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## **SUBMISSION TO SENATE ECONOMICS REFERENCES COMMITTEE**

### **INQUIRY: Personal choice and community impacts**

**FEBRUARY 2016**

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Thank you for the opportunity to comment on this matter. Most of what appears below has already appeared in the general submission ACCM made last August, but we have incorporated those comments here, with some minor modifications, for ease of reference.

This submission has been prepared on behalf of the Board of the ACCM by Prof Elizabeth Handsley (President) and Ms Barbara Biggins OAM (Hon CEO).

#### **1. INTRODUCTION TO AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA**

**The ACCM** is the peak not-for-profit national community organisation supporting families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM has a national Board representing the states and territories of Australia, and a membership of individuals and organisations including Early Childhood Australia, the Australian Council of State Schools Organisations, the Association of Heads of Independent Schools of Australia, the Australian Primary Principals Association, the Australian Education Union, the Parenting Research Centre, the NSW Parents Council, the South Australian Primary Principals Association, and the Council of Mothers' Unions in Australia.

**ACCM's core activities** include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

ACCM bases much of its work on the United Nations Convention on the Rights of the Child 1990, which is the most authoritative document about how children and families fit into society. Para 3(1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Further, Article 18 makes it very clear that governments have an obligation to support parents in fulfilling their responsibilities towards their children. This includes the responsibility of ensuring that they can access the mass media without being exposed to material that is injurious to their well-being (see article 17).

#### **2. COMMENT ON TERMS OF REFERENCE**

This submission refers primarily to paragraph (e) of the terms of reference, namely 'the economic and social impact of legislation, policies or Commonwealth guidelines [on]

the classification of publications, films and computer games'. However, as explained below, we read that phrase in light of the wording of paragraph (f).

In this submission ACCM would like to underline the role of the National Classification Scheme (NCS) in providing information to support consumer choice. There is nothing sinister or controversial about the provision of information; rather it is something we would normally expect in a consumer society, and it is also quite normal for the government to have a role, in setting standards for the kinds of information to be provided, and/or in ensuring the appropriate information is provided. We see no threat to individual liberty, and no unjustified economic or social consequences, from that aspect of the NCS's operation.

ACCM would like to challenge the apparent assumption in the Terms of Reference that classification of films, publications and computer games is done 'for the individual's own good'.

Those quotation marks appear in para (f) of the terms of reference, with an implication that all the specific examples in paras (a) to (e) are of that nature; yet it is not clear what is being quoted. The words certainly do not appear in any Australian legislation or guidelines on content classification. Therefore the Inquiry may be addressing a straw person.

This Inquiry will not be able to avoid touching on some very deep philosophical debates about the nature of humanity and society. Questioning the appropriateness of government intervention for people's 'own good' is based on a view that, we submit, tends to overlook the social nature of our species; our interconnectedness; and the pain we feel when others are hurt - even if they hurt themselves.

Our impulses to care for others should not be squashed or marginalised, rather they should be celebrated and rewarded. Not only that, as a practical matter we need to cooperate with - that is, to be interdependent with - each other for safety, security and a range of kinds of support. In this sense there is not always a clear line between one individual's 'own good' and that of another, or of the community generally.

This is particularly so when it comes to parents and children. As a child-focussed organisation, ACCM is a great believer in the aphorism that 'it takes a village to raise a child'. Concerns about children's wellbeing as media users are often relegated to 'parental responsibility' but we know, from observation and personal experience, that parents need and deserve support from the community around them. While many parents seek such support, some parents are not there, some are unaware, and others don't care. It is in the community's interests to ensure that children are able to develop into healthy, happy and responsible citizens. We see media regulation as one means of achieving all these goals.

The Committee is no doubt aware of the organising principles of the NCS:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:
  - (i) depictions that condone or incite violence, particularly sexual violence; and
  - (ii) the portrayal of persons in a demeaning manner.

Paragraph (a) clearly reflects the precise opposite of 'restricting personal choice "for the individual's own good"'.  
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Paragraph (b) reflects a motivation to protect children, ostensibly for their own good; but extending such protection to children in a range of situations (not just media use) is a well-accepted and time-honoured feature of our systems of law and government. Indeed, it is required under the Convention on the Rights of the Child, to which Australia is a signatory, as 'the child, by reason of his [sic] physical and mental immaturity, needs special safeguards and care'<sup>1</sup> and article 3 provides that 'the best interests of the child shall be a primary consideration'. This is precisely the position our legal system has taken for decades under the *Family Law Act*, for example. So far as we know there is no serious dissent from the proposition that doing so is appropriate.

Paragraph (c) appears to be motivated by a desire to protect adults, but read carefully it is clearly about protecting adults' *freedom to choose* the kind of material to which they are exposed; therefore it does not purport to judge what is in individuals' best interest but rather aims to support individuals' own judgment - or 'personal choice' - about that.

That leaves paragraph (d), which might be seen indirectly as providing for the protection of adults 'for their own good' - but it is significant that any such protection is based on 'community concerns' and not on a governmental judgment about what is in people's best interests. ACCM has some reservations about the use of 'community standards' in this context and would prefer to see reliance on valid and reliable evidence about what is harmful. But that is not to say that decisions influenced by paragraph (d) impose a view of what is in individuals' best interests. In any case it can hardly be doubted that the community does have concerns about the matters mentioned, and we doubt that there would be much support within the community for removing all restrictions on access to the kinds of material that paragraph (d) captures.

If we accept, for the reasons mentioned above, that the Inquiry's Terms of Reference have application only to the 'own good' of adults, it is important to note that the NCS only prevents us from seeing, hearing or playing a very narrow range of material. The description of that material can be found in the criteria for the 'Refused Classification' category of content, namely:

#### **CRIME OR VIOLENCE**

Detailed instruction or promotion in matters of crime or violence.

The promotion or provision of instruction in paedophile activity.

Descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years.

Gratuitous, exploitative or offensive depictions of:

- (i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed;
- (ii) cruelty or real violence which are very detailed or which have a high impact;
- (iii) sexual violence.

#### **SEX**

Depictions of practices such as bestiality.

Gratuitous, exploitative or offensive depictions of:

- (i) activity accompanied by fetishes or practices which are offensive or abhorrent;
- (ii) incest fantasies or other fantasies which are offensive or abhorrent.

#### **DRUG USE**

Detailed instruction in the use of proscribed drugs.

Material promoting or encouraging proscribed drug use.

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<sup>1</sup> Preamble, quoting from the *Declaration of the Rights of the Child*.

We submit that it is very difficult, in a civilised society, to support the proposition that even adults should have free access to such material given the strong social disapprobation of the matters depicted.

In addition we suggest that many if not all of the matters listed are not restricted for the 'own good' of the viewers or players, but for more complex, social reasons.

Having a classification system such as ours can be justified on two overlapping premises.

First, media content has an important role to play in shaping people's thoughts, attitudes and behaviour. Second, the life and experiences of any member of society can be influenced by the thoughts, attitudes and (especially) behaviour of other people at any time, and sometimes in unexpected ways against which we are unable to protect ourselves. In those situations, government regulation has the important function of helping to support all of us to get on better with each other. In other words, when access to material is restricted, or banned, it is not for the 'own good' of individuals who might otherwise consume it, but for the good of all those with whom they come into contact.

It is true that the NCS could be more closely attuned to reliable evidence about the kinds of material that shape thoughts, attitudes and behaviour in ways that are potentially detrimental to the community. However, this is not a reason to change the fundamental structure of the system, much less to dismantle it. Rather, it is a reason to review the classifiable elements and the guidelines. ACCM would be pleased to contribute to such a process.

As an organisation aiming to support others to create and maintain an appropriate media environment for young children, ACCM is more concerned with the operation of the NCS at the lower end, and in particular how distinctions are drawn between the G, PG and M categories. We have been advocating for some time for an overhaul of these categories to make them more age-specific and the criteria better aligned with the evidence about child development.

However, we remain strong supporters in principle of the role of government, legislation and regulation in setting standards for children's media experiences and especially in providing information to parents and carers to help them to choose material for their children - as is all that the three categories mentioned above do, being only advisory.

We trust that the Inquiry will bear steadily in mind the limited amount of actual coercion in the NCS, at least as to limiting the material that individuals can legally see or play; and the strong role that the system plays in informing personal choice. It is a valuable source of consumer advice.

## **References.**

United Nations (1990) *Convention on the Rights of the Child*  
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>