

List of Questions



Approach to the Inquiry

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

Because of the investment by Government and industry over many years to inform media consumers, particularly in film, DVD, computer games and television, the inquiry should try to improve the system rather than start all over again. It took many years for the viewing public to synthesise the classification categories for film and DVDs with those for television when they were altered in the early 90's. There needs to be a basic classification system with an agreed upon set of guidelines which the viewing public and the regulating authorities can agree upon. There can be variations to meet differing circumstances, and perhaps differing types of media. It is also important that parents, carers and guardians be given whatever assistance is practicable to help them in making informed decisions about those in their care.

Why classify and regulate content?

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

To provide an informed opinion – arrived at independently – of the elements and their intensity in the relevant film, game or publication so that the consumers of the material are not taken by surprise. While this may be less relevant for adults, it is primarily directed to those who have children and young adults in their care. Where material is considered to be so offensive or dangerous to the community-based on assessment of community standards and expectations – that it could cause disgust or expose to danger members of the community, then that material should not pass into the community

What content should be classified and regulated?

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

In general, adults ought to be able to watch, listen to or otherwise participate in whatever activity they wish to pursue. Emphasis has been on what is available for public exhibition rather the private consumption. It has generally been easier to control material available for public consumption and it has been the practice to use the classification of this material for all other technologies.

Until now, concern that material viewed privately, especially material which is not considered suitable for those under the age of 15 or 18 depending on the circumstances, cannot be subject to these controls has generally led governments and the community to impose the public exhibition standard to all forms of technology.

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

This is presently the case with written material as distinct from publications featuring what the present legislation calls "submittable material" which generally means sex, drugs and violent depictions. The present scheme has worked quite well now for many years. The drawback is that if a small group within the community finds offence where the great majority of the community does not, it can result in a skewed result-especially if the small group has the automatic right to raise it with any publication it chooses

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

Yes. There is a large amount of material-publications, instructional films, low level computer games and puzzles which really do not have to be classified. In the past, legislators in particular have been reluctant to allow this material to pass through the gate without examination. The end result has been that this material has been classified for general exhibition -or with publications, without any classification marking.

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

In theory, not. In practice, yes. Often contentious material produced by small organisations or groups and distributed amongst a limited audience arouses no community concern. Difficulties arise when members of the group or members diametrically opposed to them seek to widen the distribution.

Material produced by major players will, almost by definition, have a larger impact on the community and in reality there will be an expectation that it will be or should be classified.

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

It really depends on the artwork. Pictorial art exhibitions generally cause the most difficulty as the argument is mounted that if the works were seized in a police raid, they would be given a restricted classification and in some cases refused classification. Mapplethorpe was a good example. Some newspapers were "outraged" at some of his depictions, yet these pictures would be almost standard fare in restricted publications. Piss Christ offended a large segment of the community which never saw it but were still able to denounce it.

There is a considerable case to be made out for some kind of classification advice to be given in contentious exhibitions – perhaps by the classification board with some input from an independent artistic source.

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

There already exists a classification scheme for music which is self administered by the recording industry. This was brought about by community concern that music groups were using language that might be considered offensive in situations other than on stage or on recorded disc. The particular concern was that the language and the emphasis on sexual conduct was directed mainly at audiences in the teenage bracket. There were concerns raised about some of the demeaning attitudes towards women especially in the lyrics. The present system seems to be operating satisfactorily.

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

Yes. In some respects, this is the basis for the classification system. The composition of the audience is the basis for whether restrictions apply in cinema, DVD, games and publications.

Exception can be made. Special conditions apply to film festivals where the size of the audience is determined by the number of subscribers to the festival and the composition is restricted to those over the age of 18. Special rules have been applied to classification of films shown in festivals for over 40 years.

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

What is relevant is the composition of the home. If there are children who have access to the material, there is strong case for the material to have a classification and accompanying consumer advice so that parents or carers have some advice to fall back upon if called on to make a decision about suitability. If the household consists of adults, there is really no need for classification other than an advisory consumer advice about the strength of the elements in the film, game or publication.

Online access presents much more difficult problems as there is generally no advice on material available and virtually no control over access to programs which would certainly be at the high restricted end of public access material.

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

The main development over the last decade has been the almost universal access to the internet and the proliferation of personal computers, interactive telephones and electronic equipment such as Ipad. In the past there were concerns about access children might have to inappropriate material on videos and then DVDs. The argument was sufficiently persuasive as to have NSW, Victoria, South Australia and possibly Tasmania to renege on the agreement to have an X rated category for videos and later DVDs.

But in the case of DVDs and videos, it was necessary to have a monitor and generating equipment to screen the material which made it somewhat easier for parents to supervise the kind of material which might be watched by those under 18.

With laptop top computers and the only sanction to inappropriate material being "Are you 18 years or over?", material which many parents consider inappropriate can be viewed without the restriction which used to be necessary with earlier technology.

How should access to content be controlled?

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

It might be possible to have service providers operating in Australia to be covered by the classification scheme. It would not be possible to have similar restrictions placed on overseas operators.

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

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

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

Who should classify and regulate content?

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

Government regulatory agencies should be able to act independently when making decisions about community attitudes and community standards. Appointments should be made to the regulatory bodies of people able to assess community attitudes from their own life experience and from research to determine whether attitudes are changing.

Governments sometimes approach appointments with an undue emphasis on the person's breadth of experience in the community to the detriment of being able to make dispassionate judgments in accordance with the guidelines. Making classification decisions about films, literature, games and publications requires intellectual discipline and the capacity to defend that decision on paper and in discussion at Board level.

It is also important that there should be consistency across a regulatory structure or across several structures so that the community has the chance to be able to make informed and accurate decisions. For example, material given a PG, M or MA classification should be the same across all jurisdictions so that parents in particular have a sense of the intensity of the elements in the film, game, or DVD.

Where this falls down -the absence of an R category in the categories for computer games – the tendency is for the classification or material in games tends to be skewed.

As a result, it has not been possible for many years to have a common set of classification guidelines applying across the board to films, DVDs and computer games.

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

There needs to be a base classification decision making body applying agreed upon criteria and with guidelines to assist in making the decision. In Australia that is most likely to be a government agency. That agency sets the standards and other agencies-government or industry-can take their cue from that. Unless there is that agency-in this case the Classification Board – industry agencies will always be open to the accusation that the classification has been made to meet the expectation of the organisations the agency works for.

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

Educational, scientific and lifestyle material. Classical music and concerts and material of that kind. There is now an exempt category into which most of this material now falls

Classification fees

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

The government should subsidise the classification of all films because of the public interest component. In times past, the government did not recover the whole of the costs of the Classification Board and the Classification Review Board and what is now the Attorney-General's Department branch supporting both agencies.

Industry should bear the costs of the actual classification costs of films, DVDs and computer games. It should not be lumbered with the associated costs of the policy branch and the administration costs other than with the Board itself.

The reason to restrict the costs stems from government insistence that members of the Classification Board and the Classification Review Board be selected on an Australia wide basis and be located in Sydney. With the Classification Review Board, the fees for an appeal are now at about \$10,000. This is to cover the costs of members from interstate convening in Sydney for each hearing of an appeal.

This is not to criticise the wide reach of both boards but because this is the policy of the government, it should pick up the additional cost incurred in providing the appeal body as a matter of public policy.

There is already a scale of charges based on the length of the film. Small independent films would have a much better chance if the general costs of classification were confined to the work done on the actual classification and not the associated activities.

Classification categories and criteria

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

For the last 20 years the government and the film industry have invested heavily in promoting the existing classification categories. The only change which has been made during that time has been the addition of the MA category which restricts entry or acquisition of those under 15 to material in this category.

At the time the MA category was introduced, the film and television classification were merged so that there was one set of classifications applying to both industries and also to computer games- apart as I mentioned earlier, the R category for computer games.

At the same time, consumer advice began to be attached to cinema film and top videos and later DVDs. Shortly after that, consumer advice began to be attached to television programmes.

There have been public awareness campaigns, promotional and educational material produced by the Office of Film and Literature Classification as it then was often in association with the cinema and home entertainment industries to increase public awareness of the different classification categories.

These are well understood by the great majority of the cinema goers and home entertainment viewers and game players.

Because of a different set of categories in the United States and also in the United Kingdom, there can be difficulties assigning the correct category in our system. The most obvious is that in the US there is category PG-13. The UK has a 12 category. The difficulty arises in Australia with a film originating in the United States which is in the PG-13 category. It falls almost in the middle of our PG and M categories. So with many films there is a classification decision which has to fall into either the PG or the M category. As many of these films tend to be the most popular with families over the holiday break, parents are often critical of the classification Board's decision. Why did Crocodile Dundee get an M rating while Batman and Jurassic Park get a PG rating.

However, injecting a PG-13 category into the Australian scheme would cause a problem with the existing PG and M categories. New Zealand relies on the Australian classifications up to the M category and has no quarrel with the classifications assigned.

It is also worth remembering that Australia has set the pace in film and DVD classification being the first national classification agency to introduce consumer advice to accompany films and videos. The recommendation was made by a joint select committee and implemented very quickly. Several years after it had been successfully introduced into Australia, the UK somewhat reluctantly and then enthusiastically followed as did the rating agency in the United States.

So although the Australian system may not be perfect it seems to be working satisfactorily and is probably worth persevering with.

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

There has been some agitation for the G-8 classification for computer games to be extended to film and DVD. While this seems to have been successful with computer games the present G system with suitable consumer advice should be able to address this anomaly. The other possible change, the PG-13, has been discussed at some length in the previous question

Question 22. *How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?*

The advantage the present system has, along with the colour coding, is that they are recognized by being constantly screened in cinemas, on DVDs and on the covers of the games boxes. If the criteria can be merged across the spectrum, the markings ought to be able to follow across the content

Question 23. *Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?*

The difficulty in consolidating all of those elements is that each time the guidelines are altered, it requires an amendment to the legislation. The guidelines should remain reasonably flexible so that they can reflect any changes in community attitudes and also take account of new technologies which may arise.

The Act and the National Classification Code remain consolidated. Changes to the Code and the Act can only be made in the Australian Parliament after discussion at the Standing Committee of Censorship Ministers. The Guideline on the other hand can be changed with the approval of the Censorship Ministers.

This provides a balance between the relatively constant principles set out in the legislation and the flexibility required by changing attitudes or new technologies.

Refused Classification (RC) category

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

Child sexual abuse, sexually violent material, instruction in matters of crime or violence.

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

Material which would attract an X classification is widespread online.

Reform of the cooperative scheme

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

In terms of classification, the national Act has simplified consistency enormously. As you said elsewhere about the current inquiry, the present Act replaced over a dozen pieces of legislation which had to be taken into consideration.

Australia is a relatively small country in terms of population but it has a high rating for film and games consumption. It would be catastrophic for the distribution companies which now operate in Australia for there to be separate classifications applying to the same product in different States and Territories.

This was one of the main reasons for the initial review of the classification -to have just one classifying authority with all of the jurisdictions abiding by its decisions.

The number of alterations made to the decision of the Classification Board is so low as to be insignificant and it can only be done in South Australia.

Further, if any State or Territory Government is so steamed up about a decision of the Board, the Censorship Minister can ask the Federal Minister for a review and that request must be acted upon.

The difficulty lies in the enforcement of the decisions of the Classification Board or the failure of distributors to submit the material. This began with mirror legislation enacted by all of the States and Territories but it may have become out of kilter either because of lack of enthusiasm by State or Territory Ministers or their police forces or because of over enthusiasm by either or both.

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

The present scheme followed the inquiry by the ALRC which consulted widely with the States and Territories. In its report, it included a draft bill for the Commonwealth Parliament to enact and a model enforcement bill for each of the States and Territory to enact to support the Commonwealth legislation.

To some extent it was a trade because it was unlikely then that the States and Territories would refer their powers to the Commonwealth. Even if they did the view of the Commonwealth at the time was that they did not have to personnel on the ground to do all of the enforcement work. It had traditionally been a State and Territory matter and the States and Territories were willing to take that on as part of a co-operative arrangement.

There were, therefore, no arguments about constitutionality or referral of powers.

The Commonwealth passed its legislation, the States and Territories theirs and the whole scheme came into effect in 1996 as a cooperative scheme.

Question 28. *Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?*

Perhaps they should but the record for such referrals is decidedly dismal.

Other issues

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

Close association of classification agencies with each other. Regular meetings between the agencies and ACMA. As far as possible common classification criteria across the spectrum.

