



Submission to the Australian Law Reform Commission National classification scheme review

Introduction

Collective Shout: for a world free of exploitation welcomes the opportunity to make a submission to the Australian Law Reform Commission [ALRC] review of the National Classification Scheme.

Collective Shout is a grassroots movement challenging the objectification of women and sexualisation of girls in the media and popular culture.

We target corporations, advertisers, marketers and media that exploit the bodies of women and girls to sell products and services, and we campaign to change their behaviour. More broadly, we engage in issues relating to other forms of exploitation, including the inter-connected industries of pornography, prostitution and trafficking.

Supporters of Collective Shout are critical of the current scheme of classification, which relies on a mixture of self-regulation and government enforcement. In particular, we are concerned about the lack of effective enforcement and serious penalties to deter those who make a profit from the pornification of women and girls.

The national classification scheme has failed even to slow the proliferation of publications, films, television, billboards, images and words on mobile phones and the internet, as well as radio and music recordings, that demean women, reduce them to sexual objects, foster a culture that condones sexual violence and that pressures young girls to act in inappropriately adult sexual ways.

In this submission we provide an evidence-based case as to why the system has failed, and call for its complete overhaul.

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

An effective national classification scheme must include effective enforcement through sufficiently serious penalties to deter those making a profit by exploiting women and girls.

The current mix of self-regulation and government enforcement is not delivering, for girls and women in particular. It is usually left to individuals and community groups to complain about breaches of guidelines. Even when complaints are upheld, it is often too

late in that the advertising campaign has finished, the television program is over, or the penalties are too low to effect any real change in behaviour.

The recent Senate report, *Review of the National Classification Scheme: Achieving the right balance*, recommended “that transgressions of classification requirements within codes of practice by industry participants should, if verified by the Classification Board, be punishable by substantial monetary fines.”¹

Collective Shout recommends that

A new framework for classification should be designed to address the need for effective enforcement through sufficiently serious penalties to deter those who are making a profit by exploiting women and girls.

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

The primary goal of the national classification scheme should be to reduce the prevalence and availability of material in all media that contains images or words that reduce women to sex objects, condone or celebrate sexual violence against women or that promote the sexualisation of children. All codes of practice or classification guidelines should contain a clear and overriding rule that such material is not acceptable and will be refused classification.

The recent Senate report, *Review of the National Classification Scheme: Achieving the right balance*, recommended that every classification decision must take account of “community concerns about the sexualisation of society, and the objectification of women”.²

The 2007 report of the American Psychological Association (APA) Task Force on the Sexualization of Girls links the objectifying and sexualising of girls and young women with the most common health problems suffered by them. According to the APA, ‘A culture can be infused with sexualized representations of girls and women, suggesting that such sexualization is good and normal’.³ The Report argues that this frequently leads to girls and women feeling bad about themselves:

... there is evidence that sexualization contributes to impaired cognitive performance in college-aged women, and related research suggests that viewing material that is sexually objectifying can contribute to body dissatisfaction, eating disorders, low self-esteem, depressive affect, and even physical health problems in high-school-aged girls and in young women. In addition to leading to feelings of shame and anxiety, sexualizing

¹ The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance*, June 2011, Recommendation 27, p. xvi, <http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf>.

² *Ibid.*, Recommendation 2, p. xiii.

³ American Psychological Association, Task Force on the Sexualization of Girls, *Report of the APA Task Force on the Sexualization of Girls* (Washington, DC: 2007), p. 3, <www.apa.org/pi/wpo/sexualization.html>.

treatment and self-objectification can generate feelings of disgust toward one's physical self. Girls may feel 'ugly', 'gross' or untouchable.⁴

The proliferation and globalisation of sexual imagery is of serious concern. Pornographic representations of women in the public space have become normative. There is a growing body of research globally that demonstrates the detrimental effect of these representations, especially on children and young people.⁵ As the Australian Psychological Society reported to the Senate Committee Inquiry into the Sexualisation of Children in 2008, 'the values implicit in sexualised images are that physical appearance and beauty are intrinsic to self esteem and social worth, and that sexual attractiveness is a part of childhood experience ... Girls learn to see and think of their bodies as objects of others' desire, to be looked at and evaluated for its appearance.'⁶

Advertising also plays a crucial part in socialising men and boys to see the sexual objectification of women and girls as normal. Pornography has become the handbook of sex education for many boys. An estimated 70% of boys have seen pornography by the age of twelve and 100% by the age of fifteen.⁷ Girls are also increasingly exposed to pornographic images. Australian author Joan Sauers found that 53.5% of girls 12 years old and under in Australia have seen pornography, and 97% by the age of 16.⁸

Pornography is also used to groom children for sex, normalising graphic depictions of sex acts in a child's mind. Children are increasingly acting out on other children what they have seen in pornography. The *Courier-Mail* reported in 2008 that a group of 6 year old boys ran a 'sex club' at a Brisbane primary school, threatening girls who refused to comply. The paper reported the case of a 7 year old girl performing oral sex on a boy at lunchtime: "The witness said the boy had menaced the girl and threatened

⁴ Ibid. p.23

⁵ See Report of the American Psychological Association Task Force on the sexualisation of girls, <<http://www.apa.org/pi/women/programs/girls/report.aspx>>; UK Home Office, Sexualisation of Young People Review, <<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/Sexualisation-of-young-people.html>>; Scottish Parliament Equal Opportunities Committee, Research on sexualised goods aimed at children, <<http://www.scottish.parliament.uk/nmCentre/news/news-comm-10/ceq10-s3-001.htm>>; The Australia Institute, *Corporate Paedophilia: Sexualisation of children in Australia*, <https://www.tai.org.au/documents/dp_fulltext/DP90.pdf>; and Melinda Tankard Reist ed., *Getting Real: challenging the sexualisation of girls* (Melbourne: Spinifex Press, 2009).

⁶ Australian Psychological Society report, at <http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/submissions/sub115.pdf>.

⁷ Claire Scobie, 'Wild Things' *The Bulletin*, 6 February 2007, p. 35, <http://www.clairescobie.com/journalism/features/On%20Sex%20Lives%20of%20Teenagers_June07%5B2%5D.pdf>.

⁸ Joan Sauers, *Sex Lives of Australian Teenagers* (Sydney: Random House, 2009). See also Melinda Tankard Reist and Abigail Bray eds., *Big Porn Inc: Exposing the harms of the global porn industry* (Melbourne: Spinifex Press, forthcoming 2011).

her with violence'.⁹ A more recent report by the Australian Crime Commission correlates significant rates of child-on-child sexual abuse with the viewing of hyper-sexualised imagery. The report reinforces concerns among child protection advocates about the increase in sexually aggressive behaviour among children, as young people become exposed to sexual and pornographic images.¹⁰

The national classification scheme has failed even to slow the increasing influence of pornography in our culture, and it is time for a serious overhaul of the scheme.

Collective Shout recommends that:

The primary objective of the national classification scheme should be to significantly reduce the prevalence and availability of material in all media which contains images or words that reduce women to sex objects, condone or celebrate sexual violence against women, or promote the sexualisation of children.

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

The technology or platform used to access content should not be the decisive factor in whether content is classified or not. It is the nature not the format of the content that should determine classification.

Content that objectifies women, condones or celebrates sexual violence against women, or fosters the premature sexualisation of children is harmful to women and children regardless of the technology or platform used to deliver it.

In particular, Collective Shout rejects the claims by special interest groups that certain technologies should be free from any restrictions on content.

Those who oppose proposals for internet filtering on the grounds of free speech, civil liberties or an alleged right of adults to see anything they want are best described as 'sexual assault or violence against women and children libertarians' rather than 'civil libertarians'. There is nothing 'civil' about the material that gets Refused Classification under the present national classification scheme.

The character of the 'all the porn we want' lobby was revealed when 'Anonymous' and 4Chan launched 'Operation Titstorm' in February 2010, with Anonymous declaring that: 'The Australian Government will learn that one does not mess with our porn. No one messes with our access to perfectly legal (or illegal) content for any reason.' For three

⁹ 'School sex club run by small boys, says Brisbane dad', *Courier-Mail*, 13 September 2008, <<http://www.couriermail.com.au/news/queensland/report-school-sex-minister/story-e6freoof-1111117468404>>

¹⁰ 'Sexual imagery contributing to a rise of child-on-child sexual assault', Melinda Tankard Reist, 6 August 2010, <<http://melindatankardreist.com/2010/08/sexual-imagery-contributing-to-rise-of-child-on-child-sexual-assault/>>.

days, hackers disabled the Australian Parliament House computer system. They also hacked the PM's site, plastering it with porn in a protest against the government's internet filtering plans. Parliament House staff also received porn spam emails.¹¹

These pornography vigilantes demand their entitlement to every form of pornography – which would include child sexual abuse and assault images – by wrecking the computer operating systems of a democratic parliament and declaring cyber war on Australia and hence, by their actions, forcing others to view it against their will.

The recent Senate report recommended '*that, to the extent possible, the National Classification Scheme should apply equally to all content, regardless of the medium of delivery*'.¹²

Collective Shout recommends that:

The technology or platform used to access content should not be the deciding factor in whether content is classified or not and to the extent possible, the national classification scheme should apply equally to all content, regardless of the medium of delivery.

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

Collective Shout has significant first-hand experience of the ineffectiveness of a complaints-based classification system for advertising.

We believe the advertising industry has used self-regulation to its commercial advantage, to the detriment of the community, and that of women and girls in particular. The self-regulation model in fact enables the advertising industry to avoid proper scrutiny of its long history of irresponsible and profit-driven behaviour.

We have identified a range of inadequacies in the current system, including a weak code of ethics, the voluntary nature of the code, lack of pre-vetting, the Advertising Standards Board's lack of power to order removal of advertisements, inadequate monitoring, desensitisation of panel members, little consultation with child development experts, and no meaningful penalties to provide an incentive for advertisers to change their behaviour. Moreover, there is little public knowledge about complaints processes and how to go about making a complaint, with the result that if few complaints are received

¹¹ 'Hackers "titstorm" the PM and Parliament House', <<http://www.theaustralian.com.au/news/nation/hackers-titstorm-the-pm-and-parliament-house/story-e6frg6nf-1225828956252>>.

¹² The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, Recommendation 22, p. xvi, <http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf>.

because people are unaware of how to complain and to whom, it is difficult to ascertain community standards.¹³

The colonisation of public space by objectified and sexualised images of women and girls, together with an almost complete lack of action by regulatory bodies, conditions many people to see sexist advertising as acceptable, or as 'just the way things are'. At a time when hyper-sexual imagery is increasing, regulatory bodies need to be given more powers to deal with it, not fewer.

We also wish to highlight that sexualised representations of women and girls displayed in a workplace have been held to constitute sexual harassment under anti-discrimination law.¹⁴ And yet the open display of similar objectified and sexualised images of women in the public domain is exempt from sexual harassment laws. If this material has been ruled inappropriate for workplaces or schools, why is it considered acceptable as the 'wallpaper' of the public domain, where we have no choice but to view it?

The recent 'Sex and Fashion' campaign by General Pants is a prime example here, with large images of a semi-naked woman being stripped from behind, displayed in shop windows in major shopping malls, including Westfield. In our view this constitutes sexual harassment both of employers working for General Pants (who were also at one point expected to wear 'I love sex' badges) *and* of women and girls inhabiting the shopping centre environment. General Pants and other such companies are thereby engaging in the marketing of female inequality.¹⁵

Public accountability and social responsibility should be the guiding principles of regulation, not profit margins.

We note that this issue has been explored by the Victorian government, with the Portrayal of Women advisory committee producing a report¹⁶ with a number of recommendations. We are unaware of any of these recommendations being acted on. We hope that any positive recommendations flowing from this inquiry will not meet the same fate.

¹³ Submission to the House Standing Committee on Social Policy and Legal Affairs Inquiry into the Regulation of Billboard and Outdoor Advertising, 7 March 2011, <<http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs/Sub%2043.pdf>>.

¹⁴ For example, see *Horne and McIntosh v Press Clough Joint Venture and Metals and Engineering Workers' Union WA*, Equal Opportunity Tribunal of WA, nos 28 and 30 of 1992, 21 April 1994; and *Hopper v Mount Isa Mines Ltd* [1997] QADT 3 (29 January 1997), and *Mount Isa Mines Ltd v Hopper* [1998] QSC 287.

¹⁵ See Melinda Tankard Reist, 'General pants co and Ksubi selling objectification of women,' 6 May 2011, <<http://melindatankardreist.com/2011/05/general-pants-co-and-ksubi-selling-objectification-of-women/>>.

¹⁶ *The Portrayal of Women in Outdoor Advertising*, February 2002, <[http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/\\$file/Women%20in%20advertising%20outdoor.pdf](http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/$file/Women%20in%20advertising%20outdoor.pdf)>.

The concerns of supporters of Collective Shout are consistent with those found in the general community, as noted by the ASB:

Community activity and political sensitivity about gender portrayal in advertising has been reflected in complaints to the Advertising Standards Bureau [and was of particular concern to respondents to the ASB's 2010 community research on this topic]. Such complaints comprised 41% of all complaints received in 2009 (average of 31% of all complaints 2005-2009).¹⁷

Despite ASB praise for the impact of its voluntary guidelines on the regulation of advertising content, ¹⁸ the current arrangements have done little to control the placement or lessen the prevalence of advertising that objectifies and degrades women and also sexualises children.

Again, it should be noted that if the sexualised content of some billboard advertising were to be used in another medium eg film, this advertising would be subject to strict classification laws by a properly appointed Classification Board, presumably with the power to enforce its determinations directly or through other applicable legislation.

This inconsistency in regulatory regimes might in part explain the growth of outdoor advertising. The following extract from APN Outdoor's website illustrates the importance of the current system of self-regulation to the industry and its effect on the content of billboards:

With so many people outside of their living rooms, advertisers can no longer rely on mostly in-home media such as television.

Engaging consumers on the move is becoming a major focus for many clients.

Furthermore, ad avoidance devices will have an even greater impact on traditional advertising models as consumers selectively filter and receive advertising messages.

Outdoor is the only advertising medium that is virtually immune to consumer avoidance. It can't be turned off, flipped to the next page or thrown away. And it is free to view.

Outdoor truly is the last of the mass media.¹⁹

The advertising industry self-regulation system does nothing more than provide a complaints mechanism to the consumer – and even then, one that is poorly publicised (ironically, given that this is an industry that claims expertise in advertising to a wide audience). It will continue to be inadequate in preventing the increasing use of *strong and explicit sexual depiction* on billboards and any other form of sexualised imagery, unless the system is overhauled.

According to 2009 ASB statistics,²⁰ complaints about outdoor advertising comprised 23.92% of total complaints lodged, considerably higher than the average of 9.91% in the

¹⁷ Advertising Standards Bureau, *Determination summar Portrayal of gender in advertising*, October 2010, <<http://www.adstandards.com.au/files/view/?id=203>>

¹⁸ At

<http://issuu.com/cre8ive/docs/research_report_june2010?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Flight%2Flayout.xml&showFlipBtn=true>.

¹⁹ At <<http://www.apnoutdoor.com.au/Insights/Trends.aspx>>.

period 2005-2008. In 2010, four of the ten most complained about advertisements were billboards.²¹ Two of these complaints were upheld.

Collective Shout initiated and led a campaign against one of those billboards, advertising Calvin Klein (CK).²² The issue received global coverage after Alison Grundy, a sexual assault counsellor and clinical psychologist with over 20 years experience, wrote an opinion piece about how billboards of this nature create a dangerous environment for women and girls and make her job harder.²³ We note here the findings of the Board as to why the advertisement was in breach of Section 2.2 and 2.3 of the ASB Code of Ethics:

- the image of the woman was suggestive of non-consensual sexual behaviour
- the depiction of the woman with the three men was highly sexualised and clearly suggestive of sexual behaviour
- the scene is suggestive of violence and rape
- the image was demeaning to women by suggesting that she is a plaything of these men
- the image also demeans men by implying sexualised violence against women

While Collective Shout welcomes the ASB determination on the CK billboard, the billboard would not have been displayed at all if the self-regulation system were effective in protecting consumers and if advertisers complied with the ASB Code of Ethics.

Other legitimate complaints about billboards are not upheld by the ASB. One example of this is the billboard for *Sexpo* placed in Ipswich Queensland in February 2010. The billboard contained imagery and information about an adult pornographic expo, which is inappropriate for children's view, and which also objectified women. Despite requests by the community and an Ipswich Councillor for the billboard to be taken down, the ASB dismissed the complaint.²⁴ Even if complaints about the *Sexpo* billboard had been upheld, several weeks would have elapsed between the time of the billboard's placement and the ASB's determination. The advertiser then benefits from the controversy stirred up by the billboard. Advertisers such as *Sexpo* deliberately exploit the self-regulation system for publicity.

Notwithstanding the ASB guidelines, there is no evidence that the ASB prevents or controls the placement of public billboards with strong sexual depictions.

²⁰ At <<http://www.adstandards.com.au/publications/statistics>>.

²¹ At <<http://www.adstandards.com.au/publications/mediareleases>>.

²² At <<http://122.99.94.111/cases/0411-10.pdf>>.

²³ At <<http://melindatankardreist.com/2010/10/sexual-assault-counsellor-asks-why-is-it-ok-to-use-sexual-violence-as-a-marketing-tool/>>. See also Helen Pringle, 'What is the billboard doing? Reactions to Calvin Klein', *On Line Opinion*, 24 November 2010, <<http://www.onlineopinion.com.au/view.asp?article=11279>>.

²⁴ See <<http://www.qt.com.au/story/2010/02/03/ipswich-driven-to-distraction-by-sexpo-billboard-b/>>, and <<http://www.adstandards.com.au/casereports/determinations/standards?ref=60/10>>.

The ASB simply provides a complaint mechanism. While a voluntary Code of Ethics developed by the Australian Association of National Advertisers was relied upon in upholding complaints concerning billboards in 2010, this Code did not prevent the placement of these images in the first place. This is despite the recommendation of an Australian government inquiry in 2008 that the ASB rigorously apply standards for billboards and outdoor advertising so as to more closely reflect community concern about the appropriateness of sexually explicit material and the inability of parents to restrict exposure of children to such material.²⁵ It is interesting to note that despite being a participant in the self-regulation scheme and aware of the ASB determination, APN Outdoor continues to include the offensive CK billboard in its campaign gallery,²⁶ presumably as a representation of an effective billboard.

Notwithstanding the ASB's claims,²⁷ consumer protection is not provided by the self-regulation scheme.

The ASB only has the power to consider advertisements once a complaint is received. If no-one had complained about the CK billboard, perhaps because they didn't know they could or where to do so, it might still be in place. Guidelines exist that should have alerted the advertiser, including the owner of the billboard, to the fact that the advertisement was in potential breach of the Code of Ethics.

It is not sufficient to ensure consumer protection by providing a free and fast route for consumers to express their views about advertising. In an environment where billboards are in effect 'unclassified', the right of consumers to be protected should extend to prohibiting the offending conduct in the first place. Australian consumer protection legislation provide much more protection than where billboards are concerned. Depending on the commercial interest of the advertiser and its approach to risk, almost any sexualised image could be displayed on a billboard, with the right of consumers limited to lodging a complaint to the ASB, which may or may not be upheld. If the complaint is dismissed, in the absence of any other legislation, the consumer would perhaps be able to rely upon any common law remedies or, if applicable, State and Territory criminal statutes to be enforced. Collective Shout is not aware of any local government ordinances that regulate billboard content.

The inability to control billboard content contributes to the sexualisation of our culture and the harms that arise from it.

The harms of sexualisation have been identified in regard to

- Body image being listed as a leading concern for the fifth year in a row for young people²⁸

²⁵ See

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

²⁶ See <<http://www.apnoutdoor.com.au/Interact/Gallery/#p6> click on page 6.

²⁷ At <<http://www.adstandards.com.au/self-regulation-system/aboutselfregulation>>.

- One in 100 adolescent girls in Australia suffering anorexia and one in 20 bulimic²⁹
- Half of UK young women aged 16-21 would consider having cosmetic surgery ³⁰

Gail Dines, a professor of sociology and women's studies in Boston, has argued that,

women are ... affected by cultural constructions of idealized femininity... we are ...cultural beings who develop our identities out of the dominant images that surround us.... [Popular culture] represents images of contemporary idealized femininity – in a word hot – that are held up to women, especially young women, to emulate. Women today are still held captive by images that ultimately tell lies about women.... In today's image based culture, there is no escaping the image and no respite from its power when it is relentless in its visibility.³¹

We invite the Commission to peruse our website (www.collectiveshout.org) for more examples of billboards that our supporters have targeted due to their sexist portrayal of women.

An industry self-regulation body like the ASB will always be conflicted in its role, relying as it does on the funding of the industry for its financial viability and also the co-operation of the industry to implement and enforce its Code of Ethics and determinations.

In the absence of legislation underpinning the self-regulation system, the ASB has no real power to enforce its determinations. This lack of an enforcement mechanism renders the ASB powerless in the face of recalcitrant advertisers and corporations. In January 2011, the ASB upheld a complaint and determined that an advertisement breached the Code.³² The ASB advised the corporation concerned, but the corporation refused to comply with the ASB determination. The corporation planned to continue its display of the offending billboard, as indicated by the very last line of the determination: 'The advertiser advised that the billboard will be brought down at the end of summer.' The 'end of summer' was the intended end of the advertiser's billboard campaign, and a full six weeks after the date the complaint was upheld.

Collective Shout was subsequently advised by the ASB³³ that in response to the Advertiser's non-compliance, the ASB contacted the Outdoor Media Association, which then contacted the owner of the billboard alerting them to the ASB's ruling. The owner of the billboard removed the billboard advertisement on February 18. This was only 10 days before the end of the advertiser's campaign and almost a full month after the ASB's

²⁸ See <<http://www.missionaustralia.com.au/downloads/national-survey-of-young-australians/2009/164-national-survey-of-young-australians-2009>>.

²⁹ See <<http://www.eatingdisorders.org.au/media/key-statistics.html>>.

³⁰ See

<http://www.girlguiding.org.uk/system_pages/small_navigation/press_office/latest_press_releases/3rd_march_2011_-_gyac.aspx>.

³¹ Gail Dines, *Pornland: How Porn Has Hijacked our Sexuality* (Boston: Beacon Press, 2010), pp. 101-102.

³² At <<http://122.99.94.111/cases/0517-10.pdf>>.

³³ Email correspondence, 1 March 2011.

determination. The advertiser has faced no penalty for non-compliance. The removal of a sexist billboard only 10 days before the end of a campaign is not an adequate deterrent for repeating the same behaviour in future.

Collective Shout recommends that

- ***Responsibility for regulation of out door advertising should be given to an independent body or authority, with power to establish a system of pre-vetting billboards before their placement. An independent review system should replace self-regulation as a way to assess the suitability of outdoor advertising.***
- ***The AANA code of ethics should be amended to reflect the growing body of research in regard to the sexualisation of children and objectification of women. Objectification and sexualisation of women and girls should be treated as threats to the health, well-being and status of women and girls.***
- ***The AANA code of ethics should be amended to clearly reflect the fact that unsolicited and unwanted exposure to sexualised and pornified images is a form of sexual harassment.***
- ***Any regulatory body (the existing or a new body) be required to consult the international research along with child and youth development experts, to ascertain the possible impact of advertising with sexualised content or messaging, on this audience.***
- ***Clear rules should be set out governing the placement of billboards, and limitations imposed in respect of where billboards can be placed.***

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

The classification of films currently uses an ‘impact’ scale ranging from ‘mild’ for G to ‘high’ for R18+. This system is not working well, in part because of the subjective nature of the impact scale.

The classification of films is currently in disarray. For example, Zack Snyder’s latest film *Sucker Punch* was classified M on 14 March 2011 by the Classification Board, with the advisory warning of ‘frequent action violence and mature themes’. According to reviewer Cassie Alexander, the film features repeated attempted gang rapes of girls in a mental asylum who all appear to be younger than 16 years old:

Opening scene. Protag’s mother dies, leaving her and her sister with lecherous step-father. Protag denies stepfather’s advances. Stepfather (presumably) rapes younger sister, then kills her. Then frames protag for it, and gets her sent to a mental institution. Once there, the protag’s depressed mental state changes her surroundings to some sort of bordello – I shit you not – where she and other girls ‘her age’ dance for men with money and power, becoming their ‘clients’ and ‘satisfying’ them on rotating beds with red satin sheets. While experiencing this understandable duress, the film dips down into another level, where the

protag dances – and when she dances, while her clients are captivated by her spandexed crotch, the movie switches into complicated battle scenes, wherein she levels up and acquires the skills and the items that she'll need to eventually free herself from her confines.

The entire time in the movie, the protag has a babydoll face. Hey, guess what her name is? BABYDOLL. It's like they didn't even ... try. She's ultra-blonde, with pouty lips, and to be fair, she's gorgeous, and she can actually act. Unfortunately all she's given to act in is repeated sequences of beginning to dance slowly and unhappily with a 'No, Daddy, no!' face on or action scenes.

They make a big point of 'filling in her paperwork' when she arrives at the institution, and point out on there that she's 20....

She doesn't look 20. None of them look older than 16. Not a single one.

The bordello thing seems just to be a way to keep the girls wearing spandex and corsets. The men leer at them, leer on them, openly drool, brag about how much money her virginity is going to make them with a 'high roller' and threaten to rape them continually. I'm not kidding, there were SIX SEPARATE ATTEMPTED RAPES in this film.³⁴

M is a purely advisory category. M films may be seen legally by children of any age. The *Guidelines for the classification of films and computer games* provide that for the M classification the classifiable elements (sex, violence, drug use, nudity, themes, language) should have an overall impact 'no higher than moderate'. Sexual violence 'should be very limited and justified by context'. How many gang rapes are allowed in an M movie when the context is incarceration in a mental asylum that is more like a brothel for underage girls and where gang rape is encouraged?

Since the Classification Review Board decision in January 2000 to allow actual sex scenes in R18+ films, there has been a general flow-on effect on the classification of films.

The use of the subjective 'impact' scale as the primary distinction between the classifications has allowed the Classification Board and the Classification Review Board to make what often seem arbitrary decisions on classification.

In 2008, the decisions by the Classification Review Board to give an R18+ classification to three anime films – *Classes in Seduction*, *T & A Teacher*, and *Bondage Mansion*, each of which featured explicit sexual acts – set a new low in film classification.³⁵ On *T & A Teacher*, the Classification Board observed:

Although this film is animated, the depictions of the various sex acts are graphic and in close-up and the male and female genitalia are anatomically correct. The film is predominantly about sex and there are several prolonged scenes which depict masturbation of a vagina and penis, cunnilingus, fellatio, anal and vaginal penetration by digit and penis, ejaculation and intercourse.³⁶

³⁴ At <<http://cassiealexander.com/2011/03/suckerpunch-ed/>>.

³⁵ 'Four anime films classified upon review', Classification Review Board, 13 August 2008, <www.classification.gov.au/resource.html?resource=1057&filename=1057.pdf>.

³⁶ Board Report T08/238, Classification Board, 20/2/08.

Both *T & A Teacher* and *Classes in Seduction* feature sexual acts between a teacher and his or her students, which the Classification Review Board found acceptable. Melinda Tankard Reist elaborated on the content of these films and *Bondage Mansion*:³⁷

There are depictions of menace and coercion in the initiation of s-xual encounters in all three of the other films reviewed – *Bondage Mansion*, *T&A Teacher* and *Classes in Seduction*. Rules about the ‘R’ and ‘X’ classification mean that coerced s-x is allowed for an ‘R’ rating but only if the impact and explicitness is not so high as to warrant the “X” rating. These films slipped into the “R” rating because the anime was said to reduce the impact of the s-x scenes. In one scene in *Bondage Mansions*, a young woman is forced to fellate her attacker while he holds a sickle above her.

In the end any concerns about coercion are dismissed because (typically) the female characters always come to enjoy the force and degradation and appear to want more.

The NSW Council for Civil Liberties defends these films in the name of ‘free speech’. But many Australians don’t put incitement to crimes such as the r-pe of children, in the ‘free speech’ category.

Collective Shout recommends that:

The Guidelines for the classification of films and computer games should be revised to replace the subjective ‘impact’ scale with more detailed provisions for each of the classifiable elements, including strict limits on depictions of sexual violence and demeaning depictions of women. Actual sex and animated scenes depicting explicit sexual acts should not be permitted in the R18+ classification.

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?

While the mass market reach of offensive material is of particular concern because of its pervasive impact on the community there is no case for giving a free pass to content producers and distributors with more limited market reach. To do so could encourage the development of niche markets for particularly offensive material.

Collective Shout recommends that:

Neither size or market position of particular content producers and distributors, nor the potential mass market reach of the material, should affect whether content should be classified.

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

³⁷ Crikey, 23 February 2009, <<http://www.crikey.com.au/2009/02/23/comments-corrections-clarifications-and-ckups/>>.

There is something wrong with the classification scheme if it cannot understand a problem posed by the display of Bill Henson's photographs of children. For example, the girl who featured naked on the invitation to the Roslyn Oxley Gallery exhibition in 2009 was 13. While that photo was widely circulated, an even more graphic one of another girl was not. 'Untitled 1985/86' was quietly auctioned by Menzies Art Brands, Lot 214, for \$3800, only weeks after the controversy erupted. Dr Abigail Bray has described this image:

... the black and white 'Untitled 1895/86'... peers down on a naked child on the crumpled sheets of a bed, her knees bent, her legs wide open, her face turned away from the camera, her lips parted, her expression blank. She is wearing childish bangles on both arms and an ankle 'slave' bangle. Her hair is in a ponytail. Her vagina and budding breasts are highlighted by Henson's trademark manipulation of shadow. The girl is anonymous. However, to see the ugly sexual political context of Henson's photographs is to be dismissed a hysteric, prude or worse.³⁸

In relation to the latest exhibition of Henson's photographs, Tolarno Galleries has refused to reveal the age of the youngest girl in the exhibition. As Melinda Tankard Reist highlighted in an article:³⁹

Why the secrecy? Was she at an age where she could consent? As respected teen psychologist Michael Carr-Gregg put it, would she 'have sufficient cognitive or emotional maturity to fully comprehend the potential ramifications of what she is doing?'

Where will her photo end up? Where did the photos of the other two girls above end up?

Why does calling it 'art' make sexualised depictions of young girls OK?

It is right to question Henson's sexual depictions of vulnerable naked young girls – and other overtly sexualised imagery of children.

On Channel 7's Morning Show on 31 March 2011, media academic and researcher Nina Funnell noted that Henson's images have been found in the collections of paedophiles. It is difficult to see how the Classification Board could classify these images as PG.

The provision in Section 11(b) of the *Classification (Publications, Films and Computer Games) Act 1995* specifies that one of the matters to be taken into account in making a decision on the classification of a publication, a film or a computer game is its 'literary, artistic or educational merit (if any)'. This provision might have led the Board to overlook the sexualised depictions of young girls because the photographs were taken by a recognised artist.

It is worth noting that unlike the national classification scheme, the commonwealth Criminal Code's child pornography offences do not provide for any 'artistic merit' exceptions.

³⁸ Abigail Bray, 'The Gaze that Dare Not Speak Its Name: Bill Henson and Child Sexual Abuse Moral Panics', in Melinda Tankard Reist, *Getting Real: Challenging the sexualisation of girls* (Melbourne: Spinifex Press, 2009) p.113.

³⁹ See <<http://melindatankardreist.com/2011/04/hensons-sexualised-depictions-of-young-girls-calling-it-art-doesn%e2%80%99t-make-it-ok/>>.

The recent Senate report, *Review of the National Classification Scheme: achieving the right balance*, recommended “that the Australian Government, through the Standing Committee of Attorneys-General, pursue with relevant states the removal of the artistic merit defence for the offences of production, dissemination and possession of child pornography”.

Collective Shout recommends that

- ***The criterion of artistic and literary merit be considered irrelevant in determining the classification of a sexual or sexualised depiction of a child; and***
- ***Artworks which may contain a sexual or sexualised depiction of a child be submitted for classification before being publicly exhibited or offered for sale.***

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

Music lyrics are a significant influence in popular culture. The distorted image of women presented by some lyrics is therefore of concern. Some recent examples include:

- ‘That’s the way you like to f*** ... rough sex make it hurt, in the garden all in the dirt’ (Ludacris)
- ‘She find pictures in my email, I sent this bitch a picture of my dick. I don't know what it is with females, But I'm not too good at that shit’ (Kanye West)
- ‘Send those nudes, make me drool. Hit me up - make me cum. Wanna sext? I'll show you some’ (Blood on the Dance Floor)
- Paying for pussy – ‘Rollin' dice with the boys, Yah niggas pay for pussy, Whether it's at the tity bar, Or outta the car, Yah niggas pay for pussy’ (Snoop Dog)
- Bitch please – ‘I get this pussy everywhere that I go, (Yeah Nigga you know what's happenin' man) Ask the bitches in your click can't say no’ (Snoop Dog)

As part of a recent study of the effects of listening to popular music on sexual behaviour, researchers coded the content of 164 songs from 16 artists popular with teens. Overall, 15% of songs contained sexually degrading lyrics. Most of these lyrics were concentrated within the work of rap and R&B artists; as many as 70% of individual artists’ songs included degrading sexual content.⁴⁰

We have also protested Brian McFadden’s latest release *Just as you are (Drunk at the bar)*:

I like you just the way you are, drunk and dancing at the bar, I can’t wait to take you home so I can do some damage

I like you just the way you are, drunk and dancing at the bar, I can’t wait to take you home so I can take advantage.

⁴⁰ Cited in American Psychological Association, *Report of the APA Task Force on the Sexualization of Girls* (Washington DC, 2007), p. 7, www.apa.org/pi/wpo/sexualization.html.

Lyrics like this help to normalise and justify violence against women.

Alison Grundy a clinical psychologist in the field of sexual violence for 20 years, describes the lyrics as ‘one more open demonstration of the contempt shown to women’s human rights and the fundamental legislation that is place to protect them’.⁴¹

Now we have 30 years of research to show that the sexualised and violent messages of popular music, media and video games do shape and provoke male aggressive and sexualised violence. I wonder how long it will be before songs like this are seen as inciting crimes under the criminal code? Not soon enough for those of us who work with victims on the long road to recovery after experiencing the ‘do some damage and take advantage’ behaviour lauded in this song.⁴²

The classification of music lyrics is carried out jointly by the Australian Record Industry Association (ARIA) and the Australian Music Retailers Association (AMRA) under a code of practice which provides three levels of warning labels: ‘Moderate impact coarse language and themes’; ‘Strong impact coarse language and themes’; and ‘Restricted: High impact themes: Not to be sold to persons under 18’. Products containing lyrics that promote, incite, instruct or exploitatively or gratuitously depict drug abuse; cruelty; suicide; criminal or sexual violence; child abuse; incest; bestiality; or any other revolting or abhorrent activity in a way that causes outrage or extreme disgust to most adults, is not allowed to be sold or released by AMRA or ARIA members.

Many song lyrics that celebrate sexual violence against women have been given a warning label by ARIA/AMRA rather than being listed as prohibited.

The recent Senate report, *Review of the National Classification Scheme: Achieving the right balance*, recommended ‘that the ARIA/AMRA Labelling Code ... should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the National Classification Scheme. The adoption of these measures by industry should be legally enforceable and subject to sanctions.’⁴³

It would be appropriate for the classification of music lyrics to become part of the national classification scheme with guidelines which more effectively exclude from release or sale lyrics which celebrate sexual violence against women.

Collective Shout recommends that:

The classification of music lyrics should be made part of the national classification scheme with provisions that ensure that music with lyrics that celebrate violence and sexual violence against women are prohibited from release or sale.

⁴¹ Melinda Tankard Reist, ‘New song from Delta’s man feeds rape myth’, *The Drum*, 20 February 2011, <<http://www.abc.net.au/unleashed/44500.html>>.

⁴² Ibid.

⁴³

http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf, Recommendation 23, p. xvi

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

The larger the potential audience the more pervasive the impact on the community, but there is no case for giving a free pass to content directed at relatively small audiences. To do so could encourage the development of niche markets for particularly objectifying and sexualising material.

Collective Shout recommends that

The potential size and composition of the audience should not affect whether content should be classified.

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

Most technologies and platforms can deliver content at home or in public so this is not a very helpful or relevant factor in determining whether or not content should be classified.

In any case private consumption of material that treats women as sexual objects or that glorifies sexual violence against women is still harmful to the community because it has an effect on the attitudes and behaviour of consumers towards women.

Collective Shout recommends that

The fact that content is accessed in public or at home should not affect whether it should be classified.

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

Collective Shout recommends that

All content which objectifies women, condones or celebrates sexual violence against women or fosters the premature sexualisation of children is harmful to women and children and should be classified regardless of the technology or platform used to deliver it.

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

Collective Shout supports the introduction of mandatory filtering of internet content by internet service providers to exclude (or at least make more difficult to access) material that in other media forms, such as films and television, is not allowed to be distributed in Australia. Such material includes child pornography, rape pornography and bestiality.

Collective Shout recommends that

Mandatory filtering of internet content by internet service providers to exclude material that would be Refused Classification should be introduced as soon as possible.

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

Mandatory filtering is an important contribution that the government and the whole community can make to protecting children. Parents have the primary responsibility to protect their children from accessing inappropriate content, but it is not possible for parents to provide constant supervision for their older children who may access inappropriate material at the homes of other children, on mobile devices or even at public libraries. Also, some children are living in households or communities where there is inadequate parental supervision.

The 9th Australasian Conference on Child Abuse and Neglect in November 2003 was told by staff from the Child at Risk Assessment Unit at the Canberra Hospital that exposure to X-rated pornography, often on the internet, was a significant factor in sexual abuse of other children by children younger than 10 years of age. In the first 6 months of 2003, 48 children under 10 were identified as having engaged in sexually abusive acts. Access to graphic sexual images had shaped the trend.⁴⁴

Collective Shout recommends that

The government and community should support parents in protecting children from access to inappropriate content online through a mandatory filtering scheme that would exclude all material refused classification, classified X18+ or classified R18+ or MA15+ without an age-verification access system.

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

Collective Shout believes that there are three major issues with sexually explicit magazines: the system of serial classifications; the failure of 'call-in' notices; and the rules for display of these magazines.

⁴⁴ Janet Stanley, Cassandra Tinning and Katie Kovacs, 'Child Protection and the Internet' 9th Australasian conference on child abuse and neglect, 24-27 November 2003, Napcan, Sydney.

Serial classification

The system of issuing serial classifications for publications is fundamentally flawed. This was first brought to light by Julie Gale, founder of Kids Free 2B Kids, in 2008, Ms Gale identified a number of publications on sale at service stations and corner stores bearing Category 1 or Category 2 Restricted markings but which contained material including pseudo child pornography and incitements to rape and incest, which should have resulted in the publications being Refused Classification. After this material was submitted to the Classification Board the classifications given by the Board to eight publications were eventually revoked: *Best of Cheri*, *Finally Legal*, *Swank*, *The Very Best of High Society*, *Hawk*, *Gallery*, *Purely 18* and *Live Young Girls*.

Live Young Girls had been given repeated 24-month serial classifications as Category 1 Restricted based on issues Vol. 26, no. 5, May 2005 and Vol. 29, no. 5, May 2008. After Ms Gale submitted three issues of *Live Young Girls* (December 2006, August 2007, and April 2008) to the Classification Board, the Director informed her in January 2009 that each of these issues had been found to contain Refused Classification content and that the serial classification based on the May 2005 issue was revoked. Inexplicably, the later 24-month serial classification based on the May 2008 issue was left in place.

It was only when Ms Gale submitted copies of the June 2008, September 2008 and December 2008 issues of *Live Young Girls* that the Board moved to revoke this second classification. Had Ms Gale not pressed the issue further, it is unlikely that any further action would have been taken.

All eight of the publications for which serial classifications were revoked were distributed by a company called Namda. In the July/August 2005 issue of *Convenience & Impulse Retailing* the General Manager of Namda, David Watt offered advice to retail stores on selling adult magazines:

‘Retailers should be wary of distributors falsely claiming classification,’ says David Watt. ‘We submit 30 regular monthly titles to the OFLC, and NAMDA is the second largest submitter to the office (behind newsagent suppliers Gordon & Gotch). If retailers are not sure, they should check the publication’s status on the OFLC website.’⁴⁵

David Watt has held office as secretary of the sex industry body the Eros Association. EROS claims to oppose child pornography. However, these eight titles distributed by Watt’s companies contained Refused Classification material promoting sex with young girls, rape and incest. As Melinda Tankard Reist wrote in articles published in *ABC The Drum Unleashed*⁴⁶ and *OnLine Opinion*:⁴⁷

⁴⁵ ‘Get classified and cashified’, *Convenience & Impulse Retailing*, July/August 2005, <<http://www.c-store.com.au/magazine/article.php?id=4077>>.

⁴⁶ Melinda Tankard Reist, ‘Incensed about censorship’, *ABC The Drum Unleashed*, 27 November 2008, <<http://www.abc.net.au/unleashed/38374.html>>.

⁴⁷ Melinda Tankard Reist, ‘Incensed about censorship’, *Online Opinion*, 5 December 2008, <<http://www.onlineopinion.com.au/view.asp?article=8176&page=0>>.

The titles imported by Namda/Windsor have been supplied to milkbars, supermarkets and petrol stations. The publishers claim the girls are 18+ years but the content and images deliberately make them appear younger.

Words like 'tiny', 'tight' and 'tender' are used to describe body parts. The girls are often in pigtails and wearing braces...Headlines include 'Pigtail Perverts', 'Captive Virgins'.

One young girl is shown exposing her sexual parts, with the words 'I'm ready for my first time'. She is holding a pink hand puppet. 'Cute' girls known as 'Little Miss Mischief', 'frolic' on their beds with

...there are headings like: 'Virgin Violations, forced entries'. Advertisements inside the magazines promote videos including 'Helpless Girls - tantalizing videos of sexual extremes'...

Some issues advertise what sounds like incest: 'Disobedient daughter XXX DVD's... Don't tell mom!' and 'Like mother like daughter', 'Daddy's big xxxx' and 'All in the family'.

All these examples are from a magazine titled *Live Young Girls* and *Purely 18*, imported by companies linked to the secretary of the Eros Association.

Allowing images that depict children as keen for sex makes them more vulnerable to abuse and violence...

The system has failed to prevent unclassified or improperly classified titles from being imported and given mainstream display. Distributors of this pornography have shown complete contempt for the system.

Call-in notices and enforcement

The enforcement system that backs up the national classification system is widely considered to have broken down. Even Eros Association coordinator Robbie Swan told the Legal and Constitutional Affairs Committee at a public hearing on 25 March 2011 that the national classification system 'is broken because there is no compliance; we are looking at zero compliance from here on in.'⁴⁸

Our agreement with Eros is limited to the shared view that the system is broken. Swan and the Eros Association want to move to a system of self-regulation. When distributors fail to respond to call-in notices under the current regulatory scheme, why should we believe they would comply with community standards if left to regulate themselves?

Collective Shout believes there is a need for serious penalties for breaches of the national scheme.

It is disturbing to read the successive estimates committee hearings since 2008 and see the responses from the director of the Classification Board to questions about the almost total lack of response to call-in notices and the absence of centralised information about the follow-up, if any, by State and territory law enforcement officers to breaches of the national classification scheme.

⁴⁸ Senate Legal and Constitutional Affairs References Committee, Reference: Australian Film And Literature Classification Scheme, 25 March 2011, p. 52.

At the additional estimates hearing on 22 February 2011, Mr Donald McDonald, the director of the Classification Board, confirmed that ‘To date, only one call-in notice for adult publications has been complied with.’⁴⁹

Pornography depicting minors has been openly sold in convenience stores through the country. Leading importers and distributors of pornographic magazines have failed to ensure that publications comply with the serial classifications given by the Classification Board.

Has anyone been held accountable for these serious breaches? The director of the Classification Board doesn’t seem to know. No one seems to be able to tell the Senate Legal and Constitutional Affairs Committee. This indicates that the system has become a farce.

Display of restricted publications

Collective Shout believes women and girls have the right to go about their daily lives without being confronted with images and words that promote a view of women and girls as sex objects readily available for men’s sexual pleasure and gratification.

This material is also harmful to men and boys who are conditioned and socialised to see women and girls in terms of what they can provide sexually. We have written about this elsewhere.⁵⁰ It is demeaning for women – often accompanied by children – to have to confront graphic pornographic titles every time they have to buy milk and petrol. The material is often as children’s eye level, frequently next to lollies. Popular restaurant chain McDonalds, which co-brands with FuelZone, has so far failed to respond to requests to remove hardcore porn titles from open display in the co-branded outlets. We note that BP, Shell and Mobil have acted on complaints.⁵¹

In April 2010 many child development experts and advocates called on the Standing Committee of Attorneys-General to act to prevent the open display of Restricted pornographic publications.⁵² We note the irony of Julie Gale’s submission to the SCAG’s censorship working party initially not being accepted because of concerns by the SCAG

⁴⁹ Senate Legal and Constitutional Affairs Legislation Committee, Estimates: Additional Estimates, 22 February 2011,

32, <<http://www.aph.gov.au/hansard/senate/commtee/S13573.pdf>>.

⁵⁰ Submission to the House Standing Committee on Social Policy and Legal Affairs Inquiry into the Regulation of Billboard and Outdoor Advertising, 7 March 2001,

<<http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs/Sub%2043.pdf>>; Melinda Tankard Reist, *Getting Real: Challenging the sexualisation of Girls* (Melbourne: Spinifex Press, 2009), Melinda Tankard Reist and Bray, *Big Porn Inc: Exposing the harms of the global sex industry* (Spinifex Press, forthcoming, September 2011). See also numerous articles on our websites <www.collectiveshout.org>, and <www.melindatankardreist.com>.

⁵¹ Protecting children must be the priority, Julie Gale, *ABC The Drum Unleashed*, 8 April 2010 <<http://www.abc.net.au/unleashed/34398.html>>.

⁵² The statement can be found at <http://www.kf2bk.com/latest_news.htm&news_offset=10>.

secretariat about transmitting the graphic images – all of which she found in magazines in her local corner stores.⁵³

The recent Senate report, *Review of the National Classification Scheme: Achieving the right balance*, recommended that ‘as a matter of priority, the Standing Committee of Attorneys-General should consider the development of uniform standards for the display and sale of material with a Restricted classification’.⁵⁴

Collective Shout recommends that

- ***The serial classification scheme for publications should be scrapped and each issue of a publication be submitted for classification.***
- ***A major overhaul of the classification enforcement system including introducing penalties for failure to respond to call-in notices; removing distributors who breach the scheme from access to further classification services; and centralising information on the progress of enforcement actions by all relevant law enforcement agencies should be implemented.***
- ***There should be a national uniform standard requiring that Category 1 and Category 2 Restricted publications and R18+ films only be available for sale and distribution from a secure, physically separated area to ensure no children can enter the area.***

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

Classification markings, warnings and consumer advice play an important role in readily identifying to consumers and to parents the nature of content in publications, films and computer games. It would be helpful to have the same markings apply also to music recordings.

Collective shout recommends that

Classification markings, warnings and consumer advice continue to be required for publications, films and computer games and extended to music recordings.

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

⁵³ Mary-Anne Toy, ‘Graphic images delay censor report’, *The Age*, 5 April 2010, <<http://www.theage.com.au/national/graphic-images-delay-censor-report-20100404-rlnx.html>>.

⁵⁴ Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, Recommendation 12, p. xiv, <http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf>.

The recent Senate report made several recommendations about the co-regulatory and self-regulatory codes of practice and their integration with the national classification scheme.

The committee recommended that

- industry codes of practice under current self-regulatory and co-regulatory schemes, including those under the *Broadcasting Services Act 1992*, the *ARIA/AMRA Labelling Code* and the advertising industry, should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the National Classification Scheme. The adoption of these measures by industry should be legally enforceable and subject to sanctions.
- industry bodies wishing to exercise classification decision-making functions should be required to be accredited by the Australian Government.
- the Classification Board should be responsible for the development of a content assessor's accreditation, including formalised training courses for all industries covered under the National Classification Scheme.
- The accreditation of content assessors should be subject to disqualification as a result of poor performance.
- transgressions of classification requirements within codes of practice by industry participants should, if verified by the Classification Board, be punishable by substantial monetary fines.⁵⁵

Collective Shout agrees with the recommendation to closely supervise any industry role in classification and to back this up with sufficiently punitive fines to act as a real deterrent to dissuade industry classifiers from pushing the boundaries and favouring profits over social responsibility.

In the case of outdoor advertising and music recording Collective Shout believes these industries have failed to self-regulate and that responsibility for classification should be taken up directly by government on a user pays cost-recovery basis.

Collective Shout recommends that

- ***Any industry role in classification be closely supervised by government and backed up with sufficiently punitive fines to act as a real deterrent to dissuade industry classifiers from pushing the boundaries and favouring profits over social responsibility.***
- ***Classification of outdoor advertising – which should be restricted to G classification only – and music recordings should be taken up directly by government on a user pays cost-recovery basis.***

⁵⁵ Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, Recommendations 23-27, p. xvi, <http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf>.

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?

Collective Shout's experience with industry self-regulation, especially with advertising, has confirmed our intuition that an industry oriented to maximising profits is unlikely to exercise the required restraint in ensuring that content that exploits or demeans women or that sexualises children is rigorously excluded.

This applies in even stronger terms to industries whose core business is the pornification of women. Any suggestion that the pornographic magazine and film industry is capable of self-regulation is risible. The abject failure of the call-in notice system indicates the disdain with which the porn industry treats regulation.

Collective Shout recommends that

No further co-regulatory models should be adopted but government should retain full and direct responsibility for the classification of publications, films and computer games.

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

Collective Shout recommends that

There should be no further devolution to industry of responsibility for classifying.

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

There is a case for a fee waiver scheme but this should be limited to non-profit organisations and should not apply to content that would be classified MA15+ or higher.

Non-profit organisations appealing classification decisions, including any classification, should also be entitled to a fee waiver.

Collective Shout recommends that

Fee waivers be available to non-profit organisations for applications to classify content that attracts a classification lower than MA15+ and to non-profit organisations to appeal any classification decision.

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

The film and computer games classifications are generally well understood.

The distinction between Category 1 and Category 2 Restricted publications is not well known.

The three levels of warning for music recordings are not well known.

The use on television of AV as well as MA is confusing, especially as there are different time zones allocated to these two classifications.

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

X18+ films

Customs regulations prohibit the import of 'objectionable material', defined so as to include publications, films and computer games that would be Refused Classification because they contain material that exceeds the highest classification for each of these forms of material.

In giving evidence to the Legal and Constitutional Affairs Committee at a public hearing on 25 March 2011, Robbie Swan criticised a recent decision by Customs 'in which they are now forbidding adult importers to bring in masters from which they can edit and make X-rated films that fit the Australian scheme'.⁵⁶

However, Collective Shout welcomes this decision. No one should be exempt from customs regulations, least of all companies like Calvista, a division of Adultshop.Com, which makes a profit from pornography that demeans and degrades women.

Collective Shout believes that such films have no redeeming features and should be prohibited from being shown.

The *Guidelines for the classification of films and computer games* set out that the X18+ classification is

a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults. This classification is a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.

The sale of X18+ films is prohibited by law in the six states, while possession as well as sale of X18+ films is prohibited under the Northern Territory Emergency Response in

⁵⁶ Senate Legal and Constitutional Affairs References Committee, Reference: Australian Film And Literature Classification Scheme, 25 March 2011, p. 52.

prescribed communities. The latter decision followed the compelling evidence of the devastating effect of exposure to X18+ films of children in indigenous communities as reported in *Little Children are Sacred*. For example, 'The Inquiry was also told a story of a 17-year-old boy who would regularly show pornographic DVDs at a certain house then get young children to act out the scenes from the films.'⁵⁷

An earlier report in violence against women in indigenous communities in Queensland has also identified the role of X18+ films: 'The incidence of sexual violence is rising and is [in] a direct relationship to negative and deformed male socialisation associated with alcohol and other drug misuse, and the prevalence of pornographic videos in some Communities.' This report also noted evidence that \$4,000-\$5,000 worth of X18+ films were being purchased each week from Canberra by men in the Cape Communities.⁵⁸

Melinda Tankard Reist wrote in July 2007,⁵⁹

AT LAST, it is on the record: Pornography is a significant factor in the violence and anarchy in indigenous communities.

Alcohol and drugs are well accepted as causing rampant dysfunction in places already beaten down by dispossession, disempowerment, unemployment, ill health and poor education. But the trauma caused by the invasion of pornography has not been properly acknowledged.

The Northern Territory's Little Children Are Sacred report changes that. A toxic trifecta of drugs, alcohol and pornography is fuelling a culture of violence against women and children. They are being bashed, raped, disabled and killed. Their lives are marked by desperation and terror. Predictably, the sex industry is crying censorship. But children suffering porn-driven sexual abuse should come before sex industry profits.

Children whose genitals have to be reconstructed, and the babies with sexually transmitted infections, need protection now.

While the sex radicals want business as usual, Aboriginal women are identifying pornography as one of the agents of destruction in their communities.

The report tells of rampant sexually aggressive behaviour, of children being exposed to porn films and re-enacting what they have seen, of porn being used by adults to groom children for sex.

Pornography has destroyed the cultural restraints which would have protected women and children.

These isolated communities have been destroyed by white men bearing pornography. It has fed dysfunction and increased cycles of violence.

⁵⁷ *Little Children are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, p. 63, <http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf>.

⁵⁸ <<http://www.women.qld.gov.au/resources/indigenous/documents/atsi-violence-report.pdf>>, p. 156; p. 100.

⁵⁹ <<http://www.couriermail.com.au/news/opinion/suffer-the-little-children/story-e6frerdf-1111113928230>>.

The report states: 'It is apparent that children in Aboriginal communities are widely exposed to inappropriate sexual activity such as pornography, adult films and adults having sex within the child's view ... resulting in the sexualisation of childhood and the creation of normalcy around sexual activity that may be used to engage children in sexual activity.'

The inquiry that led to the report was told that sexually aberrant behaviour involving both boys and girls was becoming more common. In all communities, men and women were concerned that teenagers were becoming more violent, sexual and anarchic. Young girls didn't even know they could refuse a sexual advance...

We refer again to evidence provided to the 9th Australasian Conference on Child Abuse and Neglect in November 2003 that exposure to X-rated pornography is a significant factor in children younger than ten who were sexually abusing other children.⁶⁰

X18+ films are only legally available for sale in Australia in the ACT and in parts of the Northern Territory outside the prescribed communities. This anomaly should be remedied using the constitutional powers of the Commonwealth, including the territories power if necessary.

Publications

Category 1 and Category 2 publications each have content that is legally restricted from being sold to minors. As recommended above Collective Shout believes that both Category 1 and Category 2 publications should only be sold from premises or a part of premises which minors can be effectively prevented from entering.

There is a case, subject to this proposal for restrictions on sale being adopted, for merging the two categories into a single new R18+ classification. Consideration should be given to applying to the new classification the rules for R18+ films so that explicit depictions of actual sex are excluded.

Such depictions are exploitative and demeaning of women. The creation of these images requires the actual abuse of real women. The circulation of such images in the community and their consumption by men and boys fosters attitudes and behaviour that views women as bodies and body parts for the sexual satisfaction of men.

Publications classified Unrestricted – Not suitable for children under 15 are sold openly in newsagents and can legally be bought by boys younger than 15. This classification should be replaced by a MA15+ classification and subject to legal restrictions such as a requirement for opaque wrapping excluding the masthead and no sale to children under 15.

Music recordings

As recommended above, the classification of music lyrics should be made part of the national classification scheme with provisions that ensure that music with lyrics that

⁶⁰ Janet Stanley, Cassandra Tinning and Katie Kovacs, 'Child Protection and the Internet' 9th Australasian conference on child abuse and neglect, 24-27 November 2003, Napcan, Sydney.

celebrate violence and sexual violence against women are prohibited from release or sale.

Collective Shout recommends that

- *the X18+ classification for films should be abolished and all films that have been or would be classified X18+ be classified as Refused Classification;*
- *that Category 1 and Category 2 Restricted be merged and renamed as R18+ with criteria for classification that excludes explicit depictions of actual sex;*
- *that Unrestricted Not Suitable for Children under 15 publications be renamed MA15+ with legal restrictions on their display and a prohibition on sale or hire to children under 15; and*
- *that the levels for music recordings be replaced with classification using the same criteria as for films.*

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?

Please refer to recommendations under questions 8 and 21 above.

- **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?**

The classification criteria in the Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games should be consolidated with Unrestricted (Not suitable for children under 15) for publications being merged with MA15+ for films; Category 1 Restricted for publications being merged with R18+ and Category 2 Publications insofar as they contain explicit depictions of actual sex being Refused Classification.

The classification provisions in the Act are part of a statute that can only be changed by amendment debated and passed in both houses of the Commonwealth Parliament. While the provisions of the Act can be printed in any copy of the guidelines there necessarily remains a distinction between the Act and the guidelines which can be changed by agreement of the Ministers.

Collective Shout recommends that

The guidelines for publications be consolidated with the guidelines for films and computer games with Unrestricted (Not suitable for children under 15) for publications being merged with MA15+ for films; Category 1 Restricted for

publications being merged with R18+ and Category 2 Publications insofar as they contain explicit depictions of actual sex being Refused Classification.

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

For reasons given under question 13 above Collective Shout supports mandatory filtering of all content that would be Refused Classification or classified X18+ as well as restricting access to material that would be classified R18+ or MA15+ using a reliable age-verification system.

The mandatory internet filtering scheme should also apply to content delivered through mobile phone networks. The medium or platform used should not make a difference to the nature of the content permitted or prohibited. The problems with sexting and bullying using mobile phones need to be addressed with penalties sufficient to dissuade teenagers and others from misusing this technology to abuse women and girls. In particular it should be a serious offence to capture or transmit child pornography on a mobile phone.

Collective Shout recommends that

- ***Access to all content that would be Refused Classification or classified X18+ should be entirely prohibited online; and***
- ***Access to material that would be classified R18+ or MA15+ should only be permitted using a reliable age-verification system.***
- ***The mandatory filtering scheme for internet content apply also to content delivered by the mobile phone networks; and***
- ***There be appropriate penalties for using a mobile phone to capture or transmit images containing (i) child pornography, (ii) sexual assault or (iii) intimate sexual acts or nudity involving adults without the consent of each of the participants.***

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

Collective Shout supports the current categories that attract a Refused Classification. There should be no weakening of any of the current categories. However, Collective Shout also believes that much material that is presently given a Category 2 Restricted classification for publications; X18+ or R18+ for films and Level 3 warning for music lyrics should instead be Refused Classification.

In particular, all pornography depicting actual sex acts or simulations or animations of explicit sex acts should be Refused Classification. This material overwhelmingly depicts women as sex objects to be exploited to satisfy men's desires. It characterises women as enjoying demeaning and degrading treatment by men. It has no redeeming features.

Collective Shout also supports the current classification system for computer games where MA15+ is the highest classification and all games that exceed this classification are Refused Classification. Computer games involve a level of interactivity where the player identifies with the decision making and action sequence undertaken by perpetrators of violence, including in some games sexual violence or violence in a sexualised context (such as the sequences in Grand Theft Auto franchises were after purchasing sex with a prostitute the prostitute can be killed by being run over and set alight). This first person engagement in the sequencing of decision-making and violent actions is, not surprisingly, linked to changes in attitudes and behaviour.⁶¹

Collective Shout recommends that

- ***The Refused Classification categories not be weakened in any way but that material currently classified Category 2 Restricted (publications); X18+ (films); R18+ (films which are solely designed for sexual arousal); or Level 3 warning (music lyrics for sexual violence, violence against women) also be Refused Classification; and***
- ***No R18+ classification for computer games should be introduced but games which exceed the Ma15+ classification should continue to be classified as Refused Classification.***

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

Consistency is important but not at the cost of undermining the ability of a state or territory to impose stricter standards than the common national standard in response to local community concerns about classification issues. Any common national standards should be seen as *minimum* standards and not as a barrier to states or territories offering better protection for women and children from sexualised and demeaning content.

Collective Shout recommends that

Consistency of state and territory laws with minimum national standards be encouraged while leaving states and territories free to impose stricter laws in accordance with community concerns, especially about the objectification of women and the sexualisation of children.

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

⁶¹ Anderson, C.A. et al., 'Violent Video Game Effects on Aggression, Empathy, and Prosocial Behavior in Eastern and Western Countries: A Meta-Analytic Review', *Psychological Bulletin*, 136 (2010), pp. 151–173, <<http://www.psychology.iastate.edu/faculty/caa/abstracts/2010-2014/10ASISBSRS.pdf>>.

This submission has noted numerous failures and gaps in the current national classification scheme which is based on Commonwealth, state and territory cooperation. In particular there has been a failure by state and territory law enforcement agencies to adequately police laws restricting the sale of publications and films.

Collective Shout recommends that

The Commonwealth, states and territories continue to work together to improve the enforcement of the national classification scheme.

27. 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?

If the states referred powers to the Commonwealth then it would no longer be possible for a state to impose stricter requirements than the agreed national standard. For example, Queensland could no longer continue to prohibit the sale of all Category 1 and Category 2 Restricted publications.

It is also unclear whether the Australian Federal Police would be in a position to devote sufficient resources to enforcement of classification laws, a matter which local police should be better positioned to do, if sufficiently committed and resourced.

However, it is imperative that states and territories lift their game in enforcing classification laws. Women and children deserve respect. Laws prohibiting the sale of publications and films that portray women in demeaning and degrading ways, or that sexualise children should be rigorously enforced.

Collective Shout recommends that

States retain their powers in regard to classification laws but increase the priority and resources given to the enforcement of these laws.

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

Sexualised representations of women and girls displayed in a workplace have been held to constitute sexual harassment under anti-discrimination law.⁶² Collective Shout has received complaints from women employed in convenience stores, service stations and video stores who have been required to handle sexually offensive publications or videos in the course of their employment. Many men also object to handling such material.

⁶² For example, see *Horne and McIntosh v Press Clough Joint Venture and Metals and Engineering Workers' Union WA*, Equal Opportunity Tribunal of WA, nos 28 and 30 of 1992, 21 April 1994; and *Hopper v Mount Isa Mines Ltd* [1997] QADT 3 (29 January 1997), and *Mount Isa Mines Ltd v Hopper* [1998] QSC 287.

There should be a general right of conscientious objection for all employees to handling, selling or otherwise dealing with sexually explicit material in the course of employment. This could be incorporated into the *Fair Work Act 2009*. No one should be required to participate in the proliferation in the community of material that demeans, degrades and exploits women.

Some States have exemptions that allow employers to require minors who are employees to handle material that it is otherwise prohibited from being given to a minor. These exemptions are completely inappropriate, and indeed are a form of child sexual abuse. They should be abolished.

Collective Shout recommends that

- ***All exemptions for minors handling restricted publications or films be abolished; and***
- ***An amendment to the Fair Work Act 2009 be introduced that makes it unlawful for an employee to take adverse action against a person who is an employee, or prospective employee, of the employer because the person declines to sell or otherwise handle sexually explicit material or material that has been given a restricted classification.***

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