



30 November 2011

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Executive Director

Submission to ALRC National Classification Scheme Review

ACP Magazines Limited (ACP) thanks the Commission for the opportunity to comment on Discussion Paper 77 (**Discussion Paper**) issued in connection with the Commission's review of the national classification scheme.

ACP is Australia's leading magazine publisher and is the magazine arm of leading Australian media and entertainment company, Nine Entertainment Co Pty Limited.

ACP publishes a small number of magazines that are classified "Category 1" under the current classification scheme. ACP also publishes approximately 80 magazines that are classified "Unrestricted" under the current classification scheme, including some of the longest-running and most successful Australian magazines such as *The Australian Women's Weekly* and *Woman's Day*.

ACP is broadly supportive of the recommendations made in the Discussion Paper but wishes to highlight four matters for the Commission's consideration.

1. Support for types of content that are required to be classified

ACP supports the Commission's proposals contained in Chapter 6 of the Discussion Paper relating to the types of content that are required to be classified. ACP considers that there are compelling reasons that magazines likely to be classified G, PG and M, for example, should remain subject to voluntary classification as proposed by the Commission. Relevantly:

- a) For magazines, unlike many other forms of media, there is an intermediary between the content creator and consumers. That is, retailers determine the magazines that they will make available to their customers and, in doing so, reflect the standards and mores of their customers. Those standards and mores may, as a result of demographic differences, vary significantly from outlet to outlet.

- b) The nature of magazine covers is such that the content of a magazine is immediately apparent to a consumer. At a functional level, therefore, consumers derive little benefit from an explicit distinction, for example, between a magazine containing G content and a magazine containing PG content.

2. Support for development of industry codes in relation to restriction of access

There is significant merit in the development of industry codes regarding restriction of access to content that is not subject to mandatory access restrictions under the Proposed Classification of Media Content Act (**Proposed Classification Act**) (as suggested in Proposal 8-3 of the Discussion Paper).

In relation to magazines, for example, the characteristics referred to in paragraphs 1(a) and (b) above, suggest that media neutral access restrictions would be unworkable and that access restrictions should appropriately recognise the context in which consumers view and purchase magazines. Such appropriate recognition is more likely to be achieved through a consultative process that involves relevant industry participants throughout the magazine supply chain than through the imposition of a broad, statutory regime.

3. Concerns regarding development of a single set of statutory classification criteria

Proposal 9-4 of the Discussion Paper suggests that the Proposed Classification Act should provide for one set of statutory classification criteria (**Proposed Classification Criteria**) and that classification decisions must be made applying the Proposed Classification Criteria.

As the Commission is aware, classification decisions in relation to print publications are, pursuant to section 9 of the Classification (Publications, Films and Computer Games) Act 1995 (**Current Classification Act**), made in accordance with the National Classification Code and the Guidelines for the Classification of Publications 2005 (**Current Guidelines**). Of those two instruments, the Current Guidelines are the principal source of guidance for the classification of publications.

ACP is concerned that any changes to the Current Guidelines – whether for the purposes of media neutrality or otherwise – will necessarily change the manner in which the various classifications categories are applied. In particular, it is difficult to see how any changes to the Current Guidelines for the purposes of media neutrality can adequately capture those elements of the Current Guidelines that reflect functional characteristics specific to publications. For example, the Current Guidelines distinguish between “descriptions” and “depictions” and between content appropriate for display on cover pages and content appropriate for display on inside pages.

It is ACP’s understanding that the Commission envisages that material currently classified as “Category 2” would, under the proposed classification scheme, be classified as “X 18+” and that material currently classified as “Category 1” would, under the proposed classification scheme, be classified as “R 18+”. ACP recognises the policy benefits associated with a single set of statutory classification categories and, therefore, supports such a change. However, ACP would be concerned if changes to the Current Guidelines were such that, for example, material currently classified as “Category 1” would, under the proposed classification scheme, be classified as “X 18+” because of a difference between the application of the Current Guidelines and the application of the Proposed Guidelines.

In this regard, I note that ACP is unaware of any compelling rationale for changing the manner in which the various classifications categories are applied to publications. ACP considers that the current classification categories of “Unrestricted”, “Category 1”, “Category 2” and “RC”, as defined by the Current

Guidelines, appropriately capture relevant publications. ACP is not aware of any evidence that consumers think otherwise.

The development of the Proposed Classification Criteria should be undertaken on a consultative basis and that consultation should include representatives of the print media so that functional characteristics specific to publications are properly taken into account. In addition, to ameliorate the issues that arise as a result of the "broad brush" approach necessarily associated with rendering the Proposed Classification Criteria media neutral, ACP strongly supports mechanisms to allow for the development of industry codes to provide guidance on the application of the Proposed Classification Criteria to publications (as anticipated in Proposal 11-2(a) of the Discussion Paper).

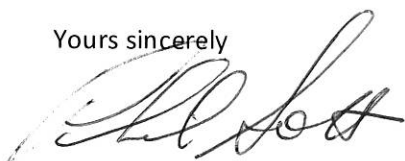
4. Support for enforcement under Commonwealth law

On a number of occasions, ACP has raised with the Classification Board and representatives of The Commonwealth Attorney-General's Department concerns over the lack of enforcement of the current classification regime. In ACP's view, there is a high level of compliance by the major Australian magazine publishers with that regime. To the extent that non-compliance is an issue, that non-compliance is principally on the part of small and foreign publishers, whose non-compliance has, on the whole, been ignored by enforcement agencies.

If the Proposed Classification Act provided for enforcement of classification laws under Commonwealth law, as suggested in Proposal 14-1 of the Discussion Paper, higher levels of compliance would be achieved for two reasons. First, a single enforcement regime would be more readily able to be understood than the current enforcement regime. We assume that the complexity of the various State-based enforcement regimes contributes to non-compliance, particularly by small and foreign publishers. Greater understanding of the regime would lead to greater compliance with it. Second, if responsibility clearly fell to a single Commonwealth enforcement agency, there would be greater national consistency as to enforcement activity than exists under the current State-based regime. Again, we consider that such consistency would contribute to greater industry compliance.

If the Commission wishes to discuss any of the matters raised above or address any other issues of relevance to the magazine publishing industry, please let me know.

Yours sincerely



Phil Scott
Managing Director