

Scope:

The purpose of this submission is to provide input into the review of classification guidelines for Films and Computer Games as part of the Department of Communications and the Arts consultation process. This submission provides commentary on the National Classification Code, the Classification Board roles and responsibilities, and suggests a governance model for classification of media.

This submission will answer direct questions asked in the associated discussion paper.

Background Information:

The Australian classification scheme has been subject to significant negative reporting internationally due to the arbitrary application of policy and many popular computer games being refused classification under the '*Guidelines for the Classification of Computer Games, 2012*' without alterations. The Australian market is small enough that this has meant some publishers made decisions not to resubmit after making changes. This has been widely assumed to result in grey market trading or illegal downloads for access to titles. Which does not achieve the intended outcome of the decision.

This submission contends that these guidelines are no longer appropriate, and due a lack of government controls, fail to achieve their intended purpose. Often games being refused classification increases interest, and further encourages alternate methods for accessing media. While the code serves an important purpose in protecting vulnerable members of our community,

Due to the evolution and maturation of the computer game medium as its audience has aged has resulted in increasing content intended for mature audiences. This largely follows the development of cinema and other media regulated by our classification system. There is more and more content which is aimed at a mature adult audience being produced.

The difference in guidelines between mediums, which is assumed to be based on the presumption of higher impact due to interactivity, creates a significant disparity in the entertainment content available for adults and has since been disproven by academic studies. There is still some dispute on the impact of interactive media regarding minors, but this applies equally to other mediums already successfully regulated while still supporting an adult's right to choose.

Executive Summary:

The classification of media in Australia as found by the ALRC review, along with the ACCC recommendations have found that our current classification system may no longer be fit for purpose. In order to remedy the guideline discrepancies and create a more balanced and effective system it is advised that the guidelines for classifying interactive media should be altered to be in parity with the film and episodic series guidelines.

To effectively manage this parity it is suggested that a common set of principles be developed which the guidelines for each media are assessed against to ensure they are fit to achieve the purpose for the principle. These principles should be self-evident and agreed to by each state's Attorneys-General.

The classification board(s) would be responsible for maintaining guidelines with appropriate governance and oversight of the e-Safety Commissioner (or similar role). Which would applied to the various media platforms (films, television, computer games, publications) and changes would take effect immediately.

Industry would then be allowed to self classify with either online tools similar to the IARC or be supplied tools to self classify where the classification board or a replacement body is there to offer assistance to the publishers when self classifying, and would be there to review decisions in the case of dispute such as a complaint from consumers or the publishers themselves. The review board (if still applicable) would be absorbed into the main board as per the ALRC recommendation.

The language of the guidelines should also be clarified with supporting documentation to ensure the public / community is able to understand the guidelines and their intended purpose.

Current classification category analysis and remedy:

The current classification categories (G, PG, M, MA15+ and R18+) for films and computer games are still useful and appropriate to fulfil the purpose of national classification code.

The guidelines of classifiable elements pertaining to the classification of computer games are no longer appropriate or useful for the classification category of R18+. The media of computer games has matured. And as such it is not a medium that caters to audience that are solely comprised of minors.

Due to having a substantial adult audience, mature adult themes are becoming more present in computer games, especially those pertaining to violence, sex and drug use. The current computer game guidelines, while an improvement from the previous are unsuitable for the current media landscape.

The guidelines were written in a way that assumes that all computer games have a higher impact due to the interactive nature, than it's film counterpart which has been proven false when pertaining to mature adult audiences by multiple studies conducted within the last decade (2010 – current).

Due to this higher impact stance the guidelines for the R18+ rating, has created a perception in the public that the guidelines for this classification rating were written assuming that the entire computer game audience were minors.

With this in mind the restrictions placed on computer games which are not present in the film guidelines make the current guidelines unsuitable, as they restrict the depiction of content that is found in films. This is highly inconsistent with the spirit of classification, and goes against one of the core principles of the national code; “adults should be able to read, hear, see and play what they want” this is perplexing, when pertaining to the R18+ rating.

Which by the very nature of the classification, states that it is intended for mature adult audiences. As the mediums are different and one is interactive, the content maybe delivered differently however there should be no extra restrictions placed on an interactive medium attempting to tackle the same subjects as film when working within an R18+ classification category.

To remedy this situation replacing guidelines such as “Violence is permitted. High impact violence that is, in context, frequently gratuitous, exploitative and offensive to a reasonable adult will not be permitted.” should be changed to be identical to the film guideline of “Violence is permitted.” In the subject of violence there are extra restrictions placed on computer games when the violence comes in a sexual nature. Specifically the guidelines “Actual sexual violence is not permitted” and “Implied sexual violence that is visually depicted, interactive, not justified by context or related to incentives or rewards is not permitted.”

Where the only sexual violence guideline for film is “Sexual violence may be implied, if justified by context.” In theory a film in which a character chooses to commit an act of sexual violence which in turn causes them to gain status and wealth due to the procreation of a child who is highly talented, which they have high influence over and collect the income of that child.

This film could be classified R18+ or lower but a similar story scenario would be refused classification if it were to happen in the computer game medium even if it were to occur in the exact same fashion and depiction as the hypothetical film as a non-interactive cut scene.

To remedy this, the removal of incentives and reward would suffice to bring parity to the guideline for the implied sexual violence. With regards to the guideline “actual sexual violence not being permitted”. Reviewing the language of the guidelines and the code the term ‘actual’ gives the impression to refer to the act being committed on the medium between real humans beings and not in a simulated manner.

As a computer game is created with computer generated images and everything is simulated, it is impossible for the guideline relating to ‘actual’ to be breached (and thus is not useful at all) due to the nature of the medium. If this is not the intent of the language then I recommend for it to be reviewed and redefined to clear confusion.

There are similar guideline discrepancies between film and computer game guides lines for the R18+ classification. Pertaining to the guidelines for drug use, an example of this is “Drug use related to incentives and rewards is not permitted.” and “Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.”

These guidelines are not useful as the logic for restriction logic does not make sense, when applying to an adult. As the interactive nature has no more impact than film on an adult audience, thus causing interesting scenarios where a video game has a healing item called morphine being the reason for a refused classification where an adult would be able to discern that morphine is not a magical cure all able to heal broken limbs and bullet wounds in seconds. In order for the game to release. The item has it's name changed to Med-X or herbal remedy which then is approved as it is not a known narcotic.

If the computer game guidelines were to be applied to a film that is intended to be R18+, the film would be refused classification. An example would be if the theoretical film showed a person taking morphine which reacts with their genetically engineered DNA to fully heal the main protagonist. However as the film was refused classification the producers re-shoot the scene and called the morphine, chemical x which then allows it to get an R18+ rating.

When applying the video game guidelines to a film as the above example did, the initial refusal of classification would be thought of as preposterous. It would be mentioned a mature adult would understand morphine would not function as shown in the fictional setting. And the secondary rating approval of a simple name change allowing adults to view the film would not be looked upon kindly either by the Australian community.

However with computer games the guideline of “Drug use related to incentives and rewards is not permitted.” has also resulted in questionable board decisions due to the interpretation of said guideline. A few examples of this would be the “Alien Drugs” from saint row IV which granted super powers. As the narcotics in question were not specified to be a real narcotic (such as speed, meth, heroine etc.) and was taken in the context of the protagonist being in a simulation matrix style. However this was still a factor for a refused classification rating which was required to be removed from the computer game before a R18+ rating was granted.

Another more recent example would be of the computer game “We happy few” which contained a narcotic called joy. In this fictional world the fictional narcotic joy was mandated by the dystopia like government to give the illusion of serenity. However it was determined initially that taking joy to prevent non player characters from acting hostile to the player (as stated in game that those who refuse or cannot ingest the narcotic are guilty of criminal evasion of mandated happiness). Was a benefit and such the game was given a refused classification rating. This was later over turned by the review board and granted an R18+ rating.

With the guideline “Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.” may also be seen to cause confusion as the previous example of “We happy few” also was reported to have breached this guideline as the joy pill bottle showed that the player when taking the narcotic, take a pill from the bottle and showed from a first person view the ingestion of the pill via oral means. This guideline raises several questions in the gaming community of

Australia such as why would animation the taking of narcotics be a valid reason for refused classification? Especially when the detailed depiction of drug use has been showing in cinema.

Examples include but not limited to snorting cocaine, injecting narcotics or ingesting narcotic pills via oral means. There have been rises in films shot in a first person perspective such as “hardcore Henry” which has first person perspective drug use (the same style found in computer games). The protagonist injects epinephrine into their body via hypodermic needle and syringe. Thus gaining enhanced strength, speed and reflexes along with their cybernetic enhancements.

A computer game example could be a player uses the item called adrenaline, this item grants a benefit of enhanced strength, however the developers added an animation of injecting the narcotic into the player’s avatar arm or chest. Under the perception of the guideline “Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.” meaning, it is understood by the community that it would be a breach (and be a cause for a refused classification) for simply being a mere artistic expression to breathe life into the game world. While the film counterpart shot in the same perspective would be deemed appropriate for R18+.

In order to rectify this situation a review in the language of the guideline “Interactive illicit or proscribed drug use that is detailed and realistic is not permitted” should be conducted to clear confusion of the guideline’s intent and application, so to not restrict the computer game medium in the depiction of usage that has been shown in film.

Classification Scope:

In the modern landscape the scope of classifiable media is vast. It is recommended that only content that is intended for release in Australia be classifiable. In modern times with the internet interconnecting countries, creeds and people across the globe. Attempting to classify all media on the internet is an impossible task, due to the speed of new media being created and the sheer volume.

Thus a narrow scope should be adopted to focus on commercial ventures and media that is intended for publication in Australia. A classic example would be YouTube where anyone with a phone can make videos and content. With a narrow scope there would be no reason to attempt to classify all YouTube videos or ask for the creators to submit a classification application, where the creator only uploaded to YouTube and due to the nature of the internet, everyone across the globe has access to that video.

While the e-safety commissioner and the harm standard classifications would be beneficial, for classifying harmful content on the internet. It should be a more reactionary rather than a pro-active approach, due to the sheer volume of media the over head cost for management of all media online would be astronomical, this also does not take into account that there is not enough of a workforce or a means of automation to reliably review all media being uploaded and produced.

There are also many products on the internet which was never intended to be released to Australia specifically but just hurled into the greater internet in a similar fashion as YouTube content, and due to the connectivity of the internet people may reach out to foreign countries to purchase media.

Rather than attempt to classify this media it would be beneficial to add exemption to classification of media that has not attempted to officially release in Australia as the product would not be advertised in Australia through official channels and would not be able to sold in Australian stores. If the content is deemed harmful it should be restricted by the e-safety commissioner under the harm standards through a reactive review, post a complaint.

Classification Standard Unification:

As per the ALRC review due to the discrepancies between classifiable elements and categories between mediums (as noted above in the guideline review and remedy), unification of all guidelines for all media types (films, television, online streaming and computer games) should be implemented to ensure the most freedom for consumers to choose their content. One such method would be to replicate the principle and guideline methodology utilised in other government documents such as the APS Code of Conduct.

Using this methodology a set of key principles would be agreed on by the Attorneys-General of each state which apply to all media and guidelines would be written by the e-safety commissioner and the classification board against those principles which will pertain to all media.

This will ensure the most agility and freedom of content across all media content as there would be a set of guidelines that pertain to a principle to aid in the classification of all classifiable material. This will also allow the e-safety commissioner the ability to add guidelines with the classification board to the classification categories G, PG, M, MA15+ to keep in line with the principles where industry may have made changes which are not suitable to children. An example of this would be the loot box controversy.

If a principle and guideline approach is unable to be utilised a set of guidelines which are agnostic between platforms should be created with the attorneys-general of each state empowering the e-safety commissioner to create temporary guidelines in the classifiable categories of G, PG, M, MA15+ to limit children's exposure to harmful changes that can occur in the future. When the Attorneys-General of each state convene during their 6 month schedule to then decide if the guideline changes should be made permanent or removed.

Classification Responsibilities:

Looking at the broadcast model and in other nations (USA and UK), there has been evidence that self-regulation of media by companies and publishers has been highly successful. It would be highly recommended to allow for industry self classification, if utilising a harmonised principle and guideline model (as noted in the classification standard unification).

This will allow the core principles agreed on by each Attorneys-General and the guidelines to be applied by industry to their publications and works. A method to achieve this would be online classification tools to reduce human input and cost. This will also allow for publishers to quickly get a classification and free up the classification board or replacement government body resources to deal with exceptions to the classification, such as investigation of complaints or reviewing the automated classification when requested by a publisher. Another method would be supplying government approved classification tools to industry and allow them to self classify based of the

guidelines written from the principles. The classification board should also be available to assist industry with classifying their media if they require assistance.

If the principle and guideline approach cannot be used then the agnostic guidelines should be applied to an agnostic online classification tool that classifies all media and allows for the publishers to get a classification (in a similar fashion to the IARC system). This will introduce the same benefits of the online tools to the publishers to self classify and reduce the cost and human input.

Classification board review analysis:

The classification board has served a vital purpose of attempting to classify all the media published in Australia and keeping in with modern sensibilities by ensuring a spread of board members being from various creeds and ages. While the board and review board are vital the review board should be dissolved into the main board as per the ALRC recommendation.

Keeping in line with automation and reduction of human input to make classification more efficient it would be beneficial for the board to no longer be required to classify material and act as the review board and review complaints and the decisions of an automated classification.

If industry self classification based on principle and guidelines was to be applied then the classification board should be there to offer assistance and to work as a reviewer on if any changes made by an assurance body or if there has been a complaint about the classification which was not addressed by industry. If the board is deemed no longer useful in it's current state I would recommend keeping it's principles of a varied group of reasonable adults and incorporating that logic into the new body or independent body for reviewing decisions.

Classification governance:

The classification governance should remain as a state function in the context of what is sellable or how it is able to be displayed. The current scheme between the federal and state governments seems to be fit for purpose. The only changes that would be recommended is to allow federal government to impose penalties for adults supplying minors with material that is restricted to adults (R18+). That is to have similar penalties to supplying X18+ rated content to minors.

Summary:

In summary the best way forward for Australian classification would be to incorporate a principle and guidelines strategy where principles are agreed to by each state Attorneys-General and the e-safety commissioner and the board write guidelines based on the principles which are to applied to all media platforms (films, television, computer games, publications).

Industry is then allowed to self classify the media they produce in-line with the guidelines which should be done either with online tools or being supplied tools which are government approved, the review board would be merged with the classification board, which then would be available to provide assistance if required.

In the event of a classification dispute in the form of either a complaint from the public or publisher there would be a review competed by the classification board. The e-safety commissioner would also have the responsibility to investigate complaints of harmful online content and rate the harmfulness of the online content.

Each state and territory in Australia should keep their current powers with regards to classification governance. The federal government should also be able to impose fines and penalties for adults supplying restricted material to minors.

The alternative if principle and guidelines were deemed to not be suitable then a set of agnostic guidelines would be decided by the attorney-generals which shall then be applied to all classifiable media content.

In order to reduce human interaction requirements and cost, an automated system that will classify all classifiable content (films, television, computer games, publications) would be introduced to allow for cheap and timely classification for industry. Where the review board and the classification board are merged and have the responsibility to review complaints that arise from the automated agnostic classification tool which shall reside online for greater availability.

With the same recommendation of the state and federal classification governance.