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Rachel Williams'
Response to the ALRC Discussion Paper National Classification Scheme Review

As a professional classifier with many years experience over a variety of platforms and content, including an extended term on the Film and Literature Classification Board (the Board), and employment with commercial and public broadcasters, I welcome this review of classification in Australia.

Thank you to the Australian Law Reform Commission (ALRC) and those conducting this review for the opportunity to contribute further and to comment on the published discussion paper.

The stated principles of this review are noble, but are not realised in the proposals published in the discussion paper.

The declared aim of this review, to keep classification regulation to the minimum needed in order to achieve a clear public purpose, has been abandoned. Instead, it is proposed to make the current approach more complicated, and to create an unwieldy and powerful censorship body at a time when such an idea is archaic and objectionable. To include enforcement powers in any new Act with regards to classification would arm this behemoth of a censorship body, and take Australia back to the turn of the last century. Australia as a thriving liberal democracy deserves better.

To suggest that a government agency or board could somehow audit television classification decisions is to welcome a dark chapter of censorship into this country. As it does to suggest that a government body impose detailed classification guidelines across all sectors of the industry.

It is inexpensive for politicians to make popular or populist changes to the censorship of content, and to barter regarding such changes for political gain. It is rumoured that the changes to the current film guidelines that saw activity legal between consenting adults across the country banned in the X category on film was as a result of political negotiations regarding the Goods and Services' Tax.

Destroying the co-operative scheme between States and Territories and investing such power in the Federal level of government over every detail of classification in this country would leave us all open to politicians wielding sticks with the next equivalent to the Bill Henson

scare, or exchanging hard-won liberal ideals for support from a politician or political group for some favoured scheme or legislation.

A national classification scheme working as a cooperative scheme between the states and territories is my preferred model as this encourages conservatism regarding changes to the scheme.

The Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) are both external to the current classification scheme in order to enshrine their independence from any such political manoeuvres. The discussion paper proposes removing this protection of the independence of public broadcasters and exposing public broadcasting to political pressure. The proposed scheme would weaken the independence of the public broadcasters to all of our detriment.

The discussion paper also includes the outrageous suggestion that on an audit or review of a television classification decision, the classifier of the content could have their ability to classify content in Australia revoked completely. This is out of step with any equivalent regulation of any other aspect of the industry, and disregards the collaborative nature of employment in a television network. To rub in the salt, the proposal does not include any avenue of appeal for such a draconian and devastating measure. How can such an approach result in anything but an increase in conservative decisions by individuals anxious, understandably, to retain their professional employment?

Throughout the discussion paper there is a disturbing absence of recognition of the professional skill and expertise of television classifiers. Any new regulator should not be able to audit television classification decisions, and any review of television classification decisions should only be as the result of complaint initiated investigations. Any new regulator should include a review process and recognise the professional status of current classifiers.

There is little evidence in the discussion paper that those conducting the review have a practical grasp of the nuances and complexities of classifying content.

It is unjust that content that can be self or co-regulated on one platform requires the payment of a fee and a delay before publication so that members of a government appointed board or public servants can make a regulatory decision regarding the same content's classification for a different platform. Addressing this inequity should be the focus of 'platform neutrality' in order to create a more equitable system.

Instead the phrase is misused in the discussion paper as if content is somehow immutable. The discussion paper suggests that the classification information attached to content will be able to be transferred to other platforms, a suggestion contingent on content not being altered or being able to be altered. In reality, content can be changed.

For example, Paul McCartney and friends performed at a live concert as a fundraiser. This concert is as one would expect of such an event: entertainment suitable for family viewing. If this event were broadcast on television the classification rating would reflect this suitability. However, when this concert was distributed on digital versatile disc (DVD) additional content was added to the concert footage. This additional material explains the MA

classification by the then Film and Literature Classification Board of this recording of an otherwise family friendly feature.

Also, different versions of content appear frequently. Content can be received by audiences with the same title, credits, and duration and yet, due, for example, to the obscuring of audio or vision through special effects, the classification of such content can be very different.

The suggestion regarding new categories would result in marked cultural shifts in Australia and increased censorship. Popular programs now being broadcast would be moved to later timeslots. Underbelly, Wild Boys, The Slap… the list is long. Where is the justification for such measures? No evidence-based research is cited in the discussion paper to suggest that Australian television audiences are calling for these changes. No evidence-based research is cited either as to why the recognisable markings should be changed to an age-based system. Nor is there any indication as to what evidence-based research, if any, formed the basis of the development of these proposed new categories.

The public call for an R rating in computer games indicates community acceptance of adults being able to read, hear, or see what they want, and confidence in classification that children can be protected. R rated content is available on most regulated platforms including subscription television, but not on free-to-air television, and this is inequitable. SBS offers Australian audiences a wide and exciting range of the world's best feature films, broadcast freely and regularly. These movies bring to Australian audiences the creativity of the best of the cream of film makers globally, and yet R rated features are censored regularly, almost all by only a few seconds, in order to meet MA restrictions. It is elitist that those who can afford to subscribe to the World Movies' channel, or who live in urban areas near niche independent cinemas can watch these films uncensored, while those who cannot must view a censored version on a channel that doesn't broadcast for an intended audience of children.

The discussion paper is lukewarm regarding the suggestion of changing or abandoning time zone restrictions. However it is likely that by the time the review is ended and any proposed new scheme implemented the use of such time zones will be redundant. Any proposed new scheme therefore should be flexible in this regard in order to accommodate this likelihood.

As a classifier who has classified for an extended term on the Classification Board and who has also worked professionally as a television classifier I disagree strongly with the proposals regarding a substantial increase in power of the Board.

The Board should not have a role in any new scheme, and certainly should not act to review decisions made by television classifiers. It is not clear that the Board will have the burden of transparency, consistency, or timeliness regarding their decisions. This alone renders questionable their primacy in the proposed new scheme.

The discussion paper does not explain why the Board should be retained, nor is there any explanation why other industry sectors should not adopt the successful co-regulatory approach so successful in regards to television classification. If this approach was adopted more widely the Board would be redundant.

Any new regulator should arrive at a set of over-arching principles on consultation with the public and industry, and then any new scheme should include the flexibility for individual sectors of the industry to interpret those principles with individual Codes. The ALRC

mentions the lack of detail in the Board's guidelines as a positive aspect of these, but doesn't take into account the usefulness for program makers of the detail in the guidelines such as the ABC's Television Program Classification Associated Standard.

Although combining functions performed currently by the Classification Branch, the Director of the Board, and the Australian Communications and Media Authority into a single regulator will help in the creation of a simple, more streamlined classification scheme, this won't be the case if the historical movement towards co-regulatory classification across industry sectors is halted and the Board is retained. This would be at odds with the principle that the classification regulation should be kept to the minimum needed to achieve a clear public purpose.

Any investigations into television classification decisions should be initiated by complaints unresolved through communication of the complainant with the broadcaster. The unresolved matters should then be investigated by a regulator with due care, not reclassified by a group of individuals separate from the understanding of the intended audience that is part of every television classifier's professional understanding. The intended audience for content is part of the context considered with every classification decision. The Board, separate from the interactive and lengthy relationship of television networks with their audiences, could not adopt this understanding from a distance and so could only ever reclassify a decision with the broadest possible understanding of any intended audience. This would result most probably in more conservative and not necessarily more accurate classification decisions.

An investigative approach rather than a reclassification of decisions is transparent and so more equitable. Any such process should also include an avenue for appeal on the part of complainants and industry.

In addition, the ALRC recognises that the starting point for complaints about classification matters should be with the content provider, but gives as an exception complainants who do not know to whom to complain. This requires clarification that any created clearing house would send complaints about classification back to the content provider, and that any regulator would not be able to deal with a complaint that hasn't first been raised with the content provider, who then has the opportunity to investigate and respond to the complainant.

I support any new regulator being able to determine how best to respond to complaints and being able to accept complaints at the regulator's discretion where reasonable. The use of authorised industry assessors I do not support, and advocate instead for the more widespread taking up of co-regulatory classification. The proposal for the development of classification instruments such as an online interactive questionnaire is questionable at best. The development of useful flexible guidelines by different sectors in the industry applying over-arching agreed common principles has worked ably with regards to television classification. This would be the best practice approach to adopt in any new scheme.

As in my earlier submission I consider this review is a good opportunity to separate classification from censorship, and so abandon the RC classification and have such content dealt with by the criminal justice system. Even if this idea isn't taken up and the Board continues I question the logistics of having the Board classify all RC and likely RC content.

When I was on the Board I classified evidence for the police including child pornography. At times the police would deliver a copy of all of the content cached on an accused person's

computer. My first experiences involved several hundred images at a time. By the conclusion of my time at the Board this had increased to more than a thousand with some investigations. The predilection of some paedophiles to accumulate vast reserves of child pornography on their individual computers rendered it more and more difficult for the Board to deal with this content fairly. Clearly every image must be viewed and assessed, as it is a different matter to be found guilty of having possession of one image of child pornography as compared with two thousand. But while this unhealthy and criminal predilection alone continues, I do not understand how the Board can deal with all RC and likely RC content in Australia.

Or is it suggested that the Board be seen to classify such content when in reality the classification work is done by a small army of public servants who 'advise' the Board's rubber stamped decisions? Surely it would be more transparent to sidestep the Board altogether and have public servants investigate such material? Is it intended that the number of Board members be increased, or will there be a further increase in the number of faceless public servants acting behind the scenes as censors with strong financial incentives to fall into line with management agendas?

I contend strongly that it would be better still to have such matters dealt with in the criminal justice system, where there is the opportunity for the accused to question any decision about the nature of content seized as evidence. This is particularly important with regards to child pornography given the community condemnation of any individual found guilty of possession of child pornography. In a just society evidence should be able to be tested in court openly, and having this aspect of the assessment of evidence being undertaken outside of the criminal justice system is unjust.

My understanding is that currently the Board cannot manage logistically the content the Board is required to classify. In order to meet legislative requirements the Board works with the assistance of a number of temporary Board members, and in-house authorised assessors. Unlike the statutory appointments of the Board the appointment of these cohorts do not take place as part of the rigorous appointment process of Board members, and unlike the identity of Board members the identity of these employees is not made public, or published on the Board's website. Many of these employees are employed on a casual or part time basis, and all lack the protection of the fixed term given to serving Board members. This creates a potential conflict of interest, as the often highly politicised decision- making of these employees can be seen to be influenced potentially by their desire for continuing employment.

In addition, it is understood anecdotally that due to the pressure to process large amounts of content classifiers at the Board are viewing content in fast forward, using technology that allows the viewer to still hear the soundtrack, albeit sped up. This results in confusion regarding the full context of classifiable elements and if this is true this would affect the credibility of Board decisions.

Given the difficulties the Board is confronting in managing the current workload any proposal that includes the Board and widens their scope should address how the Board will be able to classify more content.

Even with a greater move toward self regulation there are still likely to be only limited employment opportunities for professional classifiers. Given this I would argue caution in

the development of any training courses as although creating such a course in the postgraduate mould would be of financial benefit to universities and institutions, the lack of job opportunities would render such courses inequitable for students.

The suggestion of considering 'fear' or 'scariness' as future classifiable elements indicates a lack of understanding on the part of those carrying out the review, as these elements are considered with regards to classification currently. For example, in the ABC's Television Program Classification Associated Standard the phrase 'sense of threat or menace' specifically is considered in relation to violence at G, and there is also a particular reference to 'supernatural or mild horror themes' being included at PG.

There are anomalies in the amorphous approach to classification that has developed in Australia. Changes in technology have highlighted these, and it is timely that these anomalies be addressed to make the system more equitable and less complicated.

There has been a historical shift towards co-regulation of content in Australia, and I encourage those conducting the ALRC review to support the further development of co-regulation in any proposed new scheme.

Television classification is one area of classification that is successful in Australia. Classification at the ABC is an excellent example of a co-regulatory approach that is flexible and responsive to audience's needs. The ABC is operating in a converged media environment and managing content on a variety of platforms.

I counsel those conducting the ALRC review to consider closely how television classification operates in Australia and to make the model for any new scheme of classification the co-regulatory approach of television networks, particularly the ABC. Given the success of television classification in Australia I also ask that those conducting the ALRC review make any significant changes to television classification only as a result of substantive evidence-based research.

Rachel Williams

My submission is not intended to and does not attempt to reflect the views or opinions of my current employer, past employers, or bodies or individuals with whom I have a professional association. Any views or ideas expressed in this submission are my own and are submitted by me as an individual.