



Commissioner for Children and Young People
Western Australia

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Ms Sabina Wynn
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Dear Ms Wynn

National Classification Scheme Review: Discussion Paper

I welcome the opportunity to provide comment on the Australian Law Reform Commission's (ALRC) *National Classification Scheme Review: Discussion Paper* (the Discussion Paper). Due to the limited resources of my office my submission will focus on the guiding principles for reform and co-regulation rather than the specific proposals and questions provided in the Discussion Paper.

Role of Commissioner for Children and Young People WA

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act). Under the Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, specifically having responsibility for advocating for, promoting and monitoring their wellbeing.

Under the Act I must observe the following guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people in the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

Caring for the future growing up today

In performing my functions the best interests of children and young people must be my paramount consideration. I must give priority to, and have special regard for, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason. I am also required to have regard to the United Nations Convention on the Rights of the Child.

It is with these responsibilities in mind that I make my submission.

Previous submissions

As Commissioner for Children and Young People I have contributed to and endorsed several submissions relevant to the National Classification Scheme Review (the Review). They are as follows:

1. Joint submission with three other Children's Commissioners to the ALRC's Issues Paper on the Review.

This submission focused on the importance of acting in the best interests of children and of their rights under the United Nations Convention on the Rights of the Child, in particular their rights of participation (including in the Review), to access information and to the protection from harm.

2. Submissions by the Joint Australian Children's Commissioners and Guardians (ACCG) regarding the Commonwealth's proposal to amend the Australian National Classification Scheme to introduce an R 18+ classification and the draft Guidelines for the Classification of Computer Games.

The ACCG did not support the introduction of an R 18+ classification category for computer games because of the:

- increased availability of, and risk of exposure to, high impact content including violence, domestic and sexual violence and illicit drug use
- potential negative impacts of exposure to R 18+ computer games, particularly for vulnerable or at risk children
- difficulties parents and regulators experience in monitoring and controlling children's access to computer games.

Additionally the ACCG recommended that the introduction of an R 18+ classification be delayed until the completion of the ALRC's review of the National Classification Scheme to enable any recommendations arising from it to be implemented.

3. Submission to the Senate Legal and Constitutional Affairs References Committee's Inquiry into the Australian film and literature classification scheme.

My submission focused on:

- The importance of directly involving children and young people in decisions that impact on them and taking their views into account in the development of laws, policies and programs.
- The important role the classification scheme has in enabling consumers, including children, young people and parents, to make informed choices about what they watch, read and listen to.
- The safety, protection and wellbeing of children and young people under 18 years should be paramount.

These issues are also relevant to the Discussion Paper and I therefore reiterate their importance.

The guiding principles

The Discussion Paper describes eight guiding principles intended to provide 'an effective framework for the classification of media content in Australia' and to 'inform the development of a new National Classification Scheme'. I commend their inclusion and this intent.

However I recommend a change to guiding principle 3: 'Children should be protected from material likely to harm or disturb them'

In accordance with Article 3.1 of the Convention on the Rights of the Child, I am firmly of the view that the best interests of the child should be a primary consideration in all legal and administrative matters concerning children. While this does not necessarily mean that the best interests of the child will always override other important considerations (eg, the protection or safety of members of the community),¹ this should be the principle that is explicitly recognised in laws, regulations and policies affecting them. I do not believe it is sufficient to only recognise children and the impact of material on them without considering their best interests.

Including a 'best interests of children' principle in the guiding principles will ensure they are taken into account in the development of a National Classification Scheme. In this way better consideration will be given to the safety, protection and wellbeing of children and young people when balancing competing principles, including guiding principle 1: 'Australians should be able to read, hear, see and participate in media of their choice'.

¹ It has been observed by the Australian Human Rights Commission that Article 3.1 of the Convention on the Rights of the Child provides 'for a child's interests to be *among* the first considerations rather than requiring them to be the first considered or favoured. There are circumstances in which the community or other parties might have an equal or even superior interests so that a child's interest may not prevail': Australian Human Rights Commission, *The Best Interests of the Child*, Human Rights Brief No. 1.

Codes and co-regulation

I note that the Discussion Paper proposes 'retaining mandatory classification by the Classification Board of films for cinema release and computer games with content likely to be rated MA 15+ or higher', however 'most other content, including broadcast and subscription television content, and television programs and films not for cinema release, would be subject to regimes based on industry classification of content.'

I also note that it is intended for the codes of practice to be 'closer to direct regulation than co-regulation' because under the new Classification of Media Content Act they would have to be 'consistent with statutory classification obligations and criteria' and 'industry would only be free to develop its own rules within the constraints of the legislative requirements.'

Notwithstanding I wish to express my concern about a National Classification Scheme that includes a co-regulatory approach.

I am of the view that industry codes of practice and self-regulation currently in place, for example in advertising and print media, are not sufficient to ensure the safety, protection and wellbeing of children and young people. This is particularly so in regards to alcohol and food advertising and the sexualisation of children in a range of media. For example, there is strong evidence that the current self-regulatory approach to alcohol advertising does not effectively protect young people.^{2 3} Similarly recent research commissioned by the South Australian Government has found that self-regulatory food industry initiatives regarding 'junk food' advertising during children's television viewing times have not been successful in reducing this type of advertising to children and young people generally.⁴

If the co-regulation approach is pursued then I would wish to see as a minimum 'best interests of the child' principle incorporated into the industry classification codes of practice particularly as it is intended that these codes 'would assist in the interpretation and application of the statutory classification categories and introduce some additional flexibility to the regulatory scheme.'

Additionally, to ensure the 'best interests of the child' are considered in an informed way the 'authorised industry classifiers' (classifiers of all media content other than that to be classified by the Classification Board) should include experts in the field of child wellbeing, development, psychology or similar.

Improving legislation for children and young people

One of my legislated responsibilities is to review and monitor laws which may affect the wellbeing of children and young people. With this responsibility in mind I have

² McCusker Centre for Action on Alcohol and Youth 2011, *Alcohol and Young People: Solutions*, Available: <http://www.mcaay.org.au/component/attachments/download/4.html>

³ Foundation for Alcohol Research and Education *Marketing and Promotions*, Available: <http://www.fare.org.au/policy-advocacy/alcohol-marketing-and-promotions/>

⁴ CSIRO 2011, *Television food Advertising to Children in South Australia*, Available: <http://www.sahealth.sa.gov.au/wps/wcm/connect/378f4e80490e0c47b03ff47675638bd8/CSIRO-TV-food-ads-children-SA-PHCS-HPB-201103.pdf?MOD=AJPERES&CACHEID=378f4e80490e0c47b03ff47675638bd8>

published guidelines to help government agencies assess draft legislation, regulations and policies from the perspective of children and young people's wellbeing, with the intent of producing laws that better meet their needs and interests. My publication *Improving legislation for children and young people* is available on my website ccyp.wa.gov.au

Thank you for the opportunity to provide comment on the *National Classification Scheme Review: Discussion Paper*. Should you wish me to provide any further information on the issues I have raised I am more than happy to assist.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

17 November 2011