Submission to the

Senate Legal and Constitutional Affairs References Committee

Inquiry into the Australian film and literature classification scheme

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Executive summary

The Australian Christian Lobby (ACL) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into the Australian film and literature classification scheme. This is a timely review that specifically takes in aspects of the National Classification Scheme (the Scheme; the NCS) that are in desperate need of repair. The classification system is broken, as acknowledged by Leader of the Opposition Tony Abbott in a pre-election forum hosted by ACL.[1] Prime Minister Julia Gillard also said there was work to be done on classification.[2]

Of all the classification rulings made in recent times, the decision of the Classification Board and then the Classification Review Board to grant the film *Salo* an R18+ classification, despite it containing 'depictions of paedophilia', demonstrates a system in crisis. If the NCS is incapable of preventing this type of content from being available for sale and hire in Australia, then serious questions must be asked of the ability of the Scheme to protect consumers from inappropriate content. And slightly more recently, the decision of the Board to grant the sexually suggestive Wii console game *We Dare* a PG rating instead of the M rating requested by the manufacturers,[3] raises further questions as to the efficacy of Australia's classification system.

Of course, the NCS must balance the competing interests of adults to able to read, hear and see what they want, and of children to be protected from material likely to harm or disturb them, but it would appear the general trend in classification is to pursue the former at the expense of the latter, as evidenced by the alleged misclassification of video games in the MA15+ category. It is ACL's view that, because of the vulnerable state of children, and the reliance on parents for accurate classification information, greater consideration must be built into the classification system to account for the wellbeing and interests of children.

This submission makes a number of specific recommendations in relation to each of the terms of reference, with the aim of providing appropriate safeguards for parents to protect their children from harmful content, or from content that is otherwise considered inappropriate. Among the recommendations, ACL calls for:

- Tightening the use of serial classifications of publications;
- Limits on the display of restricted publications and films;
- Cooperative enforcement of call in-notices, including penalty provisions;
- Clarification of the use of 'artistic merit' in the Classification Guidelines;
- A ban on the sale of X rated pornography in the Northern Territory and the ACT;
- Outdoor advertising to be G-rated;
- The implementation of specific terms in classification legislative that address the sexualisation of children and the objectification of women;
- Implementation of the Government's internet filtering policy; and,
- Classification of mobile phone games.

[1] Packham, B. (2010, June 23), 'Tony Abbott pledges to re-examine classification system', *The Herald Sun*, http://www.heraldsun.com.au/news/tony-abbott-pledges-to-re-examine-classification-system/story-e6frf7jo-1225882995643

[2] http://australianchristianlobby.org.au/make-it-count/

[3] Classification Board (2010, September 8), We Dare – Decision Report, http://images.smh.com.au/file/2011/02/28/2206873/wedare_censorreview.pdf

(a) Serial classifications for publications

ACL expresses strong concerns about the use of serial classifications for publications, especially because the current classification enforcement system is not effective. The combination of serial classification, where a publication may not be examined by classifiers for up to 24 months, and lax enforcement, offers publishers and distributors of classifiable publications flexibility to exploit a system that has proven to be open to abuse.

By the design of the National Classification Scheme, a publication granted a serial classification is one that will contain depictions or descriptions likely to cause offence to a reasonable adult or content that is unsuitable for a minor to see or read, or is likely to be refused classification, as only 'submittable' publications containing this type of content are 'submittable' publications requiring classification under the Scheme.[4] With the content of classifiable publications purposely located at the boundaries of accepted community standards, it is little wonder that numerous publications granted a serial classification have been found to breach the conditions and restrictions of that classification.

The misuse of the serial classification for publications system is revealed in statistics obtained through Senate Estimates hearings. As of February 2010, the Classification Board had, "revoked the serial classification declarations of 55 publications since the scheme began in December 2005. Forty-eight of these were originally classified Category 1 restricted".[5] The figures strongly suggest that some publishers and distributors of classifiable publications have been submitting 'milder' editions of their publications for classification, before increasing the level of content once serial classification has been granted. This type of behaviour represents a breaking of confidence in the co-regulatory environment, where some publishers and distributors abuse the flexibility and trust afforded them by the classification system and the Board.

ACL believes that the above figure, of 55 classification revocations in just five years operation of the serial classification system, demonstrates a system incapable of adequately responding to community expectations. Serial classification of publications for two years has proven too long, providing publishers and distributors of classifiable publications with too much flexibility, especially when enforcement under the Scheme is ineffective.

ACL recommends that the first six issues of any new classifiable publication entered into the Australian market be subject to mandatory submission for classification to demonstrate the content of that publication consistently matches the conditions and restrictions of sale. Serial classification may then be granted for periods not exceeding six months. The Board may request submission for classification any other issue of the publication. Failure to comply with that request should result in immediate revocation of serial classification for that publication, and for any other publication from the same publisher or distributor. A strong deterrent of this nature is required if the community is to trust the co-regulatory nature of the serial classification system.

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[4] Commonwealth of Australia (2009), 'Serial Publications' [website], Attorney-General's Department, http://www.ag.gov.au/www/cob/classification.nsf/Page/Industry_ApplyforClassification_ApplyforClassification-SerialPublications

[5] Senate Standing Committee on Legal and Constitutional Affairs (2010, February), Classification Board: Answers to questions on notice, Question 11, Additional Budget Estimates 2010-2011, http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/add_0910/ag/011_Classification_Board.pdf

(b) Display of restricted publications and films

ACL supports measures to standardise the display of restricted publications and films across all Australian jurisdictions. Restricted publications and films are produced for an adult audience and considered inappropriate for children. In accordance with an important principle articulated in the National Classification Code, that "minors should be protected from material likely to harm or disturb them", the display of such items should be restricted to areas where children are unlikely to be exposed.

Restricted publications, being pornographic in nature, are published for an adult market. As such, there is no need to display, or promote for sale, publications with pornographic content in general retail outlets where children will inevitably be present, such as in milk bars, convenience stores and petrol stations. This is why the ACL has encouraged its supporters to support the petition of 'Say No 4 Kids' to see the removal of pornographic publications from general display in retail outlets of this nature.[6]

ACL notes that the display for sale of Category 2 Restricted publications must be confined to a 'restricted publications area' in a number of Australian jurisdictions.[7] ACL believes that all state and territory legislatures should adopt such measures for Category 2 Restricted publications, and extend the provision to Category 1 Restricted publications. Category 1 Restricted publications, like Category 2, are restricted for sale to people aged 18 years and over. Placing these publications for sale in restricted publications areas is reflective of the market targeted, and will prevent inadvertent exposure by minors.

The recommendation above reflects a position shared by Australian child advocates, more than 30 of whom signed a petition in 2010 calling "for the sale and display of Restricted publications to be limited to adults-only premises".[8] Given the prominence of these advocates, the Committee would do well to heed their advice to prevent the sale of Restricted pornographic publications "where they can easily be seen and accessed by children".

ACL also supports measures to restrict the display of R18+ films in premises other than for adults only. An amendment made to the South Australian *Classification (Publications, Films and Computer Games) Act 1995* in 2010 limits the display of R18+ films to a separate location within premises that display for sale or hire films with a classification lower than R18+. Under the National Classification Scheme, films with an R18+ rating have a 'high' impact, making them unsuitable for children. There is no reason, therefore, to have such films marketed in areas accessible to children.

New section 40A of the South Australian *Classification (Publications, Films and Computer Games) Act 1995*, which restricts the display of R18+ films, is a sensible and simple child-friendly initiative that should be replicated in all jurisdictions.

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[6] See http://www.sayno4kids.com/blog/

[7] Commonwealth of Australia (2009), 'Compliance for Sale of Publications' [website], Attorney-General's Department, http://www.ag.gov.au/www/cob/classification.nsf/Page/HowtoComplywithClassificationLaws_ComplianceforSaleofPublications#c2

[8] Kids Free 2 B Kids (2010, April 5), 'Put soft porn out of view say experts' [media release], http://www.kf2bk.com/latest_news.htm&news_offset=10

(c) Enforcement system

Despite the Classification Board having the capacity to 'call in' for classification any submittable publication, or any film or computer game, this power has proven extremely ineffective in preventing unclassified pornographic content from becoming available on the Australian market. According to answers to questions taken on notice in a recent round of Senate Estimates hearings, "Since 1 January 2008, 858 items mainly concerned with sex or sexualised nudity ('adult material') have been called in". The result: "In this period, no distributors of adult material have submitted films or publications for classification as a result of the call ins".[9] ACL considers this to be a systemic failure of the call in system.

It appears that the problem with the call in system does not so much lie with the Classification Board directing distributors to submit their publications for classification, but a reckless lack of coordination between the Board, the Commonwealth Attorney-General's Department and state and territory law enforcement agencies to have notices complied with. This problem with the enforcement system is highlighted in the following quote taken from Senate Estimates hearings from an officer of the Classification Branch of the Attorney-General's Department:

> *Once the referral is made to state and territory law enforcement agencies they are under no obligation under the scheme to provide us with any information about what they then do with that information. They do often contact us for assistance or advice, or, indeed, to get certificates or to get things classified. However, the Commonwealth does not have a repository of data about state and territory law enforcement.*[10]

Consequently, there is no official mechanism for tracking the enforcement outcomes of a call in notice. While it is right for the police forces of each state and territory to remain responsible for enforcement of call in notices under the classification law, the Commonwealth must provide better coordination of the enforcement system if compliance is to be realised. A national database of call in notices and other enforcement measures referred to state and territory law enforcement agencies should be established, to be administered by the Classification Board or the Commonwealth Attorney-General's Department.

Presently, the distributors of submittable publications and adult films that are subject to call in notices continue to ignore the directives of the Classification Board because there are no disincentives or penalties for doing so. ACL therefore recommends that heavy financial penalties for failure to comply with call in notices be included in the Classification Act. Penalties should increase for repeated failures of compliance.

ACL would also like to see the work of the SCAG Compliance and Enforcement Working Party expedited, "to improve compliance with, and enforcement of, classification laws".[11]

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[9] Senate Legal and Constitutional Affairs Legislation Committee (2010, October), Classification Board: Answers to questions on notice, Question 2, Supplementary Budget Estimates 2010-2011, http://www.aph.gov.au/senate/committee/legcon_ctte/estimates/sup_1011/ag/002_CLD.pdf

[10] Fitzgerald, J., cited in Senate Legal and Constitutional Affairs Legislation Committee (2010, October 18), Classification Board: Supplementary Budget Estimates 2010-2011, p. 15, http://www.aph.gov.au/hansard/senate/commttee/S13302.pdf

[11] Standing Committee of Attorneys-General (2010), Annual Report 2009-2010, p. 7, http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/vwFiles/SCAG_Annual_Report_2009_2010.pdf/$file/SCAG_Annual_Report_2009_2010.pdf

(e) Artistic merit

Following the May 2008 Bill Hensen controversy, in which New South Wales police seized a number of photographs of naked children from a Sydney art gallery, the NSW Department of Justice and Attorney General convened a Working Party (the CPWP) to examine the issue of prostitution. In its final report, the Working Party reasoned:

> *The CPWP is of the view that the inclusion of the defence of artistic merit amongst the child pornography offences may, somewhat unhelpfully, lead to the impression that material that would otherwise constitute child pornography is acceptable if the material was produced, used, or intended to be used whilst acting for a genuine artistic purpose. The CPWP is not of the view that this should be the case. Material that is otherwise offensive because of the way in which it depicts children should not be protected because its creator claims an overriding artistic purpose for it. If having considered the artistic merit of an image it is considered offensive then it should only be legitimate if there is an overriding, definable and clear public purpose.*[12]

Despite overlooking an October 2008 recommendation to remove the defence of artistic purposes from the *Crimes Act 1900* (NSW),[13] sensing heightened public concern over the issue because of the Bill Hensen controversy, the NSW Government had the defence removed on the advice of the CPWP.[14] NSW law now reflects the 'Commonwealth model', which "ensures the court specifically considers considerations of artistic merit when determining whether or not reasonable persons would regard particular material as being, in all the circumstances, offensive".[15]

Reaching consistency of approach across jurisdictions in the determination of artistic merit as a defence to possessing offensive material containing children is commendable. However, Commonwealth classification law could be further clarified to ensure that any offensive material of this nature that would normally be classified Refused Classification does not receive a lower classification rating on the basis of 'artistic merit'. The Classification Act, Code and Guidelines should state that any depiction or description of a minor under the age of 18, including the promotion or instruction in the creation of child abuse material, that is considered offensive and would receive a Refused Classification rating, cannot receive a different rating because of artistic merit. Artistic merit should never excuse content in breach of the Guidelines.

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[12] Child Pornography Working Party (2010), *Report of the Child Pornography Working Party*, NSW Department of Justice and Attorney General, pp. 21-22, http://www.lawlink.nsw.gov.au/lawlink/clrd/ll_clrd.nsf/vwFiles/Final_Child_Pornography_Working_Party_Report_8Jan.pdf/$file/Final_Child_Pornography_Working_Party_Report_8Jan.pdf

[13] NSW Sentencing Council (2008), *Penalties relating to Sexual Assault Offences in New South Wales* (Volume 1), p. xxiv, http://www.lawlink.nsw.gov.au/lawlink/scouncil/ll_scouncil.nsf/vwFiles/Vol_1_Sexual_Offences_report.pdf/$file/Vol_1_Sexual_Offences_report.pdf

[14] Schedule 1 , item 9 of the *Crimes Amendment (Child Pornography and Abuse Material) Act 2010* (NSW)

[15] Collier, B. (2010, March 10), Crimes Amendment (Child Pornography and Abuse Material) Bill 2010 (NSW), second reading speech, p. 1, http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/d2117e6bba4ab3ebca256e68000a0ae2/cc98f582145ae06aca2576e1001394e5/$FILE/LA%200910.pdf

(f) X18+ films

The *Little Children are Sacred* report documents the tragic consequences of X18+ films in the indigenous communities of the Northern Territory. It is worth citing at length:

> *In written submissions to the Inquiry from community groups and individuals, concern was expressed about the availability of pornography in communities and children's exposure to pornographic material, in particular videos and DVDs. This was as a result of poor supervision, overcrowding in houses and acceptance or normalisation of this material . . .*
>
> *The daily diet of sexually explicit material has had a major impact, presenting young and adolescent Aboriginals with a view of mainstream sexual practice and behaviour which is jaundiced. It encourages them to act out the fantasies they see on screen or in magazines. Exposure to pornography was also blamed for the sexualised behaviour evident in quite young children.*[16]

Perhaps best illustrating the shocking consequences of adolescent exposure to adult films:

> *[T]he Inquiry was told a story about a 17-year-old boy showing 10 younger children degrading and depraved pornography and making them act it out. A couple of years later, one of those children became an offender in a serious rape and murder of a teenage girl.*[17]

The Federal Government, under then Prime Minister John Howard and Indigenous Affairs Minister Mal Brough, enacted the Northern Territory Emergency Response (NTER). Among its measures was a ban on the possession or distribution of pornography in designated Northern Territory indigenous communities, in an effort to clamp down on the type of child sexual abuse and neglect documented in the *Little Children are Sacred* report. The response received bipartisan parliamentary support. In his second reading speech, Minister Brough said:

> *Make no mistake: this government is hellbent on doing everything it can to protect these innocent children. Children should never be exposed to this sort of material as they are on a regular basis in some of these communities.*[18]

ACL concurs that no child, including non-indigenous children, should be exposed to pornography given the negative effects they cause to minors, in particular. However, the problem of premature exposure to pornography is not confined to Northern Territory indigenous communities, as ACL Managing Director Jim Wallace said in a media release at the time of the NTER:

> *[T]his situation isn't confined to indigenous communities. There would be many other communities in Australia - even some in our major cities - which are isolated by lack of opportunity and social disadvantage and would be as badly affected by pornography.*[19]

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[16] Northern Territory Government (2007), *Little Children are Sacred*, Report of the NT Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, p. 199, http://www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf

[17] *Ibid*, p. 65

[18] Brough, M. (2007, August 7), *House Hansard*, Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007, second reading speech, p. 17, http://www.aph.gov.au/hansard/reps/dailys/dr070807.pdf

[19] Australian Christian Lobby (2007, June 22), 'Call for widespread ban on pornography in light of NT emergency' [media release]

Indeed, evidence points to the fact that minors are exposed to pornography right across Australia. An important 2003 research report from The Australia Institute found that almost three quarters of 16-17 year-old boys (73 per cent) report having watched an X-rated video. "One in twenty watch them on a weekly basis while more than a fifth watch an X-rated video at least once a month."[20] One of the effects of this exposure, the authors postulate, is "young people exposed to images of non-mainstream sexual behaviours may be more likely to accept and adopt them".[21] This effect appears to be evident in some of the cases documented in the *Little Children are Sacred* report.

Given the negative effects of juvenile exposure to pornography, in particular, the regulation of X18+ videos must be made stricter. This was a position considered by the Senate Committee which examined the NTER bills:

> *Consideration may need to be given to extending the prohibition on the possession and sale of X18+ films throughout the Northern Territory, or to cutting off the supply of such films at their source through an amendment to the Customs (Prohibited Imports) Regulations 1956, a prohibition on the carriage of X18+ films by a carrier service or even a prohibition on the production and sale of X18+ films in the Australian Capital Territory.*[22]

This is a position that ACL supported in its submission to that inquiry,[23] and which it restates now. As the Northern Territory and the Australian Capital Territory are the only Australian jurisdictions where X18+ films are available for sale, and the distribution of pornographic films from the ACT, in particular, makes explicit content accessible in even the most remote vulnerable communities, the laws relating to X18+ films in the territories should be brought into line with the states. ACL recommends that:

- The possession or supply of X18+ films should be prohibited in the Northern Territory;
- As the overwhelming majority of films classified X18+ that are produced or sold in the NT and the ACT are copies of originals produced overseas, Regulation 4A – Importation of Objectionable Goods of the *Customs (Prohibited Imports) Regulations 1956* should be amended to include films that would be classified as X18+ as objectionable goods;[24]
- Prohibit the use of a carrier service to send or receive an X18+ film; and,
- Prohibit the sale of X18+ films in the Australian Capital Territory.

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[20] Flood, M. & Hamilton, C. (2003, February), *Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects*, Discussion Paper Number 52, The Australia Institute, p. v, https://www.tai.org.au/documents/dp_fulltext/DP52.pdf

[21] *Ibid*, p. xi

[22] Senate Standing Committee on Legal and Constitutional Affairs (2007, August), Report – Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills, p. 32, http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/report/report.pdf

[23] Australian Christian Lobby (2007), Submission to the Senate Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills, http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sub02.pdf

[24] This recommendation also relates to term of reference (d), which has not been addressed further in this submission

(g) R18+ films

From ACL's perspective, the decision of the Classification Board, and subsequently the Classification Review Board, to grant the movie *Salo* an R18+ classification rating, despite it being Refused Classification on a number of occasions, demonstrates the failure of the current classification system in general, and of classifiers to apply the standards as they have been outlined. ACL believes the Board could only grant *Salo* an R18+ rating by breaching the Guidelines.

According to the National Classification Code, films that "describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not)" should be refused classification. Further, the Guidelines for the Classification of Films and Computer Games says that a film is to be refused classification if it contains, among other things, "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".

Despite strong prohibition against the sexual presentation of minors in films, a majority of the Classification Review Board reasoned, in relation to *Salo*, that, "In terms of whether the actors playing young males and females 'appear' to be under 18, the Review Board observes that this is a subjective judgement and notes that all the relevant actors are clearly sexually mature".[25] The subjective interpretation of the Review Board that the characters in *Salo* might not be minors appear to be one of the major factors in its classifying the movie R18+. This reasoning was subsequently contradicted by the chair of the Classification Board, Donald McDonald in Senate Estimates hearings, when he said that, "this film does not contain actual paedophilia. These are depictions of paedophilia, which is part of the theme of the anti-fascist intent of the film".[26]

Another key plank in the Review Board's decision to grant Salo an R18+ rating was the inclusion of additional documentary material to place the film in its wider context:

> *It is the opinion of the Review Board that the inclusion of additional documentary features in this modified DVD format version of Salo facilitates wider consideration of the historical, political and cultural context of the film, and this would mitigate the level of potential community offence and the impact of classifiable elements to the extent that the film can be accommodated within the R 18+ classification.*[27]

The inclusion of the additional footage, however, is no reasonable ground for classification given the fact the Classification Board has no evidence that viewers will actually watch that footage.[28] The Guidelines should be tightened to prevent the presence of additional material being used to negate the possibility of the type of questionable reasoning applied in the *Salo* decision.

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[25] Classification Review Board (2010, May 17), *Salo* – decision and reasons for decision, p. 6, http://www.ag.gov.au/www/cob/rwpattach.nsf/VAP/%289A5D88DBA63D32A661E6369859739356%29~Salo+review+-+Decision+reasons+-+Final+-+17+May+2010.pdf/$file/Salo+review+-+Decision+reasons+-+Final+-+17+May+2010.pdf

[26] McDonald, M., cited in Senate Legal and Constitutional Affairs Legislation Committee (2010, May 24), Classification Board: Budget Estimates 2010-2011, pp. 94-95, http://www.aph.gov.au/hansard/senate/commttee/S13013.pdf

[27] Classification Review Board (2010, May 17), Salo – decision and reasons for decision, p. 7

[28] McDonald, M., at Senate Legal and Constitutional Affairs Committee (2010, May 24), pp. 88-89

(h) Outdoor advertising[29]

The ACL recommends that all outdoor advertising should be 'G' rated because it is a public form of media. Because it can be reasonably assumed that all sectors of the community will be exposed to outdoor advertising, including even very small children, it is a realistic expectation of the advertising industry that its outdoor advertisements reflect the demographic composition of its audience. The public nature of outdoor advertising only strengthens this imperative, with viewers unable to 'switch off' the content as with other forms of media such as television, radio or film.

In its submission to a recent House of Representatives Committee inquiry into outdoor advertising, ACL expressed how the self-regulated nature of outdoor advertising, coupled with an industry that was more liberal in its approach to the treatment of sex, sexuality and nudity than prevailing community standards, had caused a proliferation of inappropriate sexualised outdoor advertising. The rejection of complaints lodged with the Advertising Standards Bureau because of the treatment of sex, sexuality and nudity in outdoor advertisements suggests that, rather than reflecting or respecting prevailing community standards, the advertising industry often leads those standards.

ACL has made a number of recommendations that seek to remedy the flaws of the current advertising self-regulatory environment, where offensive outdoor advertisements are being placed readily in the public domain due to a lack of disincentives or penalties. The placement of an offensive outdoor advertisement is even likely to obtain its desired objective of brand and product awareness given the probability of complaints being made and subsequent media coverage. Whatever effect such an advertisement might have on children, including premature sexualisation, appears to be a secondary consideration under the regulatory system as it presently operates.

ACL believes that advertising regulation needn't become more onerous, but consistent with the recommendations of the Senate Environment, Communications and the Arts Committee Inquiry into the sexualisation of children in the contemporary media environment, the onus is on advertisers, among others, to take account of community concerns about the sexualisation of children.[30] ACL's recommendations are that:

- Outdoor advertising be brought into line with commercial television regulations, with all outdoor advertising, including shop windows, billboard and bus shelter advertising, to have a general classification (G);
- Questionable advertisements be assessed prior to entering the public domain, by an independent panel including qualified childhood experts and community representatives;
- Significant penalties/fines be introduced for billboard companies who do not comply with standards; fines should increase for repeat offenders; and,
- A national task force be established to report on how to implement solutions and bring about effective change in the area of outdoor advertising.

[29] ACL recently lodged a submission with the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the regulation of billboard and outdoor advertising – please refer to that submission for further detail of ACL's position on this matter, and for examples of inappropriate billboard advertisements, http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs/Sub%2024.pdf

[30] Senate Standing Committee on Environment, Communications and the Arts (2008, June 26), Report – Inquiry into the sexualisation of children in the contemporary media environment, (see recommendation 1, p. v), http://www.aph.gov.au/Senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf

(i) Music videos

In 2008, the Senate Environment, Communications and the Arts Committee, through its Inquiry into the sexualisation of children in the contemporary media environment, recommended that "broadcasters review their classification of music videos specifically with regard to sexualising imagery".[31] Responding to that report, the Government subsequently reasoned that:

> *The Government believes that the classification system is intended to reflect community standards. At present, complaints statistics indicate a low level of community concern about music videos. Statistics provided to the Government by Free TV Australia show that, of all complaints received by broadcasters over the past 5 years, only 0.8% have been about a music video program. Free TV Australia has also advised that there was no level of concern raised in the 1300 submissions to the last Code review.*[32]

ACL believes that it is problematic to measure community standards by the number of complaints generated by a particular broadcast or telecast. It would come as news to a great number of people within the community to learn that their view of the contemporary media environment was judged solely on their formally complaining to the relevant authorities. With so many complaints in the largely co-regulatory and self-regulated media environment being rejected, the centrality of complaint processes in the regulation of content is a frustration for viewers and listeners, who come to feel the system is weighted against them.

Further, in the context of music videos, a great number of shows featuring such videos are broadcast on Saturday mornings in what is traditionally considered a children's viewing period, where parents have come to accept the suitability of programming for their children. If children are the major viewers during this timeslot, it is unreasonable to expect those viewers to register official complaints with the relevant regulator. Therefore, the number of complaints generated with regards music videos is not a suitable measure of their appropriate classification.

ACL holds strong reservations about the proliferation of sexualised lyrics and imagery in music videos, and believes that the NCS should reflect this growing concern, which has been expressed by members of the music industry itself. Since the Senate's 2008 sexualisation inquiry, one of Kylie Minogue's former producers declared publicly that, "The music industry has gone too far" in its sexualised content, and "Ninety-nine per cent of the charts is R 'n B and 99 per cent of that is soft pornography".[33] With a review of Free TV Australia's Code of Practice also occurring in the intervening period, it is time community concerns about sexualised music videos were addressed.

ACL recommends that the ACMA conduct a specific investigation into the classification of music videos to ensure that the television industry is applying appropriate ratings to this content.

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[31] Senate Standing Committee on Environment, Communications and the Arts (2008, June 26), Report – Inquiry into the sexualisation of children in the contemporary media environment, (see recommendation 4, p. v), http://www.aph.gov.au/Senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf

[32] Senate Standing Committee on Environment, Communications and the Arts (2008, June 26), Government response – Inquiry into the sexualisation of children in the contemporary media environment, p. 7, http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/gov_response/gov_response.pdf

[33] Kelton, S. (2010, August 11), 'Public outcry grows as pop star shock tactics get more and more extreme', *The Advertiser*, http://www.adelaidenow.com.au/entertainment/public-outcry-grows-as-pop-star-shock-tactics-get-more-and-more-extreme/story-e6fredpu-1225904099010

(k) Sexualisation of children/objectification of women

The seminal public investigation of the sexualisation of children was the 2008 Senate Environment, Communications and the Arts Committee Inquiry into the sexualisation of children in the contemporary media environment. Primarily, it found that:

> *The committee considers that the inappropriate sexualisation of children in Australia is of increasing concern. While noting the complexity of defining clear boundaries around this issue, the committee believes that preventing the premature sexualisation of children is a significant cultural challenge. This is a community responsibility which demands action by society. In particular, the onus is on broadcasters, publishers, advertisers, retailers and manufacturers to take account of these community concerns.*
>
> *Noting this heightened concern, the committee believes that this issue should be followed up and therefore recommends that the steps taken to address it by industry bodies and others should be further considered by the Senate in 18 months time.*[34]

Given that almost three years have passed, over double the time specified in the Committee's recommendation, a reinvestigation of the twin issues of the sexualisation of children in the contemporary media environment and the objectification of women in all media is overdue.

It is positive that the Australian Association of National Advertisers amended its AANA Code of Advertising and Marketing Communications to Children in light of the 2008 Senate inquiry to take account of growing community concerns about the sexualisation of children. Although it now includes a specific provision that precludes the presentation of children as sexual beings, it should also bar the advertising of products to children that attempt to sexualise children. High heel shoes for babies are a recent example of such a product, of which a child psychologist noted was "part of a growing trend in marketing to extend products designed for adults to children".[35] Discouraging the advertising of such products would go some way to reversing this concerning trend.

ACL believes that the National Classification Scheme has taken inadequate account of the dual concerns of the sexualisation of children and the objectification of women, and that simple changes can be made to address them. As the classification ratings in the Commercial Television Industry Code of Practice largely reflect the Guidelines for the Classification of Films and Computer Games, changes to the latter would cause there to be inducement for the television industry to also adopt any pro-child or pro-woman measure of the nature proposed when its Code is next updated.

ACL suggests that the Guidelines for the Classification of Films and Computer Games should be amended so that any item that sexualises children is given a Refused Classification Rating. Any item that objectifies women as sexual objects must be given an M rating or above. The use of context should not preclude an item with such content from receiving the designated classification rating. Members of the Classification Board should be given appropriate training on how to identify, and understand the social impacts of sexualising children and objectifying women in the media.

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[34] Senate Standing Committee on Environment, Communications and the Arts (2008, June 26), Report – Inquiry into the sexualisation of children in the contemporary media environment, (see recommendation 1, p. v), http://www.aph.gov.au/Senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf

[35] McInerney, S. (2008, September 17), 'High heels for babies?', *The Sydney Morning Herald*, http://www.smh.com.au/lifestyle/lifematters/high-heels-for-babies-20090407-9ywq.html

(I) ACMA and broadcast standards

The Australian Communications and Media Authority has an important role to play in the regulation of media content, but from ACL's perspective, has come to too quickly reflect the views of the industries it is meant to regulate, despite the co-regulatory environment of the broadcasting sector. This is reflected in the ACMA's endorsement of the 2010 Commercial Television Industry Code of Practice, despite strong public opposition to a number of the proposed changes. For example, the ACMA approved removal of the word 'discreetly' from the Code in relation to the broadcast of implied sexual conduct under the MA15+ classification rating. This wording had been pivotal in determining that an episode of *Californication* screened by Channel 10 had breached the Code.[36]

Further, the ACMA agreed to the television industry's 'Multi-Channel Appendix', included in the Commercial Television Industry Code of Practice for the first time. The Appendix permits television stations to screen PG programs throughout the day on digital multi-channels, meaning such channels have no dedicated children's viewing times, despite the expectation of parents that television is child-friendly in the before and after school timeslots. In announcing the change, Free TV Australia said that, "In order to ensure that viewers are aware of the new rules, a public education campaign will air on the digital multi-channels advising of the changes to the PG timezones".[37] Now over 12 months after the change, the ACMA should test whether the public is actually aware of the change.

From ACL's engagement in the consultation process leading to the revision of the Commercial Television Industry Code of Practice, and through the amendments outlined above, and more, it is our evaluation that the 'watering down' of broadcast standards feared by parents is very much a reality. The ACMA's general acceptance of the industry's changes is perceived by some to facilitate an environment where parents are disempowered in the important task of protecting their children from harmful or otherwise inappropriate media content.

The ACMA does, however, have an important role to play in the regulation of internet content. ACL is very supportive of the Federal Government's proposal to filter, at the internet service provider level, overseas-hosted content that is Refused Classification. This policy is simply an extension of existing law that has operated without controversy for some time: that takedown notices are issued to Australian-hosted sites with Refused Classification material. ACL therefore recommends the imminent introduction of legislation into the Australian Parliament that fulfils the Government's commitment to mandatory ISP filtering of overseas-hosted Refused Classification content.

A growing concern of ACL in the evolving media environment is the issue of 'convergence', as reflected by the Minister for Communications hosting an official review into the issue.[38] For example, innovative measures will need to be found to regulate the posting of television content to the internet sites of Australian television stations, as is increasingly occurring. Although this poses a difficult problem for regulators to address, ACL recommends that such programs are accompanied by the classification rating and consumer advice they received for public broadcast.

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[36] Australian Communications and Media Authority (2008), Investigation Report No. 1947, 1981, http://www.acma.gov.au/webwr/_assets/main/lib310623/ten_new_report_1947-1981.pdf

[37] Free TV Australia, '2010 Commercial Television Industry Code of Practice' – introduction, http://www.freetv.com.au/Content_Common/pg-Code-of-Practice.seo

[38] Department of Broadband, Communications and the Digital Economy, 'Convergence review', http://www.dbcde.gov.au/digital_economy/convergence_review

(m) New media technologies

The increased mobility of communications services, including the provision of games and internet services on mobile phones, creates some difficult challenges for regulators and parents alike, who each have an interest in protecting the welfare of children. ACL believes that the medium on which a program is accessed is not the determining factor in how it should ultimately be classified, but the actual content of the program.

In this respect, video games played on telephones should be classified in exactly the same way as games played on gaming consoles or personal computers. In order to reduce the likely regulatory burden this would place on the Classification Board, given the large numbers of such games, manufacturers of telephone games should determine the classification of their own games. This would be dependent on the drafting of clear guidelines to direct games manufacturers, and the provision of extensive training. A complaints mechanism should be available to members of the public to identify with authorities falsely classified games. This should be supported by a system of penalties for manufacturers who wrongly classify games.

A key problem for parents is ensuring that their children are now playing inappropriate games on their mobile phones. The provision of age verification systems through all Australian-hosted mobile download sites is therefore a necessity. ACL also supports the extension of the proposed mandatory ISP filter of overseas hosted Refused Classification content to mobile devices.

(n) Refused Classification

Suicide is a serious social problem that touches thousands of Australians every year. Whilst ACL would not wish to see hindered important discussion and acknowledgement of this significant public health issue, it is important the classification system reflects the dangers posed to vulnerable people by websites and other media sources that instruct or otherwise encourage people to take their own lives. It is therefore important that websites or other media that promote suicide receive a Refused Classification rating. An amendment to the Classification Guidelines could clarify this principle, and ensure that any future mandatory filtering at the ISP level based on the Refused Classification rating would prevent access to online material that promotes suicide.

Conclusion

The National Classification Scheme, whilst providing a useful information source for parents to determine the suitability of media content for their children, has proven to be inflexible to the changing nature of the entertainment environment, where various forms of media are converging. This provides impetus for amendment and action on the part of the Government if parents are to be adequately resourced to protect their children from increasingly accessible, mobile and interactive forms of harmful and otherwise inappropriate media content. The inability of the current system to capture the growing market of games on mobile phones, for example, demonstrates the inability of the NCS, as it presently operates, to keep pace with the rapid technological changes driven by the entertainment industry and the demands of tech-savvy media consumers.

As evidenced by the recent decision of the Classification Board to classify the sexually suggestive Wii console game *We Dare* as PG instead of M, contrary to the request of the manufacturer, there are clear examples of inconsistencies and failures in the present system that must be rectified. ACL has recommended, among other things, that greater emphasis within the classification system must be placed on proper enforcement of the existing Guidelines, including penalties for those who refuse to comply with call-in notices. The use of serial classification for publications must be tightened, and the display of restricted publications and films should be regulated. ACL would like to see the Federal Government's ISP filtering policy implemented in law, and for outdoor advertising to be G rated. Greater focus in the NCS must be placed on the pervasive effect that media has on the related issues of the sexualisation of children and the objectification of women.

ACL believes that all media content should be regulated in a consistent manner regardless of the medium of delivery. This means that a video game played on a mobile phone would receive the same rating for a game with similar content played on a personal computer. Although a difficult problem for regulators to address, a television program that is available for viewing over the internet, or as a download to be viewed on a mobile device, should at least be accompanied by the same classification rating and consumer advice it received for television broadcast. The content of a broadcast or media product should determine how it is classified, rather than its medium. This does not negate ACL's opposition to an R18+ rating for computer and video games, as interactivity should be considered a feature that increases any harmful effect of the content in question.

A classification system that has its primary focus on the content rather than the mode of delivery, as is presently the case, would overcome the greatest deficit of the National Classification Scheme in being unresponsive to the rapidly changing media environment. It would also reduce confusion for consumers and provide a consistent reference point for parents to choose appropriate media programming for their children.

Thank you for your consideration of our views.

All of ACL's recommendations are collated below for the purpose of quick reference.

ACL National Office

March 2011

Recommendations

The Australian Christian Lobby recommends that:

- The first six issues of any new classifiable publication entered into the Australian market be subject to mandatory submission for classification, with serial classification then only granted for periods not exceeding six months;
- The display for sale of Category 1 and 2 Restricted publications be confined to restricted publications areas, and the display of R18+ films, within premises that display for sale or hire films with a classification lower than R18+, be limited to a specific location;
- A national database of call in notices and other enforcement measures referred to state and territory law enforcement agencies be established;
- Heavy financial penalties be inserted into the Classification Act for failure to comply with call in notices, with penalties increasing for repeated failures of compliance;
- The Classification Act, Code and Guidelines state that any depiction or description of a minor under the age of 18, including the promotion or instruction in the creation of child abuse material, that is considered offensive and would receive a Refused Classification rating, cannot receive a different rating because of artistic merit;
- The possession or supply of X18+ films should be prohibited in the Northern Territory;
- Regulation 4A – Importation of Objectionable Goods of the *Customs (Prohibited Imports) Regulations 1956* be amended to include films that would be classified as X18+ as objectionable goods;
- The use of a carrier service to send or receive an X18+ film be prohibited;
- The sale of X18+ films in the Australian Capital Territory be prohibited;
- The Guidelines be tightened to prevent the presence of additional material being used to lower the classification to which a film should apply;
- All outdoor advertising be 'G' rated;
- The ACMA conduct a dedicated investigation into the classification of music videos;
- The Guidelines for the Classification of Films and Computer Games be amended so that any item that sexualises children is given a Refused Classification Rating, and any item that objectifies women as sexual objects is given an M rating or above;
- Members of the Classification Board be trained to identify, and understand the social impacts of sexualising children and objectifying women in the media;
- Legislation be introduced into the Parliament that fulfils the Government's commitment to mandatory ISP filtering of overseas-hosted Refused Classification content;
- The proposed mandatory ISP filter of overseas hosted Refused Classification content be extended to mobile devices;
- Television content posted to the internet sites of Australian television stations be accompanied by the classification rating and consumer advice they received for public broadcast;
- Video games played on telephones be classified in the same way as games played on gaming consoles or personal computers through a self-regulatory process supported by clear guidelines, extensive training, and a complaints and penalties mechanism; and,
- The Classification Guidelines be amended to clarify that websites or other media that promote suicide receive a Refused Classification rating.