# Submission

**on the**

# National Classification Scheme Review

# Discussion Paper

**to the**

# Australian Law Reform Commission

**GPO Box 3708, SYDNEY NSW 2001**

**Telephone: 02 8238 6333**

**Facsimile: 02 8238 6363**

**Email: classification@alrc.gov.au**

**Website: www.alrc.gov.au**

**by**

# FamilyVoice Australia

**4th Floor, 68 Grenfell St, Adelaide SA 5000**

**Telephone: 1300 365 965**

**Facsimile: 08 8223 5850**

**Email: office@fava.org.au**

**Website: www.fava.org.au**

**21 November 2011**

## TABLE OF CONTENTS

# Introduction

On 24 March 2011, Attorney-General Robert McClelland referred the National Classification Scheme to the Australian Law Reform Commission (ALRC) and asked it to conduct widespread public consultation across the community and industry.

The review is to consider issues including existing laws; the current classification categories; the rapid pace of technological change; the need to improve classification information available to the community; the effect of media on children and the desirability of a strong content and distribution industry in Australia.

The ALRC has released a discussion paper which makes proposals for a new national classification scheme for media content and called for public submissions on the proposals. Submissions are due by 18 November 2011.

# 1. Chapter 4: Guiding Principles for Reform

The Discussion Paper identifies eight guiding principles for reform – with the aim of providing an effective framework for the classification of media content in Australia. These principles are intended to inform the development of a new National Classification Scheme that meets community needs and is responsive to the challenges of technological change and media convergence.

The eight guiding principles are that:

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

The first guiding principle as formulated is deficient. This principle has its origin in the philosophical work by British philosopher John Stuart Mill *On Liberty*. In addressing the limits of legitimate power of society over the individual, Mill developed the *harm principle*.[1] This asserts that each individual has a right to liberty ***provided the person's actions do not harm others***. The first guiding principle for

the new National Classification Scheme must be qualified to include the harm principle. For example the first guiding principle could become:

> *Australians should be able to read, hear, see and participate in media of their choice provided that others are not put at risk of harm.*

> ***Recommendation 1.1:***

> ***The first guiding principle for the new National Classification Scheme should be qualified to include the harm principle, for example by adding the words "provided that others are not put at risk of harm.***

The eighth guiding principle as formulated is also deficient. Classification of content needs to be complemented by regulation of platforms and means of delivery to ensure that the intention of the classification of content is enforced through mandatory controls on platforms and means of delivery. For example, classifications involving age restrictions, such as MA15+, should be enforced by such platforms as computers, laptops, tablets and mobile phones.

> ***Recommendation 1.2:***

> ***The eighth guiding principle for the new National Classification Scheme should be modified to recognise the need for complementary regulation of platforms and means of delivery, for example by changing the principle to read:***

> ***(8) classification regulation should be focused upon content and complemented by regulation of platforms and means of delivery.***

# 2. Proposal 5–1 A new National Classification Scheme

Proposal 5–1 is that:

> *A new National Classification Scheme should be enacted regulating the classification of media content.*

The existing national classification scheme has some serious flaws and is not well suited to address the new convergent media environment. It is timely to introduce a new classification scheme.

However, as set out below in response to specific elements of the proposals in the discussion paper, the scheme proposed by the Australian Law Reform Commission (ALRC) would fail to adequately address the need to protect community standards.

> ***Recommendation 2:***

> ***A new National Classification Scheme should be adopted subject to adequately addressing the need to protect community standards.***

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

Proposal 5–2 is that:

> *The National Classification Scheme should be based on a new Classification of Media Content Act. The Act should provide, among other things, for:*
>
> *(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.*

In general these matters are appropriate to be covered by the proposed new Act.

> ***Recommendation 3:***
>
> ***The proposed new* Classification of Media Content Act *should cover the matters listed in Proposal 5-2.***

## 4. Proposal 5-3 A single regulator

Proposal 5–3 is that:

> *The Classification of Media Content Act should provide for the establishment of a single agency ('the Regulator') responsible for the regulation of media content under the new National Classification Scheme.*

Responsibility for regulating classification of media is currently divided between the Australian Communications and Media Authority, the Attorney-General's Department and the Classification Board. In a converged media environment it would be appropriate to have a single regulator.

> ***Recommendation 4:***
>
> ***The proposal that a new Classification of Media Content Act should provide for the establishment of a single agency ('the Regulator') responsible for the regulation of media content under the new National Classification Scheme is supported.***

# 5. Proposal 5-4 Platform neutral definitions

Proposal 5–4 is that:

> *The Classification of Media Content Act should contain a definition of 'media content' and 'media content provider'. The definitions should be platform-neutral and apply to online and offline content and to television content.*

Technologies used to deliver content, or the platform on which content is accessed, do not fundamentally change the nature of the content as such and so the same considerations underlying the primary objectives of the national classification scheme apply.

It would therefore be useful to use platform neutral definitions of "*media content*" and "*media content provider*" in the proposed new *Classification of Media Content Act.*

However, different media content *provider technologies* have different levels of accessibility by children. For example cinemas are controlled at the point of entry, whereas DVDs can be taken home and lax or permissive parents, or other adults, may show children the content – or at least allow children to view it. These differences of access need to be recognised in the provisions regulating media content providers.

> ***Recommendation 5:***
>
> ***The proposed new Classification of Media Content Act should include platform neutral definitions of "media content" and "media content provider".***
>
> ***Different levels of accessibility by children with different content provider technologies need to be recognised in the provisions regulating media content providers.***

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

Proposal 6–1 is that:

> *The Classification of Media Content Act should provide that feature-length films and television programs produced on a commercial basis must be classified before they are sold, hired, screened or distributed in Australia.*

The community generally appreciates and expects feature films and television programs to be classified. There is no reason to limit the classification of television programs to those produced commercially. Programming produced by the Australian Broadcasting Corporation, for example, should also be required to be classified.

This firstly ensures that material that exceeds community standards is not classified and is not able to be sold, broadcast or exhibited.

Secondly it enables access to material not suitable for children, or for children below a certain age, to be legally restricted.

Thirdly, it provides a very useful advisory service that enables individuals to select what they wish to view and assists parents to monitor and control the media their children access.

***Recommendation 6:***

***The proposed new Classification of Media Content Act should provide that all feature films and television programs, including those not commercially produced, should be classified.***

# 7. Proposal 6-2 Computer games

Proposal 6-2 is that:

> *The Classification of Media Content Act should provide that computer games produced on a commercial basis, that are likely to be classified MA 15+ or higher, must be classified before they are sold, hired, screened or distributed in Australia. Some content will be exempt: see Proposal 6–3.*

This proposal would leave games at a lower classification as optional to classify. This is inconsistent with the approach to feature films.

Parents are just as concerned to know which games are suitable for children of a particular age as they are to have this information about feature films and television programs. Indeed given the interactive nature of computer games and their potential to influence behaviour this information is perhaps even more important for computer games than more passive forms of media.

The only real difficulty cited in the discussion paper with classifying all computer games is with what the industry is calling "Small Online Content Products" which may be fairly ephemeral and not worth the cost of classifying. However, the proposal already distinguishes "*computer games produced on a commercial basis*" from other games. If computer games are produced on a commercial basis then it is reasonable to impose the cost of classification on the producers.

Additionally any computer game, even if not commercially produced, which is likely to be classified MA15+ or higher should be required to be classified. There are legitimate community concerns about computer games with strong violence or sexual themes.

The inclusion of computer games **not** commercially produced is important. Game developers may develop different commercial models for recovering the costs of development. For example, games could be distributed free from websites, with revenue generated from website advertising instead of applying a purchase price.

The classification standards for media content need to recognise that the interactivity of computer games greatly increases their impact. Players identify with characters in games much more strongly than when passively watching films and videos. Consequently, stricter standards need to be applied to games than to passive forms of entertainment.

***Recommendation 7:***

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

***Penalties for failing to submit for classification a computer game that would be classified as MA15+ or higher must be high enough to ensure compliance with the law.***

***The classification standards for media content need to recognise that the interactivity of computer games gives them greater impact than passive films or videos and that stricter standards must be applied to computer games.***

# 8. Proposal 6-3 Exempt content

Proposal 6–3 is that:

> *(a) 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 (Proposals 6–1 and 6–2).*
>
> *(b) The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs.*
>
> *(c) 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 R 18+ must be restricted to adults: see Proposal 8–1.*

It is reasonable that films and computer games shown at film festivals, art galleries and other cultural institutions be exempt from classification if their content is likely to be classified as lower than MA15+. However, if their content is likely to be MA15+ or R18+ then it is more appropriate to require that the film or computer game be classified.

This will ensure that material that exceeds the highest classification for each category is not exhibited at all and that material that is MA15+ or R18+ is subject to appropriate legal restrictions.

***Recommendation 8:***

***Films and computer games to be shown at film festivals, art galleries and other cultural institutions should be exempt from classification if their content is likely to be classified as lower than MA15+. However, if their content is likely to be MA15+ or R18+ they should be required to be classified.***

# 9. Proposal 6-4 Classification of X18+ films

Proposal 6–4 is that:

> *If the Australian Government determines that X 18+ 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 X 18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screened or distributed in Australia.*

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

However, this proposal assumes that the Australian Government could override the states, all of which currently have laws prohibiting the sale of X18+ films. It is not clear what constitutional head of power would enable the Commonwealth to prevent the states criminalising the sale of X18+ films.

In any case the Commonwealth has itself made the sale, and even the possession, of X18+ films illegal in prescribed areas of the Northern Territory.

This followed the deeply disturbing accounts of child sexual abuse, including the sexualisation of young children through exposure to X-rated pornography, recounted in *Little Children are Sacred.*

One example will suffice to illustrate the nature of the problem:

> *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]

This echoes the findings of the *1999 Report of the Aboriginal and Torres Strait Islander Women's Task Force on Violence (Queensland)* which also pointed to the link between X-rated films and sexual violence against women and children: [3]

> *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.*

The Aboriginal Coordinating Council referred to $4,000 to $5,000 of orders of pornographic videos sent every week from Canberra to the Cape Communities.

Measures introduced as part of the response to the Northern Territory emergency prohibited the sale, transport and possession of an X18+ film through prescribed areas of the Northern Territory.

Those who live in the prescribed areas are not, nor should they be, prohibited from travelling outside these areas. The Northern Territory, unlike the six States, currently permits the sale of X18+ films to any person over the age of 18. If this is allowed to continue then it will seriously undermine the prohibitions being put in place in the prescribed areas.

Furthermore, the Northern Territory's *Classification of Publications, Films and Computer Games Act (NT)* Section 50 (2) provides that "*A person shall not sell or deliver to a minor a film classified X 18+ or R 18+, unless the person is a parent or guardian of the minor*." This extraordinary provision means that it is not unlawful for a parent or guardian to give any child under their care an X18+ film.

Videos and DVDs are very portable items. Unless their sale is prohibited not just within the boundaries of the prescribed areas but throughout the Northern Territory then X18+ films will most likely continue to play a role in the premature sexualisation and sexual abuse of indigenous children.

At the Joint Press Conference announcing the legislative package to respond to the Northern Territory emergency on 22 June 2007 the then Prime Minister, Hon John Howard, stated:

> *if this set of circumstances had been disclosed as taking place in the suburb of Dickson, can you imagine what the local response from police, from medical authorities and from the state government would have been? It would have been horror and immediate action and a demand by the community that something be done*.

Sadly, there is evidence that similar events involving the sexualisation of young children through exposure to X-rated pornography are taking place in the suburbs of Canberra. The problem may be less widespread than in indigenous communities but it is nonetheless alarming.

A paper presented at the Ninth Australasian Conference on Child Abuse and Neglect in November 2003 by staff from the Child at Risk Assessment Unit, Canberra Hospital has reported that exposure to X-rated pornography is one significant factor in children younger than 10 years old sexually abusing other children.[4]

In the first six months of 2003 the Unit had identified as many as 48 children under 10 years of age that had engaged in sexualised, sexually abusive behaviour. The paper does not claim that pornography is the only factor in children becoming sexually abusive. Other factors include

substances abuse, mental health and domestic violence issues in the family. Nonetheless the authors make a strong case for access to pornography as decisively shaping this disturbing trend in the incidence of sexually abusive children.

The authors present a case study of a nine year old boy, Steven, who sees his mother's current de facto (her fourth since Steven was born) watching pornography and concludes that this is an acceptable activity. He then gets involved in viewing pornography regularly. Soon he is making his four year old half-brother Deacon act out homosexual acts with him. He also makes younger girls at school participate in sexual acts with him and threatens to hurt them if they tell anybody. While Steven certainly had significant social and developmental problems the specific expression of these problems in sexually aggressive behaviour with younger children was shaped by his exposure to graphic sexual images.

In 2003 the Australia Institute found that, of boys aged 16 or 17, one in twenty watch X-rated videos on a weekly basis while more than a fifth watch an X-rated video at least once a month.[5]

In the light of this evidence of the damaging effect of X-rated videos on non-indigenous children and young people, in places other than the Northern Territory, as well as the evidence cited above on the impact of X18+ films on indigenous communities in Queensland, there is a strong case for extending and complementing the specific provisions introduced to exclude X18+ films from indigenous communities in the Northern Territory proposed in this bill by additional measures that would reduce the exposure of children everywhere to X18+ films.

Every day thousands of X18+ films are sent by carrier services from Canberra to pornography consumers all around Australia, including those in indigenous communities, not just in the Northern Territory but in Queensland and other States.

The Commonwealth has a clear constitutional head of power (*Commonwealth of Australia Constitution Act 1900*, Section 51(v)) to make laws dealing with postal and other like services.

It should be made an offence to carry or cause to be carried or to receive from a carrier service a film classified X18+.

This would make it unlawful for pornography merchants in Canberra to send X18+ films not just to the prescribed areas in the Northern Territory but to any person in Australia. Rather than profiting from the sexualisation of young Australians, including indigenous children, the Canberra pornography industry would be effectively limited to over the counter sales.

Obviously the most decisive measure to stop the pernicious effect of X18+ films on children and young people, indigenous and non-indigenous, in Australia would be to prohibit the production and supply of X18+ films in the Australian Capital Territory.

The ACT government inherited permissive legislation on X18+ films when it attained self-government. Sadly it has not followed the lead set by all six States in prohibiting the production and sale of X18+ films. This has meant that despite State bans on the sale of X18+ films anyone in Australia can purchase X18+ films by mail order from the ACT.

The Commonwealth, which retains ultimate responsibility under the territories power, ought to act to remedy this problem. This would be the most effective measure as it would close down the principal sources from which X18+ films find their way into the hands of children and their abusers in both indigenous and non-indigenous communities around Australia.

The pornography industry has recently advanced claims that State laws prohibiting the sale of X18+ films may be unconstitutional because they violate Section 92 of the *Constitution* which provides that:

> *On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.*[6]

This argument is yet to be tested in court but would be made moot if the Commonwealth moved to prohibit the sale of X18+ films in the territories, as all States uniformly already ban the sale of X18+films.

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.*[7]
>
> ***Recommendation 9:***
>
> ***The new National Classification Scheme should include a comprehensive ban on the production, sale or exhibition of X18+ films. Effectively, films that have been or would be classified X18+ should be considered as classified Refused Classification.***
>
> ***If necessary, that is if the territories fail to act, the Commonwealth should enact legislation to prohibit the sale of X18+ films throughout the Northern Territory and the Australian Capital Territory.***
>
> ***If the X18+ classification is retained then all material that is likely to be classified X18+ should be required to be classified.***
>
> ***Additionally, the Commonwealth should prohibit the use of a carrier service to carry or cause to be carried or to receive a film that is or that would be classified X18+ and the* Customs (Prohibited Imports) Regulations 1956, Regulation 4A, Importation of Objectionable Goods *should be amended so that films that would be classified X18+ are included in the definition of objectionable goods.***

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

Proposal 6–5 is that:

> *The Classification of Media Content Act should provide that all media content that may be RC must be classified. This content must be classified by the Classification Board: see Proposal 7–1.*

Content that is Refused Classification is content that is considered to breach community standards to the extent that it should be subject to legal restrictions prohibiting its sale, distribution, exhibition and possession.

Obviously to enforce such prohibitions it needs to be clear which content is Refused Classification.

> ***Recommendation 10:***
>
> ***All media content which is likely to be Refused Classification should be required to be classified.***

# 11. 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 reflects current procedures and is reasonable.

> ***Recommendation 11:***
>
> ***The proposed new Classification of Media Content Act should provide that, before taking certain actions in relation to content likely to be RC, the Regulator and other law enforcement agencies should apply to have the content classified.***

# 12. 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'.*

This proposal responds appropriately to the variety of ways in which in a convergent media environment content could be modified. Defining the conditions under which such content needs to be reclassified based on whether the classification is likely to change is a sensible approach.

> ***Recommendation 12:***
>
> ***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'.***

# 13. 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.*

The general proposal, to encourage industry bodies to develop codes of practice for classifying material that is not legally required to be classified and to use the classifications and markings of the National Classification Scheme, is acceptable.

However, the proposal to make it optional to classify computer games that are likely to be classified as lower than MA15+ is not acceptable for the reasons given above in response to Proposal 6-2.

Nor is it acceptable to leave the classification of music with explicit lyrics as merely optional for industry bodies.

The Australian Record Industry Association (ARIA) and the Australian Music Retailers Association (AMRA) currently jointly administer a code of practice for the labelling of recorded music product containing potentially offensive lyrics and/or themes.[8]

The scheme provides for three levels of warning labels as follows:

- Moderate impact coarse language and themes;
- Strong impact coarse language and themes;
- Restricted: High impact themes: Not to be sold to persons under 18.

Additionally the scheme provides that:

> *Product containing lyrics which promote, incite, instruct or exploitatively ("exploitative" means appearing to purposefully debase or abuse for the enjoyment of listeners, and lacking moral, artistic or other values) or gratuitously ("gratuitous" means material which is unwarranted or uncalled for, and included without the justification of artistic merit) 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.*

These recordings are not permitted to be released and/or distributed by ARIA members or sold by AMRA members.

The scheme includes a Complaints Handling Service and an ombudsman. Failure to comply with the scheme can result in expulsion from ARIA or AMRI.

The Report of the American Psychological Association *Taskforce on the Sexualization of Girls* provides a summary of research evidence on the sexual content of popular music. [9]

> *It is evident that the lyrics of some recent popular songs sexualize women or refer to them in highly degrading ways, or both.*
>
> *Some examples include the following:*

- *"So blow me bitch I don't rock for cancer / I rock for the cash and the topless dancers" (Kid Rock, "f*ck off", 1998);*

- *"Don'tcha wish your girlfriend was hot like me?" (Pussycat Dolls, 2005);*

- *"That's the way you like to f*** … rough sex make it hurt, in the garden all in the dirt" (Ludacris, 2000);*

- *"I tell the hos all the time, Bitch get in my car" (50 Cent, 2005);*

- *"Ho shake your ass" (Ying Yang Twins, 2003);*

*As part of a recent study of the effects of listening to popular music on sexual behavior (Martino et al., 2006), 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.*

Recent research has found that "Listening to music with degrading sexual lyrics is related to advances in a range of sexual activities among adolescents, whereas this does not seem to be true of other sexual lyrics. This result is consistent with sexual-script theory and suggests that cultural messages about expected sexual behavior among males and females may underlie the effect. Reducing the amount of degrading sexual content in popular music or reducing young people's exposure to music with this type of content could help delay the onset of sexual behaviour."[10]

Two examples of lyrics from albums approved for sale[11] by ARIA/AMRA with Level 3 Warnings suffice to illustrate the inadequacy of this scheme:

**Stripped, raped and strangled[12]**

*(from 15 Year Killing Spree [Album] by Cannibal Corpse*

They think they know who I am
All they know is I love to kill
Face down, dead on the ground
Find me before another is found

I come alive in the darkness
Left murdered and nameless
Dead unburied and rotten
Half eaten by insects

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

They're all dead, they're all dead
They're all dead by strangulation

I come alive in the darkness
Left murdered and nameless
Dead unburied and rotten
Half eaten by insects

It felt so good to kill

I took their lives away
Seven dead, lying rotten
Unburied victims
Their naked bodies putrefy

Strangulation caused her death
Just like all the others
Raped before and after death
Stripped, naked, tortured

They're all dead, they're all dead
They're all dead by strangulation

I come alive in the darkness
Left murdered and nameless
Dead unburied and rotten
Half eaten by insects

They think they know who I am
All they know is I love to kill
Face down, dead on the ground
Find me before another is found

**The Corpse Garden**[13]

*(from Left in Grisly Fashion [Album] by Prostitute Disfigurement)*

Cruising the streets for young women
Luring them into my van
Gagged, her eyes begged for mercy
Never to be seen again

Blindfolded, gagged with masks of tape
Stripped naked, shackled to the bed
Female body infested, bruised and lacerated
There's no escape from your fate

Enter the house of horror
No turning back from your fate

Slowly slicing her body
Using my tools of the trade
With a depraved relish
The horror is now uncaged

Young women were stripped
Bound with tape
Raped, tortured then killed [2x]
Dismembered and buried
In the corpse garden

Deceased through mutilation
Bones are turned to mush
Sliced female flesh leaves me
In a rudimentary rush

Slashing young women and children
Left mummified in my masonry
Stuffed and buried in my backyard
To hide my killing spree

The corpse garden [2x]

It is hard to see what might qualify as sufficiently exploitative and gratuitous to be actually classified as "*not to be sold*" under a system that finds these lyrics acceptable.

The Senate Legal and Constitutional Affairs Committee recently recommend 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.*[14]

Music with lyrics which is likely to be classified MA15+ or higher should be required to be classified.

> ***Recommendation 13:***
>
> ***Industry bodies should be encouraged to develop codes of practice for the classification of content that is not legally required to be classified, using the classifications and markings of the National Classification Scheme.***
>
> ***However, as recommended in Recommendation 7 above all commercially produced computer games and all computer games likely to be classified MA15+ or higher should be required to be classified.***
>
> ***Additionally, music with lyrics which are likely to be classified MA15+ or higher should be required to be classified.***

# 14. 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 acceptable with certain amendments and additions to the list.

- All computer games likely to be classified MA15+ or higher should be classified by the Classification Board even if not commercially produced.
- Music with lyrics likely to be classified MA15+ or higher should be classified by the Classification Board.
- Print publications likely to be classified MA15+ or higher should be classified by the Classification Board.
- Television programs and Australian hosted websites with content likely to be classified MA15+ or higher should be classified by the Classification Board.

***Recommendation 14:***

***All content, including all television programs, computer games, print publications and music lyrics, that would be classified MA15+ or higher as well as the other content listed in Proposal 7-1 should be required to be classified by the Classification Board.***

# 15. Proposal 7-2 Authorised industry classifiers

Proposal 7-2 is that:

> *The Classification of Media Content Act should provide that for all media content that must be classified—other than the content that must be classified by the Classification Board—content may be classified by the Classification Board or an authorised industry classifier.*

The implication of proposal 7-1 and our recommendation 14 above is that all content likely to be classified MA15+ or above must be classified by the Classification Board. Proposal 7-2 is that for all other content, that is all content that would be classified lower than MA15+, classification may be done by an authorised industry classifier. This is reasonable.

***Recommendation 15:***

***An optional provision should be made for authorised industry classifiers to classify content that is likely to be classified lower than MA15+.***

# 16. 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 X 18+ may be classified by either the Classification Board or an authorised industry classifier? In Chapter 6, the ALRC proposes that all content likely to be X 18+ must be classified.*

If, contrary to recommendation 9 above, the sale of X18+ films is continued to be allowed under the new National Classification Scheme, then all content likely to be classified X18+ should be required to be classified by the Classification Board.

The pornography industry has shown itself to be untrustworthy in complying with the existing national classification scheme. This is illustrated by the failure by distributors of pornographic magazines and films to comply with call-in notices and the number of breaches of serial classifications.

Since 1 January 2008, 858 items mainly concerned with sex or sexualised nudity ('adult material') have been called in. Not a single distributor of adult material has submitted a film or publication for classification as a result of the call-ins.[15]

As of February 2010 the serial classification declarations of 55 publications had been revoked since the scheme began in December 2005. Forty-eight of these were originally classified Category 1 restricted.[16]

In the light of this track record it is naïve to propose that the pornography industry could be trusted to appropriately classify its own product.

***Recommendation 16:***

***If X18+ is retained as a classification any content likely to be classified X18+ should be required to be classified by the Classification Board.***

# 17. Proposal 7-3 Use of 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.*

Classification instruments, such as online, interactive questionnaires, can provide a simple, accessible, cost-effective means of classification. An instrument might take the form of an online questionnaire that seeks information about the nature of the content. Such instruments could be based on the statutory classification criteria and the broader classification process. Ideally the instruments would provide for an automated classification decision that would also be simultaneously notified to the Regulator. In future more sophisticated web-based applications might be possible.

This proposal would help ensure that the classification categories and markings, forming part of the new National Classification Scheme, are used as widely as possible in a consistent manner. It would also help in the classification of material, not required to be classified, that is classified voluntarily by content providers as a value-added service to their customers.

***Recommendation 17:***

***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.***

# 18. Proposal 7-4 Authorisation of 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 proposal is likely to help improve consistency in classification, including the classification of television programs, by requiring all classifiers to have completed appropriate training.

Careful consideration needs to be given to the *independence* of industry classifiers. They are likely to find themselves under considerable pressure to yield to the commercial pressures of their employers. To safeguard against loss of independence, additional measures need to be put in place.

Firstly, a register of classification decisions should be mandated in the Classification of Media Content Act to identify the classifier responsible for every classification decision. That would ensure that the licensed classifier responsible for each classification decision can be identified and held accountable for the decision.

Secondly, the Regulator should conduct random audits of classification decisions to ensure that the classification decisions are in accord with classification standards approved by the Regulator.

Thirdly, penalties should be imposed on licensed classifiers responsible for decisions in breach of the classification standards approved by the Regulator, with cancellation of the classifier's licence for serious or repeated offences.

***Recommendation 18:***

***The proposed new 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.***

***A mandatory register of classification decisions should be maintained to identify the licensed classifier responsible for each classification decision.***

***Provision should be made for random audits of classification decisions to ensure compliance with classification standards approved by the Regulator.***

***Penalties should be applied for classification decisions in breach of the classification standards approved by the Regulator, including cancellation of the classifier's licence for serious or repeated offences.***

# 19. Proposal 7-5 Authorisation of 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.*

The possible role of classification instruments is outlined above (in section 16). A provision for the Regulator to develop or authorise such instruments is a useful component of the proposed scheme.

> ***Recommendation 19:***
>
> ***The proposed new 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.***

# 20. 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?"*

Classification training should only be provided by the Regulator. If it was made a part of the Australian Qualifications Framework this would mean that it could be offered by any provider subject to the normal accreditation and auditing under the AQF. With such a dispersal of the actual training providers it would remove the Regulator one step further from ensuring that all training adequately prepared classifiers to comply with the requirements of the National Classification Scheme.

> ***Recommendation 20:***
>
> ***All classification training should be provided by the Regulator.***

# 21. 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.*
>
> *This means the Classification Review Board would cease to operate.*

The proposal for the Classification Review Board to cease operation would leave the Classification Board to review its own decisions.

This proposal, that the Classification Board review its own decisions, is not acceptable.

The Classification Review Board plays a useful role in the current national classification scheme by providing independent review of decisions by the Classification Board. The suggestion that internal processes within the Board could ensure similar independent review is not credible.

***Recommendation 21:***

***The proposed new Classification of Media Content Act should provide that the functions and powers of the Classification Board include reviewing and auditing industry classification decisions.***

***The Act should also provide for a separate Classification Review Board with the power to review Classification Board decisions.***

# 22. 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.

This proposal deals with powers that are essential to the operation of an effective National Classification Scheme.

***Recommendation 22:***

***The proposed new 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.***

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

Proposal 8–1 is that:

*The Classification of Media Content Act should provide that access to all media content that is likely to be R 18+ must be restricted to adults.*

One of the principal objects of a National Classification Scheme should be protect children from exposure to media content considered generally by the community to be unsuitable for children.

As it is not possible to classify all media content in advance (for example content produced overseas and delivered via the internet) it is necessary to make it illegal for media content providers to fail to take adequate steps to prevent children accessing media content that is likely to be classified R18+ or higher.

***Recommendation 23:***

***The proposed new Classification of Media Content Act should provide that access to all media content that is likely to be R 18+ or higher must be restricted to adults.***

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

Proposal 8–2 is that:

> *The Classification of Media Content Act should provide that access to all media content that has been classified R 18+ or X 18+ must be restricted to adults.*

R18+ should remain a legally restricted category and the proposed new Act should address appropriate means of restricting access in the new convergent media environment.

If X18+ remains as a legal category in any jurisdiction, then access should clearly be restricted to person aged 18 years or over.

***Recommendation 24:***

***The proposed new Classification of Media Content Act should provide that access to all media content that has been classified R 18+ or (if it remains a legal category in any jurisdiction) X 18+ must be restricted to adults.***

# 25. 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 MA 15+ or likely to be classified MA 15+.*

This would be a significant reduction in the protection of children aged less than 15 from unsuitable material. The current National Classification Scheme recognises that there is a development in children's capacity to appropriately deal with exposure to media content with elements such as sex, violence, drug use and adult themes. The MA15+ classification acknowledges that content with these elements and that has a strong impact is definitely not suitable for children aged less than 15.

The current scheme restricts access in various ways.

In general the restrictions on viewing films at cinemas are well-enforced as are the restrictions on the sale and hire of videos and computer games.

Removing these legal restrictions would mean that children of any age could legally be sold videos or computer games classified MA15+ without any parental involvement.

Parents are primarily responsible for monitoring their children's use of media. However, they are entitled to expect appropriate help from the broader society, including the legal system.

There is no persuasive reason for removing the legal restrictions that are currently in place on access to MA15+ media content. Indeed these restrictions should be reinforced and made as consistent as possible across all media platforms.

Indeed the current restrictions need to be strengthened in the light of technological convergence. In future, media content is increasingly available online, thereby bypassing the current access controls in cinemas and retail outlets for the sale or hire of videos and computer games.

Restrictions need to be enforceable on all platforms such as TV sets, computers, laptops, tablets and mobile phones. Legislation should mandate parental controls on all such devices sold, leased or hired in Australia. The mandatory controls should be capable of detecting the classification of content and responding accordingly. Furthermore legislation should mandate the default settings blocking access to content classified MA15+ or higher.

***Recommendation 25:***

***The proposed new Classification of Media Content Act should 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 more.***

***All platforms such as TV sets, computers, laptops, tablets and mobile phones sold, leased or hired in Australia should be required to have parental controls capable of blocking access to all age restricted content, with default settings blocking access to content classified MA15+ or higher.***

# 26. 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 to restrict access to R18+ (or, if applicable, X18+ content) is generally acceptable.

However, it should be extended to apply also to methods of restricting access to media content that is, or is likely to be, classified MA15+. Such content should be restricted to persons aged 15 years of age or more.

## *26.1 Restricting access to adult and MA15+ content online*

The best approach to restricting access to adult and MA15+ content online would be to implement a mandatory filtering scheme requiring ISPs to deliver filtered internet access as their default service. This default service should, as far as technologically and economically feasible, restrict access to content that would be likely to be classified MA15+ or higher.

ISPs would then be permitted to offer a premium service with opt-in to either MA15+ content only or to MA15+ and R18+ content, subject to strict age verification protocols to establish the customer was either 15 or older for access to the MA15+ service or 18 years or older for access to the MA15+ and R18+ service.

Individual websites and other content providers could be required to classify and restrict access to MA15+ or R18+ content. However this would only be possible for sites or providers based in Australia. A mandatory filtering scheme would be much more effective and comprehensive.

Consistent with recommendation 9 above, access to X18+ content should be completely prohibited.

This "opt-in" approach to all pornography is currently being pursued in the United Kingdom – as reported on 19 December 2010:

> *THE UK Government is to combat the early sexualization of children by blocking internet pornography unless parents request it, it was revealed today.*
>
> *The move is intended to ensure that children are not exposed to sex as a routine by-product of the internet. It follows warnings about the hidden damage being done to children by sex sites.*
>
> *The biggest broadband providers, including BT, Virgin Media and TalkTalk, are being called to a meeting next month by Ed Vaizey, the communications minister, and will be asked to change how pornography gets into homes.*
>
> *Instead of using parental controls to stop access to pornography - so-called "opting out" - the tap will be turned off at source. Adults will then have to "opt in."*
>
> *The new initiative is in advance of the imminent convergence of the internet and television on one large screen in the living room.*
>
> *It follows the success of an operation by most British internet service providers (ISPs) to prevent people inadvertently viewing child porn websites. Ministers want companies to use similar technology to shut out adult pornography from children. Pornography sites will be blocked at source unless people specifically ask to view them.*[17]

The blacklist of URLs for exclusion from the default access to be offered by ISPs should not just be compiled by complaints and the supply of lists of child abuse sites from overseas enforcement agencies. A tender should be let for a pro-active web crawler based system that actively seeks out URLs which contain prohibited material.

Real time filtering could be added as this technology becomes more efficient.

It should also be clear that the mandatory filtering scheme for ISPs applies to internet services and other content delivery services offered over mobile phone networks in Australia.

While the precise details of the filtering scheme could be elaborated in an industry code of practice the overall framework should be set out in the Act itself.

***Recommendation 26.1:***

***The proposed new Classification of Media Content Act should require all service providers of online content, regardless of platform, to deliver a default service excluding access to media content that is or is likely to be classified MA15+, to the maximum extent technologically and economically feasible.***

***The Act should also provide that service providers may offer a premium service with access to either MA15+ content or MA15+ and R18+ content based on appropriate age verification.***

***Industry codes of practice could be used to set out the details of how to filter and how to administer age verification in the light of technological developments.***

## *26.2 Parental locks and user-based filters*

End-user approaches to restricting access should be seen as supplementary to legal restrictions on providers rather than as a substitute for such restrictions.

For example, the existence of parental locks for televisions should not be seen as a reason to abolish classification time zones for free to air television.

Nor should user-based filters be seen as a substitute for the proposed mandatory filtering by service providers.

However, end-user approaches have a valid role to play in giving parents an additional tool to (a) restrict access for younger children to media content with advisory classifications such as PG and (b) serve as a back-up protection against media content that may get through the mandatory filtering scheme due to technological limitations.

Parental locks should be mandatory on all end-user devices and the default setting of the locks should prevent access to all MA15+ and R18+ content. Parental locks should be password protected and the initial password should be assigned by the manufacturer and supplied to the user when purchased.

***Recommendation 26.2:***

***The proposed new Classification of Media Content Act should require all end-user devices to be supplied with parental filters preventing access to all MA15+ and R18+ content, to the extent technically and economically feasible. The Act should require devices to be supplied with the parental filters locked and password protected.***

***Industry codes of practice could usefully offer standards for the supply and use of parental filters and locks on end-user devices.***

***End-user filters should supplement, not replace, legal restrictions on content providers.***

## *26.3 Restrictions on the display and sale of print publications and other hardcopy items with adult content*

Evidence of harm to children from adult pornography is provided in a recent survey by Robert Peters, President of Morality in Media.[18] Evidence of harm is detailed for the following:

- *Child sexual abusers use adult pornography to groom their victims.*

- *Child sexual abusers use adult pornography to sexually arouse themselves preliminary to committing offences against children.*

- *Clients of child prostitutes use adult pornography to model what they do with child prostitutes.*

- *Pimps use adult pornography to instruct child prostitutes.*

- *Many child sexual abusers begin by viewing adult pornography and progress to viewing child pornography and then to actual abuse of children.*

- *Children act out what they view in adult pornography with other children.*

These uses of adult pornography make it imperative that, if society insists on allowing adult pornography to be available to adults, the strictest possible conditions are enforced. The present classification enforcement system is failing and changes are needed to provide better protection for children.

The Senate Legal and Constitutional Affairs Committee recently recommend that:

> *Category 1 and 2 Restricted publications, and R18+ films, where displayed and sold in general retail outlets, should only be available in a separate, secure area which cannot be accessed by children.*[19]

Hardcopy material classified MA15+ should not be displayed at a level where it can be easily viewed by young children.

> ***Recommendation 26.3:***
>
> ***The proposed new Classification of Media Content Act should provide that all hardcopy items with content classified or likely to be classified R18+ should only be sold or displayed in a restricted publications area accessible to adults only. No covers or advertising material for these items should be visible to any person outside the restricted access areas.***
>
> ***The scheme should also provide for the display of MA15+ items in a manner that would make them difficult for young children to view.***

# 27. 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 MA 15+ content before 9pm?*

Even in a converged communications environment, there will remain an inherent difference between broadcast content which is generally viewed at the same time as it is broadcast and content which is viewed on demand.

Restricting what can broadcast during a specific time period – in particular the time periods when children are more likely to be listening or viewing – will remain relevant as long as there is a sector of broadcasting which is (a) free to air and (b) easily viewed at the time it is broadcast simply by switching on the relevant device.

The current exclusive G classification time zone is 6am - 8.30am and 4pm - 7pm on school weekdays. This recognises that these are times when primary school age children may well be watching television with minimal parental supervision, as parents prepare the family for the day or are preparing the evening meal or bathing younger children. The 4pm - 7pm period is also one in which the whole family, including primary school age children, watch television together. Parents should be able to have confidence that in this critical period of the day, only material suitable for children to watch unsupervised will be shown. This 4pm – 7pm period already includes news programs which are unclassified.

Similarly on weekends the 6am - 10am period is one when children may be watching television unsupervised while mum and dad enjoy a sleep-in.

Commercial free-to-air television enjoys the privilege of broadcast licences which give automatic access to every home in a broadcast area with a television. This applies equally to multi-channel services. Every child old enough to manage an "on-off" switch can access free-to-air television. It is reasonable for families to be able to have confidence that there will be no unsuitable viewing on any free-to-air station during the exclusive G classification time zone. It is not reasonable to expect parents to be checking whether the child is watching Channel 9 or *Go!* at 6 am on a Saturday morning or at 5 pm on a school night while mum is cooking dinner and dad is bathing the baby.

PG stands for "parental guidance". This means that there are classification elements in the program that lead to it not being classified G because parents may decide that a particular PG program is in fact not suitable for their children to watch at all, due to age or other personal factors. Parents may also decide that a particular program is only suitable for their children to watch with their guidance on some aspects of the program. PG elements include "mild visual depiction of and restrained verbal reference to illegal drug use", "restrained visual depiction of nudity", "supernatural or mild horror themes", etc. There are many parents who do not want their younger children exposed to such viewing.

In 2003 the draft Code of Practice proposed reducing the afternoon exclusive G classification time zone from 4pm - 7.30 pm down to just one hour from 4pm - 5pm. This was strongly opposed by the community. In the light of this community opposition the Australian Broadcasting Authority insisted on a less radical change to this time zone. The PG classification time zone now begins at 7pm each weekday evening.

This means that during the 7pm - 7.30pm zone, mainly PG programs are aired such as *Home and Away*, *Two and a Half Men* and the *7pm Project*. These programs frequently contain sexual references, coarse language and adult themes unsuitable for primary school age children. It is hard to expect parents to ban all television viewing every weeknight from 7pm onwards.

Interestingly, Channel 7 still only sends Fat Cat to bed at 7.30 pm – a clear acknowledgement that younger children who appreciate Fat Cat are still likely to be viewing television up until this time.

Both MA and AV are described as being suitable for viewing only by persons aged 15 years or over. It is therefore illogical to assign them different classification zones. The classification zones should take into account the needs of families whose parents who wish to preclude their children under 15 from viewing material judged to be unsuitable for viewing by persons under 15.

It is unreasonable to expect parents to enforce a 9 pm curfew on television viewing by 14 year olds. 9.30 pm would be more reasonable.

While many parents are rightly concerned about the adverse impact of violence on their children, many are equally concerned about the adverse impact of sexual depictions, coarse language, adult themes and drug use. Such parents see no reason to differentiate these elements by separate classification time zones. The provision of consumer advice meets the needs of those parents who

wish to permit their older children to view some, but not all, material from the adult classification range.

***Recommendation 27:***

***The proposed new Classification of Media Content Act should provide for classification time zones to apply to all free-to-air television broadcasting including multi-channels.***

***Only programming that does not require parental guidance for viewing by children should be broadcast between 6 am and 8.30 am and between 4pm and 7.30 pm on weeknights and between 6 am and 10 am on weekends.***

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

# 28. 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.*

Standard classification markings are very useful to individuals and to parents in quickly identifying the classification of a media product.

The legal requirement on media content providers to display markings in an appropriate manner is vital to the effectiveness of a National Classification Scheme.

In addition, classification marking should be displayed while content is being screened, in a similar way to the television station logos which are now displayed (usually in the bottom right corner) to identify the program channel. This would assist viewers who have switched on a program after it has started and they have missed the classification notice displayed earlier.

***Recommendation 28:***

***The proposed new 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.***

***The Act should also require content providers to display a suitable classification marking during the screening of any content.***

# 29. 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.*

This proposal is welcome as it would require regard to be had not just to the content of the advertisement but also to the classification or likely classification of the advertised content.

On free-to-air television parents can find it difficult when exciting promotions for higher classified programs are screened during children's programs.

Any broadcast of footage is obviously designed to attract those viewing the lower classified program to view the higher classified program. It is obvious that such promotions are likely to arouse the interest of younger viewers in these higher classified programs and make it more difficult for parents to explain that these programs are not suitable. "*Why can't I watch that? It looks exciting*!"

It is not desirable to be showing extracts from MA15+ programs during C, P, G and PG programs.

> ***Recommendation 29:***
>
> ***The proposed new 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.***

# 30. 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.*

## 30.1 A single set of classification categories

The proposal that a single set of classification categories should be applied to all classified media content is most welcome. This desirable simplification would reduce confusion and facilitate decision-making by consumers.

***Recommendation 30.1:***

***One set of classification categories should apply to all classified media content. Each item of media content classified should be assigned one of the statutory classification categories.***

## 30.2 Age references in classification categories

The proposed set of classification categories would introduce unwelcome confusions, particularly by focusing on age-based classification instead of content-based classification.

The classification system needs to recognise that the classification system serves several purposes:

- helping parents as they make decisions about content suitable for their children;
- guiding teenagers regarding decisions they make about material for themselves; and
- providing adults with information as they decide about content for themselves.

The proposal to introduce "8+" and "13+" age references to some classification categories fails to respect adults who choose PG or M films and programs specifically to avoid offensive language, portrayal of sexual behaviour and excessive violence. Indeed, such age references could be considered demeaning by adults who choose their entertainment carefully. One person told FamilyVoice: "As a discerning adult, I value the certification aspect that informs me of what I'm about to watch, not purely to protect my children, but also so that I can personally select what I want to view."

Such age references, while no doubt proposed as an aid to parents, could have the opposite effect – disempowering parents. Children could develop a "graduation mentality", with 8-year-olds expecting to move from G to PG programs and 13-year-olds shunning G and PG programs in favour of M programs. Peer pressure could result in children feeling embarrassed or belittled watching programs rated officially as suitable for a younger age. And children could feel empowered to demand parental permission to watch programs "officially rated" as suitable for their age.

The current PG classification states that this category should apply to "films (except RC films, X films, MA films and M films) that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians". The proposed change in the meaning of PG, from "guidance **under** 15 years" to "approved for **over** 8 years", would effectively remove parental guidance altogether.

Introduction of age references to "8+" and "13+" could also create difficulties for school teachers of English as they choose film and TV shows for study. As one teacher said to FamilyVoice: "I can hear some of the student complaints if Year 7 were to watch something for 8 year olds!"

A further potential source of confusion arises from the legal implications of the age references. Whereas the references to "8+" and "13+" would be merely advisory suggestions, the reference to "18+" in the R category has legal implications. Selling R18+ DVDs or movie tickets to minors - people under the age of 18 years - is an offence. Retaining the age reference in the R18+ classification category has the advantage of emphasising the associated legal constraints. Introducing merely advisory references to "8+" and "13+" would confuse and weaken the message of the legal implications of the "18+" reference.

The MA15+ classification was introduced for an age-specific reason: to create legal consequences. The Hoyts website explains the difference between (M) and (MA15+) films thus:

> *The M (Mature) classification is an advisory category. Films and computer games with this classification are recommended for mature audiences aged 15 years and over. However, children under 15 are not legally prohibited from attending or hiring films (including videos and DVDs) or computer games with this classification. MA15+ (Mature Accompanied) classification is a legally restricted category. Material classified MA15+ deals with issues or contains depictions that require a mature perspective. Persons under 15 cannot view or hire films or computer games classified MA15+ unless in the company of a parent or adult guardian.*

Retaining the "15+" age reference for the MA classification category is helpful in emphasising the associated legal constraints.

The G classification is applied to content that is suitable for people of all ages. It is inherently not age-based. Examples of G content would be documentary and nature films. The only age-related factor is that some such programs may not interest some children.

The C (Children) classification is applied to content produced specifically for a young child audience.

In summary, age references in the classification categories with associated legal constraints: MA15+, R18+ (and, if retained, X18+) helpfully emphasise the legal implications. Other classification categories without legal constraints (C, G PG, M) should not add age references since they would introduce unhelpful confusion and difficulties for parents and school teachers.

> ***Recommendation 30.2:***
>
> ***A clear distinction should be made between classification categories with and without legal implications. Age references should be retained in the classification categories with associated legal constraints: MA15+ and R18+ (and, if retained, X18+) to emphasise the legal implications. Other classification categories without legal constraints (C, G, PG and M) should not add age references, since they would only be advisory and would create difficulties for parents and school teachers.***

## *30.3 The proposed Teen classification category*

The proposal to replace the M classification with a "T13+" classification is potentially confusing. Some adults prefer to watch films and TV programs classified no higher than M in order to avoid exposing themselves to gratuitously offensive content. To re-label M = Mature as T = Teen could suggest that the material is designed for teenagers in a similar way to C material being designed for younger children. A T =Teen classification would fail to respect adults.

A second problem with a T = Teen classification is that it would convey the message that such material **is** suitable for teenagers, irrespective of what parents may think. This undermines parental authority and their ability to guide their children's access to films and TV programs. Teenagers would be quick to claim that "everyone" knows that T material is suitable for teenagers – the "government" has said so.

One parent has told FamilyVoice that a Teen category "would merely give a clear stamp of approval for immature audiences to view what used to be considered only suitable for mature audiences. And these audiences could blissfully view it without any thought of 'parental guidance'." Another parent said: "I hate the idea of a T13+ classification. I would have our pre or early teen daughter throwing a fit if told she couldn't watch a movie rated T13+."

A third problem with a T = Teen category is that, whether or not the suffix "13+" is added, the name itself implies a connection with the teen years starting at 13 years.

***Recommendation 30.3:***

***The M = Mature category should not be replaced with a T = Teen category, since content classification is used both to inform adults making media choices for themselves and to guide parents when making media decisions for their children.***

## *30.4 The R18+ and MA15+ classification categories*

The R = Restricted category was introduced to restrict access to some material that it is potentially harmful to people, particularly young people whose life experience is limited and whose values are still developing. Significant evidence is available that viewing such material changes the beliefs, attitudes and values of viewers and there are examples of some viewers subsequently committing serious copycat crimes.

A weakness of the present system is that the legal constraints apply only at the point-of-sale. Cinemas are not permitted to sell tickets for R18+ films to minors. Video stores are not allowed to sell R18+ DVDs to minors. However many minors do view R18+ videos screened at home by adults, in the presence of minors. The legal restrictions should be extended and strengthened to prohibit any adult from exposing a minor to R18+ material.

The MA15+ classification was introduced to restrict access to MA15+ films to people aged 15 years or over, unless accompanied by a parent or other adult guardian. This is curiously like the original intention of the PG classification when it was first introduced: to encourage parents to use their judgement on whether a film was suitable for viewing by their children.

If retained, the "15+" suffix to the MA classification, should have legal consequences. For example, age verification should be mandated for all material classified MA15+ and the permission of a child's parent should be required before a child can view, read, or hear such material. Allowing a child to access such material without a child's parent should be an offence. This would have the effect of providing parents with practical assistance in supervising the material accessed by their own children.

***Recommendation 30.4:***

***Legal constraints should control access to content rated either R18+ or MA15+. Showing R18+ material to children under any circumstances should be prohibited and parents should have full control over their own children's access to MA15+ material. Enforceable penalties should apply to breaches of these legal constraints.***

## *30.5 Classification of print publications*

The use of R18+ for print publications currently classified Restricted Category 1 or Restricted Category 2 is also welcome. There is a case for considering Restricted Category 2 publications as equivalent to X18+ and, in line with recommendation 10 above, banning such publications.

***Recommendation 30.5:***

***One set of classification categories should apply to all classified media content, including print publications. The categories should be as follows: C, G, PG, M, MA15+, R18+, X18+ (if retained) and RC. Each item of media content classified under the proposed National Classification Scheme should be assigned one of these statutory classification categories.***

# 31. 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.*

Television programs currently use the C classification to specify programming that is made specifically for children. The distinction between G and C should be extended to all media content. Parents could then know not just that the media content has nothing requiring parental guidance or that might be considered unsuitable for children but that specific media content is made for children.

However, there is a reservation in recommending that the current G criteria apply to the proposed new C classification.

Changes to the G classification for films and computer games made in 2003 have been of particular concern to parents. This classification is for a general audience. While not all G classified movies will be of interest to all children (many documentaries would attract a G classification) parents should be able to have confidence that nothing in a G classified movie will be unsuitable for children's viewing.

The National Classification Code sets out the film classifications in a descending hierarchy. The PG classification, the classification immediately above the G classification, states that this should apply to "films (except RC films, X films, MA films and M films) that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians". The Code indicates that "all other films" should be given a G classification. This necessarily implies that G films are films that *can* be recommended for viewing by persons [of any age] under 15 *without the guidance of their parents or guardians.*

In other words G films should not have any classifiable elements that may give rise to a need for parental guidance. For this reason there is no requirement under the *Classification (Publications, Films and Computer Games) Act 1995* for consumer advice to alert parents to such classifiable elements (although the Board has provided consumer advice for some G films).

However, the 2003 revision of the Guidelines did, for the first time, provide for both drug use and nudity in the G classification. **This means that there is currently no classification that indicates to a parent that the film is completely free of drug use and nudity.**

Previously the G classification made no reference to **drug use**. The 1996 Guidelines provided that "discreet verbal references and mild, incidental visuals of drug use" would attract a PG classification. The new Guidelines allow films in which drug use is "implied only very discreetly and justified by context" to be classified G.

In a parallel development, **nudity** is now referred to the first time in relation to the G classification. For G the new Guidelines state with no further qualification that "Nudity should be justified by context".

The 1996 Guidelines provided that **violence** could be "very discreetly implied, but should have a light tone, or have a very low sense of threat or menace, and be infrequent, and not be gratuitous". This is reduced in the 2003 Guidelines to read that **violence** "should have only a low sense of threat or menace, and be justified by context."

The 1996 Guidelines provided that **sexual activity** "should only be suggested in very discreet visual or verbal references, and be infrequent and not be gratuitous". This is replaced in the 2003 Guidelines by the rule that **sexual activity** "should be very mild and very discreetly implied, and be justified context."

## *31.1 Examples of films classified G under the 2003 Guidelines*

### *31.1.1 The Cat in the Hat (File No. T03/2081)*

In its Reasons for the Decision the Classification Board "notes a small number of double-entendres – for example when the Cat is holding a mud covered hoe, he calls it a "Dirty Hoe'". The Board goes on to claim that "these references are mitigated by the lack of detail and the fact that the references have a literal meaning – the Cat is indeed holding a dirt covered hoe".

This is an extraordinary claim. The Board recognises these as "double-entendres". The purpose of "double-entendres" is precisely to make a point of the second, usually sexual or crude "entendre" rather than from the natural referent. The existence of a natural referent hardly neutralises the intended sexual or crude meaning of the words. For example, introducing a character with the surname Phuc into a film and frequently using his name could not escape a charge of coarse language by claiming that it had a separate "literal meaning".

"Dirty ho" is gangsta rap for "dirty whore". It is strong offensive language.

An explicit verbal reference to a whore would not have qualified under the previous 1996 Guidelines that required that "sexual activity should only be suggested in very discreet … verbal references."

Parents taking their children to this movie in good faith believing that a G classification excluded any unsuitable elements have been upset by this unexpected use of strong offensive language and explicit verbal reference to sexual activity.

### *31.1.2 Love's Brother (File No. T03/3145)*

The Board notes that one brother asks the other "Haven't you ever done it before at the bordello in town?" The Board characterises this as a "very discreet sexual reference".

In our submission this could not have been accommodated in G under the 1996 Guidelines that required that "sexual activity should only be suggested in very discreet visual or verbal references". The question has the potential of raising two natural questions in a child's mind – "What is 'it'?" and "What is a bordello?" Both of these questions clearly raise matters for parental guidance.

### *31.1.3 Finding Nemo (File No. T03/5)*

The minority view of the Board that this film requires a PG classification, due to the scenes containing violence, would have prevailed under the 1996 Guidelines in which violence could only "be very discreetly implied". The new Guidelines have dropped this significant phrase.

### *31.1.4 Prisoner of Paradise (File No. T03/2309)*

The minority view of the Board that this film requires a PG classification due to its treatment of the theme of Nazi treatment of Jews would have prevailed under the previous Guidelines which made no provision for "adult themes" (including racism) in the G classification.

### *31.1.5 Ned (File No. T03/1191)*

The Board records a verbal reference to sexual activity, namely "touching in places … you know that you have to keep covered at decent beaches". In our view this verbal reference would not have qualified under the previous Guidelines as a "very discreet verbal reference". Under the previous Guidelines this would have, as a discreet verbal reference, required a PG classification.

The G and C classifications should be completely free of elements of drug use, sex, nudity, violence and themes that might be of concern to parents of children aged less than 15 years.

***Recommendation 31:***

***The proposed new* 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 be similar to the criteria for the G classification category, but also provide that C content must be made specifically for children.***

***The C and G classification criteria should exclude any references to drug use, sex or adult themes and any nudity. The criterion for violence should ensure that violence may only be very discreetly implied, and should have a light tone, or have a very low sense of threat or menace, and be infrequent, and not be gratuitous.***

# 32. 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 plays a useful role in alerting individuals and parents to the classifiable elements in media content that have led to it being assigned a particular category. C and G should not require consumer advice as no classifiable elements should be present.

The Act should also specify the symbols for the commonly used subcategories indicating the reasons for the classification: a (adult themes), l (language), s (sex), v (violence), etc. Consumer advice should also be required to include these subcategory symbols where applicable.

***Recommendation 32:***

***The proposed new 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.***

***The Act should also define standard subcategories indicating reasons for classification, such as a (adult themes), l (language), s (sex), v (violence) and these subcategory symbols should be included in consumer advice when applicable.***

# 33. 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 would ensure that the fundamental criteria for classification decisions are incorporated in the statute.

***Recommendation 33:***

***The proposed new Classification of Media Content Act should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.***

# 34. 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*

This proposal is useful. However, caution would be required in interpreting and applying the findings of any such review. Community standards in media content are controversial. There are significant industries with strong commercial interests at stake. Some prominent media researchers have been suspected of being unduly influenced by certain industry interests.

Any research into social attitudes is capable of various interpretations. Methodologies can be subject to legitimate questioning as to their validity.

Research, however sophisticated, cannot be used to avoid the political responsibility for making decisions on classification law acceptable to the community as a whole.

***Recommendation 34:***

***Comprehensive reviews of community standards towards media content should be commissioned regularly but the results of such reviews should be considered advisory only and not determinative of what community standards are or how they should be reflected in classification law.***

# 35. 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.*

When content is classified RC, it is reasonable to require the criteria on which the decision is based to be indicated.

However, the proposal seems to assume that depictions of actual child sexual abuse or of actual sexual violence would be the only two criteria for classifying media content as RC.

This does not reflect the current classification scheme which also includes criteria related to other sexual activity such as bestiality and fetishes; offensive depictions of children other than actual sexual

abuse; extreme depictions of sexual violence that may not be actual; instruction in crime, violence or drug use; and material that promotes terrorism.

## *35.1 Suicide related material*

Other laws also prohibit material that promotes, encourages or instructs in methods of suicide in some media. This criterion should be included in the criteria for RC.

Categories to be filtered should include not just Refused Classification but other categories where the law already prohibits hosting of material in Australia. This includes material which promotes, encourages or instructs in methods of suicide; online gaming sites; and sites facilitating financial fraud.

The internet, alongside its many benefits, has introduced a new danger to impressionable people who may be at risk of suicide. Through the internet, complete strangers can encourage such vulnerable people to commit suicide and can provide detailed instruction in effective methods of committing suicide.

Australian law already prohibits the use of any carriage service (including the internet) to "directly or indirectly counsel or incite committing or attempting to commit suicide" or to "promote a particular method of committing suicide; or to provide instruction on a particular method of committing suicide".[20]

However, in the absence of a mandatory filtering scheme these provisions have proved ineffective in preventing suicides following instruction and encouragement received by vulnerable people over the internet.

In April 2007, two 16 year old girls, Jodie Gater and Stephanie Gestier committed suicide. They hanged themselves from the branch of a tree a few kilometres from their homes in Melbourne's Dandenong Ranges.[21]

It was later discovered that the children had followed step-by-step instructions from a suicide website hosted in the Netherlands.[22]

The site offered practical and illustrated advice on a variety of methods including strangulation, asphyxiation and poisoning.

Liam Bartlett of Channel Nine's *Sixty Minutes* program reported Rob Gater's horror when he discovered that his daughter and her friend had used the internet to find a virtual suicide manual - telling them the kind of rope and knots to use, plus other deadly details.[23]

Similar incidents have occurred in Britain.

In 2008, up to 29 "internet suicides" were reported as having occurred in Britain since 2001, including a cluster of suicides of young people in the Welsh town of Bridgend. Various suicide-promoting websites had been implicated including one sponsored by California-based Nagasiva Yronwode, who identifies as a Satanist and runs the so-called Church of Euthanasia, which advocates suicide as a means of saving the world from overpopulation.

Another website sponsored by Dutch woman Karin Spaink gives detailed instruction in 41 methods of suicide. A Swedish man, Calle Dybedahl who also hosts a suicide instruction site, claims that death is not an inherently bad thing.[24]

Dr Phillip Nitschke, Australia's best known promoter of euthanasia, believes that the means and knowledge of how to commit suicide should be available to every person.

*I do not believe that telling people they have a right to life while denying them the means, manner, or information necessary for them to give this life away has any ethical consistency.*

*So all people qualify, not just those with the training, knowledge, or resources to find out how to 'give away' their life. And someone needs to provide this knowledge, training, or recourse necessary to anyone who wants it, including the depressed, the elderly bereaved, [and] the troubled teen. If we are to remain consistent and we believe that the individual has the right to dispose of their life, we should not erect artificial barriers in the way of sub-groups who don't meet our criteria.* [25]

Dr Nitschke's webite, located offshore, offers his Peaceful Pill Handbook for sale.[26] This book is prohibited from sale or distribution in Australia after it was Refused Classification for instructing in crime, including the manufacture and importing of illicit drugs (barbiturates) as well as in how to avoid a coronial inquiry following an assisted suicide.[27]

The criteria for the RC category should include material that directly or indirectly counsels or incites committing or attempting to commit suicide or that promotes a particular method of committing suicide, or that provides instruction on a particular method of committing suicide.

### *35.2 Actual sex*

If, as recommended above at Recommendation 10 the X18+ classification is abolished, then all media content that has been or would have been classified X18+ should be classified as RC. In this case the criteria for RC would include any depiction of actual sex.

***Recommendation 35:***

***The proposed new Classification of Media Content Act should 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 include all criteria that currently apply to RC material and additionally include:***

***(a) material that directly or indirectly counsels or incites committing or attempting to commit suicide or that promotes a particular method of committing suicide; or that provides instruction on a particular method of committing suicide; and***

***(b) if X18+ is abolished, all depictions of actual sexual intercourse.***

## 36. 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.*

Codes of practice have a useful role in dealing with the classification of media content other than media content to be classified by the Classification Board.

***Recommendation 36:***

***The proposed 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.***

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

Proposal 11-2 is that:

*Industry codes of practice may include provisions relating to:*

*(a) guidance on the application of statutory classification obligations and criteria to media content covered by the code;*

*(b) methods of classifying media content covered by the code, including through the engagement of accredited industry classifiers;*

*(c) duties and responsibilities of organisations and individuals covered by the code with respect to maintaining records and reporting of classification decisions and quality assurance;*

*(d) the use of classification markings;*

*(e) methods of restricting access to certain content;*

*(f) protecting children from material likely to harm or disturb them;*

*(g) providing consumer information in a timely and clear manner;*

*(h) providing a responsive and effective means of addressing community concerns, including complaints about content and compliance with the code; and*

*(i) reporting to the Regulator, including on the handling of complaints.*

The list is useful and comprehensive.

***Recommendation 37:***

***The proposed new Classification of Media Content Act should include, in industry classification codes of practice, the matters listed in Proposal 11-2 (above).***

# 38. 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.*

The Act should specify at least some of the conditions that must be fulfilled before the Regulator can be satisfied that there has been adequate public consultation on the code.

These should include a minimum period of six weeks for input on draft codes of practice, the release of the final version of the code of practice as submitted to the Regulator for approval, and the opportunity for input directly to the Regulator. The Regulator should have the right to access all public submissions on draft codes.

***Recommendation 38:***

***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.***

***In order to be satisfied that there has been adequate public and industry consultation on the code the Regulator must have access to all public submissions on the code; there must have been a period for public comment of no less than six weeks; the final version of the code submitted for approval must have been made public and there must be an opportunity for further public submissions directly to the Regulator.***

# 39. 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.*

Enforcement powers are clearly necessary to ensure compliance with a National Classification Scheme by all industry participants.

***Recommendation 39:***

***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.***

# 40. 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?*

There is some merit in having complaints submitted first to the media content provider as some complaints may be resolved quickly in this way.

However, the present television codes of practice generally allow the broadcaster 30 working days to reply to the complaint. This is far too long and contributes to the inordinate time taken to finalise complaints. This period should be shortened to 10 working days. This should be sufficient time for a broadcaster to resolve a simple complaint. If the matter is more complex the sooner it is referred to the Regulator the better.

The investigation process itself is inordinately long. For example, a complaint about the lack of consumer advice for Episode 10, Series 2 of *Californication*, a MA15+ classified program, was received by ACMA on 30 January 2009. An initial response from the broadcaster was received by ACMA on 2 March 2009. A further response from the broadcaster to ACMA's preliminary report was received on 1 June 2009. The final report was not published until 22 July 2009 nearly six months after ACMA received the complaint. This was on a perfectly straightforward matter. The relevant code required that all MA15+ programming be accompanied by consumer advice. This program was not. It is hard to comprehend how it could possibly have taken six months to finalise this matter.[28]

The result of such delays is that by the time a decision is finalised the relevant series has often concluded.

The new Regulator needs to have more efficient processes and should not give industry participants lengthy periods to respond at each stage of the investigation.

An examination of ACMA findings of breaches[29] of the broadcasting codes indicates that most breaches have not resulted in any penalty for the broadcaster licensee.

Broadcast licensees in particular are enjoying a privilege in being given access to the airwaves. This privilege carries it with the legal and social responsibility to comply with the codes of practice which are developed by the respective industry sectors. There ought to be a financial penalty for *any* breach of the code.

More importantly the Regulator should be empowered to impose temporary restraints on broadcasting a particular series in response to prima facie serious breaches of a broadcasting code. For example, if an episode in a series is found to have been wrongly classified, then all future episodes should be presumptively classified according to the higher classification.

The complaints handling process for outdoor advertising has proven ineffective.

The role currently undertaken by the Advertising Standards Board should be assigned to the new Regulator.

> ***Recommendation 40:***
>
> ***All industry codes of practice should be required to provide that industry participants must respond to complaints within 10 working days, and if complainants do not receive***

***a response within this timeframe the complaint may be forwarded directly to the Regulator who may commence an investigation immediately on receipt of the complaint.***

***The Regulator should be required to finalise all complaints in a timely manner, generally within 30 days of receiving a complaint.***

***Penalties for breaches of a code of practice should be significant, in particular:***

- ***Industry participants should incur a financial penalty for any breach of a code; and***
- ***the Regulator should be empowered, based on a preliminary investigation, to order a broadcast licensee not to broadcast any further episodes of a program that has breached the code or to impose conditions on any further broadcast of the program including presumptive classification of all future episodes at a higher classification.***

# 41. 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 Regulator's functions should include:*

*(a) encouraging, monitoring and enforcing compliance with classification laws;*

*(b) handling complaints about the classification of media content;*

*(c) authorising industry classifiers, providing classification training or approving classification training courses provided by others;*

*(d) promoting the development of industry classification codes of practice and approving and maintaining a register of such codes; and*

*(e) liaising with relevant Australian and overseas media content regulators and law enforcement agencies.*

*In addition, the Regulator's functions may include:*

*(f) providing administrative support to the Classification Board;*

*(g) assisting with the development of classification policy and legislation;*

*(h) conducting or commissioning research relevant to classification; and*

*(i) educating the public about the new National Classification Scheme and promoting media literacy.*

A single agency ('the Regulator') should be responsible for the regulation of media content under the new National Classification Scheme.

This proposal is acceptable with the additional function of providing administrative support to the Classification Review Board whose continued role is recommended in Recommendation 21 above.

***Recommendation 41:***

***A single agency ('the Regulator') should be responsible for the regulation of media content under the new National Classification Scheme.***

***Additionally to the functions listed in Proposal 12-1 the Regulator should be responsible for providing administrative support to the Classification Review Board (see Recommendation 21).***

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

Proposal 13–1 is that:

> *The new Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia.*

The Commonwealth Parliament has a clear constitutional head of power for legislation dealing with broadcasting, internet, telephone and like services (Section 51 (v)).

Additionally the territories power has been used as the basis for the Commonwealth to classify printed publications, films and computer games.

The corporations power, especially as now broadly interpreted by the High Court, could also found wide-reaching Commonwealth legislation.

The proposed new *Classification of Media Content Act* should draw on these powers as needed to meet its objects.

***Recommendation 42:***

***The new* Classification of Media Content Act *should be enacted pursuant to the legislative powers of the Parliament of Australia.***

## 43. 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 current National Classification Scheme, some or all States are able to exercise their powers to impose stricter laws on several matters. For example, all six States ban the sale of X18+ films despite the Commonwealth law which provides for their classification and allows for their importation.

South Australia retains the power to classify films differently from the National Classification Scheme. Most recently South Australia classified *A Serbian Film* RC ahead of a Classification Review Board decision to do the same. This action prevented this abominable film from being available at all in South Australia.

Queensland law currently bans the sale of all Restricted Category 1 AND Restricted Category 2 publications.

While uniformity in classification law has its advantages, there is also a legitimate role for "competitive federalism" in which an individual state (or territory) may opt for stricter laws in response to perceived community attitudes in that jurisdiction.

The principle of subsidiarity – that matters ought to be handled by the lowest or least centralised competent authority – is relevant.[30] State and territory governments are generally more closely connected with community sentiment and concerns. State and territory electorates are smaller than commonwealth ones and people are more easily able to contact the local representative. Parliaments located in the capitals of the states and territories are more accessible than the Commonwealth Parliament in Canberra.

Each State is of course free to refer or not to refer powers as it chooses.

There is merit in States retaining at least concurrent powers over some classification matters, such as distribution and sale of printed publications, distribution and sale of DVDs and CDs and screening of films.

***Recommendation 43:***

***A National Classification Scheme should be implemented in the spirit of cooperative federalism, in which States retain the power to enact laws specific to the interests of their constituencies, including stricter classification laws and State classification boards.***

# 44. 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.*

Subject to the States retaining a concurrent power to enforce any State specific laws, the classification laws should be enforceable under Commonwealth law, particularly on those matters covered by a clear head of Commonwealth power in the Australian Constitution.

***Recommendation 44:***

***Subject to the States retaining a concurrent power to enforce any State specific laws, the proposed new Classification of Media Content Act should provide for enforcement of classification laws under Commonwealth law.***

# 45. 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 proposal for a new intergovernmental agreement is necessary for a new National Classification Scheme as the proposed new scheme is clearly intended to cover matters which are under the legislative competence of the States as well as matters for which the Commonwealth has constitutional heads of power.

As worded, the proposal wrongly assumes that it is a question solely for the Australian Government to determine whether the states and territories should retain powers in relation to the enforcement of classification laws.

This is properly a matter for consultation between the States and the Commonwealth. A new intergovernmental agreement should be developed in the spirit of cooperative federalism.

***Recommendation 45:***

***The Commonwealth Government should initiate discussion with the States on a new intergovernmental agreement to support the proposed new National Classification Scheme with a combination of Commonwealth and State complementary legislation.***

# 46. 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.*

The proposed offences are necessary for enforcement of the proposed National Classification Scheme. The offences in the proposed new Commonwealth *Classification of Media Content Act* may need to be complemented by additional offences in complementary State legislation.

***Recommendation 46:***

***The proposed new Classification of Media Content Act should provide for offences as set out in Proposal 14-3. These may need to be complemented by additional offences in complementary State legislation.***

# 47. 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 range of kinds of penalties is appropriate. However, as recommended above in Recommendation 40 penalties need to be more severe and should always include a financial penalty for any breach of an industry code of practice.

***Recommendation 47:***

***Offences under the new Classification of Media Content Act should be subject to criminal, civil and administrative penalties.***

***Any breach of an industry code of practice should attract a financial penalty.***

# 48. 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.*

Infringement notice schemes can be an appropriate means of dealing with minor breaches. However, they are counterproductive if the scheme reduces the penalty to such insignificance that its imposition fails to provide any deterrent to the committing of the offence or breach.

***Recommendation 48:***

***Any infringement notice scheme introduced for classification matters should involve penalties that are still sufficiently high to be effective deterrents.***

# 49. References

---


1. John Stuart Mill, *On Liberty* (1859), see: http://en.wikipedia.org/wiki/John_Stuart_Mill

2. Little Children are Sacred, p 63.

3. http://www.datsip.qld.gov.au/pdf/taskforce.pdf p 101; p 180.

4. *Child Protection and the Internet*, presented by Dr Janet Stanley, Ms Cassandra Tinning and Ms Katie Kovacs at the Ninth Australasian Conference on Child Abuse and Neglect, 2003.

5. *Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects* Michael Flood and Clive Hamilton, The Australia Institute Discussion Paper Number 52, February 2003 available at: http://www.tai.org.au/documents/dp_fulltext/DP52.pdf

6. http://au.news.yahoo.com/thewest/a/-/mp/8170443/shops-flout-x-rated-porn-ban/

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

8. http://www.aria.com.au/pages/documents/ARIA-AMRA_Code_april2003.pdf

9. American Psychological Association, Task Force on the Sexualization of Girls, 2007, *Report of the APA Task Force on the Sexualization of Girls*, (Washington, DC) , p 7, www.apa.org/pi/wpo/sexualization.html.

10. Martino, S *et al.*, "Exposure to Degrading Versus Nondegrading Music Lyrics and Sexual Behavior Among Youth", *Pediatrics*, Vol. 118, No. 2 August 2006, pp e430-e441: pediatrics.aappublications.org/cgi/content/abstract/118/2/e430.

11. www.aria.com.au/pages/documents/Level3-010406-310307.pdf.

12. www.oleo.tv/lyrics/cannibal-corpse/stripped-raped-and-strangled.

13. www.darklyrics.com/lyrics/prostitutedisfigurement/leftingrislyfashion.html#4.

14. Senate Legal and Constitutional Affairs References Committee, Review of the National Classification Scheme: achieving the right balance, June 2011, Recommendation 23, p xvi: http://www.aph.gov.au/senate/committee/legcon_ctte/classification_board/report/report.pdf

15. Senate Standing Committee On Legal And Constitutional Affairs, *Attorney-General's Department : Answers to questions on notice*, Supplementary Budget estimates, October 2010, Program 1.1, Question 2: http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/ag/002_CLD.pdf

16. Senate Standing Committee On Legal And Constitutional Affairs, *Classification Board : Answers to questions on notice*, Additional Budget estimates, February 2010, Question 11: http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/ag/011_Classification_Board.pdf

17. http://www.news.com.au/breaking-news/world/all-internet-porn-will-be-blocked-to-protect-children-under-uk-government-plan/story-e6frfkui-1225973481287#ixzz18hpNRD7k

18. Peters, R, *How Adult Pornography Contributes To Sexual Exploitation of Children*, Morality in Media, September 2009: http://www.obscenitycrimes.org/news/HowAdultPornographyHarmsChildren.pdf

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

20. *Criminal Code Act 1995*, Schedule, Section 474.29A.

21. "Death pact teen's grim poems", *Sydney Morning Herald*, 23 April 2007: http://www.smh.com.au/news/national/grieving-mother-asks-why/2007/04/23/1177180529637.html

22. Carr-Gregg, M and McLean, S, "Black holes in net space", *Herald Sun*, 23 May 2007, http://www.heraldsun.com.au/opinion/black-holes-in-net-space/story-e6frfifo-1111113591392

23. "Web of darkness", *Sixty Minutes*, Channel Nine, 17 May 2007: http://sixtyminutes.ninemsn.com.au/stories/liambartlett/267889/web-of-darkness

24 Sawer, P, "Predators tell children how to kill themselves", *Daily Telegraph*, 17 February 2008: http://www.telegraph.co.uk/core/Content/displayPrintable.jhtml;jsessionid=HZG5IYACS003PQFIQMGSFF4AVCBQWIV0?xml=/news/2008/02/17/nweb117.xml&site=5&page=0

25. Lopez, K, "Euthanasia Sets Sail : An interview with Philip Nitschke, the other "Dr. Death.", *National Review Online*, 5 June 2001: http://www.nationalreview.com/interrogatory/interrogatory060501.shtml

26. http://www.exitinternational.net/

27. Classification Review Board, *The Peaceful Pill Handbook: Reasons for Decision*, 24 February 2007.

28. ACMA, *Investigation report*, no. 2148, 22 July 2009: http://www.acma.gov.au/webwr/_assets/main/lib310803/ads_report_2148.pdf

29. www.acma.gov.au/WEB/STANDARD/pc=PC_91717

30. See "Subsidiarity", Wikipedia: http://en.wikipedia.org/wiki/Subsidiarity