



**The Executive Director
Australian Law Reform Commission
GPO Box 3708 SYDNEY NSW 2001
[By email: classification@alrc.gov.au]**

Communications Council submission to the Australian Law Reform Commission

Dear Secretariat,

The Communications Council appreciates the opportunity to make this submission in relation to the National Classification Scheme Review Discussion Paper.

This is a supplementary submission further to our earlier submission provided in response to the Australian Law Reform Commission Issues Paper.

Please find our submission below.

Yours sincerely,

Linde Wolters
Media and Public Affairs Officer
The Communications Council

The Communications Council and this enquiry

The Communications Council has been involved in a number of enquiries into the regulatory environment marketing communications agencies operate in.

Most recently, we've submitted to the Senate Legal and Constitutional Affairs Committee's enquiry into the Australian literature and film classification scheme, as well as the Australian Law Reform Commission enquiry into classification.

Given these recent enquiries, The Communications Council will submit the following commentary alongside the Terms of Reference of this enquiry,

About The Communications Council

The Communications Council was formed on 1 January 2010, merging the former Advertising Federation of Australia (AFA) with the Account Planning Group (APG) and Australasian Writers and Art Directors Association (AWARD) and more recently the Australasian Promotional Marketing Association (APMA). The Communications Council is the peak body representing agencies in the marketing communications industry to government, media and the public.

We help grow member businesses and develop individual careers through the provision of professional development services, advocacy and support.

The Communications Council represents businesses in the media and marketing sector which just over \$30 billion towards Australia's GDP.

Advertising and the classification scheme

We are supportive of the Commission's decision not to propose that advertising should be subject to the National Classification Scheme. Our support is based on our experience that the current system of advertising self-regulation, as administered by the Advertising Standards Board (ASB) is working well.

This was outlined in detail in our previous submission to the Commission, but in brief:

- The Communications Council submits that the existing self-regulation system is an effective means of providing appropriate protections and safeguards for the community.
- The Communications Council's members share a commitment to provide consumers with appropriate advertisements that are in line with community standards, with a view to promoting consumer confidence and trust in the self-regulatory system more broadly. They operate from the understanding that a failure to meet community expectation will result in ineffective marketing messages, and may result in reputational damage to the brand.
- The current system is an effective and transparent mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.

- The current system is flexible and informed by occasional research conducted by the ASB, for instance the most recent research on community perceptions of violence in advertising and community perceptions of sex, sexuality and nudity in advertising.
- The Advertising Standards Bureau reports that the vast majority of marketing communications do not attract complaints
- The ASB reports that the majority of complaints are rigorously assessed, and are dismissed
- A determination that an advertisement breaches community standards means the immediate removal of the advertisement and prohibits use of the advertisement in the future.
- The ASB system has resulted in upheld complaints being addressed in an effective and timely manner, achieving a compliance of nearly 100%¹
- In the 0.07 per cent of cases of non-compliance, over 12 years of operation of the system, the ASB already works with government bodies to address the gaps.

Outdoor Advertising

We note that the Commission has given consideration to how outdoor advertising may fit in the classification system if the Government decided that it should come within the National Classification Scheme.

On this occasion, we note that the recent enquiry into the regulation of outdoor advertising has dismissed calls to include outdoor advertising into the classification scheme given that the Committee considered that this would not lead to improved compliance or a more effective means of regulating the industry in line with community expectations.², as well as being over reactive and costly for government.³

Given these reports, we submit that including any form of advertising under the classification scheme should not be done without consideration to the financial and administrative burden of such a system. We also note the figures cited by the Outdoor Media Association (OMA) that over 2010, the outdoor advertising industry posed 30,000 advertisements in 2010, of which 66 attracted complaints. The Advertising Standards Bureau (ASB) found that complaints about 7 of the advertisements should be upheld, making for a 99.98% of outdoor advertisements in 2010 were in accordance with prevailing community standards.

We conclude that the regulatory burden on industry of the proposed classification system is not justified in light of the effectiveness of the current system.

¹ Advertising Standards Board Statistics as cited in the ASB submission to the Senate Committee Legal and Constitutional affairs' Inquiry into the Australian film and literature classification scheme, p 25.

² Reclaiming Public Space, Inquiry into the regulation of billboard and outdoor advertising report by the House of Representatives standing Committee on Social Policy and Legal Affairs, July 2011, section 3.58, page 36

³ Reclaiming Public Space, Inquiry into the regulation of billboard and outdoor advertising report by the House of Representatives standing Committee on Social Policy and Legal Affairs, July 2011, section 3.58, page 37

The Communications Council does however not that the same Report has recommended a number of improvements to the system. As The Communications Council is committed to keeping the system relevant and reflective of community standards, we have welcomed the findings and committed to working with other industry bodies to consider the recommendations. In addition, we'll look at addressing gaps in the system through education and research.

Outdoor advertising and co-regulation (paragraph 8.78)

The Communications Council notes that the Discussion Paper states that:

“If the Australian Government chose to bring outdoor advertising into the co-regulatory National Classification Scheme, the ALRC would suggest that a law prohibiting the display in public places of media content likely to have a higher level classification may be suitable.”

The Communications Council is concerned that legislation of this nature would be costly, burdensome and unjustified in the context of a 99,8% compliance rate in the outdoor advertising field.

In addition it seeks clarification as to the definition of higher level classification. We note that a number of public health and social awareness campaigns may fall under 'higher classification', while they serve a legitimate public interest.

Current exceptions to classified advertising content

The Communications Council understands that currently advertising for classified content must carry the classification marking of the content classified. In case the content has not been classified, the advertisement must carry the marking 'check the classification', while advertisements for unclassified films and computer games must be assessed by an authorised assessor to determine the likely classification.

At the outset, The Communications Council prefers a consistent system of regulation in which advertisers- and their agencies- assess the suitability of the advertisement for the audience, and place it accordingly, with the ASB assessing all advertisement content on a complaints basis.

However as to the proposed changes to classified advertisers, we note that ASB already do take into account the aforementioned principles, adjudicating complaints taking into account the likely audience of the advertisement; the impact of the content and the classification or likely classification of the advertisement.

Community standards (proposal 9-5)

The Communications Council notes the ALRC's proposal to review community standards should be at least every five years.

The Communications Council recognizes that community standards are continually evolving, and should therefore be reviewed at appropriate times. It also recognizes that Advertising Standards Board decisions which its members are subject to reflect community standards as gaged by its Board members, and its continual research.

The Communications Council would welcome any research which would assist our organization in training the marketing communications sector on community standards. In that context it notes that it currently already monitors and distributes research reports by the ASB with a view to informing members of changing community perceptions and standards.

Advertising and classification principles and co-regulation (chapter 9 and 11)

In light of the recent Parliamentary inquiries supporting the view that self-regulation remains the most appropriate and effective means for regulating advertising and marketing communications in Australia, we oppose a system of co-regulation.

The current system is an effective and transparent mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.

In addition the current Code is technology and media neutral, regardless on which device is used to access the content, ensuring the principles remain relevant and current in the context of rapidly changing technologies.

We also note that the Code can be amended easily and rapidly, as long as all stakeholders are involved in that process.

We submit that a co-regulatory system would be less flexible than the current self-regulatory system as it is to a lesser extent able to respond to changing community standards. We consider the strength the system to lie in the system's ability to evolve and respond if necessary.