Civil Liberties Australia CLA

Response to the

Australian Law Reform Commission's

discussion paper of the

National Classification Scheme

Civil Liberties Australia (CLA) is a not-for-profit association, which reviews proposed legislation to help make it better, as well as monitoring the actives of parliaments, departments, agencies and forces to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Our civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all Australians.

1 Overview

While the proposals presented by the Australian Law Reform Commission (ALRC) do provide some small improvements, especially for large commercial content producers, there are still several logistical and philosophical problems that make it difficult for Civil Liberties Australia to support the proposals. Indeed, the proposals do not seem to be the much vaunted 'new approach', but rather just a consolidation of legislation with the fewest changes to make life easier for those with the most money, while still leaving old, and creating new, concerns for small and not-for-profit content producers and consumers. Unless serious consideration is given to the implications of the proposals, and correcting the hopefully unintended side effects, the government would be advised to retain the current flawed Classification Scheme.

Most of the bad and outdated assumptions at the root of the current system's problems have not been challenged. The proposals will continue to allow the Classification Scheme to function as a vehicle for censorship rather than the purely informative system that should be its goal. Some of the proposals suggest a lack of familiarity or understanding of what exactly the Internet represents, its limitations and freedoms. This is fairly serious, as it means that some proposals are simply impractical to implement, impossible to enforce or their underlying purpose unclear. What is clear is that the ALRC has not been given sufficient time or resources to properly handle a review of this scale or importance. What that means for legislation that derives from this review is quite troubling.

2 Proposals

2.1 Proposal 9-5

A comprehensive review of community standards in Australia towards media content should be commissioned, combining both quantitative and qualitative methodologies, with a broad reach across the Australian community. This review should be undertaken at least every five years.

2.2 Community Standards

"Community standards" as a concept is now vacuous and should be retired. What else can "community standards" mean other than the aggregate media Australians choose to experience? Any attempt to mould or limit what Australians can experience is then by definition beyond "community standards" and into the realm of social engineering. That is not necessarily bad, social engineering can be a valid exercise, but it is important to acknowledge what is really being suggested here, and ask whether that is an appropriate goal for a classification scheme.

"Community standards" can make sense when the distribution channels are narrow and limited. Free-to-air radio and television broadcasts, for example, rely on the electromagnetic spectrum for which there is only a finite amount of bandwidth available. It could therefore be justified to reserve this available bandwidth to only content that the majority find uncontroversial or enjoyable. Likewise, public spaces,

such as parks and retail areas, have finite space and no means of avoiding the content presented. To put it another way, flashing in a public place is a crime, but there are no restrictions on being nude in your own home. The limited nature of the distribution channels has been used to defend "community standards" in the past, as discussed in section 3.33.

Electronically distributed material does not suffer from this limitation at all. The distribution costs associated with electronic distribution are minor and borne almost entirely by end users. "Community standards" therefore makes little sense in this context. There is no need to limit less popular, more controversial content, because its existence and distribution in no way limits or takes away from the availability of any other content. The only limitation should then be the solid line between what is legal and what is not. Somewhat ironically, the limitless nature of electronic distribution may allow us to discover what the true "community standards" actually are, rather than adjudicate between competing individual claims and social pressures.

If the government is interested in pursuing social engineering, then that is a conversation that should be conducted openly with the Australian people, allowing a wide variety of input. The correct vehicles for social engineering endeavours are the tax, welfare and educational systems. Australia is a pluralist, secular nation, and the narrow views of a moralistic minority or corporate interests therefore must not be the dominant voice in determining the kind of society Australia should be or the content available. Australia is demonstrably a happier society, for example, now that the repression on alternate gender identities and sexualities has been somewhat lifted. In addition, it is also important that the government not turn a large number of citizens into criminals, even minor ones, by legislative fiat.

Consider "community standards" in relation to immigration. Australia used to have a White Australia policy that did have widespread community support. That it had widespread community support is not evidence that it was correct or defensible, and indeed that is looked back on as a dark period in Australia's history. Consider also the virtually unanimous community support for condemning abuse imagery using real children. Are we really claiming the basis for the legislation to outlaw such material rests primarily on the "community standards" when there is a better and more concrete foundation for it? It's simply wrong and can't be defended. Child abuse imagery is evidence of two severe crimes. First the actual abuse itself, and second the filming and distribution of images of someone against their will (breach of privacy). Intentional privacy breaches and non-consensual violation are a solid foundation to build good legislation on, and further shows the inefficacy of "community standards".

Basing legislation on community sentiment does not lead to good laws or a just society. It is concerning that the research the ALRC is proposing (10.87) may not give an accurate picture of what we should aim for. Instead, it may just outline what current social pressures allow. Homophobia has more than demonstrated that this can happen. It is only as gay rights activists have worked hard to remove discrimination that fear of homosexuals has declined. There must be solid evidence for real harm done, and this is actually a fairly high bar to reach. Exactly what

harm does material that 'advocates or instructs in a crime' do? How is this effect actually proven? Intuitive assumptions that something is obviously wrong is not a good foundation for legislation.

2.3 Media Effects Model

The media effects model is based on the intuitive, but incorrect, notion that exposure to particular kinds of content produces anti-social behaviour. It is an incredibly poor model for actually explaining how humans behave. David Gauntlett[1], among others, has pointed out numerous problems with it. Indeed, even the government saw fit to agree that this model is flawed. The report released earlier this year into R18+ rating for video games issue by the Attorney-General's Department concluded that there was little evidence either way to support the idea that violent video games lead to anti-social behaviour. It is telling that this media effects model has been assumed to be the case since the invention of the printing press. Even when science really geared up towards trying to prove it with the invention of television, there is still no conclusive evidence that there is anything to it. Australia has a poor record when it comes to relying on this model. That books like *Lady Chatterley's Lover* could remain banned for such a long time is testament to that. Any proposals that builds on assumptions borne of the media effects models are therefore seriously suspect.

It is good the ALRC seems to agree that the media effects model is suspect (4.71), but it isn't clear that they've been able to avoid basing some proposals at least partly on it. What is the word 'harm' doing in the phrase "protecting children from material likely to harm or disturb them"? How do you go about proving that exposure to particular content is harmful? What about the other factors in the child's life? Is a child who grows up in a loving, caring environment, but happens to watch *Scarface* as a 10 year old really 'harmed' more than a child who grows up in a repressive, bigoted home, who is never allowed to express themselves but never exposed to any content that would be classified higher than PG? Would punishing the first child's parents actually solve any real problem? The rejection of the media effects model should be complete and it is not clear that the ALRC have fully committed to that view.

We should also consider the foundation for calls to protect children. Often, this is based more on the difficulty some adults have processing particular ideas rather than reflecting what children are actually capable of. We attempt to make childhood some kind of sacred time rather than part of the great journey of life. A person uncomfortable with the idea of homosexuality, for instance, is far more likely to say they are concerned about the confusion a child will have growing up with two parents of the same gender, rather than simply saying they are uncomfortable with the idea of homosexuality. This is more generally evidenced in the way we deal with sexuality. Most people don't have experience talking about sex with people they are not also sexual with. There is then a natural tendency to even see talking about sex as sexual, and therefore there are concerns that even basic sex education 'sexualises' children. This is unfortunate because, like everything in life, safety, knowledge and

[1] http://www.theory.org.uk/david/effects.htm

practice are all greatly improved by exposure to new ideas and answers to common problems and concerns.

In addition to the measures listed in 5.26, it would be good to see the government also include media literacy, comprehensive sex and relationship education and privacy protection measures as part of the national curriculum.

2.4 Proposal 6-2

The Classification of Media Content Act should provide that computer games produced on a commercial basis, that are likely to be classified MA15+ or higher, must be classified before they are sold, hired, screens or distributed in Australia.

2.5 Proposal 9-2

The Classification of Media Content Act should provide for a C classification that may be used for media content classified under the scheme. The criteria for the C classification should incorporate the current G criteria, but also provide that C content must be made specifically for children.

2.6 What should be classified

While the sheer volume of content that is below the MA15+ rating is almost certainly the reason for doing it this way, it is hard to not see this proposal as anything other than backward. Older teenagers and adults are not going to be put off by a MA15+ video game because it has consumer advice that it contains “supernatural themes” or “graphic violence”. Indeed, this segment of the community is far more likely to research their media before the experience, and are expected to have the capacity and ability to be able to put their experiences into context or abort it if they find it unpalatable.

On the other hand, video game content aimed specifically at younger or general audiences is far less likely to be properly researched or pre-experienced by parents or guardians before they expose their children to it. The typical use-case is that of someone known to the child choosing content based entirely on the cover design and consumer advice. The content may then be used as a babysitter for a few hours while the parent or guardian get on with other activities. This scenario is where consumer advice is most valuable and needs to be much more detailed.

The same is true for films, and really all media. How many adults going to see *Wolf Creek* were put off because the classification contained the additional notice that it contained ‘High level realistic violence’? The rating of R18+ by itself was enough to let adults know that they might find it disturbing, let alone that it was unsuitable for their children. Compare that with adults who took their children to see *Jurassic Park* and then found their children had nightmares that night, even though its warning says nothing of the fact that people are eaten in that film and it is only rated PG.

It is precisely because the young person experiencing the content is often not the person who choses it that makes detailed consumer advice so valuable and indispensable for the person who does the choosing. Obvious examples of broader consumer advice include things like "gender stereotyping", "supernatural themes" and "scientific inaccuracies". Content in this category is least likely to have prior viewing by a responsible adult, nor be an experience an adult shares with their child. It is therefore most important that parents and guardians who do the choosing of media for children have accurate and clear information to hand about the content and suitability. For example, a cartoon that shows all female presenting characters engaged only in stereotypical feminine roles should carry something like "gender stereotyping" consumer advice. Some people might ascribe "supernatural themes" to films presenting that Santa Claus can travel the entire world in a single night. A television program that presents a Biblical view of creation as fact should carry consumer advice indicating there may be "scientific inaccuracies". Such material may be perfectly fine for children to experience, but parents would then be informed of what kinds of messages their children will be getting, and be able to prepare appropriate responses or guidance to counter any messages they do not feel their children should absorb unchallenged.

It is perfectly acceptable to require that all material that is given a rating of MA15+ can only be screened or sold to people over the age of 15. It is also acceptable to require that all material that is given a rating higher than this can only be screened or sold to people over the age of 18. What isn't clear is why these particular categories needs extra warning (6.61). A 15 year old is very close to being a full adult, and deemed largely capable of making their own decisions. Why do they or their parents or guardians need the most warning by government? There would be an issue if such content were being shown to people under the age of 15, but that is a logistical problem the parents or guardians need to solve, not a matter of insufficient consumer advice, and, at any rate, not a problem solved by classification.

2.7 Proposal 6-4

If the Australian Government determines that X18+ 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 X18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screen or distributed.

2.8 What should be classified (continued)

It is hard to see exactly what is accomplished by mandatory classification of sexually explicit material. It should be enough for the producers to be able to prove that all people appearing in the content are adults capable of and having consented to both the sex acts and distribution of the final content. No adult choosing to watch sexually explicit material expects or requires government issued consumer advice about the kinds of sex acts performed. Is there really concern that the adult industry in Australia is somehow less capable of putting an X18+ rating label on their products then a distributor of children's cartoons is at deciding between C and G rating labels?

The ALRC's position on X18+ is perplexing. While Australia may want to insist on its own standards (6.73), such a course would also mean that Australia is enacting legislation that has no teeth, cannot be enforced in any practical sense, and will be ignored by consumers and producers alike. Proposing laws or regulation that will be actively ignored by large numbers of citizens seems to be against the charter of the ALRC. Additionally, this is also an area of the market where amateur productions and user generated content are rapidly gaining popularity. Are individuals going to be required to rate themselves before posting content online?

The only rational purpose behind this proposal, is to be able to restrict access to filmed instances of sex that the government, or more to the point, prominent lobby groups, disapprove of. While there are certainly a wide range of fetishes and aberrant behaviour that are messy, require large amounts of trust, or are well outside the norm, for the most part, the acts themselves are not illegal for any set of adults to engage in anywhere in Australia. It is difficult to see exactly what changes with the consensual presence of a camera, and then consensual distribution of the result. If the government wants to prevent the documentation of a particular fetish or aberrant behaviour entering Australia, it should present the case for outlawing the behaviour itself, which would therefore make the content evidence of an illegal act. Otherwise it is arbitrarily making particular sexual practices difficult to express.

Additionally, while it is clear that the ALRC does not wish to become involved in deciding whether sexually explicit material should be legal or not, it is undeniable that a large segment of the population enjoys such content. Laws that are routinely violated by citizens and are difficult to enforce should not be part of the ALRC's recommendations. How does the ALRC justify their stance on this proposal with their stated approach at 1.16?

The ALRC seems to be attempting to focus the classification scheme on content that is contentious only in one sense (4.60, 7.24): whether it should exist at all. Is this really what classification should be about? Sexually explicit material is contentious because some people do not think it should exist at all. On the other hand, no-one, certainly not the adult industry, advocates that it should be watched by 5 year olds. It is the very best example of something that is incredibly easy to classify because virtually everyone agrees on what the classification should be, even if they don't agree on the censorship question. High violence content is likewise only contentious in the sense that some people don't think it should exist. There is no surprising consumer advice to be found in such content. The place where real help can be delivered is in the mild impact content that contains subtle messages that some people find disturbing because of their subtlety. At any rate, the discussion of whether content should exist at all is a clear violation of the first principle of the current, and presumably next, Classification Scheme.

2.9 Proposal 10-1

The Classification of Media Content Act should provide that, if content is classified RC, the classification decision should state whether the content comprises real

depictions of actual child sexual abuse or actual sexual violence. This content could be added to any blacklist of content that must be filtered at the Internet provider level.

2.10 Refused Classification

Refused Classification still seems to be poorly defined in the proposals. It seems that the ALRC has side-stepped the widespread concerns of the broadness of the category to instead subdivide it into two. One of content that is clearly illegal, and one that retains the awkward quasi-legalness that is one of the major problems with the current scheme. This doesn't address any of the concerns with the category, and indeed generates new ones.

If the ALRC were prepared to suggest that the only content that could not be contained in the other classification categories is real depictions of actual child sexual abuse or actual sexual violence, then that would be a very strong step forward. The name 'Refused Classification' wouldn't seem appropriate as that euphemistically undermines the seriousness of this kind of content. It also suggests that it is content that somehow is appropriate for the Classification Scheme in the first place.

The ALRC has also not explicitly defined what it means by 'actual child sexual abuse' or 'actual sexual violence'. This is not idle hairsplitting. Australians have been sent to prison for nothing more than being in possession of cartoons, obviously containing no real children, that apparently are child abuse imagery. Would the ALRC consider images where it is obvious that no real child is involved to be 'actual child sexual abuse'? What about computer aided, photorealistic drawings? What is the crime we are actually trying to punish in such cases, and what is the basis for making that determination? Similarly, what is 'actual sexual violence' describing? Is it solely content where one or more of the participants did not want either the sexual encounter or the filming to take place, or does it also include staged and role-played content? What level of assurance from participants, if any, would be considered sufficient to consider staged content acceptable? What is 'violence' in any case? A playful slap? Biting? Spankings?

Looking at the second subcategory the ALRC is proposing, it is still unclear what will happen to much content that is in this realm. Would *The Peaceful Pill Handbook* remain a heavily restricted work, while still being legal to own through most of Australia? Would books exhibiting works of graffiti still be banned? Another way to ask this question is, will there be any content that is accepted and available in other Western countries that would remain effectively banned in Australia? This again seems to be an area where the ALRC has side-stepped the concerns of many, and rather opted for a no change scenario. What of the Terrorist Material amendment to the definition of Refused Classification? Does the ALRC consider this an overreach or not?

The other concern is that the 'Impact Test' does not really seem to have anything to do with Refused Classification (8.7). It is unclear how *The Art Of Shoplifting* is 'very high impact' for instance. The point isn't the volume of content that reaches

a particular threshold in any case (8.8). What matters is that it should not be the business of government to decide for their citizens what kind of content they can experience. Additionally, governments should not require their citizens to constantly prove their identity by demanding restricted access systems.

2.11 Proposal 6-6

The Classification of Media Content Act should provide that the Regulator or other law enforcement body must apply for the classification of media content that is likely to be RC before:
(a) charging a person with an offence under the new Act that relates to dealing with content that is likely to be RC;
(b) issuing a person a notice under the new Act requiring the person to stop distributing the content, for example by taking it down from the Internet; or
(c) adding the content to the RC Content List (a list of content that the Australian Government proposes must be filtered by Internet service providers).

2.12 Internet filtering

Firstly, it is disheartening to see that the ALRC is not prepared to even address the nature of the proposed mandatory filter. If the ALRC isn't prepared to comment on what is essentially the Government's primary reason for commissioning this review, then what is really the point?

Before (c), there needs to be an additional step requiring Australian law enforcement to exhaust all steps to have the content destroyed by at least contacting the hosting company or local law enforcement in the event Australia is not the country of origin.

It would also be advisable to require that any additions to the blacklist must be reported in the same manner (or better) that classification decisions are reported today. If not the URL itself, then at least that the addition was made and why that decision was taken. In particular, what the nature of the content is. All a blacklist does is draw a curtain over the content; pretending it doesn't exist. This is the least ethical response to the discovery of child sexual abuse imagery.

In places the ALRC also seems to making logical leaps that don't quite hold together. For instance in 10.82 the ALRC says that essentially most people agree that actual child abuse should not be able to be purchased at any corner store. It does not logically follow that just because there is that agreement, that these people want and support filtering in a convergent environment. There is a difference between agreeing that certain kinds of content should be illegal (all classes of rape, essentially) and filtering said material. Filtering implies that the government knows where that material is and its nature. That implies the government is prepared to leave such material effectively available, as all filtering is imperfect, and simply pretending the job is done by putting a blanket over it.

This approach is condemned by most thinking people, as the multitude of church

pedophile scandals and the recent Penn State scandal in the United States have demonstrated. It is exactly the same. Some people became aware that child abuse was occurring, but it wasn't reported or if it was, it wasn't acted on. Authorities knowingly allowing such content to remain on the Internet, rather than destroying it and bringing the people responsible to justice is also horrific. This is well before the dangers of government or corporate abuse of filtering infrastructure is taken into account, or the ease with which such filters can be bypassed. It is unclear what filtering is actually attempting to accomplish that can't be phenomenally better handled through other means.

It has been shown that most blacklists in force throughout the world, almost universally imposed to 'protect the children', suffer from this problem. Authorities who have something easy to do to discharge their responsibilities, like simply adding offending URLs to a blacklist, do not do their jobs properly. This is perhaps somewhat understandable. This is content that only the tiniest fraction of society doesn't feel revolted by, and it therefore cannot be an easy job. The vast majority of content on leaked blacklists can be taken down and destroyed with a simple email to the hosting company. Indeed, hosting companies are so willing to do this, that malicious takedowns of content are a real problem on the Internet. What is needed is better funding and support for the law enforcement agencies we task with this job. Pretending that this problem can be solved easily does not help anyone. Not society, not law enforcement, and certainly not the victims.

Importantly, if the ALRC does see fit to provide cover and support for Refused Classification blacklist filtering, then it must also ensure the new Act imposes significant penalties on the government, and the Minister in particular, in the event that material that is not Refused Classification is found to be on the blacklist. Forced resignation from the Home Affairs portfolio, instant dismissal from parliament, criminal charges, and/or loss of parliamentary pension would ensure some small amount of public trust in such a system. If the government does chooses to pursue this largely symbolic measure, appropriate safeguards for the inevitable censorship abuse must be put in place. Without significant penalties also associated with restriction on access to legal material, it will not be long until a future government abuses the system. The government should have no reason to dismiss such protections if their interest in such control is as honourable as claimed.

In addition, the ALRC should be sure that the figures it is using do have solid basis in fact. There are a lot of claims made about the dangers of certain kinds of content, or the scale of problems. For instance, in 4.34, a comment from a submission includes the claim that child pornography is a multi-billion dollar industry. Unless the claimant is talking Zimbabwean dollars, it is hard to believe this figure. There aren't any reliable numbers published anywhere about child pornography, but even at its mid-2000s peak, the legal adult industry had revenues that barely reached two billion US dollars. The entire world market for video games is only just passing the 50 billion dollar mark. It is therefore extremely hard to believe that content that is universally condemned could be reaching such astronomical numbers. The problem is not as large as many claim, especially on the web. The web is far too open to scrutiny for people who are interested in such content. Peer-to-peer file sharing and

virtual private networks are much more likely to see such content than websites, and are not subject to filtering. The response should not be out of proportion to the scale of the problem. It's also an arms race, the heavier the Internet is cracked down upon, the more resources will be put into creating means of bypassing those blocks. Arms races cannot be won in this manner.

The ALRC should also ensure it properly understands the technical information it is receiving. In 8.36, the ALRC points out Telstra's willingness to agree to voluntary filtering. There are several different ways that filtering can be technically accomplished. All of them have problems associated with them. DNS filtering is scalable, for instance, but suffers from being both incredibly broad and also incredibly easy to bypass. Other methods of filtering that actually require examining requested URLs in detail rapidly break down with either the size of the user base or the length of the blacklist. They are often incredibly easy to bypass as well. Does the ALRC actually understand the filtering method implemented by Telstra and what its limitations are? Has this been explained by someone who doesn't have a stake in filtering?

It turns out that people who are interested in acquiring child abuse imagery have to also be fairly technologically accomplished. This is because it is relatively easy for law enforcement to track down people who deliberately access this kind of content. The result is that there is very little 'actual child abuse' on the web. It isn't something you can accidentally stumble across and the AFP have said that it is so hard to find they do not believe it can be found by accident. In such circumstances, exactly what filtering is supposed to accomplish is unclear. If its purpose is to prevent access to people who are actively seeking out illegal content, then the ease with which filtering can be bypassed and reverse-engineered is a serious problem. If its purpose is to prevent people from accidentally stumbling across illegal content, there doesn't appear to be much to support the notion that this actually happens with any regularity. There is no use-case where this 'solution' makes sense.

2.13 Proposal 7-4

The Classification of Media Content Act should provide that an authorised industry classifier is a person who has been authorised to classify media content by the Regulator, having completed training approved by the Regulator.

2.14 Small operators

How will this work for small businesses? Suppose a small two person business produces a video game for profit. Will at least one of the two people be required to complete training? Will they be forced to pay money to an industry body dominated by large multi-national companies to have their video game classified? Will it be enough for them to read a particular page on the Regulator's website and provide an appropriate classification? This proposal, as stated, seems designed to eliminate small business competition.

2.15 Proposal 8-5

The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, before broadcasting the content, on packaging, on websites and programs from which the content may be streamed or downloaded, and on advertising for the content.

2.16 Broadcasting

Exactly how does the ALRC propose this be enforced, particularly for websites? While this can easily be a requirement for companies operating in Australia, such as the ABC's iView, it is difficult to see anyone providing content intended for an international audience complying with this requirement for only their Australian audience. Suppose commercial content that is or is possibly MA15+ has passed into the public domain, and therefore able to be posted to a site like YouTube. How does the ALRC envisage forcing YouTube to require uploaders to provide an appropriate classification rating for the upload? YouTube can't even guarantee that all the content on its website is free of commercial Copyright restrictions, and it can take a while before such content is removed.

The nature of the Internet is that it is dynamic and fluid in nature, and sometimes content is spread simply not because it is popular, but because it is bizarre. How would the ALRC envisage this new Classification Scheme stopping the next *2 Girls 1 Cup*[2]? Does the ALRC really believe it would prevent someone emailing *goatse.cx*? How would it deal with the artwork of Robert Mapplethorpe used for shock value? The whole point of the spread of such content is the shock factor. It is unclear how any of the proposals the ALRC has made would work in any practical sense to prevent this. If it can't do that, then why make life harder for everyone in a vain attempt?

Takedowns are an after-the-fact approach. They have their place for content that is clearly illegal or against the terms of service of the provider. For content that was designed to shock, the nature of it is that it has a very short half-life and will be reproduced on multiple sources, making blacklisting, let alone classification, difficult and pointless.

The Internet is a pull medium. The content a person experiences is determined by which websites they choose to visit. This is unlike television where the content, editing and timing is decided by others. As a result, these kinds of shock fads are based on an element of trust, someone suggesting particular sites to visit. This makes prosecution unlikely and undesirable, as there is some degree of trust between them.

[2] Strongly suggested to look this up on Wikipedia, rather than through a web search.

2.17 Proposal 8-1

The Classification of Media Content Act should provide that access to all media content that is likely to be R18+ must be restricted to adults.

2.18 Access restrictions

Like proposal 8-5, this is something that sounds good, but is impractical. How does the ALRC propose this be implemented? How do you prove you are an adult online? How will privacy rights be balanced into this? What mechanism of restriction does the ALRC propose be acceptable given that even a barely competent teenager could easily work around even the most complex restrictions, as the recent revolutions in the Middle East have shown? Has the ALRC actually done an experiment to see if they can buy content from Telstra (8.27) without having to supply proof of age? Have they actually attempted to use a pre-paid debit card?

Unless the ALRC can actually propose a practical means of Internet restriction that isn't trivially bypassed and does not suffer from under or over blocking, it seems dangerous to make proposals suggesting that such things can simply be legislated into existence. To do otherwise is like proposing that the government legislate that it never rain on Sundays. It is disingenuous to the politicians who are relying on the advice, and it will further generate a false sense of security in Australians about exactly what can be achieved online in any real sense.

The only practical approach to the Internet is to first accept that it cannot be made "child safe", just like an entire city cannot be made "child safe". Instead, public education needs to move parents and guardians away from assuming the Internet can be used as a babysitter.

Instead of trying to restrict the age inappropriate content for everyone, it would make more sense to establish (or make use of one of the existing) walled gardens, which only allow access to websites that have been approved by some authority, for access by young children. Encouraging technological development in this direction, in particular, making it easy for parents and guardians to easily switch to full access of the Internet but ensuring young children cannot easily do so. Even with children around, adults are going to want to have access to more mature content.

One major point to consider is that all access restriction systems fail if someone is prepared to lie. The YouTube access restriction system that the ALRC endorses (8.10) can be easily bypassed by a child with a disposable email account and no compunction about misrepresenting their age. Why should that be YouTube's responsibility? If YouTube can get away with that, why should someone making available more mature content have to be held to a higher standard? Exactly what is gained by making this a requirement? At the end of the day children, especially teenagers, will easily be able to access restricted content. There is no practical solution to this other than to ensure they have the intellectual and emotional tools necessary to understand exactly what it is they're choosing to experience.

2.19 Question 12-1

How should the complaints-handling function of the Regulator be framed in the new Classification of Media Content Act? For example, should complaints be able to be made directly to the Regulator where an industry complaints-handling scheme exists? What discretion should the Regulator have to decline to investigate complaints?

2.20 Complaints

This is really a question of how grey the area is between classification categories. Is a particular work that is given a PG8+ rating that 10% of people feel should carry a T13+ rating worth investigating? What about if 40% of people feel this?

There are no firm answers on this, which is another reason classification should never be used as an excuse for censorship. The Regulator absolutely should have the discretion to decline to investigate complaints, especially if there is evidence that the complaints are probably manufactured by a lobby group. This is often the primary source of complaints, especially for material that ends up Refused Classification.

2.21 Board composition

The ALRC seemed to have no proposals or recommendations regarding the demographics of the make up of the new Board. There should be safeguards written into the legislation that ensures the classifiers can never become homogenous or biased towards or against any particular segment of the Australian community. It was only a few years ago that the make up of the Board was almost exclusively old, white men with a legal or political background.

2.22 Censorship

Australians must remain protected from overreach by future governments of any political persuasion. While the current scheme does have many flaws in terms of adapting to changing technology, it has at least put a brake on all Australians suffering more extreme censorship. While the opposing case is the R18+ for video games, which has taken far too long to reach even this point, the current sharing of power arrangement has prevented nasty ratcheting up of censorship. The 2007 terrorist materials amendment is an example of that. It only become law because the then Federal Government was prepared to override the system. The non-violent erotica debate is another example. Ideally attempts to liberalise the scheme could be done with very little agreement, while increasing restrictions would require unanimous State and Federal support.

If the State governments have to refer all their power in this area to the Federal government, or the High Court decides that the Federal government can do this under their communication or trade powers, what will prevent Australians suffering more extreme censorship in the future?

3 Conclusion

Civil Liberties Australia is pleased that the ALRC accepts that the current mandatory nature of classification is not sustainable. Moving the responsibility of classification largely onto industry and producers would be a big step forward. Civil Liberties Australia is less impressed that for many of the proposals, the ALRC seems to be hand-waving to hide the impracticality of what is being suggested. In a few cases, the implications of the proposals are quite nasty for individuals, who most Australians would not consider to be at any fault. In a few cases the proposals, or the thinking behind them, suggests the ALRC is going against its charter (1.16, 1.17). Only the issues Civil Liberties Australia considered most serious have been addressed in this response. There are numerous other problems and impracticalities that will hopefully be addressed by other submissions.

The evident problems on display in the proposals is almost certainly explained by the very short time the Government has allowed for the ALRC to investigate, process and understand such an important and complicated issue, and all its related issues. The proposals as they stand in the discussion paper have too many unaddressed sideffects for them to become the basis of a new classification scheme. It would be desirable to see at least another round, and ideally many more, of proposals and discussion before the reporting date. Hopefully the Government will grant the additional time that is clearly needed.

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