



Treasurer; Attorney General

Our Ref: 35-17985

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Dear Ms Wynn

National Classification Scheme Review: Discussion Paper

The Australian Law Reform Commission (ALRC) Discussion Paper responds to the Commonwealth Attorney-General's reference to the ALRC to inquire and report on "matters relating to the extent to which the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act), State and Territory Enforcement legislation, Schedules 5 and 7 of the Broadcasting Services Act 1992, and the Intergovernmental Agreement on Censorship and related laws continue to provide an effective framework for the classification of media content in Australia."

That Discussion Paper makes a number of significant proposals including:

- That there be new and comprehensive Commonwealth legislation (a Classification of Media Content Act) which will provide, for example, "what types of media content may, or must be classified"; "who should classify different types of media content"; "a single set of statutory classification categories and criteria applicable to all media content"; and "the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws."
- That the Commonwealth Parliament should exercise its legislative powers to the fullest in order to support the constitutional validity of a Classification of Media Content Act.
- That where those Commonwealth legislative powers would not be sufficient (for example, in relation to material published by individuals or unincorporated entities, and sold or distributed only within one State), there should be a referral of State legislative power to the Commonwealth Parliament.
- That the Commonwealth Government should be responsible for the enforcement of classification laws unless, for political or pragmatic reasons, the States should retain some enforcement powers.

As you will be aware, the current censorship arrangements entail a cooperative Commonwealth/State/Territory scheme where there is Commonwealth legislation (*Classification (Publications, Films, and Computer Games) Act 1995* (Cth)) which provides for Commonwealth Boards to classify material on behalf of the States and Territories; State and Territory enforcement legislation (for example, the *Classification (Publications, Films, and Computer Games) Enforcement Act 1996* (WA)) which enables State and Territory enforcement agencies to enforce those classification decisions; and an intergovernmental agreement which establishes the National Classification Scheme and, for example, provides that substantive amendments to the Classification Guidelines can only be implemented with the unanimous agreement of Ministers.

In my view, the current Co-operative Classification Scheme ought not to be replaced by a centralised Commonwealth regime. In addition to the fact that my experience on the Ministerial forum for

classification indicates to me that this Co-operative Scheme operates satisfactorily, there are several other reasons for not replacing it with the proposed Classification of Media Content Act.

First, the Discussion Paper indicates that a number of industry submissions to the ALRC "were almost universal in condemning the current National Classification Scheme for not responding adequately to the challenges of media convergence." I agree that the Classification Scheme ought to adequately deal with the emerging issue of media convergence. This could be legislatively and administratively implemented and regulated within the framework of a co-operative scheme.

Second, submissions to the ALRC also suggested that there was a problem with "the need for Commonwealth, state and territory ministers to reach unanimous agreement on any amendments to the National Classification Code or to classification guidelines". I suspect that this perceived problem has arisen from the recent discussions regarding the creation of an R18+ classification for computer games. In my view, this R18+ debate does not represent a problem. Rather, it demonstrates the strength of the co-operative arrangements in that there were considerable public consultations, account was taken of a diverse range of differing views and Ministers were able to reach an informed agreement. It was not a solution imposed by one government or Minister.

Third, a further suggested problem with the Co-operative Scheme is "anomalies in the treatment of media content between different states and territories, such as inconsistent laws relating to the sale and distribution of sexually explicit adult content". Of course, in a federal system there will always be differences of view and room to accommodate those views in laws and regulations. This is especially necessary in censorship matters where local communities and States may, for very good reasons, have differing views on what classification levels ought to apply. An example of this is the permissible sale of X18+ rated films in the ACT and NT, but not in other jurisdictions.

This is in marked contrast to the ALRC Proposal 6-4 that "If the Australian Government determines that X 18+ content should be legal in all states and territories, the Classification of Media Content Act should provide that media content that is likely to be classified X 18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screened or distributed in Australia." This clearly suggests that the proposed Commonwealth legislation would enable the Commonwealth Government to determine whether X18+ films should be legal in Western Australia and, if that occurs, that such films could be legally sold in this State. This would be contrary to the current provisions in the Western Australian legislation which prohibit the sale and distribution of X18+ films.

In my view, your Final Report ought to more clearly set out the federal co-operative alternative to a centralised classification scheme. That is, it should not, for example, assume that States will refer legislative power to the Commonwealth and it should articulate a co-operative regime which facilitates media convergence while recognising that there are, and will continue to be, differing views concerning classification across the States and Territories. Governments, Ministers, industry and the public will then be in a position to evaluate an appropriate range of recommendations.

Yours sincerely



Hon C. Christian Porter MLA
TREASURER; ATTORNEY GENERAL

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Cc – *All Attorneys General (State, Territory and Commonwealth)*
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