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Dear Terry

Thank you for the opportunity to comment on the Discussion Paper.

I support the general thrust of the discussion paper. It brings together the various strands scattered throughout different areas of government and promotes a consistency of standards and, hopefully, decisions.

I think the concept of the Regulator having control of the whole area is essential if there is to be consistency of standards and decisions, including self regulation; also that there should be one set of guidelines reflecting community standards which apply across print, cinema, games and online and finally that there should be one authority which deals with the classification and enforcement of material.

One Authority

In an ideal world, I agree that there should be one Government authority responsible for the classification of media content. Common sense would indicate that this should be the national government.

However this is an area which has been under Federal, State and Territory control, in the case of the States, since federation. It has been my experience that the States and Territories have guarded this part of their territory pretty

vigorously with some States- notably South Australia – retaining their own mechanism to overturn the national classification.

I therefore ask the ALRC to consider a “Plan B” in case the central proposition – that the Commonwealth take over the field – does not get up.

It may well be that the Federal Government of the day has philosophical difficulties with taking over areas which have been the province of the States almost since federation. In addition to the probable opposition from the States and Territories, there are also financial implications which may dampen the enthusiasm of the Commonwealth.

Enforcing the decisions across the whole field is a considerable load on the Federal Police who may be reluctant to take on this work and may have considerable difficulty in securing the necessary funding. In my experience, it has been difficult enough to engage the State and Territory police to take up the enforcement of classification decisions. Police indicate that in the order of their priorities – including murder, rape , kidnap, robbery – selling X rated videos in an adult shop in one of the States is way down the line. I suspect that there might be the same mindset in the Federal Police.

I would suggest that the ALRC might give consideration to a possible supervisory federal structure – incorporating all of the reforms which have been set out in the Discussion Paper so that there is a fallback if the main recommendation does not get up.

The Regulator

Drawing together the strands across all of the media under one authority is a worthy proposal. There are several observations about the Regulator’s position.

The Regulator should be an independent statutory authority with sufficient status and standing in the Government to resist attempts to influence his or her decisions. A similar position which comes to mind is the Inspector-General of Security.

To bolster this independence, I suggest that the ALRC recommend that the Regulator should remain under the ministerial responsibilities of the Attorney-General. The censorship/classification system was removed from the Customs Department in 1972 to the Attorney-General on the basis that civil liberties were involved in such decision making.

In my view there is a much better chance of the Regulator retaining independence if the issues involved in the new regime are recognised primarily in the area of human rights and civil liberties which have always been the responsibility of the Attorney-General.

The Regulator should be given whatever statutory powers he or she needs to carry out the responsibilities of the position. I would suggest, for instance, that the Regulator should be the adviser to the Minister – the Attorney-General – on how the scheme is working and if there are any modifications needed to improve the scheme once it is up and running.

The Regulator should, for instance, be an ex officio member, but not the chair, of the Classification Board and, if it is retained, the Classification Review Board being able to vote on a classification matter on either Board but not on a review of a decision in which he or she has taken part.

To be able to keep a watchful eye on the working of the system, the Regulator must be able to have access to all areas under his or her control and be exposed to the issues currently before the office.

I agree with the recommendations which the ALRC has made about the other duties of the Regulator - the training, the codes of practice, enforcement, research and educating the public.

Training and Participation

One of the difficulties in maintaining consistency across the whole media will be to keep classifiers in touch with what are considered current community standards. Under the ALRC's proposals, the Regulator has been given the power to conduct research and recruiting and training of classifiers.

What might help the Regulator in maintaining consistency across the media is a provision that industry classifiers spend either one or two weeks a year working with the Classification Board in classifying material. Although the content of the material may not always be in the field in which the classifier is working, the deliberations and analysis in Board discussions may help with decisions which are often made in isolation from other classifiers.

Classification Review Board

I am strongly of the view of the view that the Classification Review Board should not be disbanded.

Under the proposed scheme, the Classification Board will be the final arbiter of all of the major classification decisions. Under the ALRC's proposals, any objection to these decisions will be made to another section of the Classification Board.

The Classification Review Board at present is able to review Classification Board decisions from scratch. The CRB views the film or other material, applies the guidelines and makes an independent decision. It is the safety valve in the system in that it is completely independent from the Classification Board.

The service that it provides is a second opinion in matters where there is disagreement about a classification decision. In my experience, no classifying board gets it right all the time. There are occasions where a general view of certain community standards is held on a board which may not be entirely in kilter with actual community views.

The CRB provides the opportunity to have those classifications tested – not in the Federal Court but in another Board of community representatives not part of the Classification Board.

The criticism of the CRB is the cost of appeals. At present, the cost of an appeal is almost prohibitive. This has come about because the cost of assembling the appeal board where some or all of the members are from interstate is passed on to the appellant.

If a litigant in the Federal Court, for instance, was appealing to the Full Court of the Federal Court, the costs of the appeal would be the same if the judges comprising the appeal court were from interstate or from within the state where the appeal was being held.

I suggest to the ALRC that it should recommend the retention of the appeal board to retain the safety valve within the system but to limit the cost of an appeal to twice the cost of a classification application.

The ALRC should also recommend that appeals should remain restricted to those who have a direct interest in the film – not just on the basis that the applicant does not want it shown. In my experience, many of the objections to the screening of a film come from parties who have heard reports about a film and object to it being shown on the basis of those reports.

New Categories

The ALRC has tackled head on some of the difficulties which have faced classifiers over the last couple of decades. The PG 8 has already been given an airing in the computer games classification categories. The T13 will also be helpful as it coincides with the PG13 category in the United States.

I am not sure about the name of the classification – Teen. This will now cover the great majority of films which are submitted for classification and are given the M category.

I am not sure how the distribution or exhibition industry will react to the new category and I am unable to present a reasonable alternative.

Conclusion

In general I am supportive of the proposals in the Discussion Paper. I am happy to discuss further any of the suggestions I have made.

I wish the ALRC success with its final Report.

John Dickie

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