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Submission to the National Classification Scheme Review Issues Paper 40

Thank you for the opportunity to participate in this review of the National Classification Scheme. This submission is a personal submission and should not be taken to reflect the views of any other individual, organisation, or group.

1. In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

Most of the current framework for classification was developed before it became clear how the internet would change the way in which content is distributed and communicated in Australia. Schedules 5 and 7 of the *Broadcasting Services Act 1992* (Cth) (**BSA**) have only had a modest impact in attempting to apply rules designed for public display and broadcasting of content to internet distribution. Given the fundamental and ongoing changes in the way in which content is disseminated over rapidly developing online channels, the ALRC should seriously consider developing a new framework for classification.

2. What should be the primary objectives of a national classification scheme?

A national classification scheme should ensure that Australians are empowered to make informed decisions about the material they are exposed to. In broadcast media and media that is sold, displayed, or accessed in public, this necessarily means that some restrictions must be imposed to prevent individuals from being inadvertently exposed to material they deem harmful, bound by some rough consensus of community standards of decency.

In the online environment, however, it is much less important to take into account community concerns about content. Since content accessed online is generally searched for, not inadvertently accessed, as long as Australian internet users are empowered to make informed decisions about the content they access, there is generally no need to restrict online dissemination. Classification policy should accordingly focus on ensuring that online content is effectively classified, whether through a voluntary or co-regulatory regime. Sound classification policy likely also requires that Australian individuals are well educated as to safe online browsing and searching habits, and have access to voluntary technical mechanisms (like filters) to manage their online experience if they choose to do so.

In a pluralistic liberal democracy, where an individual's voluntary access to content is not harmful to any other person and not illegal in itself, there is no valid reason for the state to prevent that access. To the extent that the classification scheme is designed to restrict access to certain types of content, it should only restrict access to 'offensive' material in public areas, where that material could reasonably offend others. If the classification scheme is to operate to restrict voluntarily access to certain types of material in private circumstances, it should be restricted to material that is clearly illegal to possess. The national classification scheme should accordingly not operate to prevent private, informed, voluntary access to most of the content that is currently Refused Classification in Australia.

A modern Australian national classification scheme should reflect an understanding that it is extremely difficult to effectively censor content in the online environment. Countries that do effectively censor online content do so at a great cost to personal liberties. Ineffective online censorship, such as that which can be achieved by blocking a small and secret list of offensive sites, poses serious risks to the legitimacy of the classification system without either (a) reducing the risk of inadvertent access to offensive content; or (b) restricting the access of Australians to illegal content. The national classification scheme should accordingly focus on empowering Australians to make informed choices about the material they are exposed to online.

I make no comment as to whether the national classification scheme should continue to restrict the access of minors from material likely to harm or disturb them. It should be made explicit, however, that any attempts to protect minors from harmful content should not restrict the ability of Australian adults to access legal material. For example, the current computer game classification scheme, designed to protect children, violates the liberty of Australian adults to choose to enjoy material aimed at an adult audience.

3. Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

As stated above, the technology or platform used to access content does significantly change the nature of access. Broadcasting and public display carry an inherent risk of inadvertent exposure, and should accordingly be more strictly regulated than online delivery. Importantly, also, mass media forms are less difficult to classify than online publications due to the sheer amount of online content and the inherent jurisdictional problems.

4. Should some content only be required to be classified if the content has been the subject of a complaint?

I make no comment as to the desirability of a complaints driven system for broadcast media and public displays and performances.

It is unclear what benefit the online complaints system currently brings to Australians. Currently, Schedule 5 and 7 are not effective because a successful complaint does not prevent access to Australians, mainly because restrictions are easily bypassed and content can be quickly duplicated. Even if these systems were effective, it is not clear whether the complaints system provides an effective way of dealing with offensive material. It would be preferable for the National Classification System to further develop resiliency in the Australian community and empower Australians to identify and refrain from accessing material they may find offensive.

5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

Potential impact of content may be a relevant factor in classifying content (as it currently is under the guidelines), but should be informed by a better scientific understanding of the effects of media. As I understand it, there is little consensus amongst experts as to what effects exposure to, for example, violent media in different forms has on consumers. Intuitions about the potential impact of certain forms of media have been proved substantially incorrect in the past, and the National Classification System should avoid making unsubstantiated assumptions about media effects in classification.

6. Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

Mass market content is certainly easier to classify than the almost infinite range of material made available online. I make no comment as to the desirability of requiring classification of mass market content, but I do note that it would be futile (or, if effective, grossly illegitimate) to require prior classification of all online content. It therefore seems likely that the size, market position, and mass market reach of content should alter whether content should be classified.

7. Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?

Restrictions on 'offensive' art have a long and problematic history. The National Classification Scheme must be very careful not to restrict freedom of expression and political and social commentary. Publicly exhibited art can often be shocking, and it is through the continual challenging of established norms that society progresses. Classification for the purposes of providing consumer advice is permissible, as is classification for the purposes of preventing inadvertent access. Classification for the purposes of restricting voluntary access to adults to content that is not illegal is not legitimate.

8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

No comment.

9. Should the potential size and composition of the audience affect whether content should be classified?

The size and composition of the audience should only be relevant in terms of whether access to content is voluntary or accidental. Otherwise, audience size and composition provide little basis for making distinctions about classification.

10. Should the fact that content is accessed in public or at home affect whether it should be classified?

There is a very strong distinction between access in public and in private which goes to the heart of classification in a liberal democracy. Assuming that voluntary access by an adult to content in private does not harm any other person, it should presumptively and almost always be unrestricted. I acknowledge that there is an unsettled question as to whether private and voluntary access to material depicting sexual violence and other negative imagery reinforces undesirable social norms, and am not in a position to provide an opinion on this issue. If access to particular content is not harmful to other individuals in particular or in general society, however, then access should not be restricted. Access in public, by contrast, carries an inherent risk of accidental exposure to others to content that they may consider harmful. Classification policy should accordingly restrict public access to content that is likely to cause offence in a way that is consistent with community standards, but should generally not restrict private access.

11. In addition to the factors considered above, what other factors should influence whether content should be classified?

No comment.

12. What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

The most effective means of controlling access to online content is education. Australian internet users should be empowered to identify content that they might find offensive before they access it to reduce the risk of inadvertent exposure. Internet users should also have ready access to voluntary filtering technologies that reduce the risk of inadvertent exposure to material they find offensive. The National Classification Scheme should encourage online self-regulation for content producers and content hosts to clearly and effectively label their content.

There is no effective way to completely filter or block access to online content. Because of the ease with which technical measures can be bypassed, blocking cannot effectively prevent access to persons who seek out illegal material. Blocking only works to address the most casual form of inadvertent access, and it is not logistically feasible to prevent inadvertent access to the greatest majority of online sites that any particular person may find offensive. There is no evidence to establish that individuals run a significant risk of inadvertently accessing the smaller category of illegal material, or even the somewhat larger category of material that would currently be Refused Classification. It follows that any attempt to block access to online material will (a) not prevent determined access; and (b) not protect the vast majority of users from accidentally being exposed to the vast majority of content they may find offensive. Education, resilience, and empowerment are the only effective ways to deal with threats posed by potentially offensive content online.

13. How can children's access to potentially inappropriate content be better controlled online?

Children should be adequately supervised by parents or responsible adults in their online access. Parents concerned about their children's online browsing should have easy access to effective voluntarily filtering technology. Most importantly, children, like adults, should be empowered to make sensible decisions about the material they access online. Greater emphasis should be placed on educating children about online safety and fostering resilience amongst children.

14. How can access to restricted offline content, such as sexually explicit magazines, be better controlled?

No comment.

15. When should content be required to display classification markings, warnings or consumer advice?

Display of voluntary classification ratings and warnings should be encouraged in all forms and media as part of a broader strategy to empower citizens to make informed decisions about their own media access. Display of classification information should be mandatory for material that is likely to be offensive that is broadcast or publicly displayed or performed.

16. What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

I make no comment with regards to broadcast, public display, and mass media. With regards to online content, an international approach is desirable. Australia should work with other countries – particularly with the United Kingdom and the European Union – to avoid duplicating classification work. Producers and distributors of online content should be able to follow a single international standard for appropriately labelling their content. Government agencies should facilitate voluntary labelling and oversee any mandatory classification that is required, whether that classification is done by the government agency itself, by foreign agencies, or by industry bodies. Users should be encouraged to take responsibility for their own access to online content, assisted by strong standards and technical tools.

17. Would co-regulatory models under which industry itself is responsible for classifying content, and government works with industry on a suitable code, be more effective and practical than current arrangements?

At least for online content, co-regulatory models seem to be highly desirable. The Australian classification system cannot stretch to centrally classify online content. Online producers and distributors should be encouraged to develop international industry standards to classify online content.

18. What content, if any, should industry classify because the likely classification is obvious and straightforward?

No comment.

19. In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

If classification is mandatory and the costs of classification are prohibitive for certain important productions, like independent film, the Government should subsidise classification.

20. Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

Anecdotal evidence suggests that the current classification categories are relatively well understood in the community. The glaring exception is the lack of R and X ratings for computer games. It appears that some computer game content that is targeted at an adult audience in Australia is being classified MA15+, leading parents and adult gamers into a false sense of security about the content of video game titles sold in Australia. The introduction of an R rating would better empower parents and adult gamers to make informed decisions and reduce confusion due to the lack of parity between different media.

Anecdotal evidence also suggests the classification scheme for publications is poorly understood in Australia.

The refused classification category is also poorly understood. There seems to be a high degree of confusion between the overlap of material that is refused classification and material that is illegal to possess. Preferably, only material that is illegal to possess should be refused classification.

21. Is there a need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?

The refused classification category should be abolished or restricted only to material that is illegal to possess.

22. How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

The different classification markings, criteria, and guidelines should be standardised as far as possible. In particular, the different criteria and emphasis on interactivity for computer games and other interactive works should be abolished. As far as I know, there is no conclusive evidence that interactive works have a higher impact than film. In general terms, as media forms continue to converge, the continued differential treatment under the classification scheme seems more problematic than useful.

23. Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

Again, given increasing convergence between media, the classification criteria should be consolidated. There is not sufficient evidence to suggest a differential impact of the effects of different media forms to support differing criteria.

24. Access to what content, if any, should be entirely prohibited online?

Only material that is illegal to possess should be entirely prohibited online, and should be dealt with primarily by the criminal justice system rather than the classification system. There is no legitimate reason, in a liberal democracy, to prohibit private, voluntary online access to any material that is not harmful to others.

Further, as mentioned above, it is not practical for the classification system to prohibit access to a broad category of material online. Because technical measures are easily circumvented, they will not prevent access by those who wish to gain it. Prohibiting access to a broad category of material that is not itself unlawful to access would likely, if it were to be effective, require making circumvention of technical measures illegal. This would have the unfortunate and undesirable consequence of greatly broadening the scope of content that is currently illegal to possess in Australia.

25. Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

The current scope of the Refused Classification category is overly broad. It includes material that could generally be considered offensive, but is far broader than the category of material that is illegal to possess. While much content that may fall within the RC category could be offensive to a large proportion of the population, there is no reason to prevent private, voluntary, adult, access to online material merely because other members of society find it offensive. It is unclear whether it is at all desirable for community standards to dictate what content individuals choose to be exposed to if their access has no direct adverse impact on the rest of the community. Community standards change over time and there is reason to believe that community standards enshrined in prohibitions on content often reflect a much more conservative standard that is actually appropriate. Censorship should be restricted primarily to the public sphere; censorship to uphold community standards is deeply problematic and likely largely ineffective.

26. Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

While I believe that consistency of state and territory classification laws is desirable, I make no suggestion as to how it should be promoted.

27. If the current Commonwealth, state and territory cooperative scheme for classification should be replaced, what legislative scheme should be introduced?

No comment.

28. Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?

No comment.

29. In what other ways might the framework for the classification of media content in Australia be improved?

No comment.