

Classification Branch
Department of Communications and the Arts
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EROS ASSOCIATION SUBMISSION TO REVIEW OF AUSTRALIAN CLASSIFICATION REGULATION

The Eros Association is Australia's leading adult industry body, with over 25 years of experience in dealing with industry specific issues. Eros supports a responsible and non-discriminatory legal framework for adults-only businesses.

Eros welcomes the opportunity to provide comment on the review of Australia's classification regulation.

BACKGROUND

Despite The National Classification Code starting with the principle that '*adults should be able to read, hear, see and play what they want*' - this ethos has yet to be fully upheld by current classification laws.

The majority of Australians consume adult media (or 'pornography') on a regular basis, with most surveys finding that around three quarters of men (76%) and over one-third of women (41%) have looked at pornographic material in the past year.¹

Moreover, the production, distribution, sale and broadcast of adult media is a respectable component of the Australian economy which should not be treated as a 'shameful' or 'offensive' area of work.

The following will provide some necessary background to Australia's adult media industry.

¹ Rissel C, Richters J, de Visser RO, McKee A, Yeung A, Caruana T 'A Profile of Pornography Users in Australia: Findings From the Second Australian Study of Health and Relationships' (2017) 54(2) J Sex Res 227-240

Adult Media Production

Australia's adult media industry is a relatively small but notable part of our media landscape.

Adult publications have been in steady decline over the last decade, however Australia's adult film industry has received local and international critical acclaim.

Adult film production in Australia is currently very limited due to State and Territory criminal laws prohibiting the production, sale and exhibition of X18+ classified or otherwise sexually explicit material.

Broadcasting laws also render sexually explicit media subject to take down notices by the eSafety Commissioner resulting in most Australian adults-only media being almost entirely hosted overseas.

It's important that this review does not rely on stereotypes regarding the Australian adult industry.

A survey of Australian adult media producers undertaken by the Eros Association found that most Australian producers were female and operated as producer/performers. Moreover, half of all producers identified as belonging to the LGBTIQ+ community.²

Adult media production should be viewed as a valid small business enterprise, not to be unfairly penalised by any new classification regime.

Sale and Exhibition of Adult Media

Adults-only retail is a thriving part of Australia's economy, with over 300 stores across the country.

The sale and exhibition of X18+ media within adult retail can currently only legally occur in the Territories. Practically, the bulk of sales and exhibitions have occurred in the ACT where an X18+ Film License has been established.

An X18+ film license is obtained via the Business and Industry Licensing within Access Canberra. The cost of an X18+ license for one year is \$17,816.

Less than 10% of products sold within an adult retail environment are X18+ media making this licensing system not cost effective. At the time of writing, there are only three businesses currently holding an X18+ license in the ACT.

² Eros Adult Media Production Standards 2018, accessible online: <https://www.eros.org.au/wp-content/uploads/2019/09/Eros-Adult-Standards-combined-1.pdf>

Adult retail environments are age restricted and must comply with strict local laws which determine location, signage and other criteria to ensure stores are in keeping with community standards.

There is no reason why X18+ media should not be able to be sold or exhibited in environments specifically designed for adults.

RESPONSE TO KEY DISCUSSION QUESTIONS

Classification Categories and Guidelines

1) Are the classification categories for films and computer games still appropriate and useful? If not, how should they change?

The X18+ classification category was designed to warn consumers that particular media may be sexually explicit. However, in practice this classification marker has been used to censor content marketed to and sold to adults.

There are many reasons why X18+ as a classification marker has been counterproductive, including:

- State and Territory classification legislation, which uses this marker to criminalise the sale, exhibition and production of X18+ media;
- The X18+ licence in the ACT being no longer cost effective and not utilised by most sellers and producers of adult media;
- The X18+ classification marker relying on wholesalers sending in media for classification. As X18+ media sales are only a small proportion of retail revenue, there is no incentive to classify this material.
- The X18+ classification guidelines do not include a number of consensual sex acts between adults, which are by default refused classification (RC)

2c) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'sex' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?

2f) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'nudity' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?

When it comes to adult media, Eros believes classification guidelines should follow the principle: *'if it is legal for consenting adults to do something, it should be legal to film and sell media depicting those acts'*.

As it currently stands, a number of consensual sexual acts between adults are disallowed under the X18+ classification.

Not only does this contradict the idea of consent between adults, but it also unfairly discriminates against people who participate in the BDSM (bondage/discipline; dominant/submissive; sadism/masochism) community, and members of the lesbian, gay, bisexual and trans community (LGBT).

Of particular note are the following prohibitions:

“Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting are not permitted (in the X18+ restricted classification).”

*“Films will be refused classification if they include or contain any of the following:
...Gratuitous, exploitative or offensive depictions of:*

a. activity accompanied by fetishes or practices which are offensive or abhorrent; ...”

The practice of these fetishes are not illegal, so why should the depiction of these consensual sexual acts be made illegal?

General members of the public are protected from viewing such films through restricted premises – meaning that in order to view adult material, a person must consent to entering an age-restricted premises.

If an individual has an objection to such material, then they simply need not enter an adult retailer.

Scope

4) Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?

Eros does not believe there is a need to classify material produced for, marketed to and sold to adults.

If access is restricted to adults and the content is properly marked, the content should not need to be classified. Laws designed to prohibit RC content should target RC content, not X18+ content.

As such, Eros supports the removal of bans on adults-only films as well as adults-only publications on broadcasting, datacasting and online content.

Regulatory Harmonisation

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?*

Eros supports the 2012 Australian Law Reform Commission Report on Content Regulation and Convergent Media,³ which recommended the creation of a single federal media classification Act (subsuming all State and Territory classification laws).

We further submit that:

- States and territories should be absolved of responsibilities in relation to classification;
- The new scheme should not mandate that all adult content must be classified;
- The sale of adult material should be permitted including unclassified material that is likely to be classified X18+;
- The new scheme should review material currently refused classification to allow for the depiction of sexual fetishes in film within the X18+ category;
- If classification is required, the industry should be allowed to establish an industry code and self-regulate the classification of X18+ films.

Kind regards,



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³ ALRC Report 118