



Review of Australian classification regulation

January 2020





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Current arrangements

Classification helps Australian consumers make informed decisions about content and helps parents and carers protect their children from inappropriate content.

National Classification Scheme

The National Classification Scheme sets out the regulatory framework for classifying films (including episodic series)¹ not broadcast on television; computer games; and certain publications. It is a cooperative scheme between the Australian Government and the states and territories, where 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 a classification Act² enforced by state and territory police or fair trading bodies.

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. Over the last 15 years, the Board has classified 5,172 items per year on average.³ The Board and the Review Board's services are partially cost recovered from fees charged to industry.⁴

The Board and the Review Board must make classification decisions using the Classification Act, the National Classification Code (the Code) and the:

Guidelines for the Classification of Films (the Films Guidelines) or

Guidelines for the Classification of Computer Games (the Computer Games Guidelines) or

Guidelines for the Classification of Publications (the Publications Guidelines).

The same classification categories apply to both films and computer games (with the exception of X 18+ which only applies to films). However, there are some differences between the Films Guidelines and the Computer Games Guidelines in relation to what is permitted in each category.

When a film or game is classified, it is given a classification rating and consumer advice (for example, 'high impact horror violence', 'sexual references', 'strong coarse language'). Consumer advice is separate to the Code and the Guidelines and can be determined by the Board.

The definition of 'film' and 'computer game' in the Classification Act applies to online films and games. In 2014, the Classification Act was amended to enable the Minister to approve classification tools. Tools can be used to classify content in a cost-effective and timely manner, providing a solution to classifying large volumes of online content. Two industry self-classification tools have been approved – the International Age Rating Coalition (IARC) tool for online and mobile games (on participating storefronts) and the Netflix tool, explained at Appendix 2. The algorithm of the IARC and the Netflix tools generate classifications that are broadly consistent with the Board's decisions, based on the current Computer Games Guidelines and Films Guidelines respectively. If the Guidelines are updated

¹The 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.'

²Links to state and territory legislation are available at www.classification.gov.au/about-us/legislation.

³Classification Board Annual Reports are available at www.classification.gov.au/about-us/corporate-reporting/annual-reports.

⁴Fees are published in the Classification (Publications, Films and Computer Games) Regulations 2005.

following this review, the algorithms of the IARC and Netflix tools will be updated accordingly to reflect the new Guidelines.

More information about the classification process, Board statistics and the National Classification Database of classification decisions are available at www.classification.gov.au.

Television classification

The National Classification Scheme does not apply to broadcasting services. The Broadcasting Services Act 1992 (BSA) provides for certain radio and television industry groups, including those representing free-to-air and subscription broadcasters, to develop industry codes of practice and specifies issues that such codes may relate to. One of the specified issues is methods for classifying programs that reflect community standards. In developing these classification methods, the BSA requires broadcasters to consider community attitudes to a range of matters, which broadly reflect the classifiable elements of themes, violence, sex, language, drug use and nudity.⁵ The Australian Communications and Media Authority (ACMA) is required to register a code of practice in line with obligations set by the BSA.⁶ The Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service Corporation (SBS) are required by their enabling legislation to develop their own codes of practice and notify these to the ACMA. To manage the enormous volume of content on television, broadcasters can classify content themselves using staff classifiers.

Purpose of the consultation

Part 1 focuses on updating the criteria used to classify films, episodic series and computer games. On 28 June 2019, the Council of Attorneys-General agreed to a review of the Films Guidelines, the Computer Games Guidelines and the Code. The Films Guidelines were last reviewed in 2002 and the Code and the Computer Games Guidelines were last reviewed ahead of the R 18+ category being introduced for computer games in 2013. It is important to review these so they continue to reflect contemporary Australian community standards and are clear, accessible and informative.

Part 2 focuses on redesigning current classification laws so classification processes suit a modern content market and provide quality classification information for consumers. The media market has significantly changed since the National Classification Scheme was enacted in 1995, and the current system was not designed to manage media convergence or the large volumes of content now available via streaming services, online game storefronts and other professionally produced content platforms. In the current content market, there are varying levels of compliance with existing classification laws. 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) which 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.’⁷ It made 57 recommendations, some of which were implemented in a first tranche of reforms.⁸

2012 – a review of Australia’s media and communications policy framework (the Convergence review) was conducted concurrently with the ALRC review. It found that classification had evolved into a

⁵Sub-section 123(3) of the BSA.

⁶Sub-section 123(4) of the BSA.

⁷Australian Law Reform Commission (ALRC), *Classification: Content Regulation and Convergent Media* (2012), page 22.

⁸ALRC, *Classification review implementation*, 2013.

complex set of parallel and sometimes overlapping systems and it endorsed the findings of the ALRC review.⁹

2017 – the Department’s ACMA review recommended that ‘the Department will undertake further work on the potential to expand the ACMA’s remit to include the functions of the Classification Board and the Classification Review Board.’¹⁰

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, suggesting that the involvement of the Board should not be necessary to determine whether such content is harmful. The review also suggested 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 standards are currently used in the Online Content Scheme).¹¹ Information on the Department’s work to progress this review is on the following page.

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).¹²

This consultation process builds on past reviews to inform the development of a modern classification framework. Since the ALRC review, there have been significant technological and market changes as well as regulatory changes, including the establishment of the eSafety Commissioner in 2015 and changes to the Classification Act to enable the introduction of classification tools to generate decisions for classifiable content. It is timely to seek stakeholder and community views on classification to reflect a modern content market.

This review is one component of reform work being undertaken as part of the Government’s response to the ACCC’s Digital Platforms Inquiry. The Government response and regulatory roadmap is available at www.treasury.gov.au/publication/p2019-41708.

Please note that the following issues are out of scope and comments on these issues cannot be considered:

The types of films, TV series and games being produced, for example the level of violence in films, TV series or games being produced. While the content permissible in each classification category and access to this content are within scope, the type of content that is produced is a decision for content producers.

Merchandise for films and computer games, for example figurines available at food outlets and toy stores.

⁹Convergence Review Committee, *Convergence review final report* (2012), pages 39–47.

¹⁰Department of Communications and the Arts, *Review of the ACMA—Final Report* (2016), pages 43–45.

¹¹Lynelle Briggs AO (prepared for the Commonwealth of Australia), *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) p15-16.

¹²ACCC, *Digital Platforms Inquiry final report* (2019), page 199.

Advertising in general, for example on television, catchup TV, games and in cinemas. Advertising for classifiable content such as film and game trailers and posters are within the scope.

Specific time zones in which classified content is shown on broadcast television.

News, current affairs and sports broadcast on television.

Quotas for the production of Australian content and regulatory arrangements for programs broadcast on commercial free-to-air television for children of school age (C) and for preschool children (P).¹³

Part 10 of the Classification Act, which is the responsibility of the Minister for Indigenous Australians.

Submitting your comments

Before you comment

Current consultation on a new Online Safety Act

To complement this review of classification regulation, the Government is also developing a new Online Safety Act, informed by the Statutory Review of the Enhancing Online Safety Act 2015 and Schedules 5 and 7 to the BSA (Online Content Scheme). On 11 December 2019, the Department launched a consultation seeking feedback on proposals for a new Online Safety Act to improve Australia's online safety regulatory framework. One of these proposals includes empowering the eSafety Commissioner to determine if particular online content is harmful enough to require takedown action, rather than using the existing and more time-consuming Board process.

A public consultation process is currently in place to inform development of the new Online Safety Act. Information about this consultation process and how to make a submission is available at www.communications.gov.au/have-your-say/consultation-new-online-safety-act.

The development of a new Online Safety Act covers cyberbullying, image-based abuse and other online issues of concern. If your concerns are not specifically related to classification, you may consider providing a submission to inform the development of a new Online Safety Act. Submissions are due by 19 February 2020.

Community research reports

You may find the following research reports on www.classification.gov.au useful when considering the questions in this paper. These reports reflect qualitative or quantitative research conducted or commissioned by the Department to better understand Australian community behaviours, views and expectations on classification.

Community standards and media content: research with the general public (DoCA, 2016)

¹³Commercial broadcasters of free-to-air TV must meet certain quotas for the number of hours of C and P programs. C and P classifications are given to programs that meet strict suitability criteria from the Children's Television Standards, under subsection 122 (1) of the BSA. Among other things, suitability criteria includes that the program is: well produced using sufficient resources to ensure a high standard of script, cast, direction, editing, shooting, sound and other production elements; and enhances the understanding and experience of Australian children of school age (for C) or Australian preschool children (for P). All C and P programs are classified by the ACMA before being broadcast on free-to-air television. More information is at: www.acma.gov.au/childrens-tv-programs

Classification usage and attitudes research (DoCA, 2016)

Computer games content research (Where to Research Based Consulting, 2018)

Classification survey report: findings on loot boxes and simulated gambling in games (DoCA, 2018).¹⁴

How to submit comments

The Department invites submissions by **19 February 2020, 17.00 AEDT**.

Submissions should be lodged via the submission form on the Department's website at www.communications.gov.au/have-your-say.

Please provide your name, organisation (if relevant) and contact details along with your submission. The Department will not consider submissions without verifiable contact details.

If you have any questions about the submission process or cannot submit your comments through the online form, please email consultation@classification.gov.au or post your submission to:

Director, Policy and Research, Classification Branch

Department of Communications and the Arts

Locked Bag 3

Haymarket NSW 1240

Submissions will be treated as non-confidential information and may be made publicly available on the Department's website, unless you specifically request that your submission, or a part of your submission, is kept confidential. Please note that if the Department makes a submission or part of a submission publicly available, the respondent's name will be included. You should clearly indicate when submitting your comments if you do not wish your name to be included in anything that the Department may publish relating to the consultation.

The Department reserves the right not to publish a submission, or any part of a submission, at its absolute discretion. The Department will not enter into any correspondence with respondents in relation to any decisions not to publish a submission in whole or in part. The Department is subject to the *Freedom of Information Act 1982* and may be required to disclose submissions in response to requests made under that Act.

The *Privacy Act 1988* (Privacy Act) establishes certain principles regarding the collection, use and disclosure of information about individuals. Any personal information respondents provide to the Department through submissions will be used for purposes related to considering issues raised in this paper, in accordance with the Privacy Act.

¹⁴Separate to the Department's research on loot boxes, in 2018 the Senate Environment and Communications References Committee held an inquiry on 'Gaming micro-transactions for chance-based items'. Stakeholder submissions, the Committee's report and the Government response are available at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Gamingmicro-transactions/Report

What happens next

The independent expert leading the review, Mr Neville Stevens AO, and the Department may consult further with stakeholders as needed. After submissions are analysed, Mr Stevens will present a report to the Minister for Communications, Cyber Safety and the Arts for consideration.

Under an intergovernmental agreement, all Commonwealth, state and territory classification Ministers must *unanimously* agree to any amended Code, Films Guidelines and Computer Games Guidelines. This will be considered through the Council of Attorneys-General process.

Part 1: Classification categories and standards for films and computer games

National Classification Scheme

Films (including episodic series) not broadcast on television, computer games and submittable publications are classified using: the Code; either the Films Guidelines, the Computer Games Guidelines or the Publications Guidelines (collectively, the Guidelines); and the Classification Act.

The Code outlines four classification 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 depictions that condone or incite violence, particularly sexual violence, and the portrayal of persons in a demeaning manner.

The Code also broadly outlines the type of content permissible and age recommendations or restrictions for the classification categories. Refer to Appendix 1 to read the full Code.

The Guidelines assist panel members of the Board to apply the criteria in the Code and describe the content permissible in each classification category in more detail based on the context and impact of six classifiable elements: themes, violence, sex, language, drug use and nudity.

Section 11 of the Classification Act requires the Board to consider matters including community standards, the nature of the content and whether it has any artistic or educational value, and who the intended audience is. Section 9A deals with the classification of terrorist material. Refer to Appendix 1.

Broadcasting codes of practice

Under broadcasting codes of practice, Free TV Australia (Free TV), the Australian Subscription Television and Radio Association (ASTRA), ABC and SBS each use their own classification guidelines¹⁵ 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 material that may be unsuitable for them.

¹⁵ Links to codes of practice are at: www.acma.gov.au/industry-codes-practice.

These guidelines share some similarities with each other and the Films Guidelines used in the National Classification Scheme. For example, all use the classification symbols G, PG, M and MA 15+ and the classifiable elements of themes, violence, sex, language, drug use and nudity. However, the guidelines are not identical – for example, ‘suicide’ and ‘dangerous imitable activity’ are separate classifiable elements in Free TV’s code of practice.







Please take the time to read the current Code, the Films Guidelines, the Computer Games Guidelines, the relevant sections of the Classification Act, and the broadcasting codes of practice. Links are in Appendix 1.

The following questions relate to the classification of films and computer games only. Changes to the Publications Guidelines will depend on the broader approach to regulation of publications discussed in Part 2 of this paper.

1. Classification categories

Table 1 shows the classification categories for films and computer games and the impact levels.

Table 1. Classification categories and impact level

Symbol	Classification description	Impact level
	General	Very mild
	Parental Guidance – Parental guidance recommended for people under 15	Mild
	Mature – Recommended for mature audiences 15 years and over	Moderate
	Mature Accompanied – Not suitable for people under 15. People under 15 must be accompanied by a parent or adult guardian	Strong
	R 18+ – Restricted to adults 18 and over	High
	X 18+ – For films that contain sexually explicit activity between consenting adults (Film only)	N/A
No symbol	Refused Classification – prohibited	N/A

Legal restrictions for MA 15+, R 18+, X 18+ and Refused Classification content are set out in state and territory classification laws. For example, people under 18 years old are not permitted to see an R 18+ film in a cinema or buy an R 18+ computer game or film. People under 15 years old are not permitted to see a MA 15+ film in a cinema or buy a MA 15+ game or film unless accompanied by a parent or adult guardian (adult in Queensland). Depending on the state or territory, X 18+ content is either

legally restricted to adults or it is prohibited. The sale, exhibition and advertising of Refused Classification content is prohibited in all states and territories.

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 the SBS similarly only allow content up to MA 15+ to be broadcast. Codes of practice from these broadcasters set out time zones so that content in certain classifications can only be shown at particular times of the day.

Subscription television broadcasters (e.g. Foxtel) are currently prohibited from broadcasting R 18+ programs as a condition of their licence under the BSA,¹⁶ and only subscription narrowcast services may show R 18+ content (access to which must be restricted by an appropriate disabling device as required in their code of practice). Subscription television customers can disable certain levels of classified content using their subscription television equipment. ASTRA's codes of practice for subscription broadcasters and narrowcasters reflect relevant requirements in the BSA.

Under the Online Content Scheme in Schedules 5 and 7 to the BSA, the eSafety Commissioner may investigate complaints about online content classified (or with a substantial likelihood of being classified) Refused Classification and X 18+, or content classified (or with a substantial likelihood of being classified) MA 15+ and R 18+ where access is not subject to a restricted access system.¹⁷ In addition, online services have their own parental controls or age restriction features.

1) Are the classification categories for films and computer games still appropriate and useful? If not, how should they change? The Classification of Films is fine but the Classification of games needs to be held at the same standard instead of picking and choosing favourites of what applies to the rules

2. Classifiable elements

a) Themes

'Themes' includes social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown, racism and other forms of discrimination. 'Themes' also covers the level of threat and menace in a film or game, as well as horror content and supernatural content.

'Themes' can also include depictions of gambling and simulated gambling games (for example, casinostyle games where the player cannot cash out winnings).

2a) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'themes' reflect community standards and concerns? Do they need to change in any particular classification category or overall? Are 'themes' understood and is there sufficient guidance on what they mean? I believe the Themes are Understood

b) Violence

'Violence' includes acts of violence (such as punching, kicking, torture, and use of weapons such as guns and knives), the threat of violence (such as pointing guns), or the effects of violence (ranging from cuts and bruises to gory blood and injury detail). Violence can be depicted on-screen or implied offscreen.

¹⁶BSA, Schedule 2, Paragraph 10(1)(g)

¹⁷BSA, Schedule 7, clause 21. Only certain MA 15+ content is prohibited under the BSA, including content that: is not comprised of text and/or still images and is provided on payment of a fee and is provided for a profit, or is provided by a mobile premium service.

‘Violence’ also includes sexual violence, which covers sexual assault or aggression in which the victim does not consent.

2b) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to ‘violence’ reflect community standards and concerns? Do they need to be changed in any particular classification category or overall? Yes Violence in Games is always treated more harshly in games then in other media they should be held to the same stander you would a film

c) Sex

‘Sex’ includes sexual activity at different impact levels. It may be implied, simulated or explicit (actual) depending on the classification level. ‘Sex’ also includes sexual references, which can be verbal or visual.

2c) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to ‘sex’ reflect community standards and concerns? Do they need to be changed in any particular classification category or overall? Yes it needs to be change I have never heard of a film being refused to be classifided over a sex scene while games have been refused and forced to change over them

d) Language

‘Language’ covers coarse language (ranging from very mild words to more impactful swear words). The impact of coarse language depends on the type of word, the frequency of coarse language, and the context of how the word is used (such as if it is used in an aggressive or threatening manner).

2d) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to ‘language’ reflect community standards and concerns? Do they need to be changed in any particular classification category or overall? Language has always been fine

e) Drug use

‘Drug use’ includes depictions of the use of proscribed (illegal) drugs as well as references to drugs. Drug use can be shown or implied. ‘Drug use’ does not include smoking or use of alcohol, nor does it cover abuse of prescription or over-the-counter medication. Depictions of smoking, alcohol dependency and misuse of medication may be covered under ‘themes’ (for example, depictions of underage drinking or binge drinking).

2e) Do the provisions in the Code, the Films Guidelines and the Computer Games Guidelines relating to ‘drug use’ reflect community standards and concerns? Do they need to be changed in any particular classification category or overall? Drug has always been a problem in games with the australain classification board if drug use is in a game its not for kids witch means it should be in MA15 or R18 not refused classification and forced to change if you cant trust a parent to read the sticker on the box how are you trusting them to vote

f) Nudity

Nudity is exposure of parts of the body, such as breasts, buttocks or genitalia. Nudity may or may not be sexual in nature.

2f) Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to ‘nudity’ reflect community standards and concerns? Do they need to be changed in any particular classification category or overall? Nudity has also been a problem with the classification board banning games for just a little side boob or implied nudity while letting movies fly by you cant play favourites

3. Other comments

The Films Guidelines and the Computer Games Guidelines outline three essential principles to be used when making a classification decision. These are: the importance of context; the six classifiable elements; and assessing impact using a hierarchy of very mild (G), mild (PG), moderate (M), strong (MA 15+), high (R 18+) and very high (RC).

3a) What aspects of the current Code, Films Guidelines or Computer Games Guidelines are working well and should be maintained?i believe the code is working well for child and teen titles but its utterly failing when it comes to mature and adult titles

3b) Are there other issues that the Code, the Films Guidelines and/or the Computer Games Guidelines need to take into account or are there any other aspects that need to change? Hold everything to the same standered if its ok in a film it should be ok in a game if you cant trust an adult with a piece of entertainment aimed at them how can you truastr them to vote

Part 2: Modernising classification legislation

4. Content to be classified

Under the National Classification Scheme, all films and computer games must be classified before they are made available in Australia, unless they are exempt. Film and computer game exemptions are listed in the Classification Act¹⁸ and are available at www.classification.gov.au.

Films

The definition of ‘film’ in the Classification Act is broad¹⁹ and technically covers all content online apart from online games and online advertisements. This definition covers content such as websites and videos on YouTube and similar sites. The ALRC review noted this issue in the context of online platforms such as YouTube and discussed possible definitions for content that should be classified and not classified.²⁰ There is a need to clarify the definition of ‘film’ so that industry has clearer obligations about what must be classified, as it is impractical that virtually all online content must be classified in the same manner.

In addition to classification laws, there are online safety laws to manage harmful online content. Under the Online Content Scheme in Schedules 5 and 7 to the BSA, one of the eSafety Commissioner’s roles is to investigate prohibited and potentially prohibited content online, including content on YouTube, social media, and on websites. The eSafety Commissioner may investigate complaints about content classified (or with a substantial likelihood of being classified) Refused Classification and X 18+, or content classified (or with a substantial likelihood of being classified) MA 15+ and R 18+ where access

¹⁸Refer to Part 1A of the Classification Act.

¹⁹Refer to s 5 of the Classification Act: ‘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’.

²⁰ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 6.

is not subject to a restricted access system.²¹ The 2018 Statutory Review of the Enhancing Online Safety Act 2015 recommended that, instead of assessing online material using classification guidelines for film, a new ‘harm standard’ be introduced. This standard would be determined by the eSafety Commissioner, who would also be empowered to make classifications.²² This would in effect separate the standards applied to, and regulatory oversight of, potentially harmful content on websites and social media from the classification scheme applied to film.

Reflecting community expectations for classifiable content that would be G to R 18+, it is proposed that a future definition of classifiable film content should cover the following professional and commercial formats made available in Australia, unless the film content is exempt from classification:

films in cinemas

films and episodic series on physical media (DVD and Blu-ray)

films and episodic series broadcast on television and related online catch-up TV services
(e.g. ABC iView, SBS on Demand, TenPlay, 9Now, 7plus)

Commercial video-on-demand services (e.g. Netflix, Stan, Amazon Prime Video, Disney+, Apple TV+)

Films and episodic series on digital storefronts (e.g. Apple iTunes, Google Play).

Computer games

The definition of ‘computer game’ in the Classification Act covers physical boxed games and online games.²³ The ALRC review recommended the new regulator approve industry codes for voluntary classification of games that would be likely to be G to M and meet certain other criteria.²⁴ Since the 2012 ALRC review, the introduction of the IARC tool in 2015 has enabled large volumes of games to be classified effectively across all classification categories. In light of this development, it is proposed that all computer games made available in Australia continue to be classified apart from exempt ones, using the same categories as for film (with the exception of X 18+).

Certain publications to be restricted to adults

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. Nearly all commercial publications submitted to the Board are sexually explicit magazines. The Board applies the Publications Guidelines that outline the standards for violence, sex, nudity, coarse language, adult themes and drug use across four categories: Unrestricted, Category 1 restricted, Category 2 restricted and Refused Classification.

The volume of publications being submitted to the Board has significantly declined as content has moved online. In the late 1990s the Board classified nearly 2,000 publications per year. In contrast, the

²¹BSA, Schedule 7, clause 21.

²²Lynelle Briggs AO (prepared for tfapdishe Commonwealth of Australia), 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) p16.

²³Refer to s 5A of the Classification Act.

²⁴ALRC, *Classification: Content Regulation and Convergent Media* (2012), recommendation 6-4.

Board classified 42 publications in 2016–17, 31 publications in 2017–18, and 29 publications in 2018–19.²⁵ This is expected to decline with the closure of more magazine titles in 2020.²⁶

The ALRC review recommended that adult magazines need not be classified but if industry wished to classify publications they could do so. The ALRC recommended that the new regulator could approve industry codes that provide for the voluntary classification and marking of content that is not required to be classified, and the regulator should encourage the development of such a code for magazines likely to warrant restriction to adults.²⁷

4) Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified? games tv movies and streamed shows all held to the standard of the code

5. Applying the same classification standards across delivery formats

As described previously, classification decision-making standards for films and episodic series vary depending on whether they are broadcast on television or not. The Convergence Review noted that ‘content-specific, platform-specific and provider-specific rules are inconsistent, confusing and inflexible’.²⁸ The ALRC review recommended ‘a single set of statutory classification categories and criteria applicable to all media content’.²⁹

5) Should the same classification guidelines for classifiable content apply across all delivery formats (e.g. television, cinema, DVD and Blu-ray, video on demand, computer games)? Yes it should

6. Classification processes

Classification processes are currently fragmented across content platforms:

Television broadcasters can self-classify content under a co-regulatory system administered by the ACMA.

Netflix can self-classify content using the Netflix tool, with monitoring by the Board (Appendix 2).

Films and episodic series on DVD and Blu-Ray, in cinemas, and online streaming services apart from Netflix must be classified by the Board for a fee.

Example: 600-minute series on DVD, Blu-ray or a video on demand service: the application cost is \$2530 and under statutory timeframes it can take up to 20 working days for a classification decision. An additional fee of \$420 can be paid for priority processing for a classification decision to be made within five working days.

Example: 125-minute film in cinemas: the application cost is \$2760 and under statutory timeframes it can take up to 20 working days for a classification decision.

²⁵ Classification Board Annual Reports are available at www.classification.gov.au/about-us/corporate-reporting/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 2 years. Notwithstanding the introduction of serial classification, there has been a decline in publications being submitted for classification.

²⁶ The Guardian, Softcore magazines The Picture and People to Close Amid Sale Ban and Falling Circulation, 23 October 2019.

²⁷ ALRC, *Classification: Content Regulation and Convergent Media* (2012), recommendation 6-4. The ALRC recommended this for publications likely to be classified R 18+ or X 18+, as the ALRC suggested changing the classification categories for publications.

²⁸ Department of Broadband, Communications and the Digital Economy, *Convergence review final report* (2012), page 40.

²⁹ ALRC, *Classification: Content Regulation and Convergent Media* (2012), Recommendation 5-2.

Review of a decision: If an applicant does not agree with the classification decision by the Board, a review by the Review Board costs \$10,000 unless the fee is waived.

Physical boxed games must be classified by the Board for a fee (\$430–\$2460 depending on the amount of work required by the Board or whether the game is demonstrated to the Board) and under statutory timeframes it can take up to 20 working days for a classification decision. An additional fee of \$420 can be paid for priority processing for a classification decision to be made within 5 working days.

Games that are online-only can be self-classified by the game developer or publisher using the IARC tool (see Appendix 2).

There is regulatory overlap when the same content is broadcast on television and made available in other formats. For example, if an episodic series is first shown on TV, it is classified by the broadcaster, and then when it is made available on DVD or an online streaming service it must be classified by the Board. This can be time-consuming and costly for industry and potentially confusing for consumers if the classification rating and consumer advice is different across platforms.

The ALRC review noted that it would be impossible for the Board to classify everything available to consumers due to the large quantities of content online.³⁰ The ALRC review recommended that a Board be maintained to classify cinema releases and video games likely to be rated MA 15+ and above, and all other content may be classified by trained authorised industry classifiers. Under the ALRC's proposed model, industry could still choose to use the Board for the content that would not be required to be classified by the Board,³¹ such as DVDs and video games likely to be M and below. Views are sought on how relevant the ALRC's recommendation is in light of market changes and the introduction of classification tools.

Consistent with the ACCC's Digital Platforms Inquiry final report, there is an opportunity for a new classification framework to enable industry to self-classify content across all platforms, overseen by an Australian Government regulator. Under this possible model, television broadcasters could continue to selfclassify content under their codes of practice. All other industry sectors could use either trained staff classifiers (similar to television broadcasters) or classification tools approved by the Minister or the new regulator (IARC tool, Netflix tool, and future classification tools). The regulator would be responsible for robust monitoring practices so that classification decisions accurately reflect the classification guidelines and are consistent across platforms.

Depending on the overall regulatory model, the design of a new classification framework will need to take into account further issues including: the specific role of the regulator (including any possible enforcement role) and/or the contemporary role of the Board; who makes decisions about Refused Classification (prohibited) content offline; and the funding model.

6) Consistent with the current broadcasting model, could all classifiable content be classified by industry, either using Government-approved classification tools or trained staff classifiers, with oversight by a single Government regulator? Are there other opportunities to harmonise the regulatory framework for classification? That's a bit of a loaded question the industry should have the option to self regulate but there needs to be some oversight from the government so it doesn't run wild

³⁰ ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 12, page 285.

³¹ ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 7, page 148.

7. Reviews of classification decisions

Under the National Classification Scheme, classification decisions can be reviewed by the Review Board, an independent statutory body separate to the Board that convenes as needed. A review application may only be made by specified people³² and costs \$10,000 unless the fee has been waived. Reviews are infrequent – from the period of July 2014 to June 2018, the Review Board conducted a total of 14 reviews of the Board's 16,981 decisions, resulting in a change of classification for 11 of the decisions.³³ The Review Board can also review decisions originally made using the IARC or Netflix tools that the Board has already checked. Information about the Review Board's members, decisions and its Annual Reports can be found at www.classification.gov.au.

The ALRC review found that 'a criticism of the current review arrangements is that the cost of reviews is too high' (\$10,000 per review) as most Review Board members travel to Sydney from across Australia to participate in a review. The ALRC recommended that a classification review function could reside within the Board to streamline the review process by using Board members with experience in classification, simplify administrative arrangements and provide for potentially quicker review turnaround times. However, it also noted that some stakeholder submissions argued that the Board would be unable to independently review its own decisions – the primary concerns being the potential for bias and conflict of interest.³⁴

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. Consumer complaints about a classification decision on television can be directed to the broadcaster in the first instance and then the ACMA if needed. The ACMA can investigate complaints about classification decisions of content broadcast on television.³⁵ Seven classification-related complaints were made to the ACMA for investigation in 2018–19. These arrangements could continue in a new classification framework.

For content currently being classified using the Board and classification tools, it is timely to seek views on the most appropriate body and process to conduct reviews of classification decisions. Possible review mechanisms could include:

Moving the functions of the Review Board into the Board, as proposed by the ALRC.

Moving the functions of the Review Board into the new regulator.

A separate body to conduct reviews of classification decisions.

If an industry self-classification model is to be part of a future classification framework, it is worth noting that any review of classification decisions would be *in addition* to quality assurance processes conducted by a Government regulator or independent statutory body (for example, if a content distributor does not agree with a classification rating after it was checked and changed by the Government regulator or independent statutory body).

7) If a classification decision needs to be reviewed, who should review it in a new regulatory framework? Moving the functions of the Review Board into the new regulator

³²The 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 s 42 of the Classification Act.

³³Classification Board and Classification Review Board Annual Reports 2014–15, 2015–16, 2016–17, 2017–18, 2018–19, available at www.classification.gov.au/about-us/corporate-reporting/annual-reports.

³⁴ALRC, *Classification: Content Regulation and Convergent Media* (2012), paragraphs 7.130 to 7.147.

³⁵ACMA and the Office of the eSafety Commissioner Annual Report 2018–19, Appendix 5.

8. Classification governance

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. When the National Classification Scheme was established in 1995, the Commonwealth and the state and territory Ministers responsible for classification signed an intergovernmental agreement outlining governance arrangements.³⁶

The ALRC's 2012 review noted that there are 'significant differences in enforcement and penalty provisions between states and territories' and penalties for similar offences can vary significantly across each state and territory.³⁷ One inconsistency the ALRC noted is the regulation of content classified X 18+, which is prohibited online but may be sold as a DVD in the ACT and parts of the NT.³⁸

The ALRC review recommended replacing the current co-operative scheme with a Commonwealth-only scheme.³⁹ It also considered that a new classification framework should not need to include additional mandatory provisions for advertisements for classifiable films, games and publications.⁴⁰ Instead, it recommended that advertising codes administered by Ad Standards should be amended to provide that, in assessing the suitability of an advertisement of media content, the following matters should be considered: the likely audience of the advertisement; the impact of the content in the advertisement and the classification or likely classification of the advertised content.⁴¹

Since the ALRC review, there has been a continued increase in the consumption of entertainment content online. In 2018, the digital sales of games increased by 39 per cent,⁴² while physical retail sales of games have remained relatively steady over the last six years.⁴³ Although sales of DVDs and Blurays have declined, the physical retail market generated \$520 million in 2018.⁴⁴ For cinema, the total Australian box office and admissions are steady with an increase of 3.6 per cent and 5.6 per cent respectively in 2018 compared to the year prior.⁴⁵

In the context of market developments and the ACCC's Digital Platforms Inquiry, it is timely to ask whether the states and territories should continue to maintain regulatory responsibility for the sale, advertising, exhibition and hire of classifiable content in the offline world (e.g. cinemas, adult shops, DVD and game retailers) with the Australian Government responsible for enforcement of classifiable content online.

Any changes to the regulation of the availability and access to classifiable content would need to be considered by the states and territories. Views on the current scheme in this regard will inform any possible reforms.

³⁶Available at www.classification.gov.au/about-us/legislation.

³⁷ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 16, page 356.

³⁸ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 16, page 360.

³⁹ALRC, *Classification: Content Regulation and Convergent Media* (2012), chapter 15, page 341-352.

⁴⁰ALRC, *Classification: Content Regulation and Convergent Media* (2012), paragraph 8.79.

⁴¹ALRC, *Classification: Content Regulation and Convergent Media* (2012), recommendation 8-5.

⁴²IGEA, *Aussies love for video games continue to grow* (2019).

⁴³Jeffrey E. Brand, Jan Jervis, Patrice M. Huggins & Tyler W. Wilson, *Digital Australia 2020: The Power of Games* (2019), slide 61.

⁴⁴AHEDA, *2018 Yearbook* (2018), chapter 2, page 48.

⁴⁵Screen Australia, *Cinema industry trends* (2019).

8) Is the current co-operative scheme between the Australian Government and the states and territories fit for purpose in a modern content environment? If not, how should it be changed? it is slow and takes forever to get anything done

9. Other comments

9) Are there other issues that a new classification regulatory framework needs to take into account? Making sure everything is held to the same standard and not playing favourites on what follows the rules and what breaks the rules



Appendix 1 – Current legislation

The National Classification Code

www.legislation.gov.au/Details/F2013C00006

Guidelines for the Classification of Films

www.legislation.gov.au/Details/F2012L02541

Guidelines for the Classification of Computer Games

www.legislation.gov.au/Details/F2012L01934

Guidelines for the Classification of Publications

www.legislation.gov.au/Details/F2008C00129

Classification (Publications, Films and Computer Games) Act 1995

www.legislation.gov.au/Series/C2004A04863

Particular sections of relevance in the Classification Act:

Section 9 Classification in accordance with the Code

Subject to section 9A, publications, films and computer games are to be classified in accordance with the Code and the classification guidelines.

Section 9A Refused Classification for publications, films or computer games that advocate terrorist acts

Section 9A defines the meaning of ‘advocates the doing of a terrorist act’ and outlines that a publication, film or computer game that advocates the doing of a terrorist act must be Refused Classification.

Section 11 Matters to be considered in classification

The matters to be taken into account in making a decision on the classification of a publication, a film or a computer game include:

- (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.

Codes of Practice for ABC, SBS, commercial and subscription broadcasters

Available at www.acma.gov.au/industry-codes-practice.

Appendix 2 – Classification tools: IARC tool and Netflix tool

To manage the classification of the enormous volumes of online games and films in today's market, legislative changes were made in 2015 to enable the Australian Government Minister responsible for classification to approve the use of classification tools. Two classification tools have been approved so far.

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. IARC developed a global classification questionnaire tool that enables game developers to classify online and mobile games 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 comprises the following:

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 consumer advice for the game, which are displayed on the online storefront and are also searchable 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. Further information about the IARC tool is available at www.globalratings.com.

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. The Netflix tool makes it faster and easier for content on Netflix to be classified before it is made available to Australian consumers. Australia is the first country in the world to use the Netflix tool to generate official classification ratings.

The Netflix tool process comprises the following:

1. An algorithm developed by Netflix uses its ‘tagging’ technology (that makes personal recommendations for subscribers) and converts this information into Australian classifications.
2. Australian classification decisions are published on the Netflix interface and the National Classification Database at www.classification.gov.au.
3. The Department monitors and checks decisions made by the Netflix tool. The Board has the power to revoke and replace a decision made using the Netflix tool.

In 2018–19, the Netflix tool was used to classify 1,923 items of content available on Netflix in Australia.