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SUBMISSION TO

Australian Law Reform Commission

National Classification Scheme Review (IP40)

July 2011

The Australian Council on Children and the Media (ACCM) welcomes the opportunity to provide comment to this Inquiry.

This submission has been prepared for the Australian Council on Children and the Media by Prof. Elizabeth Handsley (a specialist in media law as it relates to children), and Barbara Biggins OAM, CEO (and a former Convenor of the Classification Review Board).

The ACCM would welcome the opportunity to expand on the issues raised, at a later date.

For further information, please contact Barbara Biggins at above address.

1. INTRODUCTION

The ACCM is a not-for-profit national community organisation whose mission is to support 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 comprehensive membership of organisations and individuals who support its mission.

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.

More about the ACCM can be found at Appendix 1.

2. THIS SUBMISSION REFLECTS THE FOLLOWING PRINCIPLES

2.1   The International Convention on the Rights of the Child Article 17, viz

"States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

Promoting healthy choices and stronger voices in children's media since 1957
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(b) Encourage international co-operation in the production of, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority groups or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Article 13 and 18."

2.2   The Code under the *Classification (Publications, Films and Computer Games) Act 2005*:

"Classification decisions are required to give effect to the following principles which are set out in the Code:

(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, and

(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."

2.3   Objectives h) and j) of the *Broadcasting Services Act* at para 3.of The Act.

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them;

2.4   The Policy Guidelines on Children's Media of the Australian Council on Children and the Media.

3. IN THE PREPARATION OF THIS SUBMISSION, ACCM HAS

- relied on its experience and active involvement in issues related to healthy and safe use of all media;
- listened to community concerns about the content of films, publications and games;
- drawn on its ongoing activity of reviewing the current research literature as it relates to the impact of media on children.

4. INTRODUCTORY COMMENT

ACCM welcomes the opportunity to comment on the National Classification Scheme.

We generally support the scheme as a source of information for all consumers about the content of films, magazines and computer games. We note also the use to which the scheme is put in supporting the online content regulation scheme under the *Broadcasting Services Act* and the influence it has on the classification of television content.

ACCM supports the broad approach of the classification scheme in seeking to strike a balance between the protection of children and young people from harmful material and the right of adults to see, read and play whatever they wish. This balance is not always an easy one to strike, and the ultimate decision will rarely command universal assent. But ACCM believes that in a mature democracy it is possible to achieve a broad consensus over time. This is especially the case if the system and the decision making under it are appropriately evidence-based.

ACCM particularly emphasizes the need to observe Australia's obligations under the Convention of the Rights of the Child, and in particular Article 17:

> *"17 (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Article 13 and 18."*

5. COMMENT ON THE ISSUES FOR THIS INQUIRY

Part A: Approach to the Inquiry

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

With regard to the existing framework:

ACCM considers that these key elements are worth having:

- The existing principles on which the NCS is based:
  adult freedom; children's protection; protection for all from inadvertent exposure to offensive material; community concerns about violence, sexual violence, demeaning depictions
- National approaches to the classification of films, computer games and publications
- Independent and consistent application of the classification criteria by a well trained government agency
- A review process accessible by all

These elements are not:

- Too many categories centred around the age of 15 years
- Classification categories and criteria that are not evidence –based

- Over-reliance on context and impact to determine classification category
- Self regulation of TV and other media content
- Little effective regulation of internet, mobile phone content
- Different time zones for the same classifications across free to air and digital channels
- Lack of funding put into public education about the worth and meaning of the classification scheme

Overall: ACCM considers that Australia needs a new framework that is

- Evidence-based
- Independently (not industry) constructed and applied
- Applied to all media as far as possible, consistent with other aims

Part B: Why classify and regulate content?

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

- To give voice to the community's recognition of the powerful contribution media experiences make to the shaping of individuals and society
- To support consumer choice by providing information about content of all media
- To support the healthy development of children as responsible citizens who are willing and able to contribute positively to their communities
- To provide reliable and evidence-based indicators of age-appropriateness
- To prevent the dissemination of content that is injurious to the public good

Part C: What content should be classified and regulated?

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

The National Scheme should aim to classify all content regardless of technology or platform.

The more readily accessible the platform, the stricter the regulation of its content should be.

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

No.

Complaints-based processes are not an effective means of ensuring that harmful content is not accessed by vulnerable populations such as children. Once–off exposure to frightening content can be sufficient to leave a child with sleep disturbance for some time. Commercial interests can be poor judges of what will create unnecessary fears and anxieties in the young.

Complaint-based systems rely on a public who, having seen content that is inappropriate, knowing where to lodge a complaint, takes the trouble to do so, and then perseveres through to the end result. All this takes too much time, especially for busy parents. See for example the FreeTV/ ACMA complaints processes, which can take 6 months or more.

Online content poses particular classification and access problems and is presently complaints-based. However, Australia could note the moves internationally to introduce classification processes for online content such as games and to engage filter providers in providing parents with the means to block content with too high a classification. (NICAM-Bekkers, Wim 2009 p3)

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

All media content should be classified [see Q2, 3]. We should seek ways and means to facilitate this.

The potential impact of content may not always be easily determined, and is an issue that is appropriately decided at the time of classification, by qualified and trained assessors.

In principle all content for children should be classified across all media to provide guidance for parents; to support the healthy development of children.

However the system also needs to recognise that children have access to a lot of content that is not 'designed for' them. Therefore it should be based on what children have access to rather than the intent of the material's producer.

Question 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?

No [see Q2]. There is no evidence to suggest that larger or more profitable enterprises are any more responsible than others with the content they disseminate. If anything the larger enterprises, which in many cases have greater resources at their disposal than a small nation-state, are at greater risk of abusing their power, and therefore in greater need of accountability mechanisms.

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

Yes. We recognise that there is a need to be sensitive to artistic expression, but in principle art is a medium and the same concerns exist as for any other medium.

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

Yes.

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

In principle no, but we recognise that blanket requirements, even for very small-scale distribution, might not be practicable. On the other hand, predicting the potential size and composition of an audience may in itself be difficult.

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

In principle no, but we could also support a principle that recognises the non-avoidability of some kinds of media eg outdoor advertising. The notion of providing information to support consumer choice in such a context is somewhat fanciful, and this would tell in favour of a stricter classification regime.

However, this is more a matter of *how* the material is classified, and not *whether* it is classified.

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

See Q3.

This may be the place to suggest that the ALRC review the reasons why news and current affairs programs on television are not classified. These are highly accessible to children, and despite Free TV Code calling for sensitivity to the audience, (given the times of screening in the late afternoon and early evening), there are many instances of horrific news footage which could have been reserved for later time slots. The content of many commercial "current affairs" programs should be reviewed to determine whether they are actually commentary on news of the day, and warrant freedom from classification.

Part D How should access to content be controlled?

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

- Filtering at ISP level:
  Including identity/proof of age checks ie if the whole system were to be applied to the internet, presumably some of it would be age-restricted.
- Public education as to both the need for parents and carers to restrict children's access and the methods of doing so.
- See also the aims of the Netherlands PEGI scheme (NICAM, Bekkers, Wim 2009 p3) as a basis for research.

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

The time to start managing children's access to inappropriate media content starts in infancy, and well before they are engaged in online activities.

Management of all media by parents should be encouraged and supported with public education campaigns from a child's early age.

Principles of healthy use of screen entertainment, be it old or new media, should be applied throughout childhood, so that children learn to manage their use of screens wisely.

With specific reference to online activity, parents and children need access to developmentally appropriate internet safety awareness programs, with the caveat that many children under the age of 8 may not have the facility to recognise online dangers.

As a supplement to this, filtering at ISP level is a useful protection.

The Netherlands NICAM has extensively explored options that could better protect the young on line (NICAM).

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

- Publications: Display in separate section of stores/ sealed bags/ more enforcement checks of classifications/ closer supervision and enforcement checks of serial publications

- Restricted DVDs, videos and games: separate sections only

- Legally restricted cinema films: more supervision at multiplex cinemas to prevent underage entry

- Prohibit the promotion of legally restricted cinema films and games to under-age audiences or in public places.

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

- When it has been the subject of classification and is publicly available
- In newspaper/ media reviews
- In all advertising
- On billboards, and other public banners eg buses
- In all trailers and program promotions in cinemas and on television, and in a manner that is clear and conspicuous

Merchandise promoting classified content should also wherever possible be required to carry classification markings. This might mean that merchandise cannot be made available as long before the release of the content as it currently is.

Ads and promotions for legally restricted content should be themselves classified, to ensure that the elements supporting the restricted classification are not replicated in ads and promotions disseminated to a wider audience.

PART E : Who should classify and regulate content?

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

It is imperative that a government agency, rather than industry bodies, devise and apply the classifications. This provides an independent view, avoids conflicts of interest, and has the best chance of becoming and staying evidence-based.

The government agency should be tasked with providing and updating the evidence on which classification categories and criteria are based. Assessors trained by the agency should apply the criteria, and observe established benchmarks for content within each classification.

The government agency should also provide an easily accessible and well-promoted complaints process. Such complaints and requests for review by industry should be heard by an independent body (funded by government), and whose members have expertise in child development, community health and welfare, and the law.

The role of industry bodies should be to support the process.

Users should be well informed about the processes and be encouraged to comment, contribute or complain if dissatisfied with the outcomes.

Question 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?

No. If the industry itself classifies content, there is too much risk of a conflict of interest.

Such a system is currently in place for television, as ACMA acts as a co regulator with TV stations. The system does not work because industry is under too much pressure to downgrade content to fit time zones. We can point to a number of instances where the industry was found to have broadcast inappropriately classified material. This extends to the ABC as well, for example the transmission of some shows in 8.30pm slots when the same shows are subsequently sold as box sets at a higher classification.

The proposal would also dilute classification expertise across too many industries. Classification is a highly technical process, and having one central body will ensure accuracy and consistency.

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

In our view there is no such thing as an obvious and straightforward classification. Classification is a highly technical and skilled task and recent public debates about, for example, computer games, have shown that even people who take a great interest in classification can have inaccurate ideas about how it works and what the outcomes should be.

For example, there appears to be a widespread view that games are classified in an impressionistic way as to (the classifier's view of) the appropriate age of players. Such a view overlooks the existence of elements-based and impact-based criteria and guidelines. It fails to recognise that the age restriction is a *consequence of* classification, and not a *ground for* classification; and that moreover those restrictions are not really a judgment about what is appropriate but a judgment about what is justified in terms of limiting adult freedom. For example, an R18+ classification would not be saying the material is *appropriate for* adults, it

would be saying that there was no political justification for removing the choice to view the material by a person of 18 or over.

Unless it were possible to be certain that industry actors could be thoroughly trained in the practice of classification, and internalise the policy values underlying it, no classification should be left to industry.

Part F: Classification fees

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

The government should foot the bill for all classification. This avoids the current risk of a kind of client service mentality: classification authorities might see their role as one of serving the interests of producers and distributors of content, because these are the ones who pay for the authorities' efforts. Rather the system should be structured so as to support authorities seeing their job as one to be done in the public interest.

Reviews called for by the public should be free.

Part G: Classification categories and criteria

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

G and PG are well recognised, but their meaning and implications, especially those of PG, are not well understood.

The dependence of the present system on the age of 15 years is not helpful. A classification of PG, meaning some content may confuse or upset some under the age of 15 years, has little value, and has come to be construed as "it's probably OK for the kids, and especially if I'm somewhere near". Both G and PG do not adequately cater for differences in impact on different ages of children under 15 years.

There appears to be great confusion between M and MA15+, yet at the same time M, which should mean "not recommended for those under 15 years", is widely ignored by marketers and parents, especially in relation to violent material. The legal force and strength of content of MA15+ are not understood.

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

Yes there is a need for a total overhaul of the categories. They need to be based on appropriateness for age levels that represent accepted developmental milestones.

ACCM recommends that at the very least, the following categories would provide more useful advice to parents.

G = suits all, including young children

G8+ = mild impact appropriate for 8 and over

G13+ = moderate impact appropriate for 13 and over

MA16+ = strong impact legally restricted to those 16 and over

R18+ = high impact legally restricted those 18 and over

The classification criteria within these categories should be evidence-based, and designed to support the healthy development of children in the first instance.

Much useful research has been done internationally which would support the development of criteria for assessment at these levels. See for eg the work of Cantor J, Gentile D, Wilson B. Cantor in particular has extensively researched media and fear, including developmental differences in what frightens children and the best ways of reducing fears.

The Dutch NICAM system commends itself for its scientific base. This uses finer age groupings again with **All, 6, 9, 12, 16, 18** as their categories. (NICAM)

The ACCM's Know Before You Go child-friendly movie review service uses similar age groupings for its assessments by reviewers with child development qualifications. (Australian Council on Children and the Media).

ACCM suggests a review of the type of consumer advice which accompanies these categories, to make it more specific and useful to consumers. For example, "Moderate violence" is not specific enough to be useful.

Question 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 classification *categories* should be consistent across all media regardless of platform. Convergence is not going to influence content.

However, the *criteria* for each category might need to be different to reflect the different nature of the experience eg playing computer games vs watching filmed content with no interaction. Moderate impact films might be G13+, but moderate impact games could be MA16+.

We note the separation of classification systems in Europe, with NICAM used for films, TV and DVDs, and PEGI used for games. As NICAM notes "there are good reasons for having separate systems for passive and interactive content, and the systems' criteria are tailored to the specific character of the content to which they refer. One important consideration in the rating of video games, for example is that a game can be played many times, and the levels gone through time after time".

Question 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?

No. See answer to the above question 22. The classifications should be consistent as to their consequences, but the criteria for each classification can and should vary depending on the type of experience that the platform offers.

Part H: Refused Classification (RC) category

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

Content which is Refused Classification offline should be refused Classification online.

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

Yes

Reform of the cooperative scheme

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

While it is desirable to have consistency of classification for the same product across states, it should be possible for states to reject a classification or a category (as for example Queensland has done with restricted publications). Consistency of enforcement is very desirable across states.

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

We do not agree it should be replaced.

Question 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 - there should be an ongoing opportunity for states and territories to influence the standards of media entertainment. They should all have the ability to reject a federal classification and apply their own.

Other issues

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

- Guarantee of input from child development specialists in the development of all classifications.

- Inbuilt mechanism for ongoing community education supporting parents to be proactive in choosing appropriate media for their children, and which provides basic essentials of safe use of all screen entertainment.

- Shift away from 'sex and nudity' and 'offensive language' and towards restrictions on exploitative depictions of sexuality and gender roles, including abusive language.

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http://www.kijkwijzer.nl/upload/download_pc/74_final_YPRT_Toolkit.pdf (ways to protect youth online)

APPENDIX 1

ABOUT US: THE AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA

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

Its patrons are Baroness Susan Greenfield and Steve Biddulph.

ACCM has a national Board representing the states and territories of Australia, and a comprehensive membership of organisations and individuals who support its mission

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), AHISA (Association of Heads of Independent Schools of Australia), AEU (Australian Education Union), APPA (Australian Primary school Principals Association), Infant Mental Health Association of Australia, Parenting Research Centre, NSW Parents Council, Enough is Enough: anti-violence movement, SAPPA (South Australian Primary Principals Association), Federation of NSW P&C (Parents & Citizens), and the Council of Mothers' Union 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's core services include:

- the national freecall 24/7 Children and Media Helpline (1800 700 357);
- the ACCM website www.childrenandmedia.org.au containing evidence based information about media and children (attracting over 1000 visits per day);
- the award–winning, popular *Know before you go* child-friendly movie review service (now with more than 600 movie reviews);
- the development of parent media awareness materials,
- making submissions and participating in media interviews related to media regulation.

ACCM's current issues include the early s*xualisation of children in and by the media; the impacts of media violence; the marketing of violent entertainment and junk foods to the young; classification of screen media; management of screen time and content by the very young.

ACCM's programs are lead by a team of expert volunteers, supported by a small paid staff. Its programs are supported by project grants and much volunteer input.

ACCM's awards include National Community Crime Prevention awards 2009, 2006; 2001; National Child Protection 2005.

The ACCM is a structured as a company limited by guarantee. Its ABN is 16 005 214 531. The organisation is registered for GST, has DGR and ITEC status.