

Submission on the Australian Film and Literature Classification Scheme

To:

Committee Secretary

Senate Legal and Constitutional Committee

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

Ph: +61 2 6277 3560

Fax: +61 2 6277 5794

Email: legcon.sen@aph.gov.au

Contacts:

Hon Nick Goiran MLC

Member for the South Metropolitan Region

Suite 2,

714 Ranford Road

SOUTHERN RIVER WA 6110

Ph:

Fax:

Email:

Mr Peter Abetz MLA

Member for Southern River

Suite 4,

2 Furley Road

SOUTHERN RIVER WA 6110

Ph:

Fax:

Email:

INTRODUCTION

With the progression of the twenty-first century one important and highly influential social trend is the way media has advanced, in great part due to new technology. Australian society is now saturated with media, with an almost unceasing stream of messages coming from businesses, organisations, governments and individuals.

In the midst of this high volume of information it is increasingly difficult to accurately evaluate the truth and the usefulness of such information. It is crucial that Australians have a strong group of regulators to monitor the content that is being spread throughout the media, to ensure that the rights of those who utilise media to send a message do not infringe upon or damage the rights of individuals who, willingly or not, are subject to and affected by the media.

This submission highlights several issues faced under the current system in Australia. In particular, focus is drawn to several issues suggested in the Inquiry Terms of Reference, namely:

- The desirability of national standards for the display of restricted publications and films;
- The application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;
- The impact of X18+ films, including their role in the sexual abuse of children;
- The classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;
- The possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;
- The application of the National Classification Scheme to music videos;
- The effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';
- The effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;
- The interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;
- The effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;
- The Government's reviews of the Refused Classification (RC) category; and

- The possibility of including the display of sexually explicit material such as magazines, films as well as adult only products in the National Classification scheme.

AUSTRALIAN CLASSIFICATION SYSTEM & CURRENT NATIONAL STANDARDS

There are several issues which arise when a country does not have a uniform classification system. The anomaly is that material which is acceptable in one State is banned in another.

In order to have uniform standards across Australia it is necessary to have agreement about what is and what is not acceptable in films and literature. Reaching unanimous consensus in this area is a very complicated and drawn out process which invariably leaves discontentment in one area or another. In this process there are a number of issues and questions which must be addressed if the Australian government is indeed to attempt to have nationally uniform standards in the areas of classification. One of the main concerns surrounding this topic is the question of how the proposed national standards would be determined.

In an ideal world, uniform standards would be a given, however with such diversity currently present between the States it is important to recognise that in reality introducing uniform standards will invariably cause compromise on parts of the country.

Some of the issues raised when having different standards across the States, include the issue of trade between States and the question of constitutionality. Take for example Victoria, where X-rated movies are legal – in the six other States they are not. However this legality only extends to the intention of distribution and public display of such material within the respective states, it does not extend to possession with the intention of personal use. It is hardly surprising given this inconsistency that for example, within WA, Perth shops are now flouting the States laws and are openly selling X-rated movies.

The question of restricting trade has been raised as a constitutional issue. The view given is that the constitution declares free trade between States. This is a nonsensical argument as the constitutional provision is relating to not charging taxes upon interstate trade. It is unreasonable to suggest that when one State chooses to outlaw specific material, this can be overturned because of the constitution, as this goes against the rights of States to choose which material is legal and in the best interest of its constituency. Such a suggestion would be analogous to when a State legalises a particular drug, which although illegal in other States would have to be permitted due to the constitution.

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RECOMMENDATIONS

- That all forms of media across Australia have levels of classification attached to them, which are consistent in all States and Territories.
- The criteria and definition of each of these classification levels should also be uniform across the country and ought to be relevant to the type of media in question. I.e. should take into consideration the level of exposure and impact of such material.
- For the purposes of diversity and practicality each State should retain its ability to determine the classification levels provided, which ones are to be legal in the respective State, and of those left legal, any additional restraints on their public display or distribution.
- To eliminate issues of inconsistency within a particular State, it is recommended that if a particular level of classification is banned in a subsequent State then the extent of this banning should not be limited to the illegal distribution and public display within that State, but ought to extend to the illegal possession of such material in that particular State.
- For economic effectiveness the cost of obtaining a classification must be of a reasonable amount.
- For the purpose of this submission, it is recommended that the definition of media be extended, but not limited to: retail display in particular magazines and items of clothing, outdoor advertisements including billboards, bus stops, taxis, and posters, all other forms of advertisements in particular radio and television, music videos, recorded music, films, public videos and publications.

I do note, in passing, that the Attorney-General Robert McClelland and Minister for Home Affairs Brendan O'Connor will ask the Australian Law Reform Commission to conduct a review of classification in Australia in light of changes in technology, media convergence and the global availability of media content.

SELF REGULATION

One of the biggest complaints levelled at the Australian Standards Bureau (ASB) is that there are issues because it is self-regulated. The use of self-regulation in any industry can be contentious and raises concern about issues of integrity, bias and accountability. There are already many contentious issues surrounding the subject of media and the question of its appropriate display. It is therefore imperative that once a particular standard is decided upon, the subsequent application is true and consistent with the intention of that standard in all cases.

CASE EXAMPLE: OUTDOOR ADVERTISING

An inquiry is currently being conducted into outdoor advertising due to concerns regarding the inconsistency and inappropriate application of advertising standards in outdoor advertising.ⁱ There has been a steady rise in the complaints regarding outdoor advertisements, which are currently self-regulated. The current self-regulation scheme that is under operation in this regard is based on a code of ethics, which hinges upon ‘prevailing community standards’.ⁱⁱ

However it has been noted that of the five most complained about outdoor advertisements of 2010 – only one was upheld. Furthermore, Bureau Chief Executive Fiona Jolly said advertisements were judged not on the number of complaints generated, but upon whether or not they breached advertising codes.ⁱⁱⁱ This fails to take into account that complaints are an indication of prevailing community standards (*discussed in further detail below*).

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RECOMMENDATION

For the purpose of integrity and consistency, it is recommended that the Advertising Standards Board and the application of classification standards across all media are not self-regulated.

OTHER ISSUES

There are many other specific issues which fall under the Terms of Reference of this inquiry. Outlined below are concerns with particular forms of Australian films and publications.

1. X18+ FILMS IMPACT

Term of Reference:

(e)The impact of X18+ films, including their role in the sexual abuse of children;

Under the current Australian standards, films containing only sexually explicit content are rated “X18+”.^{iv} Due to the pornographic nature of X-rated films, there are grave concerns regarding the adverse effects of such material on individuals within society.

Research teams have performed over 500 studies upon the effects of pornography and have found the following six major effects of such material:

1. Even soft porn is harmful to everyone;
2. All pornography desensitizes the viewer;
3. Pornography is addictive;
4. Pornography degrades marriages;
5. Pornography increases crime in dangerous offenders; and
6. Pornography encourages and facilitates other crimes.^v

One particular study has shown that after brief exposure to pornography, two-thirds of normal male college students would be more willing to force a woman into sexual acts if they could be assured of not being caught or punished. One-third of the students expressed an increased desire to actually commit rape.^{vi}

At least 26 studies have shown definitively that emotionally disturbed individuals and those with a tendency towards violent acts may be significantly desensitized for *several weeks* after exposure to three hours of violent and/or pornographic films.^{vii}

More than 65 studies have shown that dangerous offenders (child molesters, killers, rapists, incest fathers) are not only more likely to commit their crimes if they employ pornography, they are likely to precede their violent acts with the extended use of such materials.^{viii}

A survey of over 400 young prison offenders found that those who had been exposed to a large amount of pornography were much more likely to engage in violent and sexually deviant behaviour than those prisoners who had not been exposed to pornography.^{ix}

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RECOMMENDATION

X-Rated films should be included in the National Classification Scheme.

Given the adverse effects of pornographic material, it is recommended that the sale and possession of X-Rated films be Restricted Classification and consequently banned in all States and Territories.

2. OUTDOOR ADVERTISING

Term of Reference:

(h)The possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;

There are particular concerns relating to outdoor advertising due to its public nature. Unlike some other forms of advertising, people do not usually have a choice about whether or not to be exposed to this material; it is not like switching off a television or refraining from purchasing a magazine. As a result, sexually explicit material displayed across outdoor advertising, in particular through billboards, can be particularly damaging to vulnerable groups.

Children

The unavoidable nature of outdoor advertisements raises particular concerns regarding the inability of parents to restrict exposure of children to such inappropriate images and slogans.

In an inquiry into the Sexualisation of Children in the Contemporary Media Environment, which was based on over 160 submissions, the Senate Standing Committee on Environment, Communication and the Arts found that 'The inappropriate sexualisation of children in Australia is of increasing concern.'^x

Research shows that exposure to sexualised imagery is linked to children's experience of increased anxiety, depression, low self-esteem, body image problems, eating disorders, self-harm, and sexually transmitted infections.^{xi} Children are also becoming sexually active at younger and younger ages.^{xii}

Women

In Australian society there have been many improvements in women's rights. As part of this movement there has been extensive recognition of the degrading nature of images that portray scantily clad women, resulting in such images no longer being tolerated in work places. Unfortunately this has not been supported by outdoor advertisements in the public domain, as demonstrated by a report on the portrayal of women in outdoor advertising.^{xiii}

The Report's findings included:

- 'The majority of female (72%) and male (64%) market research respondents agreed that volume and type of imagery of women used in outdoor advertisements can impact on the way men view women.'

- 'The impacts on women and as a result of certain portrayals of women in advertising identified most were negative self-esteem and body image.'
- 'Other impacts identified included: health impacts such as mental health issues (including depression); a failure to recognise women's contributions and a restriction of women and girl's life choices; the encouragement of sexual behaviours in young women; and a general reinforcement of gender-role stereotypes.'

The Australian Association of National Advertisers (AANA) Code of Ethics^{xiv} used to assess outdoor advertisements no longer accurately reflects current community expectations. This is shown by the steady increase in complaints regarding inappropriate outdoor advertisements.

In this Code of Ethics, a substantial portion of the guidelines are reliant upon what is defined as Prevailing Community Standards. However, in the complaints process of both codes, complaints are not accommodated for if the commercial advertising complained about has been previously considered. This is inconsistent with the notion of prevailing community standards as it does not allow scope for change in public opinion

Furthermore, when considering advertisements which will be viewed by children, it is inadequate that the adverse effects of sexually explicit and offensive material on children are not considered.

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RECOMMENDATION

Outdoor advertising should be included in the National Classification Scheme.

Outdoor advertisements ought to be classified in accordance with or similar to the guidelines provided for film classifications, taking into particular consideration the unavoidable nature of such advertisements.

Given the unavoidable nature of outdoor advertisements, such adverts classified for mature audiences only (15years and over) ought not to be displayed in the public domain.

3. ARTISTIC MERIT

Term of Reference:

(e) The application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;

One of the most contentious issues in the art world, and outside of it, is where the distinction lies between art and child pornography. On one extreme there are those who are completely opposed to any restrictions on artistic expression and at the other end of the spectrum there are those who argue for maximum scrutiny. Experience has shown that the current legislation in some States of Australia, such as NSW, is inadequate when it comes to restricting the public display of art considered to be unacceptable by community standards. This issue has been relatively recently highlighted in the situation involving Bill Henson^{xv}. The resolution to the debate was that the law did not provide adequate powers for the police to prosecute Mr Henson, resulting in no charges being laid. In this case it was clear that the community, as demonstrated by the outrage expressed, did not find it acceptable to use children in art in a way that could be used as pornography and for sexual gratification.

To determine whether works of art should fall under a National Classification Scheme it is important to consider how this would be implemented and how art would be scrutinised. Ultimately, should artistic works that are on display in public galleries involve explicit sexual material, in particular involving children, then such works should be subject to classification at least as a warning to those choosing to view such displays.

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RECOMMENDATION

The public display or exhibition of art should be included in the National Classification Scheme.

Art which is publicly displayed in galleries or exhibitions ought to be classified in order to inform viewers of the likely content and the potentially offensive material contained in such artwork.

The display of artwork which is suitable for adults only should be limited to restricted areas in order to protect minors from exposure to such material.

4. RECORDED MUSIC

Term of Reference:

(j)The effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';

The current ARIA/AMRA Recorded Music Labelling Code of Practice is structured upon the basic following principals;^{xvi}

- Adults in a democratic society should be free to listen to what they wish.
- Creative artists should be free to express themselves without fear of intervention.
- Consumers should be supplied with sufficient information so that they can choose to avoid exposure to material which may offend them, and make informed purchasing decisions in relation to product which is not suitable to minors.
- Record companies and recorded music retailers operate under a commercial imperative to respectively, release sound recordings and make them available for sale to members of the public.

These principles are reflected in the labelling guidelines, which consist of classified levels ranging from Level 1 through to Level 3; Level 3 material cannot be sold to minors and material beyond Level 3 cannot be sold to any member of the public.

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RECOMMENDATION

Recorded music ought to remain a part of the national classification scheme.

Materials which fall under the classification of recorded music should retain the classifications outlined in the ARIA/AMRA Recorded Music Labelling Code of Practice. These classifications should be consistent across Australia.

5. MUSIC ON RADIO & MUSIC VIDEOS DISPLAYED ON TV

Term of Reference:

(i) The application of the National Classification Scheme to music videos;

(II) The interaction between the National Classification Scheme and the role of the Australian Communications Media Authority in supervising broadcast Standards for Television and Internet content;

Under the current National classification scheme individual broadcasters are responsible for their own censorship.

The significance of living in a democratic society is the underlying importance of freedom and liberty. When considering music and music videos which are displayed for the benefit of the public; the concepts of freedom of choice and freedom of expression are key elements in deciding the appropriate broadcasting of such materials. However it is important to note that freedom of choice extends also to the rights of individuals who do not wish to be subjected to material they find

offensive or distasteful. Of particular concern is the exposure and difficulty in screening children from inappropriate music and music videos.

It is imperative that Australia finds a balance between providing broadcasters with sufficient freedom to broadcast the particular material desired by their target audience, as well as assisting individuals, in particular parents who wish to screen their children from inappropriate music and film clips.

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RECOMMENDATION

All music and music videos broadcast on Radio and/or TV should be included in the national classification scheme.

All music that is broadcast should have an attached classification similar to the labelling code provided for recorded music. Material classified level three ought to have a verbal/visual warning attached to it before broadcasting. Materials classified beyond level three should not be broadcast.

All music videos that are broadcast should be classified in accordance with the guidelines provided for film. Materials which are rated PG, M15+, MA15+ and R18+ should have an attached visual warning before broadcasting. Furthermore, materials rated MA15+ and R18+ should have restricted time slots during which they can be broadcast. Material rated X-rated ought not to be broadcast.

Broadcasting stations/channel which frequently broadcast more explicit material should have a classification attached to them and regular visual/audio warnings regarding the content frequently broadcast by that station/channel.

The classifications provided for music or music videos should be consistent across Australia.

The national classification act should retain a separate, non-self-regulated Broadcasting Standards Authority which can deal with complaints which are not catered for by the particular broadcaster.

6. DISPLAY OF SEXUALLY EXPLICIT MATERIAL IN RETAIL

Term of Reference:

(o) Any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General's Department;

Of increasing concern is the vast amount of sexualised images and slogans which pervade our society and threaten our young children. It is understandably important for adults to have the freedom of access to certain materials such as magazines and films which are not appropriate for minors. However, it is not necessary nor is it appropriate to infringe upon the rights of parents who wish to protect their children, by displaying adult magazines and films in full view of children.

When one considers that packets of smokes are restricted display due to their associated health hazards; it seems incredible that given the observed damaging effect of overly sexualised material on children, that pornographic magazines and the like, are tolerated display in full view of children.

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RECOMMENDATION

Material such as magazines and packaging of films and adult products displayed in retail should be included in the national classification scheme.

Such material ought to be classified in accordance with or similar to the guidelines provided for films.

Given the damaging effect of highly sexualised material on children, retail material classified as being suitable for adults only ought only to be displayed in a restricted section of shops or have plain packaging.

CONCLUSION

Modern day Australian society faces unique challenges in balancing the rights of individuals. Freedom of speech and expression must be weighed up against protecting those who are vulnerable and whose rights are not often considered. The media, including publications and films, has huge potential to affect the lives of those exposed to it and influence Australian culture. Australia must strive to set high standards of content classification in order to protect society from unwanted material. Only by implementing classification schemes, particularly on material which is on public display, can we be sure that citizens understand the nature of such material and can potentially have the option to not be exposed to it. In addition, allowing each State or Territory to choose whether they will legalise R18+ and X-rated material provides the freedom which is necessary to ensure that uniform standards do not become too burdensome. Essentially, it is imperative that we protect all members of society, especially children from unwanted exposure to material which will have a negative effect upon them.

REFERENCES

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- ⁱ House Standing Committee on Social Policy and Legal Affairs, *Inquiry into the regulation of Billboard and Outdoor Advertising*, December 2010:
<http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/index.htm>
- ⁱⁱ Australian Association of National Advertisers, *Code of Ethics*, August 2009:
<http://www.aana.com.au/documents/AANACodeofEthicsAugust2009.pdf>
- ⁱⁱⁱ David Nankervis, *Sexy ads a Big Turn-off*:
<http://libstream.parliament.wa.gov.au/newsclips/2010/pdf/00085854903.pdf>
- ^{iv} Classification Website, *Classification Markings on Film and Computer Games*:
http://www.classification.gov.au/www/cob/classification.nsf/Page/ClassificationMarkings_ClassificationMarkingsonFilmandComputerGames_ClassificationMarkingsonFilmandComputerGames
- ^v American Life League, *Chapter 134 – The Harmful Effects of Pornography*:
<http://www.ewtn.com/library/PROLENC/ENCYC134.HTM>
- ^{vi} P. Zimbardo. "Sexual Murderers." *Psychology Today*, November 1977, pages 69 to 76 and 148.
- ^{vii} The Hill-Link Minority Report of the Presidential Commission on Obscenity and Pornography.
- ^{viii} The Hill-Link Minority Report of the Presidential Commission on Obscenity and Pornography.
- ^{ix} David A. Scott. "Pornography Its Effects on the Family, Community, and Culture." Published by the Child and Family Protection Institute and Contact America.
- ^x Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media*, June 2008:
http://www.aph.gov.au/senate/committee/eca_ctte/sexualisation_of_children/report/report.pdf
- ^{xi} Julie Gale, *The Sexualisation of Children*: <http://www.abc.net.au/unleashed/37158.html>
- ^{xii} Julie Gale, *The Sexualisation of Children*: <http://www.abc.net.au/unleashed/37158.html>
- ^{xiii} The Portrayal of Women in Outdoor Advertising, February 2002:
[http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/\\$file/Women%20in%20advertising%20outdoor.pdf](http://www.dpc.vic.gov.au/CA256D800027B102/Lookup/Commstoolswomenoutdooradvertising/$file/Women%20in%20advertising%20outdoor.pdf)
- ^{xiv} Australian Association of National Advertisers, *Code of Ethics*, August 2009:
<http://www.aana.com.au/documents/AANACodeofEthicsAugust2009.pdf>
- ^{xv} Miranda Devine, *Moral backlash over sexing up of our children*, May 2008:
<http://www.smh.com.au/news/opinion/moral-backlash-over-sexing-up-of-our-children/2008/05/21/1211182891875.html>
- ^{xvi} ARIA/AMRA, *Recorded Music Labelling Code of Practice*, March 2003:
http://www.aria.com.au/pages/documents/ARIAAMRACode_March2003_Final.pdf