

5 October 2018

Dear Committee,

Submission to Select Committee on Personal Choice and Community Safety

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment.

Eros wholeheartedly supports measures to legalise adults-only goods and services which do not pose harm to the community. We urge the Committee to consider the following measures in Western Australia:

1. Removal of criminal laws on brothel-keeping;
2. Legalisation of nicotine containing e-cigarettes;¹
3. Removal of laws which censor X18+ material being produced, exhibited, sold or bought;²
4. Legalisation of recreational cannabis.³

Current prohibitions on adults-only goods and services are driven by moralistic posturing about personal choices, rather than public interest considerations.

Eros would appreciate the opportunity to discuss these proposals and provide further insight into the adults-only goods and services sector.

Kind regards,

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The Eros Association

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¹ See attached Appendix 1 Eros Vaping submission to Personal Choice and Community Impacts Inquiry

² See attached Appendix 2 Eros Adult Media submission to Personal Choice and Community Impacts Inquiry

³ See attached Appendix 3 Eros Cannabis Policy Brief



Personal choice and community impacts inquiry submission

a) The sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;

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The Eros Association is a membership based organisation, consisting of businesses which provide goods and services to Australian adults.

Our members are mostly small businesses, who are passionate about providing quality goods and services to adult consumers, including sex toys and entertainment, erotic enhancement products, herbal remedies and enhancement products, personal vaporisers, various adult services and products relating to adult cultures, such as products relating to cannabis culture (t-shirts, books, magazines, etc.).

Regulating personal vaporisers, including the sale of nicotine-containing liquids will give current users of personal vaporisers confidence that the market is properly regulated. It will also allow those who wish to use personal vaporisers to lower or cease their use of combustible tobacco products to enter the market. Finally, it will stop the wide-spread practice of importing nicotine without a prescription, which sends business overseas, leaves Australian consumers with product of dubious quality and which is against the law, but widely unknown.

Regulating personal vaporisers will have many benefits for the Australian community:

- Product quality controls
- Manufacturing standards
- New business for Australians
- Clear and consistent regulatory system for nicotine products
- Competitive alternative to combustible tobacco

Product quality controls

There is currently no regulation for vaporiser liquid contents, other than a ban on nicotine-containing liquids.

The European Union has been investigating a range of ways to regulate personal vaporisers and the liquids, including nicotine-containing liquids.

They have recommended that the sale of nicotine-containing liquids with a concentration lower than 5ng/ml of nicotine could be sold as adult-restricted products, while those from 6-20ng/ml would require prescription in order to purchase.

They are also looking at restricting which flavours can be made available to consumers, in order to ensure that flavours do not appeal to children.

Scientific journal *Therapeutic Advances in Chronic Disease's* article, '*Achieving appropriate regulations for electronic cigarettes*' made the point that personal vaporisers are competitive products to smoked tobacco and that

any regulation of the market should be careful to avoid over-regulating personal vaporisers which would favour the tobacco market.

Overall, the restrictions that some stakeholders wish to impose on e-cigarettes appear to be most often disguised in the form of the same regulations used for medicinal products. Excessive and ill-conceived regulation will marginalize these products by making them unattractive to smokers and less competitively priced compared with tobacco products by preventing clear communication about reduced risks or by making them hard to access.¹

Regulating the supply and manufacture of nicotine-containing liquids is a vital step in the overall regulation of personal vaporisers, as these particular liquids are those which give consumers a direct competitive alternative to combustible tobacco. The current status quo of prohibiting the sale of nicotine-containing liquids unless one has a prescription effectively provides a market advantage to tobacco companies.

Manufacturing Standards

Though rare, there have been examples of poorly manufactured personal vaporisers exploding or catching fire. The U.S. Fire Administration released a document, acknowledging the rare problems and providing some advice on how to avoid these problems.

The danger is very minimal. There are 2.5 million users of personal vaporisers in the United States and only 25 separate incidents of explosion or fire were reported between 2009-2014.²

Australian consumers have a right to be protected from dangerous products. Implementing basic manufacturing and testing standards for personal vaporisers would help ensure the market is standardised for safety.

New business for Australians

There are a small number of personal vaporiser vendors who have opened up in Australia, but their business is limited due to the inability to sell nicotine-containing liquids.

1 Saitta, D., Ferro, G. A., & Polosa, R. (2014). Achieving appropriate regulations for electronic cigarettes. *Therapeutic Advances in Chronic Disease*, 5(2), 50 - 61.
<http://doi.org/10.1177/2040622314521271>

2 U.S. Fire Administration, *Electronic Cigarette Fires and Explosions*, October 2014
<https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf>

Whether consumers and suppliers are being willfully naïve or purposefully misleading is unclear, but it has become vape folklore³ to believe that it is legal for a person to import up to 3 months personal supply of nicotine-containing liquids. This is only a half truth, as consumers still require a prescription from their doctor to be legally allowed to import any nicotine-containing liquids.

This represents a failure of the current regulatory system, maintained by the TGA and a market failure for Australian businesses and government, who are missing out on profit and tax revenue from the sale of nicotine-containing liquids.

Allowing the sale of nicotine-containing liquids will ensure that personal vaporisers can compete directly with combustible tobacco products.

Clear and consistent regulatory system for nicotine products

Personal vaporisers are a direct competitive product to combustible tobacco products. World leading expert in addiction, Wayne Hall has made this point in an article in *The Conversation* and the journal *Addiction*.

“The ban on e-cigarettes is ethically questionable. It’s a paternalistic policy that denies adult smokers the right to use a less harmful form of nicotine.”⁴

Regulation of personal vaporisers needs to take into consideration two important points:

1. *Personal vaporisers (with nicotine) are a direct competitor to combustible tobacco products.*
2. *Personal vaporisers do not pose the same risks as combustible tobacco products.*

Each state and territory has chosen to regulate personal vaporisers differently, often with heavy burdens being threatened or placed onto the industry for personal vaporisers. The inconsistent regulatory environment makes it very difficult for businesses to enter the market or stay in the market.

Without consistency of regulation between personal vaporisers and combustible tobacco products, the status quo of combustible tobacco will be maintained, leaving consumers without a viable and potentially far less harmful alternative.

3 Question 13, Vaper Empire FAQ, <<http://www.vaperempire.com.au/frequently-asked-questions/>>

4 W. Hall, *The Conversation*, “Don’t ban e-cigarettes, sell them under tight regulation” 05/06/2015 <<https://theconversation.com/dont-ban-e-cigarettes-sell-them-under-tight-regulation-42608>> accessed 22/07/15

22 April 2016

CLASSIFICATION OF PUBLICATIONS, FILMS AND COMPUTER GAMES

SENATE STANDING COMMITTEE ON ECONOMICS: PERSONAL CHOICE AND COMMUNITY IMPACTS INQUIRY

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1 INTRODUCTION

Established in 1992, the Eros Association Inc is the industry association for the Australian adult retail and entertainment industry. The Australian adults-only industry is a growing force, expanding to a broader market of customers with a greater diversity of products. The modern Australian adults-only industry is a contemporary landscape of superstores, emporiums, industry suppliers and web stores. Our members include adult novelty stores, tobacconists, herbal shops, adult entertainment, tattoo parlours, body piercing studios, escort agencies, adult film makers, and industry wholesalers and distributors.

1.1 Definitions

This submission mostly concerns adult content that is likely to be classified X18+ if it is a film, or Category 1 or Category 2 restricted for publications. This can otherwise be described as 'sexually explicit adult content', 'pornography', 'adult media' or 'non-violent erotica' involving adults performing or modelling real or simulated consensual sex acts. The use of these terms is interchangeable for the purposes of this submission.

1.2 Background

The Australian classification scheme, insofar as it applies to adult and restricted media, has completely collapsed, leaving many people exposed to prosecution from outdated classification laws and with limited personal freedom to read, see or hear adult content. In addition, the Australian taxpayer is still being asked to fund an organisation and a scheme that delivers limited benefits and a lack of tangible results with respect to adult content.

The current system of official classification in Australia, is now a system of censorship. Adult content has a right to exist in society, free from the calls of those who feel offence at the fact that it exists. Rather than focusing on the prohibition of offline sexually-explicit adult content, the focus should be on ensuring that access to this content is restricted in order to protect minors. This should include providing education and resources to parents to assist them in supervising and monitoring their chil(ren)'s internet activity.

In 2012, the Australian Law Reform Commission (ALRC) published *Report No 118 Classification – Content Regulation and Convergent Media* after a significant public consultation into the effectiveness of the National Classification Scheme. This report acknowledged that the classification scheme as it currently stands has not kept pace with technology, which is unsurprising given that the previous review undertaken by ALRC was in 1991.

The report outlined a number of recommendations, including the creation of a new Media Content Act that would replace both the *Broadcasting Services Act 1992* (Cth) and the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). Features of the proposed new act included:

- Dissolving states and territories responsibility for classification;
- The homogenisation of classification decision markers focusing on content rather than delivery platform including abolishing 'Refused Classification', allowing some fetish-related consensual sex acts to be included in X18+ classification and the establishment of a new marker called 'Prohibited' to reflect content that is already illegal such as child sexual abuse material;
- Expansion of the role for industry developed codes and the establishment of a single regulator; and
- Remove the mandatory requirement to classify most adult content and a shift in focus to taking reasonable steps to restrict content from minors.

Very few of these recommendations have since been adopted, with exception of the introduction of R18+ computer games. The adults-only industry has been eagerly awaiting legislative reform and a clear signal from government so as to inform business decisions and long-term planning. This includes the potential

for technologically driven innovation that could address, for example, the large amount of adult content that is pirated.

With the Classification Branch now residing within the Department of Communications (formally the Department of the Attorney-General) it is time for the government to implement a classification system for the 21st Century.

2 THE NATIONAL CLASSIFICATION CODE

Classification decisions are to give effect, as far as possible, to the following principles:

- a. adults should be able to read, hear and see what they want;
- b. minors should be protected from material likely to harm or disturb them;
- c. everyone should be protected from exposure to unsolicited material that they find offensive;
- d. the need to take account of community concerns about:
 - i. depictions that condone or incite violence, particularly sexual violence; and
 - ii. the portrayal of persons in a demeaning manner.

2.1 Adults should be able to read, see, hear and play what they want

The Australian Study of Health and Relationships states that over two-thirds of men and one-fifth of women viewed adult content in some form in the 12-month period leading up to the research survey.¹

2.1.1 Contradictions between federal and state/territory classification statutes

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) allows for the classification of offline adult content, however, each state in Australia, through their respective classification enforcement statutes, have ensured that the legal status of adult content remains in a grey area.

Any adult can legally buy and possess X18+ rated films (with the exception of Western Australia)² but it is illegal for an adult retail store (an age-restricted premises) to sell such a film in all states. With respect to restricted publications (Category 1 or Category 2), however, all state and territories (except Queensland) allow for the sale, purchase and possession of these products. This presents a contradiction where still images of a consensual sex are treated differently to a moving image of the very same act.

In addition, the *Broadcasting Services Act 1992* (Cth) regulates online content, including the Restricted Access System (RAS) Declaration that requires sites with an “Australian connection” to provide age-verification systems for content that is likely to be classified MA15+ or R18+. Content that is likely to be classified as X18+ or RC (refused classification) is prohibited. This prohibition is arbitrary given that any adult content hosted overseas is not subject to classification nor the RAS Declaration.

2.1.2 X18+ licensing in the Australian Capital Territory

Part 6 of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT) allows for the sale of X18+ under an annual licence currently issued by Access Canberra. The prescribed annual fee ranges from \$15,840 for sale only, to \$31,681 for businesses wishing to copy and sell X18+ films. This does not include the cost of classifying the film, which is addition to the prescribed licence fee.

The cost of the X18+ licence is cost prohibitive for adult retail businesses operating in the ACT. It is highly unlikely that the cost of the X18+ licence would be recovered through the sale of adult DVDs due to the significant decline in these type of sales.

Actions of customs and the Classification Board caused the shut down of the only major classifier of adult titles which was operating out of the ACT (see section 1.2.3, below). This has left the market flourishing in

¹ Richters, J., de Visser, R., Badcock, P., et al, ‘Masturbation, paying for sex, and other sexual activities: the Second Australian Study of Health and Relationships’, *Sexual Health*, 2014, 11(5), pp. 461-471

² *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA), s. 81 (2)(b)

unregulated and unclassified adult material or retailers relying on old titles that have already been classified to a market disadvantage. In doing so, the Classification Board undermined the ACT's regulatory scheme for X18+ films which completely relied on new classified products. This scheme, which once boasted 14 license holders, now has only three and is about to have none.

2.1.3 Australia's only wholesale adult film classifier no longer operates

Ninety-five per cent of Australia's legal X18+ films were supplied to the market place by one of our members until recently. They imported adult films from overseas to supply the Australian market. For 20 years they imported a single master film and edited it to meet the tough Australian standards required in the X18+ category and then destroyed the imported master.

This member was the major classifier of X18+ films in Australia between 1998 and 2006. From around 2007 they became the only significant trader classifying these films at all. In 2011 they were informed by customs that they could no longer import an original master of an overseas film for editing purposes without an import permit signed by the Director of the Classification Board.

Subsequent deliveries of master films (and even Australian-classified finished DVDs) to our member were seized and held by customs for indefinite periods for varying reasons - some of which bordered on irrational. For example, the music score on one particular adult title was alleged to have infringed a Disney title but was then later released with no comment.

After many months and correspondence from our member's legal team, the permit issue was then finally refused in writing by the Classification Board on various grounds including the reputation of the company, it's alleged inability to comply with the draft import permit and a fear that the Classification Board would become flooded with import permit applications from other parties.

Our member subsequently applied through the courts to have the ability to receive an import permit. After many months of legal proceedings and under appeal, the courts ruled that the Classification Board did have the jurisdiction to grant our member an import permit, subject to the parties agreeing on the terms. Despite efforts by our member and officers of the Eros Association to meet with Classification Board officials to discuss the terms of the permit, for various reasons, members of the Classification Board were never available and clearly undermined the court's decision.

Due to plunging sales of classified DVDs in Australia and the inability to receive an import permit, our member finally decided to cease importing masters and classifying new adult titles. In Dec 2013 they closed their DVD editing suite, retrenched 18 staff in all and closed the Canberra distribution warehouse. The Adult Industry Copyright Organisation (AICO), was disbanded and ceased pursuing copyright infringement and film piracy in Australia on adult films.

Our member is no longer releasing any new titles into the Australian market and ceased all adult film sales entirely from June 30, 2014. The market is now completely unregulated and dominated by unclassified original versions of overseas adult films of every genre and persuasion.

2.1.4 The restrictive nature of X18+ classification means that some consensual sexual acts between adults are Refused Classification

According to the *Guidelines for the Classification of Films (2012)* (a legislative instrument of the Classification Act), there are a number of consensual sexual acts between adults that 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 and discipline; sadomasochism; and dominant and submissive) community, and members of the lesbian, gay, bisexual and trans community (LGBT).

“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; ...”*

Guidelines for the Classification of Films 2012

The practice of these fetishes is not illegal, so why should the depiction of these consensual sexual acts be made illegal? Furthermore, for the guidelines to call these acts “offensive or abhorrent” is insulting to those people who engage in BDSM and other fetish play. It is estimated that at least three per cent of the Australian population engage in BDSM,^{3,4,5} although this may be underestimated given that practice of this group of sexual fetishes is highly stigmatised.⁶ The practice of these fetishes is known to be higher in the LGBT community, so in some ways the restriction of the depiction of these consensual sex acts is discriminatory.⁷ The guidelines therefore establish a limited means through which adult media can be classified, allowing for punitive censorship of adult media and adding unnecessary constraints on legal, tax-paying adult retail businesses.

2.1.5 Assumptions of age based on appearance

Customs officials have contributed to the significant business disruption of many of our members. The requirement for adult content, whether that be a film or publication, to not be sold unless it has been classified contradicts customs officials’ practices. Customs officers are not suitably educated nor qualified to be making decisions about the classification of content. This is in part due to the illogical specification that a person appearing to be a minor, even though they are an adult, is to be refused classification.

Officials have used discriminatory practices including using physical attributes such as small breasts, or in some cases the fact that the women are of Asian decent, to make a determination of the performers age (somewhat counter to section 5 of the *Sex Discrimination Act 1984* (Cth) and the *Racial Discrimination Act 1975* (Cth)). This is irrespective of the fact that a major adult content producer from the USA (such as Hustler Magazine) would never use an underage performer and that any adult content production company can produce records confirming that the performer is of legal age (2257 regulations)⁸ which can be audited by the FBI. It begs to question the rationale behind such discriminatory practices and the fact that wholesalers and retailers of adult content have never and will never sell child sex abuse material and that the likely source of illegal content is via peer-to-peer networks, the Deep Web or sophisticated virtual private networks. This demonstrates a lack of understanding of the nature of this horrific and illegal content. To place it in the same category as legal consensual sexual activity is offensive.

Furthermore, when customs officials have questioned adult content entering the country, they choose to hold up the entire shipment, rather than just hold on to the ‘questionable’ content. The shipment is then ‘quarantined’ by a private company that essentially extorts our members at a considerable cost per day, whilst customs officials drag the matter out through the legal system, again at a significant cost to our members. The outcome has always resulted in favour of our members, but without explanation from customs officials. This constitutes an abuse of power and discriminatory moral-based practices against legal tax-paying adults-only businesses.

¹ Ibid.

² Digital Quarter, ‘The Great Australian Sex Census 2013-14’, *Sex Census*, < <http://sexcensus.com.au/wp-content/uploads/2015/09/results-13-14.pdf>>, 2015, (accessed 1 March 2016), pp. 10

³ Richters, J., de Visser, R., Rissel, C., ‘Demographic and Psychological Features of Participants in Bondage and Discipline, “Sadomachochism”, Dominance and Submission (BDSM): Data from a National Survey, *The Journal of Sexual Medicine*, 2008, 5(7), pp. 1660-1668

⁴ Bezreh, T., Weinberg, T., Edgar, T., ‘BDSM Disclosure and Stigma Management: Identifying Opportunities for Sex Education, *American Journal of Sexuality Education*, 2012, 7(1), pp. 37-61.

⁵ Richters, J., et al, 2014, op cit.

⁶ *United States Code of Regulation, Title 18, s.2257*

2.2 Minors should be protected from material likely to harm or disturb them

Our members take the issue of restricting access to their stores to adults-only very seriously. Offline adult content should not be able to be accessed by minors. Primarily through planning development codes at the state and local government level, age-restricted premises are a highly effective means of achieving intended aims. Our members adhere to a Code of Practice that specifically requires them to ensure ID checks are undertaken for anyone who appears under the age of 25.

2.2.1 Association of Sites Advocating Child Protection (ASACP)

ASACP is a US-based not-for-profit company that provides services to adults-only sites, government, parents and community on how to protect children from accessing adult content online. This organisation is also concerned with illegal online content, namely child sexual abuse material (or child exploitation). ASCAP provide reporting and investigation into the ownership of sites containing illegal material in partnership with international agencies, the Federal Bureau of Investigation (FBI) and the National Center for Missing & Exploited Children, and International Tiplines (USA).

ASACP have also developed the Restricted to Adults (RTA) coding for websites featuring adult content. RTA is an excellent example of a self-regulatory mechanism toward protecting minors from inappropriate content. The RTA code assists parents in filtering content they do not wish their children to access. The code is voluntary, free to use and universal. Eros encourages members to utilise the code in the development of online webstores and for businesses involved in the production of adult content.

2.2.2 Government mandated Internet filters

There have been a number of attempts in curbing the civil liberties of adults by arguing for a mandatory government-implemented internet filter to protect minors from inappropriate content and to tackle access to illegal content such as child sexual abuse material. Our members acknowledge that development of technology and faster internet speeds has resulted in greater access to online adult content. However, contrary to popular belief, it is estimated that only four per cent of the internet is legal adult content.⁹ Furthermore, it is unlikely that content featuring illegal activities can be found on the World Wide Web as it is more likely to be shared in sophisticated private peer-to-peer networks or found on the Deep Web (also known as the Dark Web or Hidden Web).

The Eros Association has previously stated publicly our opposition to mandatory internet filters for a number of reasons. The most pertinent issue is that there is too much potential for government censorship that extends beyond protecting minors from inappropriate content. Such a filter is also highly impractical and easy to get around for any technology savvy teenager. The government needs to pay close attention to the failure of the opt-out internet filter implemented in the United Kingdom.

The continued use of Restricted Access Systems, as is the case through the *Broadcasting Services Act 1992* (Cth) may no longer be an effective tool in managing online age verification. Some recommendations coming out of the ALRC review will be discussed later in this submission.

2.2.3 Abolition or prohibition of adult content as a means of protecting children

The Eros Association and our members do not believe that the abolition or prohibition of adult content will be effective at protecting minors from viewing inappropriate content. The majority of advocates for this position have a moral or ideological opposition to the existence of adult content and rarely are their views evidence-informed. Any claim that suggests that individuals who consume adult content are more likely to

⁹ Ogas, O., Gaddam, S., 'A Billion Wicked Thoughts: What the World's Largest Experiment Reveals about Human Desire', Dutton, New York, 2011.

be sexually violent or sexually abuse minors is not grounded in fact, in much the same way that violent films or computer games do not cause individuals to perform violent acts.^{10,11,12,13}

2.2.4 The role of education

Education for parents, children and the community about online safety is the most effective way at ensuring that minors are protected from inappropriate content.¹⁴ Resources should be developed by the education and compliance team within the classification branch for parents and teachers on how to talk to teenagers about adult content. What should be emphasised is that adult content constitutes a fantasy and not reality. Furthermore, sexuality education that is compulsory, universal, age-appropriate and based on evidence should instead be a priority so that adult content is not left to be the unofficial sex educator. The reality is that sexuality and sexual desire develops considerably during a person's teenage years. Parents need to be aware that if sex education is left until their child reaches adulthood, the young person is less likely to be able to negotiate consent and safer sex and is more likely to be involved in sexual and physical violence (perpetrator and/or victim).

2.2.5 Perceptions of the adult industry

In 2001, the Eros Association published the *Hypocrites* report which identified and discussed convicted child sex abusers from the Catholic Church. At the time, around 20,000 people were employed by the church, similar in size to the adults-only industry. While over 200 convictions of paedophile priests were on the public record, not one single person employed in the adults-only industry has been convicted of a sex crime. While more incidence of child sexual abuse has been uncovered across multiple religious institutions, there remain no convictions of sex crimes in the adults-only industry. The Eros Association were the first organisation to call for a Royal Commission into Child Sexual Abuse, an issue that was later taken up by the Australian Sex Party when the party formed in 2009. The Australian adults-only industry maintains their commitment to reducing incidences of child sexual abuse.

2.3 Everyone should be protected from exposure to unsolicited material that they find offensive

General members of the public are protected from viewing offline adult content primarily through state and territory planning controls for age-restricted premises. That is, a person is not exposed to adult content unless they 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.

The use of classification markers and content warnings, in our opinion, achieves the aims of the above stated principle, including concealment of covers via the use of plastic wrapping around restricted publications.

For online adult content, an individual simply need not search for it. Any suggestion that adult content is unavoidable is completely false.

¹⁰ Richters, J., et al, 2008, op cit.

¹¹ Ley, D., Prause, N., Finn, P., 'The Emperor Has No Clothes: A review of the 'Pornography Addiction' model, *Current Sexual Health Reports*, 2014, 6(2), pp. 94-105.

¹² McNair, B., 'Porn does not lead to rape culture', *The Conversation*, < <http://theconversation.com/porn-doesnt-lead-to-rape-culture-10957>>, 2012, (accessed 1 March 2016).

¹³ Barker, M., 'Asking whether porn causes sexual violence is the wrong question – here's why', *The Conversation*, <<http://theconversation.com/asking-whether-porn-causes-sexual-violence-is-the-wrong-question-heres-why-50685>>, 2015, (accessed 1 March 2016).

¹⁴ Nash, V., Marston, C., Adler, J., Livingstone, S., 'A grown-up conversation about children and porn online starts here', *The Conversation*, < <http://theconversation.com/a-grown-up-conversation-about-children-and-porn-online-starts-here-54848>>, 2016, (accessed 1 March 2016).

2.4 The need to take account of community concerns about depictions that condone or incite violence, particularly sexual violence and the portrayal of persons in a demeaning manner

As previously discussed, the limited range of consensual sex acts that are currently allowed within an X18+ film or Category 1 and Category 2 restricted publication means that most adult content depicting fetishes is Refused Classification. New legislation needs to define what specific acts are determined as sexual violence or demeaning, such as portrayals of sexual assault or rape, as discussed in the next section of this submission.

3 ALRC RECOMMENDATIONS FROM REPORT NO. 118

The Eros Association commends the ALRC for their robust and evidence informed report that details a series of key recommendations. We support the following recommendations, as outlined in ALRC Report No. 118.

3.1 A new classification scheme

The creation of the Classification of Media Content Act would replace both the *Broadcasting Services Act 1992* (Cth) and the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). States and territories would be absolved of their responsibilities in relation to classification enforcement. The federal government should consider developing a guidance note for states, territories and local government on appropriate planning development controls for age-restricted premises. Considerations such ground level access to comply with the Disability Discrimination Act and not requiring premises to operate in industrial areas should be made a priority so that legal adult businesses are not subjected to unnecessary regulation. This would also ensure that councils do not adopt quasi-prohibition of the sale of adult content through planning controls.

3.2 The regulation of online content should only include content hosted in Australia

The ALRC recommendation to include content directed at a significant Australian audience is too broad. Within the report there are conflicts between allowing for adult media to be voluntarily classified if it is likely to be classified X18+, whilst online content of this nature will be prohibited, or subject to a RAS or similar age-verification tool or warning. What constitutes a 'significant Australian audience' will need to be defined and may not be appropriate for adult content that is owned and/or hosted by an international provider. For example, it is hardly unlikely that the popular website www.pornhub.com will submit to any requirement for age-verification set by the Australian government, however, they may use warnings that require a person to click on a button confirming they are over the age of 18. It is unclear how the government will determine or measure the Australian audience of overseas sites, without monitoring and accessing metadata.

3.3 Classification of adult content

3.3.1 Development of an industry code by industry in partnership with the Classification Branch

The Eros Association would like to be able to develop industry codes to guide our members in determining what constitutes X18+ classification. This would be in partnership with the Classification Branch and Classification Board in a similar way that the computer games industry has developed an industry code for R18+ computer games. Such a code would also provide strong guidance to customs officials.

Classification should not be mandatory: wholesalers and retailers would not need to have content officially classified in order to sell, but would be required to submit content to be classified at the request of the Classification Board where a complaint about the content has been made. Therefore, content that is likely to be classified X18+ is legal to sell.

3.3.2 X18+ and Prohibited Content

The new scheme should homogenise all classification markers so that only one set of markers exist for all media irrespective of the type of media. For example, publications that are classified Category 1 Restricted and Category 2 Restricted would become X18+ to bring it in line with films with content of a similar nature. It should be noted however, that for this to process to be effective and not adversely affect our members, it would be essential that the X18+ classification be legal to sell.

As recommended by the ALRC, the X18+ classification should be expanded to include consensual sex acts between adults so that there is an alignment between what is legal to practice in real life is also legal to view. Refused Classification would be renamed 'Prohibited' and would reflect content that is already illegal such as child abuse material.

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eros policy brief on cannabis retail

Prepared by Jarryd Bartle

The Eros Association is Australia's industry association for adult goods and services. The following policy brief outlines Eros' position on recreational cannabis and suggests a clear set of principles for the legalisation of cannabis retail in Australia.

Why Legalise Recreational Cannabis?

There is a global trend toward the decriminalisation and legalisation of recreational cannabis.

Canada and New Zealand currently have proposals for legalisation, joining many parts of the United States and Uruguay in providing for a legal recreational cannabis market.

Eros supports cannabis legalisation in Australia for the following reasons:

- Over a third of Australian adults have consumed illicit cannabis at least once in their lifetime¹. This number has remained steady for decades.
- The current illicit cannabis market is a major revenue source for organised crime. Organised crime currently costs the Australian public \$36 billion dollars a year.² Legalisation would essentially collapse this flourishing black market.
- Legalising cannabis allows for better controls to ensure product safety and to ensure cannabis is not consumed by young people.
- Cost/benefit analysis has put the social and economic benefit of cannabis legalisation at \$727.5 million, largely due to increases in revenue from taxation.³

Eros Principles for Cannabis Retail

Many models for cannabis retail have been tried globally including the pharmacy model in Uruguay, dispensary model in the United States and coffee shop model in the Netherlands.⁴

Legalisation of recreational cannabis overseas has effectively restricted supply to adults and has not increased rates of dependency or addiction.⁵

Nevertheless, some issues of consumer safety have arisen – particularly around cannabis 'edibles'.⁶

¹National Drug Strategy Household Survey 2016: Detailed Findings

²The Costs of Organised Crime in Australia 2013-2014 Australian Crime Commission

³Shanahan, M and Ritter, 'A Cost Benefit Analysis of Two Policy Options for Cannabis: Status Quo and Legalisation' (2014) PLOS One Journal <https://doi.org/10.1371/journal.pone.0095569>

⁴European Monitoring Centre for Drugs and Drug Addiction, 'Models for the Legal Supply of Cannabis: Recent Developments' May 2016 <<http://www.emcdda.europa.eu/publications/pods/legal-supply-of-cannabis>>

⁵Dills, A, Goffard, S and Miron, J 'Dose of Reality: The Effect of State Marijuana Legalizations' Cato Institute, Policy Analysis No. 799

⁶Barrus, D., Capogrossi, K., Cates, S., Gourdet, C., Peiper, N., Novak, S., ... Wiley, J. (2016). Tasty THC: Promises and challenges of cannabis edibles. (RTI Press Publication No. OP-0035-1611). Research Triangle Park, NC: RTI Press. DOI: 10.3768/rtipress.2016.op.0035.1611

eros policy brief on cannabis retail

Eros has analysed the strengths and limitations of various cannabis retail models overseas and believes that the following principles should guide legislation in Australia:

- Cannabis retail should be formally legalised and not merely 'tolerated' at a municipal level as is the case in the Netherlands.
- Cannabis retail should occur within an age-restricted environment with clear store policies in place to counter access by young people.
- Cannabis retail should remain separate and distinct from tobacco retail and liquor retail.
- Cannabis retailers should be formally trained in cannabis and its effects.
- Cannabis 'edibles' should only be legalised in Australia if there are clear policies on adult-oriented packaging to ensure product is not unintentionally consumed by children.

Concluding Remarks

The adult retail sector is well placed to provide guidance to cannabis retail in Australia.

Providers of adult goods and services are 'age-restriction specialists' with a breadth of knowledge regarding regulated products.

The Eros Association will continue to provide advice to lawmakers to ensure cannabis legalisation occurs in a manner which is mindful of community concerns and prioritises consumer health and safety.

Eros Principles for Cannabis Retail

Formal Legislation



Age Restricted Environment



Specialist Staff Training



Separation from Tobacco Sales



Separation from Liquor Sales



Clear Packaging Guidelines for Edibles