



Submission to Classification Reform Review, Stage 2



30 May 2024



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ABOUT ANZSA

This submission is made on behalf of the Australia New Zealand Screen Association (ANZSA). The ANZSA represents the film and television content and distribution industry in Australia and New Zealand. Its core mission is to advance the business and art of filmmaking, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all services. ANZSA's members include Walt Disney Studios Motion Pictures Australia; Fetch TV; Netflix Inc; Motion Picture Association; Paramount Pictures Australia; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; Village Roadshow Limited and Warner Bros. Pictures International, a division of Warner Bros. Discovery Inc.

Our members are proud participants in, and contributors to, the film and television industry in Australia that contributed \$9.2 billion to the Australian economy and supported an estimated 54,818 FTE workers in 2017-18.¹

Since 1926, our members have a track record of contributing to the Australian screen industry. Our members' support for Australian stories extends across the screen industry supply chains, from investments in and ownership of Australian production companies like *Matchbox* and *Curio*, to investment in the production and distribution of Australian stories, as well as investments in physical screen industry infrastructure (e.g., sound stages) and post-production services such as *Disney Studios* and *Industrial, Light & Magic Sydney*.

Our members also take an active role in the distribution ecosystem, from distribution into Australian cinemas and home entertainment stores, to licensing content to free-to-air TV, Pay-TV (where they also operate their own branded channels) and all online distribution models ranging from download-to-own, to transactional video-on-demand (TVOD). Our members also operate several direct-to-consumer streaming subscription video-on-demand (SVOD) businesses ranging from Disney+, Netflix and Paramount+, but also more niche services like Crunchyroll and Hayu. In addition, Paramount owns Network 10 and maintains a broadcast video on demand service Ten Play.

Our members' services span the spectrum of distribution services that falls within the two legislative frameworks for classification – the *Classification (Publications, Films and*

¹ Olsberg SPI, *Study on the Economic Contribution of the Motion Picture and Television Industry in Australia*, <https://anzsa.film/wp-content/uploads/2020/02/Study-on-the-Economic-Contribution-of-the-Motion-Picture-and-Television-Industry-in-Australia_Final-Report.pdf>

Computer Games) Act 1995 (“the Classification Act”) and the *Broadcasting Services Act 1992* (“the Broadcasting Services Act”).

As such, ANZSA is uniquely placed to provide comments to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) on stage 2 of the classification reforms. We thank the Department for the opportunity to provide comments.

PRINCIPLES FOR REFORM

ANZSA and our members support the policy intent behind the Government’s classification reforms: to ensure that consumers can make informed choices about the content they and their family choose to watch in a modern media environment.

We would like to suggest some high-level guiding principles for reform that the Department may wish to consider in improving the existing classification framework.

Principle 1: Reduce regulatory burden where possible.

There are a number of opportunities to reduce regulatory burden and imbalances on services governed by the Classification Act. Distribution services governed by the Classification Act are subject to more onerous regulatory requirements than those governed by the Broadcasting Services Act, which regulates broadcasting services through a co-regulatory and complaints-based model.

To illustrate the inconsistency of the current patchwork of regulations, one of our members operates a subscription video-on-demand (SVOD) service as well as a free-to-air broadcast network. The classification of content on each service comes under different legislative frameworks, resulting in a far greater regulatory and administrative burden on the SVOD service than the free-to-air broadcast network.

Any future reforms should therefore focus on how to effectively achieve the policy intent of the classification scheme, whilst “making [classification] simpler and more cost effective”, in line with the government’s commitment.² To achieve this, we encourage the Department to consider a self-regulatory model, in particular for VOD services, similar to that applied to broadcasters in the Broadcasting Services Act, which is a proven and effective template.

² <https://www.classification.gov.au/about-us/media-and-news/news/government-announces-intention-reform-national-classification-scheme-0>

Principle 2 - Shift from an ex-ante, reporting system to a complaints-based system.

The shift to a self-classification model has seen accountability for classification shift from the Classification Board to industry, and evidence shows that industry (whether through approved classification tools or accredited classifiers) has continued to produce classifications in line with community expectations. As such, there is an opportunity to 'right-size' the classification governance structure away from one of oversight and censorship, to a complaints-based model.

Such an approach was endorsed in the Stevens Review, which recommended that a complaints-based model, similar to that overseen by the Australian Communications and Media Authority (ACMA) for broadcasting services, be extended to other classified services: ("Broadcasters support continuing the current complaints process. I consider it works well and should be extended to other content providers, such as streaming services").³

This approach would help to achieve the government's objective for its Media Policy reforms of "consistently regulat[ing] services that make available content that is 'like' TV and radio, and to achieve key policy objectives".⁴

We would therefore encourage the Department to consider how a complaints-based system could be adopted and overseen by the ACMA as part of its proposed role as the single classification regulator.

Principle 3 - It should not matter how or who makes a classification decision, as long as it satisfies consumer interest.

We note that there are a range of available options to arrive at a classification decision, including human judgement (either by the Board or by an accredited classifier) and automated processes. In the latter category, the Government has approved the Netflix tool⁵ and the Spherex tool.⁶ All of these methods have proven capable of delivering a

³ See page 118 of the Stevens Review

⁴ <https://minister.infrastructure.gov.au/rowland/speech/media-policy-priorities-new-government-seminar-communications-and-media-law-association-camla-and-international-institute-communications-iic-australian-chapter>

⁵ <https://www.classification.gov.au/sites/default/files/2019-10/classification-netflix-classification-tool-approval-2016.pdf>

⁶ <https://minister.infrastructure.gov.au/rowland/media-release/new-classification-tool-approved-online-content-ratings>

final rating, which is appropriate in its classification, and effectively informs the viewer about the content.

A guiding principle should therefore be that as long as consumer interest is served and consumers adequately protected, it should not matter how a classification decision is made. We would therefore encourage any future reforms to be outcomes-based and flexible.

Principle 4 - Maintain and enhance the classify-once principle.

The classify-once principle is a key part of how the Classification Act reduces administrative burden on industry, whether it enables the movement of content from cinema to home entertainment to broadcasting or streaming, or between broadcasting and streaming, without requiring a new classification rating to be generated. This classify-once principle ought to be maintained and consideration should be given to extending this principle to similar like-minded jurisdictions like the United Kingdom, as New Zealand has already done.

Principle 5 - Suggest a distinction between spectrum/online and “bricks and mortar” content.

Harmonized, horizontal regulation makes sense in theory but is often hard to implement in practice. The reason why no government has harmonized ex-ante theatrical classification with online or broadcast distribution in the Asia-Pacific region (outside China) comes down to the practical differences between distribution methods and finite resources.⁷ The vast volume of content which online services make available, as well as the changing content mix on streaming services, requires a shift in thinking and consideration of vertical, segmented regulation.

VOD services started out with catalogues of content available on-demand. The volume of that content already posed challenges for the original classification system and was a major driver for the approval of classification tools and self-classification. Now these

⁷ For examples around the region:

- India regulates theatrical content under the [Cinematograph Act](#) and online distribution under the [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules](#);
- Malaysia regulates theatrical content under the [Film Censorship Act](#) and online distribution under the [Communications and Multimedia Content Code](#);
- South Korea regulates theatrical and online distribution under the [Promotion of the Motion Pictures and Video Products Act](#) but places differing regulation/classification standards for both types of content.
- Singapore regulates theatrical content under the [Films Act](#) and online distribution under the [Broadcasting Act](#).

services are increasingly adding live content to their offerings. Paramount+ has comprehensive football coverage including the A-league, AFC Asian Cup and FA Cup football⁸, Netflix have recently acquired the global rights to WWE Raw⁹, and this trend is only expected to accelerate. As such, ANZSA submits that for the purpose of classification, VOD services should be regulated akin to broadcast services. VOD services are also offering parental control solutions and are able to facilitate complaints resolution processes based on queries from their members.

A distinction then can be made between this form of distribution and “bricks and mortar” – i.e. theatrical and home entertainment distribution. The role of States in the enforcement of classification obligations continues to be relevant for these distribution channels, and many practical considerations also support the status-quo.¹⁰

As such, ANZSA submits that “bricks and mortar” distribution should continue to be regulated under the National Classification Scheme, whereas VOD services should be regulated under, or in a model similar to, the Broadcasting Services Act. ANZSA supports the submissions from AHEDA and the Film Industry Associations who call for the ACMA to be the regulator which provides oversight of the National Classification Scheme.

RESPONSES TO THE REFORM PROPOSALS

Purpose and scope of the National Classification Scheme

ANZSA supports the current purpose of the National Classification Scheme; providing information to Australians to help them make informed choices on the content they and those in their care consume.

ANZSA supports the proposed criteria used to define classifiable content. Our members operate services which provide high-quality curated content, and we submit that it is appropriate these services are regulated differently from those who operate user-uploaded content services. ANZSA submits that a clear regulatory delineation should be established to ensure each service is ultimately answerable to one regulatory

⁸ <https://www.paramountanz.com.au/news-and-insights/were-kicking-goals-with-back-to-back-football/>

⁹ <https://about.netflix.com/en/news/netflix-to-become-new-home-of-wwe-raw-beginning-2025>

¹⁰ Many theatrical distributors value the certainty in obtaining the classification from the Classification Board given the significant media campaign made available to launch major movies. Managing complaints would also be very complex. Do consumers make complaints at the point of purchase, where they are often serviced by casual staff. If they were to complain through the distributor, are they even capable of knowing which company distributed a movie and how to contact them?

regime. For these user-uploaded services that regulatory regime is the Online Safety Act.

ANZSA would like to point out that the current settings in the Online Safety Act are such that the same consideration is not offered to the VOD services operated by our members. In addition to being regulated by the National Classification Scheme, they are also captured in the Online Safety Act.¹¹

A framework for evidence-based classification guidelines

ANZSA supports the establishment of a research capability within the regulator which can help ensure that the Australia's classification scheme continues to reflect changing community attitudes. ANZSA has not seen conclusive evidence that requires the establishment of a new Classification Advisory Panel (CAP), or whether – alternatively – the role can be carried out by the regulator itself.

Should Government proceed with the establishment of the CAP, ANZSA submits it should be purely a body that provides advice to government, without the power to make changes to the Code. Any consideration by government for changes to the Code must consider industry perspectives and keep to the overarching principle of reducing regulatory burdens and improving the ease of doing business. Specifically, the marginal benefits of changes should be weighed against the technological or practical capacity to implement them, and the frequency at which changes can be made should be kept to a minimum to reduce cost of recalibrating tools and retraining assessors.

ANZSA encourages the Department to consult on the CAP's operating model before it is finalised. This consultation should specifically enable content distributors to comment on the operational burden associated with regular updates to the Guidelines.

ANZSA supports the submission of the *Film Industry Associations* in respect to the establishment of a PG13 rating for the transactional 'bricks and mortar' distribution methods, and amending the classification requirements for trailers shown in cinemas from a process to rating them based on the likely classification of the movie to a process of rating them based on the content of the trailer (a method successfully applied in the United Kingdom and New Zealand).

Fit-for-purpose regulatory and governance arrangements for classification.

ANZSA supports the consolidation of classification responsibilities for broadcasters and online VOD services with the ACMA, as recommended in the Stevens Review. The

¹¹ See following page for more information on how the Online Safety Act applies to curated VOD services.

ACMA is well experienced in overseeing the co-regulatory classification arrangements and complaints handling processes with Australian broadcasters under the Broadcasting Services Act.

Using the ACMA and a complaints-based approach will also address the challenges posed to the current National Classifications Scheme's inability to effectively incorporate the increasing volume of live content available on VOD services. It is clearly impossible to provide ex-ante ratings of live content to the Classifications Board.

Capturing VOD services under the Broadcast Services Act will also address the duplication in regulatory burden for VOD services, which are currently captured under both the *Classification Act* and the *Online Safety Act 2021*.

The Online Safety Act defines "on-demand services" by applying the Broadcasting Services Act definition of online services provided by "broadcasters" (i.e. limiting this to catch-up TV services).¹² On-demand streaming services therefore fall outside of the definition of an "on demand service" and are considered a "designated internet service" provider and within the scope of the Online Safety Act. This means, for example, that streamers must comply with the Class 1 Standards which are soon to be finalised, even though on demand streaming platforms cannot, under the obligations of the Classification Act, provide access to Class 1 (Refused Classification) content.

ANZSA submits that "bricks and mortar" distribution (theatrical distribution and physical home entertainment) should continue to be regulated under the National Classification Scheme, with ACMA as the regulator.

ANZSA submits that the Classification Review Board is seldom used in practice due to the high cost (\$10,000 per application). ANZSA suggests that a separate Review Board may not be required and that the Review can be carried out by other members of the Classification Board than those who made the original decision.

ANZSA is grateful for the opportunity to participate in this review process and would appreciate the opportunity to participate in the next stages of reform.

Paul Muller

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¹² See section 18 of the [Online Safety Act 2021](#) for the definition of an on-demand program service.