

Senate Inquiry into the Australian film and literature classification scheme

Submission by the Attorney-General's Department, Canberra

The Attorney-General's Department (AGD), through the Classification Branch, is responsible for administering Australian Government classification policy. Many areas of classification policy, including the criteria applied by the Boards in making their decisions, are determined and jointly agreed by the Australian Government and State and Territory Classification Ministers.

The Classification Branch, part of the Civil Law Division, is co-located with the Classification Board and Classification Review Board in Sydney.

The Branch supports the Minister for Home Affairs and Justice and provides administrative services to the Classification Board (the Board) and Classification Review Board. It also manages the Classification Liaison Scheme, and provides classification training for industry and government bodies. The work of the Boards is for the most part cost recovered from industry.

The National Classification Scheme

The National Classification Scheme (NCS) is a cooperative arrangement under which the Classification Board classifies films (including videos and DVDs), computer games and certain publications. The Scheme commenced on 1 January 1996.

The NCS was established following recommendations made by the Australian Law Reform Commission about censorship procedure in 1991 (Report No. 55). One of the recommendations was the establishment of a legislative framework which would enable the Commonwealth, States and Territories to take a national approach to classification. The Commonwealth, States and Territories entered into the Intergovernmental Agreement on Censorship in 1995 which underpins the Scheme. This agreement confirms that non-minor amendments to the NCS and classification guidelines must be considered and unanimously agreed to by Ministers with responsibility for classification.

The Classification Boards

The Classification Board is an independent statutory body, responsible for classification decisions. The National Classification Code is a statutory instrument agreed between the Commonwealth, States and Territories that sets out the principles to be followed in making classification decisions. General criteria for the various classification categories have also been agreed.

The Classification Review Board, also an independent statutory body, can review original classification decisions in certain circumstances and provide a fresh classification decision.

The classification process

Films (including DVDs and videos) or computer games submitted for classification must be viewed or played by members of the Classification Board, who then assign each item a

classification - G, PG, M, MA 15+, RC (Refused Classification). R 18+ and X 18+ classifications are for films only. Certain publications, such as those likely to be classified RC or those likely to cause offence to a reasonable adult or are considered unsuitable for a minor to see or read, also need to be classified as either Unrestricted, Category 1 - Restricted, Category 2 - Restricted or RC.

In making its decisions, the Classification Board operates under the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act).

To help the Classification Board apply the law effectively, the National Classification Code broadly describes the classification categories. The Guidelines for the Classification of Films and Computer Games and the Guidelines for the Classification of Publications describe the elements that guide classification decision making in the categories in more detail.

The aim of the classification process is to assist consumers to make informed choices. Before material is made available to the public, the Classification Board assesses the content to determine the appropriate classification category.

Through the system of ratings, the Classification Board also applies appropriate consumer advice to inform consumers what to expect when they watch a film or DVD, open a magazine, or play a computer game. Consumer advice warns the audience about content that may scare, upset or have a strong impact. In providing consumer advice at lower classification levels such as G and PG, the Classification Board focuses on providing information about content that may have an impact on children, especially very young children.

This submission addresses each of the terms of reference in turn and provides information on the current scope of the National Classification Scheme, background information on relevant aspects of the Scheme and specific commentary to the extent that it is appropriate for the Attorney-General's Department to do so.

a) the use of serial classifications for publications;

Under the national classification scheme, only 'submittable publications' are required to be classified.

'Submittable publications' are publications that are likely to be classified RC; or are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or are unsuitable for a minor to see or read.

Publications can be classified individually as a single issue. Alternatively, a 'serial classification declaration' can be granted by the Board so that a classification of a publication applied to a single issue of a periodical, also applies to some or all future issues of the periodical during a set period of time. The Board currently limits the period of a serial classification declaration to 12 months from the date the declaration is granted.

The Board conducts compliance checks of all publications granted a serial declaration after a three month period to determine whether future issues have higher content or breach any other conditions of the declaration. Audits may also take place in response to complaints. The Classification Board provides officers of the Classification Liaison Scheme with a report of

scheduled audits and the titles of any publications that are the subject of complaint and requests the purchase of those publications.

The Board revoked the classification of seven adult publication titles in the 2009/2010 period from a total of 60 serial classification declarations. When a serial classification is audited and the classification is revoked, the audited issue and future issues (ie those published after the revocation) become unclassified. The Department advises relevant law enforcement agencies of unclassified publications by direct correspondence and through a regular bulletin.

Background to the Scheme

The serial classification scheme for publications was introduced in 2005. Under section 13 of the Classification Act, if an application is made for classification of a publication that is an issue of a periodical (the original issue), the applicant may request that the classification granted for the original issue apply also to all or some future issues.

The Board may declare that the classification granted for the original issue applies also to: all future issues; or a specified number of future issues; or all future issues published within a specified period. This is known as serial classification.

In deciding whether to make a declaration under section 13(3) of the Classification Act, the Board must have regard to the Classification (Serial Publications) Principles 2005 determined by the Director and agreed to by the Commonwealth Minister in consultation with the participating State and Territory Ministers. The Principles outline matters of relevance which the Board may consider, including:

- 1) Any statement made by the applicant regarding steps they will take to ensure that future issues will not contain any material which, if classified separately, would cause the publication to be given a higher classification to the original issue, and will not contain any advertisements which have been refused approval.
- 2) Any statement made by the applicant describing steps they will take to comply with any condition that may be imposed by the Board regarding the packaging of the publication for sale or display.
- 3) The classification history of the periodical.
- 4) Whether the content or any other attribute of any issue of the periodical that has been published does not comply with its classification.
- 5) Whether the applicant has complied with conditions imposed by the Board regarding the packaging of the publication for sale or display, in relation to other issues of the periodical.

Once the Board grants a serial classification, if the Board is of the opinion that an issue of the publication covered by the declaration contains material that, if the issue were being classified separately, would cause it to be classified with a higher classification than the original issue; or contains an advertisement that has been refused approval; the Board must revoke the declaration so far as it affects that issue and any future issues. The Board must also revoke approval of any approved advertisement for those issues of the publication.

The serial classification scheme involves a risk management approach whereby the onus is on industry to comply with the classification given to the original issue. There are several other schemes which involve a level of risk management, such as the Authorised Assessor Scheme through which trained and authorised industry assessors make recommendations to the Classification Board regarding the classification of computer games.

b) the desirability of national standards for the display of restricted publications and films;

Currently, laws governing the display of restricted publications and films are contained in State and Territory enforcement legislation. All States and Territories have similar, but slightly different requirements. For example, in the case of restricted publications, Queensland does not permit their sale at all. In Victoria, South Australia, Northern Territory and Western Australia the packaging must be sealed and use plain opaque material. New South Wales and the Australian Capital Territory also require sealed packaging though it may be transparent. Tasmania allows packaging to be transparent though no more than the top six centimetres of the publication can be displayed or exhibited in a public place. In all States and Territories except Queensland, the publication must display the determined classification markings.

In 2010, the Commonwealth explored issues around the harmonisation of jurisdictional requirements for the display of restricted material through the Compliance and Enforcement Working Party. The Working Party included representatives of the Commonwealth and State and Territory Departments with responsibility for classification. The Working Party did not include the Northern Territory who elected not to be involved, although they did receive copies of significant documents developed by the Working Party.

At the first Classification Enforcement Forum held in Sydney in 2010, representatives indicated an interest in increasing coordination and information sharing to enhance enforcement of classification offences.

The Classification Enforcement Forum is a Commonwealth initiative attended by law enforcement and policy representatives from the Commonwealth, the States and Territories, the Australian Communications and Media Authority and the Australian Customs and Border Protection Service. Participants exchange information on classification enforcement issues affecting each jurisdiction and explore how shared intelligence could assist enforcement outcomes. The Forum aims to increase compliance through improved cooperation and information sharing between Commonwealth, State and Territory agencies.

c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;

Pursuant to the National Classification Scheme, the States and Territories are chiefly responsible for enforcing the laws under the National Classification Scheme. Neither the Department nor the Classification Board has powers of enforcement.

The ACT Office of Regulatory Services and ACT Policing (part of the Australian Federal Police) enforce classification laws in the ACT. The Department of Employment, Economic Development and Innovation enforces classification laws in Queensland, on behalf of the Queensland Department of Justice and Attorney-General. State and Territory police are responsible for enforcing classification laws in other jurisdictions.

Law Enforcement

Departmental referrals to law enforcement agencies are mainly about:

- Displaying for sale unclassified adult films or submittable publications;
- Displaying for sale adult films and/or publications with incorrect markings suggesting a film or publication is classified or has a different classification;

- Non-compliance with a call in notice issued by the Director of the Classification Board to submit a film or publication for classification;
- Advertising for sale unclassified adult films.

The Department provides assistance to law enforcement agencies about applying for classification of material seized, obtaining evidentiary certificates issued by the Director of the Classification Board and generally about the National Classification Scheme. Presentations on the Scheme are also delivered to law enforcement agencies.

Law enforcement agencies are asked, but are not required, to advise the Department when they investigate a referral from the Department.

The Department is aware that State and Territory police have undertaken a number of enforcement actions over the past eighteen months. For example, in December 2010 Classification Liaison Scheme (CLS) officers were advised by NSW Police of action against two adult retailers in the Lake Illawarra area. 5,000 DVDs were seized from one store and 2,000 from another. CLS had referred these premises to NSW Police in 2009.

Classification Liaison Scheme (CLS)

CLS is a joint Australian Government, State and Territory initiative established in 1997 with the primary functions of educating industry about classification and checking compliance with classification laws.

CLS officers visit a wide range of premises throughout Australia, including cinemas, DVD and computer game stores, newsagencies, petrol stations, adult premises, games arcades and convenience stores. CLS officers actively check whether classifiable material complies with classification laws and refer breaches to law enforcement agencies.

For the first half of the 2010-11 financial year to 31 December 2010 CLS have:

- conducted 490 site visits across all States and Territories, including regional centres;
- contacted 124 companies about breaches of classification laws; and
- referred 49 restricted premises and 3 websites to enforcement agencies.

Customs

The Department also provides information and assistance to the Australian Customs and Border Protection Service. This includes provision of:

- information about importers, wholesalers and distributors of adult publications who have been found distributing unclassified material that, if classified, would likely be classified RC (Refused Classification) and therefore likely to be a prohibited import or export;
- a bulletin that lists the titles of magazines found to be unclassified or that have had their serial classification revoked (The most recent bulletin was sent in January 2011); and
- tailored classification training courses for Customs and Border Protection officers.

Call in Notices

If a publication is unclassified, the Director has powers under the Commonwealth Classification Act and the State and Territory enforcement Acts to require publishers to

submit an application for classification of a publication within three days, when the Director has reasonable grounds to believe the publication is submittable and is or will be published in Australia (the 'call in' power). A submittable publication is an unclassified publication that is likely to be classified RC; or likely to cause offence to a reasonable adult to the extent that it should not be sold as Unrestricted; or is unsuitable for a minor to see or read.

In 2009-10, the Director called in 49 adult publications and 444 adult films.

In the 2010-11 period to 31 December 2010, the Director called in 8 adult publications and 32 adult films.

Only one of the publishers of adult magazines has complied with a call in notice issued by the Board. While some distributors indicated they no longer have copies of the called in product to submit, it is an offence not to comply with a call in notice. Where call in notices are not complied with the Department refers these matters to State and Territory enforcement agencies.

The Department notifies law enforcement agencies of all these offences and any information that the distributor has provided. Some distributors are not known, so the Director cannot call in publications from these persons. However, law enforcement agencies are notified about the sale of unclassified publications.

While there is no obligation for enforcement agencies to advise of the outcomes of investigations the Minister wrote to police Ministers on 10 February 2011 asking for this information as part of a wider strategy of increasing information sharing to improve compliance with classification laws. This will be progressed through the Classification Enforcement Forum.

d) the interaction between the National Classification Scheme and customs regulations;

The criteria used in the Customs (Prohibited Imports) Regulations 1956 and the Customs (Prohibited Exports) Regulations 1958 (the Customs Regulations) to determine if something is an objectionable good mirrors the RC (Refused Classification) criteria in the Commonwealth Classification Act, the National Classification Code and the Classification Guidelines. Objectionable material is defined under Regulation 4A of the Customs Regulations as publications and any other goods, that:

- (a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be imported; or
- (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or who appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- (c) in relation to a computer game — are unsuitable for a person under 18 to see or play; or
- (d) promote, incite or instruct in matters of crime or violence; or
- (e) promote or incite the misuse of a drug specified in Schedule 4; or
- (f) advocate the doing of a terrorist act.

The role of Customs and Border Protection in the classification enforcement context is to monitor objectionable material at Australia's borders. For example, Customs and Border

Protection made 1373 detections of objectionable material in total in the 2009-2010 financial year, including publications, DVDs, computer games and electronic devices. Fifty four cases have so far been prosecuted, including forty seven cases involving child pornography. All but four of the cases were successful.

Customs provides a classification related message through the Integrated Cargo System at the time of import clearance that is sent to all importers of publications, films and computer games, reminding them of their obligations regarding classification.

Classification Training

Classification training courses have been provided to Customs officers for over 10 years. They are provided several times a year in most capital cities. The courses include decisions made by the Board which reflect current community standards. This assists Customs officers to identify material that would be prohibited imports under the Customs (Prohibited Imports) Regulations 1956.

The training courses mean that Customs officers are usually able to make decisions without having material classified by the Board, although Customs do submit a small number of applications for classification.

Increased Penalties

The Customs Regulations 1926 have been amended to increase penalties for importing and exporting commercial quantities of objectionable goods. The Customs Regulations now prescribe as 'tier 1 goods' both 'a commercial quantity of objectionable goods' (25 or more) and objectionable goods imported for particular purposes (including selling or displaying in public). The amendments came into effect on 16 December 2009.

The new purpose test means that a person who imports or exports fewer than 25 objectionable goods will still be liable to this penalty if they import or export the goods for a commercial purpose.

Under section 233BAA of the Customs Act 1901 the maximum penalty for importing or exporting tier 1 goods is a fine not exceeding 1000 penalty units (\$110,000) or imprisonment for 5 years, or both. Individuals importing small quantities of objectionable material for personal use will remain subject to the maximum penalty of 1000 penalty units (without imprisonment).

Before the recent amendments to the Customs Regulations, there was no penalty of imprisonment for the import or export of objectionable goods (unless they consisted of child pornography or child abuse material). The previous maximum penalty was a fine of up to 1000 penalty units or three times the value of the goods, whichever was the greater.

Customs Compliance Activity

On 21 April 2010, law enforcement and policy representatives from the Commonwealth, States and Territories, as well as the Australian Communications and Media Authority and the Australian Customs and Border Protection Service, participated in the Classification Enforcement Contacts Forum hosted by the Department. Participants discussed a range of classification enforcement issues affecting each jurisdiction and shared intelligence and process information. Feedback from participants was that the Forum was valuable and that it, and other means of information sharing across jurisdictions, should be held regularly.

Improved Cooperation and Information Sharing

Over the last 18 months the Department has focused on its liaison and educative roles to improve information sharing between Commonwealth, State and Territory Departments and enforcement agencies. The classification information and experience within the Department is made freely available to Customs and other enforcement agencies through training and information sessions, Publications Enforcement Bulletins and other lists of classification information as requested, provision of information about adult distributors and timely provision of information about classification legislation and procedures. Recently the Minister wrote to State and Territory Police and Fair Trading Ministers seeking their support for a cross-jurisdictional information sharing network for classification information.

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

In 2009, Ministers with responsibility for classification requested that officers work with the Arts Law Centre of Australia and the Classification Liaison Scheme, to assist arts stakeholders in understanding the National Classification Scheme in its application to artworks, particularly in the form of publications, paintings and photographs.

Subsequent actions taken by some in the arts community suggests a greater understanding on the part of stakeholders of the requirements in relation to publications under the NCS. The Guidelines for the Classification of Publications 2005 (“the Publications Guidelines”), state that ‘bona fide’ artworks (and reproductions of these) are not generally considered to be submittable publications. This recognises that because of their cultural and historical context, artworks may be considered differently to other publications. For example, bona fide artworks that may in fact offend some sections of the community may ultimately be classified “Unrestricted”, when viewed in a historical and/or cultural context.

However, this does not amount to a blanket exemption for all publications that are ‘bona fide’ artworks and needs to be put into the context of the substantive classification requirements contained in Commonwealth, State and Territory classification legislation.

The overriding legal determinant as to whether a publication should be classified before it is sold, delivered, displayed or published under State and Territory enforcement legislation is whether it is a “submittable publication” within the definition under the Commonwealth Classification Act.

Under the Commonwealth Act, “submittable publication” is defined to mean an unclassified publication that, having regard to the Classification Guidelines and Code, contains depictions or descriptions that:

- (a) are likely to cause the publication to be classified RC [Refused Classification]; or
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or
- (c) are unsuitable for a minor to see or read.

The Director of the Classification Board may also play a role in judging material to be submittable in the context of calling in submittable publications for classification, as authorised under State and Territory enforcement legislation.

For example, the decision of the Director of the Classification Board to issue a call in notice for the July 2008 issue of Art Monthly, containing reproductions of Bill Henson photographs depicting naked children and young adults, shows that arts publications and reproductions of artworks may be submittable publications requiring classification under the NCS. The issue of Art Monthly was ultimately classified “Unrestricted” with the inclusion of consumer advice recommending that the publication was unsuitable for readers under 15 years of age.

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

The X 18+ classification is a special and legally restricted category containing real depictions of actual sexual intercourse and other sexual activity between consenting adults.

The X 18+ category does not permit:

- Depiction of violence, sexual violence, sexualised violence or coercion.
- Sexually assaultive language.
- Consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers.
- Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting.
- Any depictions of non-adult persons, including those aged 16 or 17.
- Adult persons who look like they are under 18 years.
- Persons 18 years of age or over portrayed as minors.

In addition, The National Classification Code 2005 states that publications, films and computer games 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) must be classified RC.

The Department is working with jurisdictions regarding the illegal sale of adult films and magazines with the aim of improving compliance with State and Territory restrictions applicable to the sale and distribution of restricted product. It is illegal to sell adult films and magazines that are unclassified, have been refused classification or have false classification markings. In the States and parts of the Northern Territory, it is also illegal to sell or display X 18+ films.

Under the cooperative classification scheme, State and Territory governments are primarily responsible for enforcement of classification laws, including those relating to ‘adult’ publications and films.

g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;

The Guidelines for the Classification of Films and Computer Games state that the R 18+ category applies only to films, that material classified R 18+ is legally restricted to adults and that some material classified R 18+ may be offensive to sections of the adult community.

The R 18+ classification places no restrictions on themes and language. It also allows for depictions of violence and sexual violence (the latter must be implied and justified by the

context). The general rule regarding sexual activity is that it should be realistically simulated, rather than actual.

Explicit, actual sex is generally classified X 18+, however, the X 18+ classification, as a special category, is not permitted to contain violence or sexual violence.

Salo

The film Salo is a 1975 Italian drama written and directed by Pier Paolo Pasolini based on the book *The 120 Days of Sodom* by the Marquis de Sade. It has a long and complex classification history going back to 1976.

For a time, Salo was unavailable in many countries. It is now available, uncut, on DVD, in the United Kingdom, France, Finland, Greece, the Netherlands, New Zealand, Portugal, Spain, Denmark, Sweden, Italy, Austria and Germany.

There have been a number of applications for classification of versions of this film since the 1970s. The applications relate to the same film with minor edits and changes to the running times.

- In March 1976 it was Refused Registration under the Customs (Cinematograph Films) Regulations.
- In June 1992 it was refused Registration by the former Film Censorship Board.
- In 1993 it was classified R 18+ by the former Film and Literature Board of Review.
- Between 1993 and 1997 it was available except in Western Australian and South Australia where restrictions applied.
- In June 1997 it was reclassified R 18+ by the Classification Board.
- In 1998 it was classified RC (Refused Classification) by the Classification Review Board. The Commonwealth Attorney-General lodged an application for review after receiving a request to do so from the Queensland Attorney-General (as required under the *Classification (Publications, Films and Computer Games) Act 1995*.)
- In 2003 the Classification Board declined to deal with an application for reclassification.
- On 9 June 2008 an edited version of the film was classified RC by the Classification Board.

On 13 April 2010 the Classification Board classified a modified 292 minute version of the film Salo R 18+ with consumer advice for ‘Scenes of torture and degradation, sexual violence and nudity’. This version included additional background information providing an historical context which, in the view of the Board, mitigated the overall impact of the material submitted to no greater than high.

On 15 April 2010, the Minister for Home Affairs applied for a review of the Classification Board’s R 18+ classification. The Minister sought a review of the classification because he considered it was in the public interest to do so, as there was likely to be sections of the community who would have different views on the content of this film.

On 4 and 5 May 2010, a five member panel of the Review Board met to consider the Minister’s application.

In a majority decision, the Review Board classified Salo R 18+ with consumer advice for 'Scenes of torture and degradation, sexual violence and nudity'. The reasons for the decision were released by the Review Board on 18 May 2010.

FamilyVoice Australia has now taken legal action in the Federal Court under the *Administrative Decisions (Judicial Review) Act (ADJR) Act*. The Minister for Justice has been joined as a respondent in the matter. Following the lodgement of submissions for the applicant and the Minister (as second Respondent) with the Federal Court, the proceedings were listed for a half-day hearing on 4 March 2011.

Srpski Film

As an example of RC material, on 25 November 2010 the Classification Board classified the film *Srpski Film* (also known as *A Serbian Film*) RC (Refused Classification). The film stars one of Serbia's leading actors, Srđan Todorović. Upon its debut on the art film circuit internationally, the film received substantial attention for its graphic depictions of rape, necrophilia, and incest.

While the Board's decision acknowledged that a degree of artistic merit and dramatic intent is evident in this fictional film, it is of the opinion that the film is very high in viewing impact and includes an explicit depiction of sexual violence. The film therefore exceeds what can be accommodated within the R 18+ classification and was classified RC.

A modified version of the film received an 18 certificate classification in the UK.

On 23 February 2011, the Classification Board classified as RC a modified DVD version of the film.

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

On 14 December 2010, the Attorney-General, the Hon Robert McClelland MP, requested that the House of Representatives Standing Committee on Social Policy and Legal Affairs inquire into and report on the regulation of outdoor advertising content. The Committee will consider a range of issues including:

- the adequacy of the existing self-regulatory scheme in regards to billboard advertising
- whether the current industry codes and regulatory arrangements meet community concerns about billboard advertising
- the extent of consumer protection provisions across jurisdictions that prohibit false, misleading and deceptive advertising
- technical developments and new technologies in billboard advertising
- the rate and nature of complaints about billboard advertising
- the regulatory burden on business, and
- possible improvements to the current system.

Officers of this Department appeared before the Committee on 10 February 2011 to provide information about the National Classification Scheme and answer questions from Committee Members.

There are practical difficulties that would be encountered if outdoor advertising were incorporated into the National Classification Scheme within the category of ‘publications’. For example, due to the nature of outdoor advertising, it would be ineffectual to display classification markings and consumer advice on billboards. The placing of age restrictions on billboards would be largely ineffective as there are very limited circumstances in which billboards could be viewed by adults only. There would also be practical problems in applying requirements for publications that are given a restricted classification. These can include displaying the publication in an opaque wrapper.

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

The *Classification (Publications, Films and Computer Games) Act 1995* allows the Board to classify films, computer games, and publications. Music DVDs, because they have a visual component, can be treated as a film.

Audio recordings fall within the scope of the Australian Record Industry Association (ARIA) and Australian Music Retailers Association (AMRA) *Recorded Music Labelling Code of Practice* (the ARIA/AMRA Code).

The ARIA/AMRA Code provides a self-regulatory system for the sale of audio material and includes labelling provisions and a complaints handling mechanism.

Under the ARIA/AMRA Code, individual record companies have primary responsibility for labelling recordings.

The Commonwealth, State and Territory Classification Ministers monitor the operation and effectiveness of the *Recorded Music Labelling Code of Practice* via the Standing Committee of Attorneys-General (SCAG). Ministers with responsibility for classification also consider a report of the independent music industry ombudsman each year.

The Classification Board does not classify music videos for television. Television programs are classified by industry under Industry Codes of Practice registered with ACMA.

The Television Industry Codes of Practice include:

- the Commercial Television Industry Code of Practice 2010 developed by FreeTV Australia
- the Community Television Code of Practice developed by the Community Broadcasting Association of Australia
- the ABC Code of Practice 2007
- the SBS Code of Practice 2006, and
- the Subscription Broadcast Television Code of Practice 2007 developed by the Australian Subscription Television and Radio Association (ASTRA).

The Board, on request, provides TV classifiers with copies of its decision reports for films already classified by the Board.

The Department also provides classification training courses for television industry personnel. These courses are designed provide an understanding of the Board’s standards applicable to the various classification categories, and the principles used by the Board in making decisions. This service is used only infrequently by the television industry. Two of these courses were provided in 2010, to personnel from the Nine Network, and from Southern Cross Media.

When television programs and series are released on DVD, they are then submitted to the Board for classification.

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

ARIA and AMRA jointly manage the Recorded Music Labelling Code of Practice, a system of warning labels used for audio-only recorded music. ARIA represents members of the recording industry. AMRA represents music retailers.

The role of the ARIA/AMRA Recorded Music Labelling Code of Practice Ombudsman (the Ombudsman) is currently filled by an independent consultant on classification and content matters. The Ombudsman's terms of reference require the Ombudsman to provide an annual report on the operation of the music classification scheme for circulation to ARIA and AMRA members, the Commonwealth Attorney-General's Department and Commonwealth, State and Territory Censorship Ministers. Although recorded music falls outside the National Classification Scheme, Censorship Ministers are provided with this report for their information as it concerns content regulation.

During the period 1 April 2009 to 31 March 2010, the AMRA Complaints Handling service received seven complaints about recorded music. One complaint resulted in a breach of the Labelling Code. An album was sold unlabelled, when it should have carried a Level 1 sticker due to coarse language. Remedial action was taken by the Complaints Handling Service, which confirmed with the retailer and the distributor that other copies were labelled Level 1. Both retailer and distributor were advised to conduct an audit to confirm no repeat of the breach. Visual recordings of musical performances or concerts are required to be classified as films under the National Classification Scheme unless they are exempt under Section 5A of the Classification Act.

k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;

The National Classification Scheme empowers the Classification Board to classify films, computer games and publications in Australia. Upon receipt of a valid application, it provides classifications to the Australian Communications and Media Authority (ACMA) on internet content, as well as advice to enforcement agencies such as the police and the Australian Customs and Border Protection Service.

Unless an advertisement is for a film, computer game or submittable publication, it is regulated by the Advertising Standards Board.

Applicable to media content that is subject to classification by the Classification Board, the Classification Code states:

Films that:

(a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or

(b) 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); or

(c) promote, incite or instruct in matters of crime or violence

are to be classified RC.

Similar provisions in the Classification Code also apply to publications and computer games.

The object of the National Classification Scheme is to provide consumers, including parents and families, with information about the content of films, computer games and some publications to assist them in making informed choices for themselves and those in their care.

The National Classification Scheme has succeeded in promoting changes within the advertising industry to prevent the sexualisation of children. In response to a letter on 15 December 2008 from the then Secretary of the Standing Committee of Attorney's General (Censorship), suggesting that peak industry bodies consider developing protocols for the content and format of online advertisements involving images of children, the Australian Association of National Advertisers (AANA) produced the 'Managing Images of Children Online' Practice Guide. The Guide was developed in consultation with AANA's members and other industry sector organisations.

l) 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;

Complaints about online content are made to the ACMA. The ACMA has powers to either order the take down of Australian-hosted 'prohibited content' or to refer information about such content hosted overseas to filter manufacturers.

Determinations whether online content is prohibited are made by reference to the classification categories established under the National Classification Scheme (NCS). The ACMA refers Australian-hosted content that is substantially likely to be prohibited to the Classification Board for classification. The ACMA may also refer content hosted overseas to the Classification Board. In 2010, the Classification Board made 148 decisions on content referred by the ACMA.

Australia's Online Content Scheme has been successful in regulating domestically hosted content. However, the practical effect of the Scheme has been limited due to the vast volume of unrestricted content that is hosted overseas.

In relation to television the *Broadcasting Services Act 1992* imposes obligations on broadcasting licensees in relation to the classification and placement of programs and advertisements. These obligations are contained in industry codes of practice that are administered by the ACMA. The ACMA registers these codes when it is satisfied that they provide appropriate community safeguards, are endorsed by the majority of broadcasters in the relevant sector and the public has had an adequate opportunity to comment on them.

m) 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;

Mobile and online computer games are regulated by both the *Broadcasting Services Act 1992* and the National Classification Scheme. State and Territory enforcement legislation makes it an offence to sell or distribute these games to the public without classification. Presently, the majority of these games are not classified prior to being made available. This has led to concerns from the Classification Board, industry and consumers about adherence to classification requirements.

Ministers agreed at the 10 December 2010 meeting of SCAG that officers would develop options for an interim solution, noting long term solutions would be considered in the Australian Law Reform Commission (ALRC) review of the National Classification Scheme (see Section o). Officers have assessed options weighing up the extent of required legislative and non-legislative change, the timeframe for implementation, and overall effectiveness. This matter will be further considered at the next meeting of SCAG on 4-5 March 2011.

The ALRC has been asked to inquire into the existing legal framework of the National Classification Scheme which came into existence in 1996 when media content was relatively static and based on fixed platform delivery.

The ALRC review will consider the challenges facing the Scheme and the needs of the community in an evolving technological environment. The ALRC will make recommendations about a range of issues including the proliferation of classifiable content, the convergence of media and media delivery methods and the issue of compliance and enforcement.

n) the Government's reviews of the Refused Classification (RC) category

In early 2010, the Australian Government, through the Department of Broadband, Communications and the Digital Economy, held a public consultation on measures to increase transparency and accountability for the processes that would lead to RC (Refused Classification) material being placed on the RC content list for the purposes of the Government's proposal for mandatory ISP filtering. The consultation period closed on 12 February 2010.

One of the key themes raised in submissions was whether the scope of RC was too broad. Submitters commented that the RC category contains material that may have social, political and/or educational value; that a portion of the RC category contains material that is legal to own and view; and that the definition of 'reasonable adult' is harder to determine in the internet age, compared to traditional media forms.

In order to address these issues, on 9 July 2010 the Commonwealth announced that it would recommend to the States and Territories that a review of the RC classification be conducted at the earliest opportunity to examine the current scope of the existing RC classification, and whether it adequately reflects community standards. The Commonwealth proposed that the review be completed 12 months from its commencement and that the legal obligation to commence mandatory ISP filtering would then not be imposed until any review of RC material was completed.

Changes in December 2009 to the penalties for importing commercial quantities of RC materials also prompted comments from the public that were critical of the current scope of the RC classification. For example, the inclusion of some fetish material was seen as too

broad. The uncertain scope of the material covered also posed practical difficulties in ensuring compliance with the law, as the use of quantifiers such as ‘gratuitous, exploitative or offensive’ and ‘offensive or abhorrent’ are open to a range of interpretations.

The Commonwealth initially proposed a review limited to the RC classification that would have involved the descriptions of other classifications to the extent that they dictate what material is classified RC. However, the Commonwealth, States and Territories agreed on 10 December 2010 that a review of all classifications is timely and that a wider review of the Publications and Films and Computer Games guidelines should also be conducted as part of the broad review of the National Classification Scheme by the ALRC. The guidelines are reviewed from time to time in order to ensure that they remain in tune with community standards. The last time that the Publications Guidelines were substantively reviewed was in 1999. The Guidelines for Films and Computer Games were reviewed in 2004/2005.

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.

Review of the National Classification Scheme by the Australian Law Reform Commission

At the meeting of the Standing Committee of Attorneys General on 10 December 2010, Censorship Ministers agreed to the Commonwealth referring a broad review of the National Classification Scheme to the Australian Law Reform Commission (ALRC) to develop options for consideration by Ministers.

The National Classification Scheme has not been comprehensively reviewed since its inception in 1996. Since then technological advances, convergence and globalisation have changed the way people access entertainment.

The same classifiable content can now be accessed in a variety of ways. Convergence has meant that it is no longer feasible to classify content according to the traditional formats of films, computer games and publications. In addition, the volume of content available to consumers has increased considerably. The current Scheme was not designed to cope with developments such as the many thousands of mobile phone applications and online games.

To maintain confidence in classification, the Classification Scheme should be responsive to technological developments and should, where possible, apply to media content however it is delivered. Consumers, particularly parents, need to have sufficient information to be able to make informed choices for themselves and those in their care.

The ALRC will make recommendations about a range of issues confronting the current Scheme including the proliferation of classifiable content, the convergence of media and media delivery methods, compliance and enforcement.

Consultation on the draft terms of reference was undertaken to ensure the ALRC is provided with the necessary parameters to conduct a comprehensive review of the Scheme that takes account the needs of all stakeholders. Submissions on the draft terms of reference closed 28 January 2011. The Commission is expected to commence its review in April 2011 and will report by December 2011.