

# CHAPTER 12

## Committee view and recommendations

12.1 This inquiry presented the committee with an opportunity to examine a range of important issues relating to the National Classification Scheme, as well as to assess the effectiveness of regulatory regimes for media not included in the National Classification Scheme. This was the first major review of the National Classification Scheme since it was introduced over 15 years ago. As explained earlier in the committee's report, the aim of the National Classification Scheme (set out in the Intergovernmental Agreement underlying its establishment) is to 'make, on a co-operative basis, Australia's censorship laws more uniform and simple with consequential benefits to the public and the industry'.<sup>1</sup> On the basis of evidence presented during the course of this inquiry, the committee has reached the conclusion that the National Classification Scheme has not been successful in achieving this aim. Simply put, the classification system in Australia is in many ways 'broken', and requires substantial and urgent reform.

### Flaws in the National Classification Scheme

12.2 In the committee's view, the National Classification Scheme is flawed in a number of key areas:

- Aside from the complexity of its legislative framework, the scheme does not protect children from material that is likely to harm them; nor does it protect others more broadly from exposure to unsolicited material that they may find offensive. To this end, community concerns in relation to sexual violence and the portrayal of persons in a demeaning manner are being ignored.
- Publishers and distributors of magazines classified with a serial classification declaration do not maintain the material in the publications at the classification level given by the Classification Board for the period of the declaration. As a result, material which should be Refused Classification is appearing in publications which have a serial classification declaration.
- Publishers and distributors ignore call-in notices issued by the Director of the Classification Board, meaning that pornographic material which should be Refused Classification remains for sale throughout Australia.
- Numerous films with graphic depictions of actual sex have been classified R18+, despite the *Guidelines for the Classification of Films and Computer Games* setting out that the 'general rule' for R18+ classification is "simulation, yes – the real thing, no". Further, the *Guidelines for the Classification of Films and Computer Games* rely heavily on subjective assessments of impact

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1 Intergovernmental Agreement relating to a revised co-operative legislative scheme for censorship in Australia, 28 November 1995, item B.

and context, resulting in what one submission described as a 'creep downwards' of material into lower classification categories.<sup>2</sup>

- Restricted magazines and R18+ films are displayed in retail outlets alongside magazines, comics and DVDs for children.
- 'Artistic merit' remains a defence to child pornography and child abuse material offences in many states, meaning that sexualised images of naked children can be exhibited in public galleries under the guise of 'art'.
- The scheme has failed to adequately keep pace with the advent of new technology, meaning that ambiguity now exists as to which regulatory regime applies to some content. A major example of this is the confusion over how films, publications and computer games that are provided online are to be classified. The interaction of the *Classification Act 1995* and the *Broadcasting Services Act 1992* creates complexity that is easily misunderstood by industry participants and consumers.
- Significantly, one of the shortcomings of the scheme is that it is not platform neutral. That is, it does not provide for a consistent classification decision-making framework in a converged media environment. The effect is that the same content, when viewed on different screens, may be subject to different classification regimes. An example of this phenomenon is the treatment of computer games that are provided on mobile phones. The same game may be available on a personal computer, or may be accessed online through a web browser. Evidence to the committee suggests that each format is likely to be treated differently as a result of industry confusion.

12.3 In the committee's view, the multiple flaws in the National Classification Scheme mean that it cannot be sustained in its current form. Accordingly, the committee believes that significant changes should be made to the system. In that regard, the committee notes the calls from many witnesses and submitters to the inquiry for consistency and uniformity with regards to classification. There are two aspects to 'uniformity': uniformity between jurisdictions; and uniformity in decision-making processes and treatment of content.

12.4 As a starting point, several key principles should underlie a classification scheme in Australia. Following adoption of those basic principles, the committee believes that the Australian Government should endeavour to investigate all constitutional options for strengthening its legislative power in the interests of establishing a truly national and uniform classification scheme. Finally, the committee considers that a range of specific amendments or enhancements to the scheme will improve its overall operability, and will allow it to more successfully achieve its intended purpose.

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2 Family Council of Victoria, *Submission 22*, p. 7.

## Reforming principles

12.5 As discussed earlier in the committee's report, the National Classification Code sets out four key principles which, as far as possible, should be taken into consideration when making classification decisions:

- adults should be able to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material that they find offensive;
- community concerns should be taken into account in relation to:
  - depictions that condone or incite violence, particularly sexual violence; and
  - the portrayal of persons in a demeaning manner.

### *Aligning decision-making with community standards*

12.6 The committee sought feedback from almost all witnesses who appeared before it in relation to whether the principles set out in the National Classification Code remain appropriate. This issue is particularly important given the easy access that children have to an array of content through a variety of media, and which can be accessed through mobile devices, making it increasingly difficult for parents to supervise all of their children's media viewing. There is also the matter of outdoor advertisements which, as witnesses pointed out to the committee, is very difficult to avoid.

12.7 A number of witnesses indicated that they supported the principles as set out in the National Classification Code.<sup>3</sup> However, other witnesses outlined changes that they would like to see made to the principles. Mr Lyle Shelton from the Australian Christian Lobby (ACL) indicated that, in his view, the key principle should be the protection of children from inadvertent exposure to material that is clearly not appropriate for them:

I think there are not too many people who would argue that exposure to pornography and violence is not harmful to minors. Unfortunately, we have a situation where it is very easy for children to come across these sorts of images on all the media...<sup>4</sup>

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3 See, for example: Mr Ian Harvey, Australian Music Retailers Association, *Committee Hansard*, 25 March 2011, p. 15; Mr Chris Althaus, Australian Mobile Telecommunications Association, *Committee Hansard*, 25 March 2011, p. 40; Mr Bruce Arnold and Dr Sarah Ailwood, *Committee Hansard*, 25 March 2011, pp 81-82; Ms Charmaine Moldrich, Outdoor Media Association, *Committee Hansard*, 7 April 2011, p. 14; Ms Ann Landrigan, National Film and Sound Archive, *Committee Hansard*, 27 April 2011, p. 4.

4 *Committee Hansard*, 25 March 2011, pp 4-5.

12.8 Professor Elizabeth Handsley of the Australian Council on Children and the Media noted that the principles in the National Classification Code are intended to be balanced against each other;<sup>5</sup> and, in this context, the committee also acknowledges other evidence which emphasised the principle of the right of adults to choose what they want to read, hear and see.<sup>6</sup>

12.9 The committee received significant evidence about the link between exposure to material classified X18+ and the sexual abuse of children. Further, the committee also received evidence in relation to the harms caused by the sexualisation of children and the objectification of women in all media.

12.10 The committee believes that an express statement should be included in the National Classification Code which clarifies that the four key principles to be applied to classification decisions are to be given equal consideration and balanced against one another.

#### *Sexualisation of children and objectification of women*

12.11 In the committee's view, the National Classification Scheme does not adequately prevent the sexualisation of children and the objectification of women.

12.12 ACL highlighted that, in making classification decisions, in addition to taking into account views of the community with respect to violence and demeaning portrayals, there now needs to be formal recognition of community concerns about the sexualisation of society, and the objectification of women.<sup>7</sup> The committee agrees with this proposal, and suggests that the principles in the National Classification Code be expanded to take into account community concerns about the sexualisation of society, and the objectification of women.

12.13 In 2008, the Senate Environment, Communications and the Arts Committee (ECA Committee) recommended that its report, *Sexualisation of children in the contemporary media*, be further considered by the Senate in 18 months.<sup>8</sup> While the current inquiry did consider the issue of the sexualisation of children in the media, it only considered the issue in the context of the effectiveness of the National Classification Scheme, and various other regulatory regimes. Nevertheless, it is apparent that significant recommendations by the ECA Committee have not been implemented.

12.14 It was beyond the scope of this inquiry to undertake a comprehensive analysis of the progress made by industry bodies and others in addressing the sexualisation of

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5 Professor Elizabeth Handsley, *Committee Hansard*, 25 March 2011, p. 69.

6 See, for example, Pirate Party, *Submission 55*, p. 1.

7 Australian Christian Lobby, answers to questions on notice, received 20 April 2011.

8 Senate Environment, Communications and the Arts Committee, *Sexualisation of Children in the Contemporary Media*, June 2008, Recommendation 1, p. 3.

children in the contemporary media. Accordingly, the committee takes that view that the Senate, as a matter of urgency, should establish an inquiry to consider the progress made by industry bodies and others in addressing the sexualisation of children in the contemporary media, and specifically, the progress which has been made in the implementation of the ECA Committee's recommendations in its 2008 report.

### ***Need for objective decision-making***

12.15 The committee is concerned that the current decision-making framework in the National Classification Scheme allows for subjective judgements to influence classification decisions.

12.16 Ms Barbara Biggins, a former Convenor of the Classification Review Board, emphasised that a classifier should not be able to bring his or her own interpretation into the decision-making process. Importantly, it is the wording of the guidelines which must be followed:

[T]he words are all important. If you are in a classifier's position, you are not at liberty to bring your own personal interpretation of what should be an M or MA+ or R18+; you are obliged to apply the guidelines as approved by the state and territory and federal ministers. It is those state and territory and federal ministers who bear the responsibility for the form of the criteria that are being applied. The classifiers are the servants of the ministers, and they do their job according to the criteria. The wording is all important.<sup>9</sup>

12.17 Therefore, the committee is of the view that the *Guidelines for the Classification of Films and Computer Games* and the *Guidelines for the Classification of Publications 2005* need to be revised. The preamble to both guidelines should expressly state that the methodology and manner of decision-making should be based on a strict interpretation of the words in the guidelines.

12.18 The committee was provided with some specific examples of subjective criteria being considered as part of the classification decision-making process. As the committee heard, the revision of the *Guidelines for the Classification of Films and Computer Games* in 2003 placed more emphasis on impact and context, with the result that there has been a ripple effect of content being pushed into lower classification categories.<sup>10</sup> In the committee's view, the subjective assessment of impact and context should not be a consideration in the making of classification decisions.

### ***Community Assessment Panels***

12.19 The committee is of the view that greater attention needs to be had to community concerns in relation to classification issues.

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9 *Committee Hansard*, 25 March 2011, pp 67-68.

10 See Ms Barbara Biggins, *Committee Hansard*, 25 March 2011, p. 67.

12.20 Community Assessment Panels have been used at various times in the history of the National Classification Scheme to assist in gauging community standards.<sup>11</sup> However, the Attorney-General's Department noted that Community Assessment Panels were not intended to be standing bodies:

Classification Board members are themselves selected to be broadly representative of the Australian Community and [Community Assessment Panels have] been employed to ensure parity between Board decisions and the views of representative samples of community members.<sup>12</sup>

12.21 The committee appreciates that members of the Classification Board and the Classification Review Board are selected to be broadly representative of the community. However, standing Community Assessment Panels make a valuable contribution to the determination of community standards. The committee considers that standing Community Assessment Panels should be introduced to assist in the determination of community standards for the purpose of classification decision-making.

### **Other reforms: application of the National Classification Scheme to artworks and an exemption for cultural institutions**

12.22 The committee notes that the application of the National Classification Scheme to artworks for public exhibition or display is limited. The committee commends the actions of artists who have sought classification of their work prior to public exhibition or display. In the committee's view, obtaining classification assists in ensuring that audiences can be provided with appropriate advice (and, where necessary, warnings) regarding the nature of the artwork.

12.23 The committee understands that the cost of application fees may present difficulties to artists, and believes that the classification of artworks should be exempt from application fees.

12.24 The committee strongly opposes the inclusion of the artistic merit defence for child pornography offences in state legislation. In the committee's view, the NSW Parliament has taken a positive step in removing the defence of artistic merit for the offences of production, dissemination and possession of child abuse material in the *Crimes Act 1900* (NSW). Accordingly, the committee recommends that the Australian Government, through the Standing Committee of Attorneys-General, pursue with relevant states the removal of the artistic merit defence for child pornography offences.

12.25 The committee notes the difficulties that cultural institutions, such as the National Film and Sound Archive, encounter in obtaining appropriate exemptions under state and territory legislation for the exhibition of unclassified films. The

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11 Attorney-General's Department, answers to questions on notice, received 6 April 2011.

12 Attorney-General's Department, answers to questions on notice, received 6 April 2011.

committee supports self-classification with appropriate oversight in the circumstances outlined by the National Film and Sound Archive in its evidence to the committee. Therefore, the committee recommends that provision be made in the *Classification Act 1995* for an exemption for cultural institutions, including the National Film and Sound Archives, to allow them to exhibit unclassified films. This exemption should be subject to relevant institutions self-classifying the material they exhibit and the Classification Review Board providing oversight of any decisions in that regard.

### **Towards a truly national scheme**

12.26 A number of issues stem from the current federal system, including major differences between the states and territories with respect to classification matters. It is therefore clear to the committee that the National Classification Scheme does not provide a uniform and simple classification scheme across all jurisdictions and across all media.

12.27 For example, classification decisions under the National Classification Scheme are made in accordance with a complex array of legislation, codes and guidelines: the *Classification Act 1995*; the National Classification Code; the *Guidelines for the Classification of Publications 2005*; and the *Guidelines for the Classification of Films and Computer Games*. While this framework was intended to enable a national approach to classification,<sup>13</sup> some states and territories have preserved their censorship powers, establishing their own classification decision-making procedures outside the *Classification Act 1995*, and giving rise to the possibility of material having different classifications in different jurisdictions.<sup>14</sup>

12.28 Further, the states and territories are responsible for the enforcement of classification decisions made under the federal National Classification Scheme. To this end, each jurisdiction has put in place its own requirements in relation to the sale and display of classified material, particularly Restricted publications and films. The committee agrees with the sentiments expressed by the National Film and Sound Archive that the word 'daunting' does not even begin to describe the variety of requirements that a person can be confronted with when attempting to comply with the different considerations across the various jurisdictions.<sup>15</sup>

12.29 For these reasons, and after adoption of the fundamental reforming principles outlined earlier in this chapter, the committee proposes that a number of changes are

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13 See Australian Government, National Classification Scheme website at [http://www.classification.gov.au/www/cob/classification.nsf/Page/ClassificationinAustralia\\_NationalClassificationScheme](http://www.classification.gov.au/www/cob/classification.nsf/Page/ClassificationinAustralia_NationalClassificationScheme), (accessed 7 June 2011).

14 For an example of utilisation of state censorship powers, see Mrs Roslyn Phillips, FamilyVoice Australia, *Committee Hansard*, 25 March 2011, p. 77, who drew the committee's attention to the decision of the South Australian Classification Council to classify the film *Nine Songs* as X18+ in South Australia. The Classification Review Board had earlier classified the film R18+.

15 National Film and Sound Archive, *Submission 27*, p. 2, in describing the process of obtaining festival exemptions for each event it intends to show a film at across Australia.

required to the existing classification framework in Australia to achieve proper uniformity across all jurisdictions.

### *Constitutional issues*

12.30 One of the barriers to uniformity and consistency of the classification system is the federal/state divide with respect to responsibilities in this area. The availability of X18+ films in the ACT and the Northern Territory is an example of the negative implications of the states and territories having responsibility for the enforcement of classification decisions. Films classified X18+ continue to be sold in the ACT and parts of the Northern Territory, despite numerous studies linking exposure to pornographic material contained in X18+ films to the sexual abuse of children. This is particularly disturbing given the situation in the Northern Territory where the Australian Government has legislated to prohibit the possession and supply of X18+ films in prescribed areas, and yet just outside the prescribed areas X18+ films are legally available.

12.31 The committee sought advice from witnesses as to the constitutional heads of power that might be used in order for the Australian Government to legislate for a truly national classification scheme. The Attorney-General's Department (Department) advised that the following powers would be relevant:

- trade and commerce power (section 51(i));
- corporations power (section 51(xx));
- communications power (section 51(v)); and
- territories power (section 122).

12.32 The committee also sought advice from officers of the Department as to whether the external affairs power (section 51(xxix) of the Constitution) might be used in this context. Officers of the Department indicated that the scope of the power is unclear:

Most of the international conventions are about freedom of speech, particularly, for example, the International Covenant on Civil and Political Rights. They are about freedom of speech, so there are interesting issues about that.<sup>16</sup>

12.33 The committee notes the advice of the Department that it is not aware of any specific or relevant treaties which may be applicable to the use of the external affairs power in support of the implementation of Commonwealth classification law.<sup>17</sup>

12.34 The Arts Law Centre of Australia referred to the possibility of the states and territories referring their powers in this area to the Commonwealth.<sup>18</sup> The Australian

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16 *Committee Hansard*, 27 April 2011.

17 Attorney-General's Department, answers to questions on notice, received 18 May 2011.

18 Arts Law Centre of Australia, answers to questions on notice, received 21 April 2011.

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Christian Lobby (ACL) highlighted the need for constitutional heads of power issues to be addressed, otherwise 'we are going to continue to go around and around the mountain on this issue'.<sup>19</sup>

12.35 The committee agrees that this is an area that needs further action immediately. The committee recommends that the Australian Government take a leadership role through the Standing Committee of Attorneys-General in requesting the referral of powers in this area by states and territories to the Australian Government to enable it to legislate for a truly national classification scheme.

12.36 In the event that the Australian Government is not able to negotiate a satisfactory transfer of powers by all states and territories within the next 12 months, the committee recommends that the Australian Government prepare options for the expansion of the Australian Government's power to legislate for a new national classification scheme.

### *Inadequacy of enforcement powers*

12.37 Aside from considerations of constitutional issues, several aspects of the enforcement system require urgent attention.

12.38 In addition to exercising enforcement powers with respect to the sale and display of classified material, state and territory law enforcement agencies are responsible for law enforcement actions regarding classification matters. This is a particularly disjointed and fractured arrangement of the so-called 'cooperative scheme', and one of the clear failings of the National Classification Scheme is the disregard which is shown for call-in notices issued by the Director of the Classification Board.

12.39 No systematic process exists by which the Commonwealth can pursue matters it has referred to state and territory law enforcement agencies. The committee heard from the Director of the Classification Board that the pursuit of classification matters 'really comes down to the priorities that the states and territories place on this'.<sup>20</sup> Some information about what occurs as a result of referrals is available to the Attorney-General's Department. However, this is provided in an ad-hoc manner and officers of the Department admitted that it is difficult to match information in inquiries received from state and territory law enforcement agencies to a precise referral.<sup>21</sup>

### *Establishment of national standards*

12.40 In the committee's view, the differing requirements between states and territories as to how classified material can be sold, hired, exhibited, advertised and

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19 Mr Lyle Shelton, Australian Christian Lobby, *Committee Hansard*, 25 March 2011, pp 5-6.

20 *Committee Hansard*, 7 April 2011, p. 62.

21 *Committee Hansard*, 27 April 2011, p. 39.

demonstrated adds an unnecessary layer of complexity to the National Classification Scheme. Further, current legislative provisions in many states and territories means that Restricted material can be displayed in areas where children are able to see and access it. Appropriate measures need to be put in place immediately to ensure that children are protected from exposure to this type of material.

12.41 In the committee's view, the establishment of national standards for the display of Restricted publications and films will assist state and territory enforcement agencies to prioritise classification actions. In support of this, the committee notes the comments of the Classification Board in its preliminary observations to the ALRC's current review of the National Classification Scheme:

[F]or example, [if] legislation around the availability of X18+ was made uniform nationally, Refused Classification items may become a clearer priority for law enforcement agencies.<sup>22</sup>

#### *Need for cross-jurisdictional information-sharing*

12.42 Another area of the enforcement system which the committee believes is in dire need of improvement is the lack of information-sharing between the Commonwealth and the states and territories in relation to referral of breaches of the *Classification Act 1995*.

12.43 The committee notes that the Classification Enforcement Forum is considering the establishment of a cross-jurisdictional information-sharing arrangement as a means of improving compliance with classification laws. However, in the committee's view, not enough is being done at the present time to expedite the establishment of a data-sharing network. A centralised database for tracking referrals by the Commonwealth to the states and territories and other classification enforcement actions is required as a matter of urgency.

#### *Enhanced capacity for Classification Liaison Scheme*

12.44 Currently the Classification Liaison Scheme has four officers and has the primary functions of educating industry about classification and assessing compliance with classification laws. In the committee's view, the resourcing of the Classification Liaison Scheme is woefully inadequate for the job for which it is tasked. Due to the lack of resourcing for the Classification Liaison Scheme, it has fallen to private citizens to draw to the attention of the Classification Board examples of non-compliance with the classification system. This situation is neither desirable nor sustainable. What is required is a commitment by the Australian Government to adequately fund and resource the Classification Liaison Scheme. An increase to the size and commensurate funding of the Classification Liaison Scheme must be made as a matter of urgency.

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22 Classification Board, answer to question on notice, received 16 May 2011.

12.45 The committee believes that increasing the resources and funding of the Classification Liaison Scheme will enable it to conduct an increased number of compliance checks and audits on premises. For example, the committee notes concerns expressed during the inquiry in relation to the operation of serial classification declarations. The committee understands that the Classification Board has processes in place to monitor the material being made available under serial classification declarations: for example, compliance checking of publications; auditing of publications on receipt of a complaint; and a reduction in the declaration period. However, the committee believes these steps are insufficient to address the problems highlighted in the evidence it received during this inquiry. The committee believes that serial classification declarations are one aspect of the National Classification Scheme which could be subject to increased compliance and audit checking.

12.46 The committee also believes that the Classification Liaison Scheme requires a greater presence in all states and territories. Therefore, the committee recommends that the Classification Liaison Scheme have at least one representative in each state and territory. Further, the committee recommends that the Classification Liaison Scheme should be charged with responsibility for establishing and maintaining the database of information pertaining to classification enforcement actions, as described above.

12.47 Additionally, enforcement actions for failure to respond to call-in notices issued by the Director of the Classification Board should be made a priority for the Classification Liaison Scheme in providing assistance to state and territory law enforcement agencies. The committee recommends that the Australian Government should, through the Standing Committee of Attorneys-General, signal its intention to make enforcement actions for failing to respond to call-in notices a matter of priority.

12.48 In line with the expanded role and funding for the Classification Liaison Scheme, the committee considers that the reporting requirements for the Classification Liaison Scheme need to be strengthened. The committee recommends that more detailed information should be required to be included in the Attorney-General's Annual Report with respect to the operations of the Classification Liaison Scheme.

### **Platform neutrality: expanding the National Classification Scheme**

12.49 In addition to achieving uniformity of the classification framework across Australia, the committee is strongly of the view that a uniform approach to the same or similar content is required, regardless of the medium of delivery. The committee is concerned that substantial categories of media fall outside the National Classification Scheme, particularly media which either appeals to children and young people (such as music videos on television), or media which cannot be avoided by children (such as billboards and outdoor advertising).

12.50 In its submission, Screen Australia summarised the benefits of a uniform classification system, particularly noting the benefits in a converged media environment:

A uniform classification approach would provide certainty for the industry and avoid variable classifications that can affect the commercial prospects of film and television projects...

In a converged environment, where content will not be confined to a single delivery platform but will instead be accessible on a range of platforms, including online, it would be of great benefit for there to be a consistent standard applied to the content itself rather than platform on which it is transmitted.<sup>23</sup>

12.51 In general, the committee accepts that the equal treatment of content, regardless of the platform used to access that content, should be a guiding principle of a reformed National Classification Scheme. However, the nature of the digital world – specifically its size and the lack of online borders – makes this difficult in practice. Nevertheless, the committee endorses reforms to the National Classification Scheme that would harmonise the classification of content across mediums, to the extent possible.

### *Expanding the National Classification Scheme's scope*

12.52 The current situation, where the National Classification Scheme is loosely paralleled by co-regulatory and self-regulatory systems, is far from adequate, particularly given the increasing convergence of media. A number of witnesses questioned the ability of industries to adequately reflect community standards, while also noting that industry assessors may come to different opinions to the Classification Board.

12.53 The committee is aware that the exclusion of key media industries from the National Classification Scheme, and confusion over the status of online content, results in a lack of uniformity in content classification. For this reason, the committee proposes an expansion of particular elements of the National Classification Scheme to cover all mediums, including broadcast and subscription television, radio, recorded music and advertising. This expansion would result in harmonised standards, consumer advice and oversight by the Classification Board.

### *Reform of television, radio, recorded music and advertising regulation*

12.54 Under the committee's proposed extension, classification standards in industry codes of practice would be required to imitate the classification principles and requirements of the National Classification Scheme, including the National Classification Code, relevant provisions in the *Classification Act 1995* and the relevant guidelines. This could potentially be achieved by incorporation of the principles of the National Classification Scheme by reference, if not already done so. The adoption of these measures by industry should be legally enforceable and subject to sanctions.

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23 Screen Australia, *Submission 56*, p. 1.

12.55 This would have varying effects depending on the industry, as many codes of practice are already tied to the National Classification Scheme in a number of ways. The advertising industry would be most affected because advertising codes of practice are not currently directly linked to the National Classification Scheme principles.

#### *Industry self-assessment*

12.56 Under the committee's proposal, industry participants who are currently subject to industry codes of practice would continue to self-assess their own content. However, this ability would come with enhanced responsibility.

12.57 The committee's view is that industry bodies wishing to exercise classification decision-making functions will need to be accredited by government. In order to be accredited, industry bodies must employ in-house classifiers, trained by the Classification Board. Industry bodies will also serve a probationary period of accreditation, in which all decisions will be subject to review to ensure that the classification decisions are made in accordance with the legislative framework. Subsequent to serving this probationary period, an organisation will be subject to an annual audit of decisions. Continuing accreditation as a classification decision-making body will be dependent on an organisation passing this audit process.

12.58 The committee considers that the Classification Liaison Scheme is well-placed to provide education and support to industry in this regard, particularly if it is given more resources as suggested above.

12.59 Further, the committee recommends that incorrect classifications by industry assessors in the television, recorded music and advertising industries should be subject to substantial monetary fines, payable by the organisation publicly displaying the content. Under the current system, there is not enough incentive for industries to abide by even their own codes of practice. To prevent industry participants from attempting to 'push the envelope', the committee recommends that transgressions of classification requirements must be punishable by such monetary fines. This punitive system could involve a 'three-strike' system or other such mitigating scheme design in order to function equitably.

#### *Online content*

12.60 As noted above, the committee would prefer that the National Classification Scheme treat all content equally, regardless of the means used to access it. However, the scale and borderless nature of the internet complicates the practicality of this preferred approach.

12.61 Two factors significantly complicate the application of the National Classification Scheme to online content: first, the distinction between overseas- and Australian-hosted content; and, second, the sheer volume of material provided on the internet by small scale and non-commercial publishers, including private citizens, who may not be covered by industry codes.

12.62 In principle, the committee believes that effective classification of online content will most likely involve:

- a focus on self-assessment;
- adequate systems to deal with overseas-hosted content;
- an effective complaints mechanism; and
- education of industry participants.

12.63 The committee did not receive enough evidence to make specific findings on this issue. However, this will be an important matter for the Australian Law Reform Commission's (ALRC) National Classification Scheme Review and the Australian Government Convergence Review to address in their current inquiries.

### ***Consistency of ratings and consumer advice***

12.64 The committee also notes that the Director of the Classification Board supported the suggestion by one witness of consistent ratings and consumer advice as a 'really fine ideal'.<sup>24</sup>

12.65 The Classification Board provided the committee with a very informative research paper in this regard by Dr Jeff Brand from Bond University: *A comparative analysis of ratings, classification and censorship in selected countries around the world* (the Brand Paper).<sup>25</sup> While dated, the Brand Paper does provide some excellent recommendations in terms of unifying classification regimes:

...[P]rocedural matters, markings, advertising, review processes and so on could be more unified and therefore streamlined to assist both consumers and content distributors.<sup>26</sup>

12.66 The committee considers that, in order to assist in achieving consistency, the National Classification Scheme's categories, principles, labelling, markings and warnings should be extended across all mediums in the form of recognisable classification symbols.

### ***New roles for the Classification Board and Classification Review Board***

12.67 The committee proposes to retain the Classification Board in its current role. In addition, the Classification Board should, as noted above, be responsible for providing training to industry classification bodies.

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24 *Committee Hansard*, 7 April 2011, p. 64.

25 Dr Jeff Brand, *A comparative analysis of ratings, classification and censorship in selected countries around the world*, Centre for New Media Research and Education, Bond University, 2003.

26 Dr Jeff Brand, *A comparative analysis of ratings, classification and censorship in selected countries around the world*, Centre for New Media Research and Education, Bond University, 2003, p. 20.

12.68 The committee proposes that the Classification Review Board serve as a review body for industry body classification decisions as well as Classification Board decisions. Review of a decision by an industry body or by the Classification Board or the Classification Review Board should be instigated by those people who can currently apply to the Classification Review Board for decisions.<sup>27</sup> Further, the committee proposes that the Classification Review Board should, on its own motion, be able to review the classification decisions of an accredited industry body.

12.69 Membership of the Classification Board and the Classification Review Board should continue to be in accordance with the provisions which currently exist in the *Classification Act 1995*.<sup>28</sup> However, the committee is concerned that, under current provisions, the appointment period for up to seven years is too long. The committee would prefer to see more regular, staggered turnover of board membership. For this reason, the committee recommends that terms of appointment should be for a maximum period of five years, with no option for reappointment.

### ***Complaints-handling***

12.70 In the committee's view, improved complaints-handling processes must be established across the National Classification Scheme, and across the co-regulatory and self-regulatory regimes.

12.71 Consumers need to be provided with clear information about how to make complaints in relation to classification matters. In order to make a complaint, a consumer should not be required to have a detailed knowledge of the classification system, along with the role of the various bodies involved in classification and their associated responsibilities.<sup>29</sup>

12.72 To this end, the committee notes the recommendation in the Senate ECA Committee's 2008 report, *Sexualisation of children in contemporary media*, for a complaints clearinghouse to be established for the advertising and commercial television industries.<sup>30</sup>

12.73 The committee endorses that proposal and itself recommends that the Australian Government establish a 'Classification Complaints' clearinghouse where complaints in relation to matters of classification can be directed. The clearinghouse would be responsible for:

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27 See *Classification Act 1995*, ss. 42(1).

28 See *Classification Act 1995*, s. 48 and s. 74.

29 See Media Standards Australia, answers to questions on notice, received 21 April 2011, which demonstrated the difficulty that one complainant had in ensuring that their complaint was considered by the appropriate organisation.

30 Senate Environment, Communications and the Arts Committee, *Sexualisation of Children in the Contemporary Media*, June 2008, Recommendation 8, p. 60.

- receiving complaints and forwarding them to the appropriate industry body for consideration;
- advising complainants that their complaint has been forwarded to a particular organisation for consideration; and
- giving complainants direct contact details and an outline of the processes of the organisation to which the complaint has been forwarded.

### *Complaints in self-assessing industries*

12.74 Subject to the development of the clearinghouse, the introduction of content assessment accreditation and a monetary fine, the current complaints procedure for industries covered by a code of practice would remain largely in place.

12.75 Complaints in relation to classification decisions by an accredited industry body should, in the first instance, be directed to the relevant industry body to review and address. However, to ensure consistency across the National Classification Scheme, the committee recommends that the final point of appeal for classification decisions would be the Classification Review Board.

12.76 For example, community members disagreeing with a classification decision of the Advertising Standards Board would be able to ultimately appeal that decision to the Classification Review Board to ensure harmonisation of the overall scheme.

12.77 The committee is aware that a system in which the Classification Board is responsible for all classification would be ideal. However, the volume of content requiring classification is likely to preclude this possibility. For that reason, the committee has sought to provide a practical solution by ensuring that one body, in the form of the Classification Review Board, is the final arbiter of classification decisions in Australia.

### *ALRC's National Classification Scheme Review*

12.78 Finally, the committee recognises that the Australian Government has tasked the ALRC with conducting a review of the National Classification Scheme. The committee recommends that the Attorney-General specifically direct the ALRC to consider, as part of its inquiry, all findings, proposals and recommendations put forward in this committee's report.

### **Recommendation 1**

**12.79** The committee recommends that an express statement should be included in the National Classification Code which clarifies that the key principles to be applied to classification decisions must be given equal consideration and must be appropriately balanced against one another in all cases. Currently, these principles are:

- adults should be able to read, hear and see what they want;
- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material that they find offensive;
- community concerns should be taken into account in relation to:
  - depictions that condone or incite violence, particularly sexual violence; and
  - the portrayal of persons in a demeaning manner.

### **Recommendation 2**

**12.80** Further to Recommendation 1, the committee recommends that the fourth key principle in the National Classification Code should be expanded to take into account community concerns about the sexualisation of society, and the objectification of women.

### **Recommendation 3**

**12.81** The committee notes that there has been no further consideration by the Senate of the Senate Environment, Communications and the Arts Committee's 2008 report, *Sexualisation of children in the contemporary media*. The committee recommends that the Senate should, as a matter of urgency, establish an inquiry to consider the progress made by industry bodies and others in addressing the issue of sexualisation of children in the contemporary media; and, specifically, the progress which has been made in consideration and implementation of the recommendations made in the *Sexualisation of children in the contemporary media* report.

### **Recommendation 4**

**12.82** The committee recommends that the *Guidelines for the Classification of Films and Computer Games* and the *Guidelines for the Classification of Publications 2005* should be revised so that the preamble to both sets of guidelines expressly states that the methodology and manner of decision-making should be based on a strict interpretation of the words in the respective guidelines.

**Recommendation 5**

**12.83** The committee recommends that the emphasis on context and the assessment of impact should be removed as principles underlying the use and application of the *Guidelines for the Classification of Films and Computer Games*.

**Recommendation 6**

**12.84** The committee recommends that the Australian Government introduce Standing Community Assessment Panels to assist in the determination of community standards for the purpose of classification decision-making.

**Recommendation 7**

**12.85** The committee recommends that the classification of artworks should be exempt from application fees.

**Recommendation 8**

**12.86** The committee recommends that the Australian Government, through the Standing Committee of Attorneys-General, pursue with relevant states the removal of the artistic merit defence for the offences of production, dissemination and possession of child pornography.

**Recommendation 9**

**12.87** The committee recommends that provision be made in the *Classification Act 1995* for an exemption for cultural institutions, including the National Film and Sound Archive, to allow them to exhibit unclassified films. This exemption should be subject to relevant institutions self-classifying the material they exhibit and the Classification Review Board providing oversight of any decisions in that regard.

**Recommendation 10**

**12.88** The committee recommends that the Australian Government take a leadership role through the Standing Committee of Attorneys-General in requesting the referral of relevant powers by states and territories to the Australian Government to enable it to legislate for a truly national classification scheme.

**Recommendation 11**

**12.89** In the event that a satisfactory transfer of powers by all states and territories is not able to be negotiated within the next 12 months, the committee recommends that the Australian Government prepare options for the expansion of the Australian Government's power to legislate for a new national classification scheme.

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**Recommendation 12**

**12.90** The committee recommends that, as a matter of priority, the Standing Committee of Attorneys-General should consider the development of uniform standards for the display and sale of material with a Restricted classification.

**Recommendation 13**

**12.91** The committee recommends that:

- **Category 1 and 2 Restricted publications, and R18+ films, where displayed and sold in general retail outlets, should only be available in a separate, secure area which cannot be accessed by children; and**
- **the exhibition, sale, possession and supply of X18+ films should be prohibited in all Australian jurisdictions.**

**Recommendation 14**

**12.92** The committee recommends that, as a matter of priority, the Commonwealth and the states and territories should establish a centralised database to provide for information-sharing on classification enforcement actions.

**Recommendation 15**

**12.93** The committee recommends that the Classification Liaison Scheme should substantially increase its compliance and audit-checking activities in relation to, for example, compliance with serial classification declaration requirements.

**Recommendation 16**

**12.94** The committee recommends that the Classification Liaison Scheme should have at least one representative in each state and territory.

**Recommendation 17**

**12.95** The committee recommends that the Classification Liaison Scheme should be charged with responsibility for establishing and maintaining the centralised database to provide for information-sharing on classification enforcement actions, as proposed in Recommendation 14.

**Recommendation 18**

**12.96** The committee recommends that the Classification Liaison Scheme should provide assistance to state and territory law enforcement agencies in relation to enforcement actions for failure to respond to call-in notices issued by the Director of the Classification Board.

**Recommendation 19**

**12.97** The committee recommends that more detailed information should be included in the Attorney-General's annual report about the operations of the Classification Liaison Scheme.

**Recommendation 20**

**12.98** The committee recommends that the Australian Government should increase the size of, and commensurate funding to, the Classification Liaison Scheme as a matter of priority.

**Recommendation 21**

**12.99** The committee recommends that the Australian Government should, through the Standing Committee of Attorneys-General, signal its intention to make enforcement actions for failing to respond to call-in notices a matter of priority.

**Recommendation 22**

**12.100** The committee recommends that, to the extent possible, the National Classification Scheme should apply equally to all content, regardless of the medium of delivery.

**Recommendation 23**

**12.101** The committee recommends that industry codes of practice under current self-regulatory and co-regulatory schemes, including those under the *Broadcasting Services Act 1992*, the ARIA/AMRA Labelling Code and the advertising industry, should be required to incorporate the classification principles, categories, content, labelling, markings and warnings of the National Classification Scheme. The adoption of these measures by industry should be legally enforceable and subject to sanctions.

**Recommendation 24**

**12.102** The committee recommends that industry bodies wishing to exercise classification decision-making functions should be required to be accredited by the Australian Government.

**Recommendation 25**

**12.103** The committee recommends that the Classification Board should be responsible for the development of a content assessor's accreditation, including formalised training courses for all industries covered under the National Classification Scheme.

**Recommendation 26**

**12.104** The committee recommends that the accreditation of content assessors should be subject to disqualification as a result of poor performance.

**Recommendation 27**

**12.105** The committee recommends that transgressions of classification requirements within codes of practice by industry participants should, if verified by the Classification Board, be punishable by substantial monetary fines.

**Recommendation 28**

**12.106** The committee recommends that the terms of appointment for members of the Classification Board and the Classification Review Board should be for a maximum period of five years, with no option for reappointment.

**Recommendation 29**

**12.107** The committee recommends that the Australian Government should establish a 'Classification Complaints' clearinghouse where complaints in relation to matters of classification can be directed. The clearinghouse would be responsible for:

- receiving complaints and forwarding them to the appropriate body for consideration;
- advising complainants that their complaint has been forwarded to a particular organisation for consideration; and
- giving complainants direct contact details and an outline of the processes of the organisation to which the complaint has been forwarded.

**Recommendation 30**

**12.108** The committee recommends that the Attorney-General should specifically direct the ALRC to consider, as part of its current review of the National Classification Scheme, all the findings, proposals and recommendations put forward in this report.

**Senator Guy Barnett**  
**Chair**

