

Government Response to the House of Representatives Standing Committee on Social Policy and Legal Affairs – Inquiry into billboard and outdoor advertising

At the time of the Standing Committee undertaking its Inquiry, and prior to its Report being finalised, the Government referred the National Classification Scheme (NCS) to the Australian Law Reform Commission (ALRC) for review.

The ALRC review was considered necessary to modernise the system of classification in Australia and allow it to keep pace with developments in technology now and into the future. When the current NCS commenced in 1995, classifiable content and the way it was delivered to consumers was relatively static.

The ALRC review was designed to consider not only classification categories, but the whole classification system including the legislative framework to ensure it continues to be effective into the 21st century.

The ALRC was considered the most appropriate body to conduct the review as it had previously conducted an inquiry into laws relating to classification and censorship in 1991. The ALRC's 1991 Report established the basis for the current NCS.

The terms of reference for the ALRC's 2011-12 review (which were subject to public consultation prior to being finalised) stated:

Having regard to:

- *it being twenty years since the Australian Law Reform Commission (ALRC) was last given a reference relating to Censorship and Classification*
- *the rapid pace of technological change in media available to, and consumed by, the Australian community*
- *the needs of the community in this evolving technological environment*
- *the need to improve classification information available to the community and enhance public understanding of the content that is regulated*
- *the desirability of a strong content and distribution industry in Australia, and minimising the regulatory burden*
- ***the impact of media on children and the increased exposure of children to a wider variety of media including television, music and advertising as well as films and computer games***
- *the size of the industries that generate potentially classifiable content and potential for growth*
- *a communications convergence review, and*
- *a statutory review of Schedule 7 of the Broadcasting Services Act 1992 and other sections relevant to the classification of content*

I refer to the ALRC for inquiry and report pursuant to subsection 20(1) of the Australian Law Reform Commission Act 1996, matters relating to the extent to which the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act), State and Territory Enforcement legislation, Schedules 5 and 7 of the Broadcasting

Services Act 1992, and the Intergovernmental Agreement on Censorship and related laws continue to provide an effective framework for the classification of media content in Australia.

Given the likelihood of concurrent Commonwealth reviews covering related matters as outlined above, the Commission will refer relevant issues to those reviews where it would be appropriate to do so. It will likewise accept referral from other reviews that fall within these terms of reference.

Such referrals will be agreed between the relevant reviewers.

1. In performing its functions in relation to this reference, the Commission will consider:

- i. relevant existing Commonwealth, State and Territory laws and practices*
- ii. classification schemes in other jurisdictions*
- iii. the classification categories contained in the Classification Act, National Classification Code and Classification Guidelines*
- iv. any relevant constitutional issues, and*
- v. any other related matter.*

2. The Commission will identify and consult with relevant stakeholders, including the community and industry, through widespread public consultation. Other stakeholders include the Commonwealth Attorney-General's Department, the Department of Broadband, Communications and the Digital Economy, the Australian Communications and Media Authority, the Classification Board and Classification Review Board as well as the States and Territories.

The bolded term of reference referred the matter of advertising generally to the ALRC with specific reference to the exposure of children.

Initially, the ALRC was to report to Government by 31 January 2012. This was subsequently extended to 29 February 2012.

When the Standing Committee tabled its report on 4 July 2011, the Government referred it to the ALRC so that it could factor the recommendations made by the House of Representatives into its deliberations.

The Government released, via tabling in the Parliament, the final report on 1 March, 2012. Since the tabling of the ALRC Report, the Government has been able to consider how the Standing Committee's recommendations might interact with those of the ALRC.

The current NCS is a cooperative scheme between the Commonwealth and all state and territory governments. Under the Intergovernmental Agreement that underpins the scheme, the Commonwealth has agreed to consult states and territories about any meaningful changes to the scheme. Indeed, the current Commonwealth legislation has unanimous agreement requirements in relation to certain aspects of the scheme such as proposed changes to the classification categories and Classification Guidelines.

Consequently, the Commonwealth has sought the views of all States and Territories about the ALRC Report. Once those comments are received, the Commonwealth will be able to further develop its position on the ALRC recommendations (incorporating consideration of the Standing Committee's recommendations where appropriate) and, in due course, finalise the Government response to the ALRC Report.

In addition to this, the Government will also give consideration to how the ALRC recommendations interact with those of the Convergence Review. Although there are discrete components of each report, there is also substantial overlap in some key respects.

The majority of recommendations made by the Standing Committee are directed wholly or in part at non-government bodies. The Commonwealth has referred the Standing Committee's recommendations to those bodies for their attention and response by 28 September 2012.

These include:

- Australian Association of National Advertisers – the Government has referred recommendations 1, 3, 7, 8, 13, 17
- Advertising Standards Bureau – the Government has referred recommendations 5, 6, 9, 15, 16, 17, 18 and 19
- Advertising Standards Board – the Government has referred recommendations 1, 6 and 9.
- Australian Food and Grocery Council – the Government has referred recommendations 1, 14
- Federal Chamber of Automotive Industries – the Government has referred recommendations 1, 12
- Outdoor Media Association – the Government has referred recommendation 17
- Alcohol Beverages Advertising Code scheme – the Government has referred recommendations 1 and 10.

The recommendations that are wholly directed at non-government bodies (at which the Commonwealth makes no further comment at this time) are recommendations 3, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 19.

Recommendation 1—Advertising and industry bodies

The Committee recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme report to the Attorney-General's Department by 30 December 2011 detailing their responses and how the relevant recommendations will be implemented.

The Committee further recommends that the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme provide a comprehensive report to the Attorney-General's Department by 30 December 2012 detailing how the relevant recommendations contained in this report have been

implemented.

Government Response –agree

Recommendation 1 has been referred to the Australian Association of National Advertisers, the Advertising Standards Board, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme. As the Government was awaiting the ALRC Report before taking any action, advice as to their responses has been requested by 28 September 2012. Those bodies have been requested to provide copies of any advice to relevant line departments which work closely with industry on advertising including the Department of Health and Aging and the Department of Infrastructure and Transport.

Recommendation 2—Australian Government

The Committee recommends that the Attorney-General's Department review by 30 June 2013 the self-regulatory system for advertising by evaluating the industry implementation reports and assessing the extent to which there has been effective implementation of the recommendations contained in this report.

If the self-regulatory system is found lacking, the Committee recommends that the Attorney-General's Department impose a self-funded co-regulatory system on advertising with government input into advertising codes of practice.

The Committee recommends that the Attorney-General's Department conduct five-yearly reviews of the advertising regulatory system to ensure that technological advances and changes in advertising trends are being addressed adequately in line with community expectations.

Government Response – noted

The ALRC review into the NCS was concluded earlier this year and its Final Report publicly released on 1 March 2012.

The ALRC considered and discussed other media content (outside the content traditionally classified under the current NCS) in relation to possible classification obligations.

In its Final Report, the ALRC noted that the Committee 'rejected the classification system as an inappropriate system for regulating outdoor advertising'. The ALRC concurred with the Committee's view explicitly stating that it 'does not recommend that advertising be brought into the new classification scheme'.

The ALRC made a further recommendation that advertising for classifiable content (eg, films and computer games) should be managed solely under the existing advertising self-regulatory framework and that advertising codes be amended accordingly. The recommendation states:

8-5 - Advertisements for content that must be classified should continue to be subject to the existing voluntary advertising codes, with complaints being handled by the Advertising Standards Board. These voluntary codes should be amended to provide that, in assessing the suitability of an advertisement for media content that must be classified, the following matters should be considered:

- (a) the likely audience of the advertisement;
- (b) the impact of the content in the advertisement; and
- (c) the classification or likely classification of the advertised content.

The Government will consider the Committee's recommendation in developing its response to the ALRC Report.

Recommendation 4—Australian Government

The Committee recommends that the Attorney-General's Department investigate, through its anti-discrimination legislation consolidation project, how to include the unrestricted display of racist or sexualised images in the public space under the scope of discriminatory practice.

Government Response – not agree

The Government notes that section 18C of the *Racial Discrimination Act 1975* (C'wth) prohibits public acts which offend, insult, humiliate or intimidate people on the basis of race, which may apply to outdoor and out-of-home advertising.

However, the project to consolidate Commonwealth anti-discrimination laws into a single Act is not the appropriate vehicle to consider any specific regulation of outdoor and out-of-home advertising.

See further response to Recommendation 2.

Recommendation 10— Alcohol Beverages Advertising Code

The Committee recommends that the Alcohol Beverages Advertising Code Scheme conduct research every two years into prevailing community standards on the advertising of alcohol. This research should include particular reference to outdoor advertising and the findings should be reflected accordingly in Alcohol Beverages Advertising Code panel determinations.

Government Response – noted

The Alcohol Beverages Advertising Code (ABAC) Scheme is administered by a Management Committee which includes industry, advertising and government representatives.

The Commonwealth Government has allocated functional responsibility for monitoring alcohol advertising to the Health portfolio which monitors the ABAC Scheme via two means:

- The Management Committee of the ABAC Scheme has included a government member since 2004, nominated by the Federal Minister but representing all Australian governments. To date, it has always been an officer of the Department of Health and Aging.

- The Australian National Preventative Health Agency (ANPHA) is reviewing processes of the alcohol industry's compliance with the voluntary code on advertising and the effectiveness of the code in addressing community concerns.
- This recommendation could be considered in the context of this latter review.

Recommendation 11—Australian governments

The Committee recommends that the Monitoring of Alcohol Advertising Committee continue to monitor alcohol advertising and report annually to the Intergovernmental Committee on Drugs.

The Committee further recommends that the Intergovernmental Committee on Drugs oversee the operation of the Alcohol Beverages Advertising Code Scheme and provide reports every two years of its assessed effectiveness to Health ministers.

Government Response – not agree

From 2006 to December 2010, alcohol advertising was monitored by the Monitoring of Alcohol Advertising Committee (MAAC). MAAC was discontinued in December 2010 by the Ministerial Council on Drug Strategy, given an expectation that ANPHA would take on this responsibility.

The Department of Health and Aging will continue to work with the alcohol industry through the Department's continued membership of the ABAC Management Committee. Through this committee the Department of Health and Aging also links to the Intergovernmental Committee on Drugs to ensure the views of governments are represented. As indicated in response to Recommendation 10, ANPHA is also reviewing processes of the alcohol industry's compliance with the voluntary code on advertising and the effectiveness of the code in addressing community concerns.

Recommendation 18— Advertising Standards Bureau

The Committee recommends that the Advertising Standards Bureau address instances of advertiser non-compliance by:

- *establishing a dedicated webpage, easily accessible from the Advertising Standards Bureau website, that names advertisers, and their products, who have breached advertising standards or refused to comply with Board determinations;*
- *circulating the names of non-compliant advertisers in industry newsletters and other means of communication;*
- *providing the names of non-compliant advertisers to the Outdoor Media Association and encouraging their members to consider not accepting advertisements from them;*
- *providing the names of non-compliant advertisers to the Attorney-General so that the Attorney-General's Department can consider legislation that would require the naming of non-compliant advertisers in Parliament, similar to the Equal Opportunity for Women in the Workplace Act 1999; and*

- *reporting annually to the Attorney-General's Department on the non-compliance rate and steps taken to achieve compliance.*

Government Response – noted

This is primarily a matter for the Advertising Standards Bureau. The Government will await the Bureau's preliminary advice prior to considering the enumerated matters further.

See further response to Recommendation 1.