Submission to the Senate Inquiry into the Australian film & literature classification scheme

4 March 2011

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Woolloomooloo
NSW 2011

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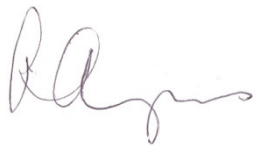
1. EXECUTIVE SUMMARY

The Arts Law Centre of Australia (Arts Law) welcomes the Senate inquiry into the Australian film and literature scheme. With technology rapidly altering the means by which people consume and communicate content, a review of the classification laws is long overdue. In contributing to this inquiry Arts Law has focused on the terms of reference most relevant to artists who as the creators of the very content people enjoy to see, watch, read or hear, are significantly impacted by classification laws not only personally but as working professionals. Our submission addresses:

- the lack of consistency between the states and territories regarding enforcement of the federal classification scheme;
- the uncertainty of the National Classification Scheme for works of art exhibited in gallery spaces;
- the critical role of 'artistic merit' in deciding whether a work can be made available on a restricted basis under R18+ or banned as 'refused classification', particularly films;
- concerns about the interaction between the Classification Board and the Australian Communications and Media Authority; and
- the lack of effectiveness in applying the National Classification Scheme to the internet through the *Broadcasting Services Act 1992.*

The arts have a long history of adapting and interacting with technology, both for the creation and dissemination of work. The opportunity for Australia to review and update its classification laws to accommodate the advantages of the digital era should not be missed.

Yours faithfully,



Robyn Ayres
Executive Director
Arts Law Centre of Australia

2. INTRODUCTION

I. THE ARTS LAW CENTRE OF AUSTRALIA

The Arts Law Centre of Australia (**Arts Law**) is the national community legal for the arts. It was established in 1983 with the support of the Australia Council for the Arts to provide specialist legal and business advice and referral services, professional development resources and advocacy for artists and arts organisations. We now support over 2,500 Australian artists and arts organisations a year operating across the arts and entertainment industries from literature and visual arts to music and film.

Arts Law envisages an arts community which understands their legal rights, has sufficient business and legal skills to achieve financial security, and carries out their arts practice in a non-exploitive and culturally aware environment. Over the years we have made numerous submissions dealing with law and policy reform issues affecting the arts. Our submissions are informed through being unique in the service we provide bridging the worlds of both arts and law, and by our clients' profile which is that they are usually:

- earning limited incomes;
- both non-Indigenous and Indigenous, and remote and urban;
- limited in their ability to enforce their rights;
- dedicated to the creation of art across all disciplines;
- either established, new or emerging arts practitioners or arts organisations;
- operating arts businesses;
- working in both traditional and digital media,
- self-reliant in business;
- eager for accessible legal information, although they typically have limited legal education.

As an independent organisation giving legal advice to artists and arts organisations across Australia, Arts Law is well placed to comment on the legal and policy issues affecting the arts community from a national perspective. We welcome this opportunity to contribute to the Australian Senate's inquiry into the film and literature classification scheme.

II. THE IMPACT OF CLASSIFICATION ON ARTISTS

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

Arts Law is keenly aware that classification is a balance between allowing adults to read, hear and see what they want, protecting minors from unsuitable material, and taking into account community concerns. However, the ability to use art as a means of expressing an opinion or belief is vital in articulating public or social debate, and developing a culture reflecting and documenting the society in which we live. The purpose of classification is primarily to enable adults to make an informed choice as to what they want to see, hear and read, and what to allow their children to have access to. It is not and should not be used as a means to censor material that is otherwise legal.

3. APPLYING THE CLASSIFICATION SCHEME TO WORKS OF ART

Arts Law receives inquiries from artists seeking advice on whether there is a need or requirement for their work to be classified prior to exhibition. The work may contain or feature material that is sensitive or may potentially offend. This may include material featuring children as artistic subjects, nudity, violence, topical political, religious and social commentary, and more.

I. WORKS OF ART INCORPORATING FILM

The requirement to classify a work prior to public exhibition under the federal *Classification (Publications, Films and Computer Games) Act 1995* (**the Act**) does not traditionally extend to works of art that are exhibited in gallery spaces. Works of art may, however, be brought under the Act if it contains classifiable material such as film or video. This would include multimedia works such as installation art which frequently incorporates a video element, and are exhibited in gallery spaces. Such pieces have been increasing in popularity with the rise of digital technology as contemporary art. Arts Law has had several inquiries raised by multimedia artists as to whether or not they are required to classify their work prior to exhibition.

It is unlikely that films such as those used in multimedia works of art are exempt from the classification requirement. Under section 5B of the Act, films that are exempt from classification must be of a certain type used in the course of business, accounting, professional, scientific, educational, current affairs, or a documentary record of an event such as sporting, family, religious or community. Some multimedia art films may be exempt as a musical presentation or record of a hobby or live performance, however these would be required to wholly be a documentary record of that hobby or live performance. A film used in a work of art that exists as a piece of art, not a documentary record, would not be automatically exempt from the classification requirement. More importantly, for many artists their artistic activities are a professional activity, not a hobby activity.

To avoid falling afoul of the classification requirement for films, many artists who use film elements in their works of art would be required to submit their works for classification. In many

cases this may beyond the artist's means, with the fee for classification of a 0-60 minute film for public exhibition costing $990, and a priority processing fee an additional $400. **Arts Law recommends that the classification provisions for exempt films be clarified to accommodate films used in works of art exhibited in gallery or exhibition spaces.** Arts Law refers the inquiry to the approach taken in the state of Victoria where the Director of the Victoria Classification Board is able, on application, to direct that the Victorian classification enforcement legislation dose not apply to an approved organisation or an organisation carrying on activities of an educational, cultural or artistic nature, in relation to the exhibition of a film at an event.[1] Whilst this exemption currently appears only to be available to the Australian Centre for the Moving Image, it would be useful if such provisions were available to other gallery and exhibition spaces dedicated to exhibition of works of art.

II. PHOTOGRAPHY AND VISUAL ARTS

Arts Law regularly receives queries from visual artists and photographers who seek advice as to whether they are required to submit their works for classification in order to for them to be publicly exhibited. Their works may feature subject matter that is sensitive or may possibly offend. The most frequent concerns are with regards to children as subjects, such as a photographer exploring masculinity in images of boys growing to adulthood, or an artist commenting on children in advertising. In the vast majority of cases such artists do not submit their works for classification, usually because they do not consider them to be a 'submittable publication' but also because of the costs involved. This carries a certain amount of risk for the artist, particularly in light of the Bill Henson controversy in 2008 over artistic photographs of naked or semi-naked children. Despite all the controversy, the photographs submitted for classification to the Classification Board were ultimately given a PG rating.

Under the *Guidelines for the Classification of Publications* bona fide artworks are not usually required to be submitted to classification as they are not generally considered to be 'submittable publications'. A 'submittable publication' is one that contains depictions or descriptions that:

[1] *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Vic) sections 64 and 66A

a) are likely to cause the publication to be refused classification;
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;
c) are unsuitable for a minor to see or read.

'Publication' is defined in the Act to include any "pictorial matter", not including a film, computer game or advertisement for a film or computer game.[2] As such, visual artworks such as photographs are publications under the Act, and if they contain certain depictions or descriptions, may be considered submittable for classification.

The rating of the Henson photograph in 2008 as PG indicates that the photograph was not a submittable publication, and there was no need for it to be classified. However, because of the negative public reaction to the photograph including from members of state and federal parliaments, it was deemed necessary to submit the work for classification in order to prove it was not offensive. More recent Henson works of art have been submitted for classification to ensure against any controversy or prosecution even though it was arguably not necessary to do so.[3] This illustrates the dilemma for artists who may portray sensitive or confronting material in their works of art as to whether or not they apply and pay the costs of classification simply as a preventative measure for works that are likely not required to be submitted for classification. **Arts Law recommends that there be an explicit exemption to classification for works of art exhibited in a gallery space, with the requirements for 'submittable publication' for classification to apply only if the work of art is to be communicated or distributed to the general public.**

[2] *Classification (Publications, Films and Computer Games) Act 1995* (Cth) section 5 Definitions
[3] 'Gallery submits Bill Henson's latest images to censors before new show', Brisbane Times, 25 April 2010 (http://www.brisbanetimes.com.au/entertainment/art-and-design/gallery-submits-bill-hensons-latest-images-to-censors-before-new-show-20100424-tkiu.html)

4. THE NEED FOR NATIONAL STANDARDS FOR DISPLAY AND ENFORCEMENT

There is a need for standardisation in classification enforcement laws. Although State and Territory classification legislation is supposed to be complementary to the Commonwealth legislation, they vary in detail. The result is one where what may be perfectly legal to sell and/or publicly exhibit in one State may be illegal in another. For example:

- All DVDs and videos classified X18+ are illegal to sell to adults in all six States, but can be legally sold in parts of the Northern Territory and throughout the Australian Capital Territory.
- In Queensland it is illegal to sell publications that have been classified as unsuitable for minors to adults,[4] even if it is in a sealed package.
- In Western Australia a person must not publicly display with the intention to sell, a computer game rated MA15+ or the container, wrapping or casing for a computer game classified MA15+, unless it is in a restricted area.[5] The public display of a computer game rated MA15+ without restrictions is legal in all other States and Territories.

Additionally, while State and Territory classification enforcement legislation largely relies on classification decisions made under the federal Act, some states have reserved censorship powers enabling them to override classifications made by the Classification Board:

- **South Australia**: legislation establishes a state Classification Council which is empowered to classify publications, films and computer games regardless of whether they have been already classified by the Classification Board. Classification decisions made by the South Australian Classification Council override those of the federal Classification Board. (*Classification (Publications, Films and Computer Games) Act 1995* (SA)).

[4] *Classification of Publications Act 1991* (Qld) section 12
[5] *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (Western Australia) section 85A

- **Queensland**: state legislation provides for a 'publications classification officer'[6] and a 'computer games classification officer'[7] who are able to classify publications and computer games that have not already been classified by the Classification Board. If such publications and games have already been classified under the Classification Board the Queensland classification officers are able to reclassify and override decisions of the Classification Board.
- **Tasmania:** state legislation provides for the establishment of a Review Committee to review a film classified by the federal Classification Board if it "unduly emphasises matters of cruelty and violence".[8] A reclassification of a film by the Tasmanian Review Committee overrides the previous classification by the federal Classification Board.

Such discrepancies are confusing for those artists who may sell or distribute their work in several jurisdictions. An example may include an artist whose work is touring across several states, an independent filmmaker whose MA15+ film screened at a festival in Victoria is reclassified as R18+ when taken to Adelaide, or an author whose book is classified as category 2 restricted sold in New South Wales is banned from sale in Queensland. The ability of state and territory officers to reclassify and override ratings decided by the Classification Board also creates uncertainty as to the finality of ratings decisions from the Classification Board for artists and creators who may apply to it in order to be able to distribute their work. **Arts Law recommends a consistent national standard for the enforcement of classification ratings.**

[6] *Classification of Publications Act 1991* (Qld) sections 6 and 9
[7] *Classification of Computer Games and Images Act 1995* (Qld) sections 5 and 7A
[8] *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tasmania) section 41A.

5. REFUSED CLASSIFICATION, R18+, AND THE ROLE OF ARTISTIC MERIT IN CLASSIFICATION DECISIONS

Under the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (**the Act**) the literary, artistic or educational merit (if any) of the publication, film or computer game must be taken into account in classification decisions[9]. 'Artistic merit', however, is not directly defined in either the Act or the Guidelines for classification. It may be impliedly taken into context, which is emphasised in the Guidelines as being crucial in determining whether a 'classifiable element' is justified by the storyline or themes, however this is unclear.

Artistic merit is crucial to understanding the depiction of material that may otherwise be refused classification (**RC**). RC material is not illegal material, however in many ways is treated as if it is. Illegal material, such as child pornography, cannot be possessed, distributed or communicated. RC material can be possessed for private/personal use, but cannot be distributed or communicated. A refusal to grant classification to a work is therefore, essentially, a ban on that work in Australia, a severe blow to any artist who may depend on the commercial dissemination of his or her work to earn an income.

The amount of weight artistic merit has in classification decisions is only known in Classification Review Board (**the Review Board**) decisions, which are published to the Classification Board webpage. An examination of some of these decisions, largely with regards to films but also publications, reveal that 'artistic merit' was crucial in the Review Board's decision to ultimately grant a rating to works – usually film – that but for artistic merit, could have been refused classification:

- *Salo* (Classification Review Board decision 6 May 2010), an Italian film examining the corruption of absolute power through physical and sexual violence. Previous versions of the film were refused classification in Australia, however the 2010 DVD format was rated R18+ due to the inclusion of documentary material that provided context for the offensive material. The majority of the Review Board noted the artistic elements of the film including "extensive, discordant usage of classical music, ornate costumes and highly stylised mise-en-scene" and the director's care and meticulous staging work.

[9] *Classification (Publications, Films and Computer Games) Act 1995* (Cth) section 11

- *Mysterious Skin* (Classification Review Board decision 6 October 2005), a film exploring the long term traumatic effects of child sexual abuse, depictions of which outweighed the requirement to refuse classification to films that contain offensive depictions of persons under 18. In rating the film R18+ the majority of the Review Board found that it had "a very high degree of artistic merit" and was a "serious artistic work."
- *9 Songs* (Classification Review Board decision 17 January 2005), a film depicting an explicit romantic and sexual relationship between an adult couple, was rated R18+ having been found to have artistic merit and elements that justified the actual sex shown on screen which otherwise would have merited an X rating or refused classification.

In all these decisions the opinion was split, with the majority of the Review Board finding artistic merit in the films that justified their subject matter, and the minority who would refuse classification because of the subject matter.

Arts Law commends the Review Board's detailed consideration of artistic merit in its decisions. However, artistic merit alone is insufficient to ensure classification, with some works (again, usually film) have been refused classification and therefore banned in Australia despite acknowledgments of artistic merit:

- *Tras El Cristal (In A Glass Cage)* (Classification Review Board Decision 25 May 2005) was found to have "serious artistic intent and merit"[10] with the Classification Review Board convenor expressing the opinion that out of the three films referred for review that year depicting child abuse, *Tras El Cristal* "had the most artistic merit".[11] Despite this, *Tras El Cristal* was refused classification and banned in Australia.
- *Ken Park* (Classification Review Board decision 6 June 2003) was acknowledged as "making a serious attempt to grapple with issues" and "having significant artistic merit"[12] yet refused classification. One significant basis for this decision was the depictions of actual sex in the film, which was similarly considered by the

[10] *Tras El Cristal (In A Glass Cage)*, Classification Review Board Decision 25 May 2005
[11] *Classification Board & Classifiation Review Board Annual Report 2004-2005*, Classification Review Board 'Depictions of children and paedophilia', page 82
[12] *Ken Park,* Classification Review Board Decision 6 June 2003

Classification Review Board in classifying *9 Songs* but accommodated under a R18+ rating.

- *Baise Moi* (Classification Review Board decision 10 May 2002) was considered to have "significant cultural merit" and contain many elements that could have been accommodated within the R18+, including sexual violence, yet refused classification. Similarly to *Ken Park*, *Baise Moi* featured depictions of actual sex which were accommodated in a rating of R18+ for *9 Songs*.

Arts Law is concerned that despite having serious artistic merit such works can still be banned from distribution (yet still able to be possessed for personal/private use) in Australia rather given a restrictive adult rating. This is partly due to the fact that the classification scheme does not seem to cater for works which are not intended to be pornographic but do not easily fit into another classification rating.

Similar difficulties can be seen with works seeking to address issues such as terrorism. Under section 9A of the Act provides that any publication, film or computer game that advocates a terrorist act must also be refused classification. It defines 'advocates' if a work:

a) directly or indirectly counsels or urges the doing of a terrorist act; or
b) directly or indirectly provides instruction on the doing of a terrorist act; or
c) directly or indirectly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise may have the effect of leading a person to engage in a terrorist act.

Arts Law is not aware of any concern in the arts community in response to material advocating terrorism being made available in Australia. In contrast, Arts Law is aware of arts practitioners who are concerned that they are committing an offence or that their work may be censored or banned because it explores issues such as terrorism and war.

Such concern exists despite subsection 9A(3) of the Act which states that a publication, film or computer game does not advocate the doing of a terrorist act if the depiction or description of a terrorist act could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire. While it is true that some works exploring terrorism would fall into the exceptions set out in section 9A of the Act, like the films depicting sexual content described above there would be instances in which the artistic work could not

easily be classified as constituting "public discussion or debate" or "entertainment or satire". Examples include multi-media works that explore the potential impact of terrorism in a city such as Sydney and the creation of a culture of fear; screenplays that contain characters who advocate terrorism; and novels that debate the response of the Australian government to potential terrorism in Australia. Artists contacting Arts Law for advice have expressed concern that the legislation, coupled with the introduction of sedition laws, creates a chilling effect and an environment in which they feel they have no freedom to explore and debate ideas through their work.

Arts Law recommends that any finding of serious artistic merit in a work containing high impact classifiable elements should exempt it from being refused classification, and accommodation sought under a restrictive X18+ or R18+ rating. This approach would allow adults who wish to access and watch the work to be able to do so, instead of banning the work entirely. A complete ban on material should apply only to works that are illegal such as child pornography.

6. THE CLASSIFICATION SCHEME AND THE AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY

Arts Law is concerned at the interaction between the Australian Communications and Media Authority (ACMA) and the National Classification Scheme. As the government agency responsible for the regulation of broadcasting, the internet, radio-communications and telecommunications under the *Broadcasting Services Act 1992*, ACMA is able to regulate television broadcasts and internet. This often requires the ACMA to make decisions as to content similar to those as made by the Classification Board, or as if it was the Classification Board, particularly in relation to internet content. The Classification Board itself does not classify internet content unless referred to do so by the ACMA or law enforcement authorities.

The ACMA has the authority to either blacklist overseas websites from access within Australia or takedown websites based in Australia for "prohibited content." "Prohibited content" is defined in Schedule 7 of the *Broadcasting Services Act 1992* as being content classified by the Classification Board as refused classification, X18+, R18+ and MA15+ material not subject to an age verification system. The ACMA may also make determinations as to *potential* prohibited content, namely content that has not been classified by the Classification Board but if the content *were* to be classified there is a substantial likelihood that the content would be prohibited content. This requires the ACMA to essentially make classification decisions over content that should be made by the Classification Board by guessing as to what the Classification Board would decide. Such decisions by ACMA are problematic because unlike the Classification Board where a publication, film or computer game is banned within Australia if it is refused classification, the ACMA is able to blacklist or take down not only material that is illegal or refused classification, but material rated X18+, R18+ and MA15+ if not restricted behind an age verification system. Such material is legitimately available in Australia in an offline format, and should not be treated differently simply because it is on the internet.

Arts Law is concerned that the ACMA has in the past made decisions as to "prohibited content" that are in conflict with decisions of the Classification Board. For example, in March 2009 it was reported in the news media that several images by artist Bill Henson which had been already cleared by the Classification Board were included on the ACMA blacklist[13] and

[13] 'Blacklist snares Bill Henson fan site", Sydney Morning Herald, 26 March 2009 (http://www.smh.com.au/articles/2009/03/26/1237657050527.html)

thus considered "prohibited content" not to be viewed online in Australia. Although the inclusion of the Bill Henson images on the blacklist was reportedly an error, it is worrying that such an error is capable of being made in the first place, especially since the contents of the ACMA blacklist are not released to the public. Such secrecy undermines any confidence in the ACMA's decision-making and its ability to judge content, particularly content which but for considerations such as artistic merit, may be refused classification (see **'Part 6: The role of artistic merit in classification decisions'**), and creates the very real potential of scope creep where the list of prohibited content or potential prohibited content expands to include material beyond its original intention. Officials of the ACMA, while perhaps trained by the Classification Board,[14] do not have the expertise or experience of the Classification Board which grant the Classification Board legitimacy. Furthermore, whereas decisions from the Classification Board can be applied for review by the Classification Review Board[15], there does not appear to be a similar obvious method of appeal for content added to the confidential ACMA blacklist.

The blacklisting of material that is legal and not refused classification is of great concern to the artistic community. The existence of two types of banned material in Australia – material refused classification by the Classification Board, and online material deemed "prohibited content" or "potential prohibited content" by the ACMA – is also confusing and has the potential for scope creep and to create conflict between decisions of ACMA and decisions of the Classification Board. As such, it is **Arts Law's recommendation that the ACMA should only be able to blacklist or take down material that is illegal. Arts Law would not recommend or support the introduction of an internet service provider level filtering scheme that prevents access to material that is otherwise legal to view and possess.**

[14] *Broadcasting Services Act 1992* (Cth) Schedule 7 clause 18 'Trained content assessor'
[15] It is noted that the fee for applying for a review by the Classification Review Board is $8,000, an amount beyond the reach of most Arts Law clients

7. THE NATIONAL CLASSIFICATION SCHEME AND NEW MEDIA TECHNOLOGY

It is Arts Law's view that the current National Classification Scheme (**NCS**) does not effectively deal with new technologies and new media. The classification system as administered by the Classification Board was formed when channels for content distribution were easily defined and far more restricted. It has stretched to accommodate the internet through the federal *Broadcasting Services Act 1992* under which the Australia Communications and Media Authority (**ACMA**) acts in place of the Classification Board. The Classification Board itself does not classify internet content unless referred to it by law enforcement agencies or ACMA. Under the *Broadcasting Services Act 1992* internet content other than a film, computer game or eligible electronic publication[16] is required to be classified by referring to the classification criteria for films as set out in the federal *Classification (Publications, Films and Computer Games) Act 1995*.[17] The criteria for the classification of film are more restrictive than the criteria for publications (which can allow for "bona fide artworks"), even though the vast majority of webpages consist solely of text and/or static images.

The overwhelming majority of content available for access over the internet has not been formally classified by Australian authorities. In some ways this undermines the purpose of classification which is to enable adults to make informed choices as to what they see, hear and read, or what their children see, hear, or read, particularly in light of mobile devices that enable users to access the internet from any location instead of a stationary computer. However, Arts Law is aware that many artists do on their own initiative include notices and/or warnings on their websites about the work contained therein in order to allow consumers to decide whether or not they wish to view it. Additionally, many websites that host user-generated content such as YouTube maintain policies on age restrictions and implement technologies to prevent younger viewers from accessing inappropriate content.[18]

[16] "Eligible electronic publication" refers to content consisting of the electronic edition of a newspaper, magazine or book that is or was available to the Australian public. This means that material that exists solely online and does not have a physical edition such as a printed book or magazine is subject to different classification requirements than material that is available both online as a webpage and offline in a physical edition.
[17] *Broadcasting Services Act 1992* (Cth), Schedule 7, clause 25
[18] YouTube help, 'Age-restricted videos' http://www.google.com/support/youtube/bin/answer.py?hl=en&answer=128029 (last accessed 3 March 2011)

Arts Law is also keenly aware that the most artists practicing today now have some form of internet presence such as their own website, an account on a user-generated content website, or are featured on websites of organisations they may have relationships with such as art galleries. Australia Council research also shows the internet is now a key tool for people to engage with the arts.[19] As described in **Part 6** the interaction between the NCS and the ACMA has resulted in an environment where material that may be legal to view and possess in physical form either privately or publicly can potentially be blocked from access or viewing when on the internet. This causes confusion and uncertainty for those who generate material, particularly artists, and seek to communicate or exhibit it over the internet. **Arts Law recommends that:**

- **the ACMA be required to apply to the Classification Board to classify any material that is not obviously illegal which the ACMA seeks to blacklist or take down;**
- **material communicated online not be defined under the *Broadcasting Services Act 1992* as "prohibited content" or "potential prohibited content" but rather in accordance with Classification markings; and**
- **that internet webpages, if submitted for classification, be assessed in a way corresponding to the way a publication would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*, rather than a way corresponding with film.**

[19] *More than bums on seats: Australian participation in the Arts*, Sydney, Australia Council for the Arts (2010)

8. CONCLUSION

The Senate Inquiry into the Australian film and literature classification scheme is a valuable opportunity to review the way art, media and information is managed in the digital age. In doing so Arts Law urges that it not be used to broaden the scope of the current classification regime in response to a vocal minority who denounce works of art or media that, while perhaps objectionable to some, are not illegal and are legitimate expressions of thought, creativity and artistic vision. Arts Law's recommendations are therefore summarised as follows.

The application of the National Classification Scheme to works of art

- Arts Law recommends that the classification provisions for exempt films be clarified to accommodate films used in works of art exhibited in gallery or exhibition spaces.
- Arts Law recommends that there be an explicit exemption to classification for works of art exhibited in a gallery space, with the requirements for 'submittable publication' for classification to apply only if the work of art is to be communicated or distributed to the general public.

The desirability of national standards for the display of restricted publications and films

- Arts Law recommends a consistent national standard for the enforcement of classification ratings.

The role of artistic merit in classification decisions, particularly the R18+ and the refused classification (RC) category

- Arts Law recommends that any finding of serious artistic merit in a work containing high impact classifiable elements should exempt it from being refused classification and accommodation sought under a restrictive X18+ or R18+ rating.

The interaction between the National Classification Scheme and the tole of the Australian Communications and Media Authority in supervising broadcast standards for internet content

- Arts Law recommends that the ACMA should only be able to blacklist or take down material that is illegal.

- Arts Law does not recommend or support the introduction of an internet service provider level filtering scheme that prevents access to material that is otherwise legal to view and possess.

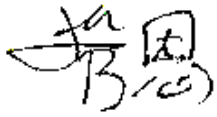
The effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults

- Arts Law recommends that the ACMA be required to apply to the Classification Board to classify any material that is not obviously illegal which the ACMA seeks to blacklist or take down;
- Arts Law recommends that material communicated online not be defined under the *Broadcasting Services Act 1992* as "prohibited content" or "potential prohibited content" but rather in accordance with Classification markings; and
- Arts Law recommends that internet webpages, if submitted for classification, be assessed in a way corresponding to the way a publication would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*, rather than a way corresponding with film.

FURTHER INFORMATION

Please contact Robyn Ayres or Jo Teng if you would like us to expand on any aspect of this submission, verbally or in writing. Arts Law can be contacted at artslaw@artslaw.com.au or on (02) 9356 2566.

Yours faithfully,



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