



**Submission to the  
Australian Law Reform Commission  
National Classification Scheme Review**

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## Executive summary

The Australian Christian Lobby (ACL) welcomes this opportunity to make a submission to the Australian Law Reform Commission (ALRC) inquiry into the National Classification Scheme (NCS or “the Scheme”). Many aspects of the Scheme are in need of repair, as acknowledged by Prime Minister Julia Gillard<sup>1</sup> and Opposition Leader Tony Abbott.<sup>2</sup>

Among recent classification decisions made by the Classification Board, perhaps the most alarming was the decision to grant an R18+ rating to the film *Salò*, despite it containing “depictions of paedophilia”. A system which specifically prohibits “depictions of paedophilia” but then allows it needs to be reviewed and tightened.

Among this and other alarming decisions is a general lack of consistency as well as an ineffective enforcement system which does not encourage consumers to complain or give them confidence that complaints will be effective.

Consumers need to have confidence in the classification system. The *National Classification Code* (NCC) attempts to balance four key principles in classification decisions:

- (a) adults should be able to read, hear and see what they want;*
- (b) minors should be protected from material likely to harm or disturb them;*
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;*
- (d) the need to take account of community concerns about:
  - (i) depictions that condone or incite violence, particularly sexual violence; and*
  - (ii) the portrayal of persons in a demeaning manner.**

Currently, the second, third, and fourth principles seem to be outweighed by the first. This does not have to be the case, and the rights of adults to consume what they want can be managed while ensuring a safe environment for children and adults alike. Restricting what is displayed in the public space is a necessary step in applying these three principles, as is tightening accessibility to adult material to ensure that only consenting adults can access them. These measures would strengthen the underlying principles while not impinging on an adult’s right to read, hear, or see what he wants, and really go to the very heart of the purpose of the Scheme.

The current ordering of these principles reflects an attitude that gives greater weight to the first principle than to the other three. ACL recommends moving principle (a) to the bottom of this list, and moving principles (b), (c), and (d) up. This would better reflect a Classification Scheme which has the protection of children as a primary objective.

This submission addresses some key concerns ACL has about classification broadly, focusing first on the widespread problem of sexualisation of children before addressing some particular concerns with the NCS. The questions contained in the ALRC’s *Issues Paper* are addressed in turn, with a list of recommendations contained at the end of the submission.

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<sup>1</sup> Interview with ACL Managing Director Jim Wallace (August 2010), <http://vimeo.com/13959730>

<sup>2</sup> Ben Packham (June 23 2010), ‘Tony Abbott pledges to re-examine classification system’, *The Herald Sun*, <http://www.heraldsun.com.au/news/tony-abbott-pledges-to-re-examine-classification-system/story-e6frf7jo-1225882995643>

## Some primary concerns

### *Sexualisation of children*

The sexualisation of children is a critically important issue in today's society. The impact and effect of all types of media on children is a crucial aspect of this issue. Its influence on society and especially on children must not be underestimated, nor should its pervasive reach into the lives of children.

There is a rapidly growing concern in the community about the increasingly sexualised environment in which children are raised and the impact this has on them. For parents who want to protect their children from inappropriate sexual images or concepts, it is becoming increasingly difficult to avoid highly sexualised content even at times and in places that until recently were considered "family friendly". Billboards and Saturday morning music videos by artists popular among children are just two examples.

This is a particular concern not only to parents, faith groups, and family organisations, but one that has been raised by think tanks and professional bodies.

The American Psychological Association sees sexualisation of girls as a "broad and increasing problem".<sup>3</sup> In a 2007 report they defined sexualisation as occurring when one or more of the following conditions are present:

- *a person's value comes only from his or her sexual appeal or behavior, to the exclusion of other characteristics;*
- *a person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy;*
- *a person is sexually objectified – that is, made into a thing for others' sexual use, rather than seen as a person with the capacity for independent action and decision making; and/or*
- *sexuality is inappropriately imposed upon a person.*<sup>4</sup>

The American Psychological Association highlights some of the problems associated with sexualisation. Some of the more serious harms include eating disorders, low self-esteem, and depression. Other negative results include decreased sexual and mental health, including a greater emphasis on physical appearance "at the center of women's value", and lowered cognitive abilities such as concentration and focus.<sup>5</sup>

The Australia Institute defines sexualisation as "the act of giving someone or something a sexual character . . . [Sexualisation of children] captures the slowly developing sexuality of children and moulds it into a stereotypical form of adult sexuality".<sup>6</sup>

In its 2006 paper *Corporate Paedophilia* the Australia Institute discusses many of the same problems highlighted by the American Psychological Association. It argues that body dissatisfaction is a

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<sup>3</sup> American Psychological Association (2007), 'Sexualization of Girls', <http://www.apa.org/pi/women/programs/girls/report.aspx>

<sup>4</sup> American Psychological Association (2007), 'Sexualization of Girls'

<sup>5</sup> American Psychological Association (2007), 'Sexualization of Girls'

<sup>6</sup> Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia: Sexualisation of Children in Australia*, The Australia Institute, p. 1

growing problem among young girls and increases with exposure to “appearance focussed media”.<sup>7</sup> One particular area of concern, closely linked to the problem of body dissatisfaction, is eating disorders in girls, which also increases with greater exposure to sexualisation.<sup>8</sup> Attention-seeking sexual behaviour and a trend towards earlier sexual activity and harmful sexual practices are also identified as problems linked to sexualisation in the media.<sup>9</sup>

The paper states that sexualisation harms not only the emotional, physical, and sexual development of children but their development generally:

*Children’s general sexual and emotional development is affected by exposure to advertising and marketing that is saturated with sexualised images and themes. Moreover, to the degree that children focus on sexualising themselves rather than pursuing other more age-appropriate developmental activities, all aspects of their development may be affected.*<sup>10</sup>

The Australian Medical Association (AMA) has also raised concerns about the unrealistic portrayal of “idealised images” of “attractive, thin women and athletic, handsome men” as a contributor to body image and self-esteem problems.<sup>11</sup> The AMA considers that a “national industry standard may be an effective step along the way to responsible body image portrayal in the media”.<sup>12</sup> Surely this should be the function of a National Classification Scheme.

The Standing Committee on Environment, Communications and the Arts’ 2008 report *Sexualisation of children in the contemporary media* acknowledges that “preventing the premature sexualisation of children is a significant cultural challenge” and states that the onus is on “broadcasters, publishers, advertisers, retailers and manufacturers” to take account of these concerns.<sup>13</sup>

Considering the widespread concern among professional bodies about sexualisation of children, ACL urges the ALRC to consider the issue as a crucial part of its review of classification in Australia.

### **Other impacts of media**

In 1994 the American Psychological Association adopted a policy resolution on violence in mass media. They stated that “the great majority of research studies have found a relation between viewing mass media violence and behaving aggressively”.<sup>14</sup> They cited numerous studies highlighting the adverse impacts that violence can have, including “increases in aggressive attitudes, values, and behaviour [and] . . . a long-lasting effect on behavior and personality, including criminal behavior”.<sup>15</sup> They noted that these increases may be found “particularly in children”.

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<sup>7</sup> Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia*, p. 37

<sup>8</sup> Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia*, pp. 34-35

<sup>9</sup> Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia*, p. 37-38, 41-44

<sup>10</sup> Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia*, p. 1

<sup>11</sup> Australian Medical Association (2009), *AMA Position Statement: Body Image and Health*, [http://www.amawa.com.au/Portals/0/docs/2009\\_bodyimage.pdf](http://www.amawa.com.au/Portals/0/docs/2009_bodyimage.pdf)

<sup>12</sup> Australian Medical Association (2009), *AMA Position Statement: Body Image and Health*

<sup>13</sup> Standing Committee on Environment, Communications and the Arts (June 2008), *Sexualisation of children in contemporary media*, Recommendation 1, p. V, [http://www.aph.gov.au/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/report/report.pdf](http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf),

<sup>14</sup> American Psychological Association (1994), *Violence in Mass Media*, <http://www.apa.org/about/governance/council/policy/media.aspx>

<sup>15</sup> American Psychological Association (1994), *Violence in Mass Media*

Other effects include desensitisation to violence, increased tendencies to become involved in violence, increased fear of becoming a victim of violence, and resulting effects such as an “increase in self-protective behavior and mistrust of others”.<sup>16</sup>

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<sup>16</sup> American Psychological Association (1994), *Violence in Mass Media*

## Some problems with the National Classification Scheme

The Legal and Constitutional Affairs References Committee (“the Committee”) acknowledged in their recent *Review of the National Classification Scheme* that the Scheme is “flawed” and “cannot be sustained in its current form”.<sup>17</sup> They especially note that the NCS “does not protect children from material that is likely to harm them; nor does it protect others more broadly from exposure to unsolicited material that they may find offensive”.<sup>18</sup>

The Prime Minister and the Opposition Leader agree that the current classification system needs improving. Tony Abbott has said that it is “broken”,<sup>19</sup> while Julia Gillard has acknowledged that “there’s work to do on classifications and content”.<sup>20</sup> Prime Minister Gillard also noted the challenges that new technology and convergence of media present, and the problem with sexualised images, particularly in the context of “confronting” billboards and advertisements and the messages they send, especially to young girls.

## Consistency

In the Committee’s view, the NCS is flawed due to the lack of a “uniform and consistent approach to classification”. The Committee also notes the inadequacy of the current situation in which the NCS is “loosely paralleled by co-regulatory and self-regulatory systems” and notes the particular problem of the “increasing convergence of media”. While supporting a “continued role for industry self-assessment”, the Committee recommends an expansion of the NCS to cover “all mediums of delivery”, “harmonised standards across all media”, and “appropriate oversight, spot checks and compliance checks”.<sup>21</sup>

In doing so, the Committee emphasised the need for “consistency and uniformity” and the importance of “maintaining a touchstone to community standards”, including an expansion of the key principles to account for concerns about the sexualisation of society and the objectification of women.<sup>22</sup>

The Committee noted that the NCS is not “platform neutral”, meaning that “the same content, when viewed on different screens, may be subject to different classification regimes”.<sup>23</sup> It recommended that the NCS should “apply equally to all content, regardless of the medium of delivery”.<sup>24</sup>

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<sup>17</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/classification\\_board/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/report/report.pdf), p. 167

<sup>18</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, p. 168

<sup>19</sup> Ben Packham (June 23, 2010), ‘Tony Abbott pledges to re-examine classification system’, *The Herald Sun*

<sup>20</sup> Interview with ACL Managing Director Jim Wallace (August 2010), <http://vimeo.com/13959730>

<sup>21</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Executive Summary

<sup>22</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Executive Summary

<sup>23</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, p. 168

<sup>24</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Recommendation 22, p. xvi

ACL supports this approach. If the community is to have confidence in an effective classification system, there needs to be consistency in the meaning and application of ratings, and individuals need to know that content of a certain level of impact will be labelled as such regardless of the platform used for its delivery. ACL urges the ALRC to heed the recommendations contained in the Committee's *Review* regarding the need for consistency across media.

### ***Serial classifications for publications***

ACL is concerned about the use of serial classifications for publications. With a combination of lax enforcement and lengthy classification grants of up to 24 months, the system is frequently abused.

From when the system began in December 2005 to February 2010, the Classification Board had "revoked the serial classification declarations of 55 publications . . . Forty-eight of these were originally classified Category 1 restricted".<sup>25</sup> This suggests that some publishers will submit milder editions for classification and increase the level of content in subsequent editions once classification has been granted.

This problem was noted by the Committee, which said that publishers and distributors were abusing the serial classification system and that material which should be Refused Classification is appearing in publications given a serial classification.<sup>26</sup>

Serial classifications are aimed at publications which will contain depictions or descriptions likely to cause offence to a reasonable adult, or content that is unsuitable for minors, or is likely to be refused classification.<sup>27</sup> The content of these publications are on the boundaries of accepted community standards, so it is unsurprising that those boundaries may be pushed over time. The length of time that serial classifications may be granted exacerbates this problem.

ACL recommends that the first six issues of any new classifiable publication should be subject to submission for classification to demonstrate that the content consistently matches the conditions and restrictions of sale. Serial classification should subsequently be granted for a period of six months, or, at the most, 12 months.

In addition to this, there need to be strong incentives to prevent exploitation. The Classification Board should have the power to request submission for review any issue of the publication, and failure to comply with the request should result in revocation of serial classification for that publication.

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<sup>25</sup> Senate Standing Committee on Legal and Constitutional Affairs (2010, February), Classification Board: Answers to questions on notice, Question 11, Additional Budget Estimates 2010-2011, [http://www.aph.gov.au/senate/committee/legcon\\_ctte/estimates/add\\_0910/ag/011\\_Classification\\_Board.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/ag/011_Classification_Board.pdf)

<sup>26</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, p. 167

<sup>27</sup> Commonwealth of Australia (2009), 'Serial publications' [webpage], Attorney-General's Department, [http://www.ag.gov.au/www/cob/classification.nsf/Page/Industry\\_ApplyforClassification\\_ApplyforClassification-SerialPublications](http://www.ag.gov.au/www/cob/classification.nsf/Page/Industry_ApplyforClassification_ApplyforClassification-SerialPublications)



### ***The enforcement system***

One of the greatest concerns with the current classification system is ineffective enforcement mechanisms. While the Classification Board has the ability to call in films, computer games, and submittable publications for classification, this rarely has any effect. Since 1 January 2008, 858 items “mainly concerned with sex or sexualised nudity” were called in without a single item being submitted for classification. An additional 82 items which were not mainly concerned with sex or sexualised nudity were called in, and only five respondents complied with the call in.<sup>28</sup>

ACL is of the opinion that this represents a broken system. Jane Fitzgerald of the Classification Board highlighted the problem in Senate Estimates hearings:

*Once the referral is made to state and territory law enforcement agencies they are under no obligation under the scheme to provide us with any information about what they then do with that information. They do often contact us for assistance or advice, or, indeed, to get certificates or to get things classified. However, the Commonwealth does not have a repository of data about state and territory law enforcement.*<sup>29</sup>

The problem was noted by the Committee, saying publishers and distributors ignore call-in notices and that material which should be Refused Classification remains available throughout the country as a result. The Committee recommended that the Government should “signal its intention to make enforcement actions for failing to respond to call-in notices a matter of priority”.<sup>30</sup>

Other recommendations of the Committee included that any industry body wishing to make classification decisions should be accredited by the Government, that there should be formalised training required to be accredited, and that accreditation should be “subject to disqualification as a result of poor performance”.<sup>31</sup>

ACL supports these recommendations. ACL also supports the Committee’s recommendation that breaches of classification requirements should be “punishable by substantial monetary fines” in order to encourage compliance.<sup>32</sup>

### ***Content in R18+ films***

The Committee noted that “[n]umerous films with graphic depictions of actual sex have been classified R18+”.<sup>33</sup> This is despite the fact that the *Guidelines for the Classification of Films and*

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<sup>28</sup> Senate Standing Committee on Legal and Constitutional Affairs (18 October, 2010), Classification Board: Answers to questions on notice, Question 2, Supplementary Budget Estimates 2010-2011, [http://www.aph.gov.au/senate/committee/legcon\\_ctte/estimates/sup\\_1011/ag/002\\_CLD.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/ag/002_CLD.pdf)

<sup>29</sup> Jane Fitzgerald, cited in Senate Legal and Constitutional Affairs Legislation Committee (18 October, 2010), Classification Board: Supplementary Budget Estimates 2010-2011, p. 15, <http://www.aph.gov.au/hansard/senate/commtee/s13302.pdf>

<sup>30</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Recommendation 21, p. xvi

<sup>31</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Recommendations 24, 25, and 26, p. xvi

<sup>32</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Recommendation 27, p. xvi

<sup>33</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, p. 167

*Computer Games* allow “simulated” sexual activity, but cite as a “general rule . . . simulation, yes – the real thing, no”.<sup>34</sup>

ACL recommends that this “general rule” be enforced so that any film containing actual sex not be granted an R18+ rating. The ban on real sex in films rated R18+ and below needs to be categorical.

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<sup>34</sup> *Guidelines for the Classification of Films and Computer Games* (as amended, 19 March, 2008), <http://www.comlaw.gov.au/Details/F2008C00126>, p. 11

## Other issues of concern

### *Display of restricted publications*

The *National Classification Code* contains two important principles by which classification decisions are to be made:

*b. minors should be protected from material likely to harm or disturb them*

*c. everyone should be protected from exposure to unsolicited material that they find offensive.*

The first principle, that “adults should be able to read, hear and see what they want”, is not irreconcilable with the second two. The three principles can be applied concurrently.

ACL supports restricting the display of any restricted material, including both Category 1 and Category 2 Restricted publications, to designated restricted publication areas. Such restrictions are necessary to protect minors from harm or others from exposure to offensive material. They do not prevent adults who want to access such material from doing so. Requiring a designated area for pornographic material of any type is a commonsense approach which meets all three principles.

Given the importance of the principles in the *National Classification Code*, ACL believes that a common, consistent standard regarding display of restricted publications should be applied to all jurisdictions. Currently five jurisdictions require Category 2 Restricted publications to be displayed in a designated area, while Western Australia and Tasmania allow these publications to be sold in unrestricted areas.<sup>35</sup>

The same restrictions should be extended to Category 1 Restricted publications. Category 1 material is pornographic in nature, intended for consumption by adults, and is restricted for sale to adults. Despite having “softer” content than Category 2 publications, its purpose is substantially the same and its display may be equally harmful to children or offensive to adults who do not wish to view such material. It is inconsistent to acknowledge the need to restrict the display of Category 2 material while allowing the display of Category 1 material.

ACL’s position is shared by Australian child advocates who signed a petition in 2010 which calls “for the sale and display of Restricted publications to be limited to adults-only premises”.<sup>36</sup> The petition, signed by such prominent figures as ethicist Clive Hamilton, child psychologist Michael Carr-Gregg, World Vision CEO Tim Costello, and Former Chief Justice of the Family Court Alastair Nicholson, calls for both Category 1 and Category 2 publications to be restricted not merely to a designated area, but to adults-only premises.

This restriction would not impede the freedom of adults who desire access to such materials. It would merely ensure that children are protected from material which is acknowledged as harmful for them to see, bringing consistency to the policy behind the Restricted classification by truly restricting the material and minimising the harmful impact it may have on children.

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<sup>35</sup> Commonwealth of Australia (2009), ‘Compliance for Sale of Publications’ [website], Attorney-General’s Department, [http://www.ag.gov.au/www/cob/classification.nsf/Page/HowtoComplywithClassificationLaws\\_ComplianceforSaleofPublications](http://www.ag.gov.au/www/cob/classification.nsf/Page/HowtoComplywithClassificationLaws_ComplianceforSaleofPublications)

<sup>36</sup> Kids Free 2 B Kids (April 5, 2010), ‘Put soft porn out of view say experts’ [media release], [http://www.kf2bk.com/latest\\_news.htm&news\\_offset=10](http://www.kf2bk.com/latest_news.htm&news_offset=10)

If restricted publications are not limited to adults-only premises, ACL recommends that they are restricted to restricted areas within other premises. For example, the South Australian *Classification (Publications, Films and Computer Games) Act 1995* requires restricted publications to be displayed in a separate adults-only area to which minors do not have access.<sup>37</sup>

### ***Display of restricted films***

ACL also supports similar restrictions on the display of R18+ films. Films with an R18+ rating are those which have a “high” impact<sup>38</sup> and are for this reason restricted to adults. It is unnecessary to display such films in general areas accessible to children.

The South Australian legislation requires R18+ films to be displayed in a separate, adults-only area. The area must be “marked as an area displaying material for films classified R18+”.<sup>39</sup> ACL recommends that the South Australian model be adopted across all jurisdictions as a way of consistently applying the *National Classification Code* principles and best protecting the best interests of children.

### ***X18+ Films***

Currently the sale of X18+ films is not legal in any Australian jurisdiction except for the Northern Territory and the Australian Capital Territory. Films from the ACT are sold and shipped to consumers throughout Australia.

In their study *Youth and Pornography in Australia*, Michael Flood and Clive Hamilton found that just under three quarters of 16-17 year old boys reported having seen an X18+ film.<sup>40</sup> Flood and Hamilton suggest that this has a number of negative impacts, including an increased likelihood that they would “accept and adopt” “non-mainstream sexual behaviours”.<sup>41</sup>

The effects of X18+ material was an important issue in *The Little Children are Sacred* report into indigenous Northern Territory communities. From that report:

*In written submissions to the Inquiry from community groups and individuals, concern was expressed about the availability of pornography in communities and children’s exposure to pornographic material, in particular videos and DVDs...*

*The daily diet of sexually explicit material has had a major impact, presenting young and adolescent Aboriginals with a view of mainstream sexual practice and behaviour which is jaundiced. It encourages them to act out the fantasies they see on screen or in magazines.*

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<sup>37</sup> *Classification (Publications, Films and Computer Games) Act 1995* (SA) s. 81

<sup>38</sup> Australian Government, ‘Classification markings on films and computer games’, [http://www.ag.gov.au/www/cob/classification.nsf/Page/ClassificationMarkings\\_ClassificationMarkingsonFilmandComputerGames\\_ClassificationMarkingsonFilmandComputerGames](http://www.ag.gov.au/www/cob/classification.nsf/Page/ClassificationMarkings_ClassificationMarkingsonFilmandComputerGames_ClassificationMarkingsonFilmandComputerGames)

<sup>39</sup> *Classification (Publications, Films and Computer Games) Act 1995* (SA) s. 40A

<sup>40</sup> Michael Flood and Clive Hamilton (February 2003), *Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects*, The Australia Institute, [https://www.tai.org.au/documents/dp\\_fulltext/DP52.pdf](https://www.tai.org.au/documents/dp_fulltext/DP52.pdf), p v

<sup>41</sup> Michael Flood & Clive Hamilton (2003), *Youth and Pornography in Australia*, p. xi

*Exposure to pornography was also blamed for the sexualised behaviour evident in quite young children.*<sup>42</sup>

Both political parties supported the ban of X18+ material in the communities the subject of this report, with Indigenous Affairs Minister Mal Brough saying the government was “hellbent on doing everything it can to protect these innocent children. Children should never be exposed to this sort of material.”<sup>43</sup>

It logically follows that X18+ material is harmful to any child, regardless of their community situation or where their community may be situated. Echoing the words of Mr Brough, that children should never be exposed to X18+ material, ACL supports a ban on the sale of X18+ films in all Australian jurisdictions.

### **Billboards**

ACL has never understood how outdoor advertising could be anything but G-rated. Billboards, posters in bus shelters, on buses, and other visual advertising of this nature is placed in a public setting and is viewed by people of all ages. There is no option to avoid this form of media by choosing not to consume it or by changing television channels. It is difficult for parents to control what their children see in public places.

This fact was considered by the Committee. In their *Review of the National Classification Scheme*, they acknowledged that outdoor advertising is a “special case . . . by virtue of their public nature”. While the Advertising Standards Bureau argues that the Advertising Standards Board must have “sensitivity to the relevant audience”,<sup>44</sup> the fact is that the entire population is exposed to outdoor advertising whether they are members of the “relevant audience” or not, and as such outdoor advertising should be inoffensive to any reasonable adult and, more importantly, suitable for children.

Currently the self-regulation of outdoor advertising is not working. Outdoor advertising has become more and more overtly sexual, sometimes depicting violence or sexual violence. Many images on billboards would not be allowed on television during the day or during G-rated programmes. ACL has made previous submissions outlining some of the types of graphic outdoor advertising appearing in public spaces and making recommendations that outdoor advertising regulations be brought into line with commercial television standards.<sup>45</sup>

ACL reiterates these recommendations: outdoor advertising should be strictly G-rated due to its public nature. Enforcement should be strengthened, with heavy penalties for advertisers who do not comply.

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<sup>42</sup> Northern Territory Government (2007), *Little Children are Sacred*, Report of the NT Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, [http://www.inquirysaac.nt.gov.au/pdf/bipacsa\\_final\\_report.pdf](http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf), p. 199

<sup>43</sup> Mal Brough (7 August, 2007), *House Hansard*, Families, Community Services and Indigenous Affairs and Other Legislation amendment (Northern Territory National Emergency Response and Other Measures) Act 2007, second reading speech, <http://www.aph.gov.au/hansard/rep/dailys/dr070807.pdf>, p. 18

<sup>44</sup> Fiona Jolly (27 April, 2011), *Official Committee Hansard: Senate – Legal and Constitutional Affairs Committee*, Commonwealth of Australia, <http://www.aph.gov.au/hansard/senate/commtee/s6.pdf>, p. 10

<sup>45</sup> Australian Christian Lobby (April 2008), Submission to the Senate Standing Committee on Environment, Communications and the Arts, [http://www.aph.gov.au/senate/committee/eca\\_ctte/sexualisation\\_of\\_children/submissions/sub143.pdf](http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/submissions/sub143.pdf)

## **Music videos**

ACL has concerns about the proliferation of sexualised lyrics and imagery in music videos.

These concerns are shared by prominent industry insiders. British producer Mike Stock says the “music industry has gone too far . . . Ninety-nine per cent of the charts is R ‘n’ B music and 99 per cent of that is soft pornography”.<sup>46</sup> Stock recently wrote an opinion article criticising the growing sexualisation in the music industry, and particularly in its music videos.<sup>47</sup>

In 2008, the Senate Standing Committee on Environment, Communications and the Arts recommended that “broadcasters review their classification of music videos specifically with regard to sexualising imagery”.<sup>48</sup>

The Legal and Constitutional Affairs Reference Committee also addressed music videos specifically, acknowledging that they may “contribute to the sexualisation of children”,<sup>49</sup> noting with concern that music videos fall outside the NCS given that they are of particular appeal “to children and young people”.<sup>50</sup>

ACL recommends that there be a specific investigation into the classification of music videos to ensure that appropriate ratings are given to them based on their content. They should be classified in accordance with the criteria of the National Classification Scheme.

## **The internet**

ACL recognises the enormous challenges in dealing with classification on the internet. No classification system, no matter how rigorously applied, can create an online environment which is completely safe for children and with controlled and classified content similar to that in television or films, and parental control remains a very important aspect of protecting children online.

However, this does not mean there are not effective ways of minimising the risk of harmful material being accessed by children and of assisting parents to this end.

In its submission to the Joint Select Committee on Cyber-Safety,<sup>51</sup> ACL cited a range of studies demonstrating that ISP filtering would be an effective way of filtering out material which is Refused Classification (RC). ACL reiterates its recommendations regarding a mandatory ISP-level filter which would filter out RC material.

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<sup>46</sup> Sam Kelton (11 August, 2010), ‘Public outcry grows as pop star shock tactics get more and more extreme’, *The Advertiser*, <http://www.adelaidenow.com.au/entertainment/public-outcry-grows-as-pop-star-shock-tactics-get-more-and-more-extreme/story-e6fredpu-1225904099010>

<sup>47</sup> Mike Stock (21 June, 2011), ‘Why this pop-porn will damage a generation of children’, *Mail Online*, <http://www.dailymail.co.uk/tvshowbiz/article-2006043/Why-pop-porn-damage-generation-children.html>

<sup>48</sup> Senate Standing Committee on Environment, Communications and the Arts (June 2008), *Inquiry into the sexualisation of children in the contemporary media environment*, Recommendation 4, p. 7

<sup>49</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, p. 122

<sup>50</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, Paragraph 12.49, p. 177

<sup>51</sup> Australian Christian Lobby (April 2011), Submission no 149 to the Joint Select Committee on Cyber-Safety, [http://www.aph.gov.au/house/committee/jssc/subs/sub\\_149.pdf](http://www.aph.gov.au/house/committee/jssc/subs/sub_149.pdf)

It is worth discussing the approach being taken in the United Kingdom towards internet pornography. ISP companies in that country are being encouraged to filter all pornography, allowing access to adults who “opt-in” by contacting their ISP. Communications Minister Ed Vaizey has said he hopes the ISPs will “get their acts together so that we don’t have to legislate, but we are keeping an eye on the situation and we will have a new communications bill in the next couple of years”.<sup>52</sup>

As Mr Vaizey has argued, “there is material online that, while legal, is not suitable for children. In the physical world youngsters are protected from inappropriate content and the same needs to happen online”.<sup>53</sup> This approach is supported by another British MP, Claire Perry, who notes the particular challenge that new technology presents, arguing that there is “damaging and degrading material, which is shocking enough when viewed as thumbnails or on an A4-sized computer screen, being piped into our homes and displayed in high-definition glory on 4-foot-wide television screens”.<sup>54</sup>

Ms Perry’s comments highlight the twin challenges of the internet and converging technologies. The most effective answer to these challenges is found in the “opt-in” approach to pornography on the internet. New technologies create new problems but also provide new solutions, and the technology is available, and is improving, that can filter out a large amount of internet pornography until consenting adults choose to access it.

This solution is a perfect example of where an “opt-in” system of access protects children and the rights of adults to view what they want.

### ***Mobile phones***

Another area of concern is video games on mobile phones. ACL supports self-regulation by manufacturers of games for phones provided there are clear guidelines for developers. A complaints mechanism should be available to consumers so that falsely classified games are reviewed by the Classification Board. As with other industries using self-regulation, there should be strong penalties to ensure that developers correctly adhere to the guidelines.

### ***Convergence of media***

Related to the previous two issues is the fact that technology is advancing to the degree that there is significant convergence of media, with the internet available on mobile phones and, increasingly, on home televisions. Internet material may now be streamed to large family televisions, or may be accessed at any time or place, far from adult supervision, on a mobile phone. Video games, television, and film are widely available online. This heightens the importance of establishing consistency to the Australian classification system as soon as possible.

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<sup>52</sup> Caroline Davies (19 December, 2010), ‘Broadband firms urged to block sex websites to protect children’, *The Guardian*, <http://www.guardian.co.uk/society/2010/dec/19/broadband-sex-safeguard-children-vaizey>

<sup>53</sup> UK Department for Culture, Media and Sport (2011, February 8), ‘Government holds talks on parental internet controls’, [http://www.culture.gov.uk/news/media\\_releases/7810.aspx](http://www.culture.gov.uk/news/media_releases/7810.aspx)

<sup>54</sup> Claire Perry in House of Commons debates, Column 239 (2010, November 23), ‘Internet Pornography’, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101123/debtext/101123-0003.htm>

ACL urges the ALRC to not only acknowledge the challenges posed by the new technologies, but to anticipate further development and convergence of media. New technology can be exploited to address some of the challenges that it presents.

ACL recommends that an “opt-in” approach be maintained across media and extended to new media. Adults are required to physically go and buy adults-only magazines, for example, verifying their age. Children cannot access adults-only material in this way. Likewise, in the interests of protecting children, this kind of content on new technologies should equally require a conscious and deliberate choice to opt-in for it, accompanied by age-verification.

For example, digital television could require adults to opt-in to certain channels or programmes, by requiring passwords or providing other similar protections.

### ***The “artistic merit” loophole***

A report from the Child Pornography Working Party established by the New South Wales Government following the 2008 Bill Hensen controversy argued that:

*the inclusion of the defence of artistic merit amongst the child pornography offences may, somewhat unhelpfully, lead to the impression that material that would otherwise constitute child pornography is acceptable if the material was produced, used, or intended to be used whilst acting for a genuine artistic purpose. The CPWP is not of the view that this should be the case. Material that is otherwise offensive because of the way in which it depicts children **should not be protected because its creator claims an overriding artistic purpose for it.** If having considered the artistic merit of an image it is considered offensive then it should only be legitimate if there is an overriding, definable and clear public purpose.<sup>55</sup>*

ACL urges the clarification of the law to ensure that any offensive material of this nature is Refused Classification and would not receive a lower rating based on “artistic merit”. Artistic merit should not excuse content which would otherwise not meet classification criteria, and neither should it be used to complicate the system’s clarity of application.

### ***Changes to the Guidelines for G ratings***

The *Guidelines for the Classification of Films and Computer Games* has been amended to allow drug use and nudity which is “justified by context” to fall into the G rating. The *National Classification Code* states that the PG rating should apply to films “that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians”, while “all other films” are to be rated G.<sup>56</sup> This implies that the G rating will be applied only to films which can be recommended for viewing by children under 15 without parental guidance.

Under the amended *Guidelines*, parents can no longer be sure that a G-rated film will be drug and nudity-free. This is an unacceptable position. ACL urges an amendment to the *Guidelines* which

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<sup>55</sup> Child Pornography Working Party (2010), *Report of the Child Pornography Working Party*, NSW Department of Justice and Attorney-General, pp 21-22

<sup>56</sup> *National Classification Code (2005)*, section 3, <http://www.comlaw.gov.au/Details/F2005L01284>



ensure that a PG rating will be applied to any film which contains nudity or drug use. This would allow parents to make more informed decisions about what their children watch.

## **Conclusion**

ACL recommends the adoption of a National Classification Scheme which brings consistency to the classification of all media in this country. This should be done on a nation-wide basis, providing confidence to consumers that material which is available across jurisdictions will be subject to the same guidelines and regulations.

At the same time, and of equal import, it should be done across all media, ensuring that consumers can be confident that ratings for one type of content (e.g. films) will apply to other types of content (e.g. television or computer games).

Consumer complaints must be more readily and easily facilitated, and breaches, particularly of self-regulation, must be subject to significant fines or penalties.

The protection of children should be emphasised as the primary objective in an NCS. Parents should be equipped to the greatest extent possible to make decisions which will protect their children in accordance with their own choices.

In light of the foregoing discussion, ACL gives the following answers to the ALRC's questions, followed by our recommendations.

## List of Questions

### *Approach to the Inquiry*

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

**The ALRC should focus on improving key elements of the existing framework.**

The existing framework has been in place for a number of years. It is reasonably well understood in the community. The existing framework is satisfactory in its current form but needs strengthening to ensure that it is consistent, efficient, and effective. Thus, the ALRC should focus on improving key elements of this framework.

One key element which needs improvement is consistency across media. Improvements to the current framework should include synchronising the various classification systems and aiming for one group of classifications across media. ACL recommends that the current ratings used for films – G, PG, M, MA15+, and R18+ – being familiar in the community, would be an appropriate system to use across media.

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

**The primary objective of an NCS should be to serve the best interests of children. The NCS should also equip parents with reliable and consistent information. Consistency and accuracy should be important objectives. Finally, just as adults should be able to read, hear, and see what they want, no one should have to read, hear, and see what they find offensive.**

The primary objective of the classification scheme should be the best interests of children. Equipping parents with reliable, consistent information regarding the content of the various products in the media, so that they can make informed choices about the products they consume or allow their children to consume, is of paramount importance in protecting the best interests of children.

Classification decisions should be made with a primary consideration being the impact that content may have on children. The growing concern in the community about the impacts of sexualised material and violence should be drivers of reform. The overriding and understandable concern of the great majority of parents for what their children hear and see should be paramount in the design and application of the National Classification Scheme.

The approach to the classification scheme should begin with an assumption that parents have the desire and the intention to control the content to which their children have access. That some parents may not wish to control, or may not have the ability to control, what their children access does not mean that this is the case for most parents.

With the rapid technological changes occurring currently any classification scheme will face challenges. The advent of the internet is the most obvious and widespread new technology, and perhaps the most difficult to classify in the traditional sense. Increasingly sophisticated mobile phones and internet-capable televisions allow an almost endless amount of entertainment and information to be accessible anywhere and at any time. However, consistency in classification and applying the “opt-in” principle can address these challenges.

In addition to this, public spaces are becoming less child-friendly. Films and publications are commonly displayed in common areas of general stores such as newsagents. Outdoor advertising is becoming more ubiquitous and more risqué.

These challenges should be addressed with the aim of allowing adults to “opt in” to adult-oriented material. Until recently, adults had to “opt in” to access most forms of media: they had to purchase videos or magazines, for example, or wait until after a certain time slot to watch certain programmes on television. This requirement is important in protecting both children and adults who do not wish to be exposed to material which they consider offensive.

Another important objective is consistency. Classifiers should aim to provide consistent content advice to all sections of society and the industries.

### ***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?*

**No, it should not.**

Consistency of classification across platforms is important if the public is to have confidence in the classification system. The “worst case” impact by platform must determine classification decisions for all platforms. For example, content which would receive an MA15+ rating on a computer game should receive an MA15+ rating in films or on television.

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

**No.**

Self-regulation is a privilege that must be honoured by responsibility. Whenever formal classification is not required, the responsibility for self-regulation must be supported by heavy penalties for breaches of the guidelines.

Because it is impossible to review every single item it will be necessary to allow self-regulation of some content in some forms of media. In order to ensure that consumers can be confident in the classification given to these products, self-regulation must be consistent and provide accurate information.

Thus, self-regulation must adhere to an overarching set of guidelines and be strongly enforced. Appropriate penalties must be applied when the guidelines are breached to provide effective disincentives for failing to meet the guidelines. If an item the subject of complaint has in fact breached the guidelines, the producer of that item must be financially deterred from further breaches.

Complaints mechanisms and processes should be simple so that consumers are more able, more willing, and more likely to complain.

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

**Yes it should.**

The impact of content should be the basis on which material is classified. Any content designed for children should be classified on the basis of the impact that content on various platforms will have on children. Content designed for children should be subject to classification across all media.

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

**No, except that market reach and penetration must be a factor in driving priorities for formal classification by the Classification Board.**

The potential effect on society as a whole may be influenced by the market reach of a particular product. This should determine whether particular content is formally classified or self-regulated. Cases such as popular films and national television in which there is near universal or widespread penetration into society would be a higher priority for the Classification Board.

Content should be classified to a consistent standard across the market, whether self-regulated or not.

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

**Yes.**

There should be a system which requires art galleries and exhibitors to self-regulate artworks. This should include similar guidelines to those which govern other visual media – films, television, publications, etc. Galleries and exhibitors should provide classification information similar to that provided for other media, advising consumers if an exhibition contains content which might offend some viewers or which parents would reasonably expect to be able to protect their children from seeing.

For example, if an exhibition had an MA15+ rating, warning that some artworks include graphic nudity, sex, violence, or themes, parents should be able to expect that some of the artworks would contain images similar to those in an MA15+-rated film. Parents should be given confidence that a PG or G-rated exhibition should likewise contain artworks which are comparable to PG or G-rated films.

ACL recommends that content which would receive an R rating in a film should be displayed in adults-only areas of an exhibition. This would provide consistency of classification and instil confidence in parents that they could be informed if an art exhibition was likely not to be “family friendly”, equipping them to make appropriate decisions.

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

**Self-regulation of sound recordings is appropriate provided it is effective.**

Self-regulation is an appropriate method of classifying music and sound recordings. However, there need to be strong incentives to adhere to the guidelines, meaning there should be a simple complaints system and strong penalties for those who do not classify sound recordings correctly.

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

**No.**

Classification should be consistent and consistently applied. However, the potential impact on society as a whole may be influenced by the size and composition of the audience: see answer to Question 6.

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

**No.**

Classification should be guided by community standards rather than individual standards. Individuals in their own home can make a decision to consume products of any classification rating. That rating should still be present to inform individuals who do not wish to consume certain types of material for themselves or their family.

**Question 11.** *In addition to the factors considered above, what other factors should influence whether content should be classified? How should access to content be controlled?*

ACL submits that all films, DVDs, and adult publications should be subject to formal classification by the Classification Board.

Other content should be self-regulated, subject to national guidelines. Any material which would be likely to receive an MA15+ or Restricted classification due to a high impact should be classified.

Access to adult-oriented material should be controlled by age-verification mechanisms such as are currently used in restricting access to, for example, MA15+ rated films. This should be extended to all media, so that any material which is suitable for adults only should not be accessible to children. In particular, this should be extended to content on the internet, requiring adults who wish to access pornographic websites to “opt-in” by contacting their ISPs and having them unblock these websites.

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

**Technology should be used to filter pornographic material at the ISP level with an option for adults to opt-in.**

ACL’s submission to the Joint Select Committee on Cyber-Safety contained a number of recommendations regarding the implementation of ISP-filtering technology. Most relevantly, all

pornography should be filtered at the ISP level with the option for adults to contact their ISP and request access to that material. This would make the internet consistent with other forms of media in the regulation of content and the accessibility of content to children.

ACL supports the Government's plans to filter RC material at ISP level and reiterates its support for those plans.

**Question 13.** *How can children's access to potentially inappropriate content be better controlled online?*

See answer to Question 12, in particular the recommendation that all pornographic material require adults to "opt-in" to access it.

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

**Restricted access areas.**

See the recommendations on pages 24-25 in regards to restricted access areas for publications and films.

**Question 15.** *When should content be required to display classification markings, warnings or consumer advice? Who should classify and regulate content?*

**A single national body should apply classification in a consistent, nation-wide manner.**

Classification markings, warnings, and consumer advice should be applied to all relevant material.

There should be one regulatory body overseeing classification in all media. The same body should also supervise self-regulation in applicable industries such as music recordings.

The national body should be responsible for responding to consumer complaints, and for providing information and other services to the public.

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

**Government agencies:** A government Classification Board should have an overarching role in the National Classification Scheme. This should include monitoring classification processes, enforcing the guidelines, investigating breaches of the guidelines, and managing user complaints.

**Industry bodies** should have responsibility for self-regulation where delegated.

**Users** should provide the community standard by which classification guidelines are set. Users also have the important role of providing feedback, especially where there are concerns about the guidelines failing or where there are breaches of the guidelines.

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

**No, it would not.**

We should not allow the industry, which is strongly motivated by commercial considerations rather than community concerns, to determine the standards to be applied.

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

**Content, other than films and computer games, which is likely to receive a rating below MA15+.**

All films should continue to be referred to a central Classification Board for classification. Other forms of media such as publications, music and sound recordings, websites, and so on could be self-regulated when the content is likely to receive a rating below MA15+. Anything that is likely to be rated MA15+ or above should be referred to the Classification Board.

#### ***Classification fees***

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

**No comment.**

#### ***Classification categories and criteria***

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

**Yes, they are understood.**

Film classification categories are well understood in the community. Confusion arises because of separate categories for different forms of media, and because of inconsistent application of the guidelines by classifiers. The system of G, PG, M, MA15+, and R18+ ratings is a satisfactory system and should be applied across all media.

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

**No.**

The community is familiar with the current classification categories.

**Question 22.** *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?*

**These should be consistent across media.**

ACL supports the use of the same criteria and guidelines across media and the same classification markings being used. The familiar markings used to classify films are an appropriate group of markings: G, PG, M, MA15+, and R18+ are recognised across the community and provide an adequate range of categories.

**Question 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?*

Consistent criteria must be used for the various media covered by these Acts, codes, and guidelines. The best way of achieving consistency may be by consolidating them into one Act. Alternatively, amending the various instruments so that they contain similar criteria to be applied to each product across media may be a more efficient, easier, or faster way of achieving consistency.

The important goal is to achieve consistency. Content which would be classified MA15+ on one platform should be classified MA15+ on another, and an R18+ rating for content in a film should mean an R18+ rating if the same content is found in a magazine. Similarly, a G or PG rating should only be applied to a product if that product's content would be classified G or PG in any other form. Material which is inappropriate for a PG rating for television should not receive a PG rating on film.

***Refused Classification (RC) category***

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

**Illegal content which is Refused Classification.**

Any illegal content, including child sexual abuse material, rape, bestiality, and sexual violence of a nature that would be illegal in offline material, should be prohibited online. Any content which promotes or provides instruction in suicide should also be prohibited. Webpages containing this material should be filtered at the ISP level by the ISP filter proposed by the Federal Government.

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

**Yes.**

***Reform of the cooperative scheme***

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

**Yes, it is of key importance.**

National legislation would be an ideal mechanism for achieving consistency across jurisdictions. If States are required to cede power to the Commonwealth to achieve this they should be encouraged to do so.



Consistently enforcing classification laws is equally important if consistent laws are to have any effect. A specialist classification unit within the states' police forces could be one way of achieving national consistency.

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

**A national scheme.**

Any new legislative scheme should be national to bring consistency across jurisdictions.

**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?*

See answer to Question 26. However, improvement of the existing framework is a more appropriate aim than establishing a new framework.

**Other issues**

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

**An efficient, effective, and user-friendly complaints system.**

Throughout this submission ACL has emphasised the importance of an efficient, effective, and user-friendly complaints system. The low level of complaints recorded under the current framework may be indicative of a system which is difficult to use and in which consumers have little confidence.

ACL recommends that information about complaints be made readily available to consumers, allowing them to register complaints if they believe that material has been given an inappropriate rating. Consumers should also have confidence that it is worth the trouble of registering a complaint. Complaints must be dealt with in a timely manner. For example, if there is a complaint in the first episode of a television series, and the programme is found to have breached the guidelines, action needs to be taken before the entire series has run.

Thus, an effective enforcement system should be in place which not only corrects any incorrect decision made but also applies adequate penalties on those responsible for the incorrect decision.

## **Recommendations**

ACL makes the following recommendations:

*A national classification scheme needs to place a high priority on consistency. To this end ACL recommends that:*

- a national classification scheme needs to be truly national, with one overarching body, such as the Classification Board, responsible for administering and enforcing guidelines;
- it needs to be “platform neutral” so that content is consistently classified regardless of the medium of delivery or the technology by which it is consumed.

*A national classification scheme needs to place a high priority on adequate enforcement of classification guidelines. To this end ACL recommends that:*

- there be an effective and efficient complaints system. The national body responsible for classification decisions should also be responsible for processing complaints and addressing community concerns;
- the Government make taking actions for failing to respond to call-in notices a matter of priority;
- any industry body wishing to make classification decisions be accredited by the Government;
- there be a requirement of formalised training to be accredited;
- accreditation be subject to disqualification as a result of poor performance;
- breaches of classification requirements be subject to severe penalties including substantial monetary fines;
- the Commonwealth maintain a repository of data about state and territory law enforcement.

*In regards to serial classification for publications, ACL recommends that:*

- the first six issues of a new classifiable publication be subject to submission for classification;
- serial classification be granted for a maximum of 6 months;
- the Classification Board have the power to request submission for classification any issue of a publication, and regularly do so;
- failure to comply with a request for submission result in revocation of serial classification for that publication.

*In regards to the sale and display of restricted publications and films, ACL recommends that:*

- the sale of all Restricted publications should be restricted to adults-only premises and not sold in general retail stores;
- if Restricted publications continue to be sold in general stores open to the public, then all Restricted publications, both Category 1 and Category 2 Restricted, should be displayed only in a restricted publications area accessible to adults only;

- all R18+ films should be displayed only in a restricted publications area accessible to adults only.

*In regards to the content of R18+ films, ACL recommends that:*

- the “general rule” in regards to sex in films not allowing real sex be clarified and enforced so that any film containing actual sex not be granted an R18+ rating.

*In regards to X18+ films, ACL recommends that:*

- the sale of X18+ films be banned in all Australian jurisdictions.

*In regards to outdoor advertising, ACL recommends that:*

- due to its public nature and the inability to “opt-out”, all outdoor advertising by G-rated, meeting the same requirements for G-rated films or television;
- enforcement be strengthened, with greater penalties for advertisers who do not comply.

*In regards to music videos, ACL recommends that:*

- there be a specific investigation into the classification of music videos;
- that the overall impact of a music video be considered in light of the concerns of sexualisation of children discussed above.

*In regards to the internet, ACL recommends that:*

- the Government continue with its plans to filter all RC material at ISP level as a matter of priority;
- in addition, all pornographic material be filtered out at an ISP level, with an option for adults to opt-in by contacting their ISPs and verifying their age.

*In regards to new and converging technology, ACL recommends that:*

- the Government anticipate further technological advances and convergence of media and platforms by focusing on consistency of classification across media and platforms;
- an “opt-in” approach be taken to new technologies such as digital television and mobile phones;
- technology be used to provide thorough and user-friendly parental control;
- there be clear guidelines for producers of games for mobile phones, with an effective complaints mechanism and strong penalties for non-compliance.

*Regarding other matters, ACL recommends that:*

- the principles in section 1 of the *National Classification Code* be re-prioritised so that principle (a) is moved to (d), and the other three principles move up one spot, better reflecting the primary objectives of the National Classification Scheme;
- the law surrounding “artistic merit” be clarified and strengthened so that “artistic merit” cannot be used as an excuse for content which is child sexual abuse, regardless of the medium used;

- the *Guidelines* be amended to ensure that G-rated films cannot contain any drug use or nudity, regardless of the context;
- museums and art exhibitors be required to classify and warn viewers of the content of artworks being displayed. Any content which would receive an R rating should be displayed in an adults-only area of an exhibition.