

Review of Australian classification regulation

Report

Neville Stevens AO

May 2020

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The Hon Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts
Parliament House
Canberra ACT 2600

Dear Minister

I am pleased to provide you with this report on the review of Australian classification regulation.

In accordance with the review's Terms of Reference, I have explored opportunities to harmonise classification of, and access to, content across media formats, considered ways to update the criteria used to classify films, episodic series, computer games and publications, and examined governance arrangements for the National Classification Scheme.

The last major change to the Australian classification system occurred in 1995 with the introduction of the National Classification Scheme. Since then, the media and content landscape has changed in dramatic ways. Despite a number of reviews since 1995, the classification system has not significantly changed to keep pace with this constantly changing environment.

This environment will continue to evolve in coming years and therefore I am recommending a regulatory and decision-making framework that is sufficiently flexible to take into account not only current requirements but also to respond to future developments in a timely fashion.

Most importantly, the recommended framework will enable Australians to have continued access to reliable and useful classification information while streamlining classification arrangements for industry.

In undertaking this review, I have consulted widely and would like to thank all those people and groups who contributed their views. I would also like to acknowledge the substantial assistance of officers in your Department.

Yours sincerely



Neville Stevens AO

31 May 2020

Terms of Reference

Background

Classification plays a crucial role in helping Australians make informed decisions about content they or those in their care watch, read and play.

The current National Classification Scheme (the Scheme) exists to provide a framework by which films, video games and certain publications made available in Australia receive a rating and consumer advice that provides a safeguard to the Australian public that content is consumed by the appropriate audience.

It is a joint scheme between the Commonwealth and the states and territories and was established in 1995. The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* establishes the framework for classification of content, and state and territory classification legislation regulates the advertising, availability and sale of classifiable content.

The Scheme applies to online and physical video games, films and episodic series on all platforms including in cinemas, on DVD and online (such as streaming services and subscription video on demand) but not to programs broadcast on television. Classification of television programs is regulated under separate codes of practice covering free to air broadcasters, subscription television broadcasters, the ABC and the SBS.

In 2012, the Australian Law Reform Commission's (ALRC) report 'Classification – Content Regulation and Convergent Media' found that classification legislation 'does not deal adequately with the challenges of media convergence and the volume of media available to Australians'. The Convergence Review Committee's report in 2012 endorsed the findings of the ALRC review. Consistent with these reviews, the Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry final report recommended that 'a new platform-neutral regulatory framework be developed,' including 'creating a nationally uniform classification scheme to classify or restrict access to content consistently across delivery formats' (Recommendation 6).

The ALRC review was conducted before the popularisation of online streaming and video on demand services and the significant increase in online and mobile games available in Australia. This review will build on the ALRC report in the context of today's diverse media content market.

Consistent with the agreement of the Council of Attorneys-General, a review of the National Classification Code, the Guidelines for the Classification of Films (Films Guidelines) and the Guidelines for the Classification of Computer Games (Computer Games Guidelines) will also be undertaken to ascertain whether they continue to reflect contemporary community standards. The National Classification Code and the Films Guidelines were last reviewed in 2002, and the Computer Games Guidelines were last reviewed prior to the introduction of the R 18+ category for games in 2013.

Scope

An independent expert will be appointed to conduct the review, supported by the Department of Communications and the Arts (now the Department of Infrastructure, Transport, Regional Development and Communications).

The review will cover:

1. Opportunities to harmonise the classification of, or restriction of access to, content across different delivery platforms including broadcasting services (commercial free to air, national broadcasting and subscription television), online stores and services, cinema releases, and physical product (e.g. boxed video games and DVDs).
2. The design of a contemporary Australian classification framework, including:
 - a. What content requires classification;
 - b. Consistency of classification categories, standards and access restrictions across media formats;
 - c. Classification decision-making processes, including mechanisms for review; and
 - d. Governance arrangements, including the suitability of the current cooperative scheme.
3. Opportunities to update classification decision-making standards, including a comprehensive review to update the National Classification Code, the Films Guidelines, and the Computer Games Guidelines.

The following issues are out of scope:

- Broader content regulation issues outlined in Recommendation 6 of the ACCC's Digital Platforms Inquiry. Content regulation reform is a significant undertaking that needs to be broken down into interrelated processes.
- Regulation of sexually explicit content online, which will be considered in possible reforms to the Online Content Scheme in Schedules 5 and 7 of the *Broadcasting Services Act 1992*.

Timing

The review will be completed and a report provided to the Minister by April 2020, for subsequent presentation to state and territory classification Ministers through the Council of Attorneys-General's process.

Executive summary

Australia's classification system has existed since the early 1900s and has evolved over the decades. Departmental research consistently shows classification is wanted and valued by Australians. From an early focus on censorship, the system has shifted to providing information and guidance to help parents make decisions about the suitability of content for children of varying ages and to provide all consumers with information to make informed choices.

There have been a number of reviews of classification arrangements including the Australian Law Reform Commission's report in 2012 and the Australian Competition and Consumer Commission's Digital Platforms Inquiry report in 2019.

These reports highlighted deficiencies with current classification arrangements and recommended significant changes to take into account the increase in content available online and the convergence of media platforms.

Areas of concern raised by these reviews and reinforced by submissions to this review include:

- The high cost of the processes of the Classification Board (the Board), especially given the volume of content now requiring classification;
- Timeframes to use the Board which are too long to be compatible with current media practices;
- Separate regulatory systems and regulators for broadcast and for other content providers;
- Lack of clarity on what content should require classification due to the very wide and outdated definitions in current legislation;
- Lack of compliance with existing legislation among some content providers, including a number of video on demand providers and online games storefronts, partly as a result of the high cost and long timeframes of existing classification practices;
- Governance arrangements between the Australian Government and the states and territories, which could better define roles and responsibilities of the various parties in an online environment, and which are not seen as sufficiently timely or flexible; and
- Lack of a regular approach to updating classification guidelines to reflect contemporary community concerns and research into relevant matters, including child development issues.

My analysis of these issues and my recommendations for change are informed by the need for a future classification regulatory framework that:

1. Is able to adapt to new technologies, market developments and emerging issues of community concern;
2. Provides clear, useful and easily accessible information to enable consumers to make informed media choices for both themselves and for their children;
3. Has evidence-based classification guidelines that are regularly updated, taking into regard both expert knowledge and Australian community standards;
4. Enables classification arrangements that are efficient and cost-effective for industry, that are consistent across content platforms and which have the confidence of the community;
5. Provides appropriate content restriction and enforcement for both physical and online content; and
6. Enables timely decision-making on changes to the classification scheme.

National Classification Code and standards

Clause 1 of the National Classification Code and section 11 of the *Classification (Publications, Films and Computer Games) Act 1995* contain a range of underpinning principles and matters to be taken into account in classification. Although formulated in 1995, many aspects of these overarching principles retain value, in particular the balancing of protecting children from harmful content while preserving the right of adults to “read, hear, see and play what they want.” However, other concepts and language contained in these provisions, which have roots in the history of classification, are in need of an update. Such amendments would reflect the evolution of classification from its historical origins in censorship and concerns for public morals to a more objective, harms-based system focussed on informing consumers (particularly parents) and protecting children.

I recommend that key principles set out in the National Classification Code be updated to provide that:

- Adults should be able to read, hear, see and play what they want, with limited exception;
- Minors should be protected from content likely to harm or disturb them; and
- Everyone should be protected from exposure to content of serious concern to the wellbeing of the community.

Content to be classified

There is a need to clarify what content should be classified, as current definitions in the *Classification (Publications, Films and Computer Games) Act 1995* were designed for the content market of the 1990s and technically capture all streaming services and user-generated content uploaded to sites such as YouTube.

The focus of classification should be on content that is most relevant and important to Australian consumers. I therefore recommend that the following three principles should be used to define content that should be classified:

- **Professionally produced** – content with higher quality production values; and
- **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.

Narrowing the definition of ‘classifiable content’ will capture online video on demand providers and online games stores directed at Australian consumers but exclude user-generated content. Classification should continue to be the responsibility of the organisation that makes the content available first in Australia, regardless of who originally made the content.

The eSafety Commissioner would continue to have responsibility for responding to online content that is illegal, including content that would be Refused Classification under the National Classification Scheme.

As part of the classification of films, sexually explicit (X 18+) films in physical formats should continue to be classified. Sexually explicit content online is regulated by the Online Content Scheme which is currently being reviewed.

Current classification exemptions for films, computer games and publications should be maintained.

Processes to classify content

A range of different classification processes currently exist under the National Classification Scheme and broadcasting laws. Where some content providers are submitting content to the Board, some are using classification tools and others are self-classifying content. These varying processes mean that classification can be more expensive and time-consuming for some parts of industry compared to others and this uneven playing field can have an impact on compliance with classification laws.

Classification decisions need to be consistent, accurate, accessible and easily understood by consumers. The community must have confidence that the right classification outcome is reached, regardless of the process that is used to achieve that classification.

I recommend harmonising processes across platforms so that industry is given greater responsibility for undertaking classification, with the flexibility to choose the classification process that best suits them. These processes would be:

- Self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers; or
- Self-classification using classification tools approved by the Australian Government Minister; or
- Submitting content to the regulator for classification.

Many computer games online show Australian classifications using the International Age Rating Coalition (IARC) tool. However, Apple's App Store uses its own international age-rating system where games are classified 4+, 9+, 12+ or 17+. The Apple App Store's own system is working well – there are few complaints to the Department, and the Department's research with the community indicates there is general consumer acceptance.¹ I therefore recommend that the relevant Australian Government Minister should have the power to authorise the use of alternative classification systems for computer games where they provide the necessary classification information for the Australian community.

The games storefront Steam, operated by the company Valve, does not display Australian classification information for all games and does not provide Australian consumers and parents with adequate information to help them make informed choices. This needs to change. If Valve does not participate in IARC in the near future, I recommend that the Department further discuss with Valve the implementation of a separate tool to generate Australian ratings for computer games sold to Australian consumers on Steam.

Currently, the same content is required to be classified separately for release across different platforms and in different formats. To avoid this double handling, I recommend that once content is classified once, it should not need to be classified again, unless it is modified and the modification is likely to change the classification. However, content providers should be able to give additional consumer advice where necessary.

The only exceptions to this would be to:

- Allow content providers to reclassify content after 10 years to reflect changing community standards; and
- Provide a limited provision for content providers to apply to the regulator for approval to reclassify where they consider the original classification category (e.g. G, PG, M, etc.) requires reassessment.

¹ Department of Communications and the Arts, [Classification usage and attitudes study](#) (2016), slide 17.

Classification decisions should continue to be uploaded and published on the National Classification Database at www.classification.gov.au, and this database should also include content classified by the broadcasters. This will provide transparent information to Australian consumers and help content providers find the classification of content that has previously been classified.

The review of classification decisions should be transferred from the Classification Review Board to the Australian Government regulator. In the infrequent cases where the regulator was the original decision-maker, alternative staff would review the decision to manage any conflict of interest issues.

The community must have confidence that the move to greater industry self-classification will not undermine the integrity of the classification system. To continue high levels of community confidence in classification, industry self-classification must be underpinned by a robust accreditation, audit, review and timely complaints mechanism overseen by the Australian Government regulator.

Classification categories and consumer advice

A variety of suggestions were made about changes to the classification categories, including adding a category between PG and M, or introducing entirely new age-based categories. Although I see merit in providing more guidance on age suitability for parents, I do not recommend changes to classification categories at this time.

The current scheme, while it may not be perfect, is well known to the community and a clear case would need to be made for any changes. There is no consensus amongst stakeholders, or arising from the Department's consumer research, for any particular alternative system and changes are strongly opposed by some stakeholders on commercial and technical grounds. However, this matter should be kept under review.

I recommend that the Refused Classification category should continue to include both illegal content and content which is abhorrent to the community but that it be renamed Prohibited to make the meaning of this category clearer.

I also recommend that the current categories for submittable publications be replaced with equivalent categories currently in use for films and computer games: Unrestricted would be replaced with M, Category 1 restricted replaced with R 18+ and Category 2 restricted replaced with X 18+. This change would be clearer for consumers and bring greater uniformity to the classification system.

There are various views in relation to consumer advice and how it is currently applied by classification tools, by broadcast classifiers and by the Board. With a move to greater industry self-classification, there needs to be more detailed guidance given to industry so that consistent consumer advice is provided.

To be useful, consumer advice should be specific, direct and consistent. In this vein, I recommend that generic consumer advice, such as 'strong themes', be avoided wherever possible and instead, more descriptive consumer advice be provided.

In updating guidelines for consumer advice, greater recognition should be given to current and emerging community concerns such as suicide, incitement of racial hatred and domestic violence.

Legal restrictions

Currently, the categories MA 15+ and R 18+ are legally restricted under the National Classification Scheme. However, MA 15+ content is not legally restricted on free to air television where broadcasters are subject to a requirement that it be broadcast after at least 8.30pm. Moreover, this content is readily available at any time through broadcasters' video on demand (catch-up TV) services. Reflecting this, the MA 15+ category stands for Mature Audience on free to air television compared with Mature Accompanied for content classified under the National Classification Scheme.

Despite MA 15+ and R 18+ both being legally restricted categories, an important distinction lies in the provisions relating to adult accompaniment or consent that apply to MA 15+. This means that the age restriction for this category is conditional on the physical accompaniment (for example, during the duration of a film screened in a cinema) or consent (for example, when purchasing a product in store) by a responsible adult. In contrast, the restriction of R 18+ is unconditional and only individuals 18 years and older can access this content.

In the online world, where the concept of another person's accompaniment or consent is difficult to monitor or enforce, the full conditions of MA 15+ arguably lose their validity. The fact that the accompaniment or consent caveat does not have application in a home setting is reflected in the different conditions that apply to the MA 15+ category for broadcast content.

I consider that arrangements should be consistent across all online platforms and I am recommending that MA 15+ content accessed online no longer be legally restricted. Legal restriction of this category is not enforceable via available technology and this change would harmonise arrangements between broadcasters and other content providers. There are an increasing number of parental controls available online that enable parents to restrict access to particular content and I recommend that these be more widely available and better promoted.

I recommend that the MA 15+ category should remain restricted in the physical world as there are readily available means of enforcing this restriction and in its absence, there would be no alternative mechanism for parents to prevent their children accessing this material.

The R 18+ and X 18+ categories should remain restricted on all formats and the best available technology should be employed to restrict access.

Classification guidelines

There are different but similar guidelines for the classification of films applying to online content providers and free to air and subscription broadcasters. It would be preferable to have a single set of guidelines for films applying across all delivery platforms.

The Films Guidelines use an impact hierarchy for classification, which is inherently subjective and relies heavily on the capacity of the Board to interpret in a consistent manner. The guidelines used by television broadcasters, by comparison, are more detailed in their description of what is allowable in each category. As classification increasingly becomes the responsibility of industry, there is a need for guidelines to be as detailed and as specific as possible to enable the provision of consistent classification decisions and information. This would provide the public with a transparent set of classification criteria and engender confidence in the system.

I therefore recommend the development of more detailed and consistent guidelines across all delivery platforms.

Currently, there is no mechanism for regular reviewing and updating of guidelines to reflect community standards, empirical research on child development issues or developments in content or modes of delivery. I recommend that a Classification Advisory Panel comprising experts in child development and other relevant fields, as well as representatives of community groups and those with industry experience, be established to provide advice on updates of the classification categories, National Classification Code, classification guidelines and matters to be taken into account in decision-making in the Classification Act. The panel would draw on both the empirical evidence in relation to harmful impacts of media content, especially on children, and research and consultation with the community. It would report at least every four years on possible updates to classification guidelines and as necessary to respond to issues that may be referred to it or on which it considers attention needs to be given.

There are separate guidelines used to classify films, computer games and publications. A number of submissions called for the merging of the Films Guidelines and Computer Games Guidelines. Many adult gamers were concerned that the differences in these guidelines were unnecessary and resulted in a number of games being Refused Classification when they are both readily available internationally and would not be Refused Classification under the Films Guidelines.

While there was considerable support for eliminating inconsistencies between the Computer Games Guidelines and Films Guidelines, other submitters were concerned that simply combining these Guidelines would not adequately capture certain interactive game features or provide adequate safeguards for children.

I consider that there is a need to address concerns about the impact of interactive content on children and about violence in computer games, and for this reason do not recommend the merging of the Films Guidelines and Computer Games Guidelines.

However, there are provisions in the Computer Games Guidelines that are more restrictive than the Films Guidelines and have led to a number of games being Refused Classification in Australia. Consistent with the principle in the National Classification Code that “adults should be able to read, hear, see and play what they want,” I recommend that the Films Guidelines and Computer Games Guidelines should be aligned at the R 18+ level and that corresponding changes are made to the Refused Classification provisions in the Computer Games Guidelines. Existing protections would continue to be applied, particularly relating to interactivity, for content below that level that may be accessed by children.

Films Guidelines

Some specific issues were raised in respect of the Films Guidelines. Concerns about sexualised depictions of minors in films is one such issue. While context, artistic merit and intended audience should be taken into consideration when assessing a film generally, sexualised depictions of minors (whether real or animated) that are gratuitous, exploitative or offensive, and which sexually objectify children, should never be permitted.

I recommend that the Films Guidelines should be amended to make reference to the need to give greater weight to the possibility that sexualised depictions of children are gratuitous, exploitative or offensive. While the current classification system provides for child abuse material to be Refused Classification, the provisions in the Commonwealth *Criminal Code Act 1995* (the Criminal Code) in relation to child abuse material are much more detailed than those in the National Classification Code and Guidelines, and I recommend that the National Classification Code and Guidelines should be aligned with the Criminal Code in this regard.

There is also a need for clear warnings for consumers and specific guidance for classifiers about matters such as violence against women and sexual violence, suicide, dangerous imitable behaviour and scary content.

I recommend that the Classification Advisory Panel should address these issues in providing advice on the development of revised and more detailed guidelines. It should also review evidence of impacts on children of lower levels of violence. While current treatment of language in classification is considered generally acceptable, there would be value in including racist and other discriminatory language in this element. I also recommend that the use of alcohol, prescription medications and smoking should be considered under the element 'drugs'.

For X 18+ films, I recommend that the absolute prohibitions on fetishes, which are not illegal, and violence (where it is unrelated to sex) should be removed.

Computer Games Guidelines

Issues relating specifically to the Computer Games Guidelines that have emerged during this review include simulated gambling, loot boxes and other micro-transactions. The main issue with loot boxes is the combination of expenditure with chance and concerns about gambling-like impacts on players, including children. To address this, I recommend that loot boxes that can be purchased are given consumer advice addressing both expenditure and chance aspects, and are given a minimum classification of PG.

Simulated gambling games, which replicate casino games, require a stronger response to prevent children's access to such games. I recommend that games which are purely based on simulated gambling should be given a minimum classification of MA 15+ and continue to be given consumer advice of 'simulated gambling'. However, games which incorporate simulated gambling in a less prominent way (e.g. as part of a broader, narrative-based game), and where simulated gambling can be avoided, may not need such a high rating. Appropriate consumer advice would include 'simulated gambling' where it is interactive and clearly replicates casino games.

Publications Guidelines

There were few suggested changes to the Publications Guidelines. While I recommend maintaining separate Guidelines for Films, Computer Games and Publications, the Publications Guidelines should incorporate definitions of classifiable elements which are consistent with those used in the Films Guidelines and Computer Games Guidelines. Clarity is also needed in relation to allowable detail in depictions of nudity.

Concerns were raised by two stakeholders about sexualised depictions of children in publications. As with the Films Guidelines, the Publications Guidelines should include the need to give greater weight to the possibility that sexualised depictions of children are gratuitous, exploitative or offensive.

Advertising of films, games and publications

I recommend no changes to classification regulation for the advertising of films, computer games and submittable publications, although responsibilities for advertising assessments that currently lie with the Board should be the role of the Australian Government regulator.

Advertising for films and computer games on television should continue to be regulated through broadcasting codes of practice and the Australian Association of National Advertisers codes. Complaints about the placement of advertising should continue to be referred to the broadcaster in the first instance, with escalated complaints being dealt with by the regulator. Complaints about the substance of advertising should continue to be referred to Ad Standards.

I looked closely at the film industry's proposal to change Commonwealth laws for advertising unclassified films where the content of the trailer is assessed rather than the likely classification of the film being advertised. However, I recognise that parts of the Australian community may have concerns about potentially unsuitable films being marketed to children, in cinemas in particular, and on balance recommend no change.

Classification governance

Role of the Australian Government and the states and territories

Under the National Classification Scheme, the Australian Government is responsible for classifying content and the states and territories are responsible for regulating the sale, exhibition, advertising and hire of classifiable content. Under the intergovernmental agreement signed in 1995, decisions made by Ministers must be effected through the Council of Attorneys-General (CAG). Any changes to the National Classification Code and the classification Guidelines must be unanimously agreed by Ministers from all jurisdictions. Many submitters were concerned that these long-standing arrangements were no longer working well in the digital age.

To clarify classification responsibilities and to make classification decision-making more responsive to changes in the content market, I recommend that the 1995 intergovernmental agreement be revised so that:

- The Australian Government retains responsibility for establishing the mechanisms to classify content, however a range of different classification processes can be used.
- The Australian Government is responsible for enforcement of online classifiable content, with states and territories responsible for enforcement of offline (physical) classifiable content.
- CAG decision-making should generally be made on the basis of consensus but where consensus cannot be reached, decisions should be made on the basis of a majority of the members.

The Australian Government regulator

Currently, classification regulation is split amongst a number of Federal bodies, including the Board, the Classification Review Board, Australian Communications and Media Authority (ACMA) and the Department. Consistent with the recommendations to harmonise content regulation across all delivery platforms, I consider that most of these functions should be consolidated in one body. Given its existing role in regulation of broadcasters and online content more generally, I recommend that this body be ACMA.

1. Introduction to the review

1.1 Background

On 16 December 2019, the Minister for Communications, Cyber Safety and the Arts, the Hon Paul Fletcher MP, released Terms of Reference for the review of Australian classification regulation.

This review formed one component of the Government's response to recommendation 6 of the Australian Competition and Consumer Commission's Digital Platforms Inquiry. The Government response and regulatory roadmap is available at www.treasury.gov.au/publication/p2019-41708.

The review also implements a decision made at the Council of Attorneys-General meeting on 28 June 2019 that the Australian Government coordinate a public consultation process on reviewing the Guidelines for the Classification of Computer Games and the Guidelines for the Classification of Films to reflect contemporary Australian community values.²

The scope of the review is outlined in the Terms of Reference. The review does not cover Part 10 of the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act), which regulates content that is prohibited in certain areas in the Northern Territory as it is the remit of the Minister for Indigenous Australians.

1.2 Concurrent review into online safety

At the time of the review, consultation was occurring on a new Online Safety Act. A discussion paper was released in December 2019, commencing a public consultation period which closed on 19 February 2020.³ The Government is currently considering the information provided during the consultation period.

1.3 Consultation

On 8 January 2020, a discussion paper was released on the Department's website and a six-week consultation period commenced with submissions closing on 19 February 2020. Comments and views were sought on the nine questions raised in the discussion paper. A total of 104 submissions were made to the review, with 39 submissions from organisations and 65 submissions from individuals. All submissions have been published on the Department's website, unless otherwise requested.

I also consulted widely with industry stakeholders, community groups, relevant Australian Government agencies and state and territory government officials and Ministers.

Originally intended to finish at the end of April 2020, the Minister extended the review period to the end of May 2020 as a result of the impact of COVID-19.

² Refer to [Communiqué from the Council of Attorneys-General June 2019 meeting](#).

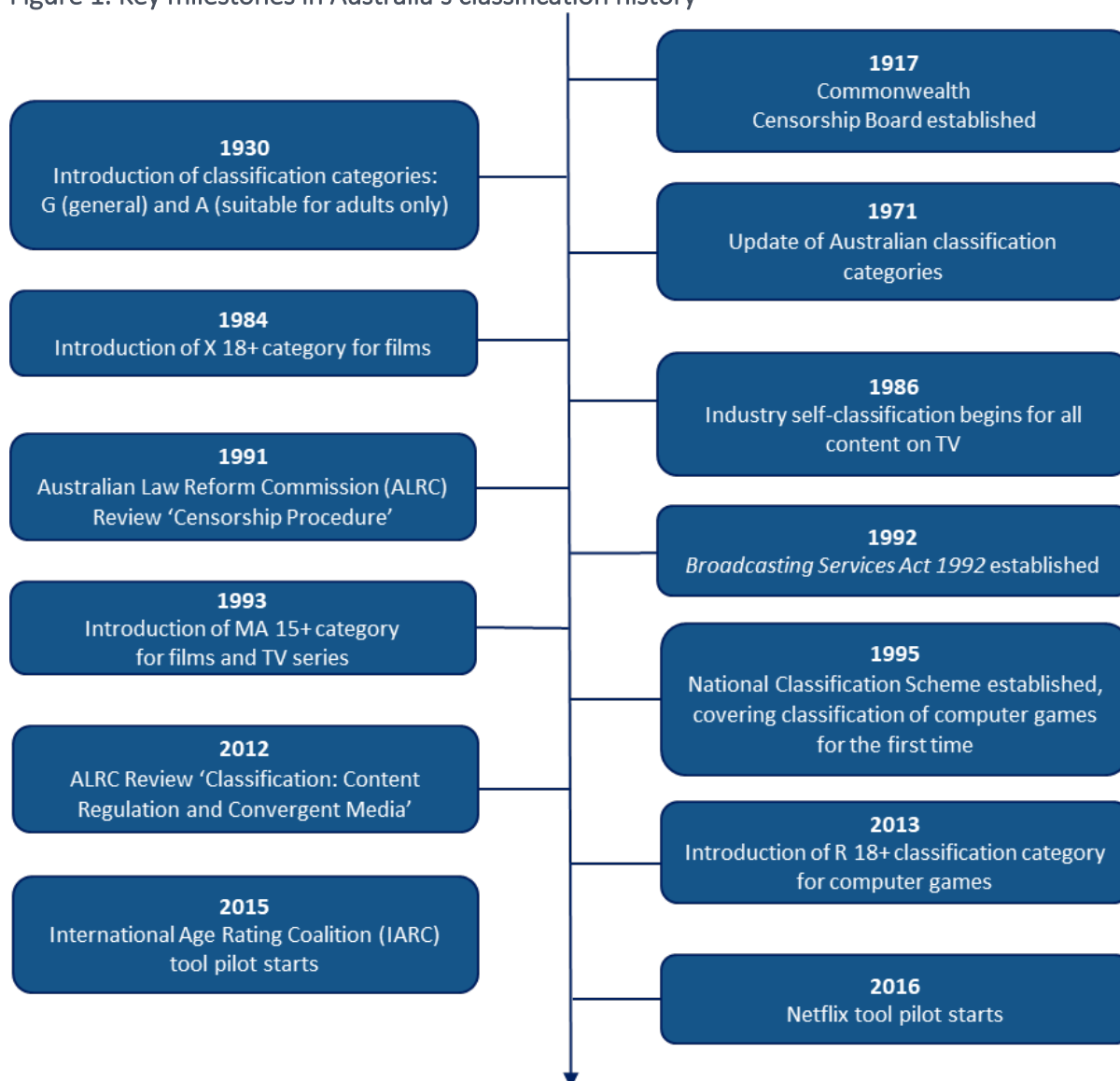
³ Refer to [Consultation on a new Online Safety Act](#).

2. Context to the review

2.1 Australia's classification history

Australia's classification system has existed since the early 1900s. From an early focus on censorship, the focus has gradually shifted to providing information and guidance to help parents make informed decisions about the suitability of programs for children of varying ages and to provide all consumers with information to make informed choices. A brief summary of key milestones in Australia's classification history is in Figure 1.

Figure 1. Key milestones in Australia's classification history



Over time, different classification regimes have evolved depending on the method of content delivery. In 1986, TV broadcasters were permitted to classify all content themselves (rather than have certain content classified by the then Censorship Board) with oversight by the then Australian Broadcasting Authority. Interestingly, one of the reasons given for the change was the need for a more flexible scheme to manage the large volume of content shown on TV.

2.2 Current regulatory arrangements

There are separate but similar regimes for content classified under the National Classification Scheme and under broadcasting legislation.

National Classification Scheme

The National Classification Scheme (the Scheme) sets out the regulatory framework for classifying films (including episodic series)⁴ not broadcast on television, computer games and certain publications.

The Scheme is established under an intergovernmental agreement between the Australian Government and the states and territories.⁵ The Australian Government is responsible for classifying content and the states and territories are responsible for regulating a range of matters in relation to classifiable content including sale, hire, exhibition and advertising.

Changes to the National Classification Code and the Classification Guidelines⁶ require unanimous agreement from the Australian Government and state and territory Ministers responsible for classification matters (usually the Attorney-General or Minister for Justice in each state and territory). Further, any decision to be made by the Ministers in relation to the Scheme, or consideration of matters relating to the administration of the Scheme, is to be effected through the relevant ministerial council (currently the Council of Attorneys-General).⁷

The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (Classification Act) establishes the Classification Board (the Board) and the Classification Review Board (the Review Board), which are statutory bodies that are independent from the Government.

Classification principles

The key principles underpinning the National Classification Scheme as set out in the 1995 National Classification Code are:

- a) adults should be able to read, hear, see and play 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;
 - (ii) the portrayal of persons in a demeaning manner.⁸

⁴ The definition of 'film' in section 5 of the [Classification Act](#) is broad and covers episodic series. Section 92 of the [Classification Act](#) states that it 'does not apply to broadcasting services to which the *Broadcasting Services Act 1992* applies'.

⁵ Refer to the [Intergovernmental Agreement](#), 1995.

⁶ The [National Classification Code](#) (2005), the [Guidelines for the Classification of Films](#) (2012), [Guidelines for the Classification of Computer Games](#) (2012) and [Guidelines for the Classification of Publications](#) (2005).

⁷ Refer to the [Intergovernmental Agreement](#), 1995.

⁸ Refer to [National Classification Code](#), Clause 1.

In making classification decisions, the Board and the Review Board must apply the Classification Act, the National Classification Code (the Code) and the relevant classification guidelines for films, computer games or publications. In addition to determining a classification category, the Boards must give consideration to the six classifiable elements of themes, violence, sex, language, drug use and nudity and provide information about these, known as consumer advice, to inform Australians about the content responsible for the classification.

Classification decisions

In 2018-19, the Board classified 2,820 films, computer games and publications.⁹ This included classifying 626 films for cinema release; 1,257 films for release on DVD, Blu-ray and online (including video on demand); 278 computer games; 29 publications; and 630 classification decisions informed by reports prepared and submitted by trained industry assessors through either the Additional Content Assessor Scheme, the Authorised Television Series Assessor Scheme or the Authorised Assessor Computer Games Scheme.¹⁰

Commercial classification decisions made by the Board¹¹ over time are illustrated in Figure 2. Significant trends include:

- A spike in the classification of films in the mid-2000s as DVDs with bonus material became popular.
- A decline in the amount of films and computer games classified over the past decade, due to the introduction of the IARC tool in 2015, the Netflix tool in 2016 and some online content not being submitted to the Board. This issue is detailed later in the report.
- A significant decline in the amount of restricted publications (generally sexually explicit magazines). This can be partly explained by the decline in the distribution of sexually explicit magazines as similar content became available online and the introduction of a serial declaration scheme for publications in 2002, enabling publications released periodically to be classified once, with the same classification applying to future issues for a fixed period of time.¹² Additionally, some publications are not being submitted to the Board. Again, this is considered later in the report.

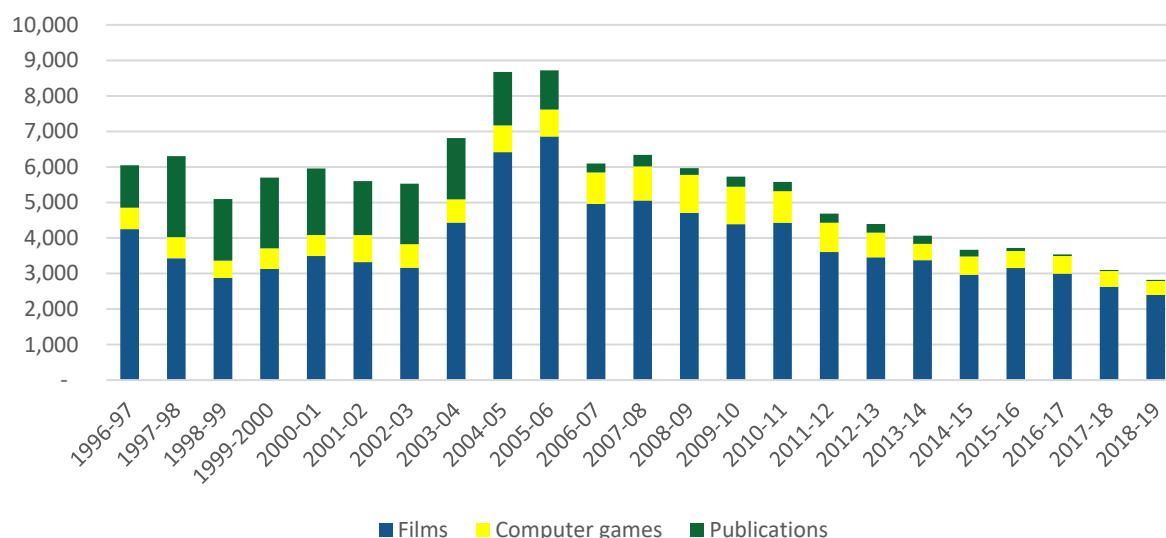
⁹ Refer to [Classification Board Annual Reports](#).

¹⁰ Information on the Additional Content Assessor Scheme, Authorised Television Series Assessor Scheme, and the Authorised Assessor Scheme for Computer Games is further described in Chapter 6 'Processes to classify content'.

¹¹ These statistics include decisions firstly assessed by industry using the Additional Content Assessor Scheme, Authorised Television Series Assessor Scheme, and the Authorised Assessor Computer Games Scheme.

¹² One of the conditions is that the content of future issues must be consistent with the classification of the original issue.

Figure 2. Commercial classification decisions by the Board, 1996-97 to 2018-19



Enforcement

The states and territories are responsible for regulating a range of matters in relation to classifiable content including sale, hire, exhibition and advertising. Each state and territory has a classification Act¹³ enforced by state and territory police or fair-trading bodies. While state and territory classification legislation is largely similar on matters such as prohibiting the sale and exhibition of unclassified content; prohibiting the sale, exhibition and advertising of Refused Classification content; and the placement of trailer advertising, there are other areas of difference. Examples of these are:

- The prohibition on the sale of X 18+ films in the states, whereas X 18+ films can be legally sold to adults in the ACT and the Northern Territory.¹⁴
- The prohibition on Category 1 and Category 2 restricted publications in Queensland.¹⁵
- Differences in the particulars for the sale and public exhibition of MA 15+ content to persons under the age of 15.
- Restrictions on the display and advertising of R 18+ films and computer games in South Australia and Western Australia.

Broadcasting legislation

Classification of content broadcast on television is currently regulated separately under the *Broadcasting Services Act 1992* (BSA). The BSA provides for certain radio and television industry groups, including those representing free to air and subscription broadcasters, to develop industry codes of practice covering, among other issues, methods for classifying programs (both films and series). Under these codes, broadcasters are able to classify content themselves using in-house classifiers. In developing these classification methods, the BSA requires broadcasters to consider community attitudes to a range of matters, which broadly reflect the classifiable elements in the

¹³ Refer to **Error! Hyperlink reference not valid.**

¹⁴ It is also worth noting that under Part 10 of the [Classification Act](#), in certain areas in the Northern Territory it is prohibited to supply, possess or control X 18+ films. Part 10 of the Classification Act regulates content that is prohibited in certain areas in the Northern Territory as it is the remit of the Minister for Indigenous Australians. As noted in Chapter 1, this review does not cover Part 10 of the Classification Act.

¹⁵ It is also worth noting that under Part 10 of the [Classification Act](#) in certain areas in the Northern Territory there are prohibitions on age-restricted publications. Part 10 of the Classification Act regulates content that is prohibited in certain areas in the Northern Territory as it is the remit of the Minister for Indigenous Australians. As noted in Chapter 1, this review does not cover Part 10 of the Classification Act.

National Classification Scheme.¹⁶ The Australian Communications and Media Authority (ACMA) is required to register codes that have been developed in line with obligations set by the BSA.¹⁷

The Australian Broadcasting Corporation (ABC) and Special Broadcasting Service Corporation (SBS) are required by their enabling legislation to develop their own codes of practice and notify these to ACMA.¹⁸

Under broadcasting codes of practice, commercial free to air broadcasters, the Australian Subscription Television and Radio Association (ASTRA), the ABC and SBS each use their own classification guidelines¹⁹ which outline the classification categories, content permissible in each category, and rules for showing content in particular time zones to help protect children from viewing content that may be unsuitable for them.

While not identical, these four classification systems are very similar to each other and to the National Classification Scheme. All use the classification categories and the classifiable elements applicable to films under the National Classification Scheme.

Broadcasters have a higher degree of flexibility to make changes to their Codes of Practice compared to the National Classification Scheme. Under the Scheme, changes require unanimous agreement from the Australian Government Minister and state and territory Ministers. Commercial free to air broadcasters and ASTRA, however, can update classification arrangements in their Codes of Practice at any time, with the updated Codes of Practice then being registered with ACMA. The ABC and SBS have even greater independence and are only required to notify ACMA when they have updated their Codes of Practice.

As a result of this greater flexibility, broadcasters have updated their Codes of Practice more frequently compared to the classification guidelines under the National Classification Scheme. This is outlined further in Chapter 8.

2.3 Past reviews and recent developments

Since 2012, a number of reviews have taken place:

- 2012 – The Australian Law Reform Commission’s review ‘Classification: Content Regulation and Convergent Media’ (ALRC review) found that “the current classification scheme does not deal adequately with the challenges of media convergence and the volume of media content available to Australians.”²⁰ The ALRC recommended developing a new platform-neutral classification framework with “one legislative regime establishing obligations to classify or restrict access to content across media platforms” and a single regulator. It also recommended moving from the existing co-operative scheme with the states and territories to a Commonwealth-only scheme.
- 2012 – A review of Australia's media and communications policy framework (the Convergence review) found that classification had evolved into a complex set of parallel and sometimes overlapping systems. It endorsed the findings of the ALRC review.²¹

¹⁶ Refer to sub-section 123(3) of the [Broadcasting Services Act 1992](#).

¹⁷ Refer to sub-section 123(4) of the [Broadcasting Services Act 1992](#).

¹⁸ Refer to section 8 of the [ABC Act](#) and section 10 of the [SBS Act](#).

¹⁹ Refer to [broadcasting codes of practice](#).

²⁰ Australian Law Reform Commission (ALRC), [Classification: Content Regulation and Convergent Media](#) (2012), p. 22.

²¹ Convergence Review Committee, [Convergence review final report](#) (2012), p. 39-47.

- 2017 – The review of ACMA conducted by the then Department of Communications and the Arts recommended that the Department undertake further work on the potential to expand ACMA’s remit to include the functions of the Classification Board and the Classification Review Board.²²
- 2018 – The Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the *Broadcasting Services Act 1992* (Online Content Scheme) recommended removing the requirement for the Board to classify online content hosted in Australia before it can be taken down by the eSafety Commissioner. The review also suggested that an alternative ‘harm standard’ should be developed for certain online content rather than using classification standards (MA 15+, R 18+, X 18+ and Refused Classification) currently used in the Online Content Scheme.²³
- 2019 – The Australian Competition and Consumer Commission’s (ACCC) Digital Platforms Inquiry final report recommended the development of a new platform-neutral regulatory framework including the creation of “a nationally uniform classification scheme to classify or restrict access to content consistently across different delivery formats” (Recommendation 6).²⁴

Following the ALRC review and the Convergence review in 2012, an R 18+ category for computer games was introduced from 1 January 2013. Other legislative reforms were enacted on 11 September 2014²⁵ which allow the Australian Government Minister to approve classification tools.

Two industry self-classification tools have since been approved:

- The International Age Rating Coalition (IARC) tool for online and mobile games (on participating storefronts); and
- The Netflix tool, used by Netflix to classify its content available in Australia.

These tools are able to classify content in a cost-effective and timely manner, providing a solution to classifying large volumes of online content. The algorithms of the IARC tool and the Netflix tool are designed to generate classifications based on the current Computer Games Guidelines and Films Guidelines respectively and the Board’s interpretation of these Guidelines. Further information about these tools is available in Chapter 6.

The 2014 reforms also removed the need in certain circumstances for films and computer games that are modified to be classified again, unless the change would likely give the film or computer game a different classification. In addition, the reforms streamlined exemption arrangements for content exhibited at film festivals or computer game expos and events held by cultural institutions and community organisations.

2.4 Current market and emerging trends

The National Classification Scheme was enacted 25 years ago and was designed for the content market at the time, namely physical content accessed via retail outlets, including films in cinemas and on VHS tapes, and computer games on physical cartridges. The content market has changed significantly since then and will change in the future, as illustrated in Figure 3.

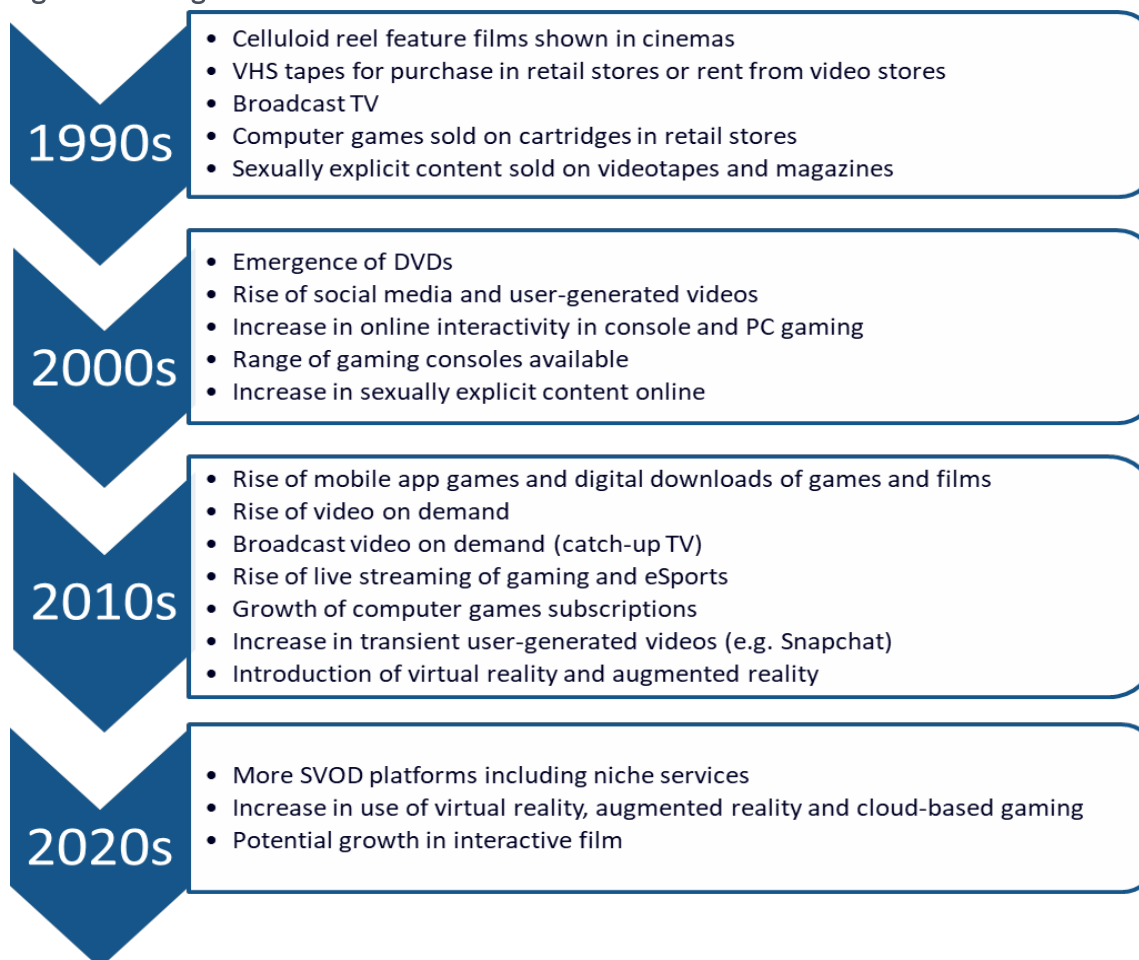
²² Department of Communications and the Arts, [Review of the ACMA—Final Report](#) (2016), p. 43-45.

²³ [Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 \(Online Content Scheme\)](#) (2018), p. 15-16.

²⁴ Australian Competition & Consumer Commission (ACCC), [Digital Platforms Inquiry final report](#) (2019), p. 199.

²⁵ ALRC, [National Classification Scheme Review, Implementation](#) (2013).

Figure 3. Changes in the content market



A major development since the Scheme was established in 1995 has been the enormous increase in digital content. There are now platforms that did not exist two decades ago, including subscription video on demand (SVOD) services, broadcast video on demand (catch-up TV), live streaming platforms and online games and mobile apps.

In addition to the significant increase in the number of platforms for professionally produced film and game content, the past 20 years has seen the emergence of social media platforms where user-generated content can be shared. Facebook was launched in 2004, YouTube in 2005 and WhatsApp in 2009. Computer games like Minecraft allow players to create and share environments in which others can play.

In parallel, there has been a significant rise in platforms for viewing sexually explicit content, both professionally produced and user-generated. The largest of these platforms, Pornhub, was launched in 2007.

While contributing to a large portion of content available to Australians, content on these platforms is generally not classified.

These trends reflect media convergence, where major communications platforms (broadcasting, telecommunications and online) come together so that once separate functions now overlap.²⁶ This environment is characterised by the ability to access content and services on multiple platforms, the emergence of new communications and media services and products, the modelling of media services around user needs and preferences and the rapid growth of user-generated content.²⁷ Coinciding with this is the increasingly global nature of content.

The availability of content on various media platforms and devices has eroded the traditional distinctions between them. For example, content can be viewed on broadcast television, an on demand platform tied to the television network and on an SVOD service. This content can be viewed on television, a computer or a mobile device. These developments have significant implications for existing platform-based regulatory arrangements.

The rise of new forms of content, much of it available globally, such as user-generated video, interactive film and the proliferation of features such as online chat and micro-transactions in computer games, also place pressure on traditional regulatory arrangements.

Film and television

Film and free to air television have been significantly impacted by the rise of video sharing platforms such as SVOD services, and social media. The SVOD market – which includes service providers such as Netflix, Stan, Apple TV+, Disney+ and Amazon Prime – has grown rapidly in recent years. Most recently, Foxtel launched its new streaming service, Binge, on 25 May 2020. Audience measurement and product development research indicated that as of April 2019, more than half of Australian adults had one or more SVOD accounts.²⁸ It is expected that VOD uptake will continue to rise and generate more revenue than other viewing platforms. A range of niche SVODs that offer specific content also exist, and it is likely more will emerge to cater for consumer demands.

In addition to SVODs, consumers are increasingly accessing both user-generated and commercially produced video content through advertising video on demand (AVOD) platforms such as YouTube, Snapchat, Facebook and Instagram. These platforms have broadened in scope to include content such as live updates on news and current affairs to meet consumer demands.

The cinema industry has maintained its market and is expected to continue to do so, with the expansion of cinema technology to enhance viewing experiences and the offer of alternative experiences such as outdoor cinemas.²⁹ Screen Australia has indicated, in their most recent statistics, that approximately 70% of Australians attended cinemas at least once a year from 2010 – 2018.³⁰

However, there has been a shift in the cinema market with the shortening of the 90-day theatrical window (the traditional length of time a film is screened in cinemas before being released on other platforms). Recently, some films have been released on home media within this 90-day window, attracting a premium rental fee.

²⁶ Australian Government, [Convergence Review: Final Report](#) (2012), p. 174.

²⁷ *Ibid*, p. vii.

²⁸ Audience measurement and product development (AMPD) Research: [Australian SVOD Market Reaches 10.2 Million Paying Subs In April 2019](#), 17 June 2019.

²⁹ PwC, [Australian Entertainment & Media Outlook 2019-2023: Filmed entertainment](#), 2019.

³⁰ PwC, [Australian Entertainment & Media Outlook 2019-2023: Free-to-air television](#), 2019.

Australia's TV sector has and will continue to be adversely affected by the growth of SVOD and AVOD services.³¹ With the growth of streaming services available to consumers, the free to air TV sector faces fragmenting audiences, increased costs for making content and declining advertising revenues.³²

With consumers increasingly choosing to access content online, the Australian market for physical films on DVD and Blu-ray discs has declined steadily since 2012.³³

Computer games

Computer games continue to increase in popularity and are played by people of all ages. Industry research indicates that the average gamer falls within the age bracket of 25-34 years.³⁴

The growth of computer games is fuelled by developments in technology. Where once games came only in physical boxes and were played on fixed computers, games are now primarily accessed online and can be played on a variety of devices. Mobile app games have become popular amongst people of all ages as they can be played anywhere and do not require a dedicated gaming device.³⁵

Digital sales are driving the majority of revenue in the gaming market due to downloads, mobile and subscription games. At the same time, sales of physical games are steadily declining.³⁶

The introduction and growth of in-game micro-transactions and downloadable content (DLC) to enable ongoing changes to the gaming experience (and ongoing monetisation of games) post-purchase have also been significant developments in the games market.³⁷ Micro-transactions are made using game points, real-world money, or both. They enable direct purchase of specific in-game content or features, including items used in the game (e.g. outfits, vehicles, weapons and tools), new game modes, characters and extra levels. Micro-transactions include paid loot boxes, where there is an element of chance as to what item a player receives.

The emergence of eSports, where large scale tournaments are held for gamers to compete against one another, and the rise of gamer 'influencers' on social media, has attracted a large spectator audience to games, promoting gaming and boosting the industry as a whole.³⁸

It is anticipated that the gaming market will become the other major entertainment subscription segment alongside SVODs. Whereas traditionally games were sold individually or as bundles on digital storefronts, gaming subscription services offer the ability for consumers to play games in bulk or to order for a single low monthly fee. Subscription services are increasingly using cloud technology to allow consumers to stream games through high-speed internet connections.

The adoption of new technology such as 5G network speeds, Augmented Reality (AR), Virtual Reality (VR), quantum computing and cloud-based gaming will continue to fuel growth in the gaming industry.³⁹

³¹ Environment and Communications References Committee, *Economic and cultural value of Australian content on broadcast, radio and streaming services*, 2019.

³² Free TV Australia, submission to *Economic and cultural value of Australian content on broadcast, radio and streaming services report*, 2018.

³³ Australian Home Entertainment Distributors Association submission, p. 3.

³⁴ ABC, *Chart of the day: Online gamers don't fit the stereotype*, 2018.

³⁵ Tech Crunch, *Mobile gaming is a \$68.5 billion global business, and investors are buying in*, 23 August 2019.

³⁶ PwC, *Australia Entertainment & Media Outlook 2019-2023: Interactive games and e-sports*, 2019.

³⁷ Environment and Communications References Committee, *Gaming micro-transactions for chance-based items*.

³⁸ PwC, *Australia Entertainment & Media Outlook 2019-2023: Interactive games and e-sports*, 2019.

³⁹ Interactive Games & Entertainment Association, *Digital Australia 2020: The Power of Games* (2020) p. 13.

Merging of films and computer games

Allied with these changes is the ongoing convergence of films and computer games. Games, traditionally simple and repetitive with limited storylines when the industry first started, have become sophisticated and more cinematic in their visual presentation and complex in narrative, sometimes incorporating more adult content and ideas, and offering an increasingly immersive, life-like experience. Traditionally, film has been a passive experience while interactivity has been the province of computer games. Technological developments are starting to blur this distinction as films incorporate interactive elements, such as the ability for consumers to make choices about the film's storyline. This trend will continue and will have implications for regulatory and classification arrangements.

Publications

Current laws require that publications which are likely to warrant restriction to adults must be classified before they can be legally distributed or advertised. It is therefore not an automatic requirement that books and other publications require classification, and the onus is on distributors to assess whether content should be considered a submittable publication for classification.

Most commercial publications submitted to the Board are sexually explicit magazines, however on rare occasions, the Board may receive an application for a book to be classified. The impact of a visual depiction is generally greater than that of a textual reference and therefore most books that have been submitted for classification have been classified Unrestricted,⁴⁰ although a few have been restricted; for example, Bret Easton Ellis' 1991 novel 'American Psycho' is classified Category 1 restricted.

The magazine publishing sector overall has declined since 1995, with sexually explicit publications impacted by the increased availability of similar content online. This decline is reflected in the volume of content being submitted to the Board. In the late 1990s, the Board classified nearly 2,000 publications per year. In contrast, the Board classified 42 publications in 2016–17, 31 publications in 2017–18, and 29 publications in 2018–19.⁴¹ This is expected to decline with the closure of more magazine titles in 2019.⁴²

⁴⁰ Recent titles that have been classified 'Unrestricted' include 'The Handmaid's Tale' and 'Beyond Magenta'.

⁴¹ Refer to the Classification Board's [Annual Reports](#). Note—'Serial classification' of publications were introduced in 2005, contributing to the decline in publications being submitted. This enables the Board to declare that the classification granted for a periodical publication apply to some or all future publications for a specified period, up to two years. Notwithstanding the introduction of serial classification, there has been a decline in publications being submitted for classification.

⁴² The Guardian, [Softcore magazines The Picture and People to Close amid Sale Ban and Falling Circulation](#), 23 October 2019.

2.5 International classification systems and developments

Almost all countries have some form of classification for films and computer games. Appendix 2 outlines the classification systems used in various countries.

Not surprisingly, classification schemes have evolved on a national basis and while the objectives of classification are similar, there are significant differences between schemes. A major difference is the use by some countries of a more age-based classification system than that used in Australia. For example, the classification system in the Netherlands informs parents and children whether a film or television program may be harmful by providing specific age guidance (All ages, 6, 9, 12, 14, 16 and 18).⁴³

All countries are grappling with the challenge of classifying the proliferation of online content with the growth of streaming services and there has been a consistent trend towards greater industry classification.

For example, in the UK, while there is no legal obligation for video on demand services to display British Board of Film Classification's (BBFC) classification ratings, the BBFC has been encouraging these service providers to use BBFC ratings. In October 2019, the BBFC released the Video on Demand User Guidelines, which provides practical advice on implementing the Best Practice Age Labelling Guidelines produced by the BBFC and the Video Standards Council Ratings Board.⁴⁴

In New Zealand, paid video on demand services are currently not covered by classification laws although a bill was introduced to Parliament in December 2019 to include commercial video on demand content under current classification legislation. Specific providers have been identified which will have to comply with the new requirements.⁴⁵

⁴³ Kijkwijzer, [About Kijkwijzer](#), 2020.

⁴⁴ BBFC, [VOD User Guidelines](#), 2019.

⁴⁵ Refer to New Zealand's [Films, Videos, and Publications Classification \(Commercial Video on-Demand\) Amendment Bill](#).

3. The need for reform

Much has changed since classification and broadcasting legislation were developed in the early nineties. Over the past decade, there has been increasing calls for reforms to the current regulatory arrangements to take account of increased content available online and the availability of similar content on different platforms. Classification arrangements that were developed in a largely physical world are no longer fit for purpose.

Concerns about current arrangements that need to be addressed include:

- The high cost of processes to use the Board, especially given the volume of content now requiring classification;
- Timeframes to use the Board which are too long to be compatible with current media practices;
- Separate regulatory systems and regulators for broadcast and for other content providers;
- Lack of clarity on what content should require classification due to the very wide and outdated definitions in current legislation;
- Lack of compliance with existing legislation among some content providers, including some video on demand providers and online games storefronts, partly as a result of the high cost and long timeframes of existing classification practices;
- Governance arrangements between the Australian Government and the states and territories, which could better define roles and responsibilities of the various parties in an online environment, and which are not seen as sufficiently timely or flexible; and
- Lack of a regular approach to updating classification guidelines to reflect contemporary community concerns and research into relevant matters, including child development issues.

3.1 Costs and timeframes

Under current regulatory arrangements, broadcasters can self-classify content using in-house staff, but most other content distributors must use the Board, leading to greater costs and timeframes for content to be classified. Classification fees are set out in the *Classification (Publications, Films and Computer Games) Regulations 2005*. Examples of fees and timeframes are outlined below.

Table 1. Classification fees

Application type	Application fee	Statutory timeframe
125-minute cinema film	\$2,760	Up to 20 working days.
600-minute episodic series on DVD, Blu-ray or VOD service	\$2,530	Up to 20 working days. An additional fee of \$420 can be paid for priority processing for a classification decision to be made within 5 working days.
Physical computer game	\$430–\$2,460, depending on the amount of work required by the Board or whether the game is demonstrated to the Board	Up to 20 working days. An additional fee of \$420 can be paid for priority processing for a classification decision to be made within 5 working days.
80-page sexually explicit magazine⁴⁶	\$480	Up to 20 working days.
Review Board decision	\$10,000 unless the fee is waived	None

⁴⁶ In some cases, the serial declaration scheme can be used for publications released periodically. Only one issue in the series is classified by the Board, at a cost of \$1,080, and this classification applies to all future issues for a fixed period of time, as long as the content of future issues is consistent with the classification of the original issue.

The high fees are due to the Board's services being fully cost-recovered through industry fees, and the Review Board's services being partially funded through industry fees and partially by the Government.

Put simply, these costs and timeframes are incompatible and not sustainable in the current media environment. While the costs may have been more acceptable a decade ago, the volume of content now requiring classification makes these costs uneconomic for industry, including streaming services and online games storefronts. One result has been that some streaming services and some online games storefronts are not complying with current regulations.

Again, the timeframes are also incompatible in a world where global content is increasingly being shown in many countries at the same time.

When the National Classification Scheme was enacted in 1995, all films, computer games and submittable publications were to be submitted to the Board. Over the years, there have been incremental changes to the National Classification Scheme to enable greater industry responsibility and flexibility, while continuing to produce reliable classification information for Australian consumers. These have included the Additional Content Assessor Scheme, the Authorised Television Series Assessor Scheme, the Authorised Assessor Computer Games Scheme and the IARC and the Netflix classification tools which are outlined in Chapter 6.

However, as more media platforms have emerged and the quantity of media has significantly increased, there is a need for a fundamental overall review of classification processes across platforms to reduce costs and timeframes. The approval of tools for the classification of computer games and some streaming content have highlighted that a model where classification is done by a Government Board is arguably not working now and will certainly not work in the future.

3.2 Lack of clarity on what content should require classification

As noted earlier, separate but similar classification systems apply to content broadcast on free to air TV and content that is classified under the National Classification Scheme. Broadcasting services are regulated under the BSA rather than the Commonwealth Classification Act. What constitutes a broadcasting service is defined in the BSA. A key development was the 'Alston Determination' in 2000 which had the effect of excluding live streaming point-to-multipoint services over the internet (including television, radio and social media video streaming services) from the definition of a broadcasting service. As a result, live streaming services (including online simulcasts of free to air TV) are regulated – for the purposes of classification – under the Classification Act, rather than the BSA. The Classification Act also applies to on-demand, point-to-point services (for example Binge and Netflix) which are exempt from the definition of a broadcasting service in subsection 6(1) of the BSA.

The Alston Determination was enacted to address the issue of live streaming which was in its infancy and not clear how it would evolve. Since that time, streaming and video on demand services in Australia have increased in both number and diversity of content offerings. On 19 September 2019, the Minister remade the Determination by extending it for an additional three years (with the instrument to sunset on 18 September 2022). This extension was to enable thorough consideration of broadcasting and online media issues following the recommendations from the ACCC's Digital Platforms Inquiry.⁴⁷

Content captured under the definition of 'film' in the Classification Act is technically very broad and would include all user-generated uploads and social media. Requiring all online content to be classified is clearly impossible and clarity is needed on what content should be required to be classified.

⁴⁷ Refer to Minister Fletcher's [media release: Alston Determination Extension](#).

3.3 Separate regulatory systems and double handling

The following figure and table illustrate current regulatory systems and the different classifiers for each regulatory system.

Figure 4. Overlapping content regulation

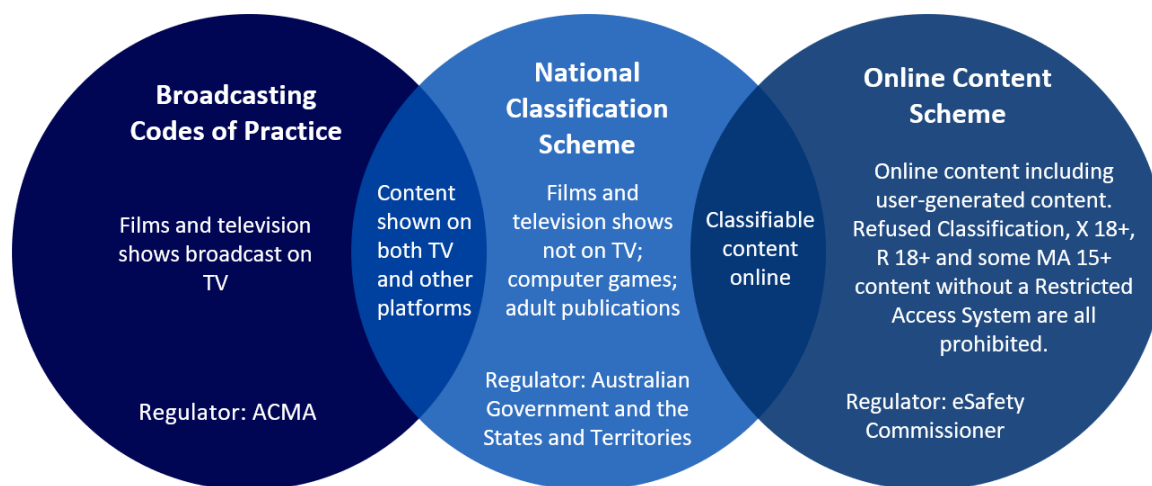


Table 2. Content classifiers across schemes

Regulation	Classifier
Broadcasting Codes of Practice	In-house staff at broadcasters
National Classification Scheme	Board, Review Board, classification tools
Online Content Scheme	APS staff at the Office of the eSafety Commissioner

There are a number of problems with applying separate classification frameworks and processes for broadcast television and other platforms. These include:

- Some differences in classification guidelines and consumer advice;
- Double handling as a result of classifications not being able to be carried over between broadcast TV and other platforms. As such, if the same content is broadcast on television and any other platform, it must be classified twice. For example, a television program broadcast is first classified in-house by the broadcaster's staff, then must be classified again by the Board if it is to be released on DVD; and
- Different classification processes resulting in higher costs and longer timeframes for content needing to be classified by the Board compared with content classified by in-house classifiers for broadcast TV.

3.4 Practical compliance with existing laws

The high costs and timeframes associated with the Board classification processes have led to some content providers not complying with classification laws.

There is varying compliance among VOD services. Some are complying with classification laws (including Netflix through the use of its classification tool approved by the Minister); others submit only a selection of content to the Board and self-classify other content; and others do not submit content to the Board and instead display their own global ratings information rather than Australian classifications.

In the games industry, the introduction of the IARC tool in 2015 has enabled Australian classification information to be provided on many online games storefronts that participate in IARC. However, Apple's App Store uses its own ratings system while Steam does not require game developers to classify games before the games are made available to consumers.

Sexually explicit DVDs are not being submitted to the Board, at least in part due to the costs.

3.5 Governance arrangements

Under an intergovernmental agreement signed in 1995, changes to the National Classification Code and the Guidelines must be unanimously agreed by Ministers from all jurisdictions. The intergovernmental agreement also outlines that decisions made by Ministers must be effected through the Standing Committee of Attorneys-General (now the Council of Attorneys-General), which meets twice per year.

The current decision-making arrangements have meant that changes to classification regulation can be time-consuming, making it more difficult to deal quickly with developments in technology and emerging community concerns. For example, it took a decade to reach agreement to enable the introduction of an R 18+ classification for computer games.

The governance framework needs to clearly outline the respective roles of the Australian Government and the states and territories in the classification scheme and enable potential changes to the scheme to be addressed in a timely fashion.

3.6 Split regulatory responsibilities at the federal level

Currently, responsibility for classification issues is split across a range of **Australian Government agencies**:

- The Board is responsible for making classification decisions for films, computer games and publications;
- The Review Board is responsible for any reviews of Board decisions;
- The Department of Infrastructure, Transport, Regional Development and Communications is responsible for providing operational support to the Boards, advising on classification policy and assessing and recommending changes to the Minister, including the approval of classification tools;
- ACMA has oversight of the classification process of free to air broadcasters and subscription TV broadcasters and handles complaints against the broadcasters.

While this reflects the historical development of classification across the then independent platforms, it is no longer suited to the current convergent media environment.

3.7 The need for regular reviews of classification guidelines

Currently, there is no process under the National Classification Scheme to regularly review the classification guidelines. As a result, guidelines may not fully reflect contemporary community concerns on social issues, such as domestic violence or depictions of suicide or emerging research on the impact of various film or computer game content on children. The guidelines also need to take into account technological change such as the blurring of the distinction between games and films, as films become increasingly interactive and games become more sophisticated in visual representation with complex narratives.

In contrast, broadcasters have greater flexibility to update their Codes of Practice to reflect changing classification standards.

4. Shaping a contemporary classification system

To address the issues raised in Chapter 3, it is helpful to first consider the features of a more contemporary and effective regulatory framework for classification.

4.1 Primary purpose of classification

Classification should provide consumers with information that helps them to make more informed media choices in selecting content to view or play for themselves and for those in their care. This information should be readily accessible and understandable to consumers and provide warnings about content that may be of concern to some sections of the community.

Classification also serves more broadly to provide guidance on the suitability of content or set restrictions on content that is considered harmful or at odds with community standards.

4.2 Principles in the National Classification Code and the Classification Act

The National Classification Code (the Code), covering the classification of films, computer games and publications, provides the key principles underpinning the National Classification Scheme.

Clause 1 of the Code provides that classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear, see and play 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.⁴⁸

Section 11 of the Classification Act provides that the following matters are to be taken into account in making a classification decision:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the publication, film or computer game; and
- (c) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.⁴⁹

Intersecting these are the provisions relating to criminal matters that exist in the Refused Classification category and the Commonwealth *Criminal Code Act 1995* (the Criminal Code). The National Classification Code also describes at a high level the content permissible for each of the categories and the age suitability or restrictions.⁵⁰

⁴⁸ Refer to [National Classification Code 2005](#).

⁴⁹ Refer to [Classification \(Publications Films and Computer Games\) Act 1995](#).

⁵⁰ Refer to [National Classification Code 2005](#).

Submitter views

A number of submissions, while broadly supporting the principles in the Code, argued that there was an opportunity to update the language in which they were expressed. For example, certain provisions were said to over-emphasise protection rather than empowerment and guidance in individual decision-making. A number of individuals also focussed on the term ‘unsolicited’ and questioned its relevance in the modern media landscape where there is an abundance of choice and information available.

A cross-section of submitters also took issue with the concept of ‘offence’, suggesting that ‘harm’ was a more appropriate consideration in modern classification.⁵¹ It was also suggested that ‘offence’, being subjective, should not be used as a basis of enforcement.⁵² In addition, the principle relating to “the portrayal of persons in a demeaning manner” was noted as being open to various interpretations.⁵³

Some submitters argued not only for greater emphasis on concepts such as harm, but for more empirical evidence of harms to be used in assessing changes to classification.

In its submission, the ACCM suggests “the matter of harm to children gets overlooked” in classification and that “measures to protect children from harm should be based on the best evidence, from peer-reviewed research, as to what is likely to be harmful. They should not be based on community standards, or on the content creator’s intent.”⁵⁴ It also argued that classification should relate to stages of child development.

The Association of Heads of Independent Schools of Australia (AHISA) and Collective Shout supported the ACCM’s proposals that classification is based on evidence of harms and refer to stages of child development.⁵⁵ Several other stakeholders called upon evidence of harms from academic research to support their various proposed changes to classification standards in line with content of concern, including sexual content, gambling, suicide and self-harm, and substance use.⁵⁶ These views are presented in Chapters 9 and 10.

Evaluation

Broadly speaking, classification has evolved to a system where decisions are intended to reflect community standards as to what is offensive to the broader population and potentially harmful or disturbing to children. This is weighed against the principle of adults being able to see, play, hear or read what they want as articulated in the Code, and matters such as intended audience and educational or artistic merit articulated in the Classification Act. Intersecting these are the provisions relating to criminal matters that exist in Refused Classification and the Criminal Code.

These provisions contain elements that trace back through the history of classification and are therefore in need of an update. However, the central cause articulated in the Code of balancing freedoms of adults and protection of children should remain after any reform of the classification system.

⁵¹ Refer to submissions from the Interactive Games & Entertainment Association (p. 25) and Australian Council on Children and the Media (p. 33).

⁵² Private submission 10.

⁵³ Interactive Games & Entertainment Association submission, p. 25.

⁵⁴ Australian Council on Children and the Media submission, p. 4.

⁵⁵ Refer to submissions from Association of Heads of Independent Schools of Australia (p. 1) and Collective Shout (p. 3).

⁵⁶ Refer to submissions from Collective Shout (p. 3), Everymind and SANE Australia (p. 3), Foundation for Alcohol Research and Education (p. 4), Responsible Gambling Fund (p. 1) and Centre for Responsible Technology (p. 31).

While community standards will necessarily continue to have an important place in classification, I am not convinced ‘offence’ should be maintained as a central concept in classification. There are several ways in which offence could be adapted, for example through a broad definition of harm that encompasses disturbance as well as more profound and lasting impacts.

I agree that the language of ‘unsolicited’ is anachronistic in the current media environment, however, I also acknowledge that a similar concept of ‘unexpected’ content has currency and goes not only to classification ratings but to consumer advice.

The reference to ‘portrayal of persons in a demeaning manner’ is problematic largely because its intent is open to interpretation. If interpreted to mean depictions of persons demeaning *themselves* of their own free will, this may be read as a relic of the previous concerns about depravity which seems at odds with the idea that “adults should be able to read, hear, see and play what they want.” However, if it is interpreted to refer to depictions of people being demeaned by *others*, this is a highly relevant concern, as it goes to matters such as cruelty, sexual violence, sexualised violence and discrimination.

Finally, while some have argued that ‘protection’ as a concept is paternalistic, I consider that classification should strive to support parents in making the best choices to protect their own children from age-inappropriate and potentially harmful content.

Two things notably absent from both the Code and the Classification Act are references to *information* and *choice*. A contemporary classification system should aim to empower consumers to make informed media choices for themselves and those in their care. Such objectives are also more closely aligned with a system that is more focussed on guidance than censorship and is more consistent with a modern consumer-centred media landscape.

As noted in Chapter 2, the review of the Enhancing Online Safety Act 2015 and Review of Schedules 5 and 7 of the Broadcasting Services Act 1992 (Online Content Scheme) recommended that the eSafety Commissioner should be enabled to make her own determinations regarding seriously harmful online content.⁵⁷

In a discussion paper produced for the consultation process for a proposed new Online Safety Act⁵⁸, a two-tiered system was proposed, whereby seriously harmful content such as child sexual abuse material would no longer be assessed under the National Classification Code, with separate provisions for content that would be classified MA 15+, R 18+, X 18+ or RC under the Code.⁵⁹ The Government is currently in the process of considering information provided in consultations.

Setting aside the question of seriously harmful online content, I consider that there is a place for both community standards and evidence relating to harms in the development of classification standards.

In relation to any updates to the Code and provisions in the Classification Act, I recommend they are based on the following fundamental principles:

- Adults should be able to read, hear, see and play what they want, with limited exception;
- Minors should be protected from content likely to harm or disturb them; and
- Everyone should be protected from exposure to content of serious concern to the wellbeing of the community.

⁵⁷ Refer to [Report of the Statutory Review of the Enhancing Online Safety Act 2015 and Review of Schedules 5 and 7 of the Broadcasting Services Act 1992 \(Online Content Scheme\)](#) (2018), p. 15.

⁵⁸ Refer to [Consultation on a new Online Safety Act](#).

⁵⁹ Refer to [Online safety legislation reform discussion paper](#), p. 44.

Recommendation 4-1: Updates to the National Classification Code and the Classification Act should be based on the following fundamental principles:

- Adults should be able to read, hear, see and play what they want, with limited exception;
- Minors should be protected from content likely to harm or disturb them; and
- Everyone should be protected from exposure to content of serious concern to the wellbeing of the community.

4.3 Objectives underlying classification reform

Development of a new classification framework must consider the needs of consumers (as the end users of classification information), industry (who are required to have content classified) and the wellbeing of the community at large. There is a need for a future classification regulatory framework that:

1. Is able to adapt to new technologies, market developments and emerging issues of community concern.

The classification framework should be able to flexibly adapt to changes in technology, market developments (such as changes to industry business models) and community needs.

2. Provides clear, useful and easily accessible information to enable consumers to make informed media choices for themselves and for their children.

Clear, specific guidance would also assist those classifying content so that classification decisions are made in a consistent and reliable manner. Guidelines should clearly indicate what content falls in each classification category and provide guidance in creating consumer advice that is useful, easily understood and succinct.

3. Has evidence-based classification guidelines that are regularly updated taking into regard both expert knowledge and Australian community standards.

The guidelines used to classify content should be periodically updated having regard to both expert knowledge on media harms and child development, as well as Australian community views and concerns.

4. Enables classification arrangements that are efficient and cost-effective for industry, that are consistent across content platforms and which have the confidence of the community.

Enabling content providers to classify content in a timely and cost-effective manner will encourage compliance which will ultimately benefit Australian consumers by providing classification information in accordance with Australian community expectations.

To facilitate this, classification processes need to be revised to:

- Clearly define what content must be classified, recognising that not all content available in Australia can be classified;
- Give industry the flexibility to choose the classification process that best suits them as long as the end outcome is consistent with the classification scheme;
- Equip industry to make consistent and appropriate classification decisions;
- Remove circumstances where the same content must be classified more than once where it is shown across different platforms; and
- Incorporate safeguards to maintain community confidence in classification outcomes.

5. Provides appropriate content restriction and enforcement for both physical and online content.

Community safeguards should include the provision of consistent, accurate, accessible and easily understood classification information and harm minimisation. Industry has an important role to play in adopting and promoting new technologies that can assist parents and carers to filter or restrict access to certain content.

6. Enables timely decision-making on changes to the classification scheme.

Classification decision-making between the Australian Government and the states and territories should facilitate timely policy changes so that the classification scheme is adaptable to changing consumer needs and industry developments.

5. Content to be classified

5.1 Films and television programs

Current arrangements

Under television broadcasting codes of practice, all ‘films’ and television ‘programs’ must be classified unless they are exempt. Exemptions cover news, current affairs and sports programs.

Under the National Classification Scheme, all ‘films’ must be classified before they are made available in Australia, unless they are exempt⁶⁰ or covered by the BSA (i.e. broadcast on television).⁶¹ The definition of ‘film’ in the Classification Act is very broad:

Film ‘includes a cinematograph film, a slide, video tape and video disc and any other form of recording from which a visual image can be produced including a computer generated image (together with its soundtrack) but does not include (a) a computer game; or (b) an advertisement for a publication, a film or a computer game’.

This definition is not limited to feature films – it also covers television episodes not broadcast on television (e.g. DVD boxed sets of TV series) as well as bonus features on DVD and Blu-ray discs.

This broad definition also covers content available online and streamed through SVOD and catch-up TV streaming services. Technically it also covers user-generated content uploaded to sites such as YouTube.

Clearly all this content is not currently classified, although legally it is caught by the current regulatory arrangements and technically should be classified.

Submitter views

There was widespread support for amending classification legislation to clarify what should be classified. Many submissions supported excluding user-generated content from classification, recognising that not all user-generated content can be classified and that classification laws should focus on professional films and television programs.⁶²

Many community and industry submissions named specific platforms where film content should be classified, for example television, cinema, DVD/Blu-ray and VOD platforms.⁶³ Others recognised the challenge of finding an appropriate platform-neutral definition to appropriately target film content and exclude user-generated content, and suggested the following:

- ‘Professional’ content (suggested by multiple stakeholders).⁶⁴
- ‘Commercial and professional’ content with ‘higher quality production values’.⁶⁵
- ‘Professionally produced, with a narrative arc, and produced for commercial exploitation and distribution’.⁶⁶

⁶⁰ Refer to Part 1A of the [Classification Act](#). Exempt films are outlined later in this chapter.

⁶¹ Refer to section 92 of the [Classification Act](#).

⁶² Refer to submissions from the Australian Children’s Television Foundation (p. 7), Australian Council for Children and the Media (p. 14), Classification Board (p. 48), Communications Alliance (p. 1), Digital Industry Group Inc. (p. 1), Foundation for Alcohol Research and Education (p. 4) and Google (p. 3).

⁶³ Refer to submissions from the Australian Council for Children and the Media (p. 14), Collective Shout (p. 3), Spherex (p. 4-5), Telstra (p. 3) and Vendetta Films (p. 2).

⁶⁴ Refer to submissions from the Film Industry Associations (p. 5), Screen Producers Australia (p. 3-4), Collective Shout (p. 3) and Australian Home Entertainment Distributors Association (p. 8).

⁶⁵ Australian Home Entertainment Distributors Association submission, p. 8.

⁶⁶ Australia New Zealand Screen Association submission, p. 4.

- ‘All professional screen content’ (apart from the existing exemptions), and neither the distribution platform nor the size of the potential audience should influence decisions about what content should be classified.⁶⁷
- The definition recommended in the 2012 ALRC review, which was that a new Act should provide that “feature films and television programs that are *likely to have a significant Australian audience and made and distributed on a commercial basis* should be classified before content providers sell, screen, provide online, or otherwise distribute them to the Australian public.”⁶⁸

The Interactive Games & Entertainment Association considers that any new definition for film should not inadvertently cover live content such as live streamed eSports broadcasts.⁶⁹

Evaluation

The Australian community values classification, and it is clear from the consultation process that industry recognises the need to continue classifying professional content. Consistent with views in the submissions, 2015 Departmental research found that over three quarters of respondents said that classification of films and games remained either very or somewhat useful.⁷⁰ Classification is particularly valued in helping guide choices for young children.

It is unrealistic to expect that all online content can or should be classified. Therefore, the focus of classification should be on the content that is most relevant and important to Australian consumers.

A revised classification framework should capture films and television programs on VOD services directed at an Australian audience, as well as on other platforms that have traditionally been classified including content in cinemas, on DVD and Blu-ray, and on television.

Many stakeholders acknowledged during the consultation process that it is challenging to define in legislation what content or services should be classified in a platform-neutral way without naming specific platforms.

This dilemma is being faced in other countries and the approach to the content to be classified is not uniform. While user-generated content is generally excluded from classification not all countries currently classify streaming service content. For example, in New Zealand, subscription VOD (e.g. Netflix) and transactional VOD services (e.g. Apple iTunes) are not currently subject to mandatory classification although legislation is being introduced to cover providers of “video on-demand content that is made available to persons in New Zealand for a fee or other consideration.”⁷¹ In the UK, the British Board of Film Classification is working to encourage VOD providers to display UK ratings and its work with Netflix is outlined in Appendix 2.

Any definition needs to recognise that the provision of streaming services is not static and that a variety of new services will emerge over time.

Accordingly, I am recommending amendments to the Classification Act to include a set of high-level principles for content that should be classified, supported by a legislative instrument that provides specific guidance and examples of content and services that should be classified. A legislative instrument that can be updated as required would provide the necessary flexibility to take into account industry changes in the future.

⁶⁷ Film Industry Associations submission, p. 5.

⁶⁸ Google submission, p. 3.

⁶⁹ Interactive Games & Entertainment Association submission, p. 27.

⁷⁰ Refer to Attorney General’s Department, [Classification ratings research with the general public](#) (2015).

⁷¹ Refer to New Zealand’s [Films, Videos, and Publications Classification \(Commercial Video on-Demand\) Amendment Bill](#). Introduced into New Zealand Parliament in December 2019 and yet to be passed.

I recommend that the following principles should be used to define content that should be classified:

- Professionally produced; and
- Distributed on a commercial basis; and
- Directed at an Australian audience.

‘Professionally produced’ implies higher quality production values where there is a likely involvement of a production team that may involve (but is not limited to) a writer, director, producer and/or support staff. This would differentiate professional films and television programs from home videos posted on YouTube or other social media.

‘Distributed on a commercial basis’ relates to 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. I consider that ‘distributed on commercial basis’ does not necessarily mean that the user must pay a fee to watch the content, though in many cases they will pay for subscription VOD or transactional VOD (such as for film rentals). One such example is broadcasting VOD services including SBS On Demand, ABC iView, 9Now, 7plus and Tenplay, in which Australian consumers do not need to pay fees to watch the content. Even though these services are provided free of charge to the public, I consider that broadcasting VOD services should be captured by classification laws – the important aspect here is that the content provider (the ABC, SBS and commercial free to air broadcasters) are organisations that undertake commercial transaction to buy, make or license the content for distribution in Australia.

‘Directed at an Australian audience’ acknowledges that there may be some online VOD platforms hosted overseas that may be available to Australians via the internet, but may not necessarily be directed at, or marketed to an Australian audience. It would not be realistic to require providers of such content to carry Australian classifications.

An indicator of ‘directed at an Australian audience’ could be a VOD platform having a selection of content specifically available in Australia or have marketing specifically directed at Australians. It is important that the content provider or distributor choosing to make the content available in Australia should be responsible for classification, which may not necessarily be the original maker of that content.

This approach would provide classification information for content that is most relevant to the broad Australian community and where there is a reasonable expectation that the content provider should provide Australian classification information.

The eSafety Commissioner would continue to have responsibility for responding to online content that is illegal, including content that would be Refused Classification under the National Classification Scheme.

As more VOD providers are likely to enter the Australian market in the future, this definition is designed to cover future VOD services as well as existing ones.

The legislative instrument could set out examples based on these three principles of what content should be classified and what should be excluded from classification, with examples outlined in Table 3.

Table 3. Examples of content that could be included and excluded from classification

Included	Excluded
<ul style="list-style-type: none"> Films and television programs across platforms, including broadcast on television, in cinemas, on physical media (DVD and Blu-ray discs), and on VOD including transactional VOD, subscription VOD and broadcasting VOD. 	<ul style="list-style-type: none"> User-generated videos such as home videos or how-to tutorials. Content may be semi-professional but would not meet the same criteria of professionally produced content as for a feature film or television program and would not be directed at an Australian audience. Online content would continue to be regulated under the Online Content Scheme, in addition to the consumer protection mechanisms provided by video platforms themselves. Live video streams that are not discrete recordings. Overseas VOD platforms that are not made and directed at an Australian audience (e.g. without a content selection specifically for Australia or Australian marketing) but are still available to Australians if sought out. Exempt films and television programs (outlined later in this chapter). Specified VOD platforms that provide films to public libraries in Australia for free use by library members (outlined later in this chapter).

Broadcasting codes of practice have separate definitions of ‘film’ and ‘television program’. However, the definition of ‘film’ in the Classification Act covers both feature films and television programs not broadcast on TV. Consistent with current broadcasting arrangements, I suggest defining ‘film’ and ‘television program’ separately to provide clear guidance to industry that classification regulation covers both feature films and television programs.

YouTube

Since YouTube’s launch in 2005, it has gained enormous popularity among Australians. It provides a wide spectrum of content, from professionally produced films to home videos and do-it-yourself instructions. It would be unrealistic to expect all YouTube content to be classified.

However, YouTube provides ‘YouTube Original’ films and television programs, most of which are available to Australians for a monthly subscription fee through YouTube Premium. These have professional production values and various Australian media distributors and broadcasters have their own YouTube channels. While most of these channels feature advertising (trailers), news or sports, some YouTube channels feature short films or television programs. I set out a possible framework for YouTube content in Table 4.

Consumer information and warnings about user-generated content is an issue that is being examined globally. The British Board of Film Classification and the Netherlands Institute for the Classification of Audio-visual Media has previously worked on the You Rate It tool,⁷² which is a tool that enables consumers to classify content on video sharing platforms. You Rate It was developed for use on an international level but is not currently used on major video sharing platforms such as YouTube or Facebook.

⁷² You Rate It, [You Rate It](#) (2020).

Table 4. YouTube content – parameters for what is required to be classified

YouTube content included	YouTube content excluded
<ul style="list-style-type: none"> • YouTube Original films and television programs • Professionally produced films and television programs directed at an Australian audience and distributed on a commercial basis 	<ul style="list-style-type: none"> • User-generated videos (e.g. home videos, how-to tutorials and other videos without obviously high professional production values) • Videos not specifically directed at an Australian audience

Recommendation 5-1: That the scope of classifiable films and television programs should be clearly articulated to focus on professionally produced content distributed on a commercial basis and directed at an Australian audience.

Recommendation 5-2: A legislative instrument should be developed to provide guidance to industry on what content should be classified.

Recommendation 5-3: Classification should continue to be the responsibility of the provider that makes the content available first in Australia, regardless of who originally makes the content.

5.2 Computer games

Current arrangements

Under the National Classification Scheme, all computer games must be classified before they are made available in Australia unless they are exempt under the Classification Act. Exemptions include software for business, accounting, education, professional purposes or scientific purposes. The definition of ‘computer game’ in the Classification Act covers physical boxed games and online games.⁷³ The introduction of the IARC tool in 2015 has enabled large volumes of games to be classified across all classification categories.

Submitter views

The Interactive Games & Entertainment Association’s submission proposed that computer games likely to be classified G, PG or M could be subject to voluntary classification through an industry code. The International Social Games Association, community organisations and individual submitters did not suggest changes to the current approach of all computer games being classified.

Evaluation

The Australian community values classification, and it is clear from the consultation process that industry recognises the need to continue classifying professional content. Given that the IARC classification system is in place and is working well, I recommend that all computer games made available in Australia continue to be classified apart from exempt computer games. Exemptions are outlined later in this chapter.

While a less significant issue compared to user-generated videos, I am aware there are some user-generated online games that may not be distributed on a commercial basis or directed at an Australian audience. As such, I recommend applying similar principles to the classification of computer games that are applied to films and television programs. The legislative instrument approved by the Minister could specifically include physical boxed games and games made available on online gaming

⁷³ Refer to section 5A of the [Classification Act](#).

storefronts. Classification should continue to be the responsibility of the provider that makes the content available first in Australia, regardless of who originally makes the content.

Recommendation 5-4: That the scope of classifiable computer games should be clearly articulated to focus on professionally produced computer games distributed on a commercial basis and directed at an Australian audience.

5.3 Publications

Current arrangements

The Classification Act requires that all ‘submittable publications’, which are likely to warrant restriction to adults, must be classified before they can be legally distributed or advertised. It is therefore not an automatic requirement that books and other publications require classification, and the onus is on publishers or distributors to assess whether content should require classification. However, the Director of the Board can ‘call in’ publications which they consider should be classified. All submittable publications are currently classified by the Board.

Most commercial publications submitted to the Board are sexually explicit magazines, however, on very rare occasions the Board may receive an application for a book to be classified.

Submitter views

Reflecting the declining market, there were very few submissions about the classification of publications. The Eros Association proposed that sexually explicit publications should not need to be classified “if access is restricted to adults and the content is properly marked.”⁷⁴ Conversely, the organisation Collective Shout suggested that sexually explicit magazines should continue to be classified and restricted to adults. Collective Shout is concerned that these magazines exploit and demean women and sexualise teenage girls. Its submission states, “it makes no sense that ‘adult’ magazines should not be classified because there are so few of them.”⁷⁵

The Board suggests that content captured under the current definition of a submittable publication continue to be classified and that the definition should be amended to: “any written or pictorial matter, the content which should not be sold or displayed as an unrestricted publication (unsuitable for a minor to see or read); or should be legally restricted to adults; or should be Refused Classification.”⁷⁶

Evaluation

I consider that there is a community expectation that publications that warrant being restricted to adults should continue to be classified if they are professionally produced, distributed on a commercial basis and directed at an Australian audience. While the market for sexually explicit publications is declining, this is not a reason to remove current regulatory arrangements for the publications that are still being published and distributed.

I also recommend that the current definition of a ‘submittable publication’ in the Classification Act should be amended to bring greater clarity about what publications require classification, namely publications that are unsuitable for minors to see or read. Classification should continue to be the responsibility of the provider that makes the content available first in Australia, regardless of who originally makes the content.

⁷⁴ Eros Association submission, p. 4.

⁷⁵ Collective Shout submission, p. 6.

⁷⁶ Classification Board submission, p. 49.

Recommendation 5-5: That the scope of classifiable publications restricted to adults should be clearly articulated to focus on professionally produced publications distributed on a commercial basis and directed at an Australian audience. The current references to a ‘submittable publication’ in the Classification Act should be amended to ‘publications that are unsuitable for minors to see or read’.

5.4 Sexually explicit films

Table 5. Current regulation of sexually explicit films

Platform	Regulation
Sexually explicit films offline (e.g. DVDs in adult stores)	<ul style="list-style-type: none"> The sale and hire of X 18+ films is regulated by the states and territories. X 18+ films can only be legally sold in the ACT and parts of the NT.⁷⁷ As sexually explicit content online has become more prevalent, the number of X 18+ films submitted to the Board for classification has steeply declined. Since 2015-16, no X 18+ commercial films have been submitted to the Board for classification.⁷⁸
Sexually explicit films online	<ul style="list-style-type: none"> Currently prohibited. Regulated by the Australian Government under the Online Content Scheme in Schedules 5 and 7 of the BSA. If a complaint is made about content that has been classified X 18+ or would be classified X 18+, the Office of the eSafety Commissioner can order the taking down of content if it is hosted in Australia or add it to a ‘Prohibited URL Filter List’ if it is hosted outside Australia.⁷⁹

The Eros Association considers that sexually explicit films (X 18+) should not need to be classified “if access is restricted to adults and the content is properly marked.” Eros notes that “if classification is required, industry should be allowed to establish an industry code to self-regulate the classification of X 18+ films.”⁸⁰

I consider that there is a community expectation that sexually explicit films should continue to be classified if they are professionally produced, directed at an Australian audience and distributed on a commercial basis. Classification should continue to be the responsibility of the provider that makes the content available first in Australia, regardless of who originally makes the content.

Sexually explicit content online that is not professionally produced, not directed at an Australian audience or not distributed on a commercial basis would continue to be regulated under the Online Content Scheme, which empowers the eSafety Commissioner to take action against illegal content including sexually explicit content. At the time of the review, consultation was occurring on a new Online Safety Act and the Government is currently considering the information provided during the consultation period.

Recommendation 5-6: That the scope of sexually explicit films should be clearly articulated to focus on professionally produced films distributed on a commercial basis and directed at an Australian audience.

⁷⁷ Not applicable to certain areas in the Northern Territory. Refer to Part 10 of the [Classification Act](#).

⁷⁸ The Classification Board and Classification Review Board [Annual Reports](#) 2015–16, 2016–17, 2017–18, 2018–19.

⁷⁹ Refer to Schedule 5, clause 40(1)(b) of the [Broadcasting Services Act 1992](#).

⁸⁰ Eros Association submission, p. 4-5.

5.5 Exempt films, computer games and publications

The Free TV, ABC and SBS codes of practice state that there are classification exemptions for news, current affairs and sports.⁸¹ Rather than specifying exemptions, the ASTRA Code of Practice specifies that films, drama programs, documentaries and reality television programs must be classified. This means that sport, news, music content and some live performance programs are not classified.

Under the Classification Act, some types of films and computer games are exempt from classification if they do not have any content likely to be classified M or higher.⁸² Examples include films for education and training, musical presentations or films of live artistic performances, current affairs, and records of sporting events, religious events, family activities or community or cultural activities, as well as computer game software for use in business or education.

Also, the Classification Act provides that public events like film festivals, computer game expos and exhibitions may feature unclassified films, computer games and submittable publications as part of their programs. The event must either be registered with the Department as a registered event (for example, Penny Arcade Expo (PAX) games expo and the Sydney Film Festival) or organised by an Approved Cultural Institution (for example, the Art Gallery of NSW, the Australian Centre for the Moving Image or government bodies). To protect children and help consumers, there are signage requirements, access restrictions and screening limitations for registered events.

Overall, these classification exemptions are working well, with minimal consumer complaints and positive feedback from industry. Therefore, I do not propose significant changes to exemption arrangements apart from clarifying that exemptions for news, current affairs and sports should apply across all platforms.

The Australian Library and Information Association (ALIA) and the State Library of NSW both raised in their submissions that public libraries are increasingly finding it difficult to source films, primarily on DVD, in languages other than English for their culturally and linguistically diverse communities.⁸³ As the quantity of these films purchased by public libraries is very low in number (less than 50 copies), DVD suppliers do not view it as commercially viable to pay to have a title classified. Accordingly, public libraries are unable to purchase these films for their collections due to the prohibition on the sale by the suppliers of unclassified films under state and territory classification legislation.

I recognise that current classification laws are inadvertently preventing libraries from providing access to resources to all members in the community in an equitable manner. I note that the Department has been working with representatives from public libraries on possible options to be presented to Government that would enable libraries to provide a service that results in film content available to a diverse audience that is balanced with appropriate protection mechanisms.

Recommendation 5-7: Maintain all current exemptions from classification and clarify that exemptions for news, current affairs and sports apply across all platforms. The Department should continue its work to develop an exemption for unclassified films in languages other than English for supply to public libraries.

⁸¹ The Free TV Code of Practice has classification exemptions for 'news programs, current affairs programs and sports programs'. The ABC Code of Practice has classification exemptions for 'news, current affairs and sporting events'. The SBS Code of Practice has classification exemptions for 'news and current affairs, sport programs and general information'.

⁸² Refer to Part 1A of the [Classification Act](#).

⁸³ Refer to submissions from Australian Library and Information Association (p. 2) and the State Library of NSW (p. 2).

6. Processes to classify content

A range of different classification processes currently exist under the National Classification Scheme and broadcasting laws. These are summarised for films and television programs in Table 6.

When the National Classification Scheme was enacted in 1995, all content in cinemas, on videotapes, on physical computer games and in adult magazines had to be submitted to the Board. Over the years, and in response to increasing volumes of content to be classified, there have been incremental changes to the National Classification Scheme to give industry greater responsibility and flexibility, while continuing to produce robust and reliable classification information. These have included the Additional Content Assessor Scheme, the Authorised Television Series Assessor Scheme, the Authorised Assessor Computer Games Scheme, the IARC tool and the Netflix tool.

Separately, broadcasters have been able to self-classify content since 1986.

There are now thousands of films and television shows on video on demand services, hundreds of thousands of online games and mobile games available and many more digital channels on broadcast television. Chapter 3 outlined the need for reviewing current classification processes.

6.1 Films and television programs

Current arrangements

Classification processes and regulatory oversight under the National Classification Scheme and broadcasting laws are summarised below:

Table 6. Current classification processes for films and television programs

Platform	Current classification processes	Regulated by
Television	<ul style="list-style-type: none"> In-house classifiers 	ACMA under the Broadcasting Services Act
Cinema	<ul style="list-style-type: none"> The Board 	National Classification Scheme: <ul style="list-style-type: none"> Commonwealth Classification Act and related regulations, determinations and legislative instruments State and territory classification legislation
DVD and Blu-ray	<ul style="list-style-type: none"> The Board Authorised industry assessors submit a written report with a recommended classification that is ratified by the Board - Additional Content Assessor (ACA) Scheme and Authorised Television Series Assessor (ATSA) Scheme 	National Classification Scheme: <ul style="list-style-type: none"> Commonwealth Classification Act and related regulations, determinations and legislative instruments State and territory classification legislation

Platform	Current classification processes	Regulated by
VOD services	<ul style="list-style-type: none"> The Board Netflix classification tool 	National Classification Scheme: <ul style="list-style-type: none"> Commonwealth Classification Act and related regulations, determinations and legislative instruments State and territory classification legislation

Television

Under broadcasting arrangements, television broadcasters use in-house staff to classify films and television programs using Codes of Practice registered and administered by ACMA.⁸⁴ In-house classifiers are trained by their broadcaster to apply the classification standards in their particular Code of Practice although many have also undertaken classification training.

Cinema

Films released in cinemas must be submitted to the Board for classification.

DVD and Blu-ray

Films and television programs released on DVD and Blu-ray discs must be classified by the Board prior to public release. There are two industry assessor schemes that are commonly used in conjunction with Board classification. These are:

- Additional Content Assessor (ACA) Scheme⁸⁵: Used where a classified film is released with additional unclassified bonus content such as commentaries, deleted scenes and 'making of' featurettes. This is generally content on DVDs and Blu-ray discs. A trained, authorised industry assessor will review the bonus content and provide the Board with a detailed report and a recommendation for its classification and consumer advice. The Board may accept or vary the recommendation.
- Authorised Television Series Assessor (ATSA) Scheme⁸⁶: Generally used where a television series is released on DVD or Blu-ray discs and where at least one episode of the series has been broadcast on Australian television. Content can include television episodes and/or related content such as out-takes, deleted scenes or a director's commentary. A trained, authorised industry assessor will review the content and provide the Board with a detailed report and a recommendation for its classification and consumer advice. The Board may again accept or vary the recommendation.

The ACA and ATSA schemes have given industry greater responsibility for assessing content and enabled them to pay lower classification fees than submitting to the Board via the traditional process. The ACA and ATSA schemes are well used by industry. In 2018-19, 159 classification decisions were made through the ACA Scheme and 357 classification decisions were made through the ATSA Scheme. This represents 29% of all DVD and Blu-ray applications.⁸⁷

⁸⁴ Refer to ACMA [Industry Codes of Practice](#).

⁸⁵ Refer to section 14(5) of the [Classification Act](#).

⁸⁶ Refer to section 14B(1) of the [Classification Act](#) and the [Classification \(Authorised Television Series Assessor Scheme\) Determination 2008](#).

⁸⁷ Refer to [Classification Board Annual Report 2018-19](#).

There are a number of safeguards under these schemes, including training and accrediting assessors and barring assessors if they continuously prepare assessments that contain ‘misleading, incorrect or grossly inadequate information’.⁸⁸

Video on Demand (VOD) services

The National Classification Scheme and the BSA were designed for the content market in the early 1990s, before VOD services were available in Australia. However, as outlined earlier, these services do not fall under the BSA and content on VOD services is legally required to be classified by the Board. There is varying compliance among existing VOD services with this requirement:

- The Netflix tool is used to classify content on Netflix’s Australian service.
- Apple TV+ and YouTube Originals are submitting content to the Board for classification for their Australian services.
- Stan and Disney+ are submitting some content to the Board, but not all content. They use in-house staff to classify content and provide Australian classifications such as G, PG and M.
- Amazon Prime Video is not submitting content to the Board and uses its own ratings system. In Australia, it shows ‘global maturity ratings’: All, 7+, 13+, 16+ and 18+, or ‘Not rated’.
- Broadcasting VOD services (also known as catch-up TV) are covered under the Classification Act and must use the Board and cannot self-classify content as they do for broadcast television. Under the current law, even if content was previously broadcast on television, the same classification cannot be carried over to the broadcasters’ VOD services. In practice, content on these VOD services is being self-classified by broadcasters.

Netflix tool

The Netflix tool produces Australian classification ratings and consumer advice for content available on Netflix in Australia that has not already been classified. Australia was the first country in the world to use the Netflix tool to generate official classification ratings.

The Netflix tool process comprises the following:

1. Human review of Netflix content by content experts and ‘tagging’ of classifiable and context setting elements.
2. An algorithm developed by Netflix converts this information into Australian classifications.
3. Australian classification decisions are displayed on the Netflix service and published on the National Classification Database at www.classification.gov.au.

The Department monitors and audits decisions made by the Netflix tool. The Board has the power to revoke and replace a decision made by the Netflix tool. In 2018–19, the Netflix tool was used to classify 1,923 items of content available on Netflix in Australia.⁸⁹

Industry stakeholders have mixed views on the Netflix tool. Some broadcasters have expressed concerns that the Netflix tool is making more conservative classification decisions (or over-classifying by generating a higher classification) compared to the Board,⁹⁰ and are concerned that over-classification will “undermine the meaning of the existing classification categories over time.”⁹¹

Netflix has submitted that its tool generates classification decisions that are ‘broadly consistent’ with both Australian community standards and decisions of the Board, as it is required to do under the

⁸⁸ Refer to section 22F of the [Classification Act](#) and section 6 of the [Classification \(Authorised Television Series Assessor Scheme\) Determination 2008](#).

⁸⁹ Refer to [Classification Board Annual Report 2018-19](#).

⁹⁰ Refer to submissions from the ABC (p. 4-5) and Free TV (p. 10-11).

⁹¹ Free TV Australia submission, p. 11.

legislation. Further, the tool was developed over several years in consultation with the Department and the Board, and Netflix is in regular contact with the Department on refining its tool.

Netflix indicated that it does not have any commercial incentive to over-classify content as its goal is to provide accurate and appropriate classifications for its members. As detailed in the Department's report on its monitoring program of the Netflix classification tool,⁹² there are invariably instances where decisions are 'borderline' (where the content could be classified in either of two classification categories), and in some cases the Netflix tool generates the higher rating and the Board gives the lower rating.

Development of a classification tool for film content

The Department is currently developing a classification tool for films and television programs that could be used by any content provider. The tool is in the form of a questionnaire, where a content provider answers a series of questions about the content in a film or television program related to the classifiable elements (e.g. violence, language, sex, nudity) and is platform neutral. Based on the answers to the questionnaire, the classification tool generates a classification rating and consumer advice that should align with Australian community standards as set out in the Films Guidelines.

The Department is working with the Board and industry to continue to refine the classification tool's algorithm based on iterative testing and is developing a model for oversight and auditing of decisions generated by the tool, as well as developing education materials for users of the tool.

Submitter views

There is widespread support for industry self-classification to reduce costs and timeframes.

VOD services, such as Apple, Amazon and Stan, noted that in the current media market, large volumes of content need to be classified in a very short period of time.⁹³ Timely classification is considered "a commercial requirement for any service that operates in the highly competitive and global SVOD marketplace."⁹⁴ Stan stated that the release of content on Australian platforms in line with global release dates has been effective in combatting video piracy in Australia.⁹⁵

There is strong support across the film, broadcasting, DVD and Blu-ray, and VOD sectors for self-classification, with flexibility to use either trained accredited classifiers or classification tools overseen by a Government regulator.⁹⁶ A strong theme was that content providers should be able to choose which process to use, based on what works best for their business model.⁹⁷ Furthermore, a new classification framework should cater to both large and small content distributors, as small content distributors may not be in a position to develop their own tool or employ staff classifiers.⁹⁸

There is support among the film industry and the DVD and Blu-ray industry for the online self-classification tool being developed by the Department.⁹⁹

⁹² Department of Communications and the Arts, [Monitoring program for the Netflix Classification Tool 2018–19](#) (2019).

⁹³ Refer to submissions from Apple (p. 2), Amazon (p. 1-2) and Stan (p. 2).

⁹⁴ Stan submission, p. 2.

⁹⁵ *Ibid.* Also refer to report prepared by Dr Katie Roe for the Department of Communications and the Arts, [Consumer survey on online copyright infringement](#) (2019).

⁹⁶ Refer to submissions from the Australia New Zealand Screen Association (p. 4), the Australian Home Entertainment Distributors Association (p. 8), Screen Producers Australia (p. 4), Film Industry Associations (p. 5), Amazon (p. 2), Apple (p. 1), Stan (p. 2), Spherex (p. 5), Netflix (p. 3) and Disney (p. 3).

⁹⁷ Netflix submission, p. 3.

⁹⁸ Screen Producers Australia submission, p. 4.

⁹⁹ Refer to submissions from Film Industry Associations (p. 5) and the Australian Home Entertainment Distributors Association (p. 8).

Many industry submissions supported industry training and accreditation processes, and recognised the need for a Government regulator to oversee classification decisions.¹⁰⁰

Individual submitters to the review were also generally supportive of industry self-classification through the use of approved classification tools or accredited classifiers. Community organisations also recognise the need to move to industry self-classification to manage classification in a contemporary media environment¹⁰¹ but were strongly of the view that it must be backed up by appropriate safeguards and oversight by a Government regulator with penalties for non-compliance.¹⁰²

Evaluation

Current arrangements for classifying films and television programs are both too costly and take too long. It is also incongruous that broadcasters can use in-house classifiers while other content providers must submit content to the Board.

Classification decisions need to be consistent, accurate, accessible and easily understood by consumers. Processes to achieve these classification decisions can be different, and I consider that industry can be given greater flexibility to choose the process that meets their needs. The most important thing is the outcome – that a consistent and accurate classification decision is provided to consumers.

I recommend that films and television programs be able to be self-classified by industry across platforms (including television, cinema, DVD and Blu-ray and VOD services). Industry should have a choice of the following processes:

- In-house or third-party industry classifiers trained and accredited by the regulator; or
- Approved classification tools, including proprietary tools like the Netflix tool or a Department tool; or
- Submitted to the regulator upon application.

The first option involves using **accredited industry classifiers**, either in-house or via accredited third-party classifiers. A number of people in the broadcasting, DVD and Blu-ray, and cinema sectors are already experienced in classifying content and/or are trained in classification through their work as authorised assessors under one of the existing ACA and ATSA schemes. This provides a solid basis for industry self-classification in the future. Details of the regulator's role in training and accrediting industry classifiers are outlined in Chapter 13.

The second option is using a **classification tool**, including proprietary tools developed in-house such as the Netflix tool or the tool being developed by the Department. Any new classification tools will need to be approved by the Minister based on criteria for the classification rating and consumer advice to align with Australian community standards. Classification tools may be subject to an evaluation, similar to the Netflix tool and the IARC tool.

I note concerns from some parts of industry with a number of the classifications decisions made by the Netflix tool. However overall, the Netflix tool is achieving the requirements set out in the Classification Act. In later chapters, I recommend the need for more detailed guidance for industry to reach classification decisions. Such guidance will also help the refinement of classification tools such as the tool used by Netflix.

¹⁰⁰ Refer to submissions from the Classification Board (p. 54), Disney (p. 3), Film Industry Associations (p. 6) and the Interactive Games and Entertainment Association (p. 33-34).

¹⁰¹ Refer to submissions from Australian Children's Television Foundation (p. 8) and the Australian Council on Children and the Media (p. 16).

¹⁰² Collective Shout submission, p. 7.

I support the development of a classification tool by the Department. It would be available to all content providers as opposed to company-specific tools and this would enable even small content producers access to a cost-effective and timely method of classification. To encourage take-up of the tool and compliance with classification requirements, the tool should be provided as a free resource for industry. While some training or education should accompany the use of the classification tool so that it is correctly used by industry, this would not need to be as extensive as the training for an accredited industry classifier.

Any content providers would still have the flexibility to develop their own bespoke classification tools, if the tools demonstrate that they can generate classification decisions that are consistent with Australian community standards.

The third option is for **content providers to submit films and television programs to the regulator for classification** for a fee based on cost recovery. Content providers may choose to use this option for content that they consider to be borderline with respect to where it would fit in terms of classification categories and where they would be more comfortable with the regulator making the decision. As the industry self-classification model becomes more established, I would not expect this more costly and time-consuming option to be widely used.

The new classification processes will present significant cost and time savings for the parts of industry that currently use the Board, thereby helping to address the current non-compliance with the existing classification laws among parts of the VOD sector. Applying the same classification processes across all content platforms will provide equal treatment for all content providers.

Greater industry self-classification, while essential, does not come without risks. It is critical that the Australian community continue to have confidence in the Australian classification system. As such, I am recommending robust training and accreditation and monitoring and complaints handling systems, with oversight by an Australian Government regulator, which I outline in Chapter 13.

Recommendation 6-1: Films and television programs on television, in cinemas, on DVDs and Blu-ray discs and on VOD services should be classified through either:

- Self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers.
- Self-classification using classification tools approved by the Minister.
- Submitting content to the regulator for classification.

6.2 Computer games

Current arrangements

Table 7. Current classification processes for computer games

-	Current classification processes	Regulated by
Physical computer games	<ul style="list-style-type: none"> • The Board • Accredited industry assessors submit written reports that are ratified by the Board - Authorised Assessor Computer Games Scheme 	National Classification Scheme: <ul style="list-style-type: none"> • Commonwealth Classification Act and related regulations, determinations and legislative instruments • State and territory classification legislation

-	Current classification processes	Regulated by
Online and mobile games	<ul style="list-style-type: none"> IARC tool for participating storefronts 	National Classification Scheme: <ul style="list-style-type: none"> Commonwealth Classification Act and related regulations, determinations and legislative instruments State and territory classification legislation

Physical computer games

Physical computer games must be submitted to the Board for classification.

The Authorised Assessor Computer Games Scheme¹⁰³ allows trained industry assessors to recommend the classification and consumer advice for a computer game if it is likely to be classified G, PG or M. The assessor provides the Board with a detailed report, recommending the game's classification and consumer advice. The Board may accept or vary the recommendation by the assessor based on the information contained in their report. This attracts a significantly cheaper classification fee than if the Board were to classify the game themselves.

In 2018-19, 114 Authorised Assessor Computer Games Scheme applications were submitted to the Board, representing 29% of the total 392 applications for computer games made during that period.

Online and mobile games

The National Classification Scheme mandates that all computer games that are made available to the Australian public must be classified.

A pilot of the IARC tool was approved in 2015 and the IARC tool was approved for ongoing use in 2017. It is used by game developers to classify online and mobile games available in participating storefronts. The IARC tool is funded through payments from participating storefronts and there is no direct cost to game developers.

¹⁰³ Refer to section 17(3) of the [Classification Act](#).

International Age Rating Coalition (IARC) tool

IARC is an international partnership of computer game rating authorities covering North America, Europe, the UK, Brazil, South Korea and Australia. In partnership with rating authorities, IARC developed a global classification questionnaire tool that enables game developers to classify online and mobile games to produce classification ratings for specific countries. It is available in participating storefronts, which currently include Google Play, the Microsoft Store for Windows and Xbox, Nintendo eShop, Oculus Store, and the Origin Store.

The IARC tool process works as follows:

1. When a game developer wants to make their game available on a participating online storefront, they must answer a questionnaire about the content of the game.
2. The IARC tool's algorithm generates a classification rating tailored to each country's classification criteria. In Australia, the tool generates an Australian classification rating and accompanying consumer advice for the game, which is displayed on the online storefront and on the National Classification Database at www.classification.gov.au.
3. IARC authorities in each country including Australia monitor classification decisions. The Board has the power to revoke and replace a decision made by the IARC tool. The IARC tool's algorithm is revised periodically based on feedback from members.

In 2018–19, the IARC tool was used to classify 317,550 games.¹⁰⁴ Further information about the IARC tool is available at www.globalratings.com.

There are two notable online games storefronts that are not IARC members and do not provide Australian classification information, and therefore are not complying with current classification laws:

- Apple's App Store uses its own age-rating system where games are classified 4+, 9+, 12+ or 17+. When submitting an app for inclusion in Apple's App Store, game developers must complete an age suitability questionnaire, which includes the frequency or intensity of content such as violence, mature themes, drug use, sexual content or nudity. A provisional classification is generated based on answers to the questionnaire. A combination of automated systems and Apple staff then review the app before it is made available to consumers on Apple's App Store. Apple's App Store ratings system has been in place since 2008 and predated the global implementation of the IARC tool (which commenced in Australia in 2015).
- Steam, a computer game storefront operated by the US company Valve, is available to Australian consumers. A large proportion of games do not display Australian classification information. Game developers have the option of providing information about the content in their game and 'tagging' the game with key words (such as 'nudity'), but this is not mandatory.

Submitter views

Overall, there is support for continuing industry self-classification with positive feedback on the use of the IARC tool. In addition, there is support among both industry and individual submitters for physical computer games to be self-classified by industry.

The Interactive Games & Entertainment Association, which represents a significant part of the Australian games industry, supports the use of either approved classification tools, trained industry classifiers, or the Government regulator making classification decisions upon application. Even if industry classification became more widely available, it notes that some publishers and distributors

¹⁰⁴ Refer to [Classification Board Annual Report 2018-19](#).

may still prefer to entrust the regulator to classify certain high profile or sensitive games or games with borderline ratings.¹⁰⁵

The International Social Games Association, which represents developers of social casino mobile games, also supports the use of approved classification tools to allow industry to take a greater role in classification.¹⁰⁶

Apple, which uses its own ratings system for games on its App Store (4+, 9+, 12+ or 17+), does not support classification by the Board or through a specific mandated tool or rating system. Instead, Apple advocates for continuing to use its own ratings system which it considers provides appropriate signalling to consumers of the nature of the game, and that suitable controls exist so that access to inappropriate content is restricted. Furthermore, Apple is of the view that both consumers and game developers are familiar with its own rating system, which has been in place since 2008.

Valve is not a member of IARC. In my consultations with Valve, which runs the Steam games storefront, Valve advised that it has developed its own separate classification tool for games available on Steam in Brazil, where providing country-specific classification information is legally necessary. To adapt to Brazilian classification requirements, Valve developed a questionnaire tool in consultation with the Brazilian classification regulator. If a game developer wishes to make their game available on Steam's storefront in Brazil, they must complete the questionnaire about the content of their game, and Brazilian classification information is generated based on the answers to the questionnaire.¹⁰⁷ Valve suggested that a similar approach could be explored in Australia.

Evaluation

I recommend that industry should have a choice of the following processes:

- Industry classifiers trained and accredited by the regulator; or
- Approved classification tools (including the IARC tool); or
- Submitted to the regulator upon application; or
- Classified under an authorised alternative classification system (detailed below).

The current IARC process for classifying online and mobile games is working well. The Board believes that "it is the construction of the IARC tool (i.e. logic based upon distinct content standards for each individual authority) which gives it its strength and leads to the generation of classification decisions that are appropriate for Australia (and the other participating authorities)."¹⁰⁸ While the Board is generally positive about IARC, it believes that the IARC tool generates a limited number of possible consumer advice compared to the Board (the IARC tool can generate over 140 different pieces of consumer advice, whereas the Board's choice of consumer advice is unlimited).

Consistent with earlier recommendations, industry self-classification should be extended to physical computer games. This will enable physical computer games to obtain classification decisions faster and at a reduced cost. Currently, IARC is not able to be used to classify physical computer games sold in Australia because of its commercial arrangements, but I understand there is scope for this to be explored with the IARC Board. I encourage the Department to continue to explore the feasibility of using IARC to classify physical computer games.

If, and until such time as there are developments to enable the broader use of the IARC tool in Australia, I recommend that physical computer games should be classified by accredited in-house or

¹⁰⁵ Interactive Games & Entertainment Association submission, p. 32-34.

¹⁰⁶ International Social Games Association submission, p. 10-11.

¹⁰⁷ The Brazilian classification regulator agreed with Valve that old games already included on Steam would not necessarily need to be classified, only new games added to the site. Older games only need to comply with the requirement when the Brazilian classification regulator contacts Valve to make the change.

¹⁰⁸ Classification Board submission, p. 59.

third-party classifiers, or alternatively submitted to the regulator for classification. I expect that this change will present significant cost and time savings for the physical game industry. It will also harmonise regulation for online and offline games.

Apple

While having all online games storefronts join IARC is the most elegant solution to provide Australian classification ratings for all online games, neither Apple nor Valve are members of IARC at this time. While one option is to prohibit these services in Australia, I do not think this is an approach that would necessarily be welcomed by Australians or be easily enforced in practice.

Apple's App Store uses its own classification system (4+, 9+, 12+, 17+) globally. Apple advised it does not adopt an alternative local classification system in preference to its own in any of the jurisdictions in which the App Store is made available. Due to local laws, games that receive a 17+ rating are not made available in the Apple App Stores in Brazil, Saudi Arabia and the United Arab Emirates.

Internationally, Apple's approach of not using local classification ratings is legal in some countries – for example, in the US, classification for computer games is not mandated under law, and in the UK, classification is only mandated for physical computer games rather than online games.¹⁰⁹ In South Korea, the Government has authorised Apple to use its independent classification system.¹¹⁰

It is worth noting that Apple's separate rating system is only for games and apps on its App Store. Films and television programs on Apple TV+ and Apple's iTunes storefront currently display Australian classifications and I consider they should continue to display Australian classifications.

The Apple App Store's own system is working well – there are few complaints to the Department and the Department's research with the community shows there is general consumer acceptance.¹¹¹ Apple's App Store provides consumer protections including parental controls across all of its devices, allowing parents or guardians to restrict access to content based on the classification level.

The provision of accurate, accessible and easy to understand information that helps consumers and parents to make informed choices about game purchases is the ultimate objective of the classification system. While Apple does not use Australian classification ratings for its games, I consider its alternative rating system achieves that objective.

Accordingly, I consider that allowing Apple to legally use its ratings system for its App Store would appropriately serve Australian consumers. Similar to the approach in South Korea, I recommend that the Minister should be able to authorise alternative classification systems for computer games, if they meet a certain set of standards (such as providing clear information for consumers broadly consistent with Australian classification guidelines, having parental controls, and having a ratings-auditing mechanism). A legislative instrument supporting the amended Classification Act could list computer games classification systems that have been authorised by the Minister to provide classification decisions.

Steam

Unlike Apple's App Store, Steam's current approach does not provide Australian consumers and parents with adequate information to help them make informed choices. Currently, the situation is 'buyer beware' and is inconsistent with the amount of information provided for computer games on other platforms.

¹⁰⁹ In the UK, classification is only applied to non-exempt games, which generally equates to games classified PEGI 12 and above.

¹¹⁰ South Korean Game Rating and Administration Committee, [Enforcement](#).

¹¹¹ Department of Communications and the Arts, [Classification usage and attitudes study](#) (2016), slide 17.

I understand that the Department, through its representation on the IARC Board, is working with the IARC executive to actively encourage Valve, the company that owns Steam, to join IARC so Steam can become a participating storefront. I support this objective.

However, if Valve does not join IARC in the near future, I recommend that the Department further discuss with Valve the implementation of a separate tool to generate Australian classification ratings for computer games being made available to Australian consumers on Steam.

Recommendation 6-2: Computer games, including physical games should be classified through either:

- Industry self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers.
- Industry self-classification using classification tools approved by the Minister (includes the International Age Rating Coalition tool).
- Submitting content to the regulator for classification.
- An alternative classification system (such as the Apple's rating system) which meets certain criteria and is authorised by the Minister.

Recommendation 6-3: That the Department continue to explore the feasibility of using the International Age Rating Coalition tool to classify physical computer games.

Recommendation 6-4: Should Valve not join the International Age Rating Coalition in the near future, that the Department discuss with Valve the implementation of a separate tool to generate Australian classifications for computer games available to Australian consumers on its online gaming platform Steam.

6.3 Publications

'Submittable publications', which warrant restriction to adults, must currently be classified by the Board for a fee before they can be legally distributed or advertised.

While the Eros Association proposes that adult publications should not need to be classified if their availability is appropriately age-restricted by industry,¹¹² I consider that the Australian community expects relevant publications to be classified.

As outlined in the previous chapter, there is a very low number of publications being submitted for classification and this number is declining. Only seven publications have been submitted to the Board in the six months from November 2019 to April 2020. Additionally, some publications are not being submitted to the Board.

I recommend that distributors of publications requiring restrictions to adults be given the option to either self-classify through industry classifiers trained and accredited by the regulator (similar to arrangements for films, television programs and computer games) or submitted to be classified by the regulator for a fee.

The option of self-classification should encourage greater compliance in the publications sector. Classification of publications would be required to be registered through an online industry portal and published on the National Classification Database, giving the regulator oversight for quality assurance and compliance, and providing transparent public information to consumers.

¹¹² Eros Association submission, p. 4.

Recommendation 6-5: Publications that warrant restriction to adults should be classified through either:

- Self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers; or
- Submitting the publication to the regulator for classification.

6.4 Classify once principle

Current arrangements

Under existing arrangements, classification ratings cannot be carried over between broadcast TV and other platforms such as DVD, Blu-ray and VOD. As a result, the same content broadcast on television and any other platform must be classified twice. For example, a television program broadcast is first classified in-house by the broadcaster's staff, then must be classified again by the Board if it is to be released on DVD.

This issue concerns the classification of *exactly the same* piece of content twice. In some cases, a film or a television program may have different classifications for one of the following reasons:

- **Modifications by broadcasters:** Television broadcasters may modify and reclassify films and television programs originally classified under the National Classification Scheme to make them suitable for a specific time zone; for example, cutting scenes to turn a MA 15+ film to M so that it can be shown in an earlier timeslot.
- **Modifications by film distributors:** Filmmakers or film distributors may modify a film after it was originally classified, such as releasing a director's cut or a 3D version of a film. In these circumstances, the Classification Act and the Modifications of Films Instrument¹¹³ apply, stating that the film should be classified again if the modification is likely to cause the film to be given a different classification.
- **Individual episodes vs series:** In-house classifiers at broadcasters may classify individual episodes, whereas DVDs have a cumulative whole-of-series approach.¹¹⁴ For example, an episode of a television program may be classified M and another episode may be classified MA 15+, but the whole television series on DVD may be classified MA 15+ to reflect that one episode in the whole series is MA 15+.
- **Inclusion of bonus content:** Some DVDs or Blu-ray discs may have a higher classification than when a film was released in cinemas or when a television program was broadcast on TV, due to the inclusion of bonus content such as deleted scenes.

Evaluation

Many stakeholders generally support the principle of 'classify once', where once the content has been classified for one platform, the same classification should apply for all other platforms on which the content is released.¹¹⁵ They argue that duplication of classification is time-consuming and costly for industry, and inconsistent classification that may result from two separate classifications can be confusing for consumers.

While support for 'classify once' is strong among most of industry and community groups, Free TV, ABC and SBS have some reservations. They believe they should retain the ability to reclassify content, even if they do not modify it. The ABC and SBS are concerned that having to accept classification decisions of other organisations impinges on their editorial independence and their ability to tailor

¹¹³ Refer to [Classification \(Publications, Films and Computer Games\) \(Modifications of Films\) Instrument 2015](#).

¹¹⁴ ABC submission, p. 5.

¹¹⁵ Refer to submissions from Disney (p. 2), the Australian Subscription Television and Radio Association (p. 3), the Australian Home Entertainment Distributors Association (p. 6-7) and Australian Children's Television Foundation (p. 8), Stan (p. 4) and Digital Media Research Centre (p. 10).

classification to their audience. However, they would be comfortable with the ‘classify once’ approach if they made the original decision and this classification is applied to other platforms.

I have been able to find only a few examples where decisions of the Board have been changed by broadcasters and I consider that the concerns of broadcasters do not outweigh the benefits of a general ‘classify once’ approach.

I note that such an approach may be more acceptable to broadcasters if all content providers used a common set of guidelines and if these guidelines were regularly updated, for example, to reflect changes in community concerns. I suggest a mechanism for this to occur in Chapter 8.

I therefore recommend that any classifiable content should generally only be classified once, unless there are modifications made to the content and the modification is likely to change the classification category.

Consistent with this principle of ‘classify once’, I recognise that there may be circumstances where content providers, including broadcasters, may wish to have the discretion to provide their audience with additional consumer advice particularly pertinent to them for content that has already been classified. The provision of this additional information in the form of further consumer advice would be acceptable in such circumstances.

In circumstances where content is not given consumer advice when shown on television, I consider it is also acceptable for consumer advice to be added if needed when the content is made available on DVD, Blu-ray or VOD. Currently, broadcasters do not need to provide consumer advice for all content on television, and generally consumer advice is provided for higher impact content such as M and MA 15+ content or content with a strength or intensity that viewers may not expect.¹¹⁶

I acknowledge the concerns of broadcasters about an inflexible ‘classify once’ rule as a classification they consider inappropriate can have commercial consequences flowing from time zone requirements. Accordingly, I recommend that where a content provider sees a need to give the content a different classification rating (e.g. PG instead of M) without editing the content, they should be able to apply to the regulator. The regulator would then consider the case and grant permission for the content provider to reclassify content and display a different classification category. This would apply to all classifiable content shown across platforms unless the content is modified or was classified over 10 years ago.

Enabling reclassification after 10 years

Under current arrangements, once a film, computer game or publication is classified, it cannot be reclassified for two years unless it has been modified. After two years, the Minister may request the Board to reclassify content, and if requested, the Board must invite submissions and consider these when reclassifying content.¹¹⁷ During the consultation process, the Board¹¹⁸ suggested enabling the reclassification of content after 10-15 years and ACMA suggested enabling the reclassification of content after 10 years without requiring a request from the Minister.

¹¹⁶ The ABC’s Code of Practice states that consumer advice will be given prior to the beginning of an M or MA 15+ program. ASTRA’s Code of Practice states that consumer advice be provided for M and MA 15+ films and drama programs. Free TV’s Code of Practice states that consumer advice must be given at the start of: a Film classified PG or above; all Programs classified M which commence between 7.30 pm and 8.30 pm; one-off Programs and very short series classified M; any Program classified MA15+; and any other Program which contains material of a strength or intensity which the Licensee reasonably believes viewers may not expect. SBS’s Code of Practice states that consumer advice will be given at the start of an M and MA 15+ program, and it may provide other appropriate consumer advice. In particular, SBS will provide appropriate consumer advice at the start of a PG program where it considers the program contains material of a strength or intensity which it reasonably believes parents or guardians of young children may not expect.

¹¹⁷ Refer to sections 37-41 of the [Classification Act](#).

¹¹⁸ Classification Board submission, p. 46-47.

In a new classification framework there should be a provision to allow for the reclassification of content if the classification decision was made more than 10 years ago. This will help provide consumers with relevant information that takes into account contemporary community standards and any changes to the classification guidelines over time.

National Classification Database

Currently, all classification decisions made under the National Classification Scheme (by the Board, Netflix tool and IARC tool), are published on the National Classification Database (the Database) at www.classification.gov.au. The Database does not currently display classification decisions for content broadcast on television. The Database provides transparent information to Australian consumers and helps content providers find the classification of content that has previously been classified.

The Database should continue to be an important part of a future classification system. Once a classification decision is made, using either an accredited industry classifier, a classification tool, or by the regulator, the classification rating and consumer advice should be registered on the online portal at www.classification.gov.au so it can be made publicly available on the Database.

The Database should include all content classified, including by broadcasters. The only exception would be where the Minister has approved an alternative classification system for computer games. Such classification decisions would not need to be uploaded onto the Database, because the classifications are unique to that particular content provider.

Recommendation 6-6: Once content is classified, it should not generally need to be classified again, unless it is modified and the modification is likely to change the classification category. Content providers should be able to give additional consumer advice in certain circumstances.

Recommendation 6-7: If a content provider does not want to carry over a classification category from another platform without modifying the content, they should apply to the regulator for permission to reclassify the content.

Recommendation 6-8: Content should be able to be reclassified after 10 years without recourse to the regulator.

Recommendation 6-9: The National Classification Database should include decisions for all content classified, including content classified by the broadcasters.

6.5 Review mechanisms for classification decisions

Under the National Classification Scheme, classification decisions can be reviewed by the Classification Review Board (Review Board), an independent statutory body separate to the Board that convenes as needed. Similar to Board members, Review Board members are appointed by the Governor-General based on advice from the relevant Minister. Information about the Review Board's members, decisions and its Annual Reports can be found at www.classification.gov.au.

A review application may only be made by specified people¹¹⁹ and costs \$10,000 unless the fee has been waived. Reviews are partially cost-recovered and partially budget funded.

¹¹⁹ The following people can apply for a review of a classification decision: the Minister, the original applicant for classification; the publisher of the classified content; or a person aggrieved by the decision. Refer to section 42 of the [Classification Act](#).

Reviews are infrequent – from 1 July 2019 to 31 May 2020, no reviews were conducted by the Review Board.¹²⁰ In the previous five financial years from the period of July 2014 to June 2019, the Review Board conducted a total of 13 reviews of the Board's 16,843 commercial decisions, resulting in a change of classification for 10 of the decisions.¹²¹ Of these 13 applications for review, 11 were requested by a film distributor for a cinema release film, one was requested by a games publisher for a physical game and one was requested by a community organisation. The Review Board can also review decisions originally made using the IARC or Netflix tools that the Board has already checked, though to date, the Review Board has never reviewed such a decision.

Separate to the National Classification Scheme, television broadcasters do not need to submit content to the Board and hence do not need to use the Review Board.

Many stakeholders indicated that the review process is expensive and time-consuming.¹²² The Interactive Games & Entertainment Association's members "seldom seek reviews of decisions made by the Board, even if they disagree with them, mainly because of the \$10,000 fee."¹²³ There was significant support for abolishing the Review Board and implementing a cheaper review mechanism that is independent from the original decision-maker. Many stakeholders supported the Government regulator conducting reviews of classification decisions where staff reviewing decisions were independent of the original classification decision-maker.¹²⁴

When the National Classification Scheme was established in 1995, the concept of a review mechanism for classification decisions was essential as films, computer games and publications were all classified by the Board. However, in a future framework where industry is primarily responsible for classifying content and the Government regulator is responsible for auditing decisions, the need to maintain substantial administrative arrangements for the conduct of reviews become less necessary.

I consider that the function for reviewing classification decisions should be transferred to the Government regulator. In instances where the regulator was the original classification decision-maker, different staff within the regulator would review the decision to manage any conflict of interest issues. As a practical example, if a content provider does not agree with a classification rating after it was checked and changed by the regulator, they could apply for a review of the classification decision. Alternative staff members at the regulator would conduct the review.

I consider that the review fee should be much lower than \$10,000 and similar to the cost of obtaining an original classification decision from the regulator given that the process would be similar. This would allow more people to apply for a review of classification decision if they believe content has been incorrectly classified.

I propose maintaining the rules currently in the Classification Act that the following people can apply for a review of a classification decision: the Minister; the original applicant for classification; the publisher of the classified content; or a person aggrieved by the decision.¹²⁵ The imposition of a fee should avoid frivolous applications for reviews.

Recommendation 6-10: Reviews of classification decisions should be conducted by the regulator. If the regulator was the original decision-maker, alternative staff would review a classification decision.

¹²⁰ [Classification Review Board decisions](#).

¹²¹ [Classification Board and Classification Review Board Annual Reports](#) 2014–15, 2015–16, 2016–17, 2017–18, 2018–19 and internal data for 2019–20.

¹²² Refer to submissions from the Interactive Games & Entertainment Association (p. 35), Film Industry Associations (p. 7) and Australian Children's Television Foundation (p. 8).

¹²³ Interactive Games & Entertainment Association submission, p. 35.

¹²⁴ Refer to submissions from the Film Industry Associations (p. 7) the Australian Children's Television Foundation (p. 8), the Interactive Games & Entertainment Association (p. 35) and Australian Communications and Media Authority (p. 5).

¹²⁵ Refer to section 42 of the [Classification Act](#).

6.6 Enforcement

The definition of content to be classified in Chapter 5 would capture some streaming services that do not currently use Australian classifications. While this current situation may have been due to the cost and timeframes of the Board processes, the recommended reforms outlined above should make classification processes more efficient and would help overcome this issue.

Classification legislation would set out a range of enforcement options, such as fines or other civil penalties, to address classification breaches such as failing to classify content that should be classified under Australian classification laws. Enforcement issues are outlined in Chapter 13, which covers arrangements for both physical and online content.








7. Classification categories and consumer advice

7.1 Changes to the classification categories

Current arrangements





























The classification categories for films and computer games under the National Classification Scheme are shown in Table 8. The content permissible in the categories is set out in the National Classification Code and respective Films Guidelines and Computer Games Guidelines. Each category has a different description with respect to suitable audience, and corresponding impact level of content that is permitted. Prior to 2005, there were slightly different categories for films (G, PG, M 15+, MA 15+, R 18+, X 18+, RC) and computer games (G, G8+, M 15+, MA 15+, RC); however, the current categories G, PG, M, MA 15+ and RC were adopted for both films and computer games in 2005 and the R 18+ category was added for computer games in 2013. The X 18+ category, however, only applies to films.

Table 8. Classification categories and descriptors

Category	Impact level	Description
General 	Very mild	The G classification is for a general audience. However, it does not necessarily indicate that children will enjoy the film or game. Some G films and games contain themes, story-lines or gameplay that do not interest children.
Parental Guidance 	Mild	Material classified PG may contain material which some children find confusing or upsetting, and may require the guidance of parents or guardians. It is not recommended for viewing by persons under 15 without guidance from parents or guardians.
Mature 	Moderate	Material classified M is not recommended for persons under 15 years of age. There are no legal restrictions on access.
Mature Accompanied 	Strong	Material classified MA 15+ is considered unsuitable for persons under 15 years of age. It is a legally restricted category for films and computer games.
Restricted (R18 +) 	High	Material classified R 18+ is legally restricted to adults. Some material classified R 18+ may be offensive to sections of the adult community.
Restricted (X 18+) 	-	This classification is a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.
Refused Classification (RC) 	Very high	Films that exceed the R 18+ and X 18+ categories, and games that exceed R 18+ will be Refused Classification.

The table below provides a comparison of the categories for films and computer games and for broadcast television.

Table 9. Classification categories on different platforms

Platform	Category
Film (cinema, DVD and Blu-ray, VOD)	      
Computer games	     
Commercial free to air TV ¹²⁶	     
ABC, SBS and Foxtel	   
Narrowcast TV (certain Foxtel subscriptions)	    

While the categories G, PG, M and MA 15+ are used for television as well as film and computer games, there are some important differences:

- The C and P categories are only used on commercial free to air television. C and P programs must meet specific criteria, including being made specifically for children [C] or pre-schoolers [P]. Programs are not classified C or P by network classifiers; instead, content producers apply to ACMA to be given a C or P rating. C, P, G and PG rated content may be broadcast at any time on television.¹²⁷
- M classified content on free to air television can only be broadcast between 7.30pm and 6.00am (5.00am for the ABC) or on school days between 12pm and 3pm.¹²⁸
- MA 15+ is a restricted category for films (cinema, DVD and Blu-ray, VOD) and computer games, and stands for 'Mature Accompanied', meaning that the category is restricted to persons 15 years or older unless a responsible adult is accompanying the person. MA 15+ is not a legally restricted category in broadcast television, however MA 15+ content on television can only be broadcast between 8.30pm and 5.00am (or 9.00pm and 5.00am for films) and stands for 'Mature Audience' on TV platforms.
- The R 18+ category is only used for films, computer games and narrowcast services. For films originally classified R 18+ to be shown on broadcast television, they must be edited to remove content that is higher in impact than MA 15+.
- The X 18+ category is for sexually explicit films. It is only legally permitted in the ACT and parts of the Northern Territory.

¹²⁶ Content is edited for TV to fit within classifications.





¹²⁷ Refer to [Australian Communications and Media Authority, Children's TV Programs](#).

¹²⁸ Refer to [Commercial Television Industry Code of Practice](#) and [SBS Code of Practice](#). The [ABC Code of Practice](#) states that content classified must only be broadcast between 7.30pm and 5.00am or between 12pm and 3pm.

- Refused Classification (RC) means that content cannot be exhibited, sold or distributed. Broadcast Codes of Practice do not refer to content being RC.¹²⁹

The categories for classification of submittable publications as set out in the Publications Guidelines are shown in Table 10 below.

Table 10. Classification categories for publications

Category	Type of content	Classification marking
Unrestricted No age restriction. Board may determine consumer advice of M (Mature) – not recommended for readers under 15 years.	Content not likely to offend a reasonable adult. <i>For example, sexual activity involving consenting adults may be discreetly implied in realistic depictions.</i>	 
Category 1 restricted Restricted to adults and must be distributed in a sealed wrapper with a cover suitable for public display.	Content may offend some sections of the adult community. <i>For example, actual sexual activity involving consenting adults may not be shown in realistic depictions.</i>	
Category 2 restricted Restricted to adults and must only be displayed for sale in premises restricted.	Content may offend some sections of the adult community. <i>For example, actual sexual activity involving consenting adults may be realistically depicted.</i>	
Refused Classification Prohibited across Australia.	Content that is very high in impact and falls outside generally accepted community standards. <i>For example, sexualised nudity involving persons portrayed as minors.</i>	

Submitter views

The views of submitters are varied and are outlined in Table 11.

One group, led by the Film Industry Associations (FIA), advocates the addition of a category between PG and M on the basis that some content currently classified M is suitable for a younger audience than 15. They argue that it is confusing to have three categories referencing 15 years (PG, M and MA 15+), as well as noting that a number of other jurisdictions have a category around the age of 11, 12 or 13.¹³⁰ FIA also stipulates that this category should not replace M.¹³¹ The Australian Home Entertainment Distributors Association (AHEDA), Disney and the Australian New Zealand Screen Association (ANZSA) support the FIA submission.¹³²

¹²⁹ Broadcasting codes of practice do not include an RC category or equivalent, however they contain provisions for what can and cannot be broadcast. Refer to [Commercial Television Industry Code of Practice](#), [ABC Code of Practice](#), and [SBS Code of Practice](#).

¹³⁰ Film Industry Associations submission, p. 3.

¹³¹ *Ibid*, p. 4.

¹³² Refer to submissions from the Australian Home Entertainment Distributors Association (p. 6), the Walt Disney Company (p. 2) and Australia New Zealand Screen Association (p. 2).

The Board proposes a similar model. However, its suggestion is that the existing advisory categories G, PG and M should not have age references. The existing impact hierarchy would be maintained and the new category be 'mild +' in impact. The Board also proposes that the notes in the Films and the Computer Games Guidelines describing the G, M and MA 15+ categories should be amended to mention the potential need for parental guidance (like PG).¹³³

Table 11. Key stakeholder positions relating to classification categories

Current categories	Film Industry Associations	Classification Board	Australian Council on Children and the Media	Interactive Games & Entertainment Association	Screen Producers Australia, Digital Media Research Centre, Australian Children's Television Foundation
Free TV, SBS, ASTRA oppose any changes	Supported by Australian Home Entertainment Distributors Association, Disney, Australia New Zealand Screen Association		Supported by Australian Heads of Independent Schools Association, Collective Shout		
G	G	G	G	G	Replace PG with PG8 and PG13 or PG12 OR change to age-specific categories.
G	G	G	5+ (new category)	G	Replace PG with PG8 and PG13 or PG12 OR change to age-specific categories.
PG	PG	PG	9+ (new category)	PG	Replace PG with PG8 and PG13 or PG12 OR change to age-specific categories.
M	PG 13 (new category)	YP or T (new category)	12+ (new category)	M/MA15+ (combined category and removal of restriction)	M may be redundant
M	M	M	12+ (new category)	M/MA15+ (combined category and removal of restriction)	M may be redundant
MA 15+	MA 15+	MA 15+	16+ (new category)	M/MA15+ (combined category and removal of restriction)	Not referenced/No change
R 18+	R 18+	R 18+	18+	R 18+ (removal of restriction)	Not referenced/No change
X 18+	X 18+	X 18+	Not referenced	Not referenced	Not referenced/No change
RC	RC	RC	RC	RC	RC or Prohibited

¹³³ Classification Board submission, p. 19.

Existing Restricted	Proposed Restricted	Existing Advisory	Proposed Advisory
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Other submitters, such as the Australian Council on Children and the Media (ACCM), propose an entirely new set of age-based categories, modelled after the Kijkwijzer system in the Netherlands and based on stages of cognitive development. The proposed categories are G, 5+, 9+, 12+, 16+ and 18+. ¹³⁴ The ACCM submission is supported by the Association of Heads of Independent Schools of Australia (AHISA) (who suggest that an age-based system may be better understood by parents) and Collective aShout. ¹³⁵ Further, the ACCM said that the addition of a PG13 category to the current categories would not address the deficiencies of the classification system. ¹³⁶

Submissions by the Australian Children's Television Foundation (ACTF), the Digital Media Research Centre at the Queensland University of Technology and Screen Producers Australia (SPA) contain broadly similar proposals relating primarily to PG. ACTF asserts that the G and PG categories are currently uninformative to parents, that the PG category is so broadly applied that it encompasses content that is suitable for children from "0-15 years." It suggests that either categories for age brackets such as 8+ and 12+ are introduced or that the entire set is replaced with an age-based set. ¹³⁷ The Digital Media Research Centre states that PG is potentially too broad and that introduction of a 'Teen' category above PG could make the M category redundant. ¹³⁸

While the Interactive Games & Entertainment Association (IGEA) did not oppose the PG13/YP category proposed by others, its main recommendation was to collapse the M and MA 15+ categories into a single advisory category. IGEA argued that due to the evidence of confusion between the M and MA 15+ categories in the community, there is no point in maintaining two similarly named categories based on the age of 15. ¹³⁹

Free TV, SBS and ASTRA strongly opposed any changes to the current classification categories. ¹⁴⁰ Free TV noted that "any changes to classification categories have the potential to be highly disruptive to viewers and would have a significant cost impact on broadcasters" and that "the case for changes to the current system has not been made." ¹⁴¹

The Board advocates a change to the classification categories for publications and proposes the adoption of equivalent film and computer game categories in the following manner: 'M' for unrestricted publications; 'R 18+' for Category 1 restricted publications and 'X 18+' for Category 2 restricted publications. ¹⁴²

Evaluation

Classification categories have periodically changed since the inception of media classification in Australia, in parallel with a shifting emphasis from censorship to information and guidance, and increasing consideration of the needs of children. The number of categories has increased as part of this shift (especially in the 1970s with the introduction of four categories G, PG, M and R 18+). Further changes in the 1980s and 1990s (introduction of X 18+ and MA 15+) responded to changes in content

¹³⁴ Australian Council on Children and the Media submission, p. 6.

¹³⁵ Refer to submissions from the Association of Heads of Independent Schools of Australia (p. 3) and Collective Shout (p. 2).

¹³⁶ Australian Council on Children and the Media supplementary paper, p. 2.

¹³⁷ Australian Children's Television Foundation submission, p. 5.

¹³⁸ Digital Media Research Centre submission, p. 8.

¹³⁹ Interactive Games & Entertainment Association submission, p. 11.

¹⁴⁰ Refer to submissions from Free TV Australia (p. 7), SBS (p. 3) and the Australian Subscription Television and Radio Association (p. 4).

¹⁴¹ Free TV Australia submission, p. 7.

¹⁴² Classification Board submission, p. 17.

available, recognising the principle that adults should be able to view what they want (while being enabled to avoid content they might find offensive) as well as the need for children to be protected from such content. The introduction of an R 18+ category for computer games recognised that games were being developed for an adult audience.

Several departmental research projects relating to the categories have been conducted. Overall, the findings were mixed. A number of the research findings – for example, confusion between the M and MA 15+ categories among about 1 in 3 people,¹⁴³ support for more age guidance in material aimed at children¹⁴⁴, and support for a ‘high PG/12/13’ category¹⁴⁵ – suggested that changes may be needed. However, in a 2014 survey when respondents were shown the ratings used to classify films and computer games, and asked to rate their overall quality as a set, a combined total of 80% indicated that the ratings were either ‘Excellent’ (17%) ‘Very good’ (32%) or ‘Good’ (31%).¹⁴⁶ Furthermore, research conducted in 2014 and 2018 did not identify an alternative set of categories that was considered clearly superior to the current set.¹⁴⁷

As pointed out by submitters, it does seem less than ideal for a classification system which aims to protect children and inform parents to have three categories referencing the age of 15 and none below. It is also true that this makes Australia an outlier among international classification systems, many of which have categories that are age-based or incorporate a category at 12 or 13 years (see Appendix 3 and Appendix 4). The proposals relating to PG13/YP/Teen also align with one additional category that was consistently favourably received in the research. However, the research findings overall suggest that while the current categories may be imperfect, there may not be a high level of demand for them to change.

On balance, I do not consider that a compelling case has been made for an additional category in isolation of a more fundamental look at all the categories. The current system, while it may not be ideal, is well known and accepted by the community.

The community research and my consultations have found no obvious alternative to the current categories or any overwhelming consensus for changes to categories. This being the case, I do not consider it desirable to recommend we either ‘start from scratch’ in creating an entirely new set of categories, or make more modest changes, such as adding a PG13 category. Instead, I recommend that further work be undertaken on this matter.

In relation to the publications categories, I recommend renaming these and adopting the equivalent film and computer game classification categories of M, R 18+ and X 18+. I consider this change will bring greater consistency in classification across media and assist consumers in understanding what the publications categories mean and for whom they are suitable. This will leverage off the generally well understood meaning of these categories compared to the existing publication categories and will be a step towards greater harmonisation of classification across different media forms.

¹⁴³ Attorney-General’s Department, *Classification ratings: Research with the general public* (2015), p. 33.

¹⁴⁴ Department of Communications and the Arts, *Classification usage and attitudes study*, 2016: 73% would prefer content for children to have age recommendations.

¹⁴⁵ Department of Communications and the Arts, *Classification Categories and Consumer Advice* (2018), p. 10.

¹⁴⁶ Attorney-General’s Department, *Classification ratings: Research with the general public* (2015), p. 41.

¹⁴⁷ *Ibid*, p. 46. Survey participants were shown two alternative sets. One (G, PG 8+, Y 13+, M 15+, R 18+, X 18+, Prohibited) was preferred to the current set by a total of 51%; the other (G, 5+, 10+, 15+, 18+, Prohibited) was preferred by 46%; also refer to Department of Communications and the Arts, *Parent survey on categories, loot boxes and simulated gambling* October 2018. When various sets were tested, the most favoured was G, PG8, PG13, MA 15+ and R 18+ (23% first preference) only slightly ahead of the current set (19% first preference).

Recommendation 7-1: That there be no change to current classification categories at this time, but that work continue on ways of providing better guidance as to suitability of film and computer game content to children at particular stages of development.

Recommendation 7-2: That to improve harmonisation across media, the classification categories for publications be changed to:

‘M’ for Unrestricted publications

‘R 18+’ for Category 1 restricted publications

‘X 18+’ for Category 2 restricted publications.

7.2 Access and legal restrictions

Current arrangements

Legislation

Physical films and computer games

Public exhibitors cannot legally allow persons under 15 years of age into screenings of MA 15+ films unless they are accompanied by a parent or guardian (an adult in Queensland). Exhibitors cannot allow persons under 18 into screenings of R 18+ films.

In retail stores, MA 15+ DVDs, Blu-ray discs and physical computer games cannot be sold to minors under 15 years unless consent is given by their parent or guardian (or they are accompanied by an adult in Queensland). Physical product classified R 18+ can only be sold to adults. In practice, it is up to exhibitors and retailers how they implement these obligations but generally some form of personal identification for proof of age is requested by employees.

X 18+ films can only be sold in the Australian Capital Territory and parts of the Northern Territory, in areas where access is restricted to adults.

Online films and computer games

The Online Content Scheme under Schedules 5 and 7 of the Broadcasting Services Act 1992 (BSA) applies to content accessed through the internet. It does not apply to licensed or national broadcasting services.¹⁴⁸

The Online Content Scheme is linked to the National Classification Scheme. Under Schedule 7, prohibited content includes content that has been classified, or is likely to be classified RC (Refused Classification), X 18+, R 18+ (unless it is subject to a restricted access system) or MA 15+ and is provided on a commercial basis (i.e. for a fee) (unless it is subject to a restricted access system).

The Restricted Access System Declaration 2014 currently in force sets out the minimum requirements for an access-control system for MA 15+ and R 18+ online content.¹⁴⁹

There are differences in the practical application and enforcement of restricted categories between the physical and online environments. While MA 15+, R 18+ and X 18+ are legally restricted in both settings, the means available to restrict content online are limited by available technology. There is currently no scheme in place for mandatory age verification to access online content that is age restricted.

However, many online content providers make tools available that enable parents to control access to content, including that which is legally restricted, and/or provide warnings about such content. Examples of what is offered on various online platforms are given in Table 12.

¹⁴⁸ Refer to Schedule 5 and 7 of the [Broadcasting Services Act 1992](#).

¹⁴⁹ Refer to the [Restricted Access Systems Declaration 2014](#).

Table 12. Access restriction features on online platforms

Platform	Access restriction feature
VOD platforms	<ul style="list-style-type: none"> • Ability to switch on a 'Restricted Mode' to filter out adult content on the platform • Ability for content creators to put age restrictions on their videos • Ability for content provider to apply age restrictions to certain content (e.g. subject to complaints).
SVODs	<ul style="list-style-type: none"> • Parental controls through a PIN and passcode protected account • Separate child friendly accounts for content that is classified G or PG • Ability to choose the maximum classification level allowable on a user profile • Pop-up warnings before legally restricted content begins playing.
Broadcast on demand platforms	<ul style="list-style-type: none"> • Separate children's platforms • Option to filter kids' content under the 'genre' tab.
Online storefronts	<ul style="list-style-type: none"> • Search option for 'Family' friendly content • Option to set account to require parental authentication before apps are downloaded.

Most devices also include in-built features that provide options for restricting and filtering content viewed on the device. These range from blocking certain apps or requiring authentication (through a PIN or passcode system) before purchasing apps on devices.

As can be seen above, the broadcast on demand platforms, unlike SVODs, do not have parental controls. It is noteworthy however that the *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* (the Standard) requires that domestic reception equipment which includes digital TV and set-top boxes must have a parental lock feature to control access to programs based on their classification.¹⁵⁰

Television content

Free TV's Code of Practice only allows commercial television broadcasters to show television programs up to MA 15+. Codes of practice for the ABC and SBS similarly only allow content up to MA 15+ to be broadcast.

Subscription television broadcasters (e.g. Foxtel) are currently prohibited from broadcasting R 18+ programs, and only subscription narrowcast services (offering content that caters to specialised interests) may show R 18+ content.

Codes of practice regulating broadcasters set out time zones so that content in certain classifications can only be shown at particular times. For example, Free TV channels only broadcast MA 15+ non-film content (e.g. episodic series) between 8:30pm and 5:00am and MA 15+ films between 9:00pm and 5:00am. Under the ASTRA Code of Practice, access to R 18+ content on narrowcast services must be restricted by an appropriate disabling device (specifics are noted below).

Publications

Submittable publications are in essence publications that may warrant restriction. Two of the three classifications for publications are restricted: Category 1 restricted and Category 2 restricted, both of which are restricted to adults but have different conditions of sale (see Table 10 earlier in this chapter).

¹⁵⁰ Refer to [Broadcasting and Datacasting Services \(Parental Lock\) Technical Standard 2010](#).

Submitter views

Legal restrictions on MA 15+ and R 18+ content

As outlined above, IGEA proposed removing legal restrictions from both MA 15+ and R 18+ computer games “on the basis that these restrictions are outdated and ineffective.”¹⁵¹ In its submission, IGEA argued that even in the offline world, “the legal restrictions that MA 15+ supposedly carry are difficult to comply with in practice, are applied inconsistently and are entirely unenforced.”¹⁵² It argues that, on gaming consoles, parental controls are robust and legal restrictions are not required to prevent children accessing age-inappropriate games.

The International Social Games Association (ISGA) also focussed on the limitations of current age verification technology in its submission. The ISGA expressed concern that the provisions in the Restricted Access Systems Declaration 2014 under the BSA were impossible to comply with due to the lack of enabling technology.¹⁵³

The ACCM advocated that restriction be applied at an even younger age level. The ACCM proposed three restricted categories, 12+, 16+ and 18+, arguing that restriction from 12 years would provide parents with necessary support, both in signalling higher level content and reinforcing the denial of such content to younger children.¹⁵⁴

While not addressed specifically in relation to restricted categories, several online platforms noted that they incorporate various parental controls as a means of assisting parents protect their children from content they consider unsuitable.¹⁵⁵

X 18 + category for film

Only one submission, from the Eros Association, was concerned specifically with the X 18+ category. Eros asserted that the X 18+ category is used to censor content rather than inform consumers, as it is legally unavailable in most jurisdictions. Eros proposed that adult content should not be required to be classified at all (as is detailed in Chapter 5).¹⁵⁶

Evaluation

Legal restrictions on MA 15+ and R 18+ content

As outlined earlier in this chapter, MA 15+ and R 18+ are both legally restricted categories for films and computer games and apply to online content. However, despite both being legally restricted, an important distinction lies in the provisions relating to adult accompaniment or consent that apply to MA 15+. This means that the age restriction on this category is conditional on the physical accompaniment (for example during the duration of a film screened in a cinema) or consent (for example when purchasing a product in store) by a responsible adult. In contrast, the restriction of R 18+ is unconditional and only individuals 18 years and older can access this content.

In the online world, where the concept of another person’s accompaniment or consent is difficult to monitor or enforce, the full conditions of MA 15+ arguably lose their validity.

The fact that the accompaniment or consent caveat does not have application in a home setting is reflected in the different conditions that apply to the MA 15+ category for broadcast content. Here, MA refers to ‘Mature Audience’, rather than ‘Mature Accompanied’, and is not legally restricted (but is subject to time zone restrictions). This poses the question of whether legal restriction should be

¹⁵¹ Interactive Games & Entertainment Association submission, p. 13.

¹⁵² *Ibid*, p. 39.

¹⁵³ International Social Games Association submission, p. 1.

¹⁵⁴ Australian Council on Children and the Media submission, p. 7.

¹⁵⁵ Refer to submissions from Netflix (p. 1), Google (p. 2) and Apple (p. 2).

¹⁵⁶ Eros Association submission, p. 3-4.

retained for MA 15+ content accessed online (including catch-up TV) when it is not imposed in broadcasting.

Most platforms and services include in-built options to disable access to certain content, allowing parents and carers to set limits on what type of content is accessible to their children. These include user profiles that can be set to exclude content outside certain classification categories, use of PIN codes to restrict access to certain content and pop-up warnings for content rated MA 15+ and R 18+.

Ultimately, no technological enforcement measure, or classification system, can be 100 percent effective in the online world and there will always be a need for parental supervision. Departmental research has also found that parents generally do not want classification to override their role or judgements.¹⁵⁷ Accordingly, technological solutions such as parental controls – which enable parents and carers to exercise discretion over what children watch or play – must play a central role in supporting not only restricted classifications, but classification generally.

I see merit in bringing the restrictions on MA 15+ for online content into line with the existing situation in free to air broadcasting. I consider that currently available parental controls coupled with adult supervision are a better alternative than maintaining a problematic legal restriction on MA 15+ content online. I do not recommend changes to existing linear free to air broadcasting codes of practice.

For physical retail, I recommend that the MA 15+ category remain restricted and that the current obligations and methods for enforcing restriction remain in place. The systems for complying with the legal restriction of MA 15+ content in physical outlets, for example asking for identification in stores, are well established and accepted by the community. In the absence of these, there would be no alternative mechanism for parents to prevent their children accessing this content as there is in the online world.

Restriction of R 18+

I consider that R18+ content should remain legally restricted. It may be technically feasible to enforce online restriction of R 18+ content via age verification but is likely to also be subject to community concerns about privacy and security. In the online domain, I recommend that until such time as age verification technology is introduced, the best available technology be required to be used to restrict access to R 18+ content.

Parental controls used by online platforms currently play a vital role and will continue to do so, even if age verification is introduced for content that is classified R 18+. I understand that the work on online safety legislation reform will also consider the requirements that should be introduced for industry to provide Australian households with options to manage their own access to certain type of content, and how these should be regulated, which may also alleviate some concerns about provisions under the Restricted Access System Declaration.

I support any initiative resulting from online safety legislation reform that parental controls for online content meet a minimum standard, based on controls currently implemented by some providers and allowing for ongoing innovation. Providers should also be required to promote use of these by consumers. Promotion of use should be considered not only in terms of consumer education and awareness raising, but also design considerations, such as requiring that such features are easy to find on user interfaces and simple to implement.

¹⁵⁷ Department of Communications and the Arts, [Classification usage and attitudes study](#) (2016): 81% agreed “Ultimately it is up to parents/guardians to decide what is best for children to watch or play.”

Consistent with online content, I recommend that the R 18+ category remain restricted in the physical world and that the current obligations and methods for enforcing restriction remain in place.

X 18 + category

I consider that the community expects X 18+ films to continue to be restricted. However, I also note that the vast majority of such content is likely to be accessed online and that online pornography is outside the scope of this review but is being considered as part of concurrent work on online safety legislation reform.

Publications

Publications are by and large sold through physical retail. I do not recommend any changes to the current rules for the display and sale of submittable publications.

Recommendation 7-3: That MA 15+ and R 18+ be legally restricted categories for physical environments, and that MA 15+ be an advisory category for all online platforms.

Recommendation 7-4: Online platforms should be required to employ and promote the best available technological barriers to minors accessing R 18+ content.

Recommendation 7-5: Parental controls should continue to be available and promoted to enable parents and carers to prevent children's access to MA 15+ content.

Recommendation 7-6: X 18 + should remain in place as a restricted category.

7.3 Scope of Refused Classification

Current arrangements

Broadly speaking, the range of content that can be Refused Classification (RC), includes both:

- Content that is illegal or promotes crime, e.g.
 - Detailed instruction or promotion in matters of crime or violence;
 - The promotion or provision of instruction in paedophile activity;
 - Depictions of practices such as bestiality;
 - Detailed instruction in the use of proscribed drugs.
- Offensive and very high impact content, e.g.
 - Gratuitous, exploitative or offensive depictions of violence with a very high degree of impact or which are excessively frequent, prolonged or detailed;
 - Gratuitous, exploitative or offensive depictions of activity accompanied by fetishes or practices which are offensive or abhorrent;
 - Violence with a very high degree of impact which are excessively frequent, prolonged, detailed or repetitive;
 - Cruelty or realistic violence which are very detailed and which have a very high impact.

RC also includes content that cannot be accommodated at the highest classification categories (R 18+ for computer games, R 18+ and X 18+ for films, Category 2 restricted for publications).

Submitter views

Several submissions were received about what should and should not be Refused Classification.

Senator Stirling Griff, Centre Alliance Senator for South Australia, argued that certain content in Japanese anime film and manga publication genres met the definition of child abuse content under the Criminal Code and should not be available to the public.¹⁵⁸ Collective Shout supported Senator Griff's views.¹⁵⁹

The Digital Media Research Centre at the Queensland University of Technology submitted that the scope of RC should not include content that is subjectively assessed as too offensive or disturbing for the Australian public, but instead only include that which is illegal. Further, they suggested that a re-scoped RC category could then simply be called 'Prohibited'.¹⁶⁰

Over 20 individual submissions made the same argument that RC should only cover illegal content and that nothing should be banned based on notions of offence.

Evaluation

The submissions by Senator Griff and Collective Shout are specifically addressed in Chapter 9 (Films Guidelines) and Chapter 11 (Publications Guidelines).

The argument that RC should only contain content that is illegal, rather than subjective views as to what is offensive, is not without merit. It would be consistent with the principle in the National Classification Code that adults should be able to read, hear, see and play what they want. It would align with the goal of incorporating more objective, harm-based measures into classification and may contribute to broader harmonisation of classification guidelines with a harms standard to be used by the eSafety Commissioner for certain online content, as suggested by ACMA in its submission.

However, removing references to offensive or objectionable content, leaving only that which is illegal in the scope of RC would represent a significant departure from classification practice to this point and may not align with community expectations. Research commissioned by the then Department of Communications and the Arts in 2018 suggested that there was still a place for RC in reflecting social norms as well as preventing access to illegal content.¹⁶¹ There is further consideration of which 'offensive' content should remain in RC, and corresponding recommendations, in the chapters on the Films Guidelines and Computer Games Guidelines.

Nonetheless, I consider that the name Refused Classification is confusing, as it suggests that the content has not been assessed when it actually means that a decision has been made about its content and classified Refused Classification as a result. Therefore, I recommend that the category, while still containing content other than that which is illegal, is renamed Prohibited, a term that is consistent with broader regulation banning illegal content and unambiguous to the public.

Recommendation 7-7: The Refused Classification category should continue to include highly offensive or objectionable material as informed by community standards, as well as available empirical evidence of potential harm, in addition to illegal material.

Recommendation 7-8: The Refused Classification category should be renamed 'Prohibited'.

¹⁵⁸ Senator Stirling Griff submission, p. 3, 5.

¹⁵⁹ Collective Shout submission, p. 19.

¹⁶⁰ Digital Media Research Centre submission, p. 8.

¹⁶¹ Whereto Research Based Consulting, *RC and high level content research report* (2018), p. 23.

7.4 Consumer advice for films and computer games

Current arrangements

Under section 20 of the Classification Act, the Board is required to provide consumer advice giving information about the content of a film or computer game. While it is not referred to in the Guidelines, consumer advice is considered to form part of the classification decision alongside the given category.

The Board has discretion to determine the phrasing of consumer advice. However, the Board's standard practice for formulating consumer advice is that it only refers to the strongest content in the film or game (i.e. the classifiable element which has the highest impact causing the film or game to be classified in a particular category), and its corresponding impact descriptor. The Board may, however, choose to reference content below the impact level of the classification in consumer advice, or provide different descriptors for content.

The Netflix tool, which is currently the only classification tool used for film content, uses a finite list of consumer advice phrases which has been approved by the Board. However, Netflix consumer advice is not confined to the strongest content.

Network classifiers have a similar level of discretion to the Board in determining consumer advice for broadcast television but generally use a similar formula to the Board. Unlike the Board, broadcasters are not generally required to provide consumer advice for G rated content. Free TV Codes require consumer advice to be provided for films rated PG, programs rated M aired between 7.30pm and 8.30pm and MA 15+ rated content, and any other program which contains material of a strength or intensity which the licensee reasonably believes viewers may not expect.¹⁶² SBS is required to provide consumer advice for PG rated programs where the content may be more impactful than audiences may expect, as well as content rated M and MA 15+.¹⁶³ The ABC is required to provide consumer advice for M and MA 15+ content.¹⁶⁴

The Classification (Publications, Films and Computer Games) (Markings and Consumer Advice) Determination 2014¹⁶⁵ sets out requirements for the display of the marking (containing both the rating and consumer advice) for films, computer games, and publications, and broadcast codes of practice include rules about when and how consumer advice is displayed.

Submitter views

In its submission, the Board expressed concern about the way consumer advice was phrased by the IARC and Netflix classification tools, by broadcasters and in the recommendations of industry assessors, which it believed caused confusion to consumers. The Board's proposed solution was that consumer advice should be standardised across all platforms, which it acknowledged would remove the flexibility for the Board to tailor consumer advice but would, more importantly, address consumer confusion.¹⁶⁶

The IGEA also advocated the creation of a standardised set of consumer advice, which it argues will facilitate consistent and accurate consumer advice generation by classification tools and industry classifiers.¹⁶⁷

¹⁶² Refer to [Commercial Television Industry Code of Practice](#), 2018.

¹⁶³ Refer to [SBS Code of Practice](#), 2019.

¹⁶⁴ Refer to [ABC Code of Practice](#), 2019.

¹⁶⁵ Refer to the [Classification \(Publications, Films and Computer Games\) \(Markings and Consumer Advice\) Determination](#), 2014.

¹⁶⁶ Classification Board submission, p. 43.

¹⁶⁷ Interactive Games & Entertainment Association submission, p. 26.

However, broadcasters, in particular the ABC and SBS, noted that they valued the ability to tailor consumer advice to specific audiences. The ABC stated that its classifiers “regularly create new consumer advisories, tailored to the specific elements of the content and the specific sensitivities of the target audience.”¹⁶⁸

Netflix in its submission also advocated against a rigid approach to consumer advice formulation, suggesting content providers should be enabled to “develop an approach to self-classification that works best for their business model, provided that such a system produces classifications and consumer advice that are reflective of Australian consumer standards and useful to Australian viewers.” Netflix suggested that, while a minimum standard should exist relating to consumer advice content, overly rigid consumer advice standards might “impose disincentives to provide the most accurate information to Australian consumers.”¹⁶⁹

There were also differing views as to what should be prioritised for inclusion in consumer advice, including how specific consumer advice relating to thematic content should be, and whether certain content below the classification level was inherently impactful enough to include, as a form of trigger warning.

Evaluation

Advice for consumers is an important feature of any classification scheme. At minimum, consumer advice provides information about the strongest content of a film or game, in addition to the guidance on audience suitability provided in the rating. Provision of such advice tells consumers, in short form, why a classification has been given. It also enables people who are concerned about some content types more than others to avoid certain content.¹⁷⁰ Depending on the descriptors used, it can also help consumers understand contextual information about the content; for example, “Mild animated violence” in a PG film communicates that there is violence, but of a certain type.

While consumer advice should be succinct to be useful for consumers, I do not support rigid rules about how it is phrased. There is arguably more flexibility relating to space to display consumer advice in a digital context than in the days when it was limited to DVD and game packaging. Therefore, there is no longer a functional need to limit consumer advice to a rigid formula of strongest content and content descriptor. Furthermore, there is no reason why platforms, particularly broadcasters such as SBS, should be prevented from tailoring consumer advice to their audiences as needed.

At the same time, where there are technical limitations on what consumer advice can be generated (for example, by classification tools), standardised lists should be provided. I recommend that all industry self-classifiers are provided with standard words to use, to encourage consistency, and minimum standards as to what consumer advice should contain (and these should be updated along with guidelines as needed), so that there is both certainty and flexibility in how consumer advice is generated on various platforms.

Finally, all platforms should be required to display both the rating and consumer advice prominently and consistently. I note that in 2019 the BBFC developed best practice guidelines for display of their ratings information for VODs. Among other points these guidelines stipulate that the classification and ‘ratings info’ (consumer advice) are displayed prominently and ‘before the call to action’ (to maximise the chance of the user seeing them before they press play).¹⁷¹

¹⁶⁸ ABC submission, p. 5.

¹⁶⁹ Netflix submission, p. 3.

¹⁷⁰ Department of Communication and the Arts, [Classification usage and attitudes study](#) (2016), p. 12.

¹⁷¹ Refer to [BBFC VOD User Guidelines 2019](#).

As classification requirements relating to display of information are contained in legislation, I recommend updating these regularly so that they are adaptable to emerging forms of accessing content and associated promotional material. In addition, I recommend that standard consumer advice terms are provided in each set of guidelines.

Recommendation 7-9: The regulator should establish minimum requirements for the information contained in consumer advice and a set of terms for all content providers to use.

Recommendation 7-10: Content providers should have the flexibility to add to consumer advice as considered needed for their audience.

Recommendation 7-11: Best practice guidelines should be provided about phrasing of consumer advice, and any requirements relating to phrasing should be broadly stated to allow for technological limitations of classification tools.

8. Classification guidelines

8.1 Creation of detailed and regularly updated guidelines

Current arrangements

Updates to the Guidelines

Under the current intergovernmental agreement, any changes to the Guidelines require unanimous agreement from federal and state and territory ministers responsible for classification. The Publications Guidelines were last updated in 2005. As part of the introduction of an R 18+ category for computer games in 2013, the previous combined Guidelines for the Classification of Films and Computer Games were separated and the current Films Guidelines and Computer Games Guidelines created.

Criteria in the Guidelines for classification decisions

For films and computer games, what is permissible in the categories is expressed as a hierarchy of impact that applies to each of the classifiable elements of Themes, Violence, Sex, Language, Drug Use and Nudity. These are outlined in Table 13 below.

Table 13. The impact level for films and computer games 172

Category	Impact of classifiable elements
G	The impact should be very mild only.
PG	The impact should be no higher than mild.
M	The impact should be no higher than moderate.
MA 15+	The impact should be no higher than strong.
R 18 +	The impact should not exceed high.

All three sets of Guidelines describe the importance of context in determining if the classifiable element is justified by the storyline or themes. The Computer Games Guidelines also describe how interactivity is an important consideration that must be taken into account and there are provisions relating to some interactive content. For films only, there is also a special category for sexually explicit content, X 18+, and there are some specific provisions about content permissible in this category.¹⁷³ Content that cannot be accommodated at R 18+ or X 18+ is Refused Classification.

Instead of a hierarchy of impact, the Publications Guidelines describe in general terms content that is permissible in each of the publication categories of Unrestricted, Category 1 restricted and Category 2 restricted for the classifiable elements of Violence, Sex, Nudity, Coarse Language, Adult Themes and Drug Use. Content which cannot be accommodated at Category 2 restricted is Refused Classification.¹⁷⁴

The provisions in the Films Guidelines and Computer Games Guidelines are broad, and although the Publications Guidelines are more specific, all three require interpretation when being applied in making classification decisions. The provision of consistent classifications therefore relies on the Board's capacity to interpret the Guidelines and consider the provisions in the Classification Act and the Code in accordance with community standards. To help the Board make classification decisions that align with community standards, section 48 of the Classification Act stipulates that "In appointing members, regard is to be had to the desirability of ensuring that the membership of the Board is broadly representative of the Australian community."¹⁷⁵ Further, under section 51, a member must

¹⁷² Refer to [Guidelines for the Classification of Films 2012](#) and [Guidelines for the Classification of Computer Games 2012](#).

¹⁷³ *Ibid.*

¹⁷⁴ Refer to [Guidelines for the Classification of Publications 2005](#).

¹⁷⁵ Refer to section 48 of the [Classification Act](#).

not hold office “for a total of more than 7 years.”¹⁷⁶ Board members receive training on applying the Classification Act, Code and Guidelines that includes examples of previous decisions at each of the classification categories.

Television guidelines

Australian free to air broadcasters’ systems of television program classification, including the Commercial Television Industry Code of Practice,¹⁷⁷ the ABC Television Classification Standards,¹⁷⁸ and the SBS Television Classification Code of Practice¹⁷⁹ are adapted from the Guidelines for the Classification of Films. The broadcasters’ classification guidelines are periodically reviewed to take into account audience feedback. While there are many commonalities between each set of guidelines there are also some notable differences.

All of the broadcasters’ guidelines provide greater detail about what is allowable in each category and each element than the Films Guidelines. However, they refer to the impact test to a varying extent. The Free TV guidelines include the impact level in the description of each category in a similar way to the Films Guidelines. The ABC’s guidelines include some limited references to impact level in the descriptions of what is allowable within each element at each category. The SBS Television Classification Code of Practice does not focus on impact, instead providing extensive guidance on assessing elements of particular concern and providing a brief description of what is allowable within each element in each category.

There are also some differences in each of the broadcasters’ guidelines in relation to what *elements* are taken into account in classification. For example, the Free TV guidelines include an additional classifiable element for depiction and descriptions of suicide,¹⁸⁰ and both Free TV and the ABC consider dangerous imitable behaviour at G,¹⁸¹ while SBS guidelines take into consideration the cultural context of each program.¹⁸²

Submitter views

Updates to the Guidelines

Several submitters, mainly in the film industry, made a general observation that it would be desirable for the Guidelines to be more regularly updated to adapt to shifting community standards and emerging issues of community concern. The Film Industry Associations said that such flexibility was “critical to the success of a future-proof classification system.”¹⁸³ SBS noted that their own guidelines are reviewed every few years and incorporated regular audience research.¹⁸⁴

Criteria in the Guidelines for making classification decisions

Several submitters commented on the lack of detail in the current classification guidelines, particularly in reference to the Films Guidelines. Generally, amongst these submitters, lack of detail in the Guidelines raised concerns about them being open to interpretation, subjective, lacking transparency and unlikely in and of themselves to facilitate consistency in decision-making.

Free TV, the ABC and SBS noted that the guidelines in their own Codes of Practice were more specific in describing allowable content within categories than the Films Guidelines.¹⁸⁵ The ABC asserted that

¹⁷⁶ Refer to section 51 of the [Classification Act](#).

¹⁷⁷ Refer to [Commercial Television Industry Code of Practice](#), 2018.

¹⁷⁸ Refer to [ABC Code of Practice](#), 2019.

¹⁷⁹ Refer to [SBS Code of Practice](#), 2019.

¹⁸⁰ Refer to [Commercial Television Industry Code of Practice](#), 2018.

¹⁸¹ Refer to [Commercial Television Industry Code of Practice, 2018](#) and [ABC Code of Practice, 2019](#).

¹⁸² Refer to [SBS Code of Practice](#), 2019.

¹⁸³ Film Industry Associations submission, p. 4.

¹⁸⁴ SBS submission, p. 2.

¹⁸⁵ Refer to submissions from Free TV Australia (p. 5), ABC (p. 3) and SBS (p. 7).

in regard to the Films Guidelines, “the description of what is permissible within each classifiable element at each classification level is brief and imprecise.”¹⁸⁶

The Australian Children’s Television Foundation (ACTF) and several others considered the impact test in the Films Guidelines and Computer Games Guidelines to be highly subjective.¹⁸⁷ The ACCM suggested that the impact hierarchy as a method for classification involved a subjective assessment “from an adult perspective”,¹⁸⁸ and that classification should instead be based on age suitability. It also suggested that the use of impact descriptors such as ‘mild’ in consumer advice is unhelpful to parents.¹⁸⁹ The ACTF suggested a lack of transparency and consistency in distinguishing ‘very mild’ from ‘mild’ content.¹⁹⁰ Comments about lack of consistency and transparency in classification *decisions* were also made by several individual submitters. Spherex, a company which submits applications for classification on behalf of a range of online distributors, noted the challenges in interpreting the Films Guidelines consistently and accurately, due to a lack of detail.¹⁹¹

Evaluation

The matters raised relating to the lack of detail and specificity in the Guidelines, and suggestions that it is good practice to regularly review classification guidelines, are valid. I agree that the impact hierarchy is inherently subjective and that while it may provide the Board with flexibility in classification decision-making, the lack of specificity in the Guidelines also places strong reliance on the past decisions of the Board for guidance on how these have been applied.

In contrast, clear, specific guidelines will be needed to facilitate consistent, reliable classification by industry. Such guidelines will also enable transparency in decision-making to maintain community confidence in a new regulatory scheme and improve the public’s understanding of classification. It will also be helpful in development or updates to classification tools to have more specific criteria than the impact hierarchy, so that classification standards are consistent across various processes and platforms.

The overall level of specificity in the broadcasters’ classification guidelines is closer to what will be required by industry classifiers than the current Films Guidelines, such as the specific provisions for suicide and imitable behaviour in the Free TV Code (addressed further in Chapter 9) and the detailed description of categories in the ABC and SBS codes of practice.

Regarding the Publications Guidelines, I note that these contain more detail about content permitted in each category than the Films Guidelines and Computer Games Guidelines. Specific aspects of these guidelines that could be improved and updated are addressed in Chapters 9 and 10.

In addition to incorporating more specific provisions, regular reviews and updating of the Guidelines is also necessary. Regular reviews based on sound evidence and community research will be crucial to enable classification to respond to social and technological change and reflect community expectations and best practice.

There are some international examples to draw upon. The first is the British Board of Film Classification (BBFC) in the United Kingdom which classifies film content including SVOD. The BBFC Guidelines, published on its website,¹⁹² are written in plain English and provide specific examples of content that is permissible in each of the classification categories, as well as a brief explanation for

¹⁸⁶ ABC submission, p. 3.

¹⁸⁷ Refer to submissions from Australian Children’s Television Foundation (p. 7), SBS (p. 5), ABC (p. 3) and Australian Council on Children and the Media (p. 44).

¹⁸⁸ Australian Council on Children and the Media submission, p. 12.

¹⁸⁹ *Ibid.*

¹⁹⁰ Australian Children’s Television Foundation submission, p. 5-6.

¹⁹¹ Spherex submission, p. 4.

¹⁹² Refer to [BBFC Classification Guidelines 2019](#).

these rules, which explains clearly how context is applied in a variety of situations. While not being literal or proscriptive in most areas, they give the reader a very clear understanding of how a range of content is to be treated. The Guidelines are updated about every four years based on a comprehensive program of community research.

The second is the system in the Netherlands (described in Appendix 2) where there are committees including a Science Committee (comprising academics) and an Advisory Committee (comprising various stakeholder groups) that monitor the system and develop updates as needed in response to new scientific findings, changes in the media landscape and societal developments.

While the basis for classification standards used in each system is different, what these systems have in common is clear and objective criteria, a sound evidence base and mechanisms for regular, systematic review. The Netherlands also draws on expertise from a range of perspectives while still having an ear to community concerns and values.

I recommend implementation of similar arrangements in Australia. An expert Classification Advisory Panel should be established to review evidence and advise on updates to the classification guidelines, as well as updates to the Code and Classification Act in alignment with the overarching principles set out in Chapter 4.

The panel would include experts in a range of academic fields relevant to classification, including psychology and media studies, as well as people with industry experience and from community organisations. Its functions would include:

- Reviewing empirical evidence of harms associated with certain media content (particularly relating to children) and community research conducted by the regulator, to inform development of new classification guidelines and updates to the Code and matters to be taken into account articulated in the Classification Act.
- Monitoring developments in media platforms and emerging issues of community concern and recommending updates to the classification guidelines to reflect these issues.
- Recommending research to test community attitudes and views on the classification system and potential new guidelines and updates.

Members of the panel would be appointed by the Australian Government after consultation with the states and territories in the same way as currently occurs for members of the Board.

Recommendation 8-1: The classification guidelines should be updated to contain specific, objective criteria for consistent classification decisions.

Recommendation 8-2: The classification guidelines should be reviewed every four years.

Recommendation 8-3: A Classification Advisory Panel should provide advice on the classification categories, classification guidelines, National Classification Code and the matters to be taken into account in decision-making in the Classification Act.

Recommendation 8-4: Advice of the Classification Advisory Panel should be informed by empirical evidence, community research, international best practice and consultation with stakeholders including the eSafety Commissioner.

8.2 Separate versus combined guidelines for various platforms

Current arrangements

There are currently separate Guidelines for the classification of films, computer games and publications, as well as a number of separate guidelines for television content. The Guidelines explain what content is permissible in each of the classification categories.

The Films Guidelines and Computer Games Guidelines have been aligned to an extent since 1995. For example, in 2005, the common categories of G, PG, M and MA 15+ for films and computer games were introduced (this essentially replaced the then computer games categories with the films categories). However, as a result of the introduction of an R 18+ rating for computer games, the existing provisions relating to interactivity and treatment of certain content in computer games (such as sexual violence) were modified to accommodate R 18+ being introduced in the Computer Games Guidelines.

As previously outlined, television broadcasters use their own guidelines contained in their respective Codes of Practice, however, these are largely aligned with the Films Guidelines. While all broadcasters use the categories G, PG, M and MA 15+ for film content, free to air commercial broadcasters also use C and P categories for some children's content. The ABC, SBS and free to air commercial broadcasters all have their own guidelines as to content permissible in categories, and Free TV has additional elements for non-film broadcast material: Suicide, Dangerous Imitable Activity and Other. ASTRA guidelines replicate the current Films Guidelines. The guidelines used by broadcasters contain both information on content permissible in categories and rules for showing content in particular time zones.

Submitter views

The ALRC review recommended "a single set of statutory classification categories and criteria applicable to all media content."¹⁹³ This review sought current views on whether there should be a single set of guidelines for all formats including television, cinema, DVD and Blu-ray discs, video on demand and computer games.

Several submitters indicated support for the proposal that all media specified be subject to the same guidelines.¹⁹⁴ However, many were more focussed in their support of common guidelines for various film formats (including online)¹⁹⁵ rather than games, as this would facilitate content only needing to be classified once.¹⁹⁶

However, the ABC and SBS did not support adopting guidelines that would be common to film in other formats.¹⁹⁷ The ABC and SBS indicated that their concerns were primarily about preserving editorial independence as well as misgivings about the current Film Guidelines, which were considered insufficiently detailed, overly subjective and in some cases, out of step with what their respective audiences would expect.¹⁹⁸ SBS noted the need to tailor both consumer advice and classification ratings to their audiences.¹⁹⁹

The Interactive Games & Entertainment Association (IGEA) supported a single set of guidelines for films and computer games, noting the disparities between the current Films Guidelines and Computer

¹⁹³ ALRC, *Classification: Content Regulation and Convergent Media* (2012), recommendation 5.2.

¹⁹⁴ Refer to submissions from The Walt Disney Company (p. 5), Australian Children's Television Foundation (p. 7), Telstra (p. 3-4), Screen Producers Australia (p. 4), Film Industry Associations (p. 5) and Australian Home Entertainment and Distributors Association (p. 8).

¹⁹⁵ Refer to submissions from Google (p. 3), Australia New Zealand Screen Association (p. 4) and Spherex (p. 5).

¹⁹⁶ Australian Home Entertainment and Distributors Association submission, p. 8.

¹⁹⁷ Refer to submissions from ABC (p. 3) and SBS (p. 9).

¹⁹⁸ Refer to submissions from ABC (p. 1-2) and SBS (p. 5)

¹⁹⁹ SBS submission, p. 7.

Games Guidelines which they assert lead to unnecessarily stringent treatment of games.²⁰⁰ This is addressed further in Chapter 10. The Board supported combining guidelines for films and games, citing similar reasons to IGEA and the increasing convergence between film and games.²⁰¹ Many adult gamers were concerned that the differences in these guidelines were unnecessary and resulted in a number of games being Refused Classification when they are both readily available internationally and would not be Refused Classification under the Films Guidelines.

The ACCM supported continued use of common categories for films and games but opposed the combining of Films Guidelines and Computer Games Guidelines on the grounds that the user experience was different due to interactivity and online elements.²⁰² The Film Industry Associations' submission also suggested that differences due to interactivity may need to be taken into account in relation to games.²⁰³

Evaluation

Ideally, a single set of Films Guidelines should apply across various delivery platforms providing they contain information that enables consistent classification in line with community expectations. While both public broadcasters value editorial independence and the ability to tailor classification to their audiences, it seems reasonable to conclude that if the Guidelines were sufficiently detailed, any tailoring to audiences could be achieved via a flexible approach to consumer advice. This would maintain consistency in classification and support the principle of 'classify once'.

There is only limited support for combining all three sets of Guidelines. Following my earlier considerations on the need for detailed and specific guidelines for industry self-classifiers, it makes sense to retain separate guidelines that refer to specific content and features of computer games, films and publications. This recognises that there are some differences in user experience, and accessing content, across formats.

There is stronger support from some sections of the community, and both the Board and games industry, to address inconsistencies between the Guidelines, particularly the Computer Games Guidelines and Films Guidelines. I consider that equivalent content should be treated as consistently as possible in the respective Guidelines, while giving clear guidance about treatment of specific characteristics, particularly of games, to adequately protect children.

One of the areas where I consider alignment of the Films Guidelines and Computer Games Guidelines should occur is in relation to content at the R 18+ classification, and corresponding criteria for what is Refused Classification in the Computer Games Guidelines.

Certain provisions in the Computer Games Guidelines at R 18+ are inconsistent not only with provisions for equivalent content in the Films Guidelines, but with other international game classification systems. As a result, a number of games are being Refused Classification in Australia despite being generally available internationally.

In this and other areas, there is a need to balance the principles in the National Classification Code about the ability of adults to have access to content while protecting minors from material likely to harm or disturb them.

Amending these more restrictive provisions and aligning the Films and Computer Games Guidelines at the R 18+ level would be consistent with the principle in the National Classification Code that "adults should be able to read, hear, see and play what they want."

²⁰⁰ Interactive Games & Entertainment Association submission, p. 30.

²⁰¹ Classification Board submission, p. 17.

²⁰² Australian Council on Children and the Media submission, p. 15.

²⁰³ Film Industry Associations submission, p. 5.

As detailed in Chapter 10, I am of the view that most of the community would consider that interactive content *is* potentially impactful particularly on the behaviour or attitudes of children. Therefore existing protections, particularly relating to interactivity below the R 18+ level, would continue to be applied.

I consider further specific areas in which the alignment of Films Guidelines and Computer Games Guidelines can be improved in Chapter 10.

Recommendation 8-5: Separate guidelines should be maintained for classification of films, computer games and publications.

Recommendation 8-6: The same film classification guidelines should be used across all film and television content platforms, including broadcast television.

Recommendation 8-7: The Films Guidelines and Computer Games Guidelines should be aligned at the R 18+ classification.

9. Films Guidelines

The Films Guidelines are used by the Board for classifying feature films, television series sold on home media ‘box sets’ as well as episodic online series and other content which fits into the definition of ‘film’ under section 5 of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act). The Films Guidelines expand on the provisions in the National Classification Code for what is permissible in each category. As outlined in Chapter 7, the threshold for what is permitted is largely determined by an ‘impact test’ applied to each of the classifiable elements.

This chapter focuses on key issues in relation to the treatment of content in the current Films Guidelines. In Chapter 8, I recommend that a single set of Films Guidelines be developed for use across all content platforms, including broadcast television, and that detailed guidance on what is allowable in each element in each category should be provided.

9.1 Themes and social issues

Current arrangements

‘Themes’ are defined in the Films Guidelines as ‘Social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism’. The Board uses ‘themes’ to cover many other types of issues including depictions of animal cruelty or predatory animal behaviour, gambling, crude humour, horror and scary content.

The Board often uses its standard formula (described in Chapter 7) for providing consumer advice for ‘themes’ by applying the impact descriptor, such as ‘Mild themes’ where this is the strongest content. Where it is deemed warranted, the Board may give advice indicating the type of theme dealt with, for example ‘Supernatural themes’ or may provide warnings such as ‘Some scenes may scare young children’ for content aimed at a young audience.

Submitter views

Suicide

The joint submission from Everymind and SANE Australia argued suicide and self-harm should be added to the list of classifiable elements, and that content warnings should be shown at the beginning of shows and films specifying that suicide or mental illness are portrayed so that audiences can choose whether to watch this content. This is due to the potential impact on vulnerable audiences of such content, including risk of suicide contagion or causing distress to those who have a lived experience of suicidal behaviour or are bereaved by suicide. It also argued that support services information should be displayed.²⁰⁴ In respect to these issues, the Film Industry Associations (FIA) noted that its “members are receptive to changes that provide sufficient information to consumers to make informed decisions about the films they want to see and to guide people who are vulnerable to certain themes.”²⁰⁵

The Board’s view is that consumer advice for themes, including suicide, should be confined to only the most impactful thematic content responsible for the classification category and that ‘trigger’ or content warnings for other thematic content should not be included.²⁰⁶

²⁰⁴ Everymind and SANE Australia submission, p. 3-4.

²⁰⁵ Film Industry Associations submission, p. 4.

²⁰⁶ Classification Board submission, p. 26.

Scary content

The Australian Council on Children and the Media (ACCM) argued that a new classifiable element should be added for fear, horror, and scary and disturbing content.²⁰⁷ It submitted that scary content was one of two broad areas where evidence of a risk of harm to children from media use has been found in academic literature (the other being depictions of violent and antisocial behaviour – see below).

Breadth of themes

The Australian Children’s Television Foundation (ACTF) argued that the scope and treatment of ‘themes’ by the Board using the Films Guidelines was broader and more conservative than the treatment of themes under television guidelines,²⁰⁸ and others also considered the parameters of ‘themes’ unclear, or that they should not encompass as much content as is currently the case.

In contrast, the Board submitted that the definition of ‘themes’ should be expanded to include “a broad array of social issues, events and content.” The Board acknowledged, however, that consumer advice for themes needs to be carefully formulated to be useful for consumers. For example, it noted consumer advice of ‘Mild themes’ may not carry enough meaning.²⁰⁹

Evaluation

Suicide

Given the contemporary awareness and concerns raised in the joint submission by Everymind and SANE Australia, and the incidence of suicide in this country, further consideration of the treatment of suicide in classification is warranted.

There are a number of precedents from other classification systems for the consideration of suicide. The Free TV Code of Practice includes suicide as a classifiable element and there are specific provisions for various kinds of suicide related content across categories. Self-harm is one of the classification criteria used by the New Zealand Classification Office. Suicide is also addressed by the British Board of Film Classification (BBFC) under the classifiable element ‘Dangerous Behaviour’ and warnings (e.g. hanging scene, suicide theme) appear in consumer advice for this content.²¹⁰

The Department’s research has consistently identified community support for consumer advice relating to suicide to be routinely used.²¹¹

Dangerous or imitable behaviour

Dangerous or imitable behaviour refers to a range of different types of dangerous behaviours and stunts that could potentially be harmful to children and young people if they tried to copy them. The issue of suicide depictions could also be addressed under this element. The issue of children copying ‘superhero violence’ noted by ACCM (addressed in ‘Violence’ below) could also be considered under ‘dangerous or imitable behaviour’.

There are a number of precedents for use of this element in classification. The BBFC’s Guidelines include the classifiable element ‘Dangerous Behaviour’ which includes portrayals of potentially dangerous behaviour which children might copy (including suicide and self-harm) as well as detailed portrayals and glamorisation of criminal and violent techniques and anti-social behaviour.²¹² Similarly,

²⁰⁷ Australian Council on Children and the Media submission, p. 11.

²⁰⁸ Australian Children’s Television Foundation submission, p. 1-6.

²⁰⁹ Classification Board submission, p. 23-24.

²¹⁰ Refer to [BBFC Classification Guidelines 2019](#).

²¹¹ Department of Communications and the Arts, *Categories and Consumer Advice*, 2018, p. 14.

²¹² Refer to [BBFC Classification Guidelines 2019](#).

the classification guidelines in Free TV's Code of Practice and the ABC's TV Program Classification Standard include guidance on 'Dangerous imitable activity' in the G category.²¹³

Scary content

In my view, given the potential harms to children of this type of content, further consideration of the treatment of scariness and horror in classification is warranted.

A number of international classification bodies consider scariness and/or horror as a separate element, including in the Netherlands, New Zealand, the USA, South Korea, Canada and the UK.

In a community standards survey conducted by the Department, 70% of respondents indicated that the level of horror in a film was important in informing their decisions regarding suitability. In relation to scariness, some parents reported finding it difficult to protect their children from scary scenes in content aimed at children and young people.²¹⁴

Discrimination and racial vilification

Given the precedents from other classification bodies overseas and general sensitivities in the community around discrimination,²¹⁵ the manner in which this issue is addressed in classification could be further considered. Internationally, discrimination is incorporated as an element by the Netherlands, the UK, Singapore and New Zealand.

Breadth of themes

In my view, further consideration needs to be given to the treatment of the broad range of topics covered under the element 'themes'. The views expressed by submitters are supported by Departmental research which indicates that the classifiable element 'themes' is poorly understood,²¹⁶ and that consumers would like to be provided with specific warnings for content which falls under 'themes', particularly for suicide, horror and scariness, and racist language.²¹⁷ The Department's research has indicated that generic references to 'themes' in consumer advice, for example 'Strong themes', 'Dark themes', 'Adult themes' and 'Mature themes' are not considered helpful by the community.²¹⁸

I agree that the element 'themes' is too broad and imprecise and that there needs to be more specific consideration and guidance on the issues of particular concern to the community.

The introduction of additional classifiable elements is not necessarily required if more specificity regarding issues of concern is included in the Guidelines for 'themes'. Classifiers should be encouraged to include descriptive consumer advice specifying the type of content a film contains, particularly for content that is identified as potentially harmful or of concern to the community, such as suicide.

²¹³ Refer to [Commercial Television Industry Code of Practice](#) and [ABC Television Classification Standards](#).

²¹⁴ Department of Communications and the Arts, [Community Standards and Media Content – Research with the general public](#) (2017), p. 27; p. 13.

²¹⁵ Department of Communications and the Arts, [Community Standards and Media Content – Research with the general public](#) (2017), p. 12.

²¹⁶ Attorney General's Department, [Classifiable elements, impact descriptors and consumer advice - Research with the general public](#) (2015), p. 23.

²¹⁷ Department of Communications and the Arts, [Research Report – Classification Categories and Consumer Advice](#) (2018), p. 14.

²¹⁸ *Ibid*, p. 17.

Recommendation 9-1: Specific guidance should be given in the guidelines for issues of particular concern to the community such as scary content, suicide depictions and other imitable behaviour, and discrimination.

Recommendation 9-2: Specific consumer advice identifying thematic content should be provided wherever possible. Consumer advice about suicide should be provided even when it is not among the highest impact elements.

9.2 Sexualisation of women and children

Current arrangements

The National Classification Code provides that a film will be Refused Classification if it describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not).

In addition, the Films Guidelines provide that a film will be classified Refused Classification if it (among other things) has the following:

- The promotion or provision of instruction in paedophile activity;
- Descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18;
- Gratuitous, exploitative descriptions or depictions of (amongst other matters):
 - Sexual violence;
 - Activity accompanied by fetishes or practices which are revolting or abhorrent;
 - Incest fantasies or other fantasies which are offensive or revolting or abhorrent.

Submitter views

Some submitters were concerned about the sexualised representations of women and/or children in the media. Collective Shout argued that provisions relating to 'sex' should be broadened to reflect research insights into the impacts on children and young people of such representations. Further views suggested that the Films Guidelines should take into account issues around the sexualisation of children so that when classifying 'sex', 'visual sexual references' such as words, symbols, acts and practices (e.g. styles of dress) that have sexual overtones should be considered.²¹⁹

Senator Stirling Griff, Centre Alliance Senator for South Australia, argued that the National Classification Scheme does not adequately address Japanese anime films involving sexualisation of children, and that such content is child abuse material under the Criminal Code. In his view, such depictions should automatically be Refused Classification regardless of the context in which they are set.²²⁰ Collective Shout supported the issues raised by Senator Griff.²²¹

Evaluation

In community research conducted by the Department, concern was expressed about the perceived sexual objectification and stereotyping of women in media.²²²

In light of the concerns outlined above, further consideration should be given as to how classification should deal with the impacts on children of sexual references and stereotyped depictions of females.

²¹⁹ Australian Council on Children and the Media submission, p. 10.

²²⁰ Senator Stirling Griff submission, p. 1-7.

²²¹ Collective Shout submission, p. 18-19.

²²² Department of Communications and the Arts, [Community Standards and Media Content – Research with the general public](#) (2017), p. 11.

Sexual objectification and stereotyping of women could potentially be included in guidance for ‘discrimination’.

The matters raised in relation to sexualised depictions of minors in films, including in anime films require a specific approach.

Context is an essential principle underpinning the Guidelines and is used to determine whether a classifiable element is justified by the storyline or themes.²²³ For example, a film’s story may dramatise the coming-of-age of an adolescent and it may include scenes of *implied*, consensual, underage sexual activity. Similarly, a storyline may also deal with child abuse and the impacts on the victims. While these scenes may cause offence to some adults, the National Classification Code and Classification Act (section 11) require consideration be given to a range of matters including the artistic merit of a film and its intended audience.

I agree that context, artistic merit and intended audience should be taken into consideration when assessing a film generally, and I acknowledge that depictions of young people in a sexual context may be justified by a storyline (as in the examples above). However sexualised depictions of minors (whether real or animated) that are gratuitous, exploitative or offensive, and which sexually objectify children should never be permitted.

While the Films Guidelines provide that gratuitous, exploitative or offensive depictions of minors are to be Refused Classification, in light of the concerns raised in submissions and clear community attitudes, the issue of sexualised depictions of children (whether animated or not) must be given greater consideration in classification decision-making. The Guidelines should make reference to the need to give greater weight to the possibility that sexualised depictions of children (animated or real) are gratuitous, exploitative or offensive rather than that they may be justified by storyline, artistic merit or intended audience.

While the current classification system provides for child abuse material to be Refused Classification, the provisions in the Criminal Code in relation to child abuse material are much more detailed than those in the Classification Code and Guidelines, and I recommend that the Code and Guidelines should be aligned with the Criminal Code in this regard.

Recommendation 9-3: The Classification Advisory Panel should consider evidence for the impacts on children of depictions of sexual references and sexual objectification of female characters, and whether and how classification should appropriately deal with this issue.

Recommendation 9-4: The Films Guidelines should give greater weight to the possibility that sexualised depictions of children are exploitative or offensive rather than that they may be justified by storyline, artistic merit or intended audience. Whether or not depictions are animated or real should not be taken into consideration.

Recommendation 9-5: The Refused Classification category in the Films Guidelines and provisions in the Criminal Code in relation to child abuse material should be aligned. This alignment should also apply to the Computer Games Guidelines and the Publications Guidelines.

²²³ Refer to the Classification Board’s [media release](#).

9.3 Drug Use

Current arrangements

The Films Guidelines provide for content promoting or encouraging illegal drug use to be Refused Classification. However, they contain very limited guidance as to what kind of drug use is permitted in each of the other categories. The Board considers both depictions of, and references to, illegal drug use under this element, and generally uses its standard formula for consumer advice by referencing the impact descriptor, for example 'Mild drug use' or 'Mild drug references'.

Submitter views

The Foundation for Alcohol Research and Education (FARE) argued that due to the risks to children of normalising or glamorising drug use, the depiction of drug use in G and PG should be prohibited.²²⁴

The Board argued that given its practice is to consider references to drugs under this element, that 'drug use' be renamed 'drugs'.²²⁵

A small number of submissions argued that depictions of alcohol, tobacco and prescription drug use should be considered under 'drug use' and not under 'themes' due to the social impacts, particularly on children and young people, of exposure to depictions of these substances.²²⁶

In contrast, the Board's submission argued for the inclusion of prescription drug abuse under this element, but was not in favour of extending this to include alcohol and tobacco use.²²⁷

Evaluation

Given the few submissions received on the subject, it appears that the way in which drug use is classified under the current Guidelines is for the most part appropriate.

Research also shows that the Board's interpretation of what type of drug use is of a higher impact (such as glamorisation of drug use) or lower impact (such as showing drug use to be associated with negative consequences) is in line with community standards.²²⁸

However, in my view, there is a case for considering alcohol, tobacco and prescription drugs under a broader 'drugs' element.

As submitted by FARE, there is evidence of social harms in relation to depictions of alcohol, tobacco and prescription drugs in terms of encouraging young people to use these substances. Departmental research also suggests community support for specific information to be provided on depictions of underage alcohol use in particular.²²⁹

²²⁴ Foundation for Alcohol Research and Education submission, p. 1-6.

²²⁵ Classification Board submission, p. 37.

²²⁶ Refer to submissions from Foundation for Alcohol Research and Education (p. 5) and Australian Council on Children and the Media (p. 10).

²²⁷ Classification Board submission, p. 37.

²²⁸ Department of Communications and the Arts, [Community Standards and Media Content – Research with the general public](#) (2017), p. 11.

²²⁹ Department of Communications and the Arts, Research report – classification Categories and Consumer Advice, (2018), p. 14.

Research also found that drug use is considered by the community to be one of the most important classifiable elements.²³⁰ The main concern is that depictions of drugs could normalise or glamorise drug use, and there is a strong desire to protect children and young people from even fairly mild drug-related content.²³¹ The context of drug use is critical to its potential impact and the way in which it should be classified, for example whether illicit drug use or substance abuse (including alcohol and prescription drugs) was glamorised or glorified, or presented as unpleasant or tragic.²³²

There are a number of international precedents for providing classification information for depictions of tobacco, alcohol, and substance use. The classification system in the Netherlands limits such content to 16 years and over if excessive alcohol use is glamorised. In the UK, the BBFC's Guidelines provide that consumer advice should be given where smoking, alcohol abuse or substance misuse are a significant feature in works which appeal to children, and classification decisions will also take into account any promotion or glamorisation of such activities.²³³

Recommendation 9-6: The Classification Advisory Panel should review evidence relating to harms of depictions of drug use.

Recommendation 9-7: Depictions of alcohol, tobacco and prescription drugs should be considered under the element 'drugs'.

9.4 Violence

Current arrangements

Clause 1. (d) of the National Classification Code provides that classification decisions should take account of community concerns about depictions that condone or incite violence, particularly sexual violence. The Films Guidelines provide limited guidance for how violence, including sexual violence, should be depicted at each classification category, referring mostly only to impact and context. However no sexual violence is allowed below the M category.

The Board generally uses its standard formula (described in Chapter 7) for providing consumer advice for violence with the impact descriptor, such as 'High impact violence' for an R 18+ film, or may describe specific types of violence, such as 'Strong blood and gore', add contextual details such as 'Battle violence', or combine the impact descriptor and contextual information such as 'Mild animated violence'. Where sexual violence is at the impact level that contributed to the film's classification, the Board will specifically mention this in consumer advice.

Submitter views

Only a few submitters directly addressed the issue of violence in films. One film industry submitter argued that consumer advice should specify the type of violence depicted, for example 'Strong science fiction violence', as not everyone had the same views about what constitutes harmful depictions of violence.²³⁴

²³⁰ Attorney-General's Department, *Classifiable elements, impact descriptors and consumer advice - Research with the general public* (2015), p. 23; p. 21.

²³¹ Department of Communications and the Arts, *Community Standards and Media Content – Research with the general public* (2017), p. 10.

²³² Attorney-General's Department, *Classifiable elements, impact descriptors and consumer advice - Research with the general public*, p. 35-36.

²³³ Refer to [BBFC Classification Guidelines 2019](#).

²³⁴ Vendetta Films submission, p. 1.

The Australian Council on Children and the Media (ACCM) cited research linking the consumption of violent media and various psychological and behavioural problems and criticised the classification of stylised ‘superhero violence’ as less impactful on children.²³⁵ Collective Shout raised concerns about depictions of sexual violence, although its main focus in this area was in relation to pornographic films and computer games.²³⁶

Evaluation

Departmental research indicates that the community considers violence as a critical aspect of classification.²³⁷ Blood and gore, sexual violence, and violence against women were identified as of particular concern.²³⁸ The research also indicates that factors viewed by the public as increasing impact (such as blood and gore) or decreasing impact (such as lack of detail) are consistent with the current Films Guidelines and Board practice.²³⁹

One area of concern expressed by submitters in relation to depictions of violence is the potential for harms to children from exposure to violent content. However, Departmental research found that while parents were very aware of the importance of educating their children about violent content and the dangers of imitating it, they did not believe that violent games and films had a significant influence on adult behaviour.²⁴⁰

The Department’s research suggests that violence against women and sexual violence are of particular concern to the Australian community.²⁴¹ Provisions for sexual violence are seen in other classification systems. The BBFC’s system considers sexual violence independently of other kinds of violence. In 2019, it responded to community concerns about sexual violence by increasing restrictions on sexual violence so that it is not allowed below ‘15’ (equivalent to MA 15+),²⁴² which is stricter than under the Australian Films Guidelines). The New Zealand Classification Office has also found strong support for specific warnings about sexual violence content.²⁴³

Consideration of harms against children in relation to violent material should be considered as part of the development of new guidelines, possibly through guidance for ‘dangerous imitable behaviour’ (outlined above).

Given the sensitivities around sexual violence, there should be a continued focus on this under revised guidelines.

²³⁵ Australian Council on Children and the Media submission, p. 18.

²³⁶ Collective Shout submission, p. 4.

²³⁷ Attorney-General’s Department, [Classifiable elements, impact descriptors and consumer advice – Research with the general public](#) (2015), p. 23.

²³⁸ Department of Communications and the Arts, *Research Report – Classification Categories and Consumer Advice* (2018), p. 13.

²³⁹ Department of Communications and the Arts, [Community Standards and Media Content – Research with the general public](#) (2017), p. 9.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, p. 13.

²⁴² Refer to [BBFC Classification Guidelines 2019](#).

²⁴³ Refer to [Young New Zealanders Viewing Sexual Violence Research](#) (2016).

Recommendation 9-8: The Classification Advisory Panel should review evidence relating to harms of depictions of violence and consider impacts of lower levels of violence on children.

Recommendation 9-9: The guidelines should be updated to take into account community concerns about violence against women and the treatment of this issue in consumer advice.

Recommendation 9-10: The Guidelines should continue to provide specific guidance in relation to sexual violence and continue to place restrictions on high level violence with blood and gore.

Recommendation 9-11: Consideration should be given to providing consumer advice about sexual violence even when it is not among the highest impact elements.

9.5 Sex and Nudity

Current arrangements

This section covers sex and nudity at the G to R 18+ level. Sex in the X 18+ category is addressed later in this chapter. The Films Guidelines provide very general guidance on sex at each category, with a focus on context and whether or not the sex is ‘discreetly implied’. There is little guidance on what type of nudity is allowed, beyond the impact test and the direction that ‘nudity should be justified by context’.

In providing consumer advice on ‘sex’, the Board differentiates between references to sex in dialogue, e.g. ‘Mild sexual references’, and depictions of sexual activity, e.g. ‘Strong sex scene’. For ‘nudity’, the Board generally uses its standard formula, for example ‘Strong nudity’. Where nudity is shown in a sexual context, it may provide the consumer advice ‘Sexualised nudity’. Descriptors such as ‘Comic nudity’ may also be used.

Submitter views

Stakeholders thought that the treatment of sex under the current Guidelines was in line with community standards and that consumer advice should continue to specify the type of sexual content present (for example implied, simulated, verbal and visual sexual references).²⁴⁴

The Board supported the continued use of the definition of ‘sexual activity’ in the Films Guidelines, and argued that any future guidelines should provide descriptions of allowable content for the element of sex for each classification category, eliminating existing variations between media types.²⁴⁵

Views on nudity encompassed concerns relating to the impact on children’s development, what constitutes nudity, whether the nudity is sexualised or non-sexualised, and whether ‘nudity’ could be more appropriately considered under the element of ‘sex’.²⁴⁶

The Board argued that to make clear to classifiers what constitutes nudity, the definition of nudity in the Publications Guidelines should be incorporated in any future guidelines.²⁴⁷

Evaluation

Given that few stakeholders specifically addressed these issues in relation to films, it appears that in general, sex and nudity are adequately dealt with in classification decision-making.

²⁴⁴ Refer to submissions from Spherex (p. 3) and Vendetta Films (p. 1).

²⁴⁵ Classification Board submission, p. 7.

²⁴⁶ Australian Council on Children and the Media submission, p. 10-11.

²⁴⁷ Classification Board submission, p. 41.

This is supported by the Department's research which showed that although 'sex' was in the top two most important elements for parents,²⁴⁸ the public's views about factors that heighten or lessen the impact of 'sex' are in line with the Board's application of the current Guidelines.²⁴⁹ Non-sexualised nudity was not of concern to the public.²⁵⁰

Internationally, the classification systems in New Zealand and the Netherlands do not have a separate classifiable element for nudity, although comparable jurisdictions have an element for sex.

Given that most community concern around nudity is focussed on sexualised nudity, there is merit in considering whether it is in fact necessary to maintain a separate classifiable element for nudity.

Recommendation 9-12: The Classification Advisory Panel should provide advice on whether it is necessary to maintain a separate classifiable element for nudity or whether it could be considered under the element of sex.

9.6 Language

Current arrangements

The Films Guidelines provide general guidance around the impact, frequency and aggressiveness of coarse language in each category. There is no specific guidance about the use of particular words.

The Board generally uses its standard formula for consumer advice for coarse language with reference to the impact descriptor, such as 'Mild coarse language'. It may also indicate whether language is used frequently or infrequently, for example 'Frequent strong coarse language'.

Submitter views

Most submitters who addressed language were satisfied with the current provisions in the Guidelines. A few individual submitters thought the current application of the Guidelines was too strict; for example, that stronger language should be allowed at the M level.

The Board argued that 'language' should be renamed 'coarse language', and that 'coarse language' should include spoken curse words and gestures but not thematic language such as racial slurs. It submitted that guidelines should provide descriptions of allowable coarse language for each classification category.²⁵¹

Evaluation

Given the lack of concerns raised in submissions, it appears that the current standards applied in relation to coarse language are largely appropriate.

However, community attitudes in relation to what constitutes offensive language are changing. Coarse language has been rated in Departmental research as one of the least important classifiable elements by both parents and non-parents, behind drug use, sex, violence and nudity.²⁵²

On the other hand, as detailed earlier in this chapter, close to seven in ten research participants indicated they would like to be informed about discriminatory language or behaviour, and they were

²⁴⁸ Attorney-General's Department, *Classifiable elements, impact descriptors and consumer advice - Research with the general public* (2015), p. 21.

²⁴⁹ Department of Communications and the Arts, *Community Standards and Media Content – Research with the general public* (2017), p. 11.

²⁵⁰ *Ibid*, p. 55.

²⁵¹ Classification Board submission, p. 35-36.

²⁵² Attorney-General's Department, *Classifiable elements, impact descriptors and consumer advice - Research with the general public* (2015), p. 21.

equally offended—sometimes more so—by offensive dialogue other than expletives, in particular racist language and sexually explicit or misogynistic language.²⁵³

Although the Board argued that discriminatory language such as racial slurs should be considered separately to coarse language, in my view, given the clear community concerns, the provision of classification guidance and consumer advice about the treatment of this kind of language is warranted.

Recommendation 9-13: Discriminatory language should be included under the classifiable element ‘language’.

9.7 The X 18+ category

Current arrangements

The X 18+ category contains depictions of actual sexual intercourse and other sexual activity between consenting adults. Violence, sexual violence, sexualised violence, coercion and assaultive language are not allowed in the X 18+ category and are therefore Refused Classification. Depictions of fetishes and consensual acts which purposefully demean anyone involved are also not permitted at X 18+ and are therefore Refused Classification.

Submitter views

A number of submitters argued for the removal of restrictions around fetishes in the X 18+ category in the Films Guidelines including the Board, the Eros Association and the Scarlett Alliance.²⁵⁴ The Eros Association argued that any legal sexual activity between consenting adults depicted in a film should be legal to depict and sell.²⁵⁵

Some submitters, including the Board, argued that the total prohibition of depictions of violence in the X 18+ category in the Films Guidelines should also be removed such that it could be part of the storyline but not directly linked with the sexual activity.²⁵⁶ The Board submitted that context should be considered in relation to depictions of violence.²⁵⁷

Evaluation

In my view, consideration of what is allowable within the X 18+ category should be focussed on harms.

Departmental research into attitudes towards Refused Classification content shows that the community is unconcerned about depictions of most fetishes, as long as there is consent, and no serious harm is inflicted. Similarly, depictions of violence that are not directly linked to sexual activity do not appear to be of particular concern. However, there was a view that more extreme forms of pornography where harm was inflicted and/or a lack of consent was shown should continue to be Refused Classification.²⁵⁸

²⁵³ Department of Communications and the Arts, *Community Standards and Media Content – Research with the general public* (2017), p. 12.

²⁵⁴ Refer to submissions from the Classification Board (p. 34), Eros Association (p.4) and Scarlett Alliance (submission to Public Consultation on a new Online Safety Act) (p. 6).

²⁵⁵ Eros Association submission, p. 4.

²⁵⁶ Refer to submissions from the Classification Board (p. 34) and submission 19 (p. 2).

²⁵⁷ Classification Board submission, p. 34.

²⁵⁸ *Where To, RC and High Level Content – report for the Department of Communications and the Arts* (2018), p. 11-17, 23-25.

Recommendation 9-14: The Classification Advisory Panel should consider harms in relation to what is allowable within the X 18+ category.

Recommendation 9-15: In the Films Guidelines, the absolute prohibitions on legal fetishes and violence (where violence is unrelated to sex) within the X 18+ category should be removed.

10. Computer Games Guidelines

The Computer Games Guidelines are used for classifying physical computer games and online computer games. The current Computer Games Guidelines were developed in 2012 as part of the introduction of an R 18+ category for games and commenced on 1 January 2013.

Many submissions raised the differential treatment of content in the Computer Games Guidelines compared to the Films Guidelines. In Chapter 8, I have recommended that while the Films and Computer Games Guidelines should remain separate, there should be alignment at the R 18+ level.

Many of the submissions in relation to themes and other classifiable elements applied to content in both films and games, and it is important to note that the computer games market has evolved to include games that are increasingly cinematic in quality which often include complex narratives and mature themes such as family violence, bereavement, sexual violence and criminal activity. Therefore, the analysis in the Films Guidelines in Chapter 9 in relation to classifiable elements is also applicable to the Computer Games Guidelines.

Issues relating to computer games that have emerged during this review include simulated gambling, loot boxes and other micro-transactions, interactivity and violence in games.

While I appreciate the concerns raised by a few submitters about game mechanics which encourage ongoing play and views that these could cause gaming addiction, I note that mechanics of this nature are a ubiquitous feature of computer games. It is therefore more helpful to provide education to consumers about this as a feature of games in general than to try address this through classification of individual games. Similarly, concerns about game features such as user interaction, user-generated content and sharing of information should be addressed via community education.

10.1 Simulated gambling

Current arrangements

Interactive features within games that resemble gambling activities (such as poker machines) are referred to as ‘simulated gambling’.

Under the *Interactive Gambling Act 2001*, it is illegal for gambling providers to offer online casinos or casino apps where players can cash out winnings.²⁵⁹ Only games with *simulated* gambling are legal in Australia.

There are two distinct types of games that involve simulated gambling. ‘Social casino’ games are simple app games which simulate real-world casino games. Simulated gambling is the entire focus of these games. Other games that have a broader storyline occasionally also contain simulated gambling as a minor feature.

Simulated gambling is not addressed specifically in the current Computer Games Guidelines but is considered by the Board under ‘Themes’. Generally, the Board and the IARC tool will give app games where simulated gambling is the dominant feature (i.e. social casino games) an M classification. Where representations of gambling in a game are less interactive or prominent, the Board may issue consumer advice of ‘Gambling themes’ or ‘Gambling references’.

²⁵⁹ ACMA, [About the Interactive Gambling Act](#).

Submitter views

Several stakeholders raised concerns about simulated gambling, and advocated restriction of these games to prevent children's access to them, the addition of specific provisions in the classification guidelines relating to simulated gambling, or enhancements to consumer advice (such as including risks of harms associated with early exposure to gambling).

For example, the Australia Institute's Centre for Responsible Technology submitted that the potential harm from simulated gambling games comes from the games' immersive and addictive qualities, from normalising and romanticising gambling, and by making players more vulnerable to becoming problem gamblers.²⁶⁰ It suggested that games with real-world gambling branding or cross promotions should be classified R 18+,²⁶¹ while other submitters suggested consumer advice could inform users of such potential harms, and that parental controls could also be calibrated to prevent children's access to this content.²⁶²

However, the International Social Games Association (ISGA) noted that there is no requirement for spending in social casino games, and the vast majority of players never make an in-game purchase.²⁶³ The ISGA states that its own research shows that less than one percent of players of social casino games are under 18, and that ISGA's Best Practice principles include several provisions about discouraging people under 18 from playing these games. ISGA notes that in 2019, Apple introduced a 17+ rating for all simulated gambling content on the Apple App Store, a move it supported. It does not however support simulated gambling games being given a restricted classification as it does not consider that it is practical to comply with the current requirements under the Restricted Access System Declaration.²⁶⁴

Evaluation

In my view, simulated gambling games that are entirely focussed on this activity require stronger classification. The community has consistently viewed such games as unsuitable for children. Qualitative and quantitative research in 2018 found strong support for restriction of such games, especially those that purely involved simulated gambling. When asked what the lowest suitable classification for such games would be, 60% of respondents selected either MA 15+ or R 18+.²⁶⁵

Internationally, the Entertainment Software Rating Board (ESRB), which classifies games for North America, only allows simulated gambling at Teen (similar to M) and above, and real gambling (with money) at Adults Only 18+ (equivalent to R 18+). The Pan European Game Information (PEGI) classification system includes a 'content descriptor' for simulated gambling. Games with this sort of content are classified PEGI 12, PEGI 16 or PEGI 18. However, this will be changed shortly so that all depictions of simulated gambling are classified PEGI 18.

Given the prevalence of simulated gambling games and concerns about this type of content, I recommend that the Computer Games Guidelines be updated to provide specific guidance on the classification of simulated gambling. Simulated gambling could be defined in new Guidelines as games incorporating both gambling mechanics (i.e. a win or lose, wager, or chance element) and casino imagery (such as poker machines, roulette wheels, poker cards). Loot boxes or other mechanics with elements of chance should be excluded from this definition.

²⁶⁰ Centre for Responsible Technology submission, p. 11.

²⁶¹ *Ibid*, p. 1-2.

²⁶² Association of Heads of Independent Schools of Australia submission p. 4, 6-7.

²⁶³ International Social Games Association submission, p. 3.

²⁶⁴ *Ibid*.

²⁶⁵ Department of Communications and the Arts, [Classification survey report: loot boxes and simulated gambling in games](#) (2018), p. 3.

In my view, the Computer Games Guidelines should differentiate between *types* of simulated gambling, for example whether or not there is an ability or requirement to spend money to play, or whether the gambling element is an optional 'side game' within a broader non-gambling game.

As noted, games which exclusively replicate casino games and require or enable the purchase of game currency for use in play are currently classified M. Considering their close resemblance to real-world gambling, and their intended player demographic and community expectations in relation to the classification of these games, I recommend that they be classified in a higher category, such as MA 15+.

Consumer advice of 'simulated gambling' should continue to be applied to all games that meet the definition articulated in the new Guidelines.

Recommendation 10-1: The Computer Games Guidelines should include a definition of simulated gambling which makes reference to interactive content which replicates casino games.

Recommendation 10-2: All games with interactive features that meet the definition of simulated gambling should be given the consumer advice of 'simulated gambling'.

Recommendation 10-3: Games which exclusively involve simulated gambling should be classified MA 15+ at a minimum.

10.2 Loot boxes and micro-transactions

Current arrangements

Many computer games incorporate 'micro-transactions', which give players the option of making small purchases within a game. Micro-transactions are made using game points, real-world money, or both. Micro-transactions may involve the direct purchase of specific in-game content or features, including items used in the game (e.g. outfits, vehicles, weapons and tools), new game modes, characters, and extra levels.

Loot boxes involve an element of chance as to what item a player might receive. Some loot boxes can be purchased (either directly with real-world money or indirectly via in-game currency), while some can only be earned through gameplay. They generally take the visual form of a mystery box that opens to reveal the result. There is no guarantee that the player will get what they want from the loot box, and players may choose to buy additional loot boxes to obtain the desired virtual items. Separate to the game itself, third-party websites exist where players can trade or sell items won via loot boxes.

Currently, the presence of loot boxes (including those that can be purchased) does not affect the classification rating of computer games. In 2019, the Board began to apply consumer advice of 'in-game purchases' where the Board considers that the game contains the ability to use real-world money to purchase downloadable content, including loot boxes. If purchases cannot be made from within the game itself, but the player is directed to a third-party website where the player can purchase downloadable content, the Board may use consumer advice of 'online interactivity'. The IARC tool gives Australian consumer advice 'online interactivity' for all micro-transactions.

The report of the Senate Environment and Communications References Committee highlighted the many types of loot boxes.²⁶⁶ It noted that developing an evidence-based regulatory approach to mitigate against any harms is challenging until further academic research has been completed. It recommended that the Australian Government undertake a comprehensive review of loot boxes in video games. In its March 2019 response to the report, the Australian Government noted the

²⁶⁶ The Senate Environment and Communications References Committee, [Gaming micro-transactions for chance-based items](#), November 2018.

recommendation and stated that a formal review immediately after the Senate inquiry is not warranted, but that the Department, working with other agencies, would continue to examine regulatory frameworks.²⁶⁷

In March 2020, the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into ‘Age verification for online wagering and online pornography’ (Protecting the Age of Innocence) noted that in the course of the inquiry, community concerns emerged “about children and young people being exposed to simulated gambling through loot boxes.” The Committee recommended “that the Office of the eSafety Commissioner or other relevant government departments report to the Australian Government on options for restricting access to loot boxes and other simulated gambling elements in computer and video games to adults aged 18 years or over, including through the use of mandatory age verification.”²⁶⁸ The Government’s response to the recommendations is due to be tabled in Parliament by 5 September 2020.

Submitter views

Many submissions from individual members of the public raised concerns about loot boxes, often referring to them as a form of gambling or simulated gambling. About half of these submissions suggested that games containing loot boxes should be classified R 18+.

In contrast, the Interactive Games & Entertainment Association (IGEA) noted that the games industry has responded to community and player concerns around loot boxes by providing consumers with more information about the probability of receiving particular items (also known as drop rates).²⁶⁹

The Board noted loot boxes should be considered separately from other games which include “very clear simulated real-life gambling.” It argued against any requirement that games containing loot boxes be classified at a specific classification level due to a lack of available research evidence of harms.²⁷⁰

Several members of the public raised concerns about the presence of micro-transactions in games aside from loot boxes. Some suggested that any form of micro-transaction should be classified MA 15+ or higher, and that warnings about this type of content should be given. The Australia Institute’s Centre for Responsible Technology recommended players could be enabled to set limits on how much they can spend on micro-transactions, or opt out of them. It suggested that in-game purchases by children could also be banned altogether.²⁷¹ However, others argued that micro-transactions other than loot boxes are already adequately dealt with via the provision of consumer advice for ‘in-game purchases’, and no further action is needed.²⁷²

Evaluation

The Department’s research with the Australian community found concerns about loot boxes among adults and young people who play computer games, in alignment with opinions expressed in submissions.²⁷³ However, a 2018 survey of parents found that 51% were not at all familiar with loot boxes.²⁷⁴

²⁶⁷ Australian Government, [Government’s response to the Senate Environment and Communications References Committee report: Gaming micro-transactions for chance-based items](#), March 2019.

²⁶⁸ House of Representatives Standing Committee on Social Policy and Legal Affairs, [Protecting the age of innocence: Report of the inquiry into age verification for online wagering and online pornography](#), March 2020.

²⁶⁹ Interactive Games & Entertainment Association submission, p. 9.

²⁷⁰ Classification Board submission, p. 25-26.

²⁷¹ Centre for Responsible Technology submission, p. 25.

²⁷² Nuclear Studios submission, p. 2.

²⁷³ Whereto Research Based Consulting, [Computer Games Content Research: Final Report](#) (2019).

²⁷⁴ Department of Communications and the Arts, [Parent survey on categories, loot boxes and simulated gambling](#) (2018).

Internationally, regulatory responses to loot boxes have varied and are still developing; to date these responses have generally been through gambling regulation or other consumer protection laws, not via classification. In the Netherlands and Belgium, loot boxes have been found to be covered by gambling laws. In Belgium, games with loot boxes that are purchased with actual money or purchased using in-game currency are considered gambling and if they are not licenced, they are illegal. In the Netherlands, the focus is instead on monetary value of winnings in that the regulation prohibits items that can be traded on third-party sites.

In 2019, the UK Digital, Culture, Media and Sport (DCMS) Select Committee (comprising cross-party MPs) and the UK Children's Commissioner both called for extension of the *Gambling Act 2005* to cover loot boxes. The DCMS Select Committee also recommended (among other things), that loot boxes be removed from games aimed at children and that the Pan European Game Information system (PEGI) take the inclusion of loot boxes into account when rating a computer game and should clearly identify games that contain loot boxes or other micro-transactions. PEGI, which classifies games for most of Europe, uses 'in-game purchases' as a descriptor for physical games with paid loot boxes and other in-game purchases. Since April 2020, PEGI has added a text notice to this descriptor for games that specifically include paid loot boxes, card packs or similar items. This text reads 'in-game purchases (includes random items)'.

In North America, the ESRB has until recently also used a descriptor of 'in-game purchases' for loot boxes that can be purchased. However, in April 2020, ESRB announced it would adopt a new advisory, 'in-game purchases (includes random items)' for all games that include purchases with any randomised elements.

I recognise that industry has a fundamental role to play in providing consumer protections. Both major game app providers, Google Play and the Apple App Store, require games apps to disclose the odds of receiving particular items in loot boxes. Both of these storefronts also advise at the point of sale if a game includes in-game purchases. The major game console makers, Sony, Microsoft and Nintendo, require paid loot boxes in games developed for their platforms to disclose information on the relative probability of obtaining randomised virtual items.

I recommend that the Computer Games Guidelines should be updated to include specific guidance about the classification of loot boxes. The most significant characteristic of loot boxes appears to be combination of chance and the ability to purchase them (including indirectly via purchased in-game currency). Loot boxes that cannot be purchased do not, in my opinion, warrant a regulatory response.

There is an argument that differential classifications may help to prevent children from over-spending on games with paid loot boxes or being exposed to simulated gambling. However, given that loot boxes vary widely in their operation and can occur in games that are otherwise fairly mild (including games currently classified G or PG), it would be very difficult and perhaps not justified to restrict all of them to MA 15+ or R 18+.

The G classification is intended to be suitable for everyone, and parents generally consider G to be a 'safe' classification rating, with little to no parental supervision required. As such, there is merit in classifying games with paid loot boxes at the PG level or above.

Consumer information in relation to loot boxes should also be enhanced. Mandatory consumer advice that refers to both spending and chance elements, such as that used by the ESRB, should be introduced.

In addition to the classification and consumer advice given to these games, consumer and parent education on the issue of in-game purchases and loot boxes has an important role to play. I note that the eSafety Commissioner provides advice to parents to talk to their children about the cost of extra features in some games, and to set limits on spending and to use parental controls. It also advises

parents to be aware of games with gambling-like elements, to help children understand that some features in online games are used to encourage more play and spending, and to talk to them about gambling and its consequences both online and in the physical world.²⁷⁵

While I acknowledge some concerns expressed about tradability of items on third-party websites, this is outside the scope of classification as it does not occur within the game itself.

Recommendation 10-4: Consumer advice should specify the presence of in-game purchases. Where in-game purchases are linked to elements of chance, this should be reflected in the consumer advice.

Recommendation 10-5: Games featuring loot boxes that can be purchased should be rated PG at a minimum.

10.3 Interactivity and its impact

Current arrangements

The Computer Games Guidelines state that:

“Interactivity is an important consideration that the Board must take into account when classifying computer games. This is because there are differences in what some sections of the community condone in relation to passive viewing or the effects passive viewing may have on the viewer (as may occur in a film) compared to actively controlling outcomes by making choices to take or not take action.

Due to the interactive nature of computer games and the active repetitive involvement of the participant, as a general rule computer games may have a higher impact than similarly themed depictions of the classifiable elements in film, and therefore greater potential for harm or detriment, particularly to minors.

Interactivity may increase the impact of some content: for example, impact may be higher where interactivity enables action such as inflicting realistically depicted injuries or death or post-mortem damage, attacking civilians or engaging in sexual activity. Greater degrees of interactivity (such as first-person gameplay compared to third-person gameplay) may also increase the impact of some content.”²⁷⁶

Interactivity includes the use of incentives and rewards, technical features and competitive intensity.

Submitter views

There were varying views on the extent to which, or whether, interactivity magnifies impact and how it should be treated in classification guidelines.

The Interactive Games & Entertainment Association (IGEA) directly questioned the assumption that interactivity always increases impact, acknowledging that it may do so in some cases but not necessarily all cases.²⁷⁷ It stated that “little research has been conducted on content other than violence, such as whether depictions of drug use or sex in video games had any impact on player behaviour, or studies on interactivity more generally” and as a result “there does not appear to be incontrovertible evidence one way or another that interactivity either increases or decreases the impact of content on the player.”²⁷⁸ The IGEA also cited research findings that interactivity could

²⁷⁵ eSafety Commissioner, Parents – The big issues, [Online gaming](#).

²⁷⁶ Refer to [Guidelines for Classification of Computer Games 2012](#), p. 4.

²⁷⁷ Interactive Games & Entertainment Association addendum, p. 1.

²⁷⁸ *Ibid*, p. 4.

potentially decrease impact.²⁷⁹ Similarly, a number of individual submitters specifically refuted the assumption that interactivity increases impact.

However, the ACCM referenced the magnifying effect of interactivity on impact of content “on thoughts, feelings and attitudes.”²⁸⁰ It asserted that “on both neural and behavioural grounds, interactive media should have a greater impact. There is evidence that interactive teaching by media is more effective than static teaching/passive consumption methods.”²⁸¹

In its submission, the Board opposed the current treatment of interactivity as a “stand-alone concept,”²⁸² proposing that it instead be assessed as part of context, as with “frequency, treatment, tone, the use of special visual effects, musical scores, sound effects and other impact accentuation techniques that are used across films and games.”²⁸³

Evaluation

The assumption that interactivity heightens impact is the foundation for the inclusion of specific provisions in the Computer Games Guidelines, and the original impetus for them being separate to the Films Guidelines. Moving away from such an assumption has potentially profound implications.

I note that the Board and the IGEA, while advocating a combined set of guidelines, still believe interactivity should be taken into account.

Reviews of the academic literature by various classification authorities have consistently found that research in relation to links between violent computer games and aggression is highly contested and inconclusive. It is however important to note, as IGEA have, that there is a comparative lack of research on interactivity’s effects in relation to content types other than violence. This may have implications for the treatment of other content and specific provisions in the Computer Games Guidelines.

Despite the lack of conclusive empirical evidence, however, I am of the view that most of the community would consider that interactive content *is* potentially impactful, and particularly on the behaviour or attitudes of children.

Therefore, while I recommend that the Classification Advisory Panel review research in considering the impact of interactivity, I consider that there will be a need for some provisions relating to interactivity at least at the lower classification levels. These should be expressed specifically in relation to interactive content, not content generally as is currently the case.

This supports my recommendation in Chapter 8 that separate guidelines are maintained for films and computer games below the R 18+ level. While I appreciate that some computer games are becoming increasingly cinematic and that interactive films are also emerging as a new content form, I note that interactive films are currently a rarity and that games are still rendered, not in live action. My recommendation that all guidelines are updated every four years will enable adaptation to further convergence between films and computer games over time.

²⁷⁹ *Ibid*, p. 6.

²⁸⁰ Australian Council on Children and the Media submission, p. 15.

²⁸¹ Refer to Australian Council on Children and the Media supplementary paper (p. 2) and Australian Council on Children and the Media submission (p. 15).

²⁸² Classification Board submission, p. 42.

²⁸³ *Ibid*, p. 43.

10.4 Specific provisions in the Computer Games Guidelines

The IGEA, the Board and several individuals criticised the existence of discrepancies between the Computer Games Guidelines and Films Guidelines, particularly at the R 18+ and Refused Classification categories.²⁸⁴ Several submissions criticised provisions relating to various classifiable elements in the Computer Games Guidelines, which were considered unreasonably restrictive and unnecessarily harsher than in the Films Guidelines. These views are outlined below.

Conversely, a smaller number, supported the use of specific points of differentiation in the Computer Games Guidelines as a precautionary measure due to the perceived higher impact of interactive content.²⁸⁵

A comparison of current provisions in the Computer Games Guidelines and Films Guidelines for themes, violence, sex, drug use, language and nudity is provided in Appendix 7.

Violence

Several individual submitters pointed out specific differences in the treatment of violence in the Computer Games Guidelines which were considered unwarranted, including prohibitions relating to sexual violence at MA 15+ and R 18+ and specific provisions around high impact violence at R 18+.

The provision relating to ‘actual sexual violence’ at R 18+ was also considered problematic by some individual submitters who noted that computer games do not feature actual people (similar comments were made in relation to sexual intercourse as noted below).

The IGEA argued that the provisions relating to violence were stricter in Australia than in comparable jurisdictions and were out of step with contemporary community standards. It recommended that the provisions should be the same for violence in the Films and Computer Games Guidelines.²⁸⁶ Similarly, the Board recommended a single definition of ‘violence’ across all media types and provision of descriptions of all content types allowable at each category level “eliminating existing variations between media types.”²⁸⁷

One individual expressed concerns about the level of violence in games rated PG. The other stakeholder to express concern about violence was the Australian Council on Children and the Media (ACCM), whose general concerns about violent content overall are outlined in Chapter 9.

Sex

Similarly to violence, the IGEA, the Board and several individual submitters objected to specific provisions for sex in the Computer Games Guidelines that do not exist in the Films Guidelines.

Specifically, the IGEA recommended that the Computer Games Guidelines at the R 18+ level be amended so that the same level of sexual activity that is permitted in films is also permitted in computer games, on the grounds that “any activity that is legal in the real-world should be able to be legally depicted.” IGEA stated that the prohibition of sex related to incentives and rewards at MA 15+ is unique to Australia and questioned why the specific rule is needed as few if any of their members publish games with such content.²⁸⁸ Some submitters also questioned the specific prohibition on ‘actual sex’ because they did not think such content exists in games.

²⁸⁴ Refer to submissions from Interactive Games & Entertainment Association (p. 17) and Classification Board (p. 13).

²⁸⁵ Australian Council on Children and the Media supplementary paper, p. 4.

²⁸⁶ Interactive Games & Entertainment Association submission, p. 15.

²⁸⁷ Classification Board submission, p. 7.

²⁸⁸ Interactive Games & Entertainment Association submission, p. 19.

In supporting a single set of guidelines, the Board suggested not only dispensing with the above provisions but instating an X 18+ category for games.²⁸⁹ Some individual submitters also made this proposal. Others suggested that all sexual content should be allowable at R 18+, while several submitters made the general comment that the provisions should be the same as for film.

While they did not comment on sexual activity in games, the ACCM and Collective Shout were concerned with sexualised representations of characters and objectification of female characters both in films and games.²⁹⁰

Drug Use

A number of organisations and individuals believed the treatment of drug use was unnecessarily harsh in comparison to the Films Guidelines. The IGEA recommended the softening of the provisions for interactive drug use, especially at the R 18+ level, and the outright removal of the rule that causes drug use linked to incentives and rewards to be Refused Classification.²⁹¹ In relation to the latter, the IGEA claim that “this is one of the rules that has led to the most RC decisions related to video games and one that as far as we know exists nowhere else in the world.”²⁹² The Digital Media Research Centre also gave particular attention to this element when noting the unwarranted discrepancies between the Films and Computer Games Guidelines.²⁹³ The Board also objected to blanket prohibition of drug use relating to incentives or rewards,²⁹⁴ arguing that “community concerns (about drug use) will be addressed and safeguarded through the proper consideration of context and the effect of interactivity”.²⁹⁵ A substantial number of individuals said that drug use linked to incentives and rewards should be allowed at R 18+ (not RC). Some said it should be allowed at MA 15+.

Submitters including the Board and the IGEA advocated for a specific definition of drugs. The Board proposed a definition similar to that used in the current Publications Guidelines to be included in new combined Guidelines (this is detailed in Chapter 9 on the Films Guidelines). The IGEA recommended a definition of drugs that specifically excludes fictional substances (this was also suggested by some individuals).²⁹⁶ It also suggested that the definition could “*generally* be limited to certain classes of high risk legally scheduled narcotics instead.”²⁹⁷ In contrast, the ACCM and FARE were both primarily concerned with a proposal to include alcohol and tobacco in the definition of drugs in both the Computer Games and Films Guidelines (as outlined in Chapter 9).

Nudity

There were only a small number of submissions that specifically addressed nudity in the Computer Games Guidelines. Both the Board and IGEA advocated aligning standards at G and PG and removing provisions relating to incentives and rewards below R 18+.²⁹⁸ The Board noted that many games are not realistically rendered, which should be recognised as potentially lessening the impact of nudity.²⁹⁹

²⁸⁹ Classification Board submission, p. 33.

²⁹⁰ Refer to submissions from the Australian Council on Children and the Media submission (p. 9) and Collective Shout (p. 2).

²⁹¹ Interactive Games & Entertainment Association submission, p. 21.

²⁹² *Ibid*, p. 22.

²⁹³ Digital Media Research Centre submission, p. 10.

²⁹⁴ Classification Board submission, p. 15.

²⁹⁵ *Ibid*, p. 39.

²⁹⁶ Interactive Games & Entertainment Association submission, p. 21.

²⁹⁷ *Ibid*, p. 23.

²⁹⁸ Refer to submissions from the Classification Board (p. 40-41) and the Interactive Games & Entertainment Association (p. 24).

²⁹⁹ Classification Board submission, p. 40.

Language

The Board and IGEA both opposed the current application of different provisions at M and MA 15+ for language and proposed greater harmonisation.³⁰⁰ Three individuals referred to language, all advocating no coarse language at G or PG but no restrictions at M or above.

Evaluation

Although there are different views relating to the extent to which interactivity should lead to stricter treatment of interactive game content than similar content in films, most submitters argued that many specific provisions in the Computer Games Guidelines about interactive content are not warranted. For example, it is also odd that there are provisions in the Computer Games Guidelines that have been included on the basis of interactive content being more impactful that do not explicitly state they apply only to interactive content.

There has been an ongoing but inconclusive global debate regarding the impact of violence in computer games. Throughout the consultation process, only limited submissions were received on this issue, with a number of submitters arguing that violence is treated too harshly in the Computer Games Guidelines. In relation to the classification of violence in computer games, I do not consider that there is an urgent need to amend the current Guidelines but that this be a subject of ongoing analysis.

While I appreciate the submissions by the Board and the IGEA that existing general guidance on interactivity should be enough, and the Board's suggestion that interactivity should be considered in the same way as other contextual factors, I am also mindful of the need to make the Guidelines as specific as possible for industry self-classifiers to make classification decisions that are reliable and consistent. It may therefore be necessary to include some specific provisions under classifiable elements in the new Computer Games Guidelines, in addition to general advice on interactivity. I recommend that the Classification Advisory Panel evaluate the existing provisions under each classifiable element that are unique to the Computer Games Guidelines, and advise how consistency with the Films Guidelines could be improved while maintaining appropriate protections.

As noted, I also believe there is a need to take concerns about interactivity and its impact on children into account. While there is weight to the view put forward by IGEA that an increasing proportion of the adult population are gamers, games in the categories G, PG and M will be played by children, and in some cases, young children. This needs to be reflected in provisions relating to interactive content in these categories, but to a lesser degree in MA 15+. However, as outlined in Chapter 8, I have recommended that the Guidelines are aligned at R 18+ with most prohibitions that are unique to games removed, so that these games are available to adults rather than being Refused Classification.

Finally, despite a few submitters supporting introduction of an X 18+ category for computer games, I do not see the need for it at this time.

³⁰⁰ Refer to submissions from the Classification Board (p. 35) and the Interactive Games & Entertainment Association (p. 20).

Recommendation 10-6: Updates to the Computer Games Guidelines should continue to consider the impact of interactivity for content in the G, PG, M and MA 15+ categories.

Recommendation 10-7: In providing advice about updates to the Computer Games Guidelines, the Classification Advisory Panel should evaluate individual provisions in the Computer Games Guidelines that are inconsistent with the Films Guidelines, and provide advice as to how these could be better aligned, while maintaining appropriate protections for children in relation to interactive content.

Recommendation 10-8: In formulating advice on areas of alignment of the Computer Games Guidelines and Films Guidelines, the Classification Advisory Panel should consider research on the interactivity of computer games, international developments and best practice, and evidence of harms.

11. Publications Guidelines

Current arrangements

As detailed in Chapter 5, only ‘submittable publications’ are required to be classified under the current scheme.

When publications are submitted to the Board, the Board applies the Publications Guidelines. These outline the standards for violence, sex, nudity, coarse language, adult themes and drug use across four categories. The categories are illustrated in Table 10 in Chapter 7, where I also recommend they be changed to be more aligned with the categories for films and games.

The current Publications Guidelines were approved in 2005. They generally provide more specific information about type of content allowable in each category and a more comprehensive glossary of terms than in the Films or Computer Games Guidelines.

Submitter views

Three submitters referred to the Publications Guidelines.

The Board advocated “the creation of a single set of statutory guidelines for the harmonisation of classification of all media content, irrespective of its ‘type’ or mode of delivery.”³⁰¹ It suggested that the Publications Guidelines currently provide clearer or more useful definitions of some classifiable elements than the Films Guidelines or Computer Games Guidelines. Where this is the case, the Board supports adopting these definitions as part of a single set of Guidelines.³⁰²

The Centre Alliance Senator for South Australia, Stirling Griff, raised concerns about the availability in Australia of certain Japanese comic books and graphic novels (known as manga). Senator Griff notes that some of these publications contain themes of sexual violence, incest and sexualisation of children, and he believes that they fall under the definition of child abuse material in the Criminal Code.³⁰³ The organisation Collective Shout supported Senator Griff’s submission.

Evaluation

Although I do not support the creation of a single set of guidelines, I agree that new guidelines should, where possible, be consistent. Further, I agree that under a new scheme, it will be important for classifiable elements and other terms to be clearly and consistently defined, and where possible these definitions should be consistent across the various guidelines.

The purpose of the Guidelines is to assist in making decisions about how a publication should be classified. Rules or guidance on compliance with requirements for the display and sale of classified publications would be best dealt with under a separate instrument, to be determined by the Australian Government regulator.

The National Classification Code provides that a publication will be Refused Classification if it describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not). In addition, the Publications Guidelines provide that a publication will be Refused Classification for similar reasons to those described in relation to the Films Guidelines in Chapter 9.

³⁰¹ Classification Board submission, p. 17.

³⁰² *Ibid.*, p. 23, 27.

³⁰³ Senator Stirling Griff submission, p. 1-5.

Consistent with my views expressed in Chapter 9, sexualised depictions of children (whether animated or not) must be given greater consideration in classification decision-making.

I am also of the view that call-in powers under current laws which empower the Board to call in unclassified content to be submitted for classification should be exercised where appropriate.

While the classification system has in role in protecting children, there is also a responsibility on content distributors and storefronts to help prevent inappropriate content from being made available to Australians.

An aspect of the Publications Guidelines that has been the subject of some controversy over time is depictions of female genitalia, in particular, airbrushing of images in sexually explicit publications. It is sometimes alleged that this practice is undertaken to obtain a lower classification, and that it has caused unhealthy perceptions and an increase in women seeking labiaplasty surgery. Given these ongoing concerns, more specific guidance should be given in the Publications Guidelines for this content, in line with community standards.

Recommendation 11-1: The Publications Guidelines should incorporate clear definitions of classifiable elements, that are consistent with (if not the same as) those used in the Films Guidelines and Computer Games Guidelines.

Recommendation 11-2: The Publications Guidelines should give greater weight to the possibility that sexualised depictions of children (animated or real) are gratuitous, exploitative or offensive rather than that they may be justified by storyline, artistic merit or intended audience.

Recommendation 11-3: A clear description of allowable detail in depictions of nudity in publications should be developed, in line with community standards.

12. Advertising of films, games and submittable publications

Advertisements for films, computer games and submittable publications are regulated by the National Classification Scheme, broadcasting codes of practice (if the advertising is shown on television), and the Australian Association of National Advertisers codes.

Under the National Classification Scheme, state and territory classification laws regulate advertising of *classified* films, computer games and submittable publications apart from when this advertising is shown on broadcast television. Under these laws:

- Films and computer games classified G to R 18+ can only be advertised with films and computer games that have the same classification or lower classification (the ‘commensurate audience rule’). For example, a trailer for a MA 15+ film cannot be shown with G, PG or M feature films.
- Submittable publications can only be advertised after they have been classified and can only be advertised in certain circumstances.³⁰⁴
- Advertising of X 18+ films is also subject to the commensurate audience rule in the ACT and the NT but prohibited in the states.
- Advertising Refused Classification films, computer games and publications is prohibited in all jurisdictions.

The Commonwealth Classification Act and related determinations complement state and territory classification laws. Rules include:

- Advertisements on a screen (including online) must display Australian classification symbols and consumer advice. Advertising for unclassified films and computer games must display the message ‘Check the Classification’.
- Advertisements for *unclassified* films and computer games are also subject to the commensurate audience rule, based on the *likely* classification of the film or game being advertised. A likely classification can be decided by either the Board or a trained Authorised Advertising Assessor employed by industry.³⁰⁵ The commensurate audience rule applies on any platform where a trailer is shown together with a film or computer game. In practice, this applies to cinemas as well as physical products such as DVDs, Blu-ray discs and physical games where trailers may be available in addition to the film or game being accessed. The commensurate audience rule does not apply to trailers not screened with a feature title, such as standalone trailers online.

Advertisements for films and computer games on television are regulated through broadcasting codes of practice. Advertising on television is classified by industry based on the *content* of the advertisement itself using television classification guidelines, and there are rules covering advertisements in particular time zones.³⁰⁶ Community complaints about the placement of advertising are directed to the broadcaster in the first instance, and if not resolved, can be escalated to ACMA.

Under an advertising industry self-regulatory scheme, the Australian Association of National Advertisers has a range of advertising codes that apply to advertising for products and services,

³⁰⁴ Advertising of Category 1 restricted publications can only be published in a Category 1 or Category 2 restricted publication or in a restricted publications area. Advertising of Category 2 restricted publications can only be published in a Category 2 restricted publication or in a restricted publications area. There are no restrictions for advertising of ‘unrestricted’ publications.

³⁰⁵ The Advertising of Unclassified Films and Computer Games Scheme allows industry to assess the likely classification of a film or computer game. It includes a number of safeguards and sanctions, including the Director of the Board having power to revoke or suspend an assessor’s authorisation, and to prohibit a distributor from advertising their unclassified products for up to three years in certain circumstances.

³⁰⁶ ClearAds, Free TV’s Commercials Advice division, provides classification services for advertising on television under the Commercial Television Industry Code of Practice and the SBS codes of practice. For free to air television, the [ClearAds Handbook](#) states that television commercials for films are classified according to the content of the commercial, and there are also placement rules.

including films, computer games and publications. Community complaints about the *content* of advertising are directed to Ad Standards, whereas complaints about the *placement* of advertising are directed to the broadcaster or state and territory law enforcement depending upon the format in which the advertising occurs.

Submitter views

Free TV considers that the current advertising arrangements work well and does not propose any changes.³⁰⁷ Ad Standards also supports largely maintaining current arrangements, and further suggests that updated legislation should clarify that assessments of advertising for films and computer games be required to recognise the Australian Association of National Advertisers codes.³⁰⁸

The film industry proposes that trailers for unclassified films should be assessed on the *actual content* of the trailer, rather than the *likely classification* of the film being advertised. The film industry proposes changes to the ‘commensurate audience rule’ for unclassified films so that trailers could be screened with films one classification category lower than the likely classification of the film being advertised, as long as the content of the trailer would not be classified higher than the feature film with which it is being shown.³⁰⁹

For example, under the film industry’s proposed changes, a trailer for a film likely to be PG could be shown before a G feature film if the content in the trailer is assessed as G. Currently, it can only be shown before PG films and above.

The film industry argues that this change would provide greater flexibility for the film industry to advertise a wider variety of film trailers in cinemas, while protecting cinema audiences from harmful content in trailers.³¹⁰

The Australian Council on Children and the Media (ACCM) and the Board do not support the cinema industry’s proposal because of concerns that the change would allow the marketing to children of films that may not be age-appropriate – for example, showing M rated superhero film trailers to children under 15 watching a PG feature film. The ACCM and the Board support maintaining the current policy.³¹¹

Evaluation

I do not recommend changes to current regulation for the advertising for films, computer games and submittable publications. Advertising for films and computer games on television should continue to be regulated through broadcasting codes of practice and Australian Association of National Advertisers codes.

Advertising for films, computer games and submittable publications, including in physical spaces (e.g. trailers in cinemas and on discs, posters, billboards) and online (e.g. banners and trailers on websites), should continue to be regulated under relevant Commonwealth or state and territory laws and Australian Association of National Advertisers codes. Updated classification laws should note that in assessing the suitability of a film or game advertisement, advertising must also be considered against the Australian Association of National Advertisers codes. Complaints about advertising placement or display of classification markings in advertisements should go to the relevant film or game distributor, with escalated complaints going to the regulator. The Australian Government

³⁰⁷ Free TV Australia submission, p. 12.

³⁰⁸ Ad Standards submission, p. 4.

³⁰⁹ Film Industry Associations submission, p. 7-9.

³¹⁰ *Ibid.*

³¹¹ Refer to submissions from Australian Council on Children and the Media (p. 13) and Classification Board (p. 76).

regulator's practical guidance to industry should cover rules for advertising placement, the display of advertising, and complaints handling processes.

While I recognise the potential commercial benefits of the film industry's proposal to change Commonwealth laws for advertising unclassified films, I also acknowledge community concerns.

On one hand, the proposed changes would better align Australian advertising laws with international practice where the *content* of a trailer itself is assessed. The changes would enable the film industry to have greater marketing flexibility in an environment where the industry is facing strong competition from VOD services. Additionally, I note the differences in treatment of trailers both online and on broadcast television. As the content of a trailer itself would be assessed, children should not be exposed to content in trailers that may harm or disturb them. Once a film is classified, parents could check the classification of the actual film and decide whether the film is suitable for their child to watch.

On the other hand, I also acknowledge the views of the Board and community groups such as the ACCM that the marketing of a wider variety of films to children may be of concern to some parents. Advertising in the cinema environment is considered by some parents to be a different experience to other media platforms because trailer advertising is carefully targeted at the audience seeing the feature film. Trailers may be more impactful on a significantly larger screen and louder sound in cinema and parents cannot turn off advertising they consider inappropriate as easily as on a screen at home or on a device.

On balance, I have decided not to recommend changes to the 'commensurate audience rule' for advertising unclassified films in Commonwealth laws as I am unconvinced that the potential commercial advantages outweigh community concerns. Sections of the Australian community have concerns about films being marketed to children, in cinemas in particular, that ultimately are not considered appropriate for them to access, regardless of whether the content of the trailer itself is considered suitable.

Recommendation 12-1: No changes to regulation for the advertising of films, computer games and submittable publications, although responsibilities for advertising assessments that currently lie with the Board should be the role of the Australian Government regulator.

13. Classification governance

13.1 Role of Australian Government and the states and territories

Current arrangements

Under the National Classification Scheme, the Australian Government is responsible for classifying content and the states and territories are responsible for regulating the sale, exhibition, advertising and hire of classifiable content. Each state and territory has its own classification Act, enforced by state and territory police or fair-trading bodies.

Classification laws in Victoria,³¹² South Australia,³¹³ Western Australia,³¹⁴ and the Northern Territory³¹⁵ include sections for regulating the classification of both online content as well as physical content. In some cases, these sections were enacted many years ago before the establishment of the Australian Government's Online Content Scheme.

Under the intergovernmental agreement signed in 1995,³¹⁶ decisions made by Ministers must be effected through the Standing Committee of Attorneys-General (now the Council of Attorneys-General, CAG), in accordance with its procedures. The intergovernmental agreement also requires changes to the National Classification Code and the classification guidelines to be unanimously agreed by Ministers from all jurisdictions.

Classification has not been substantially discussed at CAG in recent years. Prior to CAG agreeing to review the classification guidelines in June 2019 (which is being encompassed in this review), the most recent discussions were in 2014, when CAG agreed to enable the Australian Government Minister responsible for classification to approve the use of classification tools. Prior to that, in 2012, CAG agreed to introduce a new R 18+ category for computer games.

Submitter views

A clear theme from consultations is that since the National Classification Scheme was established in 1995, the content market has fundamentally changed with the emergence of online content that does not differentiate between state and territory borders. Many of today's mainstream platforms are run by international content providers and there is an increasing number of overseas based platforms providing niche content that can be accessed by Australians.

Stakeholders consider that the current governance arrangements can be time-consuming, making it difficult to change classification regulation to reflect changes in technology and community expectations. The Interactive Games & Entertainment Association, representing a significant proportion of the Australian games industry, stated that current governance arrangements requiring unanimous agreement are "glacially-paced" and noted that the introduction of an R 18+ classification category for computer games took 10 years due to the need for the Australian Government and the states and territories to reach unanimous agreement. It considers that the existing cooperative scheme, while appropriate for its time, now needs revision.³¹⁷

³¹² Refer to sections 56-59 of Victoria's [Classification \(Publications, Films and Computer Games\) \(Enforcement\) Act 1995](#). Appears to have been in place since the establishment of the National Classification Scheme in 1995.

³¹³ Refer to sections 75A-75D of South Australia's [Classification \(Publications, Films and Computer Games\) Act 1995](#). Appears to have commenced on 1 December 2002.

³¹⁴ Refer to sections 99-102 and section 105 of Western Australia's [Classification \(Publications, Films and Computer Games\) Enforcement Act 1996](#). Timing is unclear based on WA legislation history, but it appears that the provisions may have been inserted in 1998.

³¹⁵ Refer to sections 75-78 of Northern Territory's [Classification of Publications, Films and Computer Games Act 1985](#). Appears to have commenced on 1 January 1996.

³¹⁶ Refer to the [Intergovernmental Agreement](#) (1995).

³¹⁷ Interactive Games & Entertainment Association submission, p. 37.

Most submissions supported the Australian Government taking over classification responsibilities from the states and territories.³¹⁸ Such a change was also recommended by the 2012 ALRC review.

During the review, I spoke with state and territory Attorney-Generals or Ministers for Justice, as well as officials in their departments, and it is evident that there is a strong interest in retaining a joint scheme. There was recognition though that existing arrangements could be improved, including facilitating more timely decision-making.

Evaluation

I consider that the existing intergovernmental agreement on censorship, which is the foundation of the scheme, needs to be updated to clearly define roles of different jurisdictions and to be responsive to changing consumer needs and industry developments.

Although I can see advantages in a scheme run only by the Australian Government, I do not consider this to be necessarily desirable or achievable. Therefore, I recommend that the cooperative scheme be retained, but that the 1995 intergovernmental agreement be revised.

These changes should be informed by a set of principles to underpin future governance arrangements for Australia's classification scheme. These principles are:

1. Timeliness and flexibility in decision-making on changes to the classification scheme;
2. Clarity that the Australian Government is responsible for enforcement of regulation related to classifiable content online, and the states and territories are responsible for enforcement of regulation with regard to classifiable content in the physical world; and
3. Consistency and harmonisation in classification laws across jurisdictions where possible, acknowledging there may not necessarily be a 'one size fits all' approach.

In line with these principles, I recommend that the current intergovernmental agreement be redrafted so that:

- The Australian Government retains responsibility for establishing the mechanisms to classify content, however a range of classification processes should be able to be used (the current intergovernmental agreement refers to classification by the Board and Review Board);
- The Australian Government is responsible for enforcement of online classifiable content, with states and territories responsible for enforcement of offline (physical) classifiable content; and
- CAG decision-making should generally be made on the basis of consensus. Where consensus cannot be reached, decisions are to be made on the basis of a majority of the members.

The 1995 intergovernmental agreement requires decisions about the National Classification Code and the Guidelines to be made by unanimous agreement. Going forward, I suggest that decisions should generally be made on the basis of consensus but that where consensus cannot be reached, decisions are to be made on the basis of a majority of the members.

³¹⁸ Refer to submissions from the Film Industry Associations (p. 7), Australia New Zealand Screen Association (p. 5), Australian Home Entertainment Distributors Association (p. 9), Interactive Games & Entertainment Association (p. 36), International Social Games Association (p. 12), Eros Association (p. 5), Australian Library and Information Association (p. 3), State Library of NSW (p. 2), Google (p. 4), Digital Media Research Centre (p. 12) and the Classification Board (p. 69). This was also raised by some individual submitters.

Such an approach is consistent with the Handbook for Council of Australian Governments (COAG) Secretariats published in November 2019.³¹⁹ It outlines that:

As a general rule, decisions will be made on the basis of consensus. Consensus occurs when those involved in decision-making reach agreement, or come to a common understanding on an approach to a matter or a response to a situation, without any active opposition to the course of action.

This does not imply unanimity. Rather, all parties participating in the decision-making process are able to accept and are prepared to abide by, or act in accordance with, the position that has been reached.

The Handbook further states that where consensus cannot be reached, decisions are to be made on the basis of a majority of the members and this is to be done by one vote per jurisdiction.

A proposed decision-making hierarchy is set out in the table below.

Table 14. Proposed decision-making arrangements

Decision-making level	Examples
All Ministers via Council of Attorneys-General (CAG) at bi-annual meetings or out of session. Changes to the classification framework that affect both the Australian Government and states and territories.	<ul style="list-style-type: none"> • Changes to the National Classification Code. • Changes to the classification categories, such as the introduction of new category. • Changes to the classification guidelines.
Australian Government Minister Commonwealth legislation (both classification and online safety): <ul style="list-style-type: none"> • Mechanisms for making classification decisions • Determining what content is to be classified • Enforcement of classification decisions in online environment i.e. video on demand, gaming platforms. The Australian Government Minister would generally consult or advise state and territory Ministers on classification issues through exchanges of letters as required.	<ul style="list-style-type: none"> • Changes to classification decision-making processes (industry accredited classifiers, classification tools, role of regulator in classifying content, approval of any alternative classification systems). • Approval of classification tools. • Prohibitions, access obligations and enforcement of classifiable content online.
State and Territory Ministers – no change to current arrangements State and territory classification legislation including enforcement of classification decisions in offline (physical) environment i.e. cinemas, retail stores.	<ul style="list-style-type: none"> • Prohibitions, access obligations and enforcement of classifiable physical content (e.g. cinema, DVDs) and associated advertising requirements (e.g. trailers in cinemas). Essentially no change to the current arrangements.

³¹⁹ Department of the Prime Minister and Cabinet, [Handbook for COAG Council Secretariats: A Best Practice Guide](#), November 2019.

Decision-making level	Examples
State and territory enforcement agencies (police or fair-trading bodies) – No change to current arrangements	<ul style="list-style-type: none"> Enforcement action in relation to physical product and associated advertising.
Australian Government regulator	<ul style="list-style-type: none"> Detailed in the next section of the report. Includes enforcement of classifiable content online.

Recommendation 13-1: Revise the intergovernmental agreement with the states and territories to make it more responsive and adaptable to changing needs across technology, society and the market. This would include:

- Clarifying that the role of the Australian Government is to establish mechanisms to classify content which can be undertaken using a range of classification processes.
- Clarifying that the Australian Government is responsible for enforcement of classifiable content online, and the role of the states and territories are responsible for enforcement of classifiable content in the physical world.
- Outlining that decision-making through the Council of Attorneys-General should generally be on the basis of consensus. Where consensus cannot be reached, decisions are to be made on the basis of a majority of the members in agreement.

13.2 Responsibility for Australian Government regulation of classification

Currently, responsibility for classification issues is split across a range of Australian Government agencies:

- The Board is responsible for making classification decisions for films, computer games and publications;
- The Classification Review Board is responsible for any reviews of Board decisions;
- The Department of Infrastructure, Transport, Regional Development and Communications is responsible for providing operational support to the Boards, advising on classification policy and assessing and recommending changes to the Minister, including the approval of classification tools;
- ACMA has oversight of the classification process of free to air broadcasters and subscription TV broadcasters and handles escalated complaints against the broadcasters.

There is significant stakeholder support for consolidation of most of these functions within ACMA.

I agree that ACMA is best placed to be the Australian Government regulator for classification. ACMA currently regulates broadcasting classification and has many decades of experience in overseeing industry self-classification in the broadcasting sector and in handling complaints. Like the current Classification Board, ACMA is an independent statutory body with accountability through annual reporting and Senate Estimates.

The Australian Council on Children and the Media proposed establishing a new standalone regulator focussed on classification across all platforms.³²⁰ However, I do not see a strong case to move existing broadcasting classification work out of ACMA into a new standalone body focussed only on classification.

To allow for community attitudes and concerns to be considered in classification standard setting, I am recommending that the regulator conduct regular community research and that a Classification

³²⁰ Australian Council for Children and the Media submission, p. 16.

Advisory Panel is established to review this research, as well as relevant scientific research and international best practice, to inform changes to classification standards and the Guidelines.

I recommend that ACMA be the overall regulator of the classification system at the Australian Government level and perform functions including:

- Training and accrediting industry classifiers.
- Auditing decisions made through industry self-classification or classification tools.
- Making original classification decisions at the request of law enforcement agencies or content providers that do not want to self-classify or use a classification tool.
- Maintaining the National Classification Database and online portals for industry to register classification decisions.
- Reviewing classification decisions upon application.
- Supporting the Classification Advisory Panel in its role.
- Conducting research with the Australian community and monitoring industry trends.
- Issuing practical industry guidance on how classification information should be displayed across different formats.
- Handling community complaints that are escalated if the consumer is not satisfied with the response from the content provider.
- Enforcement of classifiable content online.
- Granting requests for permissions to import or export objectionable goods.
- Assessing the likely classification of an unclassified film or computer game for advertising purposes.
- Education and awareness raising about the Australian classification system.

Training and accrediting industry classifiers

For the community to have confidence in industry self-classification there will need to be trained and accredited industry classifiers. ACMA would be responsible for developing and updating online training so industry classifiers across platforms can consistently apply Australian classification standards.

Classifiers would be accredited after they have successfully completed training. Accredited classifiers could be publicly listed on the www.classification.gov.au website if they wish. This would help content providers identify third-party classifiers to use if they do not wish to use an in-house classifier. Classifiers would need to maintain this accreditation through completing refresher training after a certain period of time, similar to refresher training for authorised assessor schemes.

ACMA would also be responsible for updating any online education that industry would undertake to use particular classification tools. As outlined in Chapter 6, education may not need to be as extensive as the training for an accredited industry classifier if the questionnaires in the tools have in-built help text and other features to guide the user.

ACMA would also have powers to revoke an organisation's accreditation (or an individual classifier's accreditation if they are a sole trader) if they consistently make classification decisions that deviate from Australian classification guidelines.

Auditing industry classification decisions

Expanding industry self-classification is a significant step and it is critical that classification decisions in a new framework are reliable and can be trusted by Australian consumers. A key component of ACMA's work would be to establish a process to audit content classified by industry.

Accredited classifiers would be expected to keep a record of how they arrive at classification decisions and present their rationale for their classification decision if one of their decisions is chosen by ACMA to be audited. In the case of classification tools, output from the classification tools (such as the answers to a questionnaire) would serve as a record that can be examined by ACMA, and ACMA could follow up with any questions if needed.

ACMA would have powers to change a classification decision, which could be the classification category or consumer advice or both, if it considers that an industry classification deviates from Australian classification guidelines. To provide transparency to industry and consumers, ACMA would report annually on the volume and results of its program for auditing classification decisions.

Making original classification decisions

Commercial classification decisions

ACMA would make original classification decisions for films, television programs, computer games or age-restricted publications for a fee where a content provider does not wish to self-classify or use a classification tool. This could occur where they consider that content is on the border between two classification ratings or if they consider the content may be Refused Classification.

I expect this would only occur in a small number of cases. Decisions made by ACMA would be published on the National Classification Database.

Law enforcement decisions

Currently, the Board classifies and issues evidentiary certificates for a small amount of content referred to it by law enforcement agencies. Classification decisions and evidentiary certificates can be used in enforcement proceedings undertaken by the relevant law enforcement agency. In 2018-19, 10 films were submitted to the Board by state and territory enforcement agencies, and there were no enforcement applications for computer games or publications.

I recommend this function be undertaken by ACMA. While generally law enforcement agencies should be able to assess Refused Classification material themselves based on harms established in criminal and other legislation (for example, assessing child sexual abuse material or material inciting terrorism), agencies would be able to refer any content to ACMA for classification if required.

Link to Online Content Scheme reforms

Currently, under the Online Content Scheme, if the eSafety Commissioner wants to take down any potentially prohibited online content hosted in Australia, the content must also be referred to the Board to classify the content. The Government is undertaking work to reform the Online Content Scheme, including considering empowering the eSafety Commissioner to make decisions to prohibit online content itself without needing to go through the Board. I would support this approach.

Maintaining the National Classification Database and online portals for industry classification

The National Classification Database currently lists all classification decisions that have been made under the National Classification Scheme, including by the Board, the IARC tool and the Netflix tool. It helps content providers find the classification of content that has previously been classified and provides transparent information to Australian consumers.

As part of its role in providing secretariat support to the Board and the Review Board, the Department currently maintains the National Classification Database. I propose that ACMA should maintain the National Classification Database and current online engagement portals for industry in a new classification governance framework.

Reviewing classification decisions

Reviewing classification decisions should be undertaken by ACMA. In instances where the regulator was the original classification decision-maker, different staff within the regulator can review the decision to manage any conflict of interest issues. As a practical example, if a content distributor does not agree with a classification rating after it was checked and changed by the regulator, the distributor

could apply for a review of the classification decision. Alternative staff members or Authority members at the regulator would conduct the review.

As outlined in Chapter 6, there may be circumstances where content providers see a need to give previously classified content a different classification rating (e.g. PG instead of M) without editing the content. In these circumstances, they should apply to ACMA which would consider the case and grant permission for the content provider to reclassify content and display a different classification rating. This would only apply to content shown across platforms, which has not been modified or was classified less than 10 years ago. This will help minimise inconsistent classification ratings across platforms.

Supporting the Classification Advisory Panel

In Chapter 8, I recommend the establishment of an expert Classification Advisory Panel tasked with reviewing evidence and advising on the classification categories, and updates to the National Classification Code and the classification guidelines. Membership on the panel would be appointed by the Australian Government after consultation with states and territories in the same way as it currently occurs for members of the Classification Board. ACMA would be responsible for supporting the panel.

Developing practical guidance for the display of classification information

The provision of consistently presented, readily identifiable classification information on all platforms that deliver classifiable content is a crucial part of the classification service to the public. ACMA would be responsible for developing, in consultation with industry and informed by international best practice, practical guidance for the display of classification information and associated advertising. This display guidance would reflect classification legislation and would be reviewed and updated as needed to remain relevant for new ways of delivering classifiable content or promoting that content on platforms.

Issuing this display guidance for classification information would help provide clarity to industry on their obligations in this regard. Increasing the visibility and prominence of the classification ratings and consumer advice, especially online, will assist consumers in making informed decisions about content to view, especially for children. More readily available classification information could also increase consumer uptake of parental locks.

Complaints handling

Complaints are an important part of informing the regulator of community concerns generally and specific concerns about individual content providers or accredited assessors and in engendering community confidence in industry self-classification.

Currently, consumer complaints about a classification made under the National Classification Scheme are directed to the Board. In 2018-19, the Board received 163 complaints about its classification decisions, three complaints about decisions made using the IARC tool and six complaints about decisions made using the Netflix tool.³²¹

Under broadcasting codes of practice, consumer complaints about a classification decision on television are directed to the broadcaster in the first instance. If a consumer is unsatisfied with the response from the broadcaster or has not received a response within 60 days, complaints are escalated to ACMA.³²²

³²¹ Refer to the [Classification Board's Annual Report 2018-19](#).

³²² ACMA, [Complain about a program on TV or radio](#).

Broadcasters support continuing the current complaints process.³²³ I consider it works well and should be extended to other content providers, such as streaming services.

Consumer complaints would be made to the content provider in the first instance, and then, if the consumer is still dissatisfied, the complaint should be escalated to ACMA. The film industry is concerned that cinemas are not involved in the classification process and that it may be difficult for consumers to easily identify or access film distributors to whom they should complain. I consider this can be overcome if the cinema directs dissatisfied consumers to contact the relevant film distributor in the first instance. The Australian classification website would also provide clear information about how consumers can find a content distributor on the National Classification Database. If a consumer still has problems identifying a content distributor, they can send an enquiry to ACMA.

There should be clear direction to industry about their obligations with handling consumer complaints and reporting to ACMA on consumer complaints. I recognise that broadcasting codes of practice currently set out complaints handling arrangements. With complaints handling responsibilities for other platforms shifting from the Board to industry in the first instance in a new framework, a complaints handling code should be developed by industry and registered with ACMA for classifiable content on all other platforms (apart from broadcast television).

This code should outline timeframes for all content providers to respond to complaints. Currently, for television broadcasting, complaints can be made to ACMA if a complainant has not received a response from the television station within 60 days or the response received is unsatisfactory. Complaints about classification decisions on all platforms should be handled far more quickly by the content provider as there is a benefit to consumers in changing a classification rating or consumer advice as quickly as possible. This should be reflected in the code.

The code should require content providers to report to ACMA each year on the number of classification complaints they handle and the outcome so ACMA has visibility about all complaints that were not escalated to it. ACMA should publish this material in its Annual Report.

Call in and enforcement powers online

As noted earlier in this chapter, in a new classification framework, the states and territories would continue to be responsible for enforcement of classifiable content in the physical world, including cinemas, physical retailers and adult shops. ACMA would have responsibility for administering enforcement laws for classifiable content online (including VOD providers and online games storefronts) in addition to continuing its role in television broadcasting regulation.

In a new framework, I recommend that ACMA have powers to call in unclassified films, television programs, computer games and publications for classification. This would mirror the power the Board currently has to call in unclassified films, computer games and publications if it is aware that there is unclassified content being made available in Australia.

³²³ Refer to submissions from SBS (p. 1, 5 and 8), ABC (p. 4 and 6), Free TV (p. 12) and Australian Subscription Television and Radio Association (p. 1, 3-4).

ACMA would be empowered to take enforcement action for breaches of classification laws. Classification legislation would set out a range of enforcement options to address more serious classification breaches such as:

- Failing to classify online content that should be classified under Australian classification laws;
- Refusing to submit content that has been called in by the regulator; or
- Using misleading or deceptive labelling and classification markings online (for example, using an Australian classification symbol on a film or game when the content has not actually been classified).

I recommend that the Department and ACMA jointly develop specific enforcement mechanisms, which may include fines or other civil penalties.

To make the role between ACMA and the eSafety Commissioner responsibilities very clear, I recommend that ACMA would be responsible for taking action related to *classifiable* content online and the Office of the eSafety Commissioner would continue to focus on taking action on illegal and harmful content online, including websites and user-generated content.

Granting requests for permissions to import or export objectionable goods

Currently, the Director and Deputy Director of the Board are authorised by the relevant Australian Government Minister to grant permission for the import and export of objectionable goods under Customs prohibited imports³²⁴ and prohibited exports regulations.³²⁵ The objectionable goods provisions largely align with the description of films, computer games and publications that are Refused Classification or would be Refused Classification under the National Classification Code. As these goods relate to censorship, permissions to import or export them are managed by the Minister (or delegate) with policy responsibility for these goods.

The Australian Border Force, who has responsibility for enforcing these regulations at the border, consider that it is important that the Minister with responsibility for classification continues to have policy responsibility for objectionable goods and to authorise an appropriate delegate with subject matter expertise to consider granting permissions upon application. As the current delegates are senior members of the Board, this function should move to equivalent staff at ACMA in a new classification framework.

Assessing the likely classification of an unclassified film or computer game for advertising purposes

Currently, to advertise an unclassified film or computer game (where 'Check the Classification' appears) either the Board or an Authorised Advertising Assessor³²⁶ must assess the likely classification of the film or computer game being advertised for purposes of advertising placement according to the commensurate audience rule. This is further detailed in Chapter 12 on advertising.

In a new framework, I recommend that ACMA should manage training and accreditation of authorised advertising assessors, require assessors to register their likely classification decisions with the regulator online, and conduct random checks of a percentage of assessments of unclassified films and computer games. ACMA would also take on the Board's existing function of providing an assessment of likely classification of unclassified films or computer games for advertising purposes for a fee if a distributor did not wish to use an authorised assessor.

³²⁴ Refer to Regulation 4A of the [Customs \(Prohibited Imports\) Regulations 1956](#).

³²⁵ Refer to Regulation 3 of the [Customs \(Prohibited Exports\) Regulations 1958](#).

³²⁶ An authorised advertising assessor is a person approved by the Director of the Board following the completion of training under the Authorised Advertising Assessor scheme. Further information is in the chapter on advertising.

Authorised advertising assessors could be publicly listed on the www.classification.gov.au website if they wish. This may help small content providers identify third-party assessors if they would not like to train their own assessor or pay a fee for ACMA to assess the advertising.

Education and awareness raising about the classification system

ACMA would also be responsible for education and awareness raising about the Australian classification system. This would include maintaining information for consumers and industry on the Australian classification website, www.classification.gov.au, and undertaking activities as directed and funded by the Government.

I recommend early attention be given to publicising the availability of parental locks and other devices to enable parents to better control the content viewed by their children.

Funding the regulator

Classification services currently operate under a cost recovery funding model where applicants must provide a fee for the classification of content.³²⁷ In a new framework where self-classification is the predominant means in which content is classified, I recommend the Government review its existing funding arrangements for classification services. In this respect, the regulator could charge for some aspects, such as for industry training and accreditation and for making original classification decisions but that any use of a government classification tool should not attract a fee.

Recommendation 13-2: That ACMA be the overall regulator of the classification system at the Australian Government level and perform the following functions:

- Training and accrediting industry classifiers.
- Auditing decisions made through industry self-classification or classification tools.
- Making original classification decisions at the request of law enforcement agencies or content providers that do not want to self-classify or use a classification tool.
- Maintaining the National Classification Database and online portals for industry to register classification decisions.
- Reviewing classification decisions upon application.
- Supporting the Classification Advisory Panel in its role.
- Conducting research with the Australian community and monitoring industry trends.
- Issuing practical industry guidance on how classification information should be displayed across different formats.
- Handling community complaints that are escalated if the consumer is not satisfied with the response from the content provider.
- Enforcement of classifiable content online.
- Granting requests for permissions to import or export objectionable goods.
- Assessing the likely classification of an unclassified film or computer game for advertising purposes.
- Education and awareness raising about the Australian classification system.

³²⁷ Refer to [Classification \(Publications, Films and Computer Games\) Regulations 2005](#).

Appendix 1 – List of recommendations

4. Shaping a contemporary classification system

Recommendation 4-1: Updates to the National Classification Code and the Classification Act should be based on the following fundamental principles:

- Adults should be able to read, hear, see and play what they want, with limited exception;
- Minors should be protected from content likely to harm or disturb them; and
- Everyone should be protected from exposure to content of serious concern to the wellbeing of the community.

5. Content to be classified

Recommendation 5-1: That the scope of classifiable films and television programs should be clearly articulated to focus on professionally produced content distributed on a commercial basis and directed at an Australian audience.

Recommendation 5-2: A legislative instrument should be developed to provide guidance to industry on what content should be classified.

Recommendation 5-3: Classification should continue to be the responsibility of the provider that makes the content available first in Australia, regardless of who originally makes the content.

Recommendation 5-4: That the scope of classifiable computer games should be clearly articulated to focus on professionally produced computer games distributed on a commercial basis and directed at an Australian audience.

Recommendation 5-5: That the scope of classifiable publications restricted to adults should be clearly articulated to focus on professionally produced publications distributed on a commercial basis and directed at an Australian audience. The current references to a 'submittable publication' in the Classification Act should be amended to 'publications that are unsuitable for minors to see or read'.

Recommendation 5-6: That the scope of sexually explicit films should be clearly articulated to focus on professionally produced films distributed on a commercial basis and directed at an Australian audience.

Recommendation 5-7: Maintain all current exemptions from classification and clarify that exemptions for news, current affairs and sports apply across all platforms. The Department should continue its work to develop an exemption for unclassified films in languages other than English for supply to public libraries.

6. Processes to classify content

Recommendation 6-1: Films and television programs on television, in cinemas, on DVDs and Blu-ray discs and on VOD services should be classified through either:

- Self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers.
- Self-classification using classification tools approved by the Minister.
- Submitting content to the regulator for classification.

Recommendation 6-2: Computer games, including physical games should be classified through either:

- Industry self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers.

- Industry self-classification using classification tools approved by the Minister (includes the International Age Rating Coalition tool).
- Submitting content to the regulator for classification.
- An alternative classification system (such as the Apple's rating system) which meets certain criteria and is authorised by the Minister.

Recommendation 6-3: That the Department continue to explore the feasibility of using the International Age Rating Coalition tool to classify physical computer games.

Recommendation 6-4: Should Valve not join the International Age Rating Coalition in the near future, that the Department discuss with Valve the implementation of a separate tool to generate Australian classifications for computer games available to Australian consumers on its online gaming platform Steam.

Recommendation 6-5: Publications that may be unsuitable for minors to see or read should be classified through either:

- Self-classification by people trained and accredited by the regulator, who could be either in-house staff or third-party classifiers; or
- Submitting the publication to the regulator for classification.

Recommendation 6-6: Once content is classified, it should not generally need to be classified again, unless it is modified and the modification is likely to change the classification category. Content providers should be able to give additional consumer advice in certain circumstances.

Recommendation 6-7: If a content provider does not want to carry over a classification category from another platform without modifying the content, they should apply to the regulator for permission to reclassify the content.

Recommendation 6-8: Content should be able to be reclassified after 10 years without recourse to the regulator.

Recommendation 6-9: The National Classification Database should include decisions for all content classified, including content classified by the broadcasters.

Recommendation 6-10: Reviews of classification decisions should be conducted by the regulator. If the regulator was the original decision-maker, alternative staff would review a classification decision.

7. Classification categories and consumer advice

Recommendation 7-1: That there be no change to current classification categories at this time, but that work continue on ways of providing better guidance as to suitability of film and computer game content to children at particular stages of development.

Recommendation 7-2: That to improve harmonisation across media, the classification categories for publications be changed to:

'M' for Unrestricted publications

'R 18+' for Category 1 restricted publications

'X 18+' for Category 2 restricted publications.

Recommendation 7-3: That MA 15+ and R 18+ be legally restricted categories for physical environments, and that MA 15+ be an advisory category for all online platforms.

Recommendation 7-4: Online platforms should be required to employ and promote the best available technological barriers to minors accessing R 18+ content.

Recommendation 7-5: Parental controls should continue to be available and promoted to enable parents and carers to prevent children's access to MA 15+ content.

Recommendation 7-6: X 18 + should remain in place as a restricted category.

Recommendation 7-7: The Refused Classification category should continue to include highly offensive or objectionable material as informed by community standards, as well as available empirical evidence of potential harm, in addition to illegal material.

Recommendation 7-8: The Refused Classification category should be renamed 'Prohibited'.

Recommendation 7-9: The regulator should establish minimum requirements for the information contained in consumer advice and a set of terms for all content providers to use.

Recommendation 7-10: Content providers should have the flexibility to add to consumer advice as considered needed for their audience.

Recommendation 7-11: Best practice guidelines should be provided about phrasing of consumer advice, and any requirements relating to phrasing should be broadly stated to allow for technological limitations of classification tools.

8. Classification guidelines

Recommendation 8-1: The classification guidelines should be updated to contain specific, objective criteria for consistent classification decisions.

Recommendation 8-2: The classification guidelines should be reviewed every four years.

Recommendation 8-3: A Classification Advisory Panel should provide advice on the classification categories, classification guidelines, National Classification Code and the matters to be taken into account in decision-making in the Classification Act.

Recommendation 8-4: Advice of the Classification Advisory Panel should be informed by empirical evidence, community research, international best practice and consultation with stakeholders including the eSafety Commissioner.

Recommendation 8-5: Separate guidelines should be maintained for classification of films, computer games and publications.

Recommendation 8-6: The same film classification guidelines should be used across all film and television content platforms, including broadcast television.

Recommendation 8-7: The Films Guidelines and Computer Games Guidelines should be aligned at the R 18+ classification.

9. Films Guidelines

Recommendation 9-1: Specific guidance should be given in the Guidelines for issues of particular concern to the community such as scary content, suicide depictions and other imitable behaviour, and discrimination.

Recommendation 9-2: Specific consumer advice identifying thematic content should be provided wherever possible. Consumer advice about suicide should be provided even when it is not among the highest impact elements.

Recommendation 9-3: The Classification Advisory Panel should consider evidence for the impacts on children of depictions of sexual references and sexual objectification of female characters, and whether and how classification should appropriately deal with this issue.

Recommendation 9-4: The Films Guidelines should give greater weight to the possibility that sexualised depictions of children are exploitative or offensive rather than that they may be justified by storyline, artistic merit or intended audience. Whether or not depictions are animated or real should not be taken into consideration.

Recommendation 9-5: The Refused Classification category in the Films Guidelines and provisions in the Criminal Code in relation to child abuse material should be aligned. This alignment should also apply to the Computer Games Guidelines and the Publications Guidelines.

Recommendation 9-6: The Classification Advisory Panel should review evidence relating to harms of depictions of drug use.

Recommendation 9-7: Depictions of alcohol, tobacco and prescription drugs should be considered under the element 'drugs'.

Recommendation 9-8: The Classification Advisory Panel should review evidence relating to harms of depictions of violence and consider impacts of lower levels of violence on children.

Recommendation 9-9: The Guidelines should be updated to take into account community concerns about violence against women and the treatment of this issue in consumer advice.

Recommendation 9-10: The Guidelines should continue to provide specific guidance in relation to sexual violence and continue to place restrictions on high level violence with blood and gore.

Recommendation 9-11: Consideration should be given to providing consumer advice about sexual violence even when it is not among the highest impact elements.

Recommendation 9-12: The Classification Advisory Panel should provide advice on whether it is necessary to maintain a separate classifiable element for nudity or whether it could be considered under the element of sex.

Recommendation 9-13: Discriminatory language should be included under the classifiable element 'language'.

Recommendation 9-14: The Classification Advisory Panel should consider harms in relation to what is allowable within the X 18+ category.

Recommendation 9-15: In the Films Guidelines, the absolute prohibitions on legal fetishes and violence (where violence is unrelated to sex) within the X 18+ category should be removed.

10. Computer Games Guidelines

Recommendation 10-1: The Computer Games Guidelines should include a definition of simulated gambling which makes reference to interactive content which replicates casino games.

Recommendation 10-2: All games with interactive features that meet the definition of simulated gambling should be given the consumer advice of 'simulated gambling'.

Recommendation 10-3: Games which exclusively involve simulated gambling should be classified MA 15+ at a minimum.

Recommendation 10-4: Consumer advice should specify the presence of in-game purchases. Where in-game purchases are linked to elements of chance, this should be reflected in the consumer advice.

Recommendation 10-5: Games featuring loot boxes that can be purchased should be rated PG at a minimum.

Recommendation 10-6: Updates to the Computer Games Guidelines should continue to consider the impact of interactivity for content in the G, PG, M and MA 15+ categories.

Recommendation 10-7: In providing advice about updates to the Computer Games Guidelines, the Classification Advisory Panel should evaluate individual provisions in the Computer Games Guidelines that are inconsistent with the Films Guidelines, and provide advice as to how these could be better aligned, while maintaining appropriate protections for children in relation to interactive content.

Recommendation 10-8: In formulating advice on areas of alignment of the Computer Games Guidelines and Films Guidelines, the Classification Advisory Panel should consider research on the interactivity of computer games, international developments and best practice, and evidence of harms.

11. Publications Guidelines

Recommendation 11-1: The Publications Guidelines should incorporate clear definitions of classifiable elements, that are consistent with (if not the same as) those used in the Films Guidelines and Computer Games Guidelines.

Recommendation 11-2: The Publications Guidelines should give greater weight to the possibility that sexualised depictions of children (animated or real) are gratuitous, exploitative or offensive rather than that they may be justified by storyline, artistic merit or intended audience.

Recommendation 11-3: A clear description of allowable detail in depictions of nudity in publications should be developed, in line with community standards.

12. Advertising of films, games and submittable publications

Recommendation 12-1: No changes to regulation for the advertising of films, computer games and submittable publications, although responsibilities for advertising assessments that currently lie with the Board should be the role of the Australian Government regulator.

13. Classification governance

Recommendation 13-1: Revise the intergovernmental agreement with the states and territories to make it more responsive and adaptable to changing needs across technology, society and the market. This would include:

- Clarifying that the role of the Australian Government is to establish mechanisms to classify content which can be undertaken using a range of classification processes.
- Clarifying that the Australian Government is responsible for enforcement of classifiable content online, and the role of the states and territories are responsible for enforcement of classifiable content in the physical world.

- Outlining that decision-making through the Council of Attorneys-General should generally be on the basis of consensus. Where consensus cannot be reached, decisions are to be made on the basis of a majority of the members in agreement.

Recommendation 13-2: That ACMA be the overall regulator of the classification system at the Australian Government level and perform the following functions:

- Training and accrediting industry classifiers.
- Auditing decisions made through industry self-classification or classification tools.
- Making original classification decisions at the request of law enforcement agencies or content providers that do not want to self-classify or use a classification tool.
- Maintaining the National Classification Database and online portals for industry to register classification decisions.
- Reviewing classification decisions upon application.
- Supporting the Classification Advisory Panel in its role.
- Conducting research with the Australian community and monitoring industry trends.
- Issuing practical industry guidance on how classification information should be displayed across different formats.
- Handling community complaints that are escalated if the consumer is not satisfied with the response from the content provider.
- Enforcement of classifiable content online.
- Granting requests for permissions to import or export objectionable goods.
- Assessing the likely classification of an unclassified film or computer game for advertising purposes.
- Education and awareness raising about the Australian classification system.

Appendix 2 – International classification arrangements and recent developments

United Kingdom

Films

Co-regulatory system

The British Board of Film Classification (BBFC) is an independent, non-governmental, co-regulatory body. It is responsible for the classification of cinema films on behalf of local authorities who licence cinemas under the UK *Licensing Act 2003*. However, local authorities have the ability to amend BBFC cinema classifications in their own area, and to classify films not submitted to the BBFC, including those shown in film festivals. The BBFC also classifies video works under the UK *Video Recordings Act 1984*. For the purposes of this Act, video works are taken to include films and programmes released on physical formats such as DVD or Blu-ray. Certain classes of video works (e.g. educational works, recordings of sports and music) may claim exemption from classification, although they lose that exemption if they would attract a BBFC classification of 12 or above. The BBFC also classifies video works distributed by means of download or streaming on the internet, although this is currently on a voluntary basis and is not legally required.

The Office of Communications (Ofcom) regulates programming on UK VOD services, including catch-up TV, online film services and those providing a library of archive content.³²⁸ If a service falls within the definition of an 'on demand programme service',³²⁹ it is required to notify Ofcom of its operation. Ofcom maintains a list of VOD services who have registered with them.³³⁰

On 14 March 2019, the BBFC and Netflix announced they are collaborating to produce ratings on Netflix which are consistent with the BBFC's Classification Guidelines.³³¹ The first phase of the project involves a 12-month pilot of the Netflix tool and in the second phase, the BBFC is required to audit 3,000 minutes of content per month. Once the tool is approved for use, Netflix will produce BBFC ratings in-house to be carried over to its UK-based service.

Although there are no obligations for VOD services to display BBFC classification ratings on their platforms, it is widely encouraged as best practice. In October 2019, the BBFC released its Video on Demand User Guidelines, which provides practical advice on implementing the Best Practice Age Labelling Guidelines produced by the BBFC and the Video Standards Council Ratings Board.³³²

Guidelines

The BBFC bases classification decisions on its Classification Guidelines as well as its Guiding Principles and General Classification Considerations.³³³ See Appendix 3 for the BBFC's classification categories.

The elements used in classification are dangerous behaviour, discrimination, drugs, language, nudity, sex, sexual violence and sexual threat, threat and horror, and violence.

The BBFC conducts extensive public consultation on its Classification Guidelines every four to five years with more than 10,000 people across the UK.³³⁴ If there are significant changes in people's

³²⁸ Ofcom [Guide to video on demand](#) (2020).

³²⁹ Refer to the definition of 'on demand programme service' in s 368A of the [UK Communications Act 2003](#).

³³⁰ Ofcom [List of regulated video on demand services](#) (2020).

³³¹ BBFC, [BBFC and Netflix announce new age ratings partnership as parents demand greater consistency across video on demand and online games platforms](#) (2019).

³³² BBFC [VOD User Guidelines](#) (2019).

³³³ BBFC [Classification Guidelines](#) (2019).

³³⁴ *Ibid.*

expectations arising from these consultations, the BBFC adjusts its standards and criteria accordingly to reflect changing community attitudes.

Consumer Information

In addition to the content descriptors displayed before a film in the cinema commences and on physical products, the 'ratings info' page on the BBFC website also provides detailed information about the content it classifies. It offers a summary of the context and rationale for a given age rating and notes any other issues that might be important for parents or those wishing to take younger viewers to see a film to consider.

Enforcement

All films for cinema release must be submitted to the BBFC unless permission has been granted by the local authority in the area where the film is being shown. All video works supplied on physical formats (e.g. DVD, Blu-ray) must display BBFC classifications unless they are exempt from classification (e.g. educational works, sports works and music works that would not attract a BBFC classification of 12 or above). Local Authority Trading Standards Officers and the Police have the power to seize illegal video works and to investigate cases where age restricted works have been supplied to people under the age on the classification certificate. The BBFC provides evidence to local enforcement authorities, on request, when they investigate breaches of the UK *Video Recordings Act 1984*.

Television Broadcasting

Classification of content broadcast on television is regulated separately under UK broadcasting laws.³³⁵ Television broadcasters can self-classify content and sometimes use the same classification categories and guidelines used by the BBFC.

Computer Games

Co-regulatory system

The Video Standards Council (VSC) Rating Board is the administrator of the Pan European Game Information (PEGI) age rating system in the UK, which was established to help European parents make informed decisions on buying computer games. It was launched in 2003 and replaced a number of national age rating systems with a single system now used throughout most of Europe, in more than 35 countries. The system is supported by the major console manufacturers, including Sony, Microsoft and Nintendo, as well as by publishers and developers of interactive games throughout Europe.

In 2012, the PEGI system was incorporated into UK law and the VSC was appointed as the statutory body responsible for the age rating of video games in the UK using the PEGI system. The VSC classifies games that are rated 12, 16 and 18, and the Netherlands Institute for the Classification of Audio-visual Media (NICAM) classifies games that are rated 3 or 7.

PEGI is a member of the International Age Rating Coalition (IARC), thus online and mobile games are classified for PEGI-participating European countries using the IARC classification tool.

Guidelines

The PEGI system was developed and based on existing rating systems in Europe. A wide range of academics, consumers and other stakeholder groups were involved in the drafting of the assessment form used by game publishers and developers. The assessment form is a constantly evolving document. The criteria used reflects public opinion from consumer research but is also subject to due diligence and scrutiny. Any changes are put forward to an independent panel of experts in the fields of protection of minors and child psychology.

³³⁵ Ofcom [Broadcasting Code](#) (2019).

PEGI classification labels provide an indication of the age suitability of the game content in terms of protection of minors. See Appendix 4 for PEGI's classification categories. More detail is available on the PEGI website.³³⁶

There are eight content descriptors used for classification: violence, bad language, fear/horror, in-game purchases, gambling, sex, drugs and discrimination.³³⁷

Consumer Information

Content descriptors shown on the product packaging or in the digital storefront indicate the main reasons why a game has received a particular age rating.

Enforcement

The UK *Video Recordings Act 1984*³³⁸ states that ratings are only mandatory for 'devices capable of storing media.' As such, classification is only required for physical computer games and not online games.

Game publishers using the PEGI system must abide by the PEGI Code of Conduct. The PEGI Enforcement Committee, comprised of industry representatives and PEGI Council members, monitors compliance with the PEGI Code of Conduct. Failure to implement corrective action as suggested by the Enforcement Committee and the Complaints Board can result in the imposition of sanctions.³³⁹

Trading Standards enforces the PEGI system in the UK. PEGI advised that although non-compliance is relatively rare, enforcement action does occur. Occasionally, Trading Standards will send in test purchasers that look underage. Retailers or individuals when caught could get a £5,000 fine, six months jail and a criminal record (however, in practice being caught often results in action taken with the shop assistant rather than a fine, jail or a criminal record). The VSC provides training to retailers that is approved by Trading Standards. This acts as 'due diligence' and if the retailer undertakes the training, they will not be prosecuted, only the individual who sold the game.

United States

Films

Industry self-regulatory system

The Classification & Rating Administration (CARA) and the CARA Appeals Board were established by the Motion Picture Association, Inc. (MPA), formerly known as the Motion Picture Association of America (MPAA), and the National Association of Theatre Owners (NATO). CARA issues ratings for motion pictures exhibited and/or distributed commercially to the public in the United States. It operates as an independent division of the MPA.³⁴⁰

For home entertainment releases, the same rating issued by CARA to a film shown in cinemas may be applied to the DVD and Blu-ray so long as it is the same version of the film (i.e. no edits have been made to the film).³⁴¹ If a different version of the film is distributed for home entertainment, the film will need to be rescreened by CARA if a rating is desired. There is no formal requirement to have direct to home releases rated by CARA, however, if desired, CARA will screen the film and issue a rating in the same manner as if it was being released in cinemas.

³³⁶ PEGI [Age Labels](#) (2017).

³³⁷ *Ibid.*

³³⁸ BBFC [Law enforcement](#) (2020).

³³⁹ PEGI [Code of Conduct](#) (2017).

³⁴⁰ CARA [Classification and Rating Rules](#) (2010).

³⁴¹ BBFC [Same Difference? - A Comparison of the British and American film and DVD Rating Systems](#) (2011).

Guidelines

The guidelines used for classification are available in the Classification and Rating Rules. Any participant in the rating system or member of the public may propose to revise the Classification and Rating Rules. The CEO of the MPA and the President of NATO may make such revisions to the Classification and Rating Rules in joint agreement of what is appropriate and may provide guidance on the interpretation.³⁴²

See Appendix 3 for CARA's classification categories.

In determining a rating, the CARA raters consider elements that they think are important to most American parents when deciding what films are suitable for their children. Such elements considered include, among other things, mature themes, language, depictions of violence, nudity, sensuality, depictions of sexual activities, adult activities (those that adults, not minors may legally engage in), drug use and smoking.

Consumer Information

Rating descriptors are given for films rated PG and above. Descriptors inform parents of the elements in the film that caused the film to be given a particular rating by indicating the type and intensity of specific elements present in the film. Rating descriptors reflect only content strong enough to merit the rating the film received.³⁴³

Enforcement

Although the CARA system is voluntary, MPA members must submit films intended for theatrical release for rating and must apply the Classification and Rating Rules.³⁴⁴ Non-MPA members may submit films for classification but they do not have to accept the rating and rating descriptor.

Any violation of rules are grounds for the imposition of sanctions. Actions for sanctions are commenced by CARA. Sanctions proceedings are heard by the CEO of the MPA and the President of NATO, with their decision being final. Further information regarding industry enforcement and administration of the rules can be found in the Classification and Rating Rules.³⁴⁵

Video on demand

Like films for theatrical release, ratings on video on demand platforms are voluntary in the US. VOD platforms may either choose to have its feature films rated by CARA, apply the television rating system or may use its own rating system. For example, if Netflix releases a feature film in cinemas and on its platform, it will submit it to CARA for classification, however if the feature film is only made available on Netflix, it may choose to use the television rating system or its own rating system. For episodic series, Netflix will use the television rating system or a similar system. Other VOD platforms may use a similar approach, however only need to submit feature films to CARA if they are members of MPA.

Television Broadcasting

Classification of content broadcast on cable and on television is self-regulated separately from films in cinemas and on DVD. It will apply its own rating. If the broadcaster is a member of the TV Rating Monitoring Board, it will apply ratings consistent with the TV Parental Guidelines.³⁴⁶ Membership on the TV Rating Monitoring Board is voluntary. For example, Hulu is a member however Netflix is not.

³⁴² CARA, [Classification and Rating Rules](#) (2010).

³⁴³ *Ibid.*

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

³⁴⁶ TV Parental Guidelines Monitoring Board, [TV Parental Guidelines](#) (2019).

Computer Games

Industry self-regulatory system

The Entertainment Software Rating Board (ESRB) is a non-profit, self-regulatory body. It provides ratings for video games in the North America region.³⁴⁷

Although the rating system is voluntary, all console manufacturers as well as certain US retailers and mobile or online storefronts require ESRB ratings for the games or apps they offer. Games submitted to the ESRB for classification, including nearly all games which are distributed physically or distributed digitally with a physical component like a digital download card, are classified by ESRB raters using a process which includes a questionnaire completed by the game publisher and a video showing all of the pertinent (including the most intense) content in the game in its proper context. Failure to disclose all pertinent content during the ESRB rating process for physical products may result in enforcement actions, including fines and costly corrective actions. Also, IARC uses an automated questionnaire to generate ESRB ratings for digital-only games on mobile and digital storefronts that have implemented the IARC rating system, after which many of those ratings, especially those for products with an active user base, are tested by raters of ESRB and other rating authorities participating in IARC.

Guidelines

The ESRB uses a three-part rating system that includes ratings categories, content descriptors and interactive elements.³⁴⁸

There are six rating categories which suggests the age appropriateness of a game under the ESRB system. The categories are available at Appendix 4.

There are 30 content descriptors that are used to indicate content that may have triggered a particular rating category or may be of interest or concern, including violence, blood/gore, sexuality, nudity, language, substances, gambling and humour.

Interactive elements are used to highlight interactive or online features that may be of interest or concern but do not influence the rating category of a game. These are In-Game Purchases, Users Interact, Shares Location and Unrestricted Internet.³⁴⁹

Consumer Information

For physical products submitted directly to the ESRB for rating, rating summaries are also prepared which provide more detailed information about the contents in a game and its context. These rating summaries can be found on the ESRB website or the ESRB Rating Search App.

Enforcement

Most major retailers for physical games have established their own store policies requiring ESRB ratings to be displayed on the products they sell. Additionally, they implement age verification by cashiers or in-store personnel (including checking IDs) for the sale or rental of M (Mature) and AO (Adults Only) rated games.³⁵⁰ The ESRB Retail Council was established to facilitate communication between participating game retailers and the ESRB. Participating retailers voluntarily commit to use their best efforts to comply with the Ratings Education and Enforcement Code, including participating in mystery shop audits twice per year to confirm that their store policies are being enforced.³⁵¹

³⁴⁷ ESRB (2020).

³⁴⁸ ESRB, [Ratings Guide](#) (2020).

³⁴⁹ *Ibid.*

³⁵⁰ ESRB [Frequently Asked Questions](#) (2020).

³⁵¹ ESRB, [ESRB Retail Council](#) (2020).

The Advertising Review Council also works with publishers to display correct and complete rating information on game advertising, packaging, websites and marketing materials, and that advertising for games rated M and AO is appropriately targeted. Publishers of products submitted to the ESRB for classification are contractually obligated to follow a detailed set of industry-adopted requirements for advertising, packaging and marketing materials, which include Principles and Guidelines for Responsible Advertising Practices.³⁵² Failure to do so can result in points, corrective actions, and monetary fines. The ESRB Website Council (EWC) members, made up of several video game enthusiast websites including GameFly, GameSpot and IGN, also voluntarily comply with many of those guidelines. The ESRB regularly monitors these websites for compliance.³⁵³

New Zealand

Films

Government regulatory system

The classification system in New Zealand operates under the *Films, Videos and Publications Classification Act 1993* and its associated Regulations (NZ Classification Act).³⁵⁴ The Film and Video Labelling Body (FVLB) has a statutory role to label unrestricted films and DVDs (G, PG or M in Australia, or is rated U, PG, 12 or 12A in the UK) with a New Zealand equivalent classification and refer restricted films and DVDs (MA 15+ or R 18+ in Australia, or 15, 18 or R18 in the UK) to the Classification Office for classification.³⁵⁵

The Classification Office is an independent Crown entity established under the NZ Classification Act. Its primary function is to classify publications, which includes films, books and computer files, which may need to be restricted or banned. The Classification Office must classify content submitted to it from the FVLB, the Department of Internal Affairs, NZ Customs, NZ Police or a member of the public.³⁵⁶

Commercial video on demand content is not currently subject to a mandatory New Zealand classification regime. On 10 December 2019, the New Zealand Films, Video and Publications Classification (Commercial Video on-Demand) Amendment Bill was introduced to Parliament.³⁵⁷ If this Bill is passed, specified providers and their subsidiaries (Alphabet, Amazon, Apple, Lightbox, Microsoft, Netflix, Sky Network, Sony and Disney) will be required to comply with classification laws under the NZ Classification Act. Content providers can either submit content to the FVLB for labelling or self-rate content using the Classification Office's rating tool or an approved rating tool. All amendments will come into force on 1 January 2021, with some provisions coming into force on 1 July 2020.

This amendment is one aspect of reforms to the Media Content Regulation Regime. A program of work looking at broader reforms has been suggested.³⁵⁸

Guidelines

Specific provisions of the NZ Classification Act provide guidance on determining the classification.³⁵⁹

See Appendix 3 for the classification categories for films.

³⁵² ESRB [Advertising Principles and Guidelines](#) (2020).

³⁵³ ESRB [ESRB Website Council](#) (2020).

³⁵⁴ Refer to [Films, Videos and Publications Classification Act 1993](#).

³⁵⁵ Film and Video Labelling Body, [The Film & Video Labelling Body](#) (2011).

³⁵⁶ Classification Office, [About us](#) (2020).

³⁵⁷ Refer to [Films, Videos, and Publications Classification \(Commercial Video on-Demand\) Amendment Bill](#).

³⁵⁸ Department of Internal Affairs, [Cabinet paper on consultation on commercial video on demand content classification](#) (2019).

³⁵⁹ Refer to [Films, Videos and Publications Classification Act 1993](#).

For a film to be classified at a restricted level, it must deal with at least one of the following: sex, horror, crime, cruelty, violence, highly offensive language or self-harm, degrading or demeaning conduct, or conduct that would be dangerous if imitated.

Consumer Information

All labels for films and DVDs have a rating or classification symbol and usually a descriptive note briefly explaining the nature of content in the film or game that may be of concern to viewers, such as offensive language, sex scenes, violence, cruelty or other potentially disturbing or offensive material.

The Classification Office website also has brief summaries of recent classification decisions which provide information on what the film or game is about and what the viewer or parents can expect to see in regards to classification criteria.³⁶⁰

In addition, the website also has featured classification decisions which provides detailed information regarding recent classification decisions, what the classification criteria were and why it was given the particular classification.³⁶¹

Enforcement

The Censorship Compliance Unit at the Department of Internal Affairs has overall responsibility for the enforcement of the Classification Act and its Regulations. Customs and the Police also have responsibility for the enforcement of the Act. Offences under the Act can lead to fines or imprisonment. Prosecutions are carried out by Police, Customs and the Censorship Compliance Unit.³⁶²

Computer Games

Government regulatory system

The FVLB does not require games that have received an unrestricted classification for either Australia (G, PG or M) or the UK (3 or 7) to be classified in New Zealand, under section 8 of the NZ Classification Act. It can be sold in New Zealand with Australian or UK labels. If a game is unclassified, restricted (MA 15+, R 18+ or X 18+ in Australia or rated 12, 16 or 18 in the UK) or has been banned, the FVLB will refer it to the Classification Office for classification.³⁶³

Guidelines

Specific provisions of the NZ Classification Act provide guidance on determining the classification.³⁶⁴

Some online gaming services require official classification information to be displayed for New Zealand customers. If a game has not been previously classified in New Zealand it can be submitted to the FVLB.³⁶⁵ New Zealand is not a member of the IARC.

See Appendix 4 for the classification categories for games.

For a game to be classified at a restricted level, it must deal with at least one of the following: sex, horror, crime, cruelty, violence, highly offensive language or self-harm, degrading or demeaning conduct, or conduct that would be dangerous if imitated.

³⁶⁰ Classification Office, [Classification decision snapshots](#) (2020).

³⁶¹ Classification Office, [Featured classification decisions](#) (2020).

³⁶² Classification Office, [Classification enforcement, offences and penalties](#) (2020).

³⁶³ FVLB, [The Film & Video Labelling Body](#) (2011).

³⁶⁴ Refer to [Films, Videos and Publications Classification Act 1993](#).

³⁶⁵ Classification Office, [Films and games supplied online](#) (2020).

Consumer Information

Same as films, however, only required for restricted games. NZ does not provide any information regarding elements like online interactivity in their consumer advice.

Enforcement

Enforcement actions for compliance with computer games classifications are the same as those used for films.

Television Broadcasting

Classification of content broadcast on television is regulated separately and covered under the *NZ Broadcasting Act 1989*.³⁶⁶ Broadcasters classify content themselves using different classification categories and guidelines to those used by the Classification Office.

On 10 February 2020, the New Zealand Broadcasting Standards Authority announced the results of its review of timebands and classifications on free to air television, which included community research and extensive public consultation. From May 2020, the classification labels will change from General (G), Parental Guidance Required (PGR) and Adults Only (AO) to G, PG, M, 16 and 18. This is in line with the classification ratings for pay TV.³⁶⁷

The Netherlands

Films, video on demand and television broadcasting

Co-regulatory system

The Netherlands Institute for the Classification of Audio-visual Media (NICAM) is responsible for the coordination of the Kijkwijzer scheme, a classification system that informs parents and children whether a film or television program is harmful by providing age recommendations.³⁶⁸ NICAM was set up in close cooperation with the Dutch Government. It is a self-classification scheme where industry completes an online questionnaire to generate a classification and relevant consumer advice. The questionnaire was developed by a committee of academics and scientists based on scientific research and consumer research. It is annually reviewed, monitored and updated to reflect current attitudes, supported by NICAM's research with parents and children. The Kijkwijzer system has been licensed to Turkey, Iceland, Slovenia and Belgium.³⁶⁹

NICAM is funded half by government and half by industry. All organisations and companies affiliated to NICAM are obliged to classify their content in accordance to the Kijkwijzer rules. All video on demand providers in the Netherlands such as Netflix also use the scheme.³⁷⁰

Guidelines

Affiliated parties are obliged to comply with the provisions contained in the Kijkwijzer Regulations and the corresponding Manual for Kijkwijzer Rating Officers.³⁷¹

See Appendix 3 for the Kijkwijzer classification categories. The categories are based on scientific research on the potential impacts of specific content on children at certain stages of their cognitive development. An additional two ages, 14 and 18, were added to the existing Kijkwijzer classifications in January 2020.³⁷²

³⁶⁶ Refer to [Broadcasting Act 1989](#).

³⁶⁷ BSA, [Changes to free-to-air television timebands and classification labels](#) (2020).

³⁶⁸ Kijkwijzer, [NICAM](#) (2020).

³⁶⁹ NICAM, [Kijkwijzer](#) (2020).

³⁷⁰ Netflix, [How does Netflix decide the maturity rating on TV shows and movies?](#) (2020).

³⁷¹ [Kijkwijzer Regulations](#) (2020).

³⁷² Kijkwijzer, [Kijkwijzer renews and refines with more ages and more information](#) (2020).

The elements used for classification are violence, fear, sex, discrimination, drugs and/or alcohol abuse and coarse language. NICAM has advised that it also considers dangerous imitable behaviour, adult activities and psychological impact when assessing content, although they are not listed as separate elements.

Consumer Information

Kijkwijzer uses pictograms (violence, fear, sex, discrimination, drug and/or alcohol abuse and coarse language) to show the reason for the age recommendation. Generally, no more than three pictograms are used.

Enforcement

The Dutch Media Authority monitors compliance by regularly investigating and evaluating the functioning of the classification system. NICAM performs regular quality assessments of compliance with the Kijkwijzer Regulations. NICAM has an independent complaints committee. Breaches of rules risk sanctions which can result in a classification being amended or a fine.³⁷³

Under the Dutch Criminal Code, it is an offence to deliver, distribute or show a minor under the age of sixteen, content that is restricted to the age classification 16 years. Cinema operators and store fronts are covered by this law.³⁷⁴

Computer Games

The Netherlands uses the PEGI age rating system described in the section UK for computer games.³⁷⁵ See Appendix 4 for the PEGI classification categories.










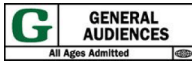


























Buro 240a (named after the article in law that regulates it) provides guidance and training for retailers in the Netherlands.

³⁷³ [Kijkwijzer Regulations](#) (2020).

³⁷⁴ [Kijkwijzer Legislation](#) (2020).















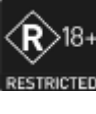














³⁷⁵ Kijkwijzer, [About PEGI](#) (2020).

Appendix 3 – International classification categories for films

	AUSTRALIA	UK	THE NETHERLANDS	USA	NEW ZEALAND
WHO CLASSIFIES	Government: Classification Board	Industry: British Board of Film Classification (BBFC) ³⁷⁶	Industry with Government oversight: Netherlands Institute for the Classification of Audio-visual Media (NICAM)	Industry: Classification and Rating Administration (CARA), part of the Motion Picture Association (MPA)	Government: Classification Office and the Film and Video Labelling Body (FVLB)
CATEGORIES: Advisory	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div> <div></div> <div></div>
Restricted unless accompanied	<div></div>	<div></div>	<div></div> <div></div>	<div></div>	<div></div> <div></div> <div></div>
Restricted	<div></div> <div></div>	<div></div> <div></div> <div></div>	<div></div> <div></div>	<div></div>	<div></div> <div></div> <div></div> <div></div> <div></div>

³⁷⁶ Note that 12 is 'video only' and 12A for 'cinema only'.

Appendix 4 – International classification categories for computer games

	AUSTRALIA	UK	THE NETHERLANDS	USA and CANADA	NEW ZEALAND
WHO CLASSIFIES (non-mobile games)	Government Classification Board	Industry using PEGI / BBFC (R18 only)	Industry using PEGI ³⁷⁷	ESRB raters (physical games); industry (digital games)	Government classifiers; AUS/UK unrestricted games receive the same rating in NZ
CATEGORIES: Advisory	  	 www.pegi.info  www.pegi.info	 www.pegi.info	   	 Suitable for General Audiences.  Parental Guidance Recommended for Younger Viewers.  Suitable for Mature Audiences 16 Years and over.
Restricted	 	 www.pegi.info  www.pegi.info  www.pegi.info	 www.pegi.info  www.pegi.info  www.pegi.info  www.pegi.info	 	 Restricted to persons 13 Years and over.  Restricted to persons 15 Years and over.  Restricted to persons 16 Years and over.  Restricted to persons 18 Years and over. 

³⁷⁷ The Dutch law that enforces the sale and display of media products, including games, to minors extends to 16. Technically, a 17-year-old can purchase a PEGI 18 product but in the covenant that retailers entered into, it is strongly advised to apply all the age categories.

Appendix 5 – International classifiable elements for films

Please note that jurisdictions take into account other content not indicated in the tick boxes below, as some content is captured under different elements across jurisdictions. For example, BBFC advised that even though ‘crime’ is not a distinct element in its Classification Guidelines, crime themes or depictions can be captured under ‘violence’ and ‘dangerous imitable behaviour’.

	AUSTRALIA	UK	NZ	THE NETHERLANDS	US	CANADA (Ontario) ³⁷⁸
Themes	✓				✓	
Violence/cruelty	✓	✓	✓ ³⁷⁹	✓	✓	✓
Sex	✓	✓	✓	✓	✓	✓
Language	✓	✓	✓ ³⁸⁰	✓	✓	✓
Drug use	✓	✓		✓	✓	✓
Nudity	✓	✓			✓	✓
Dangerous imitable behaviour ³⁸¹		✓	✓			
Discrimination		✓	✓ ³⁸²	✓		
Threat/fear/horror		✓	✓	✓		✓
Crime			✓			
Adult activities					✓	
Sensuality					✓	
Psychological impact						✓

³⁷⁸ Classification bodies in other Canadian provinces have long lists of standard ‘advisories’ but these do not appear to affect ratings and are very specific, e.g. Alberta’s 17 advisories include ‘Sexually Suggestive Scenes’ and ‘Sexual Content’.

³⁷⁹ Violence and cruelty are presented as separate elements under the NZ Classification Act.

³⁸⁰ While not under the five main criteria for classification, language that is ‘highly offensive to the public in general’ can lead to an age-restriction, if it is likely to cause serious harm to young people (under section 3A of the NZ Classification Act).

³⁸¹ Includes suicide, self-harm and other acts that would be dangerous if imitated. NZ also considers degrading and demeaning conduct under this category.

³⁸² While not under the five main criteria for classification, material can be restricted if there are representations of people who belong to a particular group, culture or community as inherently inferior due to a characteristic which is a prohibited grounds for discrimination (under section 3(3) of the NZ Classification Act).

Appendix 6 – International classifiable elements for computer games

Please note that jurisdictions take into account other content not indicated in the tick boxes below, as some content is captured under different elements across jurisdictions. For example, PEGI advised that although ‘dangerous imitable behaviour’ is not a separate content descriptor, these themes or depictions can be captured under ‘violence’ or ‘drug use’; similarly ESRB addresses crimes involving physical conflict under the element of ‘violence’.

	AUSTRALIAN CLASSIFICATION BOARD	IARC AUSTRALIA	PEGI ³⁸³	NZ	ESRB (US, CANADA)
Themes	✓	✓			
Violence	✓	✓	✓	✓ ³⁸⁴	✓
Sex	✓	✓	✓	✓	✓
Language	✓	✓	✓	✓	✓
Drug use	✓	✓	✓		✓
Nudity	✓	✓			✓
Dangerous imitable behaviour ³⁸⁵				✓ ³⁸⁶	
Discrimination			✓	✓	
Gambling ³⁸⁷			✓		✓
Threat/fear/horror			✓	✓	
Crime			✓ ³⁸⁸	✓	
Blood/gore					✓
Humour					✓

³⁸³ PEGI members include: The United Kingdom, the Netherlands, Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Moldavia, Montenegro, North Macedonia, Norway, Slovakia, Slovenia, Poland, Portugal, Romania, Serbia, Spain, Sweden and Switzerland.

³⁸⁴ Violence and cruelty are presented as separate elements under the NZ Classification Act.

³⁸⁵ Includes suicide, self-harm and other acts that would be dangerous if imitated. NZ also considers degrading and demeaning conduct under this category.

³⁸⁶ Material can be restricted if it contains self-harm, degrading or demeaning conduct, or conduct that would be dangerous if imitated.

³⁸⁷ Under the ESRB guidelines, simulated gambling i.e. without betting or wagering real cash is allowable for teens whereas real gambling i.e. involving real cash is restricted to adults. Under the PEGI guidelines gambling covers games of chance that are normally carried out in casinos or gambling halls or those that contain elements that encourage or teach gambling. These were allowable under PEGI 12, PEGI 16 and PEGI 18, but as of August 2020, this will be restricted to PEGI 18.

³⁸⁸ PEGI does not have a content descriptor for crime but has a criterion for “depicting/teaching of criminal techniques” under violence.

Interactive elements (do not affect ratings)

	AUSTRALIAN CLASSIFICATION BOARD	IARC AUSTRALIA	PEGI	NZ	ESRB (US, CANADA)
Online interactivity ³⁸⁹	✓	✓	✓		
In-game purchases	✓ ³⁹⁰	✓	✓		✓
Users interact					✓
Shares location					✓
Un-restricted internet					✓

³⁸⁹ 'Online interactivity' is a general statement used by the Board to encompass a range of online game features including user-to-user communication (texting or chat), media sharing via social media networks, user-generated content, sharing of user information and access to third-party websites. IARC gives all games with micro-transactions this consumer advice but the Board does not.

³⁹⁰ In 2019 the Board began to apply consumer advice of 'in-game purchases' where the Board considers that the game contains the ability to use real-world money to purchase downloadable content including randomised items found in loot boxes.

Appendix 7 – Comparative tables for classifiable elements (for films and games)

Themes

	Films Guidelines	Computer Games Guidelines
G	The treatment of themes should have a very low sense of threat or menace, and be justified by context.	The treatment of themes should have a very low sense of threat or menace, and be justified by context.
PG	The treatment of themes should generally have a low sense of threat or menace and be justified by context.	The treatment of themes should generally have a low sense of threat or menace and be justified by context.
M	The treatment of themes may have a moderate sense of threat or menace, if justified by context.	The treatment of themes may have a moderate sense of threat or menace, if justified by context.
MA 15+	The treatment of strong themes should be justified by context.	The treatment of strong themes should be justified by context.
R 18+	There are virtually no restrictions on the treatment of themes.	There are virtually no restrictions on the treatment of themes.

Violence

	Films Guidelines	Computer Games Guidelines
G	Violence should have only a low sense of threat or menace, and be justified by context. Sexual violence is not permitted.	Violence should have only a low sense of threat or menace, and be justified by context. Sexual violence, implied or otherwise, is not permitted.
PG	Violence should be mild and infrequent, and be justified by context. Sexual violence is not permitted.	Violence should be mild and infrequent, and be justified by context. Sexual violence, implied or otherwise, is not permitted.
M	Moderate violence is permitted, if justified by context. Sexual violence should be very limited and justified by context.	Moderate violence is permitted, if justified by context. Sexual violence, implied or otherwise, is not permitted
MA 15+	Violence should be justified by context. Sexual violence may be implied, if justified by context.	Violence should be justified by context. Strong and realistic violence should not be frequent or unduly repetitive. Sexual violence, implied or otherwise, is not permitted.

	Films Guidelines	Computer Games Guidelines
R 18+	<p>Violence is permitted.</p> <p>Sexual violence may be implied, if justified by context.</p>	<p>Violence is permitted. High impact violence that is, in context, frequently gratuitous, exploitative and offensive to a reasonable adult will not be permitted.</p> <p>Actual sexual violence is not permitted.</p> <p>Implied sexual violence that is visually depicted, interactive, not justified by context or related to incentives or rewards is not permitted.</p>

Sex

	Films Guidelines	Computer Games Guidelines
G	Sexual activity should be very mild and very discreetly implied, and be justified by context.	<p>Sexual activity should be very mild and very discreetly implied, and be justified by context.</p> <p>Sexual activity must not be related to incentives or rewards.</p>
PG	Sexual activity should be mild and discreetly implied, and be justified by context.	<p>Sexual activity should be mild and discreetly implied, and be justified by context.</p> <p>Sexual activity must not be related to incentives or rewards.</p>
M	Sexual activity should be discreetly implied, if justified by context.	<p>Sexual activity should be discreetly implied, if justified by context.</p> <p>Sexual activity must not be related to incentives or rewards.</p>
MA 15+	Sexual activity may be implied.	<p>Sexual activity may be implied.</p> <p>Sexual activity must not be related to incentives or rewards.</p>
R 18+	Sexual activity may be realistically simulated. The general rule is “simulation, yes – the real thing, no”.	<p>Depictions of actual sexual activity are not permitted.</p> <p>Depictions of simulated sexual activity may be permitted.</p> <p>Depictions of simulated sexual activity that are explicit and realistic are not permitted.</p>

Language

	Films Guidelines	Computer Games Guidelines
G	Coarse language should be very mild and infrequent , and be justified by context.	Coarse language should be very mild and infrequent , and be justified by context.
PG	Coarse language should be mild and infrequent , and be justified by context.	Coarse language should be mild and infrequent , and be justified by context.
M	Coarse language may be used. Aggressive or strong coarse language should be infrequent and justified by context.	Coarse language may be used. Aggressive or strong coarse language should be infrequent, justified by context, and not gratuitous, exploitative or offensive.
MA 15+	Strong coarse language may be used. Aggressive or very strong coarse language should be infrequent.	Strong coarse language may be used. Aggressive or strong coarse language should be infrequent, and not exploitative or offensive.
R 18+	There are virtually no restrictions on language.	There are virtually no restrictions on language.

Drug use

	Films Guidelines	Computer Games Guidelines
G	Drug use should be implied only very discreetly, and be justified by context.	Drug use should be implied only very discreetly, and be justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.
PG	Drug use should be justified by context.	Drug use should be infrequent and justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.
M	Drug use should be justified by context.	Drug use should be justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.

	Films Guidelines	Computer Games Guidelines
MA 15+	Drug use should be justified by context.	<p>Drug use should be justified by context.</p> <p>Drug use related to incentives or rewards is not permitted.</p> <p>Interactive illicit or proscribed drug use is not permitted.</p>
R 18+	Drug use is permitted.	<p>Drug use is permitted.</p> <p>Drug use related to incentives and rewards is not permitted.</p> <p>Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.</p>

Nudity

	Films Guidelines	Computer Games Guidelines
G	Nudity should be justified by context.	<p>Nudity should be infrequent and justified by context.</p> <p>Nudity must not be related to incentives or rewards.</p>
PG	Nudity should be justified by context.	<p>Nudity should be infrequent and justified by context.</p> <p>Nudity must not be related to incentives or rewards.</p>
M	Nudity should be justified by context.	<p>Nudity should be justified by context.</p> <p>Nudity must not be related to incentives or rewards.</p>
MA 15+	Nudity should be justified by context.	<p>Nudity should be justified by context.</p> <p>Nudity must not be related to incentives or rewards.</p>
R 18+	Nudity is permitted.	Nudity is permitted.