



26 February 2020

By email: [REDACTED]

SUBMISSION TO THE REVIEW OF THE NATIONAL CLASSIFICATION SYSTEM

Thank you for the opportunity to provide a submission to the review of the National Classification System.

The Australian Council on Children and the Media (ACCM) is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia), AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

ACCM's core activities include the collection and review of research and information about the impact of media use on children's development, and advocacy for the needs and interests of children in relation to media use.

This submission has been written by our President, Professor Elizabeth Handsley, and our Hon CEO, Barbara Biggins OAM, in consultation with Dr Wayne Warburton of Macquarie University. Our comments in response to the questions in the discussion paper are set out below.

Introduction: ACCM's platform and experience

The Australian Council on Children and the Media (ACCM) welcomes the opportunity to participate in this review of the National Classification System. As the peak body representing children's and families' interests in relation to media use, we have a longstanding engagement with the NCS and its operation, and a consequent awareness of its limitations. Our Honorary CEO, Barbara Biggins, is a former Convenor of the Classification Review Board, and our President, Professor Elizabeth Handsley, has participated in numerous semi-formal discussions with policy officers from the

Promoting healthy choices and stronger voices in children's media

Australian Council on Children and the Media

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Classification Branch regarding current issues. One outcome of such a consultation was ACCM's successful opposition to suggested changes to the rules for advertising unclassified cinema films. (Decision by Minister Fifield 6/11/2017)

ACCM has also participated in previous reviews of the NCS, including the Australian Law Reform Commission review, to which we made two submissions. We went on record with our disappointment at that review and the resulting report, and particularly with the way it overlooked the needs and interests of the child audience. For example, the Advisory Committee for that review included no member who could represent the interests of younger children (but it did include a number of industry representatives). We note that the Discussion Paper for this review refers frequently to that report, and in this submission we attempt to correct some of the biases that risk resulting from such reliance.

This submission, like all of ACCM's contributions to public debate, is informed by international norms relating to the rights of the child and by child development knowledge.

The submission also relies on ACCM's experience in providing a child development-based movie review service to parents for the past 18 years, and, for 5 years, an app review service, both of which supplement the NCS. This experience, combined with ACCM's surveys of parents' and carers' views about the usefulness of the NCS, and of ACCM's reviews, give us a unique insight into the benefits and shortcomings of the NCS. (See Appendices 1a and 1b)

Relevant Rights of the Child

The UN Convention on the Rights of the Child (CROC) has been ratified by all members of the United Nations except the US, the highest level of acceptance of any international agreement. It is also very widely accepted in Australian public discourse as representing an appropriate set of principles for government to follow when making decisions about children. The UN Committee on the Rights of the Child monitors how countries are meeting their obligations under the CRC and its Optional Protocols, and requires the government of each country, including Australia, to make five-yearly reports on how children are faring and what it is doing to protect children's rights. The National Children's Commissioner coordinates the preparation of those reports in Australia.

The provisions of article 17, in particular, can and should guide the development of classification policy. That article provides:

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 29 provides, in relevant part:

- 1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.

Article 13 reads as follows:

- 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
- 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

And article 18 states, in relevant part:

- 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
- 2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

From the above formal statements of Australia's international obligations, we draw the following propositions relevant to content classification:

1. Some media content is of 'social and cultural benefit' to children, but some is 'injurious to [their] well-being'. We note that the NCS currently recognises the latter proposition, with the inclusion in the *National Classification Code's* statement of principles of a reference to protecting minors from 'material likely to harm or disturb them' (s 1).¹
2. Children's freedom to access content can appropriately be limited for the sake of 'public health or morals'.
3. The government is obliged to support parents in guiding their children's media use, and in particular in maximising their access to beneficial content and protecting them from injurious content.

Overview of ACCM submission

ACCM supports the NCS as a means of fulfilling that obligation, but we also consider that it could do so a good deal more effectively. In this submission we make reference to numerous specific measures that could serve that end, but here we state a few broad propositions that inform our views on such measures.

First, the statement of principles referred to above refers, understandably, both to the protection of children from harm and to offensive content and community concerns. In our observation, these latter concepts (offensiveness and community concerns) tend to dominate discussions of the NCS at all levels, such that the matter of harm to children gets overlooked. With respect, the Discussion Paper for this review is a prime example of that tendency: it refers persistently to community views and concerns, with little or no reference to the question of harm.

In one sense this is understandable: a community consultation should aim to find out what community concerns are, and the community is not made up of experts on what is harmful to children. However, ACCM puts the case in this submission as to why it is important to retain and enhance the protective aspect of the NCS, and how best to do so.

Second, 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. Ideally ACCM would like to see this principle built into the NCS throughout, for example in any statements of principle and also in requirements that experts in that research be involved in the development and application of any rules or guidelines.

Third, there are two broad areas where evidence of a risk of harm to children from media use is apparent: media that models violent and antisocial behaviour, and media with scary content. We differentiate between these not just because the two categories represent distinct experiences –

¹ In this submission, unless the contrary intention appears, we use 'harm' and derivative words to include disturbance to children.

what is violent/antisocial is not necessarily scary, and vice-versa – but because research into the two categories has been carried out separately. The NCS should also recognise them as distinct categories.

Fourth, and following on from the third point, it is important to recognise the forms that harm to children can take. It is not limited to something like moral corruption – in fact we question whether such a concept should not be relegated to the ‘offensiveness’ side of the ledger – but it includes matters such as desensitisation to violence, the development of undesirable attitudes to violence (for example that it is an appropriate way of resolving conflict), the development of exaggerated concerns about being a victim of violence, sleep disturbances, the development of unnecessary fears and anxieties; and the acceptance of stereotypes. These harms are not insignificant and can be long lasting. It would be appropriate for the NCS to include a formal definition of harm that includes these matters, to ensure that relevant knowledge is brought to bear in decision-making under the scheme.

Fifth, classification does not just protect individual children and families, it protects the public interest. In keeping with the aphorism that ‘it takes a village to raise a child’, the whole community has an interest in children growing up happy, healthy and well-balanced. Consuming violent/antisocial content might make the average child only slightly less sensitive to violence, for example, but if it is widespread, this risks having a detrimental impact on attitudes in the community as a whole. This dimension of classification does not seem to be widely understood, but we hope that this review will bear it in mind.

Sixth, support for parents need not be limited to assistance with decisions about individual films or games. Overall, the process of engaging with a classification system can educate parents broadly as to why media content matters, and what kinds of content are problematic. The knowledge gained can empower parents in relation to other media experiences, that escape the classification net for whatever reason. The NCS should aim to achieve this.

Seventh, an age-based classification scheme should recognise that child development is not simply a linear progression of becoming less sensitive to content. Rather, children at different developmental stages are scared or upset by different things, in line with growing cognitive capability and the understandings that come with a growing capacity for abstract thought. Younger children are more frightened of the obvious characteristics of what they see, without understanding the nuances that may influence the meaning of those characteristics (for example being frightened of a scary looking person on a screen that an adult would also recognise as having a good heart and not being scary). Older children are less scared of things they know can’t possibly be real, but can, through abstract thinking, imagine ways that something they see on a screen could impact them (for example a school shooting or bushfire in a setting that looks familiar to them may make them afraid of something similar happening in their own school or home).

Further, brain development has distinct stages that are relevant. Younger children take in and lay down neurally almost everything they experience with little filter; older children tend to lay down mostly what they focus on. Children from primary school on start to lose neural connections they don’t use, with this process of neural pruning being very active in the teenage years, but at the same time the laying down of patterns and learning in their associative neural network becomes more

enduring. Thus young children are likely to encode many things that adults would see as irrelevant or uninteresting to children, and older children are likely to lay down more enduring neural patterns and pathways from what they learn. Indeed, the very eminent neuroscientist, Jay Giedd, the Chief of Brain Imaging at the Child Psychiatry branch of the US National Institute for Mental health, and a seminal researcher of child/teen brain development over time, noted that ‘If an adolescent is doing music, sports or academics, those are the connections that will be hard wired. If they’re lying on the couch or playing video games or watching MTV, those are the cells and connections that are going to survive’, and was reported by Strauch (2003) as noting (with others) that ‘Adolescence may be one of the worst times to expose a brain to drugs and alcohol or even a steady dose of violent video games’.

Overall, classification should be based on a sound understanding of child and adolescent development and likely impacts of certain media at particular stages.

More specifically in this submission ACCM argues for:

- an age-based classification system (with The Netherlands’ Kijkwijzer system as a model);
- a new element of horror/Scariness be introduced and be separate from Violence;
- the continuation of separate guidelines for films and for games, with the additional classification elements for games to cover their different risks (such as gambling);
- the application of one set of classification categories (symbols) to a wide range of film and interactive content;
- the use of automated systems only if the embedded classification system is evidence-based and capable of operating with objective judgements; and
- the establishment of a Classification Office to oversee and evaluate a national system, receive all complaints about, and perform reviews of, classification decisions.

Responses to questions in Discussion Paper

1) Are the classification categories for films and computer games still appropriate and useful? If not, how should they change?

ACCM submits that the only appropriate and useful classification categories would be those based on ages and stages of child development. Our research and discussion with experts have led us to conclude that the most appropriate categories would be G (all), 5+, 9+, 12+, 16+, 18+.

The current system uses only the ages of 15 and 18. ACCM takes issue especially with the use of the former age as it has no basis in child development – that is, it does not mark a particular stage. In addition to the expert views on which our submission is based, we can point to evidence of a substantial concern in the community that the current PG and M classifications are too broad, and do not assist parents in choosing content, especially for pre-teen children. (See Appendix 1a)

ACCM acknowledges that children develop at different rates and reach milestones at different ages, but there is nothing unusual in our legal system about having clear age cut-offs based on a population-wide prediction about when people are ready for a certain activity eg driving, voting,

drinking alcohol. The classification system would be no less justified in making such predictions, especially considering that some of the classifications would be advisory only.

As to the advisory/compulsory divide, ACCM submits that compulsion should apply at a younger age than 15 (as it currently does). This issue is most pronounced at the M level, where content is not recommended for those under 15 years. This allows children of all ages (and often as young as 3 or 4) to view the material, and such children are ex hypothesi ill-equipped to cope with very violent or scary images that perhaps a mature 13 or 14 year old could. It also allows children to put substantial pressure on parents to go against their instincts when it comes to media choices. Legal force could be more effective both in signalling problematic content to parents and in supporting them in making appropriate choices. It is notable that the British and Netherlands systems have legal force attached to the 12 category.

ACCM also acknowledges that the ideal system we are proposing would involve one more category than the current one (six, compared to five). (We note here that The Netherlands with 5 categories of ages has recently added 2 more). (Kijkwijzer 2020). In view of other planned changes (with which we agree), such as a move to an automated system, this should have only a minor impact on the running of the system. There would be one more set of criteria to program into the system, but after that the difference would be felt only in the event of a review and these would hopefully be rare. In our submission this would be a small price to pay for a sound and appropriate set of classifications, that can provide real and evidence-based support for parents in accordance with article 18 of the CROC.

A model for the system we are proposing is provided by the Netherlands' system, known as *Kijkwijzer* (Watch Wiser). We attach information about that system (Appendix 2), noting in particular the following:

- It was established and is overseen by a scientific committee, with regular reviews
- It has been well-supported by parents and the general community since 2000
- It accommodates more classifications than the current NCS
- It has been adopted also by Belgium (Kijkwijzer 2020)

The PEGI system for games, used in Europe and by the UK, is modelled on *Kijkwijzer*, and provides another example of a well-supported, scientifically-based classification system. (see Appendix 3)

2. Classifiable elements

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?

As a general proposition, the nebulous concept of 'themes' should be omitted from the system. From the point of view of children's needs and rights, most themes can be dealt with, provided their treatment is not likely to scare or disturb; or result in violence; or show approved use of problematic or harmful behaviours such as drug use or gambling. In all of these cases, specific categories would or should come into play. Themes like the death of a parent could come under scary/disturbing

content; racism and discrimination, which could be of significance from the point of view of the matters listed in article 29 (1)(b) and (d) of the CROC, should be a separate category.

If the element of themes is to be retained in the system, its role should be more constrained. It should be limited to the themes developed as part of the storyline such as family breakup, coping with a death, or divorce, or losses from gambling, but not include (approved) depictions of problematic or harmful behaviours. Parents using ACCM's age-based review system for movies have expressed their views as to which elements they find useful or would like added. (Appendix 1b)

The list of themes provided in the Discussion Paper covers some matters that could be of significance from the point of view of child development or children's rights, but without guidance as to how such matters are to be operationalised in the classification process, it is not possible to say that their inclusion as an element helps to avoid harm to children. For example, racism as a theme is not something from which children need protection generally, but that changes if the content is actually racist. In other words there is a need to be more explicit in how the 'themes' are calibrated, and this in turn needs to be informed by knowledge of child development.

At the same time, there are matters that are broadly recognised as being inappropriate for children, one example being gambling, as mentioned in the Discussion Paper. In our submission it is insufficient simply to list these as themes; again there should be specific guidelines to address them.

Nor should 'themes' be used to address matters of treatment and tone such as horror. Rather in keeping with the evidence such should be part of a separate element covering scary material. This would ensure that such matters are addressed in decision-making, whereas otherwise it is possible to overlook them, or give them insufficient weight. We note that parents think it is particularly important to include horror/ scariness as an element. (Appendix 1b)

Similarly, the 'Themes' category should not be used to consider supernatural or fantasy content, which is more effectively considered under 'scary' or 'violence' as the impact of such content may differ from a child development perspective.

ACCM also notes that the Discussion Paper lists 'the level of threat or menace' as part of the 'themes' element, and submits that this makes little sense. Rather this should be part of how other elements are calibrated.

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?

In keeping with the observations made above, ACCM submits that violence should be a major focus of the classification system, and it should be calibrated according to research findings about the kinds of content that are more and less likely to influence viewers' thoughts, attitudes and behaviours. (Summarised in Plante et al 2020) Broadly, there are three risks associated with consumption of violent content:

- (1) Desensitisation to violence, including developing a belief that it is an appropriate way of resolving conflict
- (2) Development of a 'mean and scary' view of the world, or exaggerated fears about the risk of violence from others
- (3) Increasing the risk of using aggression to solve conflict

It is important for classification policy to acknowledge all of these risks, and not only the last one, which seems to be where most attention is focussed in public discussion.

Also, as indicated, the guidelines should incorporate matters shown to be relevant to the likely impact of violent content. We attach an unpublished paper by Elizabeth Handsley and Wayne Warburton (Appendix 6) demonstrating that the Review Board's decisions, at least, appear to have been at times misguided on that score. For example, they have tended to downgrade the classification of 'superhero violence' whereas the research would suggest that such glamorised violence by an attractive character who is rewarded for the behaviour actually presents a *stronger* concern than other kinds might. The system we advocate, being based on research evidence, would have such matters in alignment.

As the Discussion Paper refers specifically to 'the effects of violence' we note that research would suggest these need to be considered specifically, and that one should not necessarily assume that depiction of effects should always lead to a higher classification.

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?

ACCM notes that the present criteria for 'Sex' specify only 'sexual activity' (and whether it is implied or real, and if implied whether discreetly or not.). We also note that the Discussion Paper states that the issues considered under this heading also include visual and verbal references.

ACCM considers the present issues taken into account are entirely inadequate in an environment where children are frequently exposed to sexualised behaviour and the trappings of sexuality, in a way that implies that children need to adopt these.

The concept of 'visual sexual references' should encompass words, symbols, acts and practices (eg styles of dress) that have sexual overtones in our culture even though they are not explicitly sexual themselves so that such matters are included as classifiable elements. Exposing children to the trappings of sexuality has been a matter of concern in recent years, and it has been directly addressed by the American Psychological Association, among others. In a 2007 report, the APA identified harms from such content ranging from 'body dissatisfaction, depression, and lower self-esteem' to 'cognitive diminishment', as well as the belief that physical appearance rather than academic or extracurricular achievement is the best path to power and acceptance'. The report also states that 'girls' relationships with boys and men are affected in that exposure to sexualizing and objectifying media has been shown to relate to girls' and boys' views on dating, boys' sexual harassment of girls, and attitudes toward sexual violence'. (American Psychological Association 2007)

It is worth noting that such depictions often go hand-in-hand with objectification of women, which in turn has been linked to family violence.

While there have been steps taken (ostensibly) to protect children from such matters in advertising, there is no reason not to address them in films and especially games.

For further well-supported discussion of these issues, ACCM commends and supports the submission of Collective Shout, which we have read in draft.

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 is not a significant concern from the point of view of child development or the rights of the child. It may be that certain uses of language in content could lead children to believe that such uses are appropriate, when they are not. In the interests of children's social development, it is appropriate to include this element, calibrated to reflect children's growing awareness of acceptable uses of language. However such calibration would not follow levels of 'impact': even low-impact language could be highly inappropriate for a child to use in some situations, and a film or game that provided strong encouragement to use it should be classified to indicate unsuitability for children of that age. Frequency of use would be a significant factor in this connection.

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?

ACCM questions the omission of tobacco and alcohol from the category of 'drugs', considering that these are the substances that cause the greatest harm in our society. Taking the analytical standpoint of protecting children from developmental harm, the concern has to be one of avoiding exposure to depictions that could raise a risk that children would see their use as an appropriate choice. Again, the risk of this is the greatest with legal drugs that children are likely to see being used in their day to day life. Such exposure should not be compounded by approving exposure to depictions in films and games, where children have not gained sufficient maturity to take a critical standpoint in response.

The above observations show it would be desirable – and we believe it would be possible – to calibrate this element for different ages and stages. We note, for example, that Kijkwijzer limits content to 16 and up if hard drug use or excessive alcohol use is shown in a favourable light.

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?

Again we start with the question of what the risk is to children's development or rights from exposure to depictions of nudity. The issues are whether the nudity is non-sexual (eg breastfeeding, sun bathing) or sexualised, and whether it piques children's sexual curiosity.

It seems more appropriate for the element of nudity to be considered in the category of sex.

3. Other comments

3a) What aspects of the current Code, Films Guidelines or Computer Games Guidelines are working well and should be maintained?

Overall, in spite of its shortcomings, the NCS makes good on its promise to balance between adults' freedoms and protecting children. We believe that the explicit statement of both these principles in a way that sets up that balancing process is a strength at the core of the scheme, and it could even be built on more effectively.

It is a strength of the NCS that it has universal coverage in some fields eg in cinemas, and it at least forms a model for other platforms eg TV? The fact it is picked up by IARC and Netflix is a further strength and we would not want to see these links lost or weakened.

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?

- a) **The elements:** ACCM believes that there is a strong case for revising the elements used in assessing film and game classifications. The recommended changes differ in some respects between films and games.

For both:

Feedback from ACCM's surveys of parents which indicate strong support for elements such as violence, and for additional elements such as scary content and smoking. (See Appendix 1b)

ACCM recommends that:

- **Themes** be dropped as an element (see above)
- **Violence** must remain, and include non-consensual sexual acts
- **Fear/Horror/scary/disturbing content** be added: should include images, sounds, effects, music or themes that are frightening or threatening; images of suffering, injuries and mutilation; themes or depictions of suicide.
- **Sex** should be expanded to explicitly include 'visual and verbal sexual references', 'sexualised depictions', nudity, in addition to 'Sexual activity'. Issues such as objectification of women could be included under this category – though the category should perhaps be renamed to more accurately reflect concerns related to potential for harm and breach of children's rights, and not just the avoidance of offence on moral grounds.
- **Drugs** should include excessive alcohol drinking and tobacco use
- **Language** should remain
- **Discrimination** (human rights and minorities) should be added to cover content which approves racial, gender, sexual and religious discrimination. Such an element could be an alternative way of picking up the objectification concerns mentioned above in relation to the element of 'sex', and would also cover such matters as racial vilification and belittling of people with disability. Such a category could work consistently with the rest of the

classification scheme, not to ban content unless there is very good reason to do so, but rather to signal to parents (and others) the presence of certain kinds of content and messages. Such an element would be consistent with Australia's obligations under article 17, as elaborated in article 29.

- **Product placement:** could be an added element, to address concerns about the ethics of marketing to children. These are well accepted in advertising regulation, and if advertising crosses over into films and other content there is no less need to limit children's exposure.

The above set should apply both to films and to games.

Additional elements for games:

Games raise extra concerns which require three extra elements

- **Gambling:** this should include both overt gambling for real money, and games that include simulated gambling behaviour such as 'loot boxes'
- **Internet connectivity**
- **In-game purchasing**

All are matters that can be linked back to potential harm to children, potential breaches of their rights, and the obligation to support parents in managing their children's media use.

- b) The hierarchy of impact of the classification categories** (very mild, mild, moderate, strong and high): these are not helpful because impact is a subjective assessment mostly made from an adult perspective. Impact on children will depend on their age and stage of development. Read in isolation from the guidelines, the word 'moderate' could be interpreted quite differently from person to person, and ditto 'mild' and 'very mild'.

The hierarchy has very little practical value to the parent choosing films or games for their children.

- c) Consumer advice lines:** The current NCS includes the provision of 'consumer advice lines' which are designed to give film and game consumers more information about the main reason(s) for the item's classification eg 'moderate violence'. As above (b), 'moderate' has many interpretations. What is much more useful to parents is Kijkwijzer's combination of an age recommendation plus a highly recognisable symbol representing the element(s) that caused the classification. (See Appendix 2)

d) The advertising of films and games

This issue has many facets and warrants careful consideration in this review. Films and games can be and are advertised on the internet, commercial TV, in cinemas, on billboards, well as in press ads. The forms of advertising that cause most concern are advertising using trailers and billboards.

The first issue is the selection of images used to promote, in particular, violent and/or scary film, the second, the approval processes for putting those images into cinemas, on TV, and public spaces where children have every right to be; and thirdly the display of the classification symbol (especially on TV).

In cinemas: these trailers, presumably compiled by distributors of the films, can be shown only with a feature of the same or a higher classification than the film being promoted. If that film has yet to be classified, present policy allows the film to be promoted with a 'Check the Classification' symbol providing that the cinema operator ensures that that film's likely classification meets these requirements. ACCM's experience and data collection show that close to 30% of times, these requirements are not met with CTC films involved in most instances. (See Appendix 4). This shows a policy failure, and ACCM recommends that the advertising of yet to be classified films cease until better safeguards are introduced.

On free to air TV: Changes to free-to-air TV codes in recent years have permitted trailers on forthcoming M and MA15+ films to be shown earlier in the evening, and in programs of a lower classification. The latter is permitted provided that the content of the trailer itself is no higher than that of the program. In ACCM's experience, and further illustrated by examination of the Advertising Standards Bureau Case reports, (Appendix 5) the content of trailers has been the subject of ongoing complaints that the impact of the trailers did in fact exceed the classification level of the program. This is clearly indicated in the case of horror films (see Appendix 5).

The points at issue are a) that 'toned down trailers' mislead audiences as to the true nature of the film; b) the process by which the trailers are classified (by Clearads of FreeTV) as suitable for the program in which they are shown leads to errors; and c) the placement of the classification symbols within the trailers (displayed in a way that is not clear and conspicuous).

In regard to b) these trailers are 30 to 60 seconds long, and will of course include the most attention-grabbing images from the film, often in a disjointed fashion. The images have little or no context within the trailer, and factors such as frequency have little relevance. This renders the film guidelines with their reliance on context and frequency useless to assess the impact of a trailer. For example the inclusion of impactful violent images in a 'PG content' trailer for a violent M or MA15+ film is considered acceptable as they are in the 'context' of advertising a violent film. This represents a fundamental misuse of the concept of 'context' and the term should be clarified and defined in such a way as to prevent it.

ACCM recommends a reconsideration of the use of the film guidelines to classify film trailers.

On billboards: Again the advertising of horror movies using scary images has led to the posting of such images in public places where children and parents are unable to avoid seeing them. (see Appendix 5 item 5)

The role of the Advertising Standards Community Panel in hearing complaints about ads (trailers) for films should be reviewed. The Community Panel has no particular expertise in the use of the film classification guidelines, nor in the impact of such trailers on children. Complaints about such trailers should be heard (in a new system) by the Classification Office, as should all complaints about classification-related matters.

4. Content to be classified

4) Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?

Broadly, ACCM supports the classification of film content as specified in the Discussion Paper. However, we add the following comments.

From a child development and rights perspective, the answer to this question should be, any content that is being promoted to children, or to which they are likely to be exposed. However ACCM acknowledges the realities of the large amounts of content being produced and disseminated in the modern media environment, and the practical difficulties associated with catching it all in the classification net. Clearly there is a need to strike a balance between achieving the goals of the system and efficient allocation of resources.

Having said that, ACCM adheres to the view that such a balance should weigh the matters just mentioned: whether (and how strongly) material is promoted to children and whether they are likely (and if so how likely) to be exposed to it. These are mentioned in preference to things that many people seem to assume are relevant, such as the producer's intent or the nature of the brand or franchise with which content is associated.

ACCM also notes the apparent approach of the ALRC review, to assume that lower-level content has less need to be caught in the classification net than higher-level content has. Such an assumption may well be justified if the primary (or only) goal of the system is to avoid offence. From a child development and rights perspective, however, lower-level material has no less need of classification, indeed the need may be greater. As previous discussion makes clear, our primary concern is to ensure that the classification system distinguishes properly between appropriate content for children of different ages (under 5, 5-8 and so on). It follows naturally from this that we see classification of lower-end content as highly important.

The question of which content is subject to classification can also be approached along the lines of sources of content, or platforms for its distribution. We trust that there is no need explain why cinema release content, content sold in physical formats (such as DVDs) and content broadcast on free-to-air or subscription television, should continue to be classified. Similarly, if content on streaming services is currently classified according to Australian categories and criteria, it should continue to be so.

5. Applying the same classification standards across delivery formats

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)?

We take 'Guidelines' to consist of the classification categories (and their associated symbols), the elements that are reviewed to determine a classification, and the criteria used in making that assessment.

Consistency in the use of the same system of categories and symbols across all classified media is beneficial to consumer understanding and use. This does not necessarily mean, however, that the elements and/or criteria used to determine classification levels need to be or should be the same.

In Australia, the categories and elements for both films and computer games are presently the same, but the criteria are different, as they should be, given the different nature of the experiences. The guidelines for games were changed, as we had argued was necessary (particularly for the criteria for MA15+), in 2012, at the time when the R18+ category was adopted. Unfortunately the changes ultimately made are lacking in cogency and clarity, but we still support the concept of differentiating between films and games, and in particular the inclusion of additional elements for games, for two principal reasons.

First, there are good reasons to think that interactive experiences have a greater capacity to influence a consumer's thoughts, feelings and attitudes – or in other words, to do harm. Theoretical learning models establish clearly that we learn better by doing than by watching (Lieberman (2006), and this is reason enough to take a precautionary approach when it comes to interactive games. There are also brain imaging studies showing that interactive media have a stronger effect than passively consumed media. (Katryri, Jari et al (2013))

Second, games raise a number of distinct issues and risks that are not present in films: dangers of grooming and bullying between players, in-game purchases, gambling and gambling-like content (Australia. Senate. 2018). These need to be thought through in developing a classification system, and there may well be reasons to have elements in place to address some or all of them. This is particularly the case if we bear in mind the role of the classification system in supporting parents, who need to avoid such undesirable content no less than depictions of violence, etc.

The second proviso relates to the fact that the risks to children associated with certain content might well vary depending on the context in which they encounter it. For example, watching a movie on television at home is not as powerful an experience as watching that same movie on a large screen, in a dark cinema, with booming speakers, surrounded by strangers. Therefore there may be a justification for variations that take such differences into account.

In responding to this question we also distinguish between the guidelines to be applied and the consequences of particular classifications that result from application of the guidelines. A current example to illustrate this distinction is the fact that R18+ content can be shown in cinemas and sold in DVD form but is not allowed on free-to-air television. The guidelines might be the same, or similar, for all three formats, but the practical conclusion from the classification reached differs between the two. Our answer that we support uniform categories and symbols across formats should not be read as implying we see no place for variations of this kind. In fact we support them.

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?

As a general proposition, ACCM little difficulty with the prospect of an automated classification system, such as Kijkwijzer. We have two main points to make in relation to the general prospect.

The first is that such a system can only be as good as the criteria and guidelines on which it is based, and automation makes it all the more important to get these right. This is for two interrelated reasons: first, a rigid automated system cannot exercise any kind of softening discretion to correct flaws in the criteria at the application stage. Second, an automated system cannot deal with matters of subjective judgment. Therefore the criteria that it applies must be objective. Basing the criteria on published research should have that effect, as the research itself would be reporting on quantifiable, objective phenomena.

The second point is that it is equally important to get the oversight and monitoring process right. We understand, for example, that the checking of the IARC system in the pilot project was all done by one person, whereas normally classification would be shared between a number of classifiers. To compare the classification process with research again, most research would test out a protocol with a number of research assistants to see if produces mostly equivalent results before being used. Equivalent processes should be adopted alongside any automated classification system, to ensure that the process embedded in the vehicle is capable of producing equivalent results on multiple applications.

The use of one government approved, evidence-based classification system for films (and all similar material), and a second for games (and other interactive content), across all platforms, would greatly increase consistency, and should increase consumer satisfaction with the processes.

All persons who classify content should be trained by a government-funded Classification Office, and advised by that Office in difficult classification decisions. All complaints related to classification matters in any medium should be received directly by, and assessed by, that Office.

7) Reviews of classification decisions

Options

- 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.

7) If a classification decision needs to be reviewed, who should review it in a new regulatory framework?

It is extremely important for the review system, including the reviewers, to be independent of the original process. The only way to ensure this is to have a separate body with separate personnel. It might be thought that such independence can be achieved at the level of individual decisions, by ensuring that the people responsible for the original decision do not participate in the review of that decision. However this does not account for the risk that reviewers will be inhibited by the fact the

original decision-maker is a colleague, with whom they have to work every day. Even a risk of such a dynamic would undermine independence.

As to the three options set out in the Discussion Paper, we oppose the first for the above reasons.

It seems unlikely there will be a new regulator, but if there is, the same reasons apply and there should still be a dedicated review section with separate personnel.

The third option is the best adapted to achieving what is needed. The establishment of a new Classification Office would fulfill that function.

Based on our substantial experience of dealing with a range of regulators, ACCM is firmly of the view that a dedicated Classification Office is the best way of ensuring that disputes about classification are resolved efficiently and expeditiously. If classification is added onto the responsibilities of a body that deals with other matters, it tends to be overshadowed by those matters, and we have found that the responses come later and are less cogent than the ones we receive from other bodies.

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?

Under the current arrangement, the National Classification Code, and any guidelines, are agreed on by the States, the Territories and the Commonwealth; a Commonwealth agency applies those rules to arrive at a classification; and then the consequences of the classifications are determined by the government in each jurisdiction. This is why, for example, X18+ films are legally available in some jurisdictions and not in others.

ACCM does not see any particular problem with this arrangement. Certainly the cooperative agreement makes it more complicated to change the Code or the guidelines, but in our view the debate and compromise required are not a bad thing. Moreover, the experience with R18+ games shows that it is not impossible to secure significant change, and that much can be achieved with strong leadership from the Commonwealth. Indeed, requiring the Commonwealth to justify its plans to the States and Territories is a model that could usefully be introduced in other policy areas.

It might be possible to say that the system is not 'fit for purpose in a modern content environment' if such an environment inherently required quicker decision-making and ease of change. However it does not. The modern environment contains massive amounts of content, and we have acknowledged that automation could be indicated simply to enable the system to keep up. However that is a very different proposition from saying that the system for setting the rules needs to change. Children's needs and rights do not change any faster simply because technology is changing fast and platforms are proliferating. Getting the rules right means that they should stay right for the foreseeable future.

Having said all of that, ACCM would be in favour of an inbuilt review mechanism to enable the system to keep up with developments in research. We feel confident that under such a mechanism, it would not be an issue to secure state and territory signoff on changes that were recommended to keep the system consistent with the evidence. If there were any doubt about this, a redesigned system could include a provision to bypass the usual cooperative processes where such proposed changes meet certain criteria.

Nor does ACCM see any difficulty with the fact that the consequences of classification vary from one jurisdiction to another. It is inherent to a federal system that such variations can occur, and in many

ways they represent a strength of such systems. As the systems are statutory, and there is rarely if ever any litigation under them, the regulatory burden of compliance in the different states is minimal and should be accepted as a cost of doing business at a national level in a federation.

In regard to the advertising of classifiable content, ACCM notes the ALRC recommendations that a new classification framework need not include additional mandatory provisions. For the reasons set out at 3. above, ACCM rejects this.

Conclusion

Again ACCM thanks the Department for the opportunity to comment on potential reforms to the NCS. We should be most pleased, of course, to discuss these matters further as the decision-making progresses, both in the completion of the review and in the implementation of its recommendations.

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APPENDIX 1a: Outcomes of ACCM's parent surveys about classification

<https://childrenandmedia.org.au/assets/files/accm-2019-survey-media-release-final.pdf>

About the survey

The survey questionnaire was available online, and participation promoted via prominent parenting, and children and young people's health and welfare, sites including HealthEd and Gen Next, Steve Biddulph's Raising Boys and Girls, Justin Coulson, ACCM, and education newsletters and facebook pages.

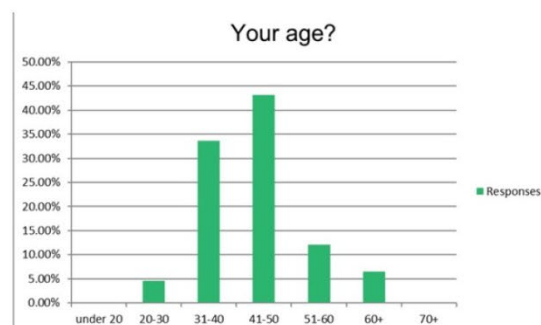
The survey results were gathered between July and October and results analysed in early November. 623 responses were received. The questionnaire can be found here:

<https://www.surveymonkey.com/r/Y7CTFSR>

The survey respondents came from all states of Australia

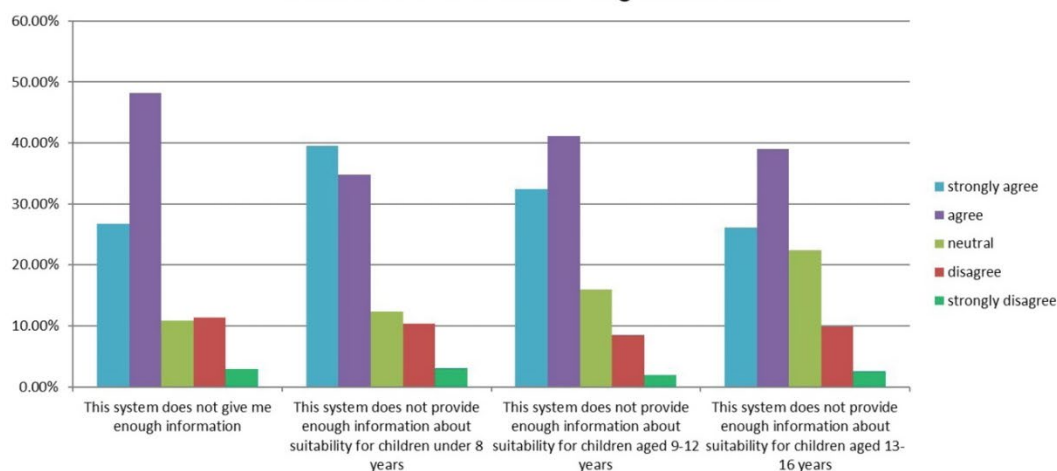


And were mostly between the ages of 30 and 50 years

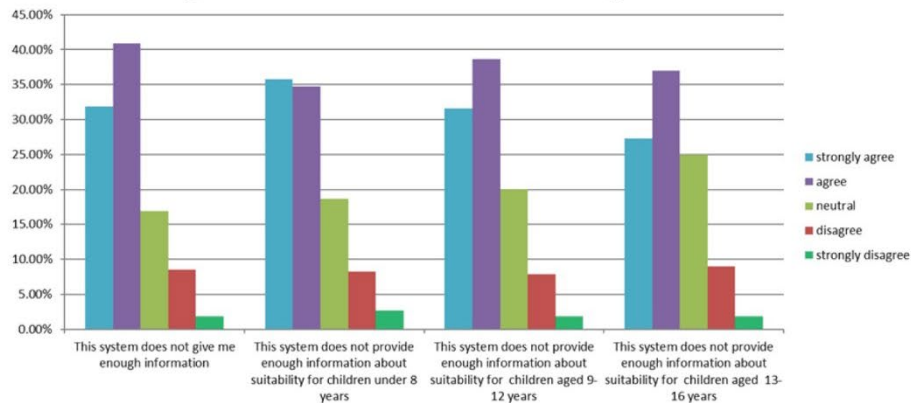


Summary of survey results:

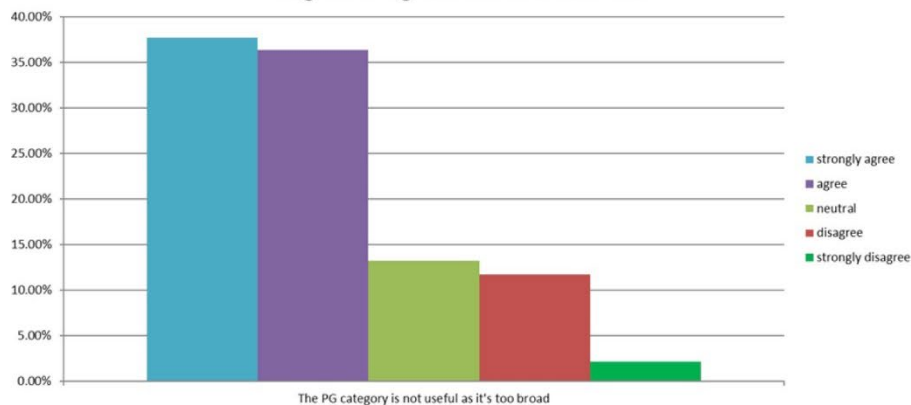
Thinking about children in your care, how useful have you found the classification system when considering the suitability of movies they might watch? Please indicate your degree of agreement or otherwise with the following statements.



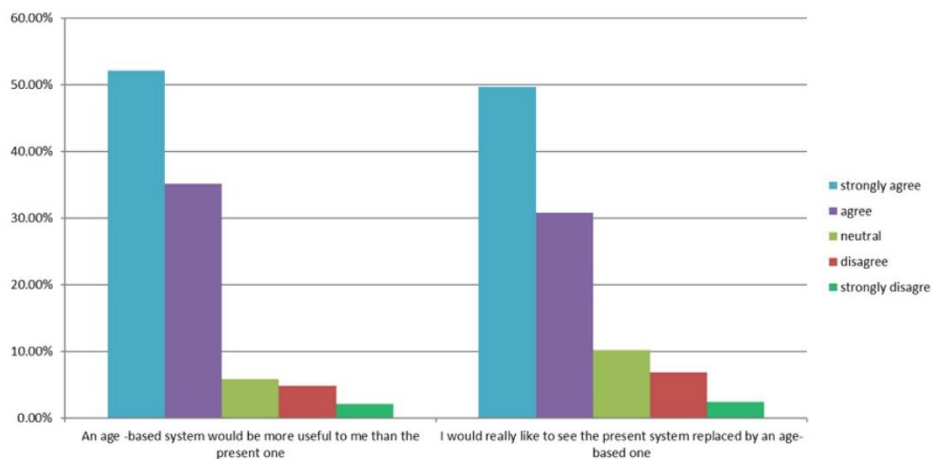
Thinking about children in your care, how useful have you found the classification system when considering the suitability of games and apps they might play? Please indicate your degree of agreement or otherwise with the following statements.



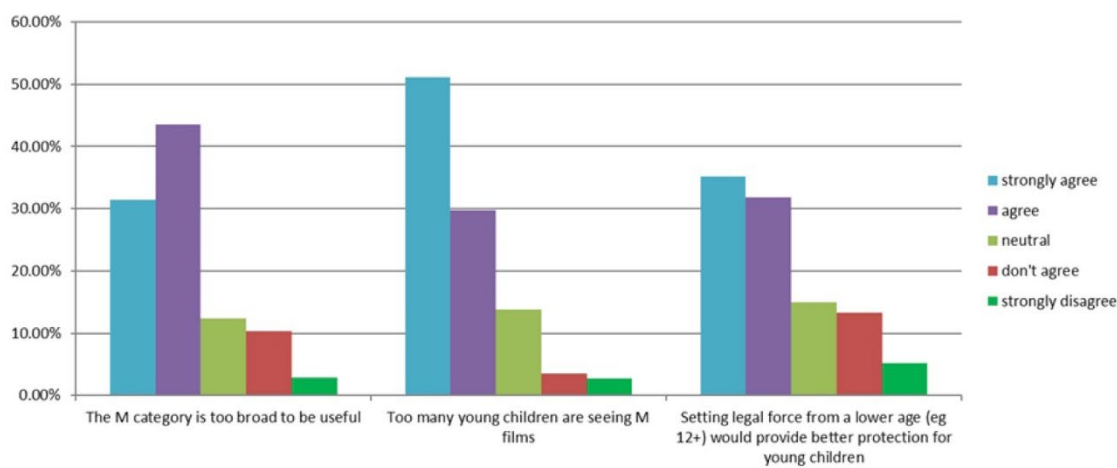
Thinking about children in your care, how useful is the PG classification when considering the suitability of movies they might watch, or games and apps they might play. Please indicate your degree of agreement or otherwise.



Some countries have classification systems that provide advice about age-appropriateness of movies and games. eg suitable for All, 5+, 9+, 12+, 16+ where, for example, a 5+ indicates age suitability for those 5 and over. Do you think that such a system might be useful to you when considering the suitability of movies, games and apps for children in your care?



The classifications G, PG and M for movies, apps and games are all advisory. Only the MA15+ and R18+ have legal force. This means that children of all ages can legally see M movies even though they are not recommended for those under 15 years. Please indicate your agreement or otherwise with the following statements.



What parents said...

ABOUT THE PG CLASSIFICATION

The PG classification is WAY TOO BROAD!!! I took my children (aged 4 and 7) to see "Dumbo" which was fine but then took them to see "A dog's journey" which was also classified PG and had to walk out half way through the movie! It is completely inappropriate for children that age (drug and alcohol use, aggressive teenage relationships, car accidents) (and that was only in the half of the movie I saw!!!) How can they both have the same classification??? Absolutely ridiculous!!!

The new lion king movie was PG but very scary. Almost needed to be PG+

I have found PG a problem when it has included death (e.g. "Pete's Dragon" and "The Good Dinosaur") and scary incidents, in terms of tension and characters in danger, rather than the view of scary as spooky. Both of the movies mentioned above contained such scenes.

Some PG have very upsetting scenes and/or frightening scenes that may only be short but have a huge impact on children and require parents to explain and comfort children these are sometimes unexpected in the broad PG classification

Even G rated movies have things in them that scare my kids and they can have nightmares for months about them. When toy story has scary ventriloquist dolls and is PG and thought to be suitable for kids etc what is going on? There needs to be more warnings about things that will scare kids.

When trailers for m rated movies are shown when you go for a pg movie is appalling

As far as I am concerned PG simply means 13 and under and that is a ridiculous rating to exist considering the vast developmental differences between a 3 yr old and a 13 year old. The G rating is NO better. I'm appalled at the failure of the government and regulators of Australia to realise or care about this fundamental flaw in the rating system that is there to "protect" children from undue distress, trauma, exposure and other unnecessary damage.

PG rating can vary far too much these days with added perhaps adult humour or content. The unintended scary theme or elements of movies need to be identified. A child cannot un-see what they have seen and should be protected.

"PG" does nothing except say that most adult people would find this OK, but we can't let 5 year olds watch it so we can't give it a "G" rating. It doesn't say anything about what could be of concern - what good is it to say "contains adult themes" when I want to know which ones? Death? Rape? Homosexuality? War trauma? Abuse? Violence? Suspense? There is a difference and I want to know!

What is classified as PG is broad and seems to be getting broader. What might be considered as low level violence/sexual material to a 13 year old may be quite confronting to a 7 year old. Also films rated PG because of "low level" violence can still be very scary for young children who can be easily frightened by what is implied - just the background music to a scene can engender anxiety/fear. PG classification is far too broad - it needs to be broken down into at least two subgroups to distinguish between 8/9 and 12/13.

As an early childhood teacher for many years and now a grandmother, I think there needs to be more awareness in the community and especially for new parents of how unsuitable many PG movies or games are for children especially those below school age. I also think the information needs to be displayed in a highlighted way, bigger and bolder. I think the age system would be better and clearer statements like 'not suitable for children under 5'

PG is tough. You've no idea until you're watchin

ABOUT THE M CLASSIFICATION

I work in a developmental and behavioural clinic as an allied health professional. There are a significant number of children on my caseload (>85%) who are exposed without any parental concern to M and MA content in films who are having anxiety, sleep disturbance, aggressive behaviour and learning difficulties which appear linked to this exposure.

Many children (50%) under 12 are using games including Grand Theft Auto, Call of Duty etc. it is concerning just how many under 7 are using these games.

Children watching M movies has a trickle down effect on schools & society. It impacts upon mental health, behaviours, criminal justice, health care etc.

It's time the government implemented a better system. Parents throughout Australia who care, are grappling with how to better protect their children's childhood, having lost all faith in the existing classification system.

lots of kids watch M 15+ at home and as a counsellor, I see many kids with anxiety issues caused by watching horror movies. parents don't understand that these inappropriate shows can cause so much distress and once they have seen it, it cant be unseen

Merchandising of M-rated movies to young children should be regulated better. eg. Lunchboxes of violent movies for kids

Legal enforcement would send a stronger message to families who do not understand the impacts of exposure to this content.

Additional comments incl about apps

Gaming, especially online gaming, is probably the most concerning issue for most parents these days, and especially in our household. We can limit their time on games, but we can't stand over them every minute and watch what's happening, nor hear conversations. Better ratings for games would remove some of the anxiety for parents and possibly even kids.

The classification of advertisements also need to be considered. Particularly for apps, often ads may play which are not PG rated during a game for children. Simple mathematics games which are great for kids often have this problem.

I work to support children in schools and believe the exposure of some to be problematic. I come across children in Prep and Year 1 who play, or at least watch violent video games and become obsessed with them. They play act this or use these strategies, threats or the on-line language with their peers.

I have come across many who do not differentiate reality from fantasy and talk about characters as their friends. Some are sexualised early by what they watch.

We need to do what we can to protect our children.

With a very young child, I've found managing and navigating his media quite difficult - you need to do a surprising amount of research to find things that are safe for him to watch (and don't lead to long, awkward conversations about sex, death and why that thing they said was funny - which a small child has an amazing ability to hone in on). Maybe as he's older the rating system will be more useful, but right now it's definitely not.

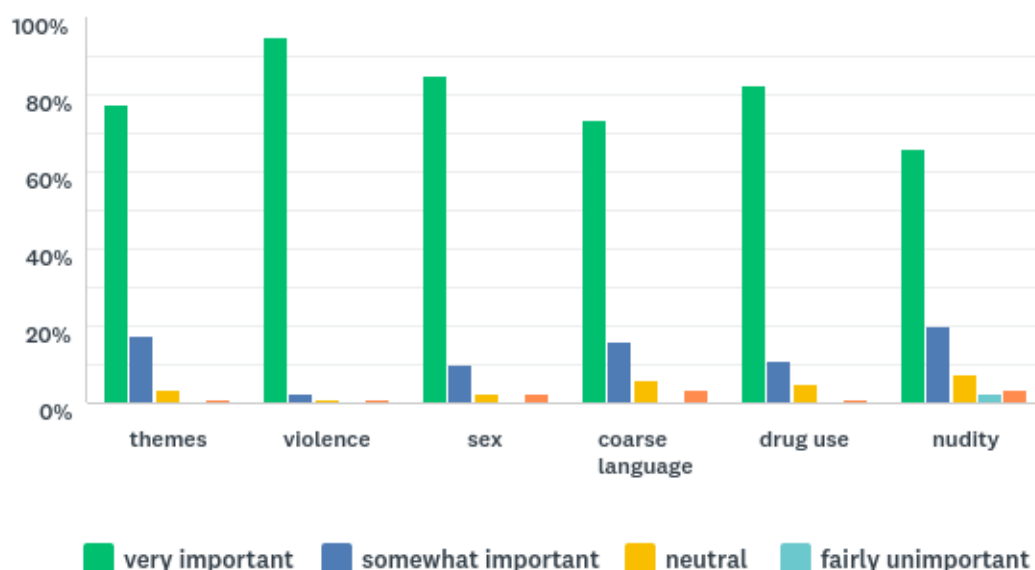
ACCM Know before you Go is a fabulous resource!

Please find ACCM. Their reviews are most useful even if the classification system was improved. It helps if you want it avoid particular kinds of content regardless of classification for example loss of a parent themes.

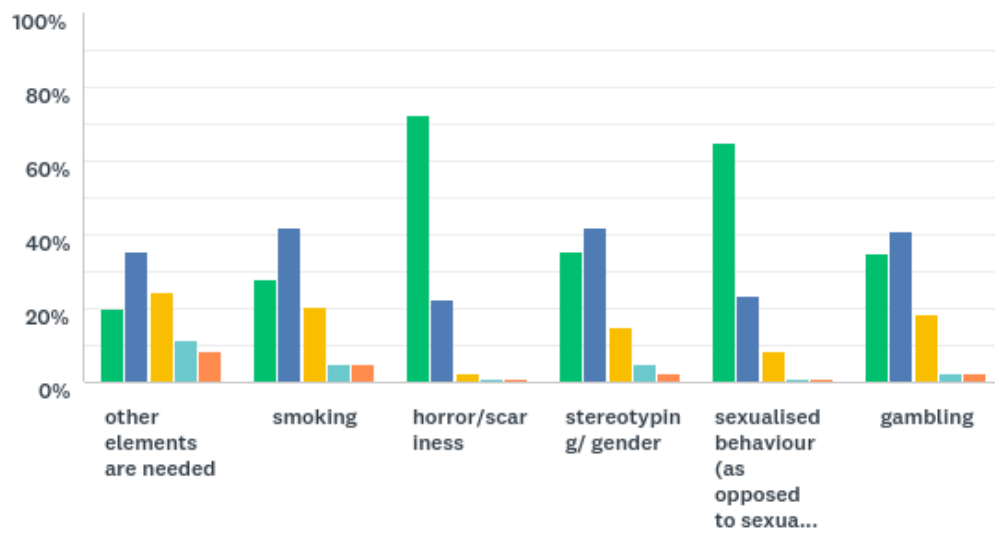
APPENDIX 1b: ACCM's ongoing survey of users of its age-based movie review service

ACCM asks a number of questions about user satisfaction with its service and about the information provided in the NCS. Here are the responses to two questions about the usefulness of the elements included in each classification category.

The elements in movies that KBYG gives information about, are those used in Australia's classification system (themes, violence, sexual activity, nudity, coarse language, drug use). How important is it to you to know about these elements?



Are there elements in movies (other than in those above) that you think should also be signalled. How important are these to you?



APPENDIX 2: Kijkwijzer explained

<http://www.kijkwijzer.nl/about-kijkwijzer>



Kijkwijzer informs

Kijkwijzer informs parents and children whether a film or television programme may be harmful, and why. Kijkwijzer does this mainly by giving an age recommendation: All Ages, 6 years, 9 years, 12 years, 14 years, 16 years and 18 years. Pictograms are also used to show the reason for the recommendation: violence, fear, sex, discrimination, drug and/or alcohol abuse and coarse language.

	All ages		Violence
	Possible harmful up to 6 years		Fear
	Possible harmful up to 9 years		Sex
	Possible harmful up to 12 years		Discrimination
	Possible harmful up to 14 years		Drugs and / or alcohol abuse
	Possible harmful up to 16 years		Coarse language
	Possible harmful up to 18 years		

Kijkwijzer does not advise on suitability

The Kijkwijzer age recommendation does not simply mean that a television programme or film is suitable for children of that age and above. Kijkwijzer makes no pronouncements on this. For example: a serious documentary bears the recommendation All Ages, because it contains no images that could be harmful to children. The film may nevertheless be unsuitable for young children, for example, because the content is too complex.

Final responsibility rests with parents

Kijkwijzer does not pass judgement on the content or quality of television programmes or films. The preferences and standards applied by parents are too diverse to allow this. Kijkwijzer simply warns of possible harmful images in television programmes or films. Final responsibility for what their children can see rests with the parents.

There is however a legal stipulation introduced by the government concerning the age categories.

Products bearing the Kijkwijzer recommendation

Kijkwijzer is applied on virtually all audiovisual products on offer in The Netherlands, from television programmes and cinematic feature films to films on DVD.

An exception is made on television for news and live programmes, as it is not possible to classify these in advance. However, the suppliers of these are obliged to take the broadcast time into account. Viewers must also be warned of shocking images in advance.

For games, the international [PEGI](#) system is applied. This is a rating system very similar to Kijkwijzer.

Where can you find the Kijkwijzer recommendation?

The Kijkwijzer pictograms can be found not only in television listings magazines, but also in cinemas, film guides, film websites, advertisements, posters and on the packaging of DVDs. The pictograms are also shown at the beginning of a television programme.

Broadcasting times on television

In the case of television, the Kijkwijzer ages are linked to broadcast slots. Programmes with the classification All Ages, 6 and 9 years may be broadcast at any time of the day. Programmes with the classification 12, 14 and 16 years may only be broadcast from 20.00 hours until 06:00 in the morning, and those with the classification 18 years may only be aired after midnight.

Nicam REGULATIONS

http://www.kijkwijzer.nl/upload/zijbalk1/51_General_statutes_NICAM__Kijkwijzer_2020.pdf

about nicam <http://www.kijkwijzer.nl/nicam>

Complaints

<http://www.kijkwijzer.nl/complaints>

APPENDIX 3: About PEGI

<http://www.kijkwijzer.nl/about-peg>

PEGI explained

The Pan-European Game Information (PEGI) age rating system was established to help European parents make informed decisions on buying computer games. It was launched in spring 2003 and replaced a number of national age rating systems with one single system now used throughout most of Europe

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. The age rating system was developed by the Interactive Software Federation of Europe (ISFE).

Age rating

The PEGI labels appear on front and back of the packaging indicating one of the following age levels: 3, 7, 12, 16 and 18. They provide a reliable indication of the suitability of the game content in terms of protection of minors. The age rating does not take into account the difficulty level or skills required to play a game.

PEGI 3

The content of games given this rating is considered suitable for all age groups. Some violence in a comical context (typically Bugs Bunny or Tom & Jerry cartoon-like forms of violence) is acceptable. The child should not be able to associate the character on the screen with real life characters, they should be totally fantasy. The game should not contain any sounds or pictures that are likely to scare or frighten young children. No bad language should be heard.

PEGI 7

Any game that would normally be rated at 3 but contains some possibly frightening images or sounds may be considered suitable in this category.

PEGI 12

Videogames that show violence of a slightly more graphic nature towards fantasy character and/or non-graphic violence towards human-looking characters or recognisable animals, as well as videogames that show nudity of a slightly more graphic nature would fall in this age category. Any bad language in this category must be mild and fall short of sexual expletives.

PEGI 16

This rating is applied once the depiction of violence (or sexual activity) reaches a stage that looks the same as would be expected in real life. More extreme bad language, the concept of the use of tobacco and drugs and the depiction of criminal activities can be content of games that are rated 16.

PEGI 18

The adult classification is applied when the level of violence reaches a stage where it becomes a

depiction of gross violence and/or includes elements of specific types of violence. Gross violence is the most difficult to define since it can be very subjective in many cases, but in general terms it can be classed as the depiction of violence that would make the viewer feel a sense of revulsion.

Content descriptors

Descriptors shown on the back of the packaging indicate the main reasons why a game has received a particular age rating. There are eight such descriptors: violence, bad language, fear, drugs, sexual content, discrimination, gambling and online gameplay with other people.

APPENDIX 4: Cinema trailers shown in 2019: ACCM review

The present rules about the screening of trailers in cinemas require that the classification of any movies being promoted using trailers must be the same or lower than the feature. If the promoted movies are yet to be classified, the cinema operator must ensure that the likely classification of those movies also meet the same requirements.

ACCM's movie reviewers routinely record the titles and classification of the films for which trailers are screened with the features they are reviewing.

ACCM has lodged some complaints with the Classification Board in 2019 about instances where cinema operators have shown trailers of movies of a higher classification with a feature which is lower classified.

Comments on ACCM's facebook page, and in its recent surveys, show that parents have noticed this trend too.

An apparent rise in the incidence of reporting of such instances, by our movie reviewers, motivated ACCM to analyse the situation for all of the past 12 months.

What ACCM found was that of the 80 movies reviewed Dec 2018- Dec 2019, where the reviewer had recorded the trailer information, (there were a few misses), 26 had accompanying trailers that did not conform. This is close to 1/3 of all features. The majority of these trailers were for films that were at the time CTC (yet to be classified), but were later classified as higher than the feature.

ACCM has lodged its concerns with the Classification Branch of the Dept of Communications.

ACCM thinks this data justifies our stand in late 2017, against the industry push to allow CTC trailers of unclassified (but likely higher classified movies) to be shown to a commensurate audience.

APPENDIX 5: Trailers, billboards and complaints to the Advertising Standards Board

1. **ACCM's table of complaints about trailers for horror movies in 2017**
<https://childrenandmedia.org.au/assets/files/news/latest-news/asb-decisions-2017.pdf>
2. **More troubling trailers on TV**
<https://childrenandmedia.org.au/assets/files/resources/small-screen/ss-358-nov.pdf>
3. **Ad Standards rules only one It: Chapter Two promo is 'excessively menacing' October 17, 2019**
<https://childrenandmedia.org.au/news/news-items/2019/ad-standards-rules-only-one-it-chapter-two-promo-is-excessively-menacing>
4. **Lists of most complained about ads always contain trailers**
2019 <https://www.adnews.com.au/news/australia-s-most-complained-about-advertisements-in-2019>

2018 <https://mumbrella.com.au/the-10-most-complained-about-ads-of-2018-so-far-529153>
5. **IT: Chapter 2 raises fresh concerns about horror movie promo and children September 17, 2019**
<https://childrenandmedia.org.au/news/news-items/2019/it-chapter-2-raises-fresh-concerns-about-horror-movie-promo-and-children>

APPENDIX 6: unpublished paper on decisions about violence

MATERIAL LIKELY TO HARM OR DISTURB THEM': TESTING THE ALIGNMENT BETWEEN FILM AND GAME CLASSIFICATION DECISIONS AND PSYCHOLOGICAL RESEARCH EVIDENCE

Elizabeth Handsley¹ and Wayne Warburton²

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Abstract

This article analyses the practical operation of Australia's National Classification System (NCS) for films and games, to evaluate its alignment with the Act, Code and Guidelines that govern it and the findings of psychological research¹. Twenty-three decisions of the Classification Review Board are examined to determine the factors the Board applies in assessing the impact of violent content, in order to draw the line between the different classification categories. Specifically the language used in referring to violent content is analysed to determine the concepts that are seen as having a bearing on impact. The concepts identified are then tested against both the rules and Guidelines governing the process and the research evidence on the depictions of violence that create the greatest risk of adverse outcomes for viewers and players. The article concludes that some changes to the rules could lead to classification decisions that were better aligned with the research evidence. The decisions generally rely on concepts that have at least an arguable basis in the rules, but those concepts, or the way they are applied, are in some instances at odds with the evidence. There are also concepts with no basis in the rules or the evidence, and concepts that the evidence shows to be significant, but that the rules and the decisions fail to apply.

Introduction

The Australian system for the classification of media content has a primary purpose of avoiding the risk of harm to child consumers. However, the precursors to classification law, censorship law and obscenity, were based on moralistic notions such as offence and corruption (Butler & Rodrick, 2015). A modern classification system should de-emphasise such notions and instead concentrate on risk of harm to children's development, as established by scientific evidence. This more objective approach is more consistent with modern notions of freedom of expression and the rights of the child. The idea of human rights being undermined on the basis of majoritarian morality (sometimes dressed up as 'community standards'; e.g., see ACMA, 2005) does not sit well with the function of human rights protection, which is precisely (in part) to prevent the 'tyranny of the majority' (Adams, 1788). Reliance on evidence of a risk of developmental harm provides a firmer footing for a balancing

process that might detract from strict protection of human rights in favour of another important interest.

None of this is to deny that there is a broad consensus within the community that it is undesirable for children to consume violent media. Article 17 of the United Nations Convention on the Rights of the Child (UNCRC, 1990) acknowledges that some media content is 'injurious to [children's] well-being' (article 17e); and violent content is high on the list of that which is recognised as meeting that description (Hammarberg, 1997; UNCRC, 2013, 2014). Even the campaign for an R18+ classification for computer games in Australia, spearheaded by the gaming industry and supported by the gaming community, relied on arguments that the new classification would prevent children from accessing inappropriate violent content (IGEA, 2010). Such an argument, however, leaves open the question of how to determine which content is inappropriate for which children, a matter which this article analyses in depth.

In particular, it is argued that the scientific findings regarding media violence consumption are valid, and they should form a basis for public policy and decision-making. It is true that the findings are not accepted by all scholars with an interest in such matters and they do not represent 100% certain proof of the links they describe (e.g., see Elson & Ferguson, 2013 and responses by Bushman & Huesmann, 2014; Krahé, 2014, Warburton, 2014). However, the factual evidence on which public policy is based is rarely of that nature. For example, the correlation between passive smoking at work and lung cancer ($r=.14$; Bushman & Anderson, 2001) is less strong than the average meta-analytic correlations found between aggression and consumption of violent television ($r=.31$; Paik & Comstock, 1994), violent video games ($r=.19$; Anderson et al., 2010; $r=.18$, Greitemeyer & Mügge, 2014), and violent media across categories ($r=.17-.23$; Anderson & Bushman, 2002; $r=.19$; Bushman & Huesmann, 2006), yet few would doubt the sufficiency of the former evidence to support laws to restrict smoking in the workplace.

The research evidence is often misrepresented as indicating (or claiming to indicate) that there is a simple, linear, causal relationship between consumption of violent media on the one hand and violent behaviour on the other. The research makes no such claims. Rather, numerous major reviews (e.g., Anderson et al., 2003; Anderson, Bushman, Donnerstein, Hummer & Warburton, 2015; Applebaum et al., 2015; Krahé et al., 2012) find that while media violence exposure increases the likelihood of aggressive behaviour and desensitisation to violence in the short- and long-term, it is just one of many risk factors, and such factors should be considered in tandem with relevant protective factors (Gentile & Bushman, 2012; Warburton & Anderson, 2015). Indeed, violent and very aggressive behaviour are seen as so multifactorial that it is very difficult to ascertain the level of influence of a single factor such as media violence exposure (Warburton, 2014). The persistence of erroneous beliefs around that which the research claims makes it difficult to have a proper, informed debate about the regulation of media violence. This article seeks, among other things, to expose the research findings to a broader audience in the hope that they will be used more appropriately in future.

The meaning of 'harm'

The *National Classification Code* is based on a foundational principle that children should be protected from material likely to harm or disturb them. The inclusion of the concept of 'harm' means

that it is not acceptable, as a matter of statutory interpretation, to proceed on the basis that children cannot be harmed by engaging with films or games. Rather, decision-makers must find a way to keep faith with the legislature's determination that harm is possible, which in turn requires them to give some meaning to the concept. This article argues for an interpretation based on psychological research about the influence of media consumption on people's thoughts, attitudes and behaviours. Reference has already been made to the NCS's historical antecedents in obscenity law, where 'harm' might be understood as a loss of innocence, signalled by the phrase 'deprave or corrupt' as used in the common law.ⁱⁱ However, such an interpretation is problematic from the point of view of modern notions of freedom of expression and moral pluralism. Consistent with the evidence-based interpretation, 'harm' should be read to include: desensitisation to violence; development of a 'mean and scary' world view; and increased tendency to respond to others with aggression (defined here as including aggressive thoughts and feelings as well as behaviours; see Valkenburg & Piotrowski, 2017). These are the 'effects'ⁱⁱⁱ that are documented in the psychological research (see Anderson et al., 2003; 2015; Krahé et al., 2012 for summaries and references).

So defined, the harm that the NCS seeks to avoid is of significance not just to the individual, but to that person's community as well. A community whose members are sensitive to violence is likely to be safer for everybody, because violence is less likely to be tolerated. If people in a community have a 'mean and scary' world view they are more likely to perceive aggression and danger where there is none, which in turn can lead to unnecessary conflict in the community. An aggressive response may or may not be experienced as unpleasant by the responder, but it is almost certain to be experienced that way by those who receive it.

When it comes to children and their families all of these points have heightened significance, and this in turn further supports the justification for having a classification system. Even if some parents and carers have all the information and skills required to fulfil their responsibility to choose appropriate media experiences for their own children, they have no control over the media experiences of the children with whom the children in their own families necessarily interact. Therefore a classification system, especially one which imposes some limits on the choices that parents and carers can make, protects not only the children who might otherwise see inappropriate content, but other children in the same community, which might otherwise be shaped by the thoughts, attitudes and behaviour that consumption of violent content can foster in the individual.

These observations represent cogent arguments for retaining the 'harm' concept, but aligning it as closely as possible with the research evidence. Accordingly, the 'impact' concept on which the NCS is based should be measured in terms drawn from the research evidence. This article seeks to facilitate the process of achieving these alignments by identifying the concepts currently in use and comparing them to those one can draw from the evidence. To underscore this point, the article will refer henceforth to negative impacts rather than harm when describing the outcomes that the NCS seeks to avoid.

Factors influencing the impact of media violence

It is important to establish what the evidence tells us about different kinds of media violence and which ones heighten or reduce the risk of influencing thoughts, attitudes and behaviour. Valkenburg

and Piotrowski (2017) list 5 principal '[c]ontextual features of media violence that may increase aggression', namely where the violence:

- is perpetrated by appealing characters;
- is rewarded;
- is justified;
- has no consequences; or
- is arousing (for example combined with action or stirring music).

In their comprehensive review, Anderson and colleagues (2003) report that a 'variety of studies ... indicate that how violence or aggression is presented can alter its meaning for the audience and may moderate viewers' behavioral, cognitive, and emotional reactions.' The categories for which evidence is presented as tending to heighten reactions are:

- violence that seems like 'real life';
- violence committed by a character with 'overall attractiveness, power, and charisma' or who is 'portrayed as a hero' (see also Kunkel et al., 2001; Huesmann, 2007);
- violence that is rewarded (see also Kunkel et al., 2001; Huesmann, 2007);
- violence that is unpunished (see also Huesmann, 2007);
- violence committed by characters with whom the viewer can identify – that is, those who are similar in age, gender and race to the viewer; and
- violence that is portrayed as justified (see also Huesmann, 2007).

Kunkel and colleagues (2001) add:

- violence that is likely to cause moderate to extreme harm;
- violent acts repeated within a scene;
- violence that does not appear to cause pain;
- where the harm depicted is 'substantially less than the harm that would normally occur from such violent actions' (see Kunkel et al., 1995);
- violence that is depicted explicitly (i.e., close-up);
- violence that is depicted in a graphic way (measured by amount of blood and gore); and
- violence involving the use of weapons.

Further, Huesmann (2007) notes a number of the earlier factors, and also includes violence that attracts and sustains attention.

There is also some evidence that the presence of blood in media such as video games increases hostility and physiological arousal (which can facilitate aggression) (see Ballard & Weist, 1996; Barlett, Harris & Bruey, 2008), as well as aggressive intentions (Farrar, Krcmar & Nowak, 2006).

Further, Sauer and colleagues (2015) recommend that ratings systems take into account 'the context in which ... violence occurs', distinguishing this from what the US classifiers presently take into account, that is, 'the amount, type and graphicness of the violence'. The idea of 'context' here seems to refer to narrative context, specifically the player's understanding of the character's motivation –

therefore something akin to the concept of ‘justification’ referred to above and discussed in more detail below. Zumbach and colleagues (2015) have indicated that there may be interconnections between the contextual factors, for example if a player identifies with a character in a game this may ‘blur the distinction between the virtual and the real world’, or in other words make the game seem more realistic. Lull and Bushman (2017) have suggested that another important factor might be level of ‘immersion’ (see also Konign, Bijvank & Bushman, 2007).

On the whole, however, it appears that interest among researchers in contextual factors may have waned in recent years. The APA’s 2015 *Technical Report on the Review of the Violent Video Game Literature*, for example, makes no reference to the question of contextual factors as discussed in this article. It only mentions recent research about the impact of competition (Applebaum et al., 2015), and lists a number of matters that are ‘understudied’, namely plot, action, pacing, user interfaces, perspective and motivations for use.

With all that in mind, the concepts relied on to calibrate media violence in Australian classification law will be discussed, before an analysis of the alignment, or otherwise, between the two.

Australian classification law

Australian classification law centres on the *National Classification Code*, which was negotiated between the Commonwealth, the States and the self-governing Territories in the mid-1990s. It covers publications, films and computer games, and some of the same basic concepts and standards – but not the same decision making system – are used to classify television content² and online content.³ As noted, this article focusses on films and games. The Code is a legislative instrument, under an Act of the Commonwealth Parliament, and there are also national Guidelines to inform the classification of material under the Code. Each State and Territory has its own legislation, laying down the consequences of each classification in that jurisdiction.^{iv}

Under the Commonwealth legislation, the following matters are to be considered in classification decisions:

- (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

² It is worth noting in particular that news and current affairs on television are not subject to any classification restrictions: *Commercial Television Industry Code of Practice 2015*, 2.3.3.

³ Only the classifications of MA15+ and R18+ are used for online content: *Internet Industry Codes of Practice 2005*, 4.1 (definition of ‘Restricted Content’).

- (c) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character;⁴ and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.^v

The *Code* provides the following further statement of principles:

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

Material is classified based on six ‘elements’, one of which is violence.^{vii} For this reason, and also based on principle (d)(i) above, we see that the system has, at its core, a recognition that media violence is a matter of concern. The classification categories are G for general exhibition; PG for parental guidance; M for mature audiences; MA15+ for mature accompanied; and R18+, meaning the material is restricted to people aged 18 and over. There is also X18+ for sexually explicit material, but no violence at all is allowed in that category. Material that does not fit into one of these categories is RC, Refused Classification. Only the categories from MA15+ up are restrictive; the other categories are advisory only. Therefore, it is fair to say that a major aim, if not the major aim, of the NCS is to inform the public’s decision-making about the content they and their children will see and play.

The Guidelines provide a description of the level of ‘impact’ of material allowable in each category. At G, any violence must be very mild; at PG it can be mild; at M moderate. At MA15+ the impact can be ‘strong’ and at R18+ it can be ‘high’. Material of ‘very high’ impact is refused classification.

The Guidelines provide these further observations about violence allowable in each category:

G: Violence should have only a low sense of threat or menace, and be justified by context.

PG: Violence should be mild and infrequent, and be justified by context.

M: Moderate violence is permitted, if justified by context.

MA15+: Violence should be justified by context. [And for games: Strong and realistic violence

⁴ This is dealt with largely by a list of exemptions for those and other classes of content – that is, there is no ‘general character’ test built into the classification guidelines themselves.

should not be frequent or unduly repetitive.]

R18+: Violence is permitted. [And for games: High impact violence that is, in context, frequently gratuitous, exploitative and offensive to a reasonable adult will not be permitted.]

RC: Gratuitous, exploitative or offensive depictions of ... violence with a very high degree of impact or which are excessively frequent, prolonged or detailed [games: or repetitive] [or] cruelty or real violence which are very detailed or which have a high impact^{viii}

To a large extent, as one would hope, the decisions echo the following general points in the *Guidelines* about how to assess impact:

Assessing the impact of material requires considering not only the treatment of individual classifiable elements but also their cumulative effect. It also requires considering the purpose and tone of a sequence.

Impact may be higher where a scene [or game-play sequence]:

- contains greater detail, including the use of close-ups and slow motion
- uses accentuation techniques, such as lighting, perspective and resolution
- uses special effects, such as lighting and sound, resolution, colour, size of image, characterisation and tone
- is prolonged
- is repeated frequently
- is realistic, rather than stylised
- encourages interactivity [for games: is highly interactive]
- [for games: links incentives or rewards to high impact elements].^{ix}

The Act, the Code and the Guidelines will from now on be referred to compendiously as ‘the provisions’.

The current study

The aim of the current study is to analyse the decisions of the Australian Classification Review Board (CRB) between January 2011 and June 2016 to ascertain the degree to which their decision making was congruent with the relevant empirical evidence on violent media content. A more extensive study could possibly look at ‘original jurisdiction’ classification decisions and not just those where review was sought, but such a study is beyond the resources available for the current endeavour. The CRB’s decisions were chosen for analysis because the decisions themselves are more easily accessible on the Classification Branch’s website and the numbers of decisions are relatively manageable. The chosen time frame closed at the time the study was commenced, so the information was as up to date as possible at the time, and taking it back to 2011 yielded a sample large enough to give a sense of themes and trends. Most notably, this time frame included the implementation of a new video game R18+ classification and consequential amendments to the guidelines, following which the CRB reviewed 13 games to ensure their classification was consistent

with new guidelines. Therefore the sample was disproportionately larger than it would have been from a shorter time period. It may be said that the selection of the time period was somewhat arbitrary, but it does not make the selection biased or unrepresentative, nor does it bias the findings. The sample is comprehensive as to the period chosen.

All of the CRB's written decisions and reasons for decision during the relevant time frame for films and games where violence was named as a principal element were analysed for consistency with relevant evidence-based findings, primarily from the field of psychology. Further details of the method of analysis are incorporated into the discussion below under 'The decisions'.

The current study was limited to Australian classification decisions, and therefore cannot give any indication of the situation in other jurisdictions. However, it can serve as a prompt for researchers and policy makers in other jurisdictions to consider how well their decisions align with the research, based on the information that they have available.

The decisions

During the relevant time frame the CRB considered 30 film and game titles, naming violence as a principal element in 22 of them (for the purpose of this count, 2D and 3D versions are treated as a single title). These are referred to from here on as 'violent titles'. In one of the cases, the game *Mortal Kombat*, there were majority and minority decisions, that is, two members of the CRB agreed on one outcome and the third supported another. Because the reasoning underlying the two outcomes was different, the majority and minority reports were counted as two decisions, resulting in 23 decisions in all (see Table 1).

The reviews were roughly equally divided between industry applications seeking a lower classification and government applications seeking a higher classification.

For the purpose of determining what matters classifiers see as heightening the impact of violence, the 23 published decisions on the violent titles were closely analysed, noting in particular the descriptive language the CRB applied to the violent content in justifying its decision. There was one title, *Rampage*, where no adjectives were used at all; rather the content was described in a factual way and the conclusion stated using language direct from the guidelines, but the decision on that title still counts as one of the 23. Notice was also taken of whether the CRB's language was indicating something that heightened or lowered impact. Normally, where it ultimately chose the lower of the two classifications that were open to it, the language used can be seen to be supporting lower impact; and the converse for higher classifications and impact (see Table 1). In some cases, expressions were grouped together as relating to a common theme, for example genre or tone (see below).

INSERT TABLE 1 ABOUT HERE

The concept used most frequently in classification decisions was realism. This was seen as heightening impact; but more frequently among these decisions it was *non-realism* that was seen as *lessening* impact. Altogether the CRB applied the concept, in one way or another, in 13 decisions.^x The importance of the concept is further supported by the high level of reference to whether the violence was 'stylised' – which as we have seen the Guidelines use as the converse of 'realistic' – and

if it was, this was seen as lessening impact. Such reasoning appeared in 9 decisions^{xi}, making a total of 14 that use one or both of the concepts.

Also important to the decision-making process was a range of ideas relating to the genre or theme of the title: action, superhero, fantasy, bullying, comic-book style or mode, horror, zombie horror, hack and slash, graphic novel, Manga, alien themed, science fiction. One or more of these concepts was referred to as lessening impact in 11 decisions.^{xii}

Eight decisions referred to the level of detail, which if low lessened impact.^{xiii} Next came a range of concepts that were grouped together as relating to 'tone': slapstick, cartoony/cartoon-like, comedic, frenetic, humorous. One or more of these appeared in 5 decisions, and all lessened impact.^{xiv}

Five decisions referred to the frequency of the violence, more than just in passing^{xv}; four referred to blood (or absence thereof)^{xvi}; and four referred to the perspective or 'camera angle' (top-down distant, mid distance, dimly lit, filmed using medium or long camera angles, set-back shot).^{xvii} Two decisions^{xviii} saw the 'familiarity' of the content or style as lessening impact.

Further descriptors that could not be classified into one of the above categories were: virtual (#1); alien (#7); emphasising and humanising (#19); difficult (combination of moves in a game)(#20); non-interactive (#20); fantastical (#20); implausible and unlikely (#20); non-human (victims)(#20); paying homage (#21); and a range of words relating to sex.^{xix} With the exception of this last category of words and of 'emphasising and humanising', all of these descriptors were seen as lessening impact. 'Paying homage' is especially interesting as it seems to imply that impact depends on the intent of the content creator.

The following excerpts give examples of how some of the above terms are used in the decisions. The quotations are from two decisions that revised the classification of a film from MA15+ to M; in other words, the CRB is describing the difference between 'strong' and 'moderate' violence, and between a classification that has legal force and one that is advisory only.^{xx} The report on *X-Men Apocalypse* contains the following:

"the film contains frequent scenes of *action* violence ... there is a long scene which shows the accidental bow and arrow shooting of Magneto's wife and child followed by Magneto using his powers to kill the policemen assembled to arrest Magneto. In this scene although it is clear the victims have been killed there is *no blood*, and *no wounds or graphic detail*. ... Apocalypse uses his power to decapitate three men. They are seen to be beheaded, apparently by sand, and fall to the ground. There is *no blood*, *no graphic detail* and *no image* of the men dying ... In this extended fight and flight scene much of Wolverine's attack is *implied*. Although soldiers are killed there [are] *no close ups* of wounds. After the attack there is a medium shot of a soldier lying down with blood pooled near his face and a scene of blood spatter on a wall. ... The scenes of Charles being attacked and crushed depict his bloodied face and mouth, but it is clear that this is a *virtual battle* Although there is some depiction of serious bodily harm, it is within a *fantasy theme* where the *detail is usually bloodless* and *bodies become no more than incidental* to the scenes and to the narrative. ... The film contains frequent *action* violence primarily between the superheros [sic] or soldiers attempting to capture or contain the superheroes. The violence is *mostly bloodless*, with *no gratuitous emphasis on wounds or bodies*."^{xxi}

The following appears in the report on *Prometheus*:

“[T]wo crew members are attacked by a snake-like creature which encircles and breaks one man’s arm, breaking the skin. His colleague cuts the snake in an attempt to release the arm. He is sprayed with acidic blood which spurts over his helmet and visor eating them away. The man then dies. The creature regenerates and enters the first crew member through his mouth. ... The violence depicted in this scene is *frenetic* and the scene is *dimly lit*. The scene is shot using a *medium camera angle* with *no lingering close up shots*. ... Dr Holloway, who is infected by alien matter, is prevented from reboarding the spaceship. He is aware of the risk he poses to the rest of the crew and asks to be killed. He is quickly killed by a flame thrower. ... This scene is of *short duration* and there are *no lingering close-up shots* of Dr Holloway in flames, the scene being filmed in *medium to long shot*. The focus is on the reaction of the crew, not on Dr Holloway. ... [A] crewman who has been infected by an alien returns to the space ship and attempts to gain entry. He attacks two crewmen, smashes one man’s helmet open and blood comes from the head of this victim. A second crewman is knocked to the ground. The infected crewman jumps on the prone man’s chest causing blood to spurt from his mouth. He then punches the man in the head causing blood to come from his broken skull. The rest of the crew use flamethrowers on the infected man who catches fire, falls down, and is then run over by a lunar vehicle. The infected man gets up and attacks a third crewman before being killed with a number of flamethrowers. ... This scene is *frenetic*, is of *short duration* (less than two minutes), has *no close up shots* and *does not linger on any injury or gore*. ... The Review Board found that the depictions of violence were of *very short duration*, the activity was *frenetic* and the scenes were *dimly lit and/or filmed using medium or long camera angles without lingering shots or graphic detail* ... ”^{xxii}

The language used gives clear signals as to the matters which are seen as heightening or lessening the impact of violence, and the same applies to the other decisions studied. Ideally such matters have a basis in the research evidence, a matter to which we now turn.

The reasons and the research

The major conclusions to flow from an analysis of the CRB’s reasons and the research are as follows:

First the decisions make frequent reference to the concept of realism – especially if one takes into account the references to ‘stylised’ violence as being the opposite of realistic. These concepts appear frequently in decisions, but when the CRB refers to realism it may not mean quite the same thing as the concept of ‘in real life’ in the research literature. Anderson and colleagues (2003) explain that two longitudinal studies had:

“... found that children who thought that violent shows they watched were telling about life ‘just like it really is’ or who identified with aggressive TV characters had relatively high average scores on a measure of physical and verbal aggression 1 year later and scored higher on a composite measure of aggressiveness (physical, verbal, and indirect or relational) 15 years later” (p. 98).

The reference to the way a show appears to be ‘telling about life’ suggests that realism in this context is not about whether the violence looks real (or stylised), but a more complex concept to do with all the circumstances in which it occurs. If this is correct, realistic must mean something more like the opposite of ‘implausible and unlikely’, which was mentioned in only one decision.

In any case, research also shows that while increased realism can increase the likelihood of aggressive responding (Anderson et al, 2003), the opposite is not necessarily true. Media with low

levels of realism can still have an impact on levels of aggression. For example, in their review, Anderson and colleagues (2003) note that “*numerous studies have found significant effects of media violence on aggression even when the media violence is clearly fictional and unrealistic*” (p. 98).

Secondly, the system also relies heavily on justification. The phrase used in the guidelines is ‘justified by context’, which seems to be the opposite of gratuitous violence - that is, violence that adds to the telling of the story. However it seems possible that the CRB is sometimes swayed by moral justification: that is, the idea that the violence is being committed by ‘good guys’, in a good cause. If it is true that ‘justified by context’ is being interpreted this way, this use of the concept of justification to lessen impact and therefore classification, *prima facie*, contradicts the research findings that violence seen as justified is *more* likely to influence thoughts, attitudes and behaviour, and to increase aggression (e.g., Valkenburg & Piotrowski, 2017), and that violence perpetrated by admired and heroic figures also has a *greater* impact (Anderson et al., 2003; Kunkel et al., 2001; Huesmann, 2007; Valkenburg & Piotrowski, 2017). If this interpretation is correct, this non-alignment goes to the guidelines themselves, and not necessarily to the CRB’s reasoning;⁵ but in any case, the better view is that the interpretation of ‘justified by context’ as meaning ‘morally justified’ is incorrect, and the CRB should reconsider its approach.

Another issue arising from the concept of ‘justification’ is whether the genre of the film, rather than the story line, should in any way be treated as part of the justificatory context. In the decisions there are numerous instances of the ‘justified by context’ test being applied in such a way that the ‘context’ used was an inherently violent genre rather than what was going on at the point in the story where the violence occurred. For example, in Decision 1 it was noted that:

“In all the scenes the violence is *justified by the context of either demonstrating superhero powers or is part of the damage inflicted in the war between superheros* [sic]. These images are all moderate in impact and are *justified by the context of a superhero battle*. The impact of this element is no higher than moderate and can be accommodated at the M level” [emphasis added].

⁵ A detailed analysis of the alignment between the provisions and the research is for another day, but for now it can be noted that the NCS itself uses a number of concepts that have no foundation in the research literature, for example morality, decency, propriety, literary/artistic/educational merit, the general character of the content, offensiveness and community concerns. Whether such concepts, particularly merit, should be included in classification as a matter of public policy is a separate question, but there is no research finding to say that content of high merit carries any less risk of harm than other content. Nor is it easy to make an objective assessment on most of the concepts listed. On the other hand, one concept identified as relevant by the research, but little used in the NCS, is audience characteristics such as age, gender and race. Although s11(d) of the Act says that ‘the persons or class of persons to or amongst whom [content] is published or is intended or likely to be published’ is one of the matters to be taken into account in classification decisions, thereby seemingly providing a warrant for measures that would align with the research on this point, the most the NCS does to incorporate such a concept is by using an age cutoff (15 years) for access to restricted content; and the general concept of audience characteristics is not picked up in the guidelines or the decisions themselves. One possibility for achieving better alignment here would be to introduce younger age categories that recognise the stages through which children under 15 develop. On the other hand, the use of gender and race to determine appropriate audiences for content is unlikely to be acceptable to the Australian public.

These statements do not seem relevant to a test of 'justification by context'. Rather they imply a focus on the idea of what an audience might (reasonably) expect, based on what members probably already know about the title, and in that sense they might be seen as applying a test of 'reasonable audience expectations'. Something similar seems to come through in the reliance on 'familiarity': the idea that if audiences have seen such content before, they know what to expect, and the violence matters less. Reference to expectations may be logical in the context of an 'impact' test – that is, it is logical to think the impact of violence on me will not be so great if I am not being taken by surprise. Therefore, for example, content that would have had a 'strong' impact otherwise might have only a 'moderate' impact on a person who was expecting it.

The difficulty with a test that uses audience characteristics as ways of measuring impact is that it inevitably treats audiences as homogenous. It is easy to generalise about people knowing what a certain genre entails, or having seen a certain kind of content before, but the CRB does not have access to any empirical evidence on such matters; and indeed the only certainty is that there will be some in the audience who do not meet that description and for whom, therefore, the impact is greater than is recognised in the classification. Consider now the likelihood that those who do not have the relevant knowledge or experience will be minors, and we begin to see how a classification system that makes such assumptions about audiences fails to protect such people. More generally, there is a strong argument that an implicit test of audience expectations has no place in, and indeed tends to undermine, a system that exists primarily to tell audiences what to expect.

Thirdly, it may be logical to assume that the frequency and length of depictions of violence is relevant to the risk of a negative impact: that a higher 'dose' of violent material will create a greater risk of negative impact and/or a risk of greater negative impact. However, the difficulty arises when frequency is judged against the overall film or game. For example, in Decision 6 the report said, 'Strong violence occurs infrequently and is *separated by long periods* of strategic avoidance of the enemy and stealth gameplay' [emphasis added]. This seems to imply that those long periods of non-violent content lessen the impact of violent parts. This approach does not appear to have any foundation in the research literature. The level of content extremity can determine impact regardless of length of exposure: children can become traumatised from relatively small exposures to violent and upsetting media (e.g., Cantor, 2000). In addition, the existence of gaps between instances of strong violence suggests that the strong violence is repeated, and as already noted, the repetition of violence within a scene typically increases its impact (Kunkel et al., 2001).

With this in mind, the occasional CRB reference to 'familiarity' as a mitigating influence seems also to be contrary to the evidence that repeated exposure to a form of content heightens its risk or impact. Using familiarity as a mitigator would be more consistent with a 'loss of innocence' test, which would say that a person who has seen similar content before has already been corrupted, and seeing the content under review could not have any further impact on him or her. This is precisely the kind of thinking that the present article argues should be avoided: it is aligned with the moralistic foundations of censorship and obscenity law, and not aligned with the research evidence about negative impact. Fortunately it was seen only rarely in the CRB's reasons and it is to be hoped that the concept does not have any further influence on the decision making process than is made explicit there.

The concepts of tone and genre used by the CRB are also in tension with the research evidence. As we have seen, the CRB sees a light-hearted tone to violence as lessening impact, whereas the research has shown that cartoonish violence can create relevant risks (Anderson et al., 2003).

Perhaps the most significant finding of all from this analysis is that the genre-related qualifiers such as ‘action’ and ‘superhero’ that the CRB uses to minimise impact and justify a lower classification are actually code for violence committed by the attractive, powerful and charismatic perpetrators that researchers have shown to heighten the influence of violent content on thoughts, attitudes and behaviours (Anderson et al., 2003; Huesmann, 2007; Kunkel et al., 2001; Valkenburg & Piotrowski, 2017). This is of particular concern considering the way that such titles are aggressively marketed to young children with merchandise, often long before the classification is known. Normally in Australia they are classified M, which means any child can legally see the content, unaccompanied, but if the decisions aligned with the research there might well be more at MA15+, which would restrict their access, and appropriately so based on the matters discussed here.

One further matter is worthy of comment. The concept of ‘accommodating’ content as used in the quotation from Decision 1 above is a persistent theme in the CRB’s decisions.^{xxiii} It is mentioned in some way in every decision analysed in this article, even the one on *Rampage* which, as noted, did not give reasons in the normal sense. Such language implies that the CRB sees its job not as finding the correct classification but as fitting content into the lowest classification it can. This is curious in light of the dual objectives of ensuring that adults can see and play whatever they like and of protecting children from potential negative impacts. The tension between these counsels a balancing approach rather than default decision-making, so one has to wonder if there is some kind of invisible ‘thumb on the scales’. An obvious candidate would be industry interests; even though these are not mentioned in the principles, it might be hard to ignore them, especially in a system that recovers its costs from that same industry.

Discussion so far has been of the concepts on which the CRB has relied; but what of concepts identified as relevant in the research but which are not referred to in the decisions? These include whether the violence is arousing; whether the violence is (un)punished or rewarded; whether the violence appears (likely to) cause harm, and if so how much; and whether weapons are used. In fairness to the CRB, there is no explicit mandate in the provisions for taking these matters into account in judging impact or potential to cause harm. However, it would be possible to introduce them under impact Guidelines; and the same will apply in due course to any other factors that may emerge in the future as significant, such as levels of immersion and identification (e.g., Konign, et al., 2007; Lull & Bushman, 2017).

Recommendations

If decisions under the NCS are to be brought into line with the research evidence on risk of adverse impact on viewers’ thoughts, feelings and behaviour, changes should be made to some combination of the Act, the Code and the Guidelines. Although the analysis points to misalignments between the evidence and the classifiers’ reasoning in particular cases, it should be noted that only one concept used in the reasoning (familiarity) had no identifiable link to the provisions. Therefore appropriate changes to the written instruments should be able to go some way towards aligning the decisions with the research.

To begin with the most general issues, the provisions should address the question of ‘accommodating’ content at a particular level, ideally specifying that classification is the result of a balancing process between the matters listed in s11 of the Act, and there is no presumption in favour of a lower category. A second helpful step would be to clarify that the intent of the item’s author (designer, writer, director etc) is irrelevant to the classification decision. This would hopefully put an end to any future use of the concept of ‘paying homage’ in classifiers’ reasoning.

Some matters should be included in the provisions so that classifiers have an explicit mandate to consider them, for example whether violent scenes are arousing; whether violence is (un)punished or rewarded or appears heroic; the amount of harm the violence appears (likely) to cause to the on-screen victim; and the use of weapons.

Familiarity and genre should be expressly excluded from the provisions. As we have seen, the former concept seems to reinforce the moralistic antecedents to the system, by implicitly casting the system as a means of protecting innocence and avoiding corruption; and it also seems to contradict the notion that repetition of exposure to violent content enhances impact and does not lessen it. The second concept, on examination, is irrelevant to any matter currently referred to in the provisions, as well as to the risk of negative impacts (as identified in the research evidence). Indeed, certain genres might enhance the risk because they tend to glamorise violence.

A number of matters need to be clarified in the provisions. For example the concept of ‘justified by context’ should be clarified to mean necessary to the plot or character development, not morally justified, and certainly not justified by the genre of the film or game (see above). ‘Realistic’ should be defined to mean ‘like real life’; rather than the opposite of ‘stylised’, it should mean the opposite of ‘implausible and unlikely’. The question might be whether one can imagine such violence happening in such a situation in real life, and not whether it is presented in a naturalistic way. Also it should be made clear that the concepts of ‘level of detail’ and ‘accentuation techniques’ are relevant where they contribute to realism. It should not be possible to read them in such a way as to give a lower classification to items that fail to show the consequences of violence.

Finally the concept of frequency needs to be addressed. We have seen that it has been applied in a way that diverges from the research evidence because it is judged against the length of the film or game as a whole, whereas the more salient question is how long a particular violent scene lasts. This would be best cleared up by replacing frequency with the concept of the length of any violent scenes. In addition, repetition of violent acts within a particular scene should be specified as enhancing impact.

As mentioned, this article has left open the question of the alignment between the provisions and the research, except to the extent that the former are reflected (or appear to be reflected) in the CRB’s decisions. There are a number of concepts included in the provisions that may not align with the evidence as to factors that enhance risks related to violent content.

The article has also, obviously, limited itself to a consideration of Australian law and practice. The same methodology could be applied to other jurisdictions, provided decision-makers give written statements of their reasoning and these are available to be examined. However, the findings here would not necessarily be replicated, precisely because law and practice vary so greatly from one

place to another. Comparisons could, however, be instructive in so far as they provide examples of how a classification system *could* work, thereby potentially guiding reform efforts where needed.

There is one final recommendation, relating not to classification law and practice but to the research on which it could be based. Although this study has gathered some research evidence on the types of media violence that enhance the risk of negative impacts, the preponderance of evidence is about the *types of people* at greater risk of negative impacts from exposure to media violence. Even some of the research referred to here is based on the way that individuals interpreted content, so conclusions about the propensity of the content itself are a function of how viewers or players are likely to respond to it (e.g., see Anderson et al., 2003). From the point of view of supporting the development of public policy on media violence, research differentiating between types of user is of limited use. It is true that classification law has traditionally distinguished between people of different ages, saying those above a certain age can access certain content and those below cannot. Such distinctions may have a foundation in research (depending on the age thresholds used and the way they are justified). However, this is probably the limit of the political acceptability of public policy that distinguishes between groups of people. Other distinctions drawn in the research are unlikely ever to be used for the development of public policy. For example, research shows that aggressive temperament and exposure to violence at home heighten the effects of media violence (Valkenburg & Piotrowski, 2017). While such insights might enable psychologists to help parents and carers understand the need to limit exposure to violent content generally for certain children, they are less helpful in informing a system to restrict exposure at a population level. The people who enforce such restrictions – cinema operators and the like – cannot be expected to check for such factors when deciding whether to grant access to certain content. Further research about content factors is needed to advance the development of public policy on access to violent media content.

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Table 1: Analysis of Classification Review Board Decisions, 2011-2016

Year	Title	Film/ game	Principal element(s)	Original classification	Sought on review (?) ⁶	Review classification	Adjectives used (+ or - impact) ⁷	Outcome
2016	X-Men Apocalypse	F	Violence	MA15+	M	M	Action, virtual, superhero, bloodless (-)	Lower successful
2016	TMNT Out of the Shadows	F	Violence	M	PG	PG	Fantasy (-)	Lower successful
2015	Boychoir	F	Violence, themes	M	PG	PG	Bullying (-)	Lower successful
2015	Blinky Bill	F	Themes, violence	PG	G	G	Slapstick, cartoony (-)	Lower successful
2014	Blended	F	Sex	M	PG	PG	N/A	Lower successful
2013	Rampage	F	Violence	MA15+	R18+	MA15+	None	Higher unsuccessful

⁶ This is rarely if ever stated because it is not an official category. The review is '*de novo*', meaning that the CRB is not, strictly speaking, deciding between only two classifications. Rather the whole field is open to it. However, in reality, distributors seek review because they want a lower category and the Minister does so in hope of getting a higher one. The classifications given in this column reflect that dynamic.

⁷ + and – are used to show where the CRB's use of the adjective appeared to support a higher or lower assessment of impact, respectively

2013	Tom Clancy's Splinter Cell Blacklist	G	Violence	MA15+	R18+	MA15+	Unrealistic, infrequent, separated by long periods of strategic avoidance of the enemy and stealth gameplay (-)	Higher unsuccessful
2013	Borderlands	G	Violence	MA15+	R18+	MA15+	Unrealistic, lack wound detail, alien, cartoon-like (-)	Higher unsuccessful
2013	Fuse	G	Violence	MA15+	R18+	MA15+	Lacks realistic detail (-)	Higher unsuccessful
2013	Deadpool	G	Violence	MA15+	R18+	MA15+	Unrealistic, comic book-style, comedic, stylised, superhero (-)	Higher unsuccessful
2013	Walking Dead Survival Instinct	G	Violence	MA15+	R18+	MA15+	Stylised, unrealistic, zombie horror (-)	Higher unsuccessful
2013	God Mode	G	Violence	MA15+	R18+	MA15+	Stylised, unrealistic (-)	Higher unsuccessful
2013	Walking Dead	G	Violence	MA15+	R18+	MA15+	Stylised, in comic book mode, unrealistic (-)	Higher unsuccessful
2013	Company of Heroes	G	Violence	MA15+	R18+	MA15+	Top down distant, stylised (-)	Higher unsuccessful
2013	Deadly Premonition	G	Violence	MA15+	R18+	MA15+	Horror themed, unrealistic (-); realistic (+)	Higher unsuccessful
2013	Gears of War	G	Violence	MA15+	R18+	MA15+	Unrealistic, stylised (-); frequent (+)	Higher unsuccessful

2013	Killer is Dead	G	Violence	MA15+	R18+	MA15+	Hack and slash, graphic novel, Manga, unrealistic (-); bloody (+)	Higher unsuccessful
2013	Alien Rage	G	Violence	MA15+	R18+	MA15+	Mid-distance, unrealistic, lacking in anatomical detail, alien themed (-)	Higher unsuccessful
2013	Inside Llewyn Davis	F	Language, themes	MA15+	M	M	N/A	Lower successful
2013	American Hustle	F	Language	MA15+	M	M	N/A	Lower successful
2013	Behind the Candelabra	F	Sex, themes	MA15+	M	M	N/A	Lower successful
2013	Saints Row IV	G	Drug use	RC	R18+	RC	Stylised, unrealistic (-)	Lower unsuccessful
2012	Prometheus ⁸	F	Violence	MA15+	M	M	Frenetic, dimly lit and/or filmed using medium or long camera angles without lingering shots or graphic detail, science fiction (-)	Lower successful
2011	A Serbian Film	F	Crime or violence, sex	R18+	RC	RC	Sexually, blood, paedophile, set-back shot, sexualised, sexual, extended, repeated (+)	Higher successful

⁸ The CRB reviewed classifications on 2 versions of this film, 2D and 3D. For these purposes only 3D one has been counted.

2011	The Human Centipede II	F	Violence	R18+	RC	RC	Detailed, prolonged, repeated frequently, realistic backgrounds (not stylised), realistic, graphic detail (+)	Higher successful
2011	We Dare	G	Sex	PG	M	PG	N/A	Higher unsuccessful
2011	Happy Feet 2 ⁹	F	Themes	PG	G	G	N/A	Lower successful
2011	Twilight: Breaking Dawn Pt1	F	Themes	MA15+	M	M	N/A	Lower successful
2011	House of the Dead: Overkill Extended Cut	G	Violence	RC	MA15+	MA15+	Horror, stylised, paying homage, not graphically sharp, familiar format, fantasy (-)	Lower successful
2011	Mortal Kombat	G	Violence	RC	MA15+ ¹⁰	RC (majority)	Not sufficiently ameliorated by the fantasy setting, emphasising and humanising, explicit, blood and gore splatter (+)	Lower unsuccessful
						MA15+ (minority)	Infrequent, difficult combination of moves, non-interactive, fantastical, heavily stylised, implausible and unlikely, non-human victims, humorous,	N/A

⁹ The CRB reviewed classifications on 2 versions of this film, 2D and 3D. For these purposes only 3D one has been counted.

¹⁰ This was the highest legal classification for games at the time.

							lacks detail and realism, familiar, artificial (-)	
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ⁱ An earlier version of this article was presented at the *Violence: The Stories and the Science* conference at NSW Parliament House in July 2016.

ⁱⁱ *R v Hicklin* (1868) LR 3 QB 360, 371 (Cockburn J).

ⁱⁱⁱ The use of the term ‘effects’ is controversial in some quarters, because it is interpreted as necessarily implying a causal relationship. However it is used as a term of art in psychological literature to identify an association between a stimulus and a mental state that may or may not be causal. This is not to state or imply that psychologists never draw causal inferences from their research, but even when they do, it is usually in a more subtle and tentative way than is portrayed in other discourses. In particular, causal inferences are generally framed in terms of risk factors, rather than mechanical or automatic consequences.

^{iv} *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT); *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW); *Classification of Publications, Films and Computer Games Act 1995* (NT); *Classification of Films Act 1991* (Qld); *Classification of Publications Act 1991* (Qld); *Classification of Computer Games and Images Act 1995* (Qld); *Classification (Publications, Film and Computer Games) Act 1995* (SA); *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas); *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Vic); *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (WA).

^v *Classification (Publications, Films and Computer Games) Act 1995* (Cth), s11.

^{vi} *National Classification Code 2005* (Cth), s1.

^{vii} *Guidelines for the Classification of Films 2012* (Cth), Part 2; *Guidelines for the Classification of Computer Games 2012* (Cth), Part 2.

^{viii} *Guidelines for the Classification of Films 2012* (Cth), Part 2; *Guidelines for the Classification of Computer Games 2012* (Cth), Part 2.

^{ix} *Guidelines for the Classification of Films 2012* (Cth), Part 2; *Guidelines for the Classification of Computer Games 2012* (Cth), Part 2.

^x Decisions 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20, 22

^{xi} Decisions 9, 10, 11, 12, 13, 15, 20, 21, 22

^{xii} Decisions 1, 2, 3, 9, 10, 12, 14, 16, 17, 18, 21

^{xiii} Decisions 7, 8, 17, 18, 19, 20, 21, 22

^{xiv} Decisions 4, 7, 9, 18, 20

^{xv} Decisions 6, 15, 20, 22, 23

^{xvi} Decisions 1, 16, 19, 23

^{xvii} Decisions 13, 17, 18, 23

^{xviii} Decisions 20, 21

^{xix} Decision 23 (sexually, paedophile, sexualised, sexual).

^{xx} This is an important borderline because it represents the difference between advice and restriction. For this reason having material classified on the MA15+ side is the outcome most likely to be of assistance to parents who wish their children to avoid violent content.

^{xxi} Decision 1, (emphasis added).

^{xxii} Decision 18, (emphasis added).

^{xxiii} Decisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22. Note that the concept of ‘accommodated’ was not always applied to violence, and sometimes it was used in negative sense ie ‘cannot be accommodated’.

Promoting healthy choices and stronger voices in children’s media

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