

The Queensland Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: Australian Law Reform Commission
Topic: National Classification Scheme Review Discussion Paper
Date due: 18 November 2011

Thank you for providing the Australian Children's Commissioners and Guardians (the ACCG)¹ with the opportunity to comment on the National Classification Scheme Review Discussion Paper (the Discussion Paper).

The ACCG welcomes the extensive review being undertaken by the Australian Law Reform Commission (ALRC) in this very complex area and the inclusion of the protection of children as a key principle of a classification system. The ACCG is also pleased to note the reference in the Discussion Paper to the Queensland Commission for Children and Young People and Child Guardian's point that 'the primary objectives of a national classification scheme should incorporate protections for children, clear advice to parents and caregivers and considerations of how to promote their wellbeing, positive development and best interests when classifying material'.

In addition to these rights, the ACCG believes the new classification system should also reflect the rights of children and young people to participate in decisions which are important to them. Empowering children and young people to make informed and positive decisions about the media they use is particularly important in the new media environment where the capacity of adults to control their access to various media is far more difficult, especially as children get older.

Summary of the Australian Children's Commissioners and Guardians' position:

1. The ACCG notes and supports the Discussion Paper's inclusion of the guiding principle that 'children should be protected from material likely to harm or disturb them'
2. The ACCG recommends that further consideration be given to the proposal that only computer games likely to be classified MA 15+ or higher be classified by the Classification Board, particularly in the event that the proposed new classification categories are not adopted
3. The ACCG recommends that a review of the type of content currently classified as MA 15+ and the existing guidelines for this category be undertaken prior to any removal of mandatory access restrictions on MA 15+ content
4. The ACCG suggests that a specific proposal be made in relation to the implementation of education initiatives to accompany any changes to the classification scheme
5. The ACCG recommends that consideration be given to how to facilitate the involvement of child development experts, family and domestic violence experts, and research to inform classification decision making, classification training courses, the development of industry codes of practice and reviews, and

¹ Contributing members of the Australian Children's Commissioners and Guardians are: Commissioner for Children and Young People and Child Guardian, Queensland, Ms Elizabeth Fraser; Child Safety Commissioner, Victoria, Mr Bernie Geary; Commissioner for Children and Young People, Western Australia, Ms Michelle Scott; and Commissioner for Children, Tasmania, Ms Aileen Ashford.

6. The ACCG recommends that if the ALRC's proposal for the use of authorised industry classifiers is adopted, the mechanisms for monitoring and responding to complaints in relation to classification decisions be strengthened.

1. The ACCG notes and supports the Discussion Paper's inclusion of the guiding principle that 'children should be protected from material likely to harm or disturb them'

The ACCG considers the protection of children to be a key component of a classification system and welcomes the proposals outlined in the Discussion Paper which seek to limit children's access to potentially harmful or disturbing material. The ACCG also recognises and supports the ALRC's attempt to develop classification categories which provide clearer guidance around specific age and recommended viewing. The ACCG notes the proposals to introduce the following classification categories: Children, General, Parental Guidance, Teen, Mature Audience and Restricted (both R 18+ and X 18+) and Refused Classification.

2. The ACCG recommends that further consideration be given to the proposal that only computer games likely to be classified MA 15+ or higher be classified by the Classification Board, particularly in the event that the proposed new classification categories are not adopted

The ACCG notes the ALRC's proposal that only computer games likely to be classified MA 15+ or higher must be classified. The ACCG acknowledges the reasons behind this in terms of the increasing development of small games, often played online and on mobile devices, and the issues associated with classifying these games. The ACCG also notes the ALRC's proposal that industry bodies should develop codes of practice that encourage the voluntary classification of content such as lower-level computer games, using the categories, criteria and markings of the National Classification Scheme.

If the proposal that *only games likely to be rated MA 15+ or higher require classification* was to be adopted, the ACCG suggests that the proposal for new classification categories should also be adopted to avoid any potential issues in implementation. This is due to the indication in the Discussion Paper that the proposed PG 13+ would be content inappropriate for those aged under 13 years rather than the current M guideline which specifies that content is not recommended for those aged under 15 years. Accordingly, if the existing categories remain in place and the recommendation to only classify MA 15+ or higher computer games was adopted, this would mean that computer games classified as being M may be sold without classification markings. Having M computer games available for purchase without any clear information on the classifiable elements of the games and recommended age appropriate viewing may limit the ability of the public to make informed choices about their computer game purchases.

If the proposed new classification categories are not introduced, further consideration may need to be given to how the proposal to require only games MA 15+ or higher to be classified would work. Furthermore, the ACCG recommends that if the proposal to require only the classification of MA 15+ or higher computer games is adopted that work be done with the industry to encourage the voluntary classification of lower level games in accordance with classification guidelines.

3. The ACCG recommends that a review of the type of content currently classified as MA 15+ and the existing guidelines for this category be undertaken prior to any removal of mandatory access restrictions on MA 15+ content

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The ACCG notes that the current classification guidelines for MA 15+ specify that the content is strong. The ACCG acknowledges the reasons raised in the Discussion Paper for removing mandatory access restriction for this category, including the issue that preventing persons under the age of 15 from seeing MA 15+ films and playing MA 15+ games is problematic offline and almost completely impossible online. The ACCG also notes the point that restricting access at the R 18+ level, rather than the MA 15+ level, is more consistent with international norms concerning the regulation of online content, as the focus is on restricting access to adults.

However, the ACCG is concerned that the impact of content classified within the current MA 15+ guidelines may warrant legal restrictions on access. As highlighted in the Discussion Paper 'less than 5% of films classified by the Classification Board are classified R 18+' and 'relatively little content is likely to hit this high threshold'. This indicates that there is potentially a considerable amount of content with strong themes not appropriate for children in categories below the R 18 + classification. The ACCG considers that the proposal that 'some content providers should continue to refuse to sell or admit young unaccompanied minors to these films and computer games, even if they are not required by law to do so' is positive but potentially unrealistic and unworkable in the long term. Consequently, this is not seen as a reliable mechanism for ensuring that access to unsuitable content is appropriately restricted for young people.

The ACCG notes that the Discussion Paper recognises that removing the legal restriction on access to MA 15+ content 'is not to say that MA 15+ content is suitable for persons under 15'. Accordingly, the ACCG considers that the guidelines within the categories should be reviewed if the proposal to remove mandatory access restrictions on MA 15+ content is to be adopted. More specifically, the ACCG recommends that further consideration be given to what content is classified in the MA 15+ and the R 18+ categories in the event that the legal restrictions on access to MA 15+ content are removed. If legal restrictions on access are to be removed for the MA 15+ classification category it may be that certain content should fall within the R 18+ restricted category rather than the proposed unrestricted MA 15+ classification category.

4. The ACCG suggests that a specific proposal be made in relation to the implementation of education initiatives to accompany any changes to the classification scheme

The ACCG notes the ALRC's expectation 'that a range of self-regulatory and other initiatives will continue to be developed to assist consumers to manage their own access to media content, and be able to protect children and others in their care'. The ACCG notes the inclusion of digital literacy and education programs, such as the Cybersmart program, are referred to in the Discussion Paper as one such measure. The ACCG also acknowledges the reference in the Discussion Paper to the importance of the education of parents and consumers as one of the most important means of regulating access to online content. This is particularly important in the new media environment where as children get older the capacity of adults to control their access to various media diminishes. Further, the ACCG suggests that consideration be given to how the new classification system could better enhance the capacity of children to make informed decisions about the media they use and incorporate their views in the design of the new classification tools.

The ACCG has previously made submissions to the Commonwealth Attorney-General's Department regarding the proposal to introduce an R 18+ classification category for computer games. In these submissions the ACCG raised concerns in relation to the potential impacts of depictions of high impact violence and highlighted the importance of implementing a public education campaign should an R 18+ classification category for computer games be introduced.

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The ACCG highlighted that this education campaign should provide information on the type of content in computer games available for sale in Australia.

The ACCG notes that in July 2011 the (then) Standing Committee of Attorneys-General gave in principle support for the introduction of an R 18+ classification category for computer games and that the Discussion Paper states that this is consistent with the ALRC's proposed classification model. In light of these developments, the ACCG reiterates the importance of a public education campaign as a key element of any changes to the Australian Classification Scheme (including any broader changes beyond the classification of computer games). The ACCG recommends that if changes are to be made that a specific proposal be included by the ALRC in relation to the importance of providing education and information to the public on classification and media access issues. Such education campaigns should include programs designed to assist children to make wise choices in the media they use.

In addition, the ACCG notes the specific ramifications that changes to the classification scheme may have for Indigenous communities in prescribed areas of the Northern Territory. It is noted that a number of communities in the Northern Territory are in prescribed areas which are subject to restrictions on classified material. The ACCG recommends that any changes to the classification scheme should be accompanied by targeted and culturally appropriate education campaigns for prescribed communities to ensure such communities are informed of the specific ramifications for them regarding classification issues.

5. The ACCG recommends that consideration be given to how to facilitate the involvement of child development experts, family and domestic violence experts, and research to inform classification decision making, classification training courses, the development of industry codes of practice and reviews

The ACCG notes the detail provided in Chapter 7 of the Discussion Paper in relation to the various options for who should classify particular content. The ACCG recognises the reasons behind the proposals for industry managed classification processes for particular content. Concerns are identified in the Discussion Paper in relation to the potential problems associated with allowing industry to classify its own content, particularly in relation to 'the balance between content providers' self-interest and community standards'. The ACCG notes that the ALRC has suggested that any moves towards greater classification of content by industry will require meaningful government oversight to incorporate appropriate checks and balances. The ACCG is supportive of this approach and encourages the ALRC to consider how child development experts, family and domestic violence experts and research in this area could be used to inform reviews of classification decisions, whether these reviews are to be undertaken through the Classification Board or some other mechanism. The ACCG also encourages the ALRC to consider mechanisms that would encourage industry consultation with child development, family and domestic violence experts in developing industry codes of practice.

The ACCG also notes the question posed in the Discussion Paper of whether or not classification training should be provided only by the Regulator or become part of the Australian Qualifications Framework. The ACCG recommends that regardless of the entity providing the classification training, consideration should be given to how to incorporate the views of child development experts, family and domestic violence experts and the research in this area in classification training programs.

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6. The ACCG recommends that if the ALRC's proposal for the use of authorised industry classifiers is adopted, the mechanisms for monitoring and responding to complaints in relation to classification decisions be strengthened

For the classification system to meet its objectives it must be, and must be seen to be, reliable by the community. The ACCG notes that the ALRC has proposed that a large amount of media be classified, either on a voluntary or mandatory basis, by authorised industry classifiers who would be guided in part by codes developed by various industry bodies. The Discussion Paper also notes that other content may be classified by the Classification Board or by content providers (for media content that does not need to be classified), and the ACCG notes that this may create a risk that the proposed new system will result in a reduction in consistency and reliability in decision making.

The ACCG suggests that the ALRC should consider how the proposed new classification system could be strengthened to ensure greater reliability and consistency of decision making. Further, it is proposed that a more robust complaints mechanism is required so that members of the community who suspect that material has been misclassified can easily report their concerns to a body responsible for investigating their concerns. Importantly, there should be one complaints body that is independent and easily accessible to consumers, and that is required to provide the complainant with an response regarding the outcome, including an outline of the decisions and the rationale in writing if requested. Education campaigns are suggested to be a critical element in ensuring awareness of the relevant complaints mechanism and accessibility of the complaints body to the community. Finally, while it is not considered appropriate for a complaints system to be relied upon for enforcement purposes, the ACCG recommends that sufficient powers be afforded to the complaints body to ensure that it has the capacity to fully and appropriately investigate complaints and impose sanctions on or require remedial action be taken, for example, by content distributors whose material has been found to be misclassified.

Please do not hesitate to contact Clea Viney, A/Senior Policy Officer, Policy, Strategic Policy and Research Program (ph:07 3211 6954; e-mail Clea.Viney@ccypcg.qld.gov.au) should any aspects of this advice require clarification.