



15 May 2014

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: legcon.sen@aph.gov.au

Dear Committee Secretary,

The Arts Law Centre of Australia (**Arts Law**) is pleased to comment on the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014* (the **Bill**).

We commend the Australian government on the introduction of this first tranche of reforms based on the recommendations of the ALRC National Classification Scheme Review. We have previously provided to the ALRC submissions which set out in detail our position. Arts Law's submission to the Issues Paper (CI1299) and the Discussion Paper (CI2490) can be accessed via the ALRC website [here](#). That position has not changed but rather than restate it in full in this submission, we will set out the general position briefly (Part A) and then move to addressing some but not all of the new Schedules to the Bill (Part B).

About the Arts Law Centre of Australia

Arts Law was established in 1983 with the support of the Australia Council for the Arts and is the only national community legal centre for the arts. Arts Law provides expert legal and business advice, publications, education and advocacy services each year to more than 2,500 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients and their relevance to the classification discussion

Arts Law works nationally to support the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

Arts Law makes this submission on behalf of our broad client base. The relevance of the Bill to our clients is illustrated by the fact that 2,299 of the approximate 2,984 legal problems we have addressed since January 2013 involved the following artists, all of whom may be affected by changes to the National Classification Scheme:

- visual artists including photographers;
- authors including journalists;
- filmmakers including documentary filmmakers;
- game developers and multimedia artists; and
- peak or professional organisations which represent the interests of the above clients.

PART A – Our General Position

Our general position on reforms to the National Classification Scheme

Arts Law strongly supports the modernisation of Australia's classification system in order to better accommodate the way content is consumed.

It is important for artists that they are able to communicate their work as widely and freely as possible to enable them to earn income from their work. As such, they are directly impacted not only by the classification system's determination of how a publication, film or computer game can be exhibited or sold and communicated over the internet, but by the environment the classification system fosters in how audiences and the general community receive and respond to art.

A well-tailored classification system, the purpose of which is primarily to enable adults to make an informed choice as to what they want to see, hear and read, and what to allow their children to have access to, is an effective mechanism to regulate freedom of expression provided it is not used as a means to censor material that is otherwise legal.

Ideally, the principles that any classification framework be responsive and able to adapt to technological change and focus on content rather than platform should ensure a sound classification system well into the future. The chance of the Australian government and stakeholders to create a modern, functional system of classification in Australia should not be missed.

Arts Law supports the first tranche of amendments to the National Classification System as set out in the Bill, in particular those concerning the use of classification tools (Schedule 1), expansion of exempt film categories and exemptions for festivals, events and cultural institutions (Schedule 3) and the impact of modifications (Schedule 4).

PART B – Our response to specific Schedules in the Bill

Schedule 1 – Classification Tools

Arts Law supports the amendments set out in Schedule 1 of the Bill.

The following are general comments relating to the implementation of any classification tools. The Minister may consider including these suggestions in the written guidelines described in new clause 22CA(4).

If the Bill is passed and the Minister is directed/directs third parties to develop classification tools, we consider it important that:

1. careful consideration is given to the implementation and maintenance of determinative factors that inform the workings of the tools. We would not want the tools to be allowed to become outdated in comparison to how the Classification Board determines classifications following the traditional method under the Classifications Act.¹

¹ *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

2. the accessibility of the tools is considered, for example, for the visually impaired or for those with limited internet connectivity.

It is essential that any classification tools are subject to random auditing or similar by the Classification Board or the Minister in order to confirm the tools are achieving the desired outcomes.

Schedule 3 - Exemptions

Arts Law in principle supports the amendments set out in Schedule 3 of the Bill and would be happy to provide feedback on the conditional cultural exemption rules (new clause 6G) if/when produced by the Minister.

If the Bill is passed, the amendments in Part 2 alter the exemption process for films and computer games such that in future it will operate on a self-assessment basis. We suggest the Minister provide clear guidance and support for content providers making a determination concerning exemption of their work including, for example, what proportion of content constitutes “mainly” comprising an exempt genre (pursuant to amendments to clause 5B(1)) and how to determine classification of their content as ‘content likely to be classified higher than PG will still need to be submitted for classification to the Classification Board.’²

Schedule 4 - Modifications

Arts Law in principle supports the amendments set out in Schedule 4 of the Bill and would be happy to provide feedback on a legislative instrument specifying additional exempt modifications (new clauses 20A(e) and 21(3)) if/when produced by the Minister.

Further consultation with Arts Law and its stakeholders

Please contact Robyn Ayres (Executive Director) or Suzanne Derry (Senior Solicitor) if you would like us to expand on any aspect of this submission, verbally or in writing. We are also pleased to be of any assistance in meeting with you prior to, or during the preparation of the final report.

² Explanatory Memorandum, *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014* (Cth), pg 8.

Yours faithfully

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