



**Submission to the
Australian Law Reform Commission
National Classification Scheme Review**

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Contents

Introduction	1
ACL's primary concerns.....	1
Protection of children	1
<i>Sexualisation of children</i>	1
<i>Violence in the media</i>	2
Consistency	2
Issues of concern in the Discussion Paper	2
The eight guiding principles	2
New categories	3
Free-to-air television time-zone restrictions	4
Display of adult material.....	5
Film festivals and art galleries.....	6
Issues that need greater attention in this inquiry	6
X18+	6
Content in R18+ films.....	7
Internet filtering.....	7
Outdoor advertising.....	8
Video games classification	9
Serial classifications for publications	10
Music videos	10
The "artistic merit" loophole	10
Mobile phones	11
Recommendations	12

Introduction

The Australian Christian Lobby (ACL) welcomes this opportunity to make a submission to the *National Classification Scheme Review Discussion Paper* (“the Paper” or “the Discussion Paper”).

ACL commends the Australian Law Reform Commission (ALRC) on its commitment to overhauling the National Classification Scheme (NCS) so that it is more consistent, efficient, and effective. We are pleased that some of the ALRC’s proposals acknowledge the need to provide greater protection for children and clearer guidance for parents.

However, ACL is concerned that there are some areas which have not been adequately addressed, and that some proposals are counter to the principle of protecting children. There are some areas of discussion on which the ALRC has not made proposals which are also of concern.

This submission will reiterate some of the key points of our July submission¹ and then comment on the Discussion Paper.

ACL’s primary concerns

Protection of children

One of the primary reasons, if not the primary reason, for classification is to protect children from content which may harm them in their development into healthy adults. This should guide the approach to classification. Two major areas of concern regarding the protection of children are sexualisation of children and violence in the media.

Sexualisation of children

The sexualisation of children is a critically important issue in today’s society, recognised by the American Psychological Association as a “broad and increasing problem”.² The Australia Institute draws attention to a range of associated risks such as eating disorders and inappropriate sexual behaviour.³ The Australian Medical Association has also raised concerns about the unrealistic portrayal of “idealised images” of “attractive, thin women and athletic, handsome men” as a contributor to body image and self-esteem problems and has suggested that a “national industry standard may be an effective step along the way to responsible body image portrayal in the media”.⁴

The Discussion Paper referred to the Senate Standing Committee on Environment, Communications and the Arts’ 2008 inquiry into *Sexualisation of Children in the Contemporary Media*, noting the

¹ Australian Christian Lobby (July 2011), *Submission to the Australian Law Reform Commission National Classification Scheme Review*,

http://www.alrc.gov.au/sites/default/files/pdfs/ci_2024a_australian_christian_lobby.pdf

² American Psychological Association (2007), ‘Sexualization of Girls’,
<http://www.apa.org/pi/women/programs/girls/report.aspx>

³ Emma Rush & Andrea La Nauze (2006), *Corporate Paedophilia: Sexualisation of Children in Australia*, The Australia Institute, http://www.tai.org.au/documents/dp_fulltext/DP90.pdf, pp 34-44.

⁴ Australian Medical Association (2009), *AMA Position Statement: Body Image and Health*,
http://www.amawa.com.au/Portals/0/docs/2009_bodyimage.pdf

Committee's observation that inappropriate sexualisation of children is a "significant cultural challenge".⁵

Because of the significant problem of sexualisation of children, and the guiding principle that "children should be protected from material likely to harm or disturb them",⁶ a review of the National Classification Scheme should consider the problem of sexualisation in its approach to classification, outdoor advertising, regulation of online content, and accessibility of offline content.

We urge the ALRC to comment on the issue of sexualisation of children directly. Given the recognised extent of the problem, a review of this type should address the issue directly.

Violence in the media

The American Psychological Association has stated that research has shown a link between viewing violence in mass media and aggressive attitudes, values, and behaviour and can have a long-lasting effect on behaviour and personality, including criminal behaviour.⁷ This issue is directly related to classification.

We recommend that this issue should also be commented on directly.

Consistency

In their *Review of the National Classification Scheme*, the Legal and Constitutional Affairs References Committee criticised the NCS's lack of a "uniform and consistent approach to classification". The Committee's recommendations included an expansion of the NCS to cover "all mediums of delivery", "harmonised standards across all media", and "appropriate oversight, spot checks and compliance checks".⁸

We note that the ALRC considered the Committee's recommendations, including the need to focus on "content rather than platform or means of delivery".⁹ ACL believes consistency in classification is essential and supports the ALRC's comments regarding this issue.

Issues of concern in the Discussion Paper

The eight guiding principles

Although the ACL agrees broadly that adult Australians should be able to consume media content of their choice with few limitations, the purpose of classification is primarily to protect children who may be harmed by certain content and to inform consumers of what content products may contain. The NCS provides the necessary limitations on the libertarianism of the principle that adults "should

⁵ Australian Law Reform Commission (September 2011), *National Classification Scheme Review Discussion Paper*, http://www.alrc.gov.au/sites/default/files/pdfs/publications/dp_77_whole_pdf.pdf, p 20.

⁶ ALRC, *Discussion Paper*, p 57.

⁷ American Psychological Association (1994), *Violence in Mass Media*, <http://www.apa.org/about/governance/council/policy/media.aspx>

⁸ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/report/report.pdf, Executive Summary

⁹ ALRC, *Discussion Paper*, p 69.

be able to read, hear, see and participate in media of their choice”.¹⁰ Thus, the principles that guide the NCS should go to the heart of its very purpose. The current order of the principles suggests that community standards, protection of children, and information are subservient principles to the principle of adults being able to consume whatever they want. To remain true to its purpose, the NCS must rank the guiding principles in this order of priority:

1. children should be protected from material likely to harm or disturb them;
2. consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;
3. the classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services;
4. classification regulation should be focused upon content *and impact* rather than platform or means of delivery;
5. classification regulation should be kept to the minimum needed to achieve a clear public purpose, and should be clear in its scope and application;
6. communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community;
7. Australians should be able to read, hear, see and participate in media of their choice;
8. the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets.

New categories

In our July submission, we recommended the retention of the G, PG, M, MA15+, and R18+ categories as they have been in use for a long period of time and are widely understood and recognised in the community.

The proposed new categories attempt to remove ambiguity around M and MA15+, replacing M with T13+ and retaining MA15+. The new categories would continue to classify MA15+ as “not suitable” for children under 15, but would remove the legal restrictions.

ACL is concerned that material which was previously not recommended for children under 15 (rated M) will now be seen as recommended for children aged 13 and 14.

However, we can support the new category if it is made clear that content rated T13+ is not *suitable* for children under 13. As there has been no legal restriction on content rated M, and as M labels do not display an age, it is common practice for 13 and 14-year-old children to view M rated material. We emphasise the importance of the “13+” in the new category and recommend this be prominently displayed.

ACL does not support the removal of the legal restrictions on the MA15+ category.¹¹ Many films, games, and television shows contain graphic violence, sex, nudity, drug use, or adult themes which,

¹⁰ ALRC, *Discussion Paper*, p 57.

¹¹ ALRC, *Discussion Paper*, pp 130-131.

although not of a high enough impact to warrant an R18+ rating, are nevertheless inappropriate for children under 15. The change to MA15+ would mean any content less than R18+ would legally be permissible viewing for children of any age.

As Flinders University Law Professor Elizabeth Handsley commented in *The Age*:

*anything lower than R18+ could legally be seen by anybody, of any age. Think of the opening scene in Saving Private Ryan. That's MA15+. Material with that level of violence would be open season for children of all ages.*¹²

The rationale behind the ALRC's proposal is the difficulty in enforcing MA15+ restrictions consistently across media. However, the ALRC strongly maintains that R18+ should be restricted. Both categories are difficult to enforce, and yet there are strong imperatives to do so. The Paper acknowledges the unsuitability of much MA15+ content for persons under 15, and suggests 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". It seems inconsistent to recognise the inappropriateness of this content, suggest that providers refuse access to it, and then recommend the removal of the current legal restrictions on the MA15+ category.

ACL submits that there is no reason to remove the legal restriction, especially if the principles remain the same. The ALRC has offered no compelling reason to remove legal restrictions and has acknowledged that restricting MA15+ content from children under 15 remains important. Rather than allowing minor difficulties or inconsistencies in the application of MA15+ restrictions to result in their abandonment, the inconsistencies should be redressed and the restrictions retained.

We strongly urge the ALRC to reconsider its proposal and recommend the retention of the legally restricted MA15+ category.

Free-to-air television time-zone restrictions

The Discussion Paper notes some submissions that call for the removal of time-zone restrictions on free-to-air television.¹³ For example, Free TV Australia argued that time-zones are no longer relevant or effective. The ALRC notes the increasing convergence of media, and that MA15+ or higher content may be watched at any time of day by anybody with subscription television or an internet connection.

By contrast, the ALRC also acknowledges that "the logic of convergence may lead to policy outcomes for which Australia may not be ready",¹⁴ such as the prohibitions on broadcasting of R18+ or even X18+ content being seen as outdated. In the ALRC's words "a community expectation that television channels are safe, particularly for children, at certain times of day, may suggest that time-zone restrictions are still relevant".¹⁵

¹² Elizabeth Handsley (November 11, 2011), 'Not much for children in classification review', *The Age*, <http://www.theage.com.au/opinion/politics/not-much-for-children-in-classification-review-20111111-1nas1.html>.

¹³ ALRC, *Discussion Paper*, pp 137-8.

¹⁴ ALRC, *Discussion Paper*, p 138.

¹⁵ ALRC, *Discussion Paper*, p 138.

We submit that these time-zone restrictions are not only relevant but entirely necessary. It is essential that the expectation that daytime television will be safe for children, especially at times when children are likely to be viewing, are met.

We acknowledge the suggestion that “at the very least, a comprehensive public education campaign about how to use parental locks would be necessary” if time-zone restrictions were lifted. However, this truly would be the “very least”. Parental locks are not a suitable or adequate substitution for the current time-zone system, given the long history of the restrictions and the widespread television consumption by children at certain times of the day. Education in parental locks is merely patching up what would be a disastrous situation if time-zone restrictions are removed and content designed for adults is permitted at these times.

The ALRC noted the lack of time-zone restrictions for subscription television. However, subscription TV requires payment and is received through set-top boxes containing parental locks. Despite moves towards set-top boxes for free-to-air television, this is not yet universal. Furthermore, TV which is received freely without any need to subscribe or “sign up” should meet minimum time-zone standards.

This is a pivotal point in the whole purpose of the NCS on this issue and ACL strongly urges the ALRC to require the retention of time-zone restrictions for free-to-air television.

Display of adult material

The ALRC repeatedly emphasises the need to restrict access to R18+ media to adults,¹⁶ adding that this restriction should apply “whether or not the content is produced on a commercial basis”.¹⁷ We agree with the ALRC’s comments in regards to restricting access to adult material, and suggest that the display of such material is an important and related issue.

The ALRC acknowledges that consumers do not have the same level of control over the public display of media in streets, shopping centres, parks, and other public areas as they do over media consumed in their homes. The ALRC also recommends stricter restrictions on “the display of media content in public” than on “the sale and distribution of content to be viewed in homes and cinemas”, suggesting that public display of media might be restricted for content classified MA15+ or higher.¹⁸

The ALRC acknowledges the Senate Legal and Constitutional Affairs References Committee’s recommendation that films and publications with adult content should “only be available in a separate, secure area which cannot be accessed by children”.¹⁹

We strongly agree with the Committee’s recommendation. In its July submission, ACL recommended that all publications currently classified as Category 1 and Category 2 Restricted, or what would be X18+ under the new Scheme,²⁰ if they continue to be legally available, should be sold only in adults-only premises and not in general retail stores such as newsagents or service stations. Should these publications continue to be permitted for sale in general stores open to the public, they should be

¹⁶ ALRC, *Discussion Paper*, p 128.

¹⁷ ALRC, *Discussion Paper*, p 129.

¹⁸ ALRC, *Discussion Paper*, p 143-144.

¹⁹ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, Recommendation 13, p xv, cited in the *Discussion Paper*, p 136.

²⁰ ALRC, *Discussion Paper*, p 154-155.

displayed in a separate area with access restricted to adults. We also recommended that all R18+ films be displayed only in restricted areas accessible only to adults.²¹

ACL reiterates these recommendations, which are critical to achieving the protection of children.

Film festivals and art galleries

Proposal 6-3 in the Discussion Paper proposes that material shown at “film festivals, art galleries and other cultural institutions” be exempt from the requirement of classification, even though material “likely to be R 18+” must still be restricted to adults.

In its July submission, ACL recommended that galleries and exhibitors should provide classification information similar to that provided for other media. This must include:

- warnings on advertising and at entrances that artwork may include graphic sex, violence, nudity, or themes, using standard classification markings;
- that material that would receive an R18+ rating be restricted to adults;
- that material above MA15+ be displayed in a restricted area.

We approve of the ALRC’s proposal in this regard, however classification should still be required for content likely to be MA15+, or at the very least R18+.

Films and computer games displayed at film festivals should have the same requirements for classification as ordinarily.

Issues that need greater attention in this inquiry

X18+

The ALRC withholds comment in the Discussion Paper on whether the X18+ content should be legal to sell or distribute.²² It notes that although the sale of X18+ films is illegal in most of Australia, the publications equivalent of X18+, Category 1 and Category 2 Restricted, may be sold.²³

The ALRC repeatedly recommends the restriction of such material to adults only, something the ACL supports. However, ACL strongly recommends that the sale of any X18+ material (including publications now classified Category 1 and Category 2 Restricted) be banned.

Michael Flood and Clive Hamilton suggest that pornography and X18+ material has a number of negative impacts on people, and particularly on teenage boys, including that they would “accept and adopt” “non-mainstream sexual behaviours”.²⁴ Consumption of X18+ material is also associated with aggressive sexual behaviour and even rape.²⁵

The effects of X18+ material was an important issue in *The Little Children are Sacred* report into indigenous Northern Territory communities, with the report expressing concern about “the

²¹ Australian Christian Lobby *Submission to the ALRC*, pp 9-10, 24-25.

²² ALRC, *Discussion Paper*, p 99.

²³ ALRC, *Discussion Paper*, p 99, footnote 63.

²⁴ Michael Flood and Clive Hamilton (February 2003), *Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects*, The Australia Institute, https://www.tai.org.au/documents/dp_fulltext/DP52.pdf, p xi.

²⁵ Flood and Hamilton, *Youth and Pornography in Australia*, pp ix – xi.

availability of pornography in communities and children's exposure to pornographic material, in particular videos and DVDs". This availability and exposure was considered to have had a major impact on young Aboriginals and was blamed for "sexualised behaviour in quite young children".²⁶

Following the report, both political parties supported the ban of X18+ material in those communities, with Indigenous Affairs Minister Mal Brough saying the government was "hellbent on doing everything it can to protect these innocent children. Children should never be exposed to this sort of material".²⁷

It is inconsistent to recognise the harms of X18+ material and ban it in certain Aboriginal communities but not apply the ban in the rest of Australia. X18+ films are currently still legal throughout the Territories, except in those communities, and X18+ equivalent publications are legal in most States. ACL supports a ban on the sale of all X18+ films and publications and urges the ALRC to make a recommendation to this end, rather than remain noncommittal on the issue.

Content in R18+ films

The *Guidelines for the Classification of Films and Computer Games* currently allow "simulated" sexual activity but cite as a "general rule... simulation, yes – the real thing, no".²⁸ This guideline is acknowledged in the Discussion Paper.²⁹ Despite this guideline, however, the Legal and Constitutional Affairs References Committee notes that "numerous films with graphic depictions of actual sex have been classified R18+".³⁰

ACL urges the ALRC to address this concern. ACL recommends that the "general rule" be made a mandatory one, so that any material depicting actual sexual activity not be given an R18+ rating. The misuse of apparently discretionary clauses like this is a large part of the failure of the current system. The ban on real sex in R18+ and below needs to be categorical.

Internet filtering

The ALRC does not make comment on the merits of the proposed ISP filter.³¹ The issue of mandatory and voluntary ISP-level filtering is briefly discussed in the Paper,³² which notes the Telstra's submission that blocking a blacklist of URLs is "feasible and practical to implement at 100% accuracy... without noticeably impacting on network performance".³³

²⁶ Northern Territory Government (2007), *Little Children are Sacred*, Report of the NT Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf, p 199.

²⁷ Mal Brough (7 August, 2007), House Hansard, Families, Community Services and Indigenous Affairs and Other Legislation amendment (Northern Territory National Emergency Response and Other Measures) Act 2007, second reading speech, <http://www.aph.gov.au/hansard/reps/dailys/dr070807.pdf>, p 18.

²⁸ *Guidelines for the Classification of Films and Computer Games* (as amended, 19 March, 2008), <http://www.comlaw.gov.au/Details/F2008C00126>, p. 11

²⁹ ALRC, *Discussion Paper*, p 99.

³⁰ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 167.

³¹ ALRC, *Discussion Paper*, p 183.

³² ALRC, *Discussion Paper*, pp 135-136.

³³ ALRC, *Discussion Paper*, pp 135, citing Telstra's *Submission CI 1151*, (July 15, 2011).

ACL has supported the Labor Government's proposal for an ISP filter and put in a submission to this effect to the Joint Select Committee on Cyber-Safety in April, 2011.³⁴ Despite the limitations and challenges of ISP filtering, there are a range of studies demonstrating that it would be an effective way of filtering Refused Classification material.

We strongly urge the ALRC to support the ALP's ISP filtering proposals in the context of the National Classification Scheme discussion. A platform neutral review of classification should address the issue of internet filtering.

We draw the ALRC's attention to the approach in the United Kingdom, where ISP companies are filtering pornography with the choice for adults to "opt-in" by contacting their ISPs.³⁵ UK Communications Minister Ed Vaizey has argued for this approach saying "there is material online that, while legal, is not suitable for children. In the physical world youngsters are protected from inappropriate content and the same needs to happen online".³⁶

ACL recommends such an approach be adopted in Australia. Much material which is legal must still be restricted to adults, something the Discussion Paper advocates repeatedly. The technology exists and is being employed in the UK to block much pornographic material online while giving adults the option of access if they choose. Given the existence of such technology, this is a common sense approach, is consistent with the approach towards films, publications, and other offline material, and is in the best interests of children.

Outdoor advertising

The ALRC addresses the issue of outdoor advertising briefly and, in ACL's view, inadequately.³⁷ Mention is made of the House of Representatives Standing Committee on Social Policy and Legal Affairs' report *Reclaiming Public Space*, which recommends a review of the self-regulatory system for advertising by mid-2013. In the event such a review finds the self-regulatory system lacking, the Committee recommends a co-regulatory system with government input into codes of practice for advertising.³⁸

ACL submits that this is an inadequate response. Outdoor advertising has become more overtly sexual and sometimes depicts violence or sexual violence. The AANA *Code of Ethics* requires that advertising must have "sensitivity to the relevant audience".³⁹ This term is vague and does not account for the fact that the entire population may be exposed to outdoor advertising regardless of whether they are members of the "relevant audience".

³⁴ Australian Christian Lobby (April 2011), *Submission to the Joint Select Committee on Cyber-Safety*, <http://australianchristianlobby.org.au/wp-content/uploads/110429-ACL-cyber-safety-submission.pdf>.

³⁵ James Chapman (October 12, 2011), 'New curbs on internet sleaze: Help for parents to protect children from unsuitable content', *Daily Mail*, <http://www.dailymail.co.uk/news/article-2047651/Camerons-porn-filter-New-curbs-internet-sleaze-protect-children.html#ixzz1aeqmA1DR>.

³⁶ Caroline Davies (19 December, 2010), 'Broadband firms urged to block sex websites to protect children', *The Guardian*, <http://www.guardian.co.uk/society/2010/dec/19/broadband-sex-safeguard-children-vaizey>.

³⁷ ALRC, *Discussion Paper*, p 144-145.

³⁸ House of Representatives Standing Committee on Social Policy and Legal Affairs (July 2011), *Reclaiming Public Space: Inquiry into the Regulation of Billboards and Outdoor Advertising: Final Report*, <http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/report/fullreport.pdf>, Recommendation 2, pp xv – xvi.

³⁹ Australian Association of National Advertisers, *Code of Ethics*, <http://www.aana.com.au/documents/AANACodeofEthicsAugust2009.pdf>, para 2.3.

The Senate Legal and Constitutional Affairs References Committee acknowledges that outdoor advertising and billboards may be “a special case... by virtue of their public nature”.⁴⁰ They noted the “contribution of outdoor advertising to the sexualisation of children and objectification of women”.⁴¹

Outdoor advertising is inherently public and cannot be switched off. It is shown at all times of day, and children are necessarily exposed to it.

ACL has previously made submissions recommending that outdoor advertising regulations be brought into line with commercial television standards.⁴² Television advertising regulations recognise the fact that children watch TV at particular times of day and thus regulate what kind of advertising may be shown at those times.

We urge the ALRC to address how to deal with the issue of outdoor advertising in a more effective way than the current self-regulatory system. We recommend that all outdoor advertising be strictly G-rated due to its public nature and exposure to children of all ages at any times of day. Any regulatory regime must include strong enforcement and heavy penalties for non-compliance.

Video games classification

The Discussion Paper recommends applying the “same thresholds and limits on content permitted at each classification category across media content”. Thus, a level of graphic violence, for example, that would be permitted in MA15+ films would also be allowed in MA15+ video games. This is despite the repetitive and interactive nature of video games, two aspects of games which must be considered as raising the impact of that content, and which rightly have done so to date..

Impact must be the driver of classification in any classification system. So, content with the same level of impact should be rated similarly in films and computer games, and the content itself should be assessed according to its impact.

ACL recommends that the interactive and repetitive nature of video games be taken into account when considering the impact a computer game has and thus the classification it receives.

ACL has long opposed the introduction of an R18+ rating for video games. However, given that such a category will now be introduced, we urge the ALRC to ensure that this does not allow games which are currently Refused Classification to creep into the R18+ category. Games with very high levels of violence currently rated MA15+ should be pushed into the new R18+ category, while games currently Refused Classification should remain RC.

We also note with concern that some video games which offer sex or nudity as incentives or rewards may fall into the R18+ category. This is against all our community norms and particularly the growing concern for the objectification of women. The ALRC must recommend that any games offering sex or nudity as incentives or rewards be Refused Classification.

⁴⁰ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 137.

⁴¹ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 140.

⁴² Australian Christian Lobby (April 2008), Submission to the Senate Standing Committee on Environment, Communications and the Arts, http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/submissions/sub143.pdf

Serial classifications for publications

In its July submission ACL expressed concern about the use of serial classifications for publications due to lax enforcement and lengthy classification grants. Between December 2005 and February 2010, 55 publications had their serial classification revoked, 48 of which were originally classified Category 1 restricted.⁴³ This proves that milder content is submitted for early editions and higher content is submitted in subsequent editions once classification has been granted. The Legal and Constitutional Affairs References Committee noted this problem and said that “material which should be Refused Classification is appearing in publications which have a serial classification declaration”.⁴⁴ The Committee suggested that this issue is one which “could be subject to increased compliance and audit checking”.⁴⁵

ACL reiterates its recommendation that the first six issues of any new classifiable publication should be subject to submission for classification to demonstrate that the content consistently matches the conditions and restrictions of sale. Serial classification should subsequently be granted for a period of six months, or, at the most, 12 months.

Music videos

In its July submission ACL called for a specific investigation into the classification of music videos in accordance with National Classification Scheme criteria. The Senate Legal and Constitutional Affairs Reference Committee suggested that the sexual nature of many videos played during G and PG viewing times may be contributing to the sexualisation of children,⁴⁶ and expressed concern that music videos fall outside the NCS due to their appeal to children and young people.⁴⁷

The ALRC did not consider music videos in the Discussion Paper. ACL believes this is a necessary part of a review of classification aiming to be platform neutral. ACL recommends that the ALRC address the issue, acknowledging that music videos are an area of concern due to their appeal to children and their often highly sexualised nature.

The “artistic merit” loophole

ACL again urges the closing of the “artistic merit” loophole to ensure that it is impossible for offensive and even illegal material such as child pornography to be given a lower rating than Refused Classification. A report from the Child Pornography Working Party, established by the New South Wales Government following the 2008 Bill Hensen controversy, argued that:

the inclusion of the defence of artistic merit amongst the child pornography offences may, somewhat unhelpfully, lead to the impression that material that would otherwise constitute

⁴³ Senate Standing Committee on Legal and Constitutional Affairs (2010, February), Classification Board: Answers to questions on notice, Question 11, Additional Budget Estimates 2010-2011, http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/ag/011_Classification_Board.pdf

⁴⁴ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 167.

⁴⁵ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 167.

⁴⁶ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 122.

⁴⁷ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 177.

*child pornography is acceptable if the material was produced, used, or intended to be used whilst acting for a genuine artistic purpose. The CPWP is not of the view that this should be the case. Material that is otherwise offensive because of the way in which it depicts children should not be protected because its creator claims an overriding artistic purpose for it.*⁴⁸

The NSW *Crimes Act* was subsequently amended to remove “genuine artistic purpose” as a defence for child pornography.⁴⁹

The Senate Legal and Constitutional References Committee recommended that the defence be removed.⁵⁰

Mobile phones

ACL reiterates its support for self-regulation for video game content on mobile phones provided there are clear guidelines, an efficient complaints mechanism, and strong penalties to encourage adherence.

⁴⁸ Child Pornography Working Party (2010), *Report of the Child Pornography Working Party*, NSW Department of Justice and Attorney-General, [http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/vwFiles/Final_Child_Pornography_Working_Party_Report_8Jan.pdf/\\$file/Final_Child_Pornography_Working_Party_Report_8Jan.pdf](http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/vwFiles/Final_Child_Pornography_Working_Party_Report_8Jan.pdf/$file/Final_Child_Pornography_Working_Party_Report_8Jan.pdf), p 21

⁴⁹ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, p 86.

⁵⁰ Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme*, Recommendation 8, p xiv.

Recommendations

In light of the foregoing discussion, ACL recommends that:

- the ALRC comment directly on the issue of sexualisation of children;
- the ALRC comment directly on the issue of violence in the media;
- the eight guiding principles outlined in the Discussion Paper be re-prioritised to reflect the importance of protecting children and providing information to the public;
- the legal restriction on MA15+ material be retained;
- the current time-zone restrictions for free-to-air television be retained;
- all publications currently classified Category 1 and Category 2, or what would be X18+ under the new Scheme, if they continue to be legally available, be sold only in adults-only premises and not in general retail stores such as newsagents or service stations;
- if these publications continue to be permitted for sale in general stores open to the public, they be displayed only in a separate area with access restricted to adults;
- all R18+ films be displayed in restricted areas accessible only to adults;
- museums and art exhibitors be required to classify and warn viewers of the content of artworks being displayed. Any content which would receive an R18+ rating should be displayed in an adults-only area of an exhibition;
- films and computer games displayed at film festivals should have the same requirements for classification as ordinarily;
- there be a ban on the sale of all X18+ films and publications throughout Australia;
- the “general rule” in regards to sex in films not allowing real sex be made a mandatory rule so that any film containing actual sex cannot be granted an R18+ rating;
- the ALRC express support for the Labor Government’s ISP filtering proposals;
- all pornography be filtered at ISP level with an option for adults to opt-in by contacting their ISPs, an approach being instigated in the UK;
- all outdoor advertising be strictly G-rated due to its public nature and exposure to children. Any regulatory regime must include strong enforcement and heavy penalties for non-compliance;
- the interactive and repetitive nature of video games be taken into account when considering the impact a computer game has and thus the classification it receives;
- games which are currently Refused Classification not be allowed to creep into the new R18+ category for games;
- any games offering sex or nudity as incentives or rewards must be Refused Classification;
- the first six issues of any new classifiable publication be subject to submission for classification, that serial classification be granted for a maximum of six months, and that the Classification Board have the power to request submission for classification of any issue of a

publication. Failure to comply with a request for submission should result in revocation of serial classification;

- the ALRC address the problem of music videos and their overtly sexual nature and appeal to children, and recommend a specific inquiry into the classification of music videos in accordance with National Classification Scheme criteria; and,
- “artistic merit” be removed as a defence for offensive or illegal content such as child pornography.