

See submissions below and attached. Cheers, Carol O'Donnell,
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**RESPONSE TO THE NATIONAL CLASSIFICATION SCHEME REVIEW
ISSUES PAPER PRODUCED BY THE AUSTRALIAN LAW REFORM
COMMISSION (ALRC)**

**Question 1: In this Inquiry, should the ALRC focus on developing a new
framework for classification, or improving key elements of the existing framework?**

According to the ALRC Issues Paper the national classification system seems to work quite well as it appears well known, practical and supported by the Australian public (p 16). The following purposes outlined (p. 19) for regulating and classifying content seem good in this context. They nevertheless reflect a comparatively censorious and narrow view of classification, as defined by the court:

- Providing advice to consumers to help inform their viewing choices, including warning them of material they might find offensive;
- Protecting children from harmful or disturbing content; and
- Restricting all Australians from accessing certain types of content

Griffith has apparently observed that classification is different to censorship in that the latter is 'suggestive of public order and idea of the public good whereas classification is associated with the facilitation of informed choice in a community of diverse standards' (p. 19). In a historical context, censorship seems mainly associated with domination and repression of people. It is good to move away from this potential. However, the driving legislation, the *Classification (Publications, Films and Computer Games) Act 1995*, appears to refer narrowly to censorship, rather than to the search for truth and pleasure, which is ideally the foundation of a flourishing community life, often best brought to us by the mass media against the more ignorant, narrow and dominating forces of the past.

Classification and censorship are thus two different things and the ALRC appears engaged primarily in the latter. The objects of the Radiocommunications Act (1992) may assist more diverse inquiry which is more broadly and effectively undertaken in regional contexts related to education, information and entertainment content and its broader classification uses, including censorship. The aim may be conceived as enhancement and protection of the quality of life of a relevant people or individual. The act seeks management of the radiofrequency spectrum to maximise the overall public benefit by efficient allocation and use of spectrum. It seeks provision of the spectrum for use by agencies involved in the defence or national security of Australia, law enforcement, the provision of emergency services, or for use by other public or community services.

The common dictionary defines a framework as 'a structure into which completing parts can be fitted' and I do too. The UN addresses and deals in comparative regional frameworks in theory and in practice. Its many Conventions and related agreements aim at assisting the improvement of the quality of life, including through increasingly diverse

choices for all. This direction is ideally a break with the feudal assumptions of the past and present which have typically been brought to Australians from earlier and narrower common law and statute which is pre-scientific in many ways discussed in the attached.

It is irrelevant what the ALRC does as long as courts and lawyers rule us. Courts apply a feudal framework in which the lawyers' overwhelming aim is to win the battle. The narrowly feudal, rule bound assumptions and adversarial processes of courts encourage repeated adversarial behaviour across all communities, while crushing more scientific and democratic approaches to delivering the pleasure and truth we ideally seek from the world, instead of the reflection of want and oppression, which are death, fear, and war.

Let the media, which is ideally also the 'fourth estate', be the ideally open voice, researcher and judge of media, supported by politicians, who in an ideal democracy also clearly represent the people, in open consultation with relevant communities. See the attached discussion of Fairfax press direction and consider many related new approaches to regional development in the light of the need to protect and enhance the global heritage. These broader questions of governance and related classification are now to the fore in the discussion of the business of global media proprietors like Rupert Murdoch.

Question: Why classify and regulate content?

A. To give people wider and deeper access to pleasure and knowledge by assisting the continuing pursuit of improving democratic order and expression for all

The answer to the question of why one should classify or regulate content depends on what the ALRC means by 'classify' and 'regulate'. This refers back to the primary problem which is that laws drive us but often have no aims and key terms are hardly ever clearly defined in laws, and certainly not in ways consistent with the common dictionary.

'Classification' and 'regulation' are terms born of the European Enlightenment which encapsulated a new scientific concern with achieving better order and new knowledge or 'mastery' which this ideally brings. Pleasure and knowledge are ideally allied at birth. However, each child is born into a historical set of social and environmental forces much larger and broader than the mother and her immediate surroundings. What happens in history can help us all flourish or lead to the destruction of the self and others or many more. War is natural to lawyers. Law and legal privilege are based on controlling secret knowledge to frustrate clearer understanding and are anti-democratic and expensive.

The position of the UK White Paper on Development, as stated by the Australian Law and Justice Evaluation Issues Paper (2010) is that the UK will treat security and access to justice as a basic service, on a par with education. One wonders how else such services could logically be seen in a modern era - as a gift from God, a lord or queen? Article 3 of the 1948 Declaration of Human Rights states everyone has the right to life, liberty and security of person. The ideal point of legislation to remove discrimination is to allow all to be treated and to express themselves more equally and therefore openly, without fear of harm. Good communication is the key way to encourage environments supporting of

this. In many cultures this may be more difficult for women to achieve because of related assumptions that it is the role of men to protect them. Whether this occurs more in the breach than in the observance may be a moot question ideally for open debate. (I thought 'The Separation' was a most wonderful movie from every angle. Didn't you?)

The legal paradigm and those who uphold it in their practice represent Australia's most powerful feudal relics, which are naturally also male. Birth control, education and good employment are the insurance for women's health and community wellbeing everywhere. They are naturally also foundations for human rights, which are essentially about the search for greater equality of opportunity of choice for all. This possibility is very recent. Defence portfolio planning is addressed in a related international context in the attached. Community management relationships which media are ideally designed to support more effectively to reflect the image of the people and to assist their search for pleasure and knowledge, are discussed in the related light of the pledge the UN Secretary General made at Hiroshima in 2010 to abolish nuclear weapons and find ways to reduce poverty, tackle climate change and make economic development more environmentally friendly.

Joseph Borkin's book, 'The Crime and Punishment of IG Farben' (1978), which deals with the story of corporate and political corruption involving leaders of the major powers in preparing Germany for war, its involvement in the Holocaust and its American links, including material on the post-1960 Kennedy connection, begins with President Dwight D. Eisenhower's 'Farewell to the Nation' on 17.1.61. Eisenhower said:

In the councils of Government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes.

Borkin was a lawyer, and one wonders what happened after he wrote this book which points out many anti-democratic and controlling structures we inherited and reproduce. (This was one of many mind blowing second hand books I found in Glebe. In Dublin I found Jane Fonda's autobiography. She was heroic to me in many ways.)

Like plain English, scientific classifications for service purposes are normally outside the lawyers' domain. The law typically has 'interpretations', which are nothing like definitions. The expression of emotion must also be defined by their controlling and feudally established rules. Generations of lawyers have built increasing power on feudal rules which are essentially anti-democratic in denying plain speech and common sense to favour legal interpretations of particular conflicting laws which typically have no objects.

On the other hand, Sen explains the early Chinese Communist preoccupation with basic health and education in rural areas as necessary precursors for China's successful entry into global manufacturing later. He states nearly half the Indian population is illiterate today, whereas China has close to universal literacy, especially among the young. Sen argues India supported growth in bureaucratic and professional classes to the comparative

detriment of surrounding communities and this is a common problem. He supported Japanese Prime Minister, Obuchi Keizo's discussion on building Asia's tomorrow in an address given to the Asian Crisis and Human Security Conference in 1999. The Japanese Prime Minister spoke of the vital aim of 'human security' and the related values of creativity and dignity. This contrasts with older notions of national security and defense, which centre more narrowly on how to fight off potential aggression with force, rather than concentrating more broadly on the means to prevent it.

Sen argues that 'Human security' is 'the keyword to comprehensively seizing all the menaces that threaten the survival, daily life, and dignity of human beings, and to strengthening the efforts to confront these threats'. This depends fundamentally on broader and improved communication. He argues support for the poor, freedom of speech and transparent management, are essential for effective operation of the market and equality. Classification is best understood in this context, which is far from legal.

How to deal with apparent discrimination (apparently unfair treatment) or other apparent breaches of law is most effectively grasped not by lawyers, but in comparatively objective consideration of the specific situation – e.g. as a doctor or a parent ideally attempts to do with childrens' apparent illnesses or disagreements. To do this requires broader, clearer, more scientific, empathetic and democratic (as distinct from more opaque, narrower, dictatorial, adversarial, rule-bound and expensive), consideration and treatment.

A key principle of anti-discrimination theory is often stated as being that one should not unfairly treat any individual as a supposedly typical representative of a supposed group to which they may superficially appear to belong. That is 'stereotyping'. However, the process of science, risk management and fair and effective insurance pricing involves attempted labelling and allocation of people to groups on the basis of key characteristics they appear to share. Communication and classification should help us choose and grow.

There are many related classification matters for debate. For example, the feedback below on the symposium 'Resilience: Can our Environment keep bouncing back?' organized by the Faculty of Agriculture, Food and Natural Resources at Sydney University, discussed a view that decision makers ideally need to be explicit in their assumptions and start planning with regional maps in which significant public and private assets are identified and simply graded in terms of their high or low significance and related threats, prior to making recommendations for action to improve their nature and resilience. The resilience of an environment is ideally judged in the context of prior directions to achieve the broader ideal aims for that environment. One assumes these are ideally related to public, private and non-profit partnerships to achieve related environmental, social and economic goals.

What content should be classified and regulated?

Answering the questions related to this requires an empirical knowledge of current social and technological issues and related future needs of regional industries and communities that are far beyond me. Such questions may be best answered in being guided by past experience and complaints, as well as by greater regional understanding and consultation,

in the guiding light of international and other goals. Typically expected behaviour may be departed from in particular cases with clearly documented justification considered in the public interest. One can suppress or ignore something that offends some or many or debate and research it in an orderly way. The latter is often a preferable growth strategy.

The attached submission to the Minister for Innovation, Industry, Science and Research's Book Industry Strategy Group outlines the directions which appear necessary for governments to take with industry and related communities to develop and implement rough governance models for achieving the general directions for more sustainable development. Books are conceptualised along with other written, visual and aural product and service in the context of all regional sales, education and entertainment provision which appears to assist industries, communities and their related individuals to achieve more sustainable development more broadly, quickly and entertainingly through more open communication. This direction has no use for legal qualifications.

In this context note the contribution of Professor Christian List of the London School of Economics to the Sydney Ideas debate on 'The authority of science: Is science just another voice in the policy debate?' (8.4.2011). He contrasts the concept of aggregative democracy with deliberative democracy and prefers the latter. Deliberative democracy assumes the combination of belief and the desire to make rational decisions should drive development directions, rather than the aggregation of particular numbers being the main driver. List's distinction between two democratic forms provides the capacity for belief and more scientific approaches to evidence to drive development regionally and universally. Local decisions ideally occur in this context. Ideally these decisions may vary from what might normally be expected, because of good reasons related to the specific local context. This variation is ideally justified more broadly in print and signed off. This practice provides accountability for decision making and may be adopted more broadly later for some apparently good reason. (One should not blindly follow rules.)

According to his biographer (Brown, 2011 p. 363) Michael Kirby, the foundation leader of the ALRC, published lectures which repeated a 1922 description of the common law as 'a monument slowly raised, like a coral reef, from the minute accretions of past individuals'. Kirby acknowledge this made for a 'semi-chaotic, intermittent creation' rather than 'a perfect science', but he still viewed a perfect science as possible and desirable. Kelly, a colleague of Kirby's, suggested there was 'more to life' than 'trying to make sense of a legal system that is inherently unscientific and absurd'. Kirby replied:

Dear David.....How dare you say law is absurd when it was you who taught me to treat it as a conceptual unity. (p. 363)

Lawyers appear as the richest and most powerful elite whose concealment, pretences, confusions and in-jokes corrupt all around them. As in an abusive marriage, they appear determined to be all we have to support us. One wonders about their effects on police but must guess. This is far from good enough and requires systematic study and open report.

Yours truly

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AGRICULTURE, FOOD AND RELATED NATURAL RESOURCES RESEARCH

I refer to the Research Symposium 2011 entitled Resilience: Can our Environment keep bouncing back? This was organized by the Faculty of Agriculture, Food and Natural Resources at Sydney University and one feels educated and emboldened as a result of having attended the event. The following observations are made below as a result.

My favourite speaker for clear and logically argued direction was Associate Professor Michael Harris. He referred to INFFER, which I noted again from the INFFER website later, is a simple investment framework for environmental resources and a related tool for planning and prioritizing public investments in natural resources and the environment. INFFER requires decision makers to be explicit in their assumptions and to start planning with regional maps in which the significant public assets are ideally identified and simply graded in terms of their high or low significance and related threat, prior to making related recommendations for action to improve their nature and resilience.

When Harris discussed the INFFER system he appeared to use the regional framework to address benefits and threats to private activity, as well as public benefits and threats related to the natural environment. He also pointed out that the resilience of an environment should ideally be judged in the context of prior directions to achieve the broader ideal aims for that environment, which one assumes may ideally be related to public and private partnerships to achieving common environmental, social and economic goals. Harris strongly supported the earlier view of Dr Jane Belnap, a scientist with the US Department of Interior in Utah, that the management goals for any natural environment need to be clearly understood before 'resilience', which she defined as 'how easily the system bounces back', can be effectively studied or achieved.

The term 'resilience' was previously familiar to me in relation to practices to achieve good health management, rehabilitation after injury and related risk management and premium setting principles which are ideally used in management of occupational health and safety, rehabilitation and related compensation systems under state legislation. This approach appears consistent with Harris's regional approach to risks to the environment. Consistency is important for gaining management transparency and related system clarity and cost containment. Production chains and individuals typically work, consume and live in related regional communities. Under an insurance approach to maintaining or achieving greater 'resilience', managers appear advised to undertake the steps likely to reduce the major burdens of injury (in acute and chronic situations). Ideally, attempts are made to prevent injury, to rehabilitate the injured and to compensate more fairly.

In this context, support the Productivity Commission (PC 2011) direction in regard to rural research and development corporations as it can provide vital support for a new Australian and international government and community paradigm which ideally attempts to gain more sustainable regional development through better related investment and risk management. The PC notes the 2009 decision to abolish the Land and Water Australia

research and development corporation (RDC). It suggests a new RDC entitled Rural Research Australia (RRA) intended to sponsor non-industry specific research and development (R&D) to promote more productive and sustainable resource use by the Australian rural sector. RRA's remit is expected to involve land, water and energy use.

I will be interested to see a synopsis of Professor Quentin Grafton's presentation 'Towards an understanding of the win-win outcomes from managing systems for their resilience' on your website, as promised, along with other key presentations. I note he is currently Professor of Economics at the Australian National University where he is the ANU-UNESCO Chair holder in Water Economics and Transboundary Water Governance and Director for the Centre for Water Economics, Environment and Policy. I could not understand a word he said. When I upset him by interrupting early on, to ask how he defined a 'system', I think he said it was 'anything you want it to be'. (Is that right?)

Clear aims and definitions are vital if confusion, cost, lies, corruption, loss and lawyers are to be more easily avoided than they were before and after the last global financial crash. Because I could not understand anything Professor Grafton said, in question time I asked him who had funded his research in the past and who he expected would fund it in future. I claimed no politician, bureaucrat or farmer should fund what he or she could not understand at least enough to justify clearly to others, and Grafton's presentation was incomprehensible to me. MP Bob Katter made a similar point later on the 'Insiders' program on ABC TV. He said he feared that plans for systems that are supposed to reduce carbon pollution would involve 'complex rubbish that is going to distress everybody in Australia'. The related memory and effects of the global financial crisis and of the Americans who mainly brought it, has not dimmed, at least for him and me.

Professor Grafton referred me to his website in regard to who had funded him in the past and said I might be allied to people in Canberra who had questioned the bona fides of his research and had even made death threats against him. I am not aligned to these people and had never heard of Professor Grafton or about this before he brought it up. I later noted in the Australian Financial Review (AFR 8.7.2011, p. 48) that Professor Grafton will start in August 2011 as the government's 'first chief economist' in a new 'professionally independent' agency within the Department of Resources, Energy and Tourism. Advisory board members will be Professor Paul Simshauser, Vivek Tulpule, Justin Smirk, Dr Lynne Chester, Anne Nolan, Dr David Gruen and Phillip Glyde. Gee, I hope they can understand him. Will Professor Grafton be expected to take their advice?

You are invited to ponder, as I have, the description of the research entitled 'Economics of Overexploitation Revisited' on Professor Grafton's website. It states:

About 25% of the world's fisheries are depleted such that their current biomass is lower than the level that would maximise the sustained yield (MSY). By using methods not previously applied in the fisheries conservation context we show in four disparate fisheries (including the long-lived and slow-growing orange roughy) that the dynamic maximum economic yield (MEY), the biomass that produces the largest discounted economic profits from fishing, exceeds the MSY.

One first wonders how the ‘maximised sustained yield’ (MSY) may relate to the ‘maximum’ sustained yield in any particular period. One also wonders whether the term ‘yield’ refers to fish or to fishing profit or both. This is important because one assumes the value of the fish is greater than the value of the fishing profit. One naturally also wonders who owns the fish and the fishing profit and if Grafton thinks that this matters.

One wonders how the ‘dynamic maximum economic yield’ (MEY) can be assessed and what makes it dynamic. What are ‘discounted economic profits’? (I thought economists lived in a world where there are no profits besides economic ones). What are these ‘economic’ profits discounted from and why? What are Grafton and his colleagues arguing when they state that ‘the maximum economic yield (MEY), the biomass that produces the largest discounted economic profits from fishing, exceeds the MSY’?

I can only guess these researchers are addressing people who have said that ‘maximising discounted profits causes stock depletions’ and that in plain English this means ‘comparatively unprofitable fishing causes fish and/or monetary stocks to be further reduced’. Their research discussion states:

Thus, although it is theoretically possible that maximising discounted economic profits may cause stock depletions, our results show there is a win-win: in many fisheries at reasonable discount rates and at current prices and costs, larger fish stocks increase economic profits. *Surely larger fish stocks (where fewer bigger fish are equivalent to more of the smaller fish?) always increase economic profits, other things being equal, at least until the (fish and money) stocks crash?*

The research discussion then states:

An MEY target that exceeds MSY and transfers from higher, future profits to compensate fishers for the transition costs of stock rebuilding would help overcome a key cause of fisheries overexploitation, industry opposition to lower targets.

Is Grafton simply arguing that spending money on fish stock rebuilding is likely to be a good idea if people want to fish as much as possible? Or is he arguing that attempts to broaden the number of investors in fishing companies is a good idea? Should the same word ‘stock’ be applied to two totally different things – fish and shares in a business – if one wishes to avoid confusion? I don’t think so. It will lead to more major crashes.

A lot of things that seem clear quite quickly to Blind Freddy may seem subjects of great mystery after expensive experts. For example, I lived in Northern Nigeria for two years shortly after the Biafran war. It looked pretty obvious that desertification was related to women’s daily search for wood to burn during food preparation. The British had planted an avenue of stately trees, I guess around 1910, which the military governor of Kano state was quickly chopping down at intervals to build things on his private farm, where he had also taken some of the land moving equipment of the Department of Main Roads.

Last year, on a domestic Qantas flight, I saw a great short film made by Channel 9, on women in Nepal who were assisted in the production and sale of alternative cheap fuel made from weeds they had also been paid to eradicate. Who needs economic ‘experts’?

One wonders what Grafton thinks about competition because for the traditional economist there appears to be no such thing as an overcrowded market. However, the NSW WorkCover insurance system was established in the 1980s because the number of workers compensation insurers competing on premium price was so large the insurance funds collected were insufficient to meet the costs generated by courts after workers were injured. This caused the collapse of seven insurance companies and a new system in which industry and government owned the premium fund instead of giving the money to insurers to own. They then paid insurers to administer related services and invest the fund on industry and government behalf. Read about some of the ideal relationships between these structures and Medicare, private health insurance and between non-profit industry superannuation and other investment funds on www.Carolodonnell.com.au

One guesses that where Grafton and others like him stand on competition is that one can never have too much, but on the other hand monopoly is ideally abhorred by all, which is also a traditional legal line. I cannot understand what he says or writes but in this context it should be noted that Medicare is a monopoly pricing system designed to ensure that insurance companies, hospitals and doctors cannot drive the cost of health care services as high as they would otherwise be driven if the Australian population had no guaranteed access to free or lower cost services under Medicare. In the US people die earlier than in Australia and US health care services are more expensive and less equitable than those provided in Australia. Many with chronic illnesses may be denied treatment on the basis of having ‘pre-existing conditions’ and more than 40 million have no insurance coverage.

Problems were also pointed out in regard to legal and economic assumptions about the potential benefits of competition and the related horrors of monopoly, in an inquiry into telecommunications competition regulation which was initiated by the former Treasurer, Peter Costello. The PC (2001) attitude to its own inquiry into allegations of unfair use of market power in telecommunications was summed up in its quote from the Hilmer Report (1993) on national competition policy when it said:

The central conundrum in addressing the problem of misuse of market power is that the problem is not well defined or apparently amenable to clear definition.... .Even if particular types of conduct can be named, it does not seem possible to define them, or the circumstances in which they should be treated as objectionable, with any great precision.....**Faced with this problem.....the challenge is to provide a system which can distinguish between desirable and undesirable activity while providing an acceptable level of business certainty** (My bolding). (PC, 2001, p. 154)

The current Treasurer has stated that what the Australian business community wants most is certainty about the direction of carbon pollution reduction plans and the carbon price. The design of clear, low risk, green investment models is also vital. Try INFFER.

If Professor Grafton would like a professional model to assist clarification of the synopsis of his presentation maybe Professor Simon Gächter's description of his coming presentation at Sydney University entitled 'Understanding Cooperation in Humans: Lessons from Experimental Economics', will help. Gächter argues that cooperation problems may arise where 'group interest and individual interest are in conflict'. His results apparently show in sixteen subject pools around the world 'surprising cross-cultural similarities in cooperation in the absence of punishment but very large variability in punishment behaviour – with dramatic consequences for cooperation'. He will apparently present evidence the societal/cultural background has an important impact on behaviour that deserves more attention. I will miss Gächter due to holidays in the US.

Your attention in the above context is also drawn, however, to the forthcoming US presidential race and to the related recent performance of the Governor of Montana, Brian Schweitzer, who has also recently faced an oil spill into the Yellowstone River. In a short interview with Geoffrey Brown on the News Hour on SBS TV last week, the Governor gave a very clear description of the effects of the oil spill on his constituency, their environment and far beyond, before outlining the apparent causes of the oil spill and suggesting clear steps for cleaning up the problem in the short term and for monitoring and fixing it in the longer term. The Governor of Montana's TV interview seemed to me a startlingly new and more informed approach to life by an amazingly competent and well rounded communicator which could avoid the usual ten year court cases that no-one understands, where the lawyers and 'experts' who hang off their bounty again win big.

The US often seems less like a democracy than a place where the rich secretly buy politicians who appear incapable of speech informed beyond the woolly levels considered desirable in continuing processions of courts and for giant children's election parties. Too bad rich Americans so often appear to run Australia in their own interests mainly through universities and lawyers. Why not give the 'fourth estate' the sort of chance to explain matters more clearly? This seems likely to be appreciated by the Chinese masses and others who are not rich and also by Rupert Murdoch, now that he has shut down the 'News of the World'. See more discussion on Fairfax press and social services attached.

Thank you for a very interesting and informative symposium. (The waiter singing 'I'm going to get you on a slow boat to China' as he passed close behind me should be shot).

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