternative flexible classification scheme which is better suited to our modern realities.

Scope

The ALRC's NCS Review Issues Paper has described a wide-ranging (and, frankly, chaotic) view of how classification is currently carried out in Australia.

The NCS's central feature is a set of Government-promulgated Classification Guidelines which are used by a Commonwealth Classification Board (CB) to apply standard classification markings to films, publications and computer games, which are then interpreted by State Governments to apply restrictions on commercial exploitation.

The Intergovernmental Agreement on Censorship (IGA) is also central to the scheme, although the Commonwealth has made it clear that the IGA does not bind the crown by passing amendments to the Classification Act to regulate terrorism-related material against the wishes of the State Attorneys-General during the Howard Government's term. I'm therefore not convinced that the IGA carries any real weight or credibility, it's used more as a cynical rhetorical prop by censorship ministers to explain why they're not supporting popular action with which they personally disagree, by deferring to lack of unanimity among the other censorship ministers.

The ACMA Online Content rating system described in Schedule 7 to the Broadcasting Services Act 1992 is arguably a late addition to the scheme. I will consider it in this submission, despite the near total lack of credibility of a regulatory system that says unrestricted publication of material harmful to minors is perfectly fine as long as you do it from a server in New Zealand[1]. Politicians have been fulminating in the nation's Parliamentary chambers about the evils of online content for nearly twenty years; meanwhile its regulation is and always has been a complete joke.

While regulation of commercial and non-commercial television content, television advertisements, films screened on international airlines and other material not directly covered by the Classification Act are all claimed to be consistent with the NCS, these schemes are nevertheless outside the NCS, and I will not be considering them in this submission. Television content in particular exists in a parallel classification universe, where television stations employ their own classifiers to interpret published codes from organizations such as Free TV Australia and the ABC. The fact that those codes claim alliance with the Commonwealth's Classification Guidelines doesn't make them part of the NCS (as proved by ACMA's action against Channel 10 for screening exposed breasts on *Big Brother,* despite the programme having passed Channel 10's own classifiers. Television's MA15+ clearly isn't equivalent to the Commonwealth's MA15+).

Stakeholders

Censorship is a divisive issue in our society. We like to believe that the Australian ethos supports freedom of speech, but we're also apt to participate in Singapore-style genuflections to authority figures whenever they ply us with sufficiently frightening dystopian fabrications (Our current Communications Minister personally exemplifies that embarrassing aspect of Australianism, by frequently telling the Parliament that freedom of speech is a core Australian value, even as he simultaneously invokes imaginary child predation to champion a half-baked internet censorship system).

The Australian Law Reform Commission (ALRC) will no doubt receive NCS Review submissions from a great many people who will wax lyrically about the dangerous side effects of modernizing or liberalizing classification. There exists a coterie of "usual suspects," mostly individuals and organizations aligned with religious groups, who seem to believe that Australians are such incompetent parents and so inclined towards degeneration that a strong and authoritarian censorship system is apparently the only thing standing between virtue and societal collapse.

You will also hear from a smaller number of individuals and groups who speak with more measured tones about the subject, who believe that the operation of the NCS has strayed so far from its original purpose that it should be adjusted or replaced. I count myself among those individuals.

There's another group of stakeholders you won't hear from, the approximately 22 million Australians (including approximately 18 million Australian self-directed media consumers older than 15 years)[2] who have absolutely no interest in the NCS, have

---

[1] Note that this will remain permissible (and encouraged) under the Labor Party's proposed Internet censorship scheme, which, they promise, will not attempt to regulate the online accessibility of R18+ and X18+ content.

[2] Source: *Population by Age and Sex, Regions of Australia, 2009* , Australian Bureau of Statistics, http://www.abs.gov.au/ausstats/abs@.nsf/Products/3235.0~2009~Main+Features~Main+Features?OpenDocument#PARALINK4

no idea that this enquiry is being carried out, and who will continue to pay scant attention to it regardless of any changes the ALRC recommends or the Parliament enacts.

It's important to keep that in perspective. As the copyright industry has discovered to their chagrin, part of the modern online environment's disruptiveness is that it makes controls on content distribution so meaningless that members of the public only vaguely understand that they're bypassing them. Responding to that threat by "amping-up" the controls makes the legal system lose credibility by appearing disproportionate, impotent, unhinged from reality, and unreflective of public expectations, leading inevitably to disrespect for the law.

The recommendations of the ALRC will potentially guide the Parliaments of Australia in their enactment of modifications to the NCS which will either prove useful or irrelevant to the 22 million people you won't be hearing from. Given that each and every one of those individuals possesses expertise in technological tools necessary to ignore classifications they don't agree with, it is important for the ALRC to subject submissions which advocate strict content controls to strong "reality checks" rather than simply taking them at face value.

The Public's Use of the NCS

It's useful to consider the impact of the NCS on a typical modern Australian family.

Consider a hypothetical urban household containing one or two parents, a young child, a primary school age middle child, and a 16 year old teenage child. The household's entertainment menu includes at least one television, a computer with broadband internet access, various audiovisual entertainment devices.

Each member of the household has different educational and entertainment needs. Each child will also have different levels of parental involvement in their educational and entertainment choices. Each person interacts and exchanges life experiences with a different social circle.

It's beyond question that the family will come into contact with the NCS many times on any given day. How does it affect them? I'd like to answer that by explaining what they do, not what they say they do.

Adults

The adults in the family have positions of responsibility over their children. They are, in a nutshell, exactly the kind of people that the existing NCS is supposed to inform.

Australian parents invest significant effort into their childrens' use of media content, which must be "vetted" for family appropriateness. The NCS attempts to provide parents with guidance, by classifying content on a spectrum ranging from G to X18+, and by providing consumer advice about themes (e.g., "drug use," "violence," "strong language.")

The NCS is inadequate in isolation. Parents know their children better than any bureaucrat, and are in a better position to judge whether content is suitable for their home. NCS judgements about content suitability are therefore mere advisories, rather than dicta.

For example: I have a work colleague with a four year old son who is going through a developmental phase where he is very sensitive to implications of death. When it affixes a "G" rating to a nature documentary, the Classification Board has no way of knowing that my colleague's son might cry himself to sleep because a sea bird's nest is shown in one scene containing four eggs, and is later shown with only three chicks. My colleague cannot rely on the Classification Board's judgement because the Classification Board cannot give regard to the realities of his family.

So Australian parents consume a vast array of information about content they bring into their homes, and the NCS is merely a small part. The internet enables access to discussion forums about movies and television, detailed reviews from sites such as *imdb.com,* alternative classification systems such as the one found at *kids-in-mind.com*. Parents also talk within the household to each other and their children, and with other parents.

My point is that we spend our lives immersed in a rich soup of "metadata" about content. Exchanging opinions about entertainment content is part of our culture, it's all around us. We are not passive consumers, we're active and informed.

The adults in the household will also use that cultural immersion to feed their own entertainment requirements. An Australian adult will make a decision about whether or not to see a movie or buy a computer game based on their own assessment of whether it's likely to be, in an abstract sense, "good."

When an Australian adult sees a movie, he or she will be only tangentially aware of the NCS classification symbol. It seems vitally important to bureaucrats and politicians that films are advertised with the correct ratings (as shown by the prominent Australian Government logo placement on cinema trailers), but it's almost completely irrelevant to an Australian moviegoer, who will have decided whether to see the film based on reviews, internationally-distributed online trailers, and the film's reputation among their friends.

Young Children

A young child will have very little autonomy in relation to media consumption choices. Australians are mostly attentive and capable parents, and invest considerable skill into mentoring, nurturing and supervising their children through their early years.

A young child's television viewing habits will be vetted by carers. Material in printed publications is largely irrelevant to children who can't read, but visual material is nonetheless evaluated and supervised. Autonomous access to the internet is rare. Young children spend almost all of their formative years enclosed in a supervisory cocoon administered by parents, preschool carers, and other family members.

NCS classification is almost completely irrelevant to this age group, because carers' choices about media exposure are largely governed by whether or not content has been specifically designed for children. The fact that *Avatar* carries an "M" rating from the Australian Classification Board is meaningless in a world where no parent in his or her right mind would give *Avatar* to an unsupervised preschool child regardless of what the Classification Board thought about it. Similarly, the fact that *The Wiggles Movie* has been classified "G" only carries worth among observers who, in the absence of Classification Board guidance, would be unaware that *The Wiggles Movie* is specifically produced for children.

A common tactic among defenders of the current NCS is to evoke imagery of young wide-eyed innocents to support a view that the NCS protects children. It's possible that that was true 20 years ago when Australians enjoyed less access to information about media; But in 2011, the young wide-eyed innocents are among those who would be almost completely unaffected if the NCS suddenly ceased to exist.

Teenage children

From a parental guidance perspective, teenagers are at the opposite end of the spectrum from young children. As children grow older, direct parental control diminishes on a downhill slide, starting from total envelopment in their early years, to zero at age 18. Teenagers are on the tail end of that progression, largely making their own decisions about media consumption without parental involvement. Parental guidance earlier in the child's life will influence the choices a teen makes, but there will be rebellious periods when any parent's best efforts are for naught. For the most part, a teen's engagement in the media landscape is indistinguishable from an adult's.

Where the NCS fails young children by being irrelevant, it fails teens by being ineffective. A 16 year old teenager is probably visually indistinguishable from an 18 year old teenager, and will be prone to bypass point of sale age controls accordingly. Age verification by credit card is pointless in a world where any person of any age can buy a prepaid VISA card for $20 at their local Woolworths supermarket. Even if age controls were effective, teenagers are immersed in ubiquitous broadband, and are perfectly capable of accessing whatever media content they desire online (almost all of which, it must be said, has not been evaluated by the Australian Classification Board at all).

Rather than using the NCS to make media consumption decisions, a teenager's choices will be guided by their upbringing, their own personal preferences, and by the opinions of their online and offline social networks. Teenagers are active participants in our society's cultural life, and engage voraciously in exchanges of views about films, music, websites, computer games, and literally any other form of content they encounter, empowered by frictionless contact with whatever media content they desire, with a near total lack of care or awareness of the NCS.

“Middle” children

Between the two extremes of childhood, there is a middle ground, a window of time when parental control is being relaxed to enable the emergence of cautious experimentation and self-determination. Children within this window are young enough to be heavily influenced by their parents rather than their peer groups, but not yet old enough to be “let off the leash” entirely.

The onset and duration of this middle ground will vary from child to child, so it’s not possible to be prescriptive about it. Nevertheless, for most children it probably occupies a range of years from middle primary school until the early teens, perhaps from age 9 to age 13 or 14.

Children in this age group will have their own pocket money, hence have their own means of acquiring commercial content. The home disciplinary environment will be stronger than it’d be for late teens (one can instantly visualize the differences in responses exhibited by a parent of a 10 year old purchaser of an R18+ DVD, versus the same parent reacting to the same child buying the same DVD at age 17.) The child will have a peer group, but for the most part its members will be under similar strictures imposed by their own parents.

It is among this group that the NCS is probably most valuable. Children are making their own media consumption choices, involving content which hasn’t been vetted by parents. Having not seen it themselves, parents need some means to judge its suitability so they can adequately discharge their supervisory responsibilities. The labels and consumer advisories on content (or, at least, that subset of content which is assessed by the NCS) is one tool in the toolbox which they can use to rapidly inform themselves.

So it could be argued that for any given Australian, who will probably live for something in the vicinity of 80 years, there is a window of perhaps five years of their childhood when the NCS provides worthy, useful guidance.

Limitations of the NCS

The NCS was designed in the late 1980’s and deployed in the early 1990’s, and is, like all legislative instruments, a reflection of its time.

We have had ample opportunity to observe its operation and evolution over the last 20 years. What have we learned?

Coverage

In the early 1990’s, the realities of content distribution were simple enough that the NCS could credibly claim to regulate almost all of the content it was intended to regulate.

Virtually all content entered Australia on physical media, mostly videotapes and printed matter. Border enforcement by Customs agents, call-in notices, and cooperation from industry ensured that virtually all audiovisual content in Australia came before Classification Board review.

Those days have long passed.

In 2011, content enters Australia electronically, and there is no opportunity for the Classification Board to have their say. An Australian film consumer can use a peer-to-peer platform such as *BitTorrent* to download, say, *Pulp Fiction,* at which point they’ll almost certainly receive an American edit, possibly very different from the Australian edit which attracted an R18+ rating from our Classification Board[3].

Australians returning from overseas are almost never bothered by Customs searches of their luggage, and, for those few who are inspected, it’s utterly unheard of for Customs to attempt to ascertain the contents of “blank” media.

Computer games are sold via electronic download, and while the versions offered to Australians are often (not always) restricted to MA15+ to pass NCS requirements, it’s usually simple work to convert them back to the international version by

[3] Note that the Australian Government’s proposed ISP censorship scheme does not address this deficiency: It only targets web pages, and can not have any impact whatsoever on peer-to-peer download services.

editing configuration parameters. Gamers have endured the NCS's dysfunctional ministrations for far too long, and many disrespect the system enough to treat bypassing it as sport[4].

The 21st century reality is that the NCS is capable of assessing an ever decreasing fraction of an ever enlarging pool of content delivered to Australians. Furthermore, any Australian is routinely capable of obtaining unclassified or Refused Classification content with ease, so much so that those who bypass our classification laws are only barely aware of what they're doing. No Australian who has downloaded a Refused Classification fetish film from Europe has ever halted themselves and said, "Oh, hang on, I can't watch this because it's RC." It's far more likely that they have no understanding or care of what RC means in the first place.

Skewing political debates

The NCS occasionally becomes unwittingly involved in public debates, where socially-conservative activists attempt to use it as a tool to skew political discourse towards the status quo.

Australians frequently debate contentious social and moral issues, in which one side will argue stridently for change and the other side will just as strenuously support the status quo.

Those who are arguing for change often support changes to the law. Until those changes are passed, the objects of their advocacy are often illegal.

The fact that "detailed instruction in crime" can be Refused Classification provides defenders of the status quo with opportunities to use the NCS to retard political debates by placing limits on the expressiveness of progressives.

An example:

There is strong plurality support in Australia for voluntary euthanasia. Exit International, a lobby group which is attempting to change the law to support dignified assisted suicide for the terminally ill, has published a book called *The Peaceful Pill Handbook,* which describes ways and means to end one's own life quickly, effectively, without pain, and without undue distress for one's family.

A passage in the book describes how to obtain and administer Nembutal, a drug used in the treatment of epilepsy which, in sufficiently large doses, causes death by paralysis. The method of acquisition and administration of the drug as described in *The Peaceful Pill Handbook* is illegal in Australia, so the book has been banned under the NCS[5].

The Peaceful Pill Handbook is undeniably part of a political debate in this country about the availability of assisted suicide. The NCS's restriction skews the debate: Those defending the status quo know that there is virtually no limitation whatsoever on the material they use to prosecute their case; Those in favor of social change know that there is an invisible line they can cross which will, without warning, result in published articles of their political expression being quashed.

The Peaceful Pill Handbook is available throughout the world. Australia is the only country on the planet to have banned it. Due to the NCS, the Australian debate about voluntary euthanasia is uniquely retarded, tilted in favor of the status quo.

This isn't the only example. There is a reason why elements in the Christian community went running off to the Classification Board when Andreas Serrano's *Piss Christ* photograph was exhibited at the National Gallery of Victoria in 1997, or why police submitted Bill Henson's photographic work to the Classification Board in 2008, or why the Victorian Retail Traders Association submitted an edition of La Trobe University's *Rabelais* student newspaper to the Classification Board to secure a

---

[4] Following the furore in the gaming community surrounding the Classification Board's refusal to grant the game *Left4Dead 2* an MA15+ rating, Australian gamers published the method to convert the specially-edited Australian edition of the game back into the "normal" version before the Australian version was released onto the market. What value is the Classification Board contributing by participating in these charades?

[5] *"Classification board defends euthanasia book ban"*, ABC News, 25 February 2007, http://www.abc.net.au/news/newsitems/200702/s1856344.htm

prosecution for an article about economic redistribution by shoplifting: The Classification Board is seen in some quarters as a referee who can settle public and political debates by banning the losing side.

Another example, in a slightly different direction: Availability of abortion has largely been a settled question in Australia since it was legalized in the 1970's, but there exists a small social movement who wishes to recriminalize it. Their advocacy is affected by the NCS in the same way as Exit International's, in that a website which incites its readers against abortion by presenting pictures of aborted fetuses was assessed by ACMA as Refused Classification in 2009 (later corrected to R18+ by the Classification Board) and added to Australia's "Prohibited Internet Content" list.

In each example, defenders of the status quo can speak with impunity, and advocates of contentious change are randomly confronted with Classification Board responses limiting their participation in the debate.

This is a misuse of the NCS. Using the state's censorship apparatus to bludgeon political debates is anathema in a country that regards itself as, "free." The Government has made a mistake by creating and operating infrastructure which is capable of being abused like this.

The "Refused Classification" category

By any realistic assessment, the "Refused Classification" (RC) category is a failure of the NCS.

Its supporters claim that it's some kind of bulwark against degradation and moral decline, seemingly oblivious to the fact that the Internet has been routinely bypassing RC for nearly thirty years, and the generation of Australians who have grown up in its influence are no more degraded or less moral than any other Australians.

The "RC" category is an aberration unique to Australia. It occupies a nether-region between the outer limits of X18+ and R18+, and the near limits of, "illegal."

Its status is routinely misrepresented. The conservative minority, including most of our politicians, seem to be under the mistaken impression that the Classification Board uses the RC category to ban content. The Labor Party has based their entire ISP censorship plan on the incorrect belief that RC should be banned online *because it is banned offline,* even though it isn't actually banned offline at all[6].

RC is a restriction on commercial exploitation within Australian jurisdiction. It is an offense to import commercial quantities of RC content, to publicly exhibit it, and to sell it.

It is not, however, an offense to buy it, view it, or possess it -- restrictions which must surely count among the bare basic requirements of a ban.

Despite the Classification Board's refusal to classify *The Peaceful Pill,* or the film *Romance,* or the 2007 Melbourne International Film Festival's attempt to screen the graffiti documentary *70K*, or *Ken Park,* or *Baise Moi,* all of them can be legally acquired by Australians[7], as per the Classification Guidelines' assertion that "adults should be able to read, hear and see what they want."

Part of the reason why these articles of content are available from overseas is because no other country anywhere in the world has a restriction even remotely comparable to Australia's RC. In other countries, content is either legal (in which case it is classified) or illegal (in which case it is given over to the police and the courts). It is only Australia which has this third category of "legal but we'd really prefer it if you'd treat it as illegal" Refused Classification material.

---

[6] "You can't buy RC in newsagents or see it in cinemas!" storms Senator Stephen Conroy with monotonous regularity, seemingly oblivious to the fact that you can't obtain X18+ in newsagents or cinemas either, but his own policy promises to ignore it on the internet. Do you think the Senator who has spent more time talking about it over the last four years than anyone else is confused about what "RC" actually is?

[7] *The Peaceful Pill* is available in printed form from amazon.com, and the companion DVD is available on YouTube. *Romance, Ken Park,* and *Baise Moi* are available on DVD from a multitude of online retailers. *70K* is available on youtube.com.

Given the ubiquity of ways to obtain content outside the control of the Classification Board, an unintended interpretation of the RC label in the modern world is that it is equivalent to a statement from the Australian Government to the effect of, "This content is legal for you to own, but we refuse to provide you with consumer guidance. The Australian Government believes that this content might be disturbing or offensive to certain viewers, but we knowingly refuse to tell you how or why. In relation to this most dangerous of legal content, we abdicate responsibility for controlling it. Good luck, you're completely on your own." Forgive me for asserting that that sounds just a little bit schizophrenic.

Regardless of what other conclusions the ALRC draws about the NCS, the RC category should be abolished, and the void between the current NCS and "illegal" should be filled by either introducing new classification ratings or by extending X18+ and R18+.

Social discord

While the RC category doesn't (and was never intended to) function as a ban, the one effect it does have is to create social discord in Australia.

Australians generally believe that we have freedom of speech. Any attempt to tell an Australian what she can or can't say, read, watch or hear is usually greeted with hostility. "It's okay to ban things, as long as you don't ban my things."

When an article of content is refused classification in Australia, particularly a controversial item which is not banned anywhere else, the act of refusal sends a message: "Even though this article is not illegal, the Australian Government thinks you are less mature, less worthy, more brittle than the Englishmen, Americans, Frenchmen, Spaniards and Mexicans who can see it without interference from their governments. We, the Australian Government, feel like we need to protect you from your own dangerous impulses, which will victimize you even though nobody in the world has similarly suffered. You are uniquely incompetent to make your own decisions about media consumption."

It's deeply offensive.

It's even more offensive when the Classification Board can't even make up their own minds.

Consider the film *Salo: 120 Days of Sodom.* When it was originally released in 1976 it was immediately banned in Australia.

Then, according to our Classification Board, something incredible happened to Australian society in 1993, because we all became intellectually sturdy enough to view the film without turning into axe-murderers, allowing it to earn an R rating.

Five years later in 1998, a magic unicorn died somewhere, which was a shame because *the unicorn was emitting rainbow-colored mind-rays which were making Australians intellectually mature enough to view the film.* Or perhaps there's a similarly credible alternative explanation. No matter, the result was that we apparently all became so feeble-minded that the Classification Board needed to Refuse Classification to *Salo* again for our own protection, and the protection of our community standards.

In March 2010, the Classification Board decided that the film wasn't brain-meltingly abhorrent after all, and perhaps we're mature enough to see it again, but only if we're good.

Minister for Home Affairs, Brendan O'Connor, distinguished himself by self-identifying as someone who isn't mature enough to see it, and pestered the Classification Review Board to protect him and his ilk by banning it again. Australia's Parliament lacks so much objectivity that we are confronted with the spectacle of a politician who seriously believes he'll earn votes by claiming we're too stupid to watch a film without hurting ourselves, then launching himself into the breech to protect us from our own choices.

This state of affairs is, frankly, asinine. Although *Salo* isn't a particularly pleasant film, it has been available in virtually all parts of the world throughout the entire time in which it has been banned in Australia, with no ill effect whatsoever. It is absurd to suggest, as Brendan O'Connor did, that citizens of other countries can watch the film without causing the downfall of their societies, while Australians are so mollycoddled and brittle that the mere *availability by mail order* of such a film requires emergency Ministerial action.

At each stage in this long, drawn out, stupid saga, the decisions of the Classification Board have created entirely unnecessary social discord. Whenever they ban it, people like me vent and fume about the moral emptiness of the socially conservative minority; Whenever they unban it, groups and individuals such as the Australian Christian Lobby and Hetty Johnston work themselves into a lather about imaginary victimized children, and predict tales of hypothetical doom that will befall our society.

It's all so vacuous, so tiresome, so unnecessary, so spectacularly useless in a world where anyone who wants to see the film can download it with BitTorrent.

We are past the point where the NCS is capable of restricting the availability of content. It's all out there, free for the taking, limited only by the consumer's declining residual respect for copyright. We have these arguments over theoretical restrictions on content availability which seemingly wax and wane endlessly (for *35 years* in the case of *Salo*), and none of it makes one iota of difference to whether or not Australians can actually access the content. Our arguments are pointless when it is literally impossible for one of the sides to ever win. Shouldn't the debate be over by now?

The only tangible effect of these debates *created and sustained by the NCS* is to promote social discord. Civil libertarians and social conservatives bicker endlessly over NCS outcomes which don't, at the end of the day, actually matter. Parts of our civil society spend decades tearing shreds off each other for nothing.

In my view, the way out is to abolish the RC category, to get the NCS out of the business of banning things. Australia already has laws which criminalize the production, possession, import, sale and exhibition of truly abhorrent articles of content. The content which doesn't meet the tests required by those statutes is, by definition, legal. There is no doubt that some of it will be necessarily confrontational and controversial, and may trigger lengthy debate, just like it does in virtually every other jurisdiction around the globe. But that's a perfectly right and proper outcome in a free society, and at the end we'll either build consensus for changing laws governing illegal material, or we won't.

What isn't right and proper is for the Commonwealth to parachute itself into the middle of those debates, and prematurely terminate them by imposing half-cocked bans on lawful material to empower somebody's "heckler's veto."

It's a gutless response: Our rudderless political leaders lack the wherewithal to mount a persuasive argument for or against criminalization of films like *Salo,* so they handball the issue to the Classification Board instead, and slink away into the shadows, disclaiming responsibility, thankful that nobody ever points out who's in charge of the Classification Guidelines.

Then the hour hand does another turn around the clock face, the planet does another lap around the sun, hell freezes over, and we're *still* arguing about unenforceable classification decisions. Enough!

Cultural participation

As the ALRC has noted in its discussion paper, a growing aspect of modern cultural participation revolves around content creation.

In truth, the NCS has always recognized that Australians produce volumes of unclassified content. The "call-in" provisions in the Classification Act could be viewed as an attempt to close the "content creation hole" by bringing any form of regulated media, amateur or otherwise, within the gamut of the NCS at the Classification Board's option.

The difference now, of course, is one of scale. Australians produce content like never before.

The ubiquity of low-cost media manipulation tools enable photograph editing, video mash-ups and desktop publishing in ways never envisaged by the 1991 NCS design, and will probably continue to enable new forms of participation that nobody has even thought of yet for years to come.

None of that is captured by the present NCS. It just isn't equipped to deal with scale, and the absence of social problems caused by unregulated creative output strongly suggests that the NCS doesn't have a problem to solve here in the first place. We seem to be doing okay without obsessively classifying every LOLcat, slashfic and Youtube movie uploaded onto the internet.

A modest proposal

Based on the foregoing, it is my belief that the current NCS is largely irrelevant to modern content users, and that it also has a distorting influence on Australian political discourse.

I think it needs to be reformed from root to branch.

If we were to create a new classification system in 2011 suitable for the 21st century, we would need to start by acknowledging some realities which the old NCS fails to accommodate, and which a new NCS should accept as defining axioms.

Mandatory application of the NCS is not required to protect society

Australia has spent the last 30-odd years as an involuntary participant in an informal experiment to determine what happens to a society when it is inundated with unregulated media content[8].

The Internet's arrival in the mid-1980's enabled its users to fluidly access content produced in foreign jurisdictions. Regardless of the efforts of the Australian government to amend the Classification Guidelines to restrict availability of written material, audiovisual recordings, or computer games, they've all remained accessible online.

As time has passed, the overwhelming growth in percentage of the Australian population able to access unregulated content online has been utterly eclipsed by the sheer volume of the material itself, virtually all of which is outside the purview of the State and Commonwealth Attorneys-General and the Commonwealth's Classification Board.

The socially conservative minority reliably asserts that the Classification Board "protects" Australians by filtering content through a lens tinted by some nebulous concept of "community standards." They routinely argue that strict application of the NCS is required to protect children, protect adults from offensive imagery, and fight sexual violence. Child porn, violent computer games, obscenity and rape, the four horsemen of the censorship apocalypse.

By their own logic, Australia should be some kind of morally-degenerate hellhole by now. If the NCS is required to protect children, then the children we've raised into productive mature adults over the last 30 years with increasingly pervasive access to unclassified internet content ought to be fatally damaged. If the NCS is required to protect us from obscenity, then an entire generation ought to have been psychologically scarred, unable to lead a productive life because they watched "2 girls 1 cup" on YouTube. If the NCS prevented Australians from descending into sexual violence, surely everyone younger than 40 would be in jail by now.

It's clearly preposterous to suggest that the application of the NCS in its present form protects anyone from anything. Despite the protestations from tut-tutting panic-merchants, our society is doing just fine, thank you very much. There is no credible empirical evidence that routine exposure to unregulated content has had any damaging impact on society whatsoever.

The NCS is not capable of classifying everything

Related to the previous axiom: In its discussion paper, the ALRC cites a Google study which estimates the size of the HTML portion of the Internet at "over one trillion unique URLs."[9]

The other useful datapoint in that study was that Google's estimate of the growth of the HTML portion of the Internet was one billion unique URLs per day.

The study was published in July 2008. It's now July 2011, fully three years since its publication, over 1000 days. Assuming conservative linear growth, the web now encompasses over *two* trillion URLs. A more realistic estimate would observe that

---

[8] It's worth noting that the Internet predates the current NCS, and that if Australian legislators had been aware of contemporary technology when they designed the current system, it might have stood the test of time, and not require reform now.

[9] See discussion paper IP40 footnote number 40 on page 27, "*We Knew the Web Was Big...*," Google, 2008, http://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html

most internet-related quantities double every 18 months, meaning we've accommodated two doublings since the study's publication, putting the current size of the web closer to *four* trillion URLs.

The NCS was devised in an age when any given year would see, at most, 100 new cinematic releases, perhaps a few thousand videocassettes, and maybe a similar quantity of restricted publications. It is entirely incapable of accommodating the volume of work that would be required to make any noticeable impact whatsoever on the content distribution system that will dominate Australians' entertainment technologies for decades to come. As Senator Stephen Conroy has discovered while prosecuting the ALP Government's attempt to censor the Internet, our classification system erodes its own credibility by even pretending it will try.

The Australian public respects many classification systems, of which the NCS is merely one

Our use of the Internet has implicitly exposed us to a great many classification systems without even consciously realizing it.

No Australian who has ever illegally downloaded an American edit of a Hollywood blockbuster on BitTorrent has ever declined to watch it on the grounds that the Australian Classification Board hasn't assessed it, and that it might therefore contain scenes which would be unsuitable for Australian screens. No, if they're aware of its classification at all, the MPAA rating it almost certainly carries appears sufficient, the United States' "NC-17" label is every bit as informative as our "R18+".

Australians also don't appear to care whether the classification label (if any) has been affixed by a Government. We might watch BBC drama series which carry British government-applied rating labels, but we also play downloaded computer games which have been labelled by ESRB, a private company which licenses game classification services to publishers without Government intervention. We accept all manner of content from the United States, a country united under a constitution which actually prohibits the Government from meaningfully censoring any creative content whatsoever, where all classified content has therefore been assessed by non-Government actors.

The Australian Government's classification markings may have once carried some kind of special inherent legitimacy, back in the days when Australians had a little bit more faith in their Governments than they do now, but those days are passed. Where Australians pay any attention to classification markings in 2011, they don't seem to care where they come from, as long as they convey useful information.

We are part of a global community

Our cultural life increasingly revolves around exchanging shared experiences of media artifacts. It's rare to spend a week at work without talking to colleagues about the latest and greatest television show, BBQ conversations frequently revolve around sharing opinions about movies, and children frequently proclaim their identity to the world in terms of the popular entertainment brands they wear on their T-shirts.

As one travels around the world, one naturally discovers that most of the world's peoples are just like us. We're part of a global community of people who just can't get enough of culture, and we all discuss and debate our personal preferences with anyone who'll listen.

These days you don't even need to travel. One of the most disruptively amazing discoveries of the 21st century is the way the Internet connects cultural communities across borders, encouraging global conversations in ways that were virtually impossible less than a generation ago.

Given that we all consume the same content, it's increasingly strange that so many countries are belabored by legacy national classification systems, all seemingly applying local "community standards," even though the public clearly doesn't wish to be bothered by national restrictions, and we want to participate in the same culture our overseas friends enjoy.

The saving grace, of course, is that virtually all of these localized classification systems apply their unique "community standards" in exactly the same way[10].

Consider one of our cultural icons, the 1979 Australian classic film *Mad Max.*

---

[10] "You are all individuals!" http://www.youtube.com/watch?v=jVygqjyS4CA

According to the Internet Movie Database[11], *Mad Max* has been assessed as suitable for 18 year olds by the UK, Ireland, Italy, Argentina, Canada (under no less than three separate applications), France, New Zealand (twice), Norway, South Korea, Spain, the USA, West Germany and Finland.

What possible value is added when the Australian distributors are forced to pay the Classification Board to affix a functionally identical Australian classification before they can screen the film in this country?

Furthermore, Singapore, the Netherlands, Argentina and France have more recently assessed it as suitable for 16 year olds. Are Australian 16 year olds more feeble than French 16 year olds? Our are parents less skillful and influential than Argentinian parents? Is the Australian Classification Board correct to affix the film with a rating that says it's suitable for 18 year olds when Dutch 16 year olds can watch the same uncut version of the film on television?

There seems to be a view underpinning the NCS that we're somehow exceptional in Australia, more fragile, more inclined to psychological harm; and that exceptionalism justifies mandatory imposition of unique Australian bureaucratically-derived community standards, which, coincidentally, happen to be almost indistinguishable from everyone else's community standards.

It's obvious: *Mad Max* is a film for mature audiences. No doubt about it, no argument. But we'd know that even if the Australian Classification Board had never seen it, because it has received at least 28 classifications from other agencies around the world which all say more or less the same thing.

You can perform the same analysis on virtually any content, whether or not it was produced in Australia. Content intended for children is inoffensive everywhere; content intended for adults attracts virtually the same adult ratings everywhere. Content balanced on the margins of each rating prompts the same debates and value judgements everywhere, and doesn't seem to provoke much practical harm regardless of which way the chips fall. The Australian national identity is global, and we're part of that now, we participate in the same cultural endeavors as our peers in other countries.

What value is the NCS adding?

A reformed National Classification System

I cannot spend ten pages criticizing the current system without offering a better alternative.

A new National Classification System designed for the 21st century would look somewhat different from the current NCS, although it'd share enough attributes to ease a transition from old to new.

My suggested classification system would meet the following conditions:

- It would not be mandatory, thereby freeing Australian content producers from expensive Classification Board assessment fees, removing amateur online content producers from their current legal limbo[12], and dropping the ridiculous pretense that an Australian classification system is even theoretically capable of classifying everything.

- It would be explicitly cast as an advisory system, rather than a system of controls, thereby recognizing that control is no longer possible. Nothing the Australian classifiers do can ever "ban" anything. If we're starting again from scratch, we should not entertain delusions of grandeur about the capabilities of our censorship system.

- The "Refused Classification" concept would be abolished. Either X18+ and R18+ would be extended to fill the resulting void, or new classification symbols would be implemented. All content which is legal to own ought to be able to attract a meaningful classification label upon application. The Australian Government should not withhold useful guidance to

[11] IMDB Parental Guide for *Mad Max:* http://www.imdb.com/title/tt0079501/parentalguide#certification

[12] Is an Australian in breach of classification law by uploading a video of themselves having sex to an amateur pornography site? What if it happens to be the kind of fetish sex that would be refused classification? I frankly have no idea, but the practice is harmless enough and common enough that it ought to be legal.

consumers of legal content.

- It would recognize third-party systems of classification as having equal weight to Australian systems of classification.

  The Classification Board would gain a new role, that of approving external third-party classification systems. Guidelines would be used to withhold approval from classification systems which were inconsistent, or which breached common sense by (for example) awarding "suitable for children" ratings to pornography, or affixing valid ratings to material which is out-and-out illegal. Approved classification systems should also be unambiguous, in that they should provide clear guidance about age/maturity suitability, the nature of themes conveyed, and so on.

  As long as a classification system met the conditions stipulated in the guidelines, the Classification Board would be required to assent to its approval. Once approved, a third-party classification system would have equal weight to the Australian system.

  If Australians trust the MPAA rating system (and their online habits indicate that they surely do!), then they should be permitted to rely on it. If they trust ESRB ratings for computer games, who is the Australian Government to tell them that their trust is misplaced? If conservative religious communities wish to invent and operate their own rating system which reflects their values and beliefs, or parenting organizations wish to promulgate classifications which provide detailed information about fine-grained thematic categories, that ought to be fine too.

  It's entirely possible that a single item of content might carry multiple ratings from multiple agencies, government and private, thereby providing consumer advisory information and content guidance to a wider range of better-targeted audiences than the current NCS. For the first time in years, classification labels could be made *relevant* to Australian consumers.

  Note that there are precedents for recognition of third-party credentials in other areas of Australian law: Australia accepts ICAO-compliant flight crew licenses issued by other countries. If we're happy to accept that other nations can train pilots that can fly in Australian airspace without crashing airliners into our cities, we can probably accept that other nations are capable of rating our films, publications and computer games.

- It would be media-neutral. If a magazine attracts a certain rating, a scanned copy of the same magazine circulated on DVD-ROM or a web page should attract the same rating.

  At present, an Internet copy of a magazine is classified like a motion picture, using different classification guidelines to the magazine; The DVD-ROM isn't a film, printed publication or computer game, so it isn't classified at all.

  The current NCS is replete with bizarre anomalies like that, partly due to lack of care exhibited by legislators during amendments to the relevant acts, but also due to a misplaced and unproven (but popular) belief that certain media inherently conveys more "impact" than certain other media.

- In case of disputes about availability and presentation of a given item of content, a modern NCS should begin by insisting that the subject content must be assessed by at least one of the approved classification schemes, if it hasn't been assessed already. If the publisher is overseas or unknown, then the Classification Board could use their own NCS standards (as amended) to rate the content.

  Having been so assessed, the content would then need to be treated according to the outcome of the scheme that assessed it. If it says the content is for adults only, then our society has an expectation that it would be age-restricted in the manner of R18+ and X18+ content today. If it's intended for children, then it might be available in supermarkets.

  This would enable (for example) *Mad Max* to be published in Australia without having to obtain an Australian classification,

so long as it had been rated by (say) the MPAA system in the United States, and was advertised, sold and exhibited with appropriate warnings and age restrictions.

These changes would produce a classification system which is consistent across media types. The proposed system would provide useful information to a generation of consumers that are poorly served by the current system. It would remove the Australian Government from its unwanted role as a cultural arbiter, and would prevent classification from skewing political debates.

It would also make no practical difference to actual content availability, except at the fringes of controversy where the current classification system is most defective. Some of the most poorly received and controversial classification decisions in history would be vacated: Margaret Pomeranz would never have had to carry out an illegal public screening of the film *Ken Park* and dare the police to arrest her, because *Ken Park* would carry the same "suitable for adults" rating in Australia as it carries literally everywhere else in the world.

My proposed system is simple, easy to explain, easy to administer, and consistent. There is also a relatively simple transition path from the current NCS to my proposed replacement: At the commencement of the new scheme, the Classification Board's existing classification guidelines (amended to remove RC) would constitute the first "approved scheme," meaning the day-one implementation would be virtually seamless. The system would then become more expressive and useful over time as more third party schemes relevant to the tastes of more subsets of Australian society were progressively approved by the Classification Board from that day forth.

My proposed system would also be significantly cheaper than the current system. The Classification Board's role would change: Rather than involving our classifiers (at significant cost) in every presentation of new content, the new system acknowledges that virtually all popular content enters Australia after being classified by someone else anyway, so we don't need to do it ourselves. The demand on our classifiers would be vastly reduced, along with the cost imposed on our local content creation industries. The Classification Review Board would almost never see a case.

A note about art

There have been recent calls from certain politicians to have artworks included in our classification scheme. The idea is so ridiculous that it's almost impossible to meaningfully mock it. It would be embarrassing to descend to the level of a detailed rebuttal, so I'll simply voice my objection and move on.

Conclusion

Censorship is a contentious subject in any democracy, particularly in those like ours which lack clear distinctions between private preference and public policy, and where politicians seem to feel free to interfere in the former as if it were the latter.

The iconic image of an anti-authoritarian Australian has waned with time. We still have an independent streak, but we've grown an ugly selfishness, in that we seem to accept virtually limitless impositions on liberty as long as they only affect someone else.

The evolution of the NCS reflects that sad reality. Since 1991 it has morphed into something which divides sections of our community. Most people ignore it altogether, drawing virtually no realistic practical guidance from it, even as they proclaim agreement with it in polls. For those who don't ignore it, the scheme serves as a lightning rod for social division, creating and empowering corrosive arguments about control of culture which can never be resolved as long as Classification Board decisions keep feeding them.

I doubt I'd enjoy the application of candlewax during sex, but I can't see a single legitimate reason why those who do shouldn't be able to enjoy its depictions in private. I'm not an anti-abortion crusader, but I can't see why classification should be used to limit participation in public debates by those who are. I support voluntary euthanasia, and I find it insulting that my Government believes part of its role is to distort the debate in favour of the status quo by deploying Refused Classification labeling against those with whom I agree.

It's normal, expected, and correct for free democracies to debate culture. But the public's voracious adoption of the internet should be interpreted as implicit recognition that it's no longer appropriate (or possible) for governments to attempt to settle cultural debates through censorship. Part of the reason we've moved online is to participate in a global community, and we haven't invited the Australian Government in to control it. Our classification system should reflect that new reality.

The days of classification being used to restrict availability of content are long gone. If the intention is for the NCS to be relevant, any reformed classification system should focus on public empowerment through consumer advisory information, and leave decisions about appropriateness and availability where they belong: In the hands of the informed and discerning public the NCS is supposed to serve.

Appendix: Answers to the Classification Review List of Questions

1. **In this inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?**
   The existing system has outlived its usefulness. A new framework should be developed.

2. **What should be the primary objectives of a national classification scheme?**
   To recognize the diversity of Australia's communities; To empower the public's enjoyment of content through consumer advisory information relevant to each individual's community standards, if and when such advisory information is required.

3. **Should the technology or platform used to access content affect whether content should be classified, and, if so, why?**
   My view is that the classification scheme ought to reflect the impossibility of classifying all material by making classification optional across all platforms.

4. **Should some content only be required to be classified if the content has been the subject of a complaint?**
   Any content should only be required to be classified when it becomes the subject of a legitimate complaint. Restrictions on vexatious complainants should be employed to ensure that the system doesn't become de facto mandatory due to specific individuals or groups reflexively complaining about everything.

5. **Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?**
   Academia has been studying whether specific types of content have more "impact" than others for centuries. If there was any such thing as "potential impact," it'd have been unambiguously discovered and documented by now, and would no longer be cause for debate.
   Content specifically designed for children does not need to be classified at all, because it is immediately obvious that it has been specifically designed for children. Nevertheless, if third-parties wish to provide services to parents by gaining approval from the Classification Board for enhanced child-specific classification schemes and applying said schemes to content designed for children, they should be free to do so.

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?**
   No.

7. **Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?**
   No[13].

8. **Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?**
   Yes, inasmuch as their classification should be optional as well. If there is demand for one or more classification schemes which could provide useful and wanted information to communities of consumers of this content, there should be no impediment to prevent interested parties from applying for approval of suitable classification schemes to cover them.

9. **Should the potential size and composition of the audience affect whether content should be classified?**
   No, noting that it is impossible to judge the size and composition of audience until after content has been published.

10. **Should the fact that content is accessed in public or at home affect whether it should be classified?**
    No, with the obvious exception that content accessed in public might be more likely to attract complaints if it happens to offend any of Australia's communities.

---

[13] It is worth noting that requiring such prior restraint would not have affected the subject of the most recent artistic moral panic (and the most likely cause for this question to be included in the inquiry), the 2008 Bill Henson exhibition, because his so-called "offensive" photographs were classified "PG." Exactly which perceived problems would prior restraint solve?

11. In addition to the factors considered above, what other factors should influence whether content should be classified?

Content may be classified if its illegality is germane to court proceedings. In a trial, content which attracts a valid classification under a scheme which the Classification Board has approved should carry a prima facie presumption of legality, both because the Classification Board would not approve classification schemes which legitimize illegal material, and because members of the public relying on such approval in good faith should be afforded a presumption of innocence against charges of possessing or producing illegal content.

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

My proposed new National Classification Scheme would not restrict online content, it would merely label it with consumer advice drawn from any relevant approved classification schemes.

Any National Classification Scheme which presumes any capability of controlling access to online content will be pilloried as a vacuous, pointless waste of effort.

If it would aid the ALRC's evaluations, I would be pleased to provide more detail to underpin my contention that it is no longer possible for classification schemes to have any impact on the availability of online content. Not only is it unconditionally possible for consumers to bypass online censorship systems, it is also possible for publishers to make available content online in readily accessible venues which are impossible to censor.

13. How can childrens' access to potentially inappropriate content be better controlled online?

The ACMA's voluminous research seems to indicate that parents believe childrens' access to potentially inappropriate content is already controlled online. It seems to me that those who cry the loudest about the difficulty of bringing up children in an online environment are old people whose children grew up and left the home long before the internet went "mainstream," and who therefore have very little direct experience of what they're talking about.

Australian parents have brought up an entire generation of children in the presence of absolutely no controls whatsoever on inappropriate online content, and those normal, well-adjusted grown-up children are now old enough to have children of their own. They're doing fine, despite the efforts of politicians to malign and impugn their parenting skills.

I draw the ALRC's attention to the recent report of the Joint Select Committee on Cyber-Safety[14], which makes it perfectly clear that the most prevalent and risky "inappropriate" content online involves children being bullied by their peers, a class of content which will never be classified or classifiable regardless of what the Parliament decides.

Childrens' access to potentially inappropriate content online is best controlled in the same way as their access to inappropriate content offline: By good parenting, empowered by good information. As the Joint Select Committee reported, technical controls are unlikely to be effective[15].

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

It's not credible to assert that the controls on offline content are ineffective now, excepting where children are able to conceal their age, a problem that's unlikely to be solved by any amended classification system.

We've lived with the current system of offline age controls for two decades. Throughout that time, the most common way for children to access restricted offline content has been to find it at the bottom of dad's sock drawer. I'd guess that almost every reader of this document "exposed" themselves to such content as children, but still considers themselves to be healthy, well adjusted and unharmed, but also curiously believes that other peoples' children are inferior to them, and need to be protected, lest they become a danger to themselves and society.

The cognitive dissonance is palpable.

Under my proposed new system, classification schemes approved by the Classification Board would need to clearly distinguish content suitable for adults. Such content would be subjected to age checks, distribution via restricted premises, etc, just like it is now. The system appears to work, I can't see any justification to make major changes to it.

---

[14] http://www.aph.gov.au/house/committee/jscc/report.htm

[15] Example: Paragraph 2.7 in the Committee's report.

15.When should content be required to display classification markings, warnings or consumer advice?

A system which is intended to empower informed decision making by content consumers should reasonably require that content which is intended for adult consumption should carry suitably informative consumer advice. Consideration should be given to requiring a URL which consumers can use to obtain more detail about the specific content at issue, including any relevant classification ratings it may have attracted.

Australians' use of content obtained from the Internet marked with foreign classification schemes should be interpreted as a sign that Australians attach no special weight to standardized Australian markings, so they should not be required.

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

The Commonwealth Classification Board should administer its own classification scheme (amended to abolish RC). It should also be able to approve third-party classification schemes, with such approval conditional on guidelines intended to promote veracity, reliability, legality, compatibility, and so on.

The State Governments would have roles very similar to their present-day roles, except rather than specifically restricting availability of the NCS's R18+ and X18+ classifications, they would amend their laws to apply them to "content assessed under an approved classification scheme as suitable for adults only." Special State treatment of RC content would become irrelevant because RC would no longer exist.

Industry would have an expanded role. Some approved classification schemes could conceivably be operated by publishers to enable self-applied classification. Industry bodies or special interest groups who are not currently involved in classification at all could also gain approval for their own schemes, which they could apply to third-party content, thereby expanding the gamut of information available to consumers. Third-party classifications would be distributed online in a form convenient to their users[16].

Users would be empowered by gaining access to a comprehensive set of officially-sanctioned classification resources, from which they could pick and choose based on their own personal preferences. Perhaps some families would like their film classifications delivered by a service operated by the Catholic Church; Others might find that the MPAA provides more useful information; Immigrants to Australia might prefer to trust the classification schemes operated by their countries of origin; Australian Aboriginies may choose to operate a classification scheme which reflects their own cultural standards and sensitivities.

Informed consumers can make choices, and the focus of the NCS should be to get as much information to the Australian population as possible, so they can choose which content is suitable for themselves and their families.

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?

No. The failing with that proposal is the assumption that a single "suitable code" will be devised which suits everyone. That's impossible. Australia is a multicultural nation inhabited by people with diverse backgrounds, wildly different community standards, a strong desire for self-determination, and enough Internet access to make a very public mockery of any code which attempts a one-size-fits-all solution with which we disagree.

18.What content, if any, should industry classify because the likely classification is obvious and straightforward?

As discussed in my submission, content for children is virtually always so obvious and straightforward that classification is redundant. Content intended for adults only is so obvious and straightforward that virtually every country agrees and issues almost the same rating, turning classification into a mere rubber stamp. In between the two extremes is a mass of innocuous content that, for all practical purposes, probably doesn't need to be classified at all.

The NCS needs to be something that actually adds value. It can do so by ensuring that its outcomes are community-relevant, by enabling communities to pick and choose from classification systems which match their values.

Industry has a role in all of this. There is no reason why industry participation in classification shouldn't be ubiquitous.

---

[16] An example of such an unofficial scheme distributed online is *kids-in-mind.com*, which classifies films against a set of detailed criteria to meet the needs of contributors' community. The Internet Movie Database, *IMDB.com*, also lists arbitrary numbers of classification ratings in the "Parental Guide" section attached to each movie review.

19. In what circumstances should the Government subsidize the classification of content? For example, should the classification of small independent films be subsidized?

Under my proposed scheme, subsidization would be unnecessary, because classification would be cheap. Small independent filmmakers would not need to classify unless their films attracted complaints, at which time they could choose the cheapest approved scheme which resolved the dispute. The system's overheads would be tiny, thus Government expenditure on subsidy schemes would be permanently unnecessary.

The money thus free could alternatively be used to promote Australia's cultural participation by funding the arts, instead of the unwanted bureaucratic overheads that the arts are presently compelled to endure.

20. Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

The difference between "G" and "PG" is poorly understood. The fact that MA15+ is a restricted classification which requires adult supervision and approval for consumption by under-15's is poorly understood. The difference between Category 1 Restricted publications and Category 2 Restricted publications is sufficiently opaque that I don't understand its motivation myself, and the fact that Category 2 Restricted publications are uniquely banned in Queensland defies belief. The fact that violence is utterly prohibited in X18+ is not only poorly understood, but actively undermined by wowser groups who wish the public to believe that X18+ content should be banned because it promotes rape. The fact that RC is not equivalent to a "ban" is so poorly understood that the politicians inhabiting the Parliament that invented the RC concept can't define it.

Australian content consumers generally only require broad guidance from classification, if they want any guidance at all: The only questions that matter are, "Is this okay for my kid?" and, "Is this porn?" The current NCS is very poor at communicating anything more nuanced than that, leaving more complicated questions about taste and suitability to be resolved with the aid of other information sources.

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

Within the context of the approved classification system operated by the Classification Board, RC should be removed. X18+ should be recast as, "Adult only content containing actual sex," bringing it in-line with the "X" rating in other jurisdictions, where it is broadly understood to mean, "Pornography." R18+ should be recast as, "Adult only content," for non-sexual content which is nevertheless not intended for children[17].

New classification categories could and should be created based on industry and community expectations. They could be as brief or as detailed and expressive as their designers wish, as long as they meet baseline standards required for their approval by the Classification Board. Different communities have different requirements, it's not possible to enumerate the possible gamut of desirable new classification categories in a document such as this.

22. How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognize greater convergence between media forms?

The only reason they aren't consistent now is because the Parliament has invested concerted effort over a great many years into making them inconsistent.

The Parliament has, without evidence, decided that computer games' interactivity causes so much impact that they deserve special treatment.

The Parliament has decided that a PDF published online should be classified as a film, that the same PDF when printed on paper should be classified as a publication, and that the same PDF distributed on a USB memory stick needn't be classified at all.

The Parliament has decided that the ACMA and the Classification Board should have parallel responsibility for classifying Internet content, even though the rate at which the Classification Board overrides and corrects the ACMA should indicate that the ACMA's forays into classification are largely an incompetent failure.

The Parliament has decided that films should have a system of classification that's different from publications, such that a pornographic magazine depicting wax fetish can attract a Category 2 Restricted rating, but a pornographic movie which

---

[17] A version of R18+ recut in this vision might be a good place to put *The Peaceful Pill Handbook,* for what it's worth.

documents the photographic shoot for the same magazine is automatically Refused Classification.

If there is a desire for markings, criteria and guidelines to be made consistent across different types of content, the solution is simple and obvious: *The Parliament should stop trying so hard to make them inconsistent.*

23. Should the classification criteria in the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

Yes.

24. Access to what content, if any, should be entirely prohibited online?

It's a meaningless question. The Iranian Government was unable to prevent its citizens from uploading YouTube videos during the 2009 Green Revolution, despite threats to torture and kill those who tried[18]. The Chinese Government employs over 60,000 people to maintain its "Golden Shield" firewall, and still can't prevent its citizens from making Facebook updates.

There is no credible way of preventing access to content online, and the National Classification Scheme should not embarrass itself by making the attempt.

It's undeniable that symbolic attempts at control can be used to "send a message." In relation to the Internet, the message will be, "The Australian Government is too impotent to make our controls effective, and too stupid to stop trying."

25. Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

No.

Upon request, I can provide several URLs of online content that has been Refused Classification by the ACMA and the Classification Board, and you can judge for yourself.

The Refused Classification category does not reflect content which should be prohibited in any media, let alone online. The category instead reflects the desire of the early-1990's Parliament to enact a "heckler's veto," which could restrict the commercial exploitation of legal material which offended social conservatives.

Rather than asking whether RC reflects material which should be prohibited, this inquiry should be asking whether the RC category needs to exist at all. None of our international peers have such a category, it's an aberration unique to Australia. It should be abolished.

26. Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

Inconsistencies promote the notion that adults on one side of a state border are less capable of rational judgement than adults on the other side.

That's clearly a ridiculous notion. Australia's differing community standards aren't based on the locations of lines on maps, they're based on Australia's differing communities. A reformed NCS would cease to imagine that Queenslanders have different standards from South Australians, and instead recognize and accommodate the different standards of (say) muslims and (say) christians.

Australia is inhabited by an incredibly diverse range of communities, each with their own standards, beliefs and norms. The current NCS seems to pretend that a one-size-fits-all approach is feasible, then it even gets that wrong by treating it differently in different states. It's a bizarre legislative failure on multiple levels.

Implementation of a reformed scheme with simplified rating categories will provide an opportunity for State Governments to normalize their approaches to classification.

27. If the current Commonwealth, state and territory cooperative scheme for classification should be replaced, what legislative scheme should be introduced?

My proposal would not require the cooperative scheme to be vacated completely. My alternative scheme could be

---

[18] Interestingly, the resulting cameraphone footage depicting the death by shooting of protester Neda Sultan went viral across the internet, appeared on 6 o'clock television news telecasts across the world, and won a George Polk Award for photojournalism. Meanwhile the Australian Classification Board classified it as R18+.

accommodated within the existing scheme by amendment.

Note that the Commonwealth has done the most to damage the current cooperative scheme, by enacting anti-terrorism clauses into the Refused Classification definition against the explicit wishes of the State Attorneys-General, in violation of the IGA. If there is a desire to maintain a cooperative scheme, perhaps the Federal Government would do well to actually be cooperative.

28. Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?

My proposal permits the states to reserve the powers they have not already referred to the Commonwealth.

In broad strokes, the current NCS empowers the Commonwealth to apply classification markings, and the State Governments to interpret and enforce them. That model would not change under my proposal; only the markings (and their implied interpretation) would be adjusted and supplemented.

29. In what other ways might the framework for classification of media content in Australia be improved?

Regardless of what else happens, it is my strong belief that a reformed classification system would abolish the RC category, and would not undermine its own credibility by attempting to control the internet.