



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Public Consultation Paper: Modernising Australia's Classification Scheme - Stage 2 Reforms

April 2024

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Make your views known

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department) is seeking feedback from interested parties on the second stage of reforms to the National Classification Scheme (the Scheme), with the submissions period closing on Thursday 30 May 2024. Submissions received by the department as part of this consultation process will be used to inform reform options.

Making a submission

The department is welcoming written comments and submission on the matters outlined in this paper. Comments and submissions should be received by 5:00pm AEST on Thursday 30 May 2024.

Online submissions can be made to: <https://www.infrastructure.gov.au/have-your-say/>

Submissions by mail can be sent to:

Director - Classification Reform
Online Safety, Media and Platforms Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
CANBERRA ACT 2601

Questions about the submission process can be directed to: reform@classification.gov.au.

Publication of submissions and confidentiality

All submissions will be made publicly available by the department unless a respondent specifically requests that a submission, or part of a submission, be kept confidential. Comments will not be published.

The department reserves the right not to publish any submission, or part of a submission, which in its view contains potentially offensive or defamatory material, or for confidentiality reasons.

The department is subject to the *Freedom of Information Act 1982* and comments and submissions may be required to be disclosed by the department in response to requests made under that Act.

Introduction

This consultation paper is intended to inform the development of options for the second stage of reforms to the National Classification Scheme (the Scheme).

The Scheme was established in 1995 under cooperative arrangements between the Commonwealth and State and Territory Governments. It sets out the regulatory framework for classifying films (including episodic series not broadcast on television), computer games and certain publications. Under the Scheme, content is classified by the Classification Board or by third parties through the use of ministerially approved classification tools. Classification decisions are made in accordance with the classification guidelines and the *National Classification Code 2005* (the Code), prepared under section 6 of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act). Broadcast television is not classified by the Classification Board, but is instead classified by in-house, industry classifiers using guidelines that are broadly consistent with the classification guidelines and regulated by the Australian Communications and Media Authority (the ACMA).

Successive reviews¹ have found that the Scheme has not kept pace with the way Australians access media content, particularly the rapid growth in digital and online content and the emergence of new content sharing platforms and interactive features, or with evolving community standards.

On 29 March 2023 the Hon Michelle Rowland MP, Minister for Communications, announced a two-stage process to reform the Scheme and released the 2020 Review of Australian classification regulation (the Stevens Review). The Stevens Review examined numerous issues related to the current Scheme and identified key areas for reform including:

- the harmonisation of the regulatory framework for classification across broadcast, physical and online content
- the appropriateness of criteria used to classify content, and whether they accurately reflect community standards
- the type of content required to be classified, and
- the appropriate level of government oversight of the Scheme and where responsibility for the Scheme should sit.

The first stage of classification reforms will commence during 2024. Legislation commenced on 14 March 2024 to:

- expand options for industry to self-classify content using classifiers that have been trained and accredited by Government
- expand the powers of the Classification Board to provide quality assurance and oversight of self-classification decisions
- expand classification exemptions for low-risk cultural content to increase community access to this material, and
- remove the need to re-classify content that has already been classified for broadcast television and has not been modified.

¹ *Classification—Content Regulation and Convergent Media (ALRC Report 118)* – Australian Law Reform Commission 2012 [Classification—Content Regulation and Convergent Media \(ALRC Report 118\) | ALRC](#); *Review of Australian classification regulation (the Stevens Review)* – Neville Stevens 2020 [Review of Australian classification regulation \(the Stevens Review\) | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#).

Additionally, in response to growing community concerns about the harm resulting from children accessing gambling-like content in computer games, the Government has announced the introduction of mandatory minimum classifications for computer games containing simulated gambling and paid loot boxes from September 2024, following unanimous agreement from State and Territory Governments.

As part of the second stage of classification reforms the Government is looking at making comprehensive changes to the Scheme so that it is fit for purpose in a modern media environment. This includes establishing an appropriate mechanism to ensure that the classification guidelines are evidence based and remain responsive to evolving community standards and expectations.

While the Government does not intend to provide a formal response to the recommendations of the Stevens Review, it has informed the development of the Government's first stage of classification reforms and the options outlined in this consultation paper. Given the time that has elapsed since the Stevens Review, this consultation paper also considers recent developments in content regulation as well as engagement with industry.

The views and ideas put forward through this consultation process will inform the development of options for the second stage of classification reform. It is anticipated that future targeted consultations will be undertaken on specific proposals.

Interaction between the Classification Act and Online Safety Act 2021

The Online Content Scheme set out in Part 9 of the *Online Safety Act 2021* (the Online Safety Act) gives the eSafety Commissioner a range of powers to address harmful online material which has been classified, or would likely be classified under the Classification Act as 'Refused Classification' (RC), X18+, and R18+. Details of the types of content that meet these classifications are available in the relevant guidelines². The eSafety Commissioner may determine the classification of online content with reference to the Code and relevant classification guidelines, or may obtain advice from the Classification Board.

The Online Safety Act also requires the development of industry codes and standards designed to prevent or restrict access to RC, X18+ and R18+ material online.

Issues for consultation

Feedback is sought on **three key areas** identified for consideration as part of the second stage of classification reforms:

1. clarifying the scope and purpose of the Scheme, including the types of content that should be subject to classification
2. ensuring the classification guidelines continue to be aligned with, and responsive to, evolving community standards, expectations and evidence, and
3. establishing fit-for-purpose governance and regulatory arrangements for the Scheme, under a single national regulator responsible for media classification.

² [Federal Register of Legislation - Guidelines for the Classification of Publications 2005](#)
[Federal Register of Legislation - Guidelines for the Classification of Films 2012](#)
[Federal Register of Legislation - Guidelines for the Classification of Computer Games 2012](#)

Out of scope

Consideration of the second stage of classification reforms will be confined to the three broad areas outlined above. The following are therefore out of scope of this consultation:

- issues relating to cooperative arrangements between the Commonwealth, states and territories
- changes to enforcement powers and models, and
- matters which fall within the remit of the Online Safety Act.

These and other matters may also be subject to consultation with key stakeholders at a later date.

The Hon Michelle Rowland MP, Minister for Communications, has announced an independent statutory review of the operation of the Online Safety Act. The review is being led by Ms Delia Rickard PSM and will include a separate public consultation process in mid-2024. The review of the Online Safety Act will include consideration of regulatory responses to harmful online material, including the eSafety Commissioner's powers with respect to restricted online content.

Purpose and scope of the National Classification Scheme

The case for reform:

The Code sets out the guiding principles of the Scheme, that: adults should be able to read, hear, see and play what they want; children should be protected from material likely to harm or disturb them; and everyone should be protected from exposure to unsolicited material that they find offensive. The Code also sets out that community concerns regarding depictions that condone or incite violence, particularly sexual violence, and the portrayal of persons in a demeaning manner, must also be taken into account.

While the principles of the Scheme have remained unchanged, the purpose of classification has changed over time from a focus on censorship to providing information to Australians to make informed choices on the content they and those in their care consume.

In addition to assisting Australians to make informed choices about the content they and those in their care consume, the Scheme also provides a mechanism to refuse classification of material which instructs or incites in matters of crime or violence or offends against the standards of morality, decency and propriety generally accepted by reasonable adults. Material which is refused classification is not legally able to be sold, hired, advertised or imported in Australia.

Australians need to have confidence in the classification system as a trusted source of information to guide their media choices, regardless of platform.

Definitions of content to be classified under the Classification Act however were developed in a predominantly physical media environment. Since this time, the rapid growth in online content and the emergence of new digital platforms for distributing content have posed challenges for the Scheme.

One of the biggest changes in the way people consume content since the establishment of the Scheme has been the growth of user-generated content online. Community-based research commissioned by the department in 2022 found that children's access to unsuitable content via free online platforms (such as YouTube and TikTok videos) was a concern for 72 per cent of parent respondents, however classification of free online platforms was not a key expectation for most parents because of the challenges involved in classifying this content.³ Additionally, due to the high volume of user-generated content being made available, it would likely be impractical to require each piece of content to be classified. Regulation of user-generated content in this way also potentially cuts across regulatory arrangements under other Government legislation such as the Online Safety Act.

There has also been recent interest in the classification of publications, in particular graphic novels, from parts of the community, which may be considered as part of these reforms.

Currently, publications are not required to be classified in Australia unless they meet the definition of a 'submittable publication'. Feedback has been received about the ongoing suitability of the current definition of a submittable publication.

³ Report on classification usage and attitudes research – ORIMA 2022 [Classification usage and attitudes 2022](#) | [Australian Classification](#)

Possible reform options:

Classifiable content

The Stevens Review recommended that the focus of classification should be on content that is most relevant and important to Australian consumers, and proposed the development of criteria to clarify what content is classifiable under the Scheme.

The following criteria could be used to define classifiable content:

- professionally produced – content with higher quality production values
- distributed on a commercial basis – to capture organisations or individuals that distribute media content as part of their business, as opposed to individuals or community groups whose main purpose is not to distribute media content for commercial gain and
- directed at an Australian audience – a selection of content is specifically made available for Australia or marketing is specifically directed at Australians.

In addition:

- classification is the responsibility of the service provider who makes the content available in Australia, regardless of who originally makes the content and
- online content is only classifiable where it is uploaded by the service provider itself to clarify that user-generated content that is professionally produced and distributed on a commercial basis does not require classification.

These criteria would apply to publications, films and computer games under the Classification Act to improve clarity around the types of material that require classification and provide a consistent approach to the regulation of content. For example, the criteria would capture online streaming providers and online games stores directed at Australian consumers, but would not capture user-generated material that has been posted online which has historically been captured due to the broad definition of ‘film’ in the Classification Act.

Classification of publications

A ‘submittable publication’ is defined under the Classification Act as:

“an unclassified publication that, having regard to section 9A [of the Act] or to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions that:

- (a) are likely to cause the publication to be classified Refused Classification; or*
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or*
- (c) are unsuitable for a minor to see or read.”*

As part of stage 2 reforms, additional clarification could be provided on what publications are required to be submitted for classification. Consideration could also be given to whether the definition of a submittable publication should be broadened to capture publications that do not meet the criteria for legal restriction to adults but contain depictions or descriptions that are unsuitable for children under 15 years of age.

Questions for discussion

1. Are the guiding principles set out in the Code still relevant in today's media environment?
2. Do you support the proposed criteria that defines what material should be classified under the Scheme?
3. Are there any other issues with the current purpose and scope of the Scheme that should be considered?
4. Do you support changes to the definition of a 'submittable publication' to provide clarity on publications requiring classification under the Scheme?

A framework for evidence-based classification guidelines

The case for reform:

The Classification Act and the Code require classification decisions to be aligned with community standards. This is achieved through the application of three separate sets of Guidelines: *Guidelines for the Classification of Publications 2005*⁴; *Guidelines for the Classification of Films 2012*⁵; and *Guidelines for the Classification of Computer Games 2012*⁶ (the Guidelines). Every classification decision under the Act must be made in accordance with these guidelines. The guidelines, along with the Code, set out the different classification categories for each of the three content types, as well as the classifiable elements and kinds of content accommodated within each classification category. The criteria in the Code and Guidelines are also applied by the eSafety Commissioner when assessing online material.

There is currently no requirement for regular reviews of the Guidelines. As a result, the Guidelines have not been regularly updated to ensure that they reflect community standards, contemporary research on issues relating to the harm impact of different types of content, or developments in content or modes of delivery. Updates to the Code and Guidelines are subject to the *Intergovernmental Agreement on Censorship 1995*⁷, and rely on the Commonwealth or a state or territory to bring forward a proposal to the Standing Council of Attorneys General for unanimous agreement by all participating Ministers.

A direct consequence of this is that issues of community concern or emerging evidence may not always be reflected in the current Guidelines. Issues that have been raised include the impact of scary content especially for children, suicide and other mental health themes, classification standards for computer game content, adequacy of the classification categories (including for publications), depictions of non-consensual sexual activity, and portrayals of gender based and family violence. This also includes concerns around the harms of pornographic material which is currently classified X18+ or RC.

Previous reviews of the Scheme have identified the need for more regular updates and reviews of the Guidelines to reflect changing community standards and expectations, and to more systematically consider and incorporate evidence of harms.

Possible reform options:

The Stevens Review recommended that a Classification Advisory Panel (CAP) comprising experts from academic fields relevant to classification (including psychology, child development and media studies) as well as representatives from community organisations and those with industry experience, be established to consult on regular updates to the Guidelines.

The CAP would not be a decision-making body, but would provide advice to the Commonwealth and State and Territory Governments on possible updates to classification criteria. Advice would be informed by empirical evidence, community research, international best practice and consultation with stakeholders, to help ensure that the decisions made are evidence-based and consider community attitudes so that the Scheme is responsive to community expectations.

⁴ [Federal Register of Legislation - Guidelines for the Classification of Publications 2005](#)

⁵ [Federal Register of Legislation - Guidelines for the Classification of Films 2012](#)

⁶ [Federal Register of Legislation - Guidelines for the Classification of Computer Games 2012](#)

⁷ [intergovernmental-agreement-on-censorship-1995.pdf \(classification.gov.au\)](#)

The establishment of a CAP, or similar body, could provide a robust mechanism to inform a fulsome review of the Guidelines. This could include consideration of a number of issue-specific recommendations made by the Stevens Review, emerging issues such as in relation to the classification of certain publications, and issues of community concern as they arise.

Questions for discussion

1. Do you support the establishment of an independent Classification Advisory Panel or similar body?
2. What issues or expertise relevant to the classification environment would you like to see represented in a Classification Advisory Panel or similar body?
3. Are there any aspects of the current Guidelines that you would like the Classification Advisory Panel or similar body to consider?

Fit-for-purpose regulatory and governance arrangements for classification

The case for reform:

Under current regulatory arrangements, responsibility for classification sits across a number of Australian Government agencies, as well as with the states and territories as follows:

- the Australian Government is responsible for classifying content, in accordance with the Guidelines and the Code, through the Classification Board, the Classification Review Board and Ministerially approved classification tools. Stage 1 reforms will also expand options for industry to self-classify content using classifiers who have been trained and accredited by Government
- State and Territory Governments are primarily responsible for the enforcement of the Scheme through their own complementary legislation (which primarily focusses on physical media) but due to the cooperative nature of the Scheme, any changes to the Classification Act, the Code or the Guidelines require unanimous agreement from State and Territory Governments
- the department is responsible for providing operational support to the Classification Board and Classification Review Board, advising on classification policy and assessing and recommending changes to the Minister, including the approval of classification tools
- the ACMA has classification oversight and complaints handling responsibilities for free-to-air and subscription television broadcasters, and
- the eSafety Commissioner regulates potentially harmful online material classified or likely to be classified RC, X18+ or R18+, with the department providing policy advice to the Minister in respect of the Online Safety Act.

These arrangements are inefficient, fragmented and create an unequal regulatory regime for the same material when it is delivered physically or virtually. There are also a lack of provisions relating to enforcement of compliance with classification requirements by online film and game service providers, which are a result of the current Scheme being designed at a time when physical material was predominant.

Possible reform options:

A number of reviews have recommended that responsibilities for classification at the Commonwealth level should be consolidated into a single national regulator. The single national regulator would have wide ranging responsibilities which may include training and accrediting classifiers, quality assurance of classification decisions, enforcement of compliance for online classifiable content and maintaining the National Classification Database.

There are a number of possible regulatory approaches that could be applied. At present there are two primary models for the regulation of content in Australia that could inform the development of future options.

- The ACMA's regulation of broadcast television provides a well-established model where broadcasters are provided with licenses allowing them to broadcast on free-to-air television in Australia. Continued access to licensing is dependent on the broadcasters adhering to relevant codes and standards, which include the classification of broadcast content. The

ACMA also has powers to provide warnings and apply civil penalty orders for non-compliance with the legislation they enforce.

- The eSafety Commissioner regulates harmful online content under the Online Safety Act, based on industry outreach (to support compliance), education (including resources for parents and children), and graduated and flexible regulatory responses to address a number of harmful online behaviours. These responses include issuing removal notices for online service providers to take down harmful content from their services and financial penalties for service providers that do not comply with requirements under the Online Safety Act.

Both of these models are co-regulated between government and industry through the use of industry standards and codes of practice. While both have been effective in regulating their respective content, and include aspects of classification, their application to the full range of classifiable content has not been tested. ACMA's regulatory model has been effective for broadcast television, but it is unclear how effective this model would be for higher impact material and across other forms of classifiable content. The eSafety Commissioner's regulatory approach provides a well established model for regulating harmful content online, but it is unclear how effective this model would be for content that is not considered harmful.

Views are being sought on the applicability of either of these existing regulatory models, as well as any other considerations that should inform the development of fit-for-purpose regulatory and governance arrangements for classification in Australia.

The future role and responsibilities of the Classification Board and Classification Review Board, two statutory independent agencies with specialist classification and review roles under the current Scheme, would also need to be considered in the design of any new fit-for-purpose regulatory model. The expansion of industry self-classification through approved classification tools has seen a shift in the role of the Classification Board from making primary classification decisions to providing quality assurance of industry self-classification decisions. For example, in 2021-22, the International Age Rating Coalition (IARC) tool made 275,159 classification decisions for computer games, in contrast to 298 classification decisions made by the Board. Additionally, the number of films classified by the Classification Board has been in decline since a peak of just under 7,000 in 2005-06 to 2,210 in 2021-22. It is anticipated that this trend will accelerate with the commencement of the accredited classifier scheme on 14 March 2024.

Questions for discussion

1. Do you support the consolidation of classification functions under a single national regulator at the Commonwealth level?
2. What key considerations should inform the design of fit-for-purpose regulatory arrangements under a single national regulator model?
3. Is there a role for the Classification Board and the Classification Review Board under a single national regulator model?
4. Are there any gaps or unintended consequences that may be caused by consolidating classification functions under a single national regulator at the Commonwealth level?