Australian Law Reform Commission Submission

National Classification Scheme Review

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ABSTRACT

Australia's National Classification System no longer serves the community's best interests and is in dire need of modernisation.

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Response to questions posed by ALRC Issues Paper 40

Approach to the Inquiry

Q1. In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

Given the evolution of content creation and distribution the answer to this appears self-evident. The evolution is not anything new; the democratisation of content (and consequently knowledge) has been steadily underway since the invention of the Gutenberg printing press circa 1440.

I believe it is appropriate for the ALRC to focus on the development of a new framework rather that trying to continue to tinker with, or bolt onto the current system. The current scheme has become somewhat of a Frankenstein and appears to fail most stakeholders in some way.

Focussing on a new framework, designed from scratch, does not preclude the consideration and/or incorporation of the aspects of the current scheme that are considered to be successful and appropriate (the few that may exist) in a modern scheme.

Why classify and regulate content?

Q2. What should be the primary objectives of a national classification scheme?

A national classification scheme's primary objective should be to define a consistent and well-recognised framework regarding the language, terms and expectations for all Australians when making decisions about what content to consume where it doesn't already exist or is insufficient.

A national classification scheme should be designed so as to avoid unnecessary bureaucracy, cost and at all stages ensure its efficacy.

I believe that Australia's national classification scheme should serve as a scheme of last resort; should existing consumer advice exist already it serves no purpose to reclassify it domestically. Examples of existing consumer advice may be where the content has been classified under a recognised scheme from other countries.

I propose that the consumer advice take the form of an estimation or determination of the minimum age the content is suitable for.

What content should be classified and regulated?

Q3. Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

No.

A national classification scheme should be focussed on informing content consumption decisions. The suitability of content for a particular age group is not dependent on the platform used to deliver it.

Consider this simple example. Televisions are now available that are capable of being networked and accessing content via the Internet or home network. Should a viewer miss the broadcast of an ABC show, perhaps the Four Corners 'Access Denied' episode, they would have been able to watch it using ABC's iView Internet service at a later time of their choosing.

If ABC make the same content available via iView over the Internet how is it in any way less or more suitable for a viewer compared to a linear broadcast that was delivered over the air? What if the household Internet was wireless?

To use technology or platform to determine the classification is to condemn the classification scheme to irrelevance and obsolescence.

Q4. Should some content only be required to be classified if the content has been the subject of a complaint?

No.

Content should fall into two categories; content compulsory to classify and content voluntary to classify. Content voluntary to classify should not be subject to a reassessment or review unless the content has been voluntarily classified prior.

Content compulsorily classified may be self-assessed or assessed by a government agency. Compulsorily classified content that has been self-assessed may be appealed to the government agency for reassessment at its discretion. If the original self-assessment was found to be deliberately misleading or incorrect, cost recovery may be pursued. But self-assessments conducted in good faith should not incur any fee for re-assessment or review irrespective of the outcome.

In the interests of protecting the integrity of the classification scheme, content that has been voluntarily classified incorrectly by way of self-assessment may be required to withdraw the incorrect classification or substitute it with an appropriate classification. If it is believed that the content was misclassified either deliberately or negligently penalties may be applied.

Q5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

No.

The decision of whether content should be classified should not be based on the potential impact of the content but whether classification provides benefit.

What value does classifying content provide? Does it help consumers in making their content viewing decisions?

Consider an arthouse horror film festival; does it serve any useful purpose if every film is classified? People attending the film festival are aware of the content being exhibited - it is the reason they have chosen to attend in the first place. Individual classification provides no additional benefit.

Just because content has been *designed* for children should not require it to be classified. On the other hand, if the content is *exhibited* to children then it may require classification.

Q6. 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.

The purpose of classification is to inform *individual's* decisions regarding the suitability of content for them or suitability for minors. The size, market position or the potential mass market reach of the material has no material impact on the individual's decision and should not be a factor in determining whether it should be classified.

Q7. Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?

No.

Art galleries or exhibitions should be considered as unclassified. Illegal content should be dealt with by law enforcement.

Q8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

No.

Q9. Should the potential size and composition of the audience affect whether content should be classified?

No.

To consider the potential size or composition of audience when determining whether to classify content is inappropriate. Such a flawed approach to classification leads to inequity and inconsistency and as such would undermine credibility of the national classification scheme.

Classification should be about consumer advice, it is immaterial whether one or one million people have watched the movie, video, read the book or otherwise accessed the content. The impact for the individual seems unaffected.

Q10. Should the fact that content is accessed in public or at home affect whether it should be classified?

No.

It is already possible for an individual to be in a public space and be accessing entirely private content. It would seem near impossible to predict where content may be accessed given the evolution of mobile platforms for content.

However, if it is necessary, it should be sufficient to require the content be classified prior to public exhibition.

I trust the differentiation between content that *may* be accessed in public versus content that is *deliberately* exhibited in public is clear.

Q11. In addition to the factors considered above, what other factors should influence whether content should be classified?

Does it add value? Does it help a consumer get advice about the content they can't get some other way?

Is it practical to classify? Is the content linear? Does it self modify? Is the content mutable?

How should access to content be controlled?

Q12. What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

To try and control access to content via the Internet is to plan to fail. A new national classification scheme should reflect this reality and not try. In fact, the classification scheme should not be used to try and control access to content. The

conflation of classification and control is a significant part of the reason that the current scheme has the issues it does today.

The Internet should be treated as an unclassified delivery channel; it enables large-scale commercial distribution of content, medium to small-scale non-commercial distribution, even secured person-to-person communications.

I believe it is an impossible task to control distribution of content or the access to content by any Internet user. As a society we do not control what people say to one another or impair their daily activities. Appropriate controls, where they are needed, should be enacted through the criminal code.

If content is found to be illegal it should be removed at the origin. This is the only appropriate control that should be attempted and is widely accepted in all other aspects of society. It is high time that special properties cease to be bestowed on the Internet - it leads to bad legislation and bad government.

Q13. How can children's access to potentially inappropriate content be better controlled online?

By controlling and monitoring children's access to the Internet through parental supervision or that of a guardian. There are ample technological tools that aid individuals and guardians to that end.

We do not ask how we can make major freeways safer to be used as a crèche or for children to use as a playground. Equally we should not be treating the Internet as a baby sitter or child's wonderland.

Similarly, we do not ask our vehicle manufacturers to make their vehicles safer for children to drive. We do, however, insist the driver of the vehicle takes responsibility for the welfare of their passengers and that minors in their vehicle are appropriately restrained by seatbelts or child restraint as age appropriate.

Q14. How can access to restricted offline content, such as sexually explicit magazines, be better controlled?

If access to content were to be restricted to adults, opaque packaging of the content or limiting access to the area the content is displayed would be the most appropriate approach.

The sale of restricted content to minors is not a classification-related matter but one of enforcement of the existing laws or regulations that prohibit sale or exhibition to minors.

Q15. When should content be required to display classification markings, warnings or consumer advice?

Classification markings, warnings or consumer advice should be displayed at all times for content that is *compulsory* to classify. This may be on the product packaging at the time of purchase or immediately outside the room, building or facility where the content is on display.

Content that is voluntary to classify may display classification markings, warnings or consumer advice, but should not be required to do so.

I believe it is acceptable to display a general classification notification or advice that is of equal category, or greater, as the content on display.

Who should classify and regulate content?

Q16. What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

Government agencies should be responsible for legislation and regulations, review and reassessments and education regarding the classification categories.

Industry bodies may be able to self-assess content, provide industry based training and education to industry members and the public.

Users should obviously use any classification assessments to inform their media consumption choices. But most often neglected, users should also define the expectations of a national classification scheme and measure its utility.

Q17. 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?

Yes.

I propose an approach where content is divided into two main classes regarding classification, compulsory to classify and voluntary to classify.

In addition I propose that classification occur in two ways: self-assessment and government-assessed. All content, including compulsorily classifiable content, may be self-assessed. To ensure consistency I think a review/reassessment process for self-assessed content should exist.

Instead of self-assessing content it should also be possible for an exhibitor to request the government body to assess content at the exhibitor's expense. The primary reason for this is for an exhibitor to "insure" against

review/reassessment for content they may have significant financial investment in.

The classification guidelines should be overseen by the government body.

Q18. What content, if any, should industry classify because the likely classification is obvious and straightforward?

None.

Given that the primary, indeed the only, function of classification should be to provide advice prior to the viewing of content the question posed seems redundant as well as unnecessary.

If the classification is truly obvious and straightforward it is my contention that the classification would serve no additional use and is not required.

Classification fees

Q19. In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

The Australian government should subsidise classification in all instances where content is required to be classified by a government agency.

This would include review or reassessment of self-assessed content by the government. If, subsequent to review or reassessment the original classification was found to deliberately misleading or negligent, the government agency should seek full recovery of costs.

Classification categories and criteria

Q20. Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

There is reasonable understanding of most categories overall, with one exception that undermines the current system. The Refused Classification (RC) category is the subject of great confusion, in part due to the obfuscation of Senator Conroy and the government as a whole in the pursuit of Internet censorship.

Refused Classification appears to be a meta-classification insomuch as it is the absence of classification. All evidence points to the fact that it is impossible to control access to content in a modern, connected society. All RC does is ensure that advice about content that may be viewed or accessed, is not provided.

I propose the abolition of the RC category.

I think publication categories are not as well understood compared to film categories, for example. Unrestricted, Category 1 Restricted and Category 2 Restricted confuse many, I know many are unsure which of the three categories has the least impact.

Q21. Is there a need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?

Yes, all existing categories should be removed and substituted with age-based ratings that are consistent across all media.

Age-based categories are easily understood and they can mirror the recognised developmental milestones. This reflects the commonly held and non-controversial view that some content is not suitable for minors at differing stages of development.

The second highest category should be "18+" as this reflects the age of majority; it should be the case that adults are able to access any and all content that is not illegal to access. There is no place for a moralising or judgemental national classification scheme.

The highest category should be "Unclassified" with the abolition of RC and a new scheme that only serves to classify and not prohibit access to content. The "Unclassified" category does not need any descriptors or guidelines as all content that does not fit into the "18+" or lower categories will be deemed "Unclassified".

The category descriptors and/or guidelines should be determined by the unanimous agreement of state and territory bodies. By not proscribing the "Unclassified" category it removes the susceptibility of the scheme to the lobbying of weak governments.

Additionally, an "Unclassified" category returns the focus of the scheme to genuine consumer advice rather than abusing it for censorship. No longer will the debate about category descriptors be used to prevent access rather than be about the age appropriateness of the content.

Should the states and territories not be able to reach unanimous agreement regarding the minimum age that a user should be when viewing a film featuring large green fluffy dinosaur puppets it would end up being "Unclassified". The worst that happens is that access to this content is restricted to adults.

Q22. How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

Classification markings and categories should be universal as they are of greatest use when readily identifiable and consistently applied.

Classification categories should not be based on media format and should reflect the minimum age the content is suitable for. This should result in consistentcy.

Q23. 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.

If classification is truly about providing consumer advice to aid in their consumption of content and it is accepted that classification provides an indication of the age appropriateness then a unified classification is logical.

Refused Classification (RC) category

Q24. Access to what content, if any, should be entirely prohibited online?

None.

This question is yet another example of special properties being bestowed on the Internet - it makes no sense to do so.

Content that is illegal to access should not be dealt with via a classification scheme, as trying to do so will compromise the integrity of the national classification scheme.

Q25. Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

No.

The Refused Classification (RC) category should not exist; it is not the place of the national classification scheme to moralise or pander to extremists. Much less should the RC category be used to limit access to content when using the Internet.

Adults should be free to access all content that is not illegal. If legislators are not prepared to make the content illegal then it should be not be "prohibited". This is the standard that our society has used for a long time.

It is also important to note that while the RC category has existed for some time, most Australians have effectively opted out of it or bypassed it and will continue to do so.

Reform of the cooperative scheme

Q26. Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

Yes.

The category descriptors should be set by the unanimous agreement of the state and territory bodies under a complimentary applied law scheme, this should ensure the best outcomes.

Abolishing the RC category and making the highest category "Unclassified" focuses the debate on consumer advice and not censorship. It achieves this because the "Unclassified" category would be a catchall, or fall through category for content that doesn't meet the lesser category requirements.

Q27. If the current Commonwealth, state and territory cooperative scheme for classification should be replaced, what legislative scheme should be introduced?

I believe a complimentary applied law scheme is most appropriate coupled with intergovernmental agreement on classification.

Q28. 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?

No.

I believe that if the states referred their powers to the Commonwealth there is a significant risk that the classification scheme will become the play thing of weak government's pandering to the handwringing, noisy minority. The national classification scheme should have continuity and not be reinvented every time the federal government changes.

Other issues

Q29. In what other ways might the framework for the classification of media content in Australia be improved?

<u>Unrealistic depiction of reality</u>
I would like to draw attention to the abhorrent reality that realistic depiction of female genitalia and female ejaculation is prohibited in some media despite both being accepted as medically "normal".

I have to express my absolute disgust that the national classification scheme may be contributing to body dysmorphia amongst Australian women.

This must stop! There are anecdotal reports of the increase in labiaplasty being conducted for cosmetic reasons. A healthy body image is important and the realistic anatomical depiction serves to reinforce that.

<u>The Age Verification Problem</u>
Currently the Broadcasting Services Act requires that some content be subject to a Restricted Access System (RAS). A RAS is required to verify the age of the user prior to enabling access to content rated MA15+ or R18+ for example.

I believe it is virtually impossible to design a workable RAS that does not compromise Internet users privacy. It may even be impossible to design a RAS that can verify the age of the user at all.

I believe that the requirement for a RAS should be removed.