



Commissioner for Children and Young People  
Western Australia

**All enquiries**

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Our reference: 12/7309

Hon Adele Farina MLC  
Chairman  
Standing Committee on Uniform Legislation and Statutes Review  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Ms Farina

**Submission: Inquiry into Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012**

Thank you for the opportunity to make a submission on the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012. In the short timeframe allowed I am able to provide a summary of my views. I have also provided copies of previous submissions on this matter, refer to Appendix 1.

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (my Act). Under my Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, specifically having responsibility for advocating for, promoting and monitoring their wellbeing.

Under the Act I must observe the following guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people in the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

In performing my functions the best interests of children and young people must be my paramount consideration. I must give priority to, and have special regard for, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.

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I am also required to have regard to the *United Nations Convention on the Rights of the Child*.

It is with these responsibilities in mind that I make this submission.

I note that the Commonwealth Government has responsibility for determining whether an R18+ classification is lawful, and in developing the guidelines for that classification. The State's responsibility is regarding the advertising, display and sale of computer games. In this matter, I believe the State's proposed legislation is in line with the Commonwealth's and no conflict exists.

However, I would take this opportunity to reiterate my concerns about the possible effects of the availability of games classified as R18+ from the perspective of the wellbeing of children.

The Australian Children's Commissioners and Guardians,<sup>1</sup> of which I am a member, has consistently opposed the introduction of the R18+ classification for computer games on three grounds:

**The increased availability of, and risk of exposure to, high impact content including violence, domestic and sexual violence and illicit drug use**

The increase in the allowable threshold of content would increase the possibility of children's and young people's exposure to games with inappropriate content, through incidental exposure through other family members playing games in the same household. In this regard I consider that material had been classified as inappropriate for children and young people for good reasons, and so their incidental exposure to this material seems counter-intuitive to protecting their welfare and wellbeing, and undermines the intent of the classification system being intended to keep such games out of the hands of children and young people.

**The potential negative impacts of exposure to R18+ computer games, particularly for vulnerable or at-risk children**

Although the research on the impact of violent computer games is not conclusive, the Byron review<sup>2</sup> reports that for some children, particularly those who are most vulnerable, the broader biological, psychological and social context in which computer games are played may contribute to a negative impact on children.

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<sup>1</sup> Children and Young People Commissioner, Australian Capital Territory; Commissioner for Children and Young People, New South Wales; New South Wales Children's Guardian; Children's Commissioner, Northern Territory; Commissioner for Children and Young People and Child Guardian, Queensland; Guardian for Children and Young People, South Australia; Commissioner for Children, Tasmania; Child Safety Commissioner, Victoria; Commissioner for Children and Young People, Western Australia.

<sup>2</sup> Byron T 2008, *Safer children in a digital world – the report of the Byron review*, <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>



A literature review by the Commonwealth Attorney General's Department on the impact of violent games on aggression concluded that '*research into the effects of VVGs [violent video games] on aggression is contested and inconclusive.*'<sup>3</sup>

However, my Act states at section 3 that

*'in performing a function under this Act the Commissioner or any other person must regard the best interests of children and young people as the paramount consideration.'*<sup>4</sup>

While there is no conclusive evidence that violence in computer games will have a negative impact on children and young people, neither has it been proven that there is no effect. It is therefore possible that violence in computer games might have a negative impact on children and young people, and so I remain opposed to the implementation of the R18+ classification for computer games.

### **The difficulties parents and regulators experience in monitoring and controlling children's access to computer games**

While I remain opposed to this classification, if the Bill becomes law, it will be important to reinforce to retailers, parents and young people:

- The provisions of section 85A of the existing *Classifications (Publications, Films and Computer Games) Enforcement Act 1996* and the proposed amendments to that section regarding the display of MA15+ and R18+ games.
- The need for parents to take an active role in assessing the games used by their children, and that the classification system can only function effectively if its decisions are supported by purchasers.
- That possession or distribution of RC (Refused Classification) material is and remains an offence.

In summary, based on the overriding principle that the best interests of children and young people must be paramount, I continue to oppose the implementation of the R18+ classification for computer games.

Yours sincerely ,



MICHELLE SCOTT

Commissioner for Children and Young People WA

5 October 2012

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<sup>3</sup> Attorney-General's Department 2010, *Literature Review on the impact of playing violent video games on aggression*, Commonwealth of Australia, p.42

<sup>4</sup> *Commissioner for Children and Young People Act 2006*, section 3



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Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs

Dear Ms Dennett

**Inquiry into the Classification (Publications, Films and Computer Games) Amendment (R+18 Computer Games) Bill 2012**

I welcome the opportunity to provide comment to the Senate Standing Committee on Legal and Constitutional Affairs on the Inquiry into the *Classification (Publications, Films and Computer Games) Amendment (R+18 Computer Games) Bill 2012*.

**Role of Commissioner for Children and Young People WA**

I was appointed as Western Australia's (WA) inaugural Commissioner for Children and Young People in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act). Under the Act my role is to advocate for the half a million Western Australian children and young people under the age of 18, specifically having responsibility for advocating for, promoting and monitoring their wellbeing.

Under the Act I must observe the following guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.
- The contributions made by children and young people in the community should be recognised for their value and merit.
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account.
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

In performing my functions the best interests of children and young people must be my paramount consideration. I must give priority to, and have special regard for, the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.

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I am also required to have regard to the *United Nations Convention on the Rights of the Child*.

It is with these responsibilities in mind that I make my submission.

### **Position on the introduction of an R+18 Computer Games classification**

I have previously contributed to several submissions by the joint Australian Children's Commissioners and Guardians (ACCG) regarding the Commonwealth's proposal to amend the Australian National Classification Scheme to introduce an R 18+ classification and the draft Guidelines for the Classification of Computer Games.

I do not support the introduction of an R 18+ classification category for computer games because of:

- the increased availability of, and risk of exposure to, high impact content including violence, domestic and sexual violence and illicit drug use;
- the potential negative impacts of exposure to R 18+ computer games, particularly for vulnerable or at risk children; and
- the difficulties parents and regulators experience in monitoring and controlling children's access to computer games.

Additionally the ACCG recommended that the introduction of an R 18+ classification be delayed until the completion of the Australian Law Reform Commission's (ALRC) review of the National Classification Scheme to enable any recommendations arising from it to be implemented. The final ALRC report was tabled in Parliament on 1 March 2012. While public consultation during the two years of the ALRC review reportedly "...demonstrated strong support in favour of the introduction of an R+18 category for computer games"<sup>1</sup>, I would like to take this opportunity to reiterate the shared concerns of the Australian Children's Commissioners and Guardians outlined above.

### **Other previous submissions of relevance**

As Commissioner for Children and Young People I have contributed to and endorsed several other submissions relevant to this Inquiry. They are as follows:

#### **1. Submission to the Discussion Paper on the ALRC's Review, November 2011**

This submission supported the inclusion and intent of the eight guiding principles for reform. However I recommended that guiding principle 3: 'Children should be protected from material likely to harm or disturb them' should be strengthened in accordance with Article 3.1 of the *Convention on the Rights of the Child*, with the best interests of the child being the driving consideration. This should be the principle that is explicitly recognised in laws, regulations and policies affecting them. I do not believe it is sufficient to only

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<sup>1</sup> Explanatory Memorandum, *Classification (Publications, Films and Computer Games) Amendment (R+18 Computer Games) Bill 2012*. The House of Representatives, The Parliament of the Commonwealth of Australia, p. 1.

recognise children and the impact of material on them without considering their best interests.

Including a 'best interests of children' principle in the guiding principles would ensure they are taken into account in the development of a National Classification Scheme. In this way better consideration will be given to the safety, protection and wellbeing of children and young people when balancing competing principles, including guiding principle 1: 'Australians should be able to read, hear, see and participate in media of their choice'.

In this submission, I also expressed my concern about a National Classification Scheme that includes a co-regulatory approach. I am of the view that industry codes of practice and self-regulation currently in place, for example in advertising and print media, are not sufficient to ensure the safety, protection and wellbeing of children and young people. This is particularly so in regards to alcohol and food advertising and the sexualisation of children in a range of media. For example, there is strong evidence that the current self-regulatory approach to alcohol advertising does not effectively protect young people.<sup>2 3</sup> Similarly recent research commissioned by the South Australian Government has found that self-regulatory food industry initiatives regarding 'junk food' advertising during children's television viewing times have not been successful in reducing this type of advertising to children and young people generally.<sup>4</sup>

If co-regulation is pursued then I would wish to see, as a minimum, that the 'best interests of the child' principle is incorporated into the industry classification codes of practice. Additionally, to ensure the 'best interests of the child' are considered in an informed way the 'authorised industry classifiers' (classifiers of all media content other than that to be classified by the Classification Board) should include experts in the field of child wellbeing, development, psychology or similar.

2. Joint submission with three other Children's Commissioners to the ALRC's Issues Paper on the Review, July 2011

This submission focused on the importance of acting in the best interests of children and of their rights under the *United Nations Convention on the Rights of the Child*, in particular their rights of participation (including in the Review), to access information and to the protection from harm.

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<sup>2</sup> McCusker Centre for Action on Alcohol and Youth 2011, *Alcohol and Young People: Solutions*, Available: <http://www.mcaay.org.au/component/attachments/download/4.html>

<sup>3</sup> Foundation for Alcohol Research and Education *Marketing and Promotions*, Available: <http://www.fare.org.au/policy-advocacy/alcohol-markting-and-promotions/>

<sup>4</sup> CSIRO 2011, *Television food Advertising to Children in South Australia*, Available: <http://www.sahealth.sa.gov.au/wps/wcm/connect/378f4e80490e0c47b03ff47675638bd8/CSIRO-TV-food-ads-children-SA-PHCS-HPB-201103.pdf?MOD=AJPERES&CACHEID=378f4e80490e0c47b03ff47675638bd8>



3. Submission to the Senate Legal and Constitutional Affairs References Committee's Inquiry into the Australian film and literature classification scheme, March 2011

My submission focused on:

- The importance of directly involving children and young people in decisions that impact on them and taking their views into account in the development of laws, policies and programs.
- The important role the classification scheme has in enabling consumers, including children, young people and parents, to make informed choices about what they watch, read and listen to.
- The safety, protection and wellbeing of children and young people under 18 years should be paramount.

These issues are also relevant to this Inquiry and I therefore reiterate their importance.

**Improving legislation for children and young people**

One of my legislated responsibilities is to review and monitor laws which may affect the wellbeing of children and young people. With this responsibility in mind I have published guidelines to help government agencies assess draft legislation, regulations and policies from the perspective of children and young people's wellbeing, with the intent of producing laws that better meet their needs and interests. My publication *Improving legislation for children and young people* is available on my website [www.ccyp.wa.gov.au](http://www.ccyp.wa.gov.au)

Thank you for the opportunity to provide comment on the Inquiry into the *Classification (Publications, Films and Computer Games) Amendment (R+18 Computer Games) Bill 2012*. Should you require any further information on the issues I have raised I am more than happy to assist.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

7 March 2012

## **The Commission for Children and Young People and Child Guardian**

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

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**Advice to:** Australian Government Attorney-General's Department and the Standing Committee of Attorneys-General  
**Topic:** Commonwealth Guidelines for the Classification of Computer Games  
**Date due:** 15 July 2011

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Thank you for providing the Australian Children's Commissioners and Guardians (the ACCG)<sup>1</sup> with the opportunity to comment on the draft Commonwealth Guidelines for the Classification of Computer Games (the guidelines), which include the proposed criteria for an R18+ category for computer games. The Commissioners and Guardians collectively have a legislated responsibility to promote and protect the rights and wellbeing of Australian children and young people under the age of 18.

The 2010 submission made by the ACCG in relation to the classification of computer games did not support the introduction of an R18+ category. While the ACCG still has concerns about the introduction of an R18+ classification, it notes that the guidelines have made some positive attempts to consider the interests of children and young people in classifying computer games. However, it is the ACCG's firm view that more work needs to be done in developing clear guidelines for depictions of particular types of violence. To this end, the ACCG notes the *Review of the National Classification Scheme: achieving the right balance* report from the Senate Legal and Constitutional Affairs References Committee, which highlighted concerns in relation to the inadequate protection of children under the current National Classification Scheme and the ineffectiveness of enforcement mechanisms.

### **Summary of the Australian Children's Commissioners and Guardians' position:**

The ACCG supports the specification in the guidelines that descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years will be refused classification.

The ACCG recommends that:

1. in relation to depictions of sexual violence across the M, MA15+ and proposed R18+ classification, the guidelines be reviewed to ensure that the M classification category is subject to a stricter test regarding what is acceptable under the guidelines. The current wording of the proposed guidelines implies a potentially weaker threshold for acceptable depictions of sexual violence in the M category compared to the MA15+ and the R18+ category

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<sup>1</sup> Contributing members of the Australian Children's Commissioners and Guardians are: Commissioner for Children and Young People and Child Guardian, Queensland, Ms Elizabeth Fraser; Children and Young People Commissioner, Australian Capital Territory, Mr Alasdair Roy; Guardian for Children and Young People, South Australia, Ms Pam Simmons; Commissioner for Children, Tasmania, Ms Aileen Ashford; Commissioner for Children and Young People, New South Wales, Ms Megan Mitchell; Office for Children – Acting Children's Guardian, New South Wales, Mr David Hunt; Child Safety Commissioner, Victoria, Mr Bernie Geary; Commissioner for Children and Young People, Western Australia, Ms Michelle Scott and Children's Commissioner, Northern Territory, Mr Howard Bath.



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2. the potential impact of depictions of domestic and family violence is expressly taken into account when classifying or refusing to classify material
3. a public education campaign be implemented to develop awareness about the types of material which may be present in computer games available for purchase in Australia, and
4. a final decision in relation to the introduction of an R18+ classification for computer games be delayed until completion of the Australian Law Reform Commission's (ALRC) National Classification Scheme Review. Furthermore, in the event that a decision is made to adopt an R18+ classification for computer games, its introduction should be delayed to enable any recommendations made as a result of the ALRC Review, which provide for the safety and wellbeing of children to be implemented.

### 1. Require a stricter test for M classifications regarding depictions of sexual violence in computer games

The guidelines indicate that some level of sexual violence is acceptable in not only the proposed R18+ category of games, but also in the MA15+ and the M categories. The M category has no legally enforceable age restriction on who can buy these games, whereas MA15+ classified games are available for purchase by young people aged 15 and over. In effect, this would mean that children and young people could have access to video games containing depictions of sexual violence.

The guidelines also appear to contain a possibly weaker threshold for acceptable depictions of sexual violence in the M classification category compared to the legally restricted MA15+ and R18+ categories. The guidelines specify that for the M classification, sexual violence should be *very limited and justified by context*. Conversely, the MA15+ AND R18+ guidelines specify that *sexual violence may be implied, if justified by context*. This appears to allow for sexual violence to be actually exhibited in M rated games, yet possibly only implied in games subject to stricter classification.

Although the ACCG notes that the hierarchy of impact detailed in the guidelines means that the impact of particular material in the M classification can only be *moderate*, the ACCG recommends that greater clarity is provided in relation to acceptable depictions of sexual violence across the various categories and that a stricter test for acceptable depictions of this type of violence be applied for the M and MA15+ categories than for the R18+ category (should this category be introduced).

The ACCG supports the guidelines' specification that gratuitous, exploitative or offensive depictions of sexual violence or sexual violence related to incentives and rewards will be Refused Classification.

### 2. Expressly consider the potential impact of domestic and family violence when classifying video games

The ACCG is concerned that the guidelines do not contain any particular detail on how domestic and family violence will be considered for classification purposes. The

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introduction of an R18+ category of video games could potentially result in high impact domestic violence content games being legally distributed in Australia.

The ACCG recommends that the guidelines provide guidance on how this type of violence would be dealt with for classification purposes and that the potential impact of this type of violence is expressly taken into account when classifying (or refusing to classify) material.

### **3. Public education campaign to explain the nature of material in computer games**

A public education campaign should be undertaken to provide consumers, particularly parents and care givers, with information about the nature of material which may be present in computer games sold in Australia.

The education campaigns should be tailored for particular contexts, for example taking into account how an R18+ classification category might have implications for the restrictions on classified material imposed on prescribed areas in the Northern Territory by the Commonwealth government intervention.

### **4. A final decision on the introduction of an R18+ classification be delayed until the completion of the ALRC's National Classification Scheme Review and if the R18+ classification is to be adopted, its introduction be delayed to enable any recommendations made as a result of the ALRC review to be implemented**

The ACCG notes the specific mention in the Australian Law Reform Commission's terms of reference for its National Classification Scheme Review of *'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'*.

In the event that the decision is made to implement an R18+ classification for computer games, the introduction of this category should be delayed until the completion of the Australian Law Reform Commission's National Classification Scheme Review. This would enable any recommendations from this review which provide for the safety and protection of children and young people to be taken into account.

Please do not hesitate to contact Clea Viney, A/Senior Policy Officer, Policy, Strategic Policy and Research Program (ph:07 3211 6954; e-mail [Clea.Viney@ccypcg.qld.gov.au](mailto:Clea.Viney@ccypcg.qld.gov.au)) should any aspects of this advice require clarification.