Submission on National Classification Scheme Review Discussion Paper to the Australian Law Reform Commission

Introduction

Collective Shout: for a world free of sexploitation welcomes the opportunity to make a submission on the discussion paper on the National Classification Scheme Review issued by the Australian Law Reform Commission.

Collective Shout (www.collectiveshout.org) is a two-year-old grassroots movement challenging the objectification of women and sexualisation of girls in the media and popular culture.

We target corporations, advertisers, marketers and media which exploit the bodies of women and girls to sell products and services, and campaign to change their behaviour. More broadly we also engage in issues relating to other forms of sexploitation, including the inter-connected industries of pornography, prostitution and trafficking.

Supporters of Collective Shout are critical of the current national classification schemes, which rely on a mixture of self-regulation and government enforcement. In particular, we are concerned about the lack of effective enforcement through sufficiently serious penalties to deter those who are making a profit from the pornification of women and girls.

The national classification schemes have failed to halt or even slow the proliferation of images and words through publications, films, television, billboards, mobile phones and the internet, as well as radio and music recordings, that demean women, reduce them to sexual objects, foster a culture which condones sexual violence and pressures young girls to act in inappropriately adult sexual ways.

In this submission we respond to the proposals for a new National Classification Scheme presented in the discussion paper, by calling for effective measures to halt and reverse the proliferation of sexualised and demeaning images and depictions of women and girls in the new convergent media environment.

Proposal 5–1 A new National Classification Scheme

The current national classification schemes have failed to halt the proliferation in all forms of media of images that demean women and girls by portraying them as sexual objects, often glorifying violence and sexual assault against them. The time for a major overhaul of the national classification scheme is overdue.

The proposal for a unified and new National Classification Scheme is therefore welcome in principle.

However, Collective Shout has serious reservations about some aspects of the ALRC's proposals. These reservations and alternative recommendations are set out in detail below.

Collective Shout recommends that:

A new National Classification Scheme should be adopted with one of its primary objective being significantly to reduce the prevalence and availability of material, in all media, which contains images or words that reduce women to sex objects, condone or celebrate sexual violence against women or promote the sexualisation of children.

Proposal 5–2 The National Classification Scheme should be based on a new *Classification of Media Content Act*

Proposal 5-2 sets out a list of matters to be covered by a proposed new *Classification of Media Content Act.* These matters are:

(a) what types of media content may, or must be classified;

(b) who should classify different types of media content;

(c) a single set of statutory classification categories and criteria applicable to all media content;

(d) access restrictions on adult content;

(e) the development and operation of industry classification codes consistent with the statutory classification criteria; and

(f) the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws.

These are all matters that should be covered by classification legislation.

Collective Shout recommends that:

New classification legislation provide for the matters listed in Proposal 5-2.

Proposal 5-3 A single regulator

Under the current National Classification Scheme responsibility for the regulation of classification is divided between the Australian Communications and Media Authority, the Attorney Generals' Department and the Classification Board. There is merit in having a single regulator for all classification matters regardless of media type.

Collective Shout recommends that:

New classification legislation should provide for the establishment of a single regulator responsible for the regulation of all media content under a new National Classification Scheme.

Proposal 5-4 Platform neutral definitions

Collective Shout has raised concerns about the depiction of women and girls across a range of media including billboards, television, music lyrics and videos, films, computer games, mobile phone applications and websites. The fundamental issues are the same across all these diverse forms of media.

It would therefore be appropriate for an overarching definition of "media content" and "media content provider" to be used in new legislation to ensure consistency of law across not just existing forms of media, but new forms that may emerge as technologies develop.

Collective Shout recommends that:

New classification legislation should have platform neutral definitions of "*media content*" and "*media content provider*".

Proposal 6-1 All feature films and commercial television programs to be classified

The purpose of classifying films and television programs is to ensure that community standards are observed by:

- classifying as legally prohibited media content that exceeds these standards;
- classifying as legally restricted media content that is inappropriate for children or children below a specific age to be exposed to;
- classifying with appropriate advisory classifications other media content to assist families and consumers determine which media content they wish to access.

These purposes apply to all films intended for distribution or exhibition and to all television programs intended for broadcast regardless of whether or not they are commercially produced.

Collective Shout recommends that:

New classification legislation should require all films and television programs, whether commercially produced or not, to be classified before being distributed, exhibited or broadcast.

Proposal 6-2 Computer games

Proposal 6-2 is that only computer games that are likely to be classified MA 15+ or higher, and are produced on a commercial basis, must be classified before they are sold, hired, screened or distributed in Australia.

This would mean games that would be likely to be classified as lower than MA15+ would not be classified.

However, the lower classifications above G correspond to certain levels of violence and sexual content. Individual consumers and families want information on such content for computer games as much as for films or television programs.

Nor should the requirement for classification depend on whether or not a computer game is commercially produced.

Collective Shout recommends that:

New classification legislation should require all computer games to be classified before they are sold, hired, screened or distributed in Australia.

Proposal 6-3 Exempt content

Proposal 6–3 is that the *Classification of Media Content Act* should provide a definition of 'exempt content' that captures all media content that is exempt from the laws relating to what must be classified. The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. This content should not be exempt from the proposed law that provides that all content likely to be R18+ must be restricted to adults.

Collective Shout has raised serious concerns about films exhibited at film festivals. The Melbourne film festival for example recently screened *A Serbian Film* before the Classification Review Board banned it.

Collective Shout does not support an exemption for films festivals from the requirement to have film classified before exhibiting them.

Collective Shout recommends that:

Films and computer games to be shown at film festivals, art galleries and other cultural institutions should not be exempt from classification.

Proposal 6-4 Classification of X18+ films

Proposal 6–4 is that "*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, screened or distributed in Australia*."

The discussion paper does not address the merits or otherwise of allowing X18+ films to be legally sold.

Customs regulations prohibit the import of 'objectionable material', defined so as to include publications, films and computer games that would be Refused Classification because they contain material that exceeds the highest classification for each of these forms of material.

In giving evidence to the Legal and Constitutional Affairs Committee at a public hearing on 25 March 2011, Robbie Swan criticised a recent decision by Customs 'in which they are now forbidding adult importers to bring in masters from which they can edit and make X-rated films that fit the Australian scheme'[1].

[1] Proof Committee Hansard, Senate Legal and Constitutional Affairs References Committee, *Reference: Australian Film And Literature Classification Scheme*, Friday 25 March 2011, p. 52.

Collective Shout welcomes this decision. No one should be exempt from customs regulations, least of all companies like Calvista, a division of Adultshop.Com, which makes a profit from pornography that demeans and degrades women.

Collective Shout believes that such films have no redeeming features and should be prohibited from being shown.

The current *Guidelines for the classification of films and computer games* set out that the X18+ classification is

> a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults. This classification is a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.

The sale of X18+ films is prohibited by law in the six states, while possession as well as sale of X18+ films is prohibited under the Northern Territory Emergency Response in prescribed communities. The latter decision followed the compelling evidence of the devastating effect of exposure to X18+ films of children in indigenous communities as reported in *Little Children are Sacred*. For example, 'The Inquiry was also told a story of a 17-year-old boy who would regularly show pornographic DVDs at a certain house then get young children to act out the scenes from the films.'[2]

An earlier report on violence against women in indigenous communities in Queensland has also identified the role of X18+ films: 'The incidence of sexual violence is rising and is [in] a direct relationship to negative and deformed male socialisation associated with alcohol and other drug misuse, and the prevalence of pornographic videos in some Communities.' This report also noted evidence that $4,000-$5,000 worth of X18+ films were being purchased each week from Canberra by men in the Cape Communities.[3]

Melinda Tankard Reist wrote in July 2007,[4]

> AT LAST, it is on the record: Pornography is a significant factor in the violence and anarchy in indigenous communities.
>
> Alcohol and drugs are well accepted as causing rampant dysfunction in places already beaten down by dispossession, disempowerment, unemployment, ill health and poor education. But the trauma caused by the invasion of pornography has not been properly acknowledged.
>
> The Northern Territory's *Little Children Are Sacred* report changes that. A toxic trifecta of drugs, alcohol and pornography is fuelling a culture of violence against women and children. They are being bashed, raped, disabled and killed. Their lives are marked by desperation and terror. Predictably, the sex industry is crying censorship. But children suffering porn-driven sexual abuse should come before sex industry profits.

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[2] Northern Territory Board of Inquiry , *Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, available online: http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdfp.63.

[3] Queensland Government, Department of Aboriginal and Torres Strait Islander Policy and Development, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report,* 1999, p. 156; p. 100, available online: http://www.women.qld.gov.au/resources/women/resources/indigenous/atsi-violence-report.pdf

[4] Melinda Tankard Reist, Suffer the Little Children*, Courier Mail,* 2007, available online: http://www.couriermail.com.au/news/opinion/suffer-the-little-children/story-e6frerdf-1111113928230

> Children whose genitals have to be reconstructed, and the babies with sexually transmitted infections, need protection now.
>
> While the sex radicals want business as usual, Aboriginal women are identifying pornography as one of the agents of destruction in their communities.
>
> The report tells of rampant sexually aggressive behaviour, of children being exposed to porn films and re-enacting what they have seen, of porn being used by adults to groom children for sex.
>
> Pornography has destroyed the cultural restraints which would have protected women and children.
>
> These isolated communities have been destroyed by white men bearing pornography. It has fed dysfunction and increased cycles of violence.
>
> The report states: 'It is apparent that children in Aboriginal communities are widely exposed to inappropriate sexual activity such as pornography, adult films and adults having sex within the child's view … resulting in the sexualisation of childhood and the creation of normalcy around sexual activity that may be used to engage children in sexual activity.'
>
> The inquiry that led to the report was told that sexually aberrant behaviour involving both boys and girls was becoming more common. In all communities, men and women were concerned that teenagers were becoming more violent, sexual and anarchic. Young girls didn't even know they could refuse a sexual advance…

The Ninth Australasian Conference on Child Abuse and Neglect in November 2003 was told by staff from the Child at Risk Assessment Unit at the Canberra Hospital that exposure to X-rated pornography was a significant factor in children younger than ten who were sexually abusing other children. In the first six months of 2003, 48 children under ten were identified as having engaged in sexually abusive acts. Access to graphic sexual images had shaped the trend.[5]

X18+ films are only legally available for sale in Australia in the ACT and in parts of the Northern Territory outside the prescribed communities.

This anomaly should be remedied using the constitutional powers of the Commonwealth, including the territories power if necessary.

The Senate Legal and Constitutional Affairs Committee recently recommend that

> *the exhibition, sale, possession and supply of X18+ films should be prohibited in all Australian jurisdictions [6].*

The Australian Law Reform Commission should be endorsing this recommendation and proposing that the new National Classification Scheme comprehensively ban the exhibition, sale, possession and supply of X18+ films.

Collective Shout recommends that:

The X18+ classification for films should be abolished and all films that have been or would be classified X18+ be classified as Refused Classification.

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[5] Janet Stanley, Cassandra Tinning and Katie Kovacs, 'Child Protection and the Internet', paper presented to the *Ninth Australasian conference on child abuse and neglect*, 24-27 November 2003, Napcan, Sydney.

[6] Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, Recommendation 13, p. xv, available online: http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf

Proposal 6-5 Content that is likely to be Refused Classification (RC) must be classified

Media content is Refused Classification because it exceeds community standards to the extent it should not be sold, exhibited or possessed by anyone. In order to enforce these prohibitions media content that is likely to be Refused Classification should be legally required to be submitted for classification.

Collective Shout recommends that:

New classification legislation should require that all media content, which is likely to be Refused Classification, be classified.

Proposal 6-6 Classifying material as RC before taking certain actions

Proposal 6–6 is that 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).

This proposal is appropriate and represents current practice.

Collective Shout recommends that:

New classification legislation should require that before the regulator or any law enforcement agency takes action in relation to media content that is likely to be Refused Classification, the media content should be classified.

Proposal 6-7 Classifying modified content

Proposal 6–7 is that the *Classification of Media Content Act* should provide that if classified content is modified, the modified version shall be taken to be unclassified. The Act should define 'modify' to mean 'modifying content such that the modified content is likely to have a different classification from the original content'.

It is appropriate, in a converging media environment where media content is changing more rapidly within and across media types and platforms, to define "modify" in broad terms as proposed. This would mean that trivial changes do not require reclassification but that any change which is likely to result in a new classification would trigger a legal requirement to have the new version classified.

Collective Shout recommends that:

New classification legislation should require that, if classified content is modified, the modified version shall be taken to be unclassified. The legislation should define 'modify' to mean 'modifying content such that the modified content is likely to have a different classification from the original content'.

Proposal 6-8 Industry codes of practice for optionally classified content

Proposal 6–8 is that industry bodies should develop codes of practice that encourage providers of certain content that is not required to be classified, to classify and mark content using the categories, criteria, and markings of the National Classification Scheme. This content may include computer games likely to be classified below MA 15+ and music with explicit lyrics.

As stated above in response to Proposal 6-2 all computer games should be required to be classified before being exhibited or sold.

Music lyrics are a significant influence in popular culture. The distorted image of women presented by some lyrics is therefore of concern. Some recent examples include:

- 'That's the way you like to f*** … rough sex make it hurt, in the garden all in the dirt' (Ludacris)
- 'She find pictures in my email, I sent this bitch a picture of my dick. I don't know what it is with females, But I'm not too good at that shit' (Kanye West)
- 'Send those nudes, make me drool. Hit me up - make me cum. Wanna sext? I'll show you some' (Blood on the Dance Floor)
- Paying for pussy – 'Rollin' dice with the boys, Yah niggas pay for pussy, Whether it's at the tity bar, Or outta the car, Yah niggas pay for pussy' (Snoop Dog)
- Bitch please – 'I get this pussy everywhere that I go, (Yeah Nigga you know what's happenin' man) Ask the bitches in your click can't say no' (Snoop Dog)

As part of a recent study of the effects of listening to popular music on sexual behaviour, researchers coded the content of 164 songs from 16 artists popular with teens. Overall, 15% of songs contained sexually degrading lyrics. Most of these lyrics were concentrated within the work of rap and R&B artists; as many as 70% of individual artists' songs included degrading sexual content.[7]

Collective Shout protested Brian McFadden's 2011 release *Just as you are (Drunk at the bar)* [8]

> I like you just the way you are, drunk and dancing at the bar, I can't wait to take you home so I can do some damage
> I like you just the way you are, drunk and dancing at the bar, I can't wait to take you home so I can take advantage

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[7] American Psychological Association, *Report of the APA Task Force on the Sexualization of Girls,* Washington DC, 2007, p. 7, available online: http://www.apa.org/pi/wpo/sexualization.html.
[8] Melinda Tankard Reist, New song from Delta's man feeds rape myth*, The Drum*, 20 February 2011, available online: http://www.abc.net.au/unleashed/44500.html

Lyrics like this help normalise and justify violence against women.

Alison Grundy, a clinical psychologist in the field of sexual violence for 20 years, describes the lyrics as "one more open demonstration of the contempt shown to women's human rights and the fundamental legislation that is place to protect them"[9].

"Now we have 30 years of research to show that the sexualised and violent messages of popular music, media and video games do shape and provoke male aggressive and sexualised violence. I wonder how long it will be before songs like this are seen as inciting crimes under the criminal code? Not soon enough for those of us who work with victims on the long road to recovery after experiencing the 'do some damage and take advantage' behaviour lauded in this song." [10]

The classification of music lyrics is carried out jointly by the Australian Record Industry Association (ARIA) and the Australian Music Retailers Association (AMRA) under a code of practice which provides three levels of warning labels: 'Moderate impact coarse language and themes'; 'Strong impact coarse language and themes'; and 'Restricted: High impact themes: Not to be sold to persons under 18'. Products containing lyrics which promote, incite, instruct or exploitatively or gratuitously depict drug abuse, cruelty, suicide, criminal or sexual violence, child abuse, incest, bestiality, or any other revolting or abhorrent activity in a way that causes outrage or extreme disgust to most adults, is not allowed to be sold or released by AMRA or ARIA members.

Rather than being listed as prohibited many song lyrics, which celebrate sexual violence against women, have been given a warning label by ARIA/AMRA. For example, 'Stripped, raped and strangled' by Cannibal Corpse was given a Level 3 Warning rather than prohibited from sale by AMRA members. The song includes the following lines:

> She was so beautiful I had to kill her
> Tied her up and taped her mouth shut
> Couldn't scream, raped violently
> Rope tight, around her throat
> Her body twitches as she chokes
> Strangulation caused her death just like all the others
> *Raped before and after death; stripped, naked, tortured*.

The recent Senate report, *Review of the National Classification Scheme: achieving the right balance*, helpfully recommended "that the ARIA/AMRA Labelling Code … should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the National Classification Scheme. The adoption of these measures by industry should be legally enforceable and subject to sanctions."[11]

It would be better for the classification of music lyrics to become part of the new National Classification Scheme with guidelines, which more effectively exclude from release or sale lyrics that celebrate sexual violence against women.

Music that is likely to be classified MA15+ or higher should be required to be classified before being sold or broadcast.

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[9] Ibid.
[10] Ibid.
[11] Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: achieving the right balance*, June 2011, Recommendation 23, p. xvi, available online: http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf

Collective Shout recommends that:

Music that is likely to be classified MA15+ or higher should be required to be classified before being sold or broadcast.

Proposal 7-1 Content required to be classified by the Classification Board

Proposal 7–1 is that the *Classification of Media Content Act* should provide that the following content must be classified by the Classification Board:

(a) feature-length films produced on a commercial basis and for cinema release;

(b) computer games produced on a commercial basis and likely to be classified MA 15+ or higher;

(c) content that may be RC;

(d) content that needs to be classified for the purpose of enforcing classification laws; and

(e) content submitted for classification by the Minister, the Regulator or another government agency.

This proposal is defective. In addition to the categories listed above the following categories of media content should also be required to be classified by the Classification Board:

- all computer games;
- music with lyrics likely to be classified MA15+ or higher;
- print publications likely to be classified MA15+ or higher;
- all television programs with content likely to be MA15+ or higher; and
- all Australian hosted websites with content likely to be classified MA15+.

Collective Shout recommends that:

The new classification legislation should require all media content on any platform that is likely to be classified MA15+ to be classified by the Classification Board.

Proposal 7-2 Authorised industry classifiers

Collective Shout has reservations about maintaining the integrity of the new National Classification Scheme if there is too much dispersion of the classification function. However, authorised industry classifiers could have a role in the classification of media content (other than films or computer games) that is likely to be classified as lower than MA15+.

Collective Shout recommends that:

The new classification legislation should allow the optional use of authorised industry classifiers to classify media content, other than films or computer games, that is likely to be classified lower than MA15+.

Question 7-1 Classification of X18+ films

Question 7-1 is "Should the Classification of Media Content Act provide that all media content likely to be X18+ may be classified by either the Classification Board or an authorised industry classifier?"

In response to Proposal 6-4 above Collective Shout has recommended that the X18+ classification for films be abolished and that all such films should be Refused Classification.

If the X18+ classification is not abolished then Collective Shout vigorously opposes the suggestion that the pornography industry be trusted to classify its own products.

Collective Shout's experience with industry self-regulation, especially with advertising, has confirmed the intuitive understanding that an industry naturally oriented to maximising profits is unlikely to exercise the required restraint in ensuring that content that exploits or demeans women or that sexualises children is rigorously excluded.

This applies in even stronger terms to industries whose core business is the pornification of women. Any suggestion that the pornographic magazine and film industry is capable of self-regulation is laughable.

The enforcement system that backs up the national classification system is widely considered to have broken down. Even Eros Association coordinator Robbie Swan told the Legal and Constitutional Affairs Committee at a public hearing on 25 March 2011 that the national classification system 'is broken because there is no compliance; we are looking at zero compliance from here on in.' [12]

Our agreement with Eros is limited to the shared view that the system is broken. Swan and the Eros Association want to move to a system of self-regulation. When distributors fail to respond to call-in notices under the current regulatory scheme, why should we believe they would comply with community standards if left to regulate themselves?

It is disturbing to read the successive committee estimates hearings since 2008 and see the responses from the director of the Classification Board to questions about the virtually total lack of response to call-in notices and the absence of centralised information about the follow up, if there was one, by State and territory law enforcement officers to breaches of the national classification scheme.

At the additional estimates hearing on 22 February 2011, Mr Donald McDonald, the director of the Classification Board confirmed that "To date, only one call-in notice for adult publications has been complied with"[13].

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[12] Proof Committee Hansard, Senate Legal and Constitutional Affairs References Committee, *Reference: Australian Film And Literature Classification Scheme*, Friday, 25 March 2011, p. 52

[13] Proof Committee Hansard, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates: Additional Estimates,* 22 February 2011, p. 32, available online: http://www.aph.gov.au/hansard/senate/commttee/S13573.pdf

The abject failure of the call-in notice system indicates the disdain with which the porn industry treats regulation.

Collective Shout recommends that:

If, contrary to the recommendation of the Senate Legal and Constitutional Affairs Committee, Collective Shout and other community groups, the X18+ classification for films is not abolished, the new classification legislation should require any film likely to be classified X18+ to be classified by the Classification Board.

Proposal 7-3 Use of authorised classification instruments

Proposal 7–3 is that the *Classification of Media Content Act* should provide that content providers may use an authorised classification instrument to classify media content, other than media content that must be classified.

This proposal would assist media consumers and families by helping facilitate the widespread use of consistent classification categories and markings even for media content that is not required to be classified but that is classified voluntarily by media content providers.

Collective Shout recommends that:

New classification legislation allow media content providers to use an authorised classification instrument to classify media content, other than media content that is required to be classified.

Proposal 7-4 Authorised industry classifiers

Proposal 7–4 is that 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.

This is a sensible proposal. It is likely to help improve consistency in classification, including the classification of television programs, by requiring all classifiers to have completed appropriate training.

Collective Shout recommends that:

New classification legislation provide for authorised industry classifiers, that is, persons who have been authorised to classify media content by the Regulator, having completed training approved by the Regulator.

Proposal 7-5 Authorised classification instruments

Proposal 7–5 is that the *Classification of Media Content Act* should provide that the Regulator will develop or authorise classification instruments that may be used to make certain classification decisions.

Collective Shout supports this useful proposal.

Collective Shout recommends that:

New classification legislation provide that the Regulator will develop or authorise classification instruments that may be used to make certain classification decisions.

Question 7-2 Who should provide classification training?

Question 7–2 asks "Should classification training be provided only by the Regulator, or should it become a part of the Australian Qualifications Framework? If the latter, what may be the best roles for the Board, higher education institutions, and private providers, and who may be best placed to accredit and audit such courses?"

If classification training were to become a part of the Australian Qualifications Framework then it could be provided by any educational institute including private providers under the standard accreditation and auditing procedures of the Framework. This approach would make it difficult for the Regulator to ensure a consistency in training and consequently in the application of the National Classification Scheme.

Collective Shout recommends that:

New classification legislation require that any formal classification training be provided only by the Regulator.

Proposal 7-6 Functions of the Classification Board

Proposal 7–6 is that the *Classification of Media Content Act* should provide that the functions and powers of the Classification Board include:

(a) reviewing industry and Board classification decisions; and

(b) auditing industry classification decisions.

The ALRC is proposing the abolition of the Classification Review Board and that the Classification Board review its own decisions.

Collective Shout vigorously opposes this proposal.

The proposal that the Classification Board review its own decisions is quite unacceptable.

On 9 May 2011 the Classification Board classified as R18+ an uncut version of the film *Human Centipede II (Full Sequence).*

According to the British Board of Film Classification (BBFC) in its decision of 6 June 2011 to ban the film, it features "*a strong and sustained focus throughout the work on the link between sexual arousal and sexual violence and a clear association between non-consensual pain and sexual pleasure"* [14].

On 6 October 2011 the BBFC classified as 18 (equivalent to R18+) a version of the film after requiring 32 compulsory cuts "to scenes of sexual and sexualised violence, sadistic violence and humiliation, and a child presented in an abusive and violent context. In this case, cuts included:

[14] British Board of Film Classification, *The Human Centipede* 2 (decision), June 2011, available online: http://www.bbfc.co.uk/BVV278459/

a man masturbating with sandpaper around his penis; graphic sight of a man's teeth being removed with a hammer; graphic sight of lips being stapled to naked buttocks; graphic sight of forced defecation into and around other people's mouths; a man with barbed wire wrapped around his penis raping a woman; a newborn baby being killed; graphic sight of injury as staples are torn away from individuals' mouth and buttocks.[15]"

The decision of the Classification Board to allow the version of the film with these scenes of sexual violence still in it is reprehensible.

Collective Shout is in the process of intervening in support of an appeal from the Minister for Home Affairs to the Classification Review Board to review this decision by the Classification Board.

Collective Shout intervened in support of an earlier appeal to the Classification Review Board to review the similarly disturbing decision by the Classification Board to classify *A Serbian Film* R18+.

In a media release announcing the intervention spokeswoman Melinda Tankard Reist said "*A Serbian Film* contains depictions of a man raping his five year old son; of a man beheading a woman while raping her and of an adolescent girl smilingly encouraging a man to hit a woman while the woman performs oral sex on him. It clearly exceeds the classification guidelines for R18+ films and should have been Refused Classification… The gratuitous depiction of sexual violence for entertainment threatens true sexual freedom. It cannot be defended on the grounds of liberty or art.[16]"

Collective Shout recommends that:

New classification legislation should provide for the continued existence of a Classification Review Board, completely independent from the Classification Board. The Classification Review Board should be responsible for reviewing on appeal any decision of the Classification Board.

Proposal 7-7 Powers of the Regulator

Proposal 7–7 is that the *Classification of Media Content Act* should provide that the Regulator has power to:

(a) revoke authorisations of industry classifiers;

(b) issue barring notices to industry classifiers; and

(c) call-in unclassified media content for classification or classified media content for review.

Collective Shout supports this proposal that the Regulator has powers necessary for the operation of a National Classification Scheme.

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[15] British Board of Film Classification, *The Human Centipede* 2 (decision), June 2011, availabe online: http://www.bbfc.co.uk/CVV278459/

[16] Melinda Tankard Reist, *Calls for a Serbian film to be banned for depictions of child rape and extreme violence against women, 15.11.2011,* availabe online: http://melindatankardreist.com/2011/09/calls-for-a-serbian-film-to-be-banned-for-depictions-of-child-rape-and-extreme-sexual-violence-against-women

The power to call-in media content must be accompanied by effective enforcement measures, including significant financial penalties for failure to respond to call-in notices and removing distributors who breach the scheme from access to further classification services.

Collective Shout recommends that:

New classification legislation provide that the Regulator has power to:

> ***(a) revoke authorisations of industry classifiers;***
>
> ***(b) issue barring notices to industry classifiers; and***
>
> ***(c) call-in unclassified media content for classification or classified media content for review.***

Failure to comply with call-in notices should result in significant financial penalties and removal from access to further classification services.

Proposal 8-1 Restricting access to content likely to be R18+

Collective Shout is very concerned about the increasingly early and pervasive exposure of children, both boys and girls, to inappropriate media content including pornography and violence.

Boys exposed to pornographic images of women develop distorted views of women and sexuality. "Porn shuts down a boy's natural feeling as it places little value on intimacy, empathy or respect of partners in pornographic material. A growing body of research also shows that viewing porn is likely to make boys more sexually aggressive, to do whatever they feel they can get away with, and to want to act out what they have seen."[17]

Exposure of girls to pornography changes the way they think about themselves and their bodies. They become more ready to objectify themselves and to engage in sexual acts they do not find pleasurable or comfortable merely to please boys and to conform with what is expected of women according to the image of womanhood presented in pornography. [18]

It is imperative that the new National Classification Scheme include effective measures to reduce children's access to media content likely to be classified R18+ in all media formats including print, film, computer games and internet.

Collective Shout recommends that:

New classification legislation should provide that access to all media content that is likely to be R18+ or higher must be restricted to adults.

There should be significant penalties for media content providers who fail to take adequate steps to ensure such restrictions.

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[17] Hamilton, M, 'Groomed to consume: how sexualised marketing targets children' in *Big Porn Inc: exposing the harms of the global pornography industry,* Spinifex, 2011, p. 20 citing Flood, M. 'The harms of pornography exposure among children and young people', *Child Abuse Review*, 2009, p.1.

[18] Ibid., p. 21.

Proposal 8-2 Restricting access to content classified R18+ or X18+

R18+ should be retained as a legally restricted category across all media content types and platforms. New classification legislation should require media content providers to take effective measures to restricting access by children to any R18+ media content.

If, contrary to the recommendation to abolish the X18+ classification, this classification is retained, then clearly access should be rigorously restricted to persons aged 18 years or over.

Collective Shout recommends that:

New classification legislation provide that access to all media content that has been classified R18+ or (if contrary to our recommendation the X18+ classification is not abolished) X18+ must be restricted to adults.

Proposal 8-3 No mandatory access restrictions to MA15+ content

Proposal 8–3 is that the *Classification of Media Content Act* should not provide for mandatory access restrictions on media content classified MA15+ or likely to be classified MA15+.

The current classification criteria for MA15+ allow strong impact violence, sex and adult themes. MA15+ classified media content is clearly inappropriate for young children.

Removing mandatory access restrictions on MA15+ media content would enable media content providers to market this material aggressively to children to increase their profits as some distributors already do with M classified films and computer games. It would make it legal for even very young children to attend a cinema exhibition of an MA15+ film or to purchase an MA15+ computer game or DVD.

Families need the support of the whole community in seeking to protect children from early exposure to strong impact violence, sex and adult themes in media content.

The current legal restrictions on access to MA15+ should be retained and extended more consistently across all media content types and platforms.

Collective Shout recommends that:

New classification legislation provide that access to all media content that is classified MA15+ or likely to be classified MA15+ must be restricted to persons aged 15 years or older.

Proposal 8-4 Methods of restricting access to adult media content

Proposal 8–4 is that the *Classification of Media Content Act* should provide that methods of restricting access to adult media content—both online and offline content—may be set out in industry codes, approved and enforced by the Regulator. These codes might be developed for different types of content and industries, but might usefully cover:

(a) how to restrict online content to adults, for example by using restricted access technologies;

(b) the promotion and distribution of parental locks and user-based computer filters; and

(c) how and where to advertise, package and display hardcopy adult content.

This proposal is helpful, but it also needs to apply to restricting access to media content that is or is likely to be classified MA15+ to persons aged 15 years of age or older.

Restricting online content to adults (or to persons aged over 15 years)

If the new National Classification Scheme is to really address the issues emerging in a converging media environment, it needs to aim at restricting access to online content based on rigorous age verification protocols, regardless of place, origin or physical location of the content. The Government's proposed mandatory filtering scheme needs to be integrated into the new National Classification Scheme.

One of the aims of the mandatory filtering scheme should be to prevent, as far as technologically feasible, access by children to inappropriate media content online.

The best way to achieve this would be to require all service providers of online media content, regardless of delivery platforms, to provide a filtered default service that excludes all media content that is or is likely to be classified MA15+ or higher.

The scheme should provide for access to MA15+ and R18+ media content only to consumers who satisfy rigorous age verification protocols.

Collective Shout recommends that:

New classification legislation should include a legal framework for the Government's proposed mandatory filtering scheme.

It should require all service providers of online media content regardless of delivery platforms to provide a filtered default service that excludes all media content that is or is likely to be classified MA15+ or higher.

It should provide for access to MA15+ and R18+ media content only to consumers who satisfy rigorous age verification protocols.

Parental locks and user-based computer filters

These should not be seen as substitutes for legal restrictions on access, but as ancillary aids for media consumers and families.

Collective Shout recommends that:

Parental locks and user-based computer filters be seen as ancillary aids to media consumers and families supplementing legally required access restrictions by media content providers.

Restrictions on the display and sale of hardcopy items with adult or MA15+ content

Restricted Category 1 and Restricted Category 2 publications each have content that is legally restricted from being sold to minors. Collective Shout believes that both Restricted Category 1 and Restricted Category 2 publications should only be sold from premises or a part of premises which minors can be effectively prevented from entering.

There is a case for merging the two categories into a single new R18+ classification. Consideration should be given to applying to the new classification the rules for R18+ films so that explicit depictions of actual sex are excluded. Such depictions are exploitative and demeaning of women. The creation of these images requires the actual abuse of real women. The circulation of such images in the community and their consumption by men and boys fosters attitudes and behaviour that views women as bodies and body parts for the sexual satisfaction of men.

Publications presently classified Unrestricted – Not suitable for children under – 15 are sold openly in newsagents and can legally be bought by boys younger than 15. This classification should be replaced by the MA15+ classification and subject to legal restrictions such as a requirement for opaque wrapping excluding the masthead and no sale to children under 15.

Similar requirements should apply to DVDs, computer games and music recordings.

Collective Shout recommends that:

New classification legislation should provide that all hardcopy items with media content that has been or is likely to be classified R18+ should only be available for sale or hire or be displayed in a restricted area to which only adults may be admitted.

The legislation should also provide for restrictions on the sale or hire of items with media content that has been classified or is likely to be classified MA15+ to persons aged under 15 years. Items with media content which has been classified or is likely to be classified MA15+, should only be displayed for sale or hire with opaque wrappings excluding a masthead or title.

Question 8-1 Time-zone restrictions

Question 8–1 asks "Should Australian content providers—particularly broadcast television—continue to be subject to time-zone restrictions that prohibit screening certain media content at particular times of the day? For example, should free-to-air television continue to be prohibited from broadcasting MA15+ content before 9pm?"

The MA15+ classification applies to media content with strong impact violence, sex and adult themes.

Families need assistance in protecting children under 15 years from exposure to this media content. This is very difficult to do if such media content is broadcast free-to-air during time periods when children of this age are still up. 9.30 pm is a reasonable cut-off time that would assist most families.

Collective Shout recommends that:

New classification legislation should provide for classification time zones to apply to all free-to-air broadcasting.

Programming classified MA15+ should only be broadcast between 9.30 pm and 5.00 am.

Proposal 8-5 Display of classification markings

Proposal 8–5 is that 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.

This proposal for suitable classification markings would be helpful for media consumers and families.

Collective Shout recommends that:

New classification legislation should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking.

Proposal 8-6 Advertisements for media content

Proposal 8–6 is that the *Classification of Media Content Act* should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

(a) the likely audience of the advertisement;

(b) the impact of the content in the advertisement; and

(c) the classification or likely classification of the advertised content.

Protecting children from premature exposure to MA15+ or higher content also requires protecting them, as far as possible, from advertisements and promotions which highlight the availability and (alleged) attractiveness and excitement of such media content.

Rules for the placement of advertisements should ensure that advertisements for MA15+ or higher media content cannot be broadcast or screened during the broadcast or screening of programs or films classified lower than MA15+. Nor should such advertisements be allowed on DVDs, computer games or in online content that is classified lower than MA15+.

Collective Shout recommends that:

New classification legislation provide that an advertisement for media content, that must be classified, must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

(a) the likely audience of the advertisement;

(b) the impact of the content in the advertisement; and

(c) the classification or likely classification of the advertised content.

Rules for the placement of advertisements should ensure that advertisements for MA15+ or higher media content cannot be broadcast or screened during the broadcast or screening of programs or films classified lower than MA15+. Nor should such advertisements be allowed on DVDs, computer games or in online content that is classified lower than MA15+.

Proposal 9-1 Classification categories

Proposal 9–1 is that the *Classification of Media Content Act* should provide that one set of classification categories applies to all classified media content as follows: C, G, PG 8+, T 13+, MA 15+, R 18+, X 18+ and RC. Each item of media content classified under the proposed National Classification Scheme must be assigned one of these statutory classification categories.

This proposal is supported.

Having a uniform set of classification categories for all media content would assist media consumers and families to readily identify the level of classifiable content in a media product.

Classifications distinguished by age of suitability are also welcome.

However, if M is replaced by T13+ as proposed then the criteria for this classification category should be significantly revised from those for the current M classification which has been designed with 15 years as the relevant age.

In 2008 the Senate Standing Committee on Environment, Communications and the Arts inquiry into the sexualisation of children in the contemporary media recommended, "*that broadcasters review their classification of music videos specifically with regard to sexualising imagery*[19]".

Current classification guidelines for films do not adequately cover the "sexualised imagery" that pervades so many music videos. Music is a very powerful shaper of children and young people's perceptions. It is disturbing that the minds of girls and boys are being filled with images, which depict women and girls as sexual objects available for men's pleasure.

Collective Shout has been alerted by supporters who are outraged that raunchy music videos classified as M are played on television screens in McDonald's, bowling alleys and other supposedly family and child friendly venues as well as broadcast at times when children may be watching television. Guidelines under the new National Classification Scheme should ensure that music videos with sexualised imagery are generally classified as MA15+ and therefore are subject to time zone classification restrictions for broadcasting and to the legal restrictions on exhibition, sale and hire which Collective Shout recommends be retained for MA15+ media content.

It would also be inappropriate and misleading for media content classified as M under the current scheme to be rebadged or treated as T13+ as much of it is content unlikely to be suitable for 13 year olds.

The discussion paper does not include a proposal for how earlier classification categories which are to be abandoned, would be treated under the new scheme.

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[19] Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, 2008, p, 42, para. 4.56, available online: http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf

One approach would be to require any newly produced copies of media content previously classified PG to be marked as T13+ unless they are submitted for reclassification; and, if previously classified as M, then marked as MA15+ unless resubmitted for classification.

The AV category for television was introduced following widespread community concerns about violence in television programs during the early evening timeslot when families and children were likely to be watching television. Setting the time at which such programming could be shown as no earlier than 9.30 pm was a welcome move. Collective Shout has argued that the same 9.30 pm cut off should apply to programming classified MA15+ for sexual content or adult themes. If the AV classification is abolished it would be a retrograde step to leave the MA15+ timeslot as 9pm onwards.

Collective Shout recommends that:

New classification legislation should provide for a uniform set of classification categories to apply to all classified media content. The categories should be C, G, PG 8+, T13+, MA15+, R18+, and RC. (Collective Shout calls for the abolition of the X18+ category).

Guidelines under the new National Classification Scheme should ensure that music videos with sexualised imagery are generally classified as MA15+.

Media content classified as PG under the old system should be treated as T13+ under the new system unless reclassified.

Media content classified as M under the old system should be treated as MA15+ under the new system unless reclassified.

Proposal 9-2 The C classification

Proposal 9–2 is that 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.With the introduction of a PG8+ classification there is no longer any justification for allowing even minimal sexual references, violence, drug references or nudity in G classified media content. Families are entitled to know that media content classified C or G contains no classifiable elements for which parental guidance could be required.

The proposal for a C classification is only acceptable if it incorporates the high standards required for television programs under the current scheme to be given the C classification and includes provision for the continuation of the P classification for programming suitable for pre-schoolers.

Collective Shout recommends that:

New classification legislation provide for a C classification that may be used for media content classified under the scheme. The criteria for the C classification should be similar to the criteria for the G classification category, but also provide that C content must be made specifically for children. The standards should incorporate all the elements of the current C classification for television programs.

Additionally the P classification used for television programs should also be maintained.

Free-to-air television quotas for C and P programming should remain in place under the new scheme.

The P, C and G classifications should not contain any drug use, sex, violence, adult themes or nudity whatsoever.

Proposal 9-3 Consumer advice

Proposal 9–3 is that the *Classification of Media Content Act* should provide that all content that must be classified, other than content classified C, G or RC, must also be accompanied by consumer advice.

Consumer advice should not be necessary for C and G media content as there should be NO classifiable elements in this classification, that is NO sex, drug use, nudity, adult themes or violence.

Consumer advice for classifications PG8+, T13+, MA15+ and R18+ is helpful because it alerts media consumers and families to the classifiable elements that have led to the specified classification being assigned to the media content.

Collective Shout recommends that:

New classification legislation should provide that all content that must be classified (other than content classified C, G or RC) must also be accompanied by consumer advice.

Proposal 9-4 Statutory classification criteria

Proposal 9–4 is that the *Classification of Media Content Act* should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.

This proposal fails to take account of the differing impact of classifiable elements in different forms of media content. For example, computer games, due to the high level of interactivity, have a greater impact on the consumer.

Collective Shout recommends that:

New classification legislation should provide for statutory classification criteria that take account of the differing impact of different media content types such as computer games and that classification decisions must be made applying these criteria.

Proposal 9-5 Regular review of community standards

Proposal 9–5 is that 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.

Dr Helen Pringle has helpfully drawn attention to the ideological bias that appears to be driving a significant body of academic research on pornography, classification and media in Australia

and elsewhere. In her careful analysis of *The Porn Report* written by Australian academics Alan McKee, Katherine Albury and Catharine Lumby she demonstrates persuasively that far from being a serious intellectual inquiry this work represents an "ideological mission … an apologia for the sex industry". The authors, she contends, set out to make the case for "the mainstream distribution and use of pornography". [20]

McKee, Albury and Lumby all gave so-called "expert evidence" to the Classification Review Board in support of Adultshop.Com's attempt to get the porn film *Viva Erotica* reclassified as R18+ rather than X18+. If this attempt had succeeded then all films previously classified X18+ - that is those consisting solely or principally of depictions of actual sex – would have been potentially reclassified R18+ and available for sale or hire in every corner video store, effectively bypassing State bans on the sale of X18+ films.

Previous official reviews of the classification guidelines have at times relied on the work of academics that support the normalisation and mainstreaming of pornography.

For this reason Collective Shout, while supporting reliable, intellectually honest research, cautions against giving credit too readily to any research in this field merely because it is conducted by persons with academic qualifications.

Collective Shout recommends that:

Reviews of community standards in regard to media content should be carefully assessed for possible bias. Research reflecting a variety of points of view should be taken into consideration and reliance on one particular school of thought –especially the pro-pornography perspective – avoided. Research showing evidence of harms from media consumption must be given its full weight alongside reviews of community standards.

Proposal 10-1 Refused classification category

Proposal 10–1 is that 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 service provider level.

Stating the reason for media content being classified RC is reasonable.

Collective Shout is concerned that the proposal only refers to two possible reasons that media content might be classified RC - actual child sexual abuse and actual sexual violence.

The current criteria for RC are much broader than this. Films are to be RC if they include or contain any of the following:

> *Detailed instruction or promotion in matters of crime or violence.*
>
> *The promotion or provision of instruction in paedophile activity.*
>
> *Descriptions or depictions of child sexual abuse [note: this does NOT specify that the depictions be of actual child sexual abuse] or <u>any other</u> exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years.* [underlining added]

[20] Pringle, H. "A studied indifference to harm: defending pornography in *The Porn* Report" in *Big Porn Inc: exposing the harms of the global pornography industry,* Spinifex, 2011, p. 122-133.

Gratuitous, exploitative or offensive depictions of:

- *(i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed;*
- *(ii) cruelty or real violence which are very detailed or which have a high impact;*
- *(iii) sexual violence.* [again, this does NOT specify it to be actual sexual violence]

Depictions of practices such as bestiality.

Gratuitous, exploitative or offensive depictions of:

- *(i) activity accompanied by fetishes or practices which are offensive or abhorrent;*
- *(ii) incest fantasies or other fantasies which are offensive or abhorrent.*

Detailed instruction in the use of proscribed drugs.

Material promoting or encouraging proscribed drug use.

Collective Shout hopes that this is just a clumsy oversight by the ALRC and does not represent a tendency to narrow the grounds for RC.

On the contrary Collective Shout believes that the grounds for RC should be further broadened to include any depiction of actual sex (that is media content currently classified X18+ or Restricted Category 2) and material which promotes, encourages or instructs in methods of suicide.

Material which promotes, encourages or instructs in methods of suicide is currently prohibited from being accessed online or stored on Australian hosted websites. It would be consistent to extend this prohibition across all media types and platforms.

Collective Shout recommends that:

New classification legislation provide that, if content is classified RC, the classification decision should state the criterion or criteria which applied to the content.

The RC classification should be broadened to include, as well as all content currently required to be classified as RC, any content with depiction of actual sex that would currently be classified Restricted Category 2 or X18+ and material that directly or indirectly counsels or incites committing or attempting to commit suicide or promotes a particular method of committing suicide; or provides instruction on a particular method of committing suicide.

Proposal 11-1 Industry classification codes of practice

Proposal 11–1 is that the new *Classification of Media Content Act* should provide for the development of industry classification codes of practice by sections of industry involved in the production and distribution of media content.

Such codes of practice may be useful for the classification of media content other than media content that is required to be classified by the Classification Board.

Collective Shout recommends that:

New classification legislation provide for the development of industry classification codes of practice by sections of industry involved in the production and distribution of media content.

Proposal 11-2 Matters to be included in codes of practice

Proposal 11-2 lists matters that may be provided for in industry codes of practice.

This proposal is supported.

Collective Shout recommends that:

New classification legislation provide for the inclusion in industry classification codes of practice of the matters set out in Proposal 11-2.

Proposal 11-3 Regulator approval of codes of practice

Proposal 11–3 is that the Regulator should be empowered to approve an industry classification code of practice if satisfied that:

(a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;

(b) the body or association developing the code represents a particular section of the relevant media content industry; and

(c) there has been adequate public and industry consultation on the code.

As a grassroots movement challenging the objectification of women and sexualisation of girls in the media and popular culture Collective Shout has participated in many public consultations. It is our experience that in many cases the consultation lacks credibility because it is not widely advertised, the time for preparing responses to often complex proposals is too short and final versions of proposed new codes are submitted to the regulating body (e.g. ACMA) without being made public.

This can mean that many members of the community who have a view on the matters raised in a code of practice do not have the opportunity to express those views; that submissions are not as detailed or comprehensive as they could be if more time was allowed; and that having made submissions on an initial draft code new proposals emerge in the final registered version, which have not been the subject of an opportunity for public comment.

Collective Shout recommends that:

The Regulator should be empowered to approve an industry classification code of practice if satisfied that:

(a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;

(b) the body or association developing the code represents a particular section of the relevant media content industry; and

(c) there has been adequate public and industry consultation on the code.

The Regulator should only be "satisfied that there has been adequate public and industry consultation on the code " if there has been significant widespread advertising of the consultation; there must have been a period for public comment of at least six weeks; and the final version of the code submitted to the Regulator is made public.

The public should be able to make submissions directly to the Regulator as well as to the industry body developing a new code.

Proposal 11-4 Enforcement powers for codes of practice

Proposal 11–4 is that where an industry classification code of practice relates to media content that must be classified or to which access must be restricted, the Regulator should have power to enforce compliance with the code against any participant in the relevant part of the media content industry.

The systemic failure of enforcement under the current National Classification Scheme needs to be addressed by effective measures in the new scheme. Enforcement powers must include significant financial penalties and denial of privileges to offenders.

Collective Shout recommends that:

Where an industry classification code of practice relates to media content that must be classified or to which access must be restricted, the Regulator should have power to enforce compliance with the code against any participant in the relevant part of the media content industry.

Enforcement powers must include significant financial penalties and denial of privileges to offenders.

Question 12-1 Complaints-handling function

Question 12–1 is "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?"

Collective Shout believes that the first point of contact for complaints should be a regulatory body with the requisite powers to enforce meaningful penalties for breaches of community standards in a timely manner.

Collective Shout has first hand experience of the ineffectiveness of the complaints system for advertising where complaints are directed to the industry based Advertising Standards Board.

Collective Shout believes the advertising industry has used self-regulation to its commercial advantage, to the detriment of the community, and women and girls in particular. The self-regulation model in fact enables the advertising industry to avoid proper scrutiny of its long history of irresponsible and profit-driven behaviour.

We have identified a range of inadequacies in the current system, including a weak code of ethics, the voluntary nature of the code, lack of pre-vetting, the Advertising Standards Board's

lack of power to order removal of advertisements, inadequate monitoring, de-sensitisation of panel members, little consultation with child development experts, and no meaningful penalties to provide an incentive for advertisers to change their behaviour. There is little public knowledge about complaints processes and how to go about making a complaint, with the result being that if only a small number of complaints are received because people are unaware of how to complain and to whom, it is difficult to ascertain community standards. [21]

It is our view that the colonisation of public space and free-to-air broadcasting with objectified and sexualised images of women and girls, together with an almost complete lack of action by regulatory bodies, conditions many people to seeing sexist advertising and other sexist broadcasting as acceptable, or as 'just the way things are'. At a time when hypersexual imagery is increasing, regulatory bodies need to be given more powers, not less.

We also wish to highlight the fact that sexualised representations of women and girls displayed in a workplace constitute sexual harassment under anti-discrimination law[22]. But the open display of similar objectified and sexualised images of women in the public domain is exempt from sexual harassment laws. If this material has been ruled inappropriate for workplaces or schools, why is it considered acceptable as the 'wallpaper' of the public domain, where we have no choice but to view it?

The proliferation and globalisation of sexual imagery is of serious concern. Pornographic representations of women in the public space have become normative. There is a growing body of research globally that demonstrates the detrimental effect of these representations, especially on children and young people[23]. As the Australian Psychological Society reported to the Senate Committee Inquiry into the Sexualisation of Children in 2008, 'the values implicit in sexualised images are that physical appearance and beauty are intrinsic to self esteem and social worth, and that sexual attractiveness is a part of childhood experience... Girls learn to see and think of their bodies as objects of others' desire, to be looked at and evaluated for its appearance'[24]. In addition, advertising plays a crucial part in socialising men and boys to see the sexual objectification of women and girls as normal.

Public accountability and social responsibility should be the guiding principles of regulation, not profit margins.

The concerns of supporters of Collective Shout are consistent with those found in the general community, as noted by the ASB:

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[21] Collective Shout, *Submission to the House Standing Committee on Social Policy and Legal Affairs Inquiry into the Regulation of Billboard and Outdoor Advertising*, 7 March 2010, available online: http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs/Sub%2043.pdf

[22] For example, see *Horne and McIntosh* v *Press Clough Joint Venture and Metals and Engineering Workers' Union WA*, Equal Opportunity Tribunal of WA, nos 28 and 30 of 1992, 21 April 1994; *Hopper v Mount Isa Mines Ltd* [1997] QADT 3 (29 January 1997), and *Mount Isa Mines Ltd v Hopper* [1998] QSC 287.

[23] American Psycological Association, *Report of the APA Task Force on the sexualisation of girls,* 2007, availabe online: http://www.apa.org/pi/women/programs/girls/report.aspx ; UK Home Office, *Sexualisation of Young People Review,* 2010, available online: http://webarchive.nationalarchives.gov.uk/+/http:/www.homeoffice.gov.uk/documents/Sexualisation-of-young-people.html; Scottish Parliament Equal Opportunities Committee, *Research on sexualised goods aimed at children*, 2010, availabe online: http://www.scottish.parliament.uk/nmCentre/news/news-comm-10/ceq10-s3-001.htm; The Australia Institute, *Corporate Paedophilia: Sexualisation of children in Australia*,2006, available online: https://www.tai.org.au/documents/dp_fulltext/DP90.pdf; and Melinda Tankard Reist ed., *Getting Real: challenging the sexualisation of girls,* Melbourne, Spinifex Press, 2009.

[24] Australian Psychological Society, *Submission to the Inquiry into the sexualisation of children in the contemporary media environment.*, 2008, available online: http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/submissions/sub115.pdf

> Community activity and political sensitivity about gender portrayal in advertising has been reflected in complaints to the Advertising Standards Bureau [and was of particular concern to respondents to the ASB's 2010 community research on this topic]. Such complaints comprised 41% of all complaints received in 2009 (average of 31% of all complaints 2005-2009).[25]

Despite ASB praise for the impact of its voluntary guidelines on the regulation of advertising content [26], we contend that the current arrangements do little to control the placement or lessen the prevalence of advertising that objectifies and degrades women and also sexualises children.

The following extract from APN Outdoor's website illustrates the importance of the current system of self regulation to the industry and its effect on the content of billboards:

> With so many people outside of their living rooms, advertisers can no longer rely on mostly in-home media such as television. Engaging consumers on the move is becoming a major focus for many clients. Furthermore, ad avoidance devices will have an even greater impact on traditional advertising models as consumers selectively filter and receive advertising messages. Outdoor is the only advertising medium that is virtually immune to consumer avoidance. It can't be turned off, flipped to the next page or thrown away. And it is free to view. Outdoor truly is the last of the mass media.[27]

The advertising industry self-regulation system does nothing more than provide a complaints mechanism to the consumer – and even then, one that is poorly publicised (ironically, given that this is an industry that claims expertise in advertising to a wide audience). It will continue to be inadequate in preventing the increasing use of *strong and explicit sexual depiction* on billboards and any other form of sexualised imagery, unless the system is overhauled.

According to 2009 ASB statistics[28], complaints about outdoor advertising comprised 23.92% of total complaints lodged, considerably higher than the average of 9.91% in the period 2005-2008. In 2010, four of the ten most complained about advertisements were billboards[29]. Two of these complaints were upheld.

Collective Shout initiated and led a campaign against one of those billboards, advertising Calvin Klein[30]. The issue received global coverage after Alison Grundy, a sexual assault counsellor and clinical psychologist with over 20 years experience, wrote an opinion piece about how billboards of this nature create a dangerous environment for women and girls and make her job harder.[31] We note here the findings of the Board as to why the advertisement was in breach of Section 2.2 and 2.3 of the ASB Code of Ethics:

- the image of the woman was suggestive of non-consensual sexual behaviour

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[25] Advertising Standards Bureau, *Determination summary: Portrayal of gender in advertising,* October 2010, available online http://www.adstandards.com.au/files/view/?id=203

[26] Advertising Standards Bureau, *Ad Standards Research Report*, June 2010, availabe online: http://issuu.com/cre8ive/docs/research_report_june2010?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Flight%2Flayout.xml&showFlipBtn=true.

[27] APN Outdoor Website, 'Trends', http://www.apnoutdoor.com.au/Insights/Trends.aspx.

[28] Advertising Standards Bureau website, 'Statistics on 2009 Complaints', http://www.adstandards.com.au/publications/statistics.

[29] Advertising Standards Bureau websiste, 'Most Complained About Ads in 2010', http://post.cre8ive.com.au/t/ViewEmail/r/CCB9053E36AFD998/C67FD2F38AC4859C/

[30] Advertising Standards Bureau, *Case report Case 0411-10*, October 2010, availabe online: http://122.99.94.111/cases/0411-10.pdf.

[31] Melinda Tankard Reist, *Sexual Assault Counsellor Asks Why is it ok to use sexual violence as a marketing tool*, November 2010, available online: http://melindatankardreist.com/2010/10/sexual-assault-counsellor-asks-why-is-it-ok-to-use-sexual-violence-as-a-marketing-tool/; See also Helen Pringle, 'What is the billboard doing? Reactions to Calvin Klein', *On Line Opinion*, 24 November 2010, available online: http://www.onlineopinion.com.au/view.asp?article=11279.

- the depiction of the woman with the three men to be highly sexualised and clearly suggestive of sexual behaviour
- the scene is suggestive of violence and rape
- the image was demeaning to women by suggesting that she is a plaything of these men
- the image also demeans men by implying sexualised violence against women

While Collective Shout welcomes the ASB determination on the CK billboard, the billboard would not have been displayed at all if the self-regulation system were effective in protecting consumers and if advertisers complied with the ASB Code of Ethics.

Other legitimate complaints about billboards are not upheld by the ASB. One example of this is the billboard for *Sexpo* placed in Ipswich Queensland in February 2010. The billboard contained imagery and information about an adult pornographic expo, which is inappropriate for children's view, and which also objectified women. Despite requests by the community and an Ipswich Councillor for the billboard to be taken down, the ASB dismissed the complaint.[32] Even if complaints about the Sexpo billboard had been upheld, several weeks would have elapsed between the time of the billboard's placement and the ASB's determination. The advertiser then benefits from the controversy stirred up by the billboard. Advertisers such as Sexpo deliberately exploit the self-regulation system for publicity.

Notwithstanding the ASB guidelines, there is no evidence that the ASB prevents or controls the placement of public billboards that display strong sexual depictions.

The ASB simply provides a complaint mechanism. While a voluntary Code of Ethics developed by the Australian Association of National Advertisers was relied upon in upholding complaints concerning billboards in 2010, this Code did not prevent the placement of these images in the first place. This is despite the recommendation of an Australian government inquiry in 2008 that the ASB rigorously apply standards for billboards and outdoor advertising so as to more closely reflect community concern about the appropriateness of sexually explicit material and the inability of parents to restrict exposure of children to such material[33]. It is interesting to note that despite being a participant in the self-regulation scheme and aware of the ASB determination, APN Outdoor continues to include the offensive CK billboard in its campaign gallery[34], presumably as a representation of an effective billboard.

Notwithstanding the ASB's claims[35], consumer protection is not provided by the self-regulation scheme.

The ASB only has the power to consider advertisements once a complaint is received. If no-one had complained about the CK billboard, perhaps because they did not know they could or where to do so, it might still be in place. Guidelines exist that should have alerted the advertiser,

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[32] See Zane Jackson, 'Ipswich Sexpo Billboard too Sexual', *Queensland Times*, 3 February 2010, available online: http://www.qt.com.au/story/2010/02/03/ipswich-driven-to-distraction-by-sexpo-billboard-b/, and Advertising Standards Bureau, *Case Report on Case 60/10*, February 2010, availabe online: http://www.adstandards.com.au/casereports/determinations/standards?ref=60/10.

[33] Standing Committee on Environment, Communications and Art, *Sexualisation of Children in Contemporary Media*, June 2008, available online: http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf.

[34] APN Outside website, 'Campaign Gallery', http://www.apnoutdoor.com.au/Interact/Gallery/#p6, click on page 6..

[35] Advertising Standards Bureau website, 'About Self Regulation', http://www.adstandards.com.au/self-regulation-system/aboutselfregulation.

including the owner of the billboard, to the fact that the advertisement was in potential breach of the Code of Ethics.

It is not sufficient to ensure consumer protection by providing a free and fast route for consumers to express their views about advertising. In an environment where billboards are in effect 'unclassified', the right of consumers to be protected should extend to prohibiting the offending conduct in the first place. Depending on the commercial interest of the advertiser and its approach to risk, almost any sexualised image could be displayed on a billboard, with the right of consumers limited to lodging a complaint to the ASB which may or may not be upheld. If the complaint is dismissed, in the absence of any other legislation, the consumer would perhaps be able to rely upon any common law remedy or, if applicable, hope that State and Territory criminal statutes could be enforced. Collective Shout is not aware of any local government ordinances that regulate billboard content.

The inability to control billboard content contributes to the sexualisation of our culture and the harms that arise from it.

The harms of sexualisation have been identified in regard to

- Body image being listed as a leading concern for the fifth year in a row for young people[36]
- One in 100 adolescent girls in Australia suffering anorexia and one in 20 bulimic[37]
- Half of UK young women aged 16-21 would consider having cosmetic surgery [38]

Gail Dines, a professor of sociology and women's studies in Boston, has argued that

> [Despite the advances made on behalf of women in recent decades, women] remain cultural identities who develop our identities out of the dominant images that surround us…. [Popular culture] represents images of contemporary idealized femininity – in a word hot – that are held up to women, especially young women, to emulate. Women today are still held captive by images that ultimately tell lies about women…. In today's image based culture, there is no escaping the image and no respite from its power when it is relentless in its visibility.[39]

We invite the ALRC to peruse our website (www.collectiveshout.org) for more examples of billboards that our supporters have found offensive due to their sexist portrayal of women.

An industry self-regulation body like the ASB will always be conflicted in its role, relying as it does on the funding of the industry for its financial viability and also the co-operation of the industry to implement and enforce its Code of Ethics and determinations. Its ability to carry out its role is severely hampered.

In the absence of legislation underpinning the self-regulation system, the ASB has no real power to enforce its determinations. This lack of an enforcement mechanism renders the ASB powerless in the face of recalcitrant advertisers and corporations. In January 2011, the ASB upheld a complaint and determined that an advertisement breached the Code. The ASB advised the corporation concerned, but the corporation has refused to comply with the ASB determination. The corporation planned to continue its display of the offending billboard, as

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[36] Mission Australia, National Survey on Young Australians 2009, available online: http://www.missionaustralia.com.au/downloads/national-survey-of-young-australians/2009.

[37] Eating Disorders Australia website, 'Key Statistics', http://www.eatingdisorders.org.au/media/key-statistics.html.

[38] Girlguiding UK, Press Release: Give yourself a chance, 3 March 2011, availabe online: http://www.girlguiding.org.uk/system_pages/small_navigation/press_office/latest_press_releases/3rd_march_2011_-_gyac.aspx.

[39] Gail Dines, *Pornland: How Porn Has Hijacked our Sexuality,* Boston, Beacon Press, 2010, p. 102.

indicated by the very last line of the determination: 'The advertiser advised that the billboard will be brought down at the end of summer.' [40] The 'end of summer' was the intended end of the advertiser's billboard campaign, and a full 6 weeks after the date the complaint was upheld.

Collective Shout was subsequently advised by the ASB[41] that in response to the Advertiser's non-compliance, the ASB contacted the Outdoor Media Association, which then contacted the owner of the billboard alerting them to the ASB's ruling. The owner of the billboard removed the billboard advertisement on February 18. This was only 10 days before the end of the advertiser's campaign and almost a full month after the ASB's determination. The advertiser has faced no penalty for their non-compliance. The removal of a sexist billboard only 10 days before the end of a campaign is not an adequate deterrent for repeating the same behaviour in future.

Collective Shout recommends that:

The first point of contact for complaints about breaches of community standards in media should be the Regulator who should have the requisite powers to enforce compliance in a timely manner, including through the imposition of adequate penalties.

Proposal 12-1 A new Regulator

Proposal 12-1 is that a single agency ('the Regulator') should be responsible for the regulation of media content under the new National Classification Scheme. The proposal also sets out proposed functions for the new Regulator.

As recommended above, Collective Shout supports the continued existence of the Classification Review Board. The Regulator should have the additional function of providing administrative support to the Classification Review Board.

Collective Shout recommends that:

New classification legislation should provide for a single agency ('the Regulator') to be responsible for the regulation of media content under the new National Classification Scheme.

The Regulator should also be responsible for providing administrative support to the Classification Review Board.

Proposal 13-1 The new Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia.

This proposal is supported.

Collective Shout recommends that:

New classification legislation should be enacted pursuant to the legislative powers of the Parliament of Australia.

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[40] Advertising Standards Bureau, Case Report 0517/10, January 2011, available online: http://122.99.94.111/cases/0517-10.pdf.

[41] Email correspondence between ASB and Collective Shout, 1 March 2011.

Proposal 13–2 State referrals of power

Proposal 13-2 is that State referrals of power under s 51(xxxvii) of the Australian *Constitution* should be used to supplement fully the Parliament of Australia's other powers, by referring matters to the extent to which they are not otherwise included in Commonwealth legislative powers.

Under the Constitution States may choose to refer any power to the Commonwealth.

For example, most States have entirely referred the power to classify films. However, South Australia still retains the power to classify films itself.

Recently this power has been exercised responsibly to ban *A Serbian Film* and *Human Centipede II (Full Sequence)* from exhibition or distribution in South Australia despite the appalling decisions of the Classification Board to classify these two films as R18+.

Collective Shout commends South Australia for this action.

Likewise Collective Shout commends all States for banning the sale and distribution of X18+ films despite the Commonwealth allowing the importation of this socially destructive material and its sale through the Australian Capital Territory.

Collective Shout also appreciates Queensland's ban on the sale of all Restricted Category 1 and Restricted Category 2 publications.

Any referral of powers should only be in the context of an intergovernmental agreement to enforce stricter classification laws. Retaining concurrent powers may be the wiser course of action.

Collective Shout recommends that:

States should only refer powers in order to support a stricter classification scheme. They should consider retaining concurrent powers in order to protect community standards in their State.

Proposal 14-1 Enforcement under Commonwealth law

Proposal 14–1 is that the new *Classification of Media Content Act* should provide for enforcement of classification laws under Commonwealth law.

This proposal is supported although Collective Shout also supports State laws that impose more restrictions on pornography and other undesirable media content than the National Classification Scheme.

Collective Shout recommends that:

Classification laws should be enforced by both the Commonwealth and the States.

Proposal 14-2 New Intergovernmental Agreement

Proposal 14-2 is that if the Australian Government determines that the states and territories should retain powers in relation to the enforcement of classification laws, a new intergovernmental agreement should be entered into under which the states and territories agree to enact legislation to provide for the enforcement of classification laws with respect to publications, films and computer games.

The current National Classification Scheme is undergirded by an intergovernmental agreement between the Commonwealth, States and territories. Clearly any new National Classification Scheme would require a new intergovernmental agreement.

Collective Shout recommends that:

A new intergovernmental agreement to support the proposed new National Classification Scheme be negotiated by the Commonwealth with the States and territories.

Proposal 14-3 Offences

Proposal 14-3 is that the new *Classification of Media Content Act* should provide for offences relating to selling, screening, distributing or advertising unclassified material, and failing to comply with:

(a) restrictions on the sale, screening, distribution and advertising of classified material;

(b) statutory obligations to classify media content;

(c) statutory obligations to restrict access to media content;

(d) an industry-based classification code; and

(e) directions of the Regulator.

This proposal is supported.

Collective Shout recommends that:

New classification legislation provide for offences as set out in Proposal 14-3.

Proposal 14-4 Penalties

Proposal 14–4 is that offences under the new *Classification of Media Content Act* should be subject to criminal, civil and administrative penalties similar to those currently in place in relation to online and mobile content under sch 7 of the *Broadcasting Services Act 1992* (Cth).

This proposal is supported but penalties must be sufficiently severe to deter breaches.

Collective Shout recommends that:

New classification legislation should provide that offences be subject to criminal, civil and administrative penalties.

To be an effective deterrent, any breach of an industry code of practice should attract a sufficient financial penalty.

Proposal 14-5 Infringement notice scheme

Proposal 14–5 is that the Australian Government should consider whether the Classification of Media Content Act should provide for an infringement notice scheme in relation to more minor breaches of classification laws.

This proposal is not supported as infringement notice schemes are only suitable for dealing with minor breaches of laws by individuals in ways that do not directly harm other people. Breaches of classification law harm the community in important ways and should attract significant penalties.

Collective Shout recommends that:

No infringement notice scheme be included in new classification legislation.

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Collective Shout
for a world free of sexploitation.