

Australia Council Submission to the ALRC National Classification Scheme Review – July 2011

About the Australia Council for the Arts

The Australia Council for the Arts is the Australian Government's arts funding and advisory body.

Its mission is to enrich the lives of Australians and their communities by supporting the creation and enjoyment of the arts. This mission is underpinned by a commitment to:

- Excellent and distinctive Australian art - assisting Australian artists to create and present a body of distinctive cultural works characterised by the pursuit of excellence;
- Access for all Australians - assisting Australian citizens and civic institutions to appreciate, understand, participate in, enjoy and celebrate the arts;
- A strong and vibrant arts sector - providing infrastructure development for Australia's creative arts.

Executive Summary/Introduction

The Australia Council welcomes this review into the National Classification Scheme.

The National Classification Scheme has profound significance to our culture. It both informs and reflects what our society values, what our society accommodates and that which it deems unacceptable. In doing so, the scheme is of great consequence to the arts – in particular, to the scope of artists' freedom of expression and the freedoms audiences have to decide what they will listen to, see or read.

The Australia Council believes that the classification scheme's principal objectives should be:

- To provide consumer guidance so that adults can make informed decisions about what content they, or children under their care, will view or read;
- To protect minors from material likely to harm or disturb them;
- To protect everyone from exposure to illegal material.

In fulfilling these objectives, the classification scheme should not unreasonably infringe upon artistic freedom of expression and should not unreasonably limit what Australian adult audiences are permitted to listen, see or read.

On the whole, the existing classification scheme has a relatively limited applicability on the artforms and artists that are funded through the Australia Council. Currently, it is applicable to our funded artforms in the following circumstances:

- Artwork which incorporates film or moving images are required to submit their works to the Classification Board;
- A small minority of works produced in the areas of visual arts and literature would need to be submitted to the Classification Board as 'submittable publications';
- Recorded music is covered by the ARIA / AMRA Labelling Code. However, where a musician produces a film or DVD of their work then this would need to be submitted to the Classification Board;
- As a precondition for funding under the *Protocols for working with children in art*¹, the Australia Council requires that artworks receive a classification from the Classification Board if they are distributing contemporary images that depict a real child who is naked or semi-naked, and is between the ages of 1 and 18.

The Australia Council has not identified a compelling basis for expanding the classification system to cover a greater breadth of artforms. Indeed, the large majority of art – whether visual art, literature, the performing arts or recorded music - is already presented responsibly, with appropriate measures in place to inform the public about work that contains potentially offensive material. For this reason, we recommend that industry self-regulation, with reference to relevant existing laws, is the most appropriate and feasible way of regulating the arts sector.

More detail about our position is provided below in our responses to a number of the questions posed in the ALRC Issues Paper.

¹ http://www.australiacouncil.gov.au/about_us/strategies_2/children_in_art

Question 1. In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

It is appropriate that the ALRC considers the development of a new framework for classification given that the current framework was established in a very different media environment. The key changes that have occurred since the establishment of the current classification scheme include:

- The vast and ever-growing content now available in the digital environment;
- The new and growing number of platforms in which content can be accessed;
- The convergence of telecommunications technologies.

For the classification scheme to be effective and relevant to our current society, it needs to address these changes. Having said that, it is not the position of the Australia Council that this new media environment necessitates the expansion of the classification scheme to apply to new content and new platforms. Rather, we would recommend the development of a new framework that involves more industry self-regulation, with reference to relevant existing laws, as being an appropriate and feasible way of addressing this new media environment.

Why classify and regulate content?

Question 2. What should be the primary objectives of a national classification scheme?

We recommend that the following objectives, which are drawn from the National Classification Code, should guide the national classification scheme:

- To provide consumer guidance so that adults can make informed decisions about what content they, or children under their care, will view or read;
- To protect minors from material likely to harm or disturb them;
- To protect everyone from exposure to illegal material.

What content should be classified and regulated?

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

The large majority of artwork is presented responsibly, with appropriate measures in place to inform the public about work that contains violent, sexually explicit or other potentially offensive material. Therefore, self regulation, with reference to relevant existing laws, coupled with a complaints based system has the potential to be an

effective and practical way of dealing with the very small minority of cases where responsible and appropriate measures are not in place.

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

Artworks should not be required to be classified before exhibition as they do not meet the Government's criteria for direct government regulation. As stated in the ALRC Issues Paper:

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

The Australia Council contends that the exhibition of artworks do not meet these criteria for the following reasons:

- As stated in our response to question 4, the large majority of artwork is presented responsibly and with appropriate measures in place to inform the public about work that contains violent, sexually explicit or other potentially offensive material;
- The majority of people enter an exhibition properly informed about the nature of the work they are about to view;
- Should anyone want to be protected from material they might find offensive, they can do so by simply choosing not to enter the exhibition space;
- Given that art exhibitions take place in a discrete space, they do not pose problems of "high-risk, of high impact or significance";
- Existing state and territory criminal laws provide an effective means of dealing with any artworks that contain illegal, obscene or indecent material.

Currently, works of art may be brought under the Act if it contains classifiable material such as film or video. The Australia Council strongly recommends that artworks containing film or video be exempt from the classification scheme for all of the reasons stated above.

Question 8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

To our knowledge, the ARIA / AMRA Labelling Code provides an effective system of graduated consumer advisory warnings to assist consumers and, particularly, for parents or guardians when supervising the music purchases of children under their care. As per our response to question 7, we are not aware of evidence which demonstrates that music and other sound recordings meet the government criteria for direct government regulation. Therefore, the Australia Council does not see grounds for abandoning the Code and replacing it with a classification scheme.

As the Code only relates to the sale of “physical” products, it does not cover the music purchases on the internet. Most digital retailers apply the internationally recognised “explicit” labelling to digital tracks – which provides consumers with instantly recognisable and consistent advice regarding the content of the particular track. Given that a significant proportion of digital content is stored and delivered from outside of Australia – it would be very difficult to implement the same consumer advisory labels to content that is available on the internet.

Were the classification scheme to apply to music in the same way as other content, this would involve classifying not only the large volume of music created and released each year, but also retrospectively classifying the vast catalogue of music that has been recorded over the past century. The Australia Council would be concerned about the cost and administrative burden this would impose upon the music industry and musicians, most of whom have very limited resources available to them.

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

As stated in our response to question 7, it is our understanding that the arts sector exercises responsible judgement in deciding when it is appropriate to provide warnings or consumer advice.

Question 19. In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

In the event that the classification scheme applies to artworks across any of the artforms, we believe the classification fee should not apply. As the Australia Council 2010 *Artists’ Careers* research demonstrated, most artists generate a very modest income from their artworks². Thus for many artists, classification fees are prohibitively expensive. Any additional costs imposed on artists have the potential to have a highly detrimental impact on the sustainability both of an artists’ career and the arts sector as a whole.

It is worth noting that under the *Protocols for working with children in art* Australia Council grant applicants currently enjoy an exemption of classification fees for

² http://www.australiacouncil.gov.au/resources/reports_and_publications/subjects/artists/artist_careers

classifying visual art material that contains contemporary images that depict a real child who is naked or semi-naked, and is between the ages of 1 and 18.

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

For the arts, consistency of classification laws across jurisdictions is very important. Artists regularly work across state and territory borders through the touring of performances and exhibitions, and through the distribution of publications. As small arts organisations and individual artists have limited access to legal advice, consistent laws would create a more manageable framework for them to operate within.

Question 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?

As per our response to question 26, the Australia Council is in favour of classification laws that are consistent across states and territories.