



ACT GOVERNMENT SUBMISSION

Review of Australian classification regulation

Justice and Community
Safety Directorate

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CONTENTS

PREAMBLE AND SUMMARY..... 3

SUBMISSION BY THE ACT GOVERNMENT 4

 Whether the current co-operative scheme is fit for purpose 4

 Current co-operative system and the ACT..... 4

 Regulation through a civil law regime..... 4

 Consideration of other issues 5

 Human rights including the right to freedom of expression..... 5

PREAMBLE AND SUMMARY

Thank you for the opportunity to comment on the discussion paper “Review of Australian classification regulation”. The ACT Government welcomes the Australian Government’s commitment to redesign current classification laws so classification processes suit a modern content market and provide quality classification information for consumers. The ACT government recommends that the any changes to classification laws:

- be consistent with the *Human Rights Act 2004* (ACT) and contain robust protections for human rights; and
- occur in the context of a civil regulatory system.

In this submission, the ACT Government provides comments in relation to two questions raised in the discussion paper, questions 8 and 9.

8) Is the current co-operative scheme between the Australian Government and the states and territories fit for purpose in a modern content environment? If not, how should it be changed?

9) Are there other issues that a new classification regulatory framework needs to take into account?

SUBMISSION BY THE ACT GOVERNMENT

Whether the current co-operative scheme is fit for purpose

Current co-operative system and the ACT

As noted in the discussion paper, the National Classification Scheme sets out the regulatory framework for classifying content not broadcast on television; computer games; and certain publications. Under the current co-operative scheme, the Commonwealth is responsible for classifying content and the ACT Government maintains regulatory control over the sale, advertising, exhibition and hire of classifiable content in the ACT. However, the Commonwealth is currently responsible for enforcement of classifiable content online.

The ACT is one of two jurisdictions in Australia that legally allow for the sale and copy of X 18+ films,¹ the other jurisdiction being the Northern Territory. The ACT regulates the X 18+ film industry through a licensing scheme which ensures that X 18+ films can be safely distributed to appropriate consumers while protecting community members from potentially harmful and offensive content.² Proprietors must obtain a licence under Division 6.2 of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT) to be able to sell or copy X 18+ films in the ACT. Three types of licences are currently available: a licence to sell, a licence to copy and a licence to both sell and copy.

Regulation through a civil law regime

The ACT Government notes that as much classifiable content is accessed online rather than through physical stores, the Commonwealth is now responsible for enforcement for considerable content. In this respect, should there be proven benefits to a Commonwealth-led regulatory scheme, the ACT Government would be open to this approach provided that the X 18+ film industry is able to continue in the ACT and be regulated by a licensing scheme similar to that currently imposed by the ACT Government.

¹ The definition of the word 'film' in the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT) (ACT Classification Act) is derived from its Commonwealth legislation equivalent, the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth Act); and includes cinematograph films, slides, video tapes and discs and any other form of recording from which a visual image including a computer generated image, can be produced. Section 92 of the Commonwealth Act states that the Commonwealth Act 'does not apply to broadcasting services to which the *Broadcasting Services Act 1992* applies.'

² Gareth Griffith, "'X' Rated Films and the Regulation of Sexually Explicit Material' (Briefing Paper No 15/03, Parliamentary Library, Parliamentary Paper, New South Wales Parliament, 2003).

The ACT X 18+ film licensing scheme aligns with one of the ACT Government's priority areas for action under the *ACT Women's Plan 2016-26* i.e. safety, and a commitment to reduce the incidence of violence against women and girls and to ensure that they feel safe in their homes and communities.

Exposure to very high impact pornography is correlated with increased violence against women. In jurisdictions where the sale of X 18+ films is not regulated, this raises concerns that films may be sold as a part of the black market and lack censoring of very high impact content exposing depictions of crime, cruelty and violence. The licensing regime in the ACT encourages the safe distribution of X 18+ films to appropriate consumers and filters content that is harmful and offensive.

Consideration of other issues

Human rights including the right to freedom of expression

The ACT Government considers that any change to the current classification laws should be compatible with human rights including the right to freedom of expression, the rights of children to be protected from exploitation and abuse, the rights of women and the right to privacy. Issues of human rights compatibility should be at the forefront of the development of any changes.

The ACT's *Human Rights Act 2004* (Human Rights Act) provides statutory protection to a broad range of human rights drawn from primarily from the *International Covenant on Civil and Political Rights* (ICCPR), including the right to freedom of expression under section 16.³ As such, the ACT Government is required to protect the right to freedom of expression and section 16 of the Human Rights Act recognises that everyone has the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders. The scope of protection under section 16 embraces even expression that may be regarded as deeply offensive. In this respect, it is acknowledged that the right to freedom of expression is not absolute and may be subject to permissible limitations including, for example, to protect the rights and freedoms of others. The appropriate balancing of rights is an important one for consideration in the development of any changes. From a human rights perspective, there is a clear interest in there being appropriate levels of protection in relation to content that could risk condoning violence against women or expose children to exploitation and abuse.

³ *Human Rights Act 2004* (ACT), section 16(2).



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Government

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