



Australian Government
Classification Board

Modernising Australia's Classification Scheme

Stage 2 Reforms

Australian Classification Board

Submission

30 May 2024



About the Australian Classification Board

The Australian Classification Board (The Board) is an independent statutory body established under the *Classification (Publications, Films and Computer Games) Act 1995*. This independence and impartiality from government and industry is an important feature of the current Classification system under the National Classification Scheme, and recognised as such by both the Australian community and industry.

The Board is currently responsible for classifying films, computer games and certain publications in Australia, and increasingly an important quality assurance function with oversight of industry self-classification decisions through its auditing and revocation powers. The Board is required to give effect to the principles and criteria of the National Classification Act 1995, National Classification Code (the Code) and guidelines for the classification of films (2012), computer games (2012) and publications (2005) when making classification decisions.

The Code requires that classification strikes a balance between choice and harm minimisation matters articulated in principles that include:

- enabling adults to choose what they read, hear, see and play;
- respecting people who may not want to see material they find confronting; and
- protecting minors from inappropriate content likely to harm or disturb them.

The Classification Act requires the Board to consider matters including community standards, the nature and character of the content, whether it has any artistic or educational value, and the intended audience. The Guidelines are more detailed tools for classifying content and explain the different categories and the scope and limits of content suitable for each category.

The Board consists of a Director, a Deputy Director and Board Members, that are appointed by the Minister, for a maximum term of up to seven years and are required to be broadly representative of the Australian community, who view up to 300 minutes of content daily (5 hours daily – per Board member), each requiring a classification decision and written report justifying the decision within the legislation.

The Classification Board, through its daily application of the Act, the Code and the Guidelines in classification decision making, defines, reviews and updates classification practice and precedent, known as Benchmarks and the Board Standards, annually, to ensure it is relevant to the content being classified and reflective of community standards and concerns.

These standards are considered ‘best practice’ in classification by industry, with the Board recognised by the Australian public as a consistent, high quality, and trusted agency. This is evidenced by many of the Board’s former Members being subsequently employed within industry, classifying media for Broadcast Television, Streaming services, film and computer games companies, as well as working within the Office of the eSafety Commissioner.

Furthermore, the Board, its standards and classification decisions are held in high regard internationally, recognised by peer classification agencies in Asia, the UK, U.S. and New Zealand in particular, with whom we share advice, information on classification decisions and professional practice.

Executive Summary

The Australian Classification Board (The Board) supports reforms to the National Classification Scheme (the Scheme) as part of the Stage 2 Reform process announced by the Hon. Michelle Rowland MP, for Communication in March 2023. The Board commends the Minister and the Department for undertaking this process. The Board is committed to proactively and constructively contributing its expertise as a key stakeholder to the reform process through Proposing and testing options, concepts and ideas, as well review of the practical application of any reform initiatives, to deliver a future-focussed, fit for purpose National Classification Scheme for all media content to the benefit of the Australian consumer and the media industry.

The Board has developed a deep, unparalleled expertise in the unpacking and classification of media content within a legislative and risk mitigation framework, through thousands of hours of viewing and classifying media content and high impact Law Enforcement content a challenging, yet essential service for them community. In 2022-23 the Board viewed 409,817 minutes or 1,782 business days of content. It is this daily practice of ‘action research’ through the application of the Act, The Code and the Guidelines to make classification decisions, that enables the Board to set benchmarks and standards, not only for its own practice but also for industry self-classifiers including digital tools, Accredited Classifiers and Authorised Assessors. This professional practice enables the Board insights into the successes and challenges of the current Scheme and its practical workings and outcomes.

In the Board’s opinion the Scheme has not kept pace with the way Australians access and consume media content and developments in the industry that provides it to them. Particularly, the a fit-for-purpose Scheme must accommodate the rapid growth in digital and online content and technologies, the emergence of new content-sharing platforms and interactive features, evolving community standards and media industry convergence that focuses less on the delivery platform and more on content to consume, and will efficiently and effectively enable Australians their choice of the latest creative, media content available in the market.

The Board supports key areas of reform identified by the Stevens Review 2020 and raised in this consultation including:

- the harmonisation of the regulatory framework for classification across all media content regardless of delivery platform
- the appropriateness of criteria and guidelines with which to classify content, and whether they accurately reflect community standards
- the defining of media content required to be classified that includes online content
- the appropriate level of government oversight of the Scheme, in what form and where responsibility for the Scheme should sit.

As it with the response to the 2020 Stevens Review, the Board continues to recognise the need and desirability for further industry self-classification, its value in establishing a multi-faceted classification process with the Board at its core, along with the digital tools (Netflix, Spherex and IARC), and recent Stage 1 Reforms pertaining to deeming provisions for Broadcast classification decisions and the Accredited Classifiers scheme.

The Board’s view is that oversight by a single, independent national regulator of all media content is the future way forward, incorporating a Board led classification, in order to efficiently and consistently enable *Australian adults should be able to read, hear, see and participate in media of their choice; as well as harm minimisation particularly for children and young people.*

The Board's skills, expertise and experience would bring deep through:

- Setting the 'standards' and benchmarks of the Scheme Australian classification and driving consistency in and quality assurance of decision-making by industry and digital tools, thereby maintaining public – both industry and consumer - confidence across a harmonised classification system.
- Undertaking the classification of some content at first instance, this being the daily 'action research' of the 'edge cases' - commercial and law enforcement applications that push the thresholds of current classification standards and impact thresholds, community standards or are considered high risk and / or high profile.
- Undertaking auditing and benchmarking of classification decisions made by industry Accredited Classifiers and digital tools. This includes verifying and revoking these classification decisions and classifying this content if required, to ensure the management of risk, as well as consistently define evolving classification standards and inform and educate industry and the consumer to achieve high quality outcomes for both.
- Defining and publishing classification benchmarks standards that direct the development and refinement of digital tools and the training of Authorised Assessors and Accredited Classifiers in order to generate classification decisions that are relevant and consistent with industry needs and the expectations of Australian consumers.
- Providing training and accreditation of industry classifiers and assessors and auditing their performance and directing remedial action.
- Undertaking the current role and functions of the Classification Review Board, as well as operating as the review body for all other decisions made under any new scheme.

The Board supports the expectation of Australian consumers that there will be restrictions on the publishing of some content, with access to some content restricted by age and that some content should not be available at all, under strict criteria that only the Board can determine and make a legally enforceable decision on.

The Board's response that follows in not intended to provide definitive solutions, the questions proposed in this consultation our significant and not exclusive to the Australian context, all jurisdiction globally are wrestling with the same issues of convergent media regulation. However, in providing this response the Board aims to share its insights, and provide ideas, options and considerations with which to engage in a broader conversation with our peer agencies, industry and government about finding the best fit-for purpose future possible.

The Board sees this response as only the start of the discussion and its contribution to this important endeavour.

Summary Recommendations

Clarifying the scope and purpose of the Scheme, including the types of content that should be subject to classification

1. Purpose and scope of the National Classification Scheme

1. The updating of principle: (b) of the Code to: “Children and young people should be protected from material likely to harm or disturb them.”
2. The implementation within the Code of a Mild+ classification category with an impact level that sits between PG and M to accommodate content specific for young people aged 13-14 years.
3. The updating of principle: (a) of the code to: “Australian adults should be able to read, hear, see and participate in media of their choice.”
4. The implementation a National Classification Scheme for all media content that defines classifiable media characteristics or formal elements rather than media types or delivery formats.
5. The development and implementation of a single set of statutory guidelines with a single set of impact level classification categories known as the ‘Guidelines for the Classification of media content’ under which all agencies and segments of the media industry operate.
6. Criteria 1. Be amended to - Professionally produced - content created through the systematic and regular intent of an organised entity for a particular audience.
7. Criteria 2. be amended to - Distributed on a commercial basis - content that is professional produced for financial gain and other benefit, directly or indirectly, on any delivery platforms.
8. Criteria 3. is amended to Directed at an Australian audience – content, regardless of delivery platform that is accessible to Australians.
9. Criteria 4. be amended to Classification is the responsibility of the publisher distributing content commercially and available in Australia on all delivery platforms.
10. Criteria 5. Is amended to - Online content that is professionally produced, distributed commercially and accessible to Australians is to be defined as ‘Entrepreneurial generated content’ and meets the criteria of classifiable content.
11. That a more fit for purpose definition of user-generated content be created to account for media content that does not meet the classification content criteria to ensure individuals and community groups are exempt from classification.
12. That ‘Entrepreneurial generated content be self-classified in the first instance by publishers, adhering to a Duty of Care Industry Code.
13. The concept of ‘submittable media content’ as a mechanism for ‘calling in’ unclassified Entrepreneurial generated content that meet similar criteria to that of the current Submittable publications be implemented.
14. The definition of User Generated Content be updated to accommodate content creation outside of professional routines and practices and does not have an institutional or a commercial market context. It may be produced by non-professionals without the expectation of profit or remuneration with motivating factors including connecting with peers, sharing information, and the desire to express oneself.
15. That the exemption from classification for News, Current Affairs and Sports Programs be retained and made consistent across all delivery platforms.

16. Entrepreneurial generated and user-generated online content, should be self-classified in the first instance, for example, by the You Rate It tool (or similar).
17. Online content that undertakes the self-classification process should use, under licence, the National Classification Scheme's markings and consumer Advice.
18. All classifiable content regardless of delivery format is classified in accordance with Australian classification laws and standards.
19. That the Classification Act be amended to majority agreement when it comes to updating the Classification Guidelines, and that this be undertaken on a regular cycle of every 4-5 years.
20. That future Scheme should require classifiable content publishers to have content classified and to provide offences and penalties for failure to do so. These powers should vest in the National Regulator for media content.
21. The existing conditional cultural exemption provisions in the legislation be reviewed and rectified, so that there is consistency in the training of people seeking to register an event in order to restore harmony to the regulatory framework around the publishing of unclassified content.
22. That the four-screening per state condition be amended in the legislation to account for onsite in cinema screenings and online viewing to account for the post COVID hybrid film festival model with a clear definition of the total number of viewing permissible included.
23. There should be no change to the commensurate audience rule for the screening of trailers in cinemas.
24. That consumer advice for the media industry (other than the Board's) be defined, set and standardised by the Board, for all media across all delivery platforms, along with the expansion of industry training, and be used by all classification processes through industry.
25. Amend sections 37-41 of the Classification Act to allow for the re-classification of content by the Board, either upon the Board's own initiative, or upon application, or implied request (arising, for example out of an enquiry or a complaint).
26. That the onus remains on industry self-classifiers to identify content that warrants classification by the Board in the first instance, because it may be Refused Classification.
27. That the Board or any future classification function be the only authority that may determine an X 18+ and 'Refused Classification' decision.
28. That the current definition of "submittable publication" in the Classification Act be deleted and replaced with - Any written or pictorial matter, the content of which: should not be sold or displayed as an unrestricted publication (as it unsuitable for a child to see or read); or should be legally restricted to adults; or should be Refused Classification.
29. That the current publication classification categories of Unrestricted, Category 1 – Restricted and Category 2 – Restricted be abolished and be replaced with the G, PG, Mild+, M, MA15+, R 18+ and X 18+ equivalent classification categories.
30. That any future Scheme and Guidelines for the classification of all media content include provisions relating to the display and wrapping of restricted hard copy publications and considerations access restrictions for online publications.
31. A more expansive concept of 'submittable content' be examined, incorporating 'submittable publications, as well as all other unclassified online content, in all delivery platforms, as a legislative mechanism to address 'entrepreneurial generated content' as distinct from 'user generated content'.

Ensuring the classification guidelines continue to be aligned with, and responsive to, evolving community standards, expectations and evidence

2. A framework for evidence-based classification guidelines

32. That an independent from government CAP drawn from a self-nominate pool of commonwealth and states and territories endorsed subject matter experts relevant to classification.
33. The term for CAP Pool members is up to maximum of 4 years with the CAP meeting 4 times per year, which is aligned to a review and update of the classification guidelines.
34. That the Director of the Board be a standing member of each CAP meeting, along with the Assistant Secretary Classification as Chair.
35. That Community Reference Groups focussed on youth, multi-cultural and First Nations be established that liaises directly with the Engagement function of a future National regulator.
36. The CAP should be implemented that is made up of a pool of diverse classification related subject matter experts nominated by and endorsed by the Commonwealth and states and territories.
37. A Terms of Reference and skills matrix for CAP Pool membership is developed and endorsed by the Commonwealth and states and territories.
38. That each CAP meeting is made up of relevant but diverse members to be representative of vary perspectives about the issue(s) at hand.
39. Working group perspective on key issues for upcoming CAP meetings are sort and tabled in the relevant CAP meeting.
40. That any future Guidelines include a definition of themes that is expanded from the current definitions in the existing Guidelines to include a broad array of contemporary social issues, events and content.
41. That consumer advice for themes be confined to only the most impactful thematic material determining the classification category of the content, and that additional consumer advice for 'issues of community concern' are included if present only at the highest impact level or the upper limit of one level below.
42. That any future Guidelines for content include the definition of 'violence' in the List of Terms that is currently contained within the Film and Games Guidelines.
43. That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of violence for each classification category, eliminating existing variations between media types.
44. That any future Guidelines for content remove the blanket prohibition on depictions of violence in films containing sexually explicit activity ('pornographic films'), relying instead upon consideration of context and the prohibitions contained in the Refused Classification category.
45. That any future Guidelines for content include the definition of 'sexual activity' in the List of Terms that is currently contained within the Film and Games Guidelines.
46. That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of sex for each classification category, eliminating existing variations between media types.
47. That any future Guidelines for content remove the prescriptive list of impermissible fetishes and references to 16- and 17-year-olds in the X 18+ classification.

48. That the element currently named 'Language' be re-named 'Coarse language' to reflect the content being assessed
49. That any future Guidelines for content include a definition of 'Coarse language' that distinguishes it from other thematic language, and that it includes spoken language and gestures.
50. That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of 'coarse language' for each classification category, eliminating existing variations between media types.
51. That an indicative coarse language list for each classification level be published on the Classification Website.
52. That the element currently named 'Drug use' be re-named 'Drugs' to reflect the content being assessed.
53. That any future Guidelines for content include a definition of 'Drugs' that includes both proscribed drugs and the misuse of legal drugs (but does not extend to caffeine, alcohol and tobacco).
54. That the proposed future single set of statutory 'Guidelines for all media content' provide descriptions of allowable content for the element of 'Drugs' for each classification category, eliminating existing variations between media types.
55. That any future Guidelines for content include the definition of 'nudity' in the List of Terms that is currently contained within the Publications Guidelines.
56. That the proposed future single set of statutory 'Guidelines for the Classification of all media content' provide descriptions of allowable content for the element of 'nudity' for each classification category, eliminating existing variations between media types.
57. That any future Guidelines for content position interactivity as part of the essential principles with which to assess impact in relation to the six classifiable elements.
58. The CAP reviews all current guidelines to align impact levels, definitions and differing restrictions across classifiable elements, with the aim that under a future National Classification Scheme of developing a single set of Guidelines for all media content.

Establishing fit-for-purpose governance and regulatory arrangements for the Scheme, under a single national regulator responsible for media classification

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

<p>59. That there should be a single national regulator whose responsibilities cover the classification processes of all media content, regardless of delivery platform including for law enforcement.</p>
<p>60. This regulator should assimilate the functions relating to classification processes and complaints handling currently carried out by the Classification Board, Free TV, ASTRA, ACMA and the Office of the eSafety Commissioner.</p>
<p>61. That the Board forms part of the new regulator as the classification function and:</p> <ul style="list-style-type: none">• sets the standards of Australian classification for all media;• undertakes auditing and benchmarking of classification decisions made by industry self-classifiers and digital tools, and can vary or revoke these classification decisions and can classify this content;• undertakes auditing and benchmarking of industry self-classifiers and digital tools, and can direct the refinement of the tools in order to generate classification decisions that are applicable and consistent with Australian classification standards;• is responsible for the functions under section 22CA of the Classification Act recommending or otherwise to the Minister a proposed classification tool;• provides the training and accreditation of industry self-classifiers and assessors and monitors their performance and directs remedial action;• undertakes classification of content at first instance, upon receipt of a valid application, for particular commercial and law enforcement applicants;• undertakes the review of classification decisions currently performed by the Classification Review Board, as well as operating as the review body for all other decisions made under any new Scheme
<p>62. That the Board's transfer to the classification function of a future National regulator, its role and scope, are enshrined in the legislative instruments establishing the new government regulator.</p>
<p>63. A fit-for-purpose single National regulator should be design based on the necessary functions, skill and expertise required to regulate a contemporary media environment and not be anyone existing agency that has subsumed others.</p>
<p>64. That the classification function be formed with the related functions, skills and experience of existing agencies - ACMA, the Office of the e-safety Commissioner and the Australian Classification Board.</p>
<p>65. That the Board should form the core of the new classification function in a future National regulator.</p>
<p>66. That a community engagement and education function be included in a future single National regulator organisation focussed on promoting the classification related information, and programmes.</p>
<p>67. A social media campaign be developed in conjunction with a user-centred App sharing classification related information.</p>
<p>68. That the Classification website be enhanced to make available classification related information, programmes and resources and a mechanism for public and industry feedback including complaints, latest decisions and updated industry benchmarks.</p>

69. That a dedicated research and community consultation function is included in a future National regulator which partners the classification function and academic and community groups to conduct of research and garner insights into classification-related matters and issues.
70. That the Board, as part of a future national regulator, undertakes quality assurance of industry self-classification decisions across all media and delivery platforms.
71. That the Board, as part of a future national regulator, sets of standards and accredited training for industry self-classifiers and digital tools.
72. That digital tools partners and broadcast classifiers undertake the same Board standards and accredited training course in the classification of media content in Australia, as Accredited Classifiers and Authorised Assessor prior to classifying content to promote consistency and a harmonisation of the classification system.
73. The Board as part of a future national regulator, defines, sets and shares classification benchmarks with industry as part of the classification functions service.
74. That the core of a future national regulator’s classification function, the Board is independent in its decision making and diverse and representative of the Australian community in its membership and this be enshrined in legislation.
75. Under a future national regulator, the Board undertakes all reviews of classification decisions across all media, including its own, using a defined and transparent protocol.
76. That any future national regulator, “give equal weight to the social and cultural dimensions of media regulation, including classification regulation, as to economic and technical regulation”.

AUSTRALIAN CLASSIFICATION BOARD RESPONSE

1. Purpose and scope of the National Classification Scheme

The Australian Classification Board supports the case for reform.

Overview of the Board’s response to the possible reform options:

Reform Option	Board Response
<p>Noted here for completeness, referring to Question 1.</p> <p>The Code sets out the guiding principles of the Scheme. While the principles of the Scheme have remained unchanged, the purpose of classification has changed over time from a focus on censorship to providing information to Australians to make informed choices on the content they and those in their care consume.</p>	<p>Supported with amendments.</p> <p>The Board agrees with the guiding principles of the Code that underpin the current National Classification Scheme and that, <i>“the purpose of classification has changed over time from a focus on censorship to providing information to Australians to make informed choices on the content they and those in their care consume.”</i></p> <p>However, have proposed additional options in Section 1 Recommendations</p>
<p>Classifiable content: Proposed criteria to define classifiable content:</p> <ul style="list-style-type: none"> • professionally produced – content with higher quality production values • distributed on a commercial basis – to capture organisations or individuals that distribute media content as part of their business, as opposed to individuals or community groups whose main purpose is not to distribute media content for commercial gain and • directed at an Australian audience – a selection of content is specifically made available for Australia or marketing is specifically directed at Australians. • classification is the responsibility of the service provider who makes the content available in Australia, regardless of who originally makes the content and • online content is only classifiable where it is uploaded by the service provider itself to clarify that user-generated content that is professionally produced and distributed on a commercial basis does not require classification. 	<p>Supported with amendments</p> <p>The Board agrees with the objective of the reform option <i>“...to improve clarity around the types of material that require classification and provide a consistent approach to the regulation of content.”</i></p> <p>However, have proposed additional options in Section 1 Recommendations.</p>
<p>Classification of publications</p> <p>Consideration could also be given to whether the definition of a submittable publication should be broadened. to capture publications that do not meet the criteria for legal restriction to adults but contain depictions or descriptions that are unsuitable for children under 15 years of age.</p>	<p>Supported with amendments</p> <p>The Board agrees with the objective of the reform to <i>“...capture publications that do not meet the criteria for legal restriction to adults but contain depictions or descriptions that are unsuitable for children under 15 years of age.”</i></p> <p>However, have proposed additional options in Section 1 Recommendations.</p>

In addition to the responses to the options proposed in the Public Consultation Paper, the Board outlines a number of additional reform recommendations in the following section.

Question 1.

Are the guiding principles set out in the Code still relevant in today's media environment?

The Board supports the current guiding principles set out in the code, with an update to widen the definition of 'minors' to make it more relevant in today's media environment.

The key discussion points are:

- Acknowledging Children and Young People in the guiding principles of the Code.
- A National Classification Scheme for all media content
- A single set of Guidelines for the Classification of all Media Content

Acknowledging Children and Young People in the guiding principles of the Code.

The current classification categories are predicated on protecting all Australians, consumers of media content, as expressed in the *National Classification Code* (the Code). However, the principles of the Code speak solely of 'adults' and 'minors'.

Within the current Code there is no contemplation of 'minors' being a wide and diverse group divisible into 'children' (approx. 5 to 12 years) and 'young people' (approx. 13 to 17 years). Nor is there any contemplation of the way each of these groups may react to the impact of the content that they 'read, hear, see and play', the context of their preferred delivery format, whether this be physical media or online. Furthermore, and most importantly, the Code should account for the fact that young people are at a different social, emotional and intellectual developmental stage from children and adults.

This consideration is in line with how 'minors' - people under 18 years - are today viewed in Australian government, the media industry and broader community. For example, the majority of Australian state and territory public sectors have a Commissioner for 'Children and Young People', in recognition of the different levels of social, emotional and intellectual development between children and young people.

Within the commercial media industry, across all forms of media content, there is clear evidence that content creators are deliberately developing material for young people. This material often exceeds the mild impact level of the PG classification and is causing material, upon classification, to be pushed into the M (moderate impact) classification level, even though the material does not always require a mature perspective (as is intended for the M – Mature category).

Contemporary cinema, broadcast television, film and series streaming, DVD and Blu-Ray, computer games and online content, have evolved greatly in the past 29 years since the Code was developed, including the focus on niche audiences. The Code no longer reflects the way in which the groups in our community and industry are categorised (children, young people and adults), nor does it reflect the vast spectrum of classified films and computer games that are in the PG and M classifications, many of which sit at the borderline between the two classification categories.

This same phenomenon of exponential change and niche audiences was recognised in America in the 1980s, with the development of the PG-13 classification to address its then-deficit in classification categories for content aimed at and relevant to young people.

In the Board's view it is therefore important that the National Classification Scheme acknowledges these significant demographics in the Australian population as distinct from one another - children (approx. ages 5 – 12 years) and young people (approx. ages 13 to 17 years).

Recommendation 1.

The updating of principle:

(b) of the Code to: "Children and young people should be protected from material likely to harm or disturb them."

It follows from updating the Code as noted, to implement within the Code a classification category aimed at young people, particularly the 13-14 years age group commonly known as 'Tweens' that sits between PG and M, and would address '**mild+**' **impact level** content which is being created specifically for this cohort of young people. Such a development is, in the Board's opinion, overdue.

There are well-established international film markets and festivals aimed specifically at children and young people. Of note is Berlinale which includes the award sections called *Generation Kplus* and *Generation 14plus*. Both programs include contemporary films exploring the lives and worlds of children and young people. Berlinale *Generation 14plus* is renowned for being in "*a unique position as the instigator of a convention-breaking young people's cinema and is the section which accommodates narratives and cinematic languages that take young people seriously*" and "*hold up a mirror to the adult world*".

Further, the Board has been tracking a trend, particularly in theatrical release films, of an increasing level of pervasive dark themes, or a sense of peril, threat and menace or crude humour, sexual references and innuendo and sexualised imagery in content which would attract a young person demographic. Examples include films such as *Mowgli*, *Miss Peregrine's Home for Peculiar Children*, *Maleficent* and most recently the musical comedy *Mean Girls*. The impact test for the classifiable element of themes (peril, threat and menace, crude humour) and the element of sex (Sexual references, innuendo and sexualised imagery) has been borderline between mild (PG category) and moderate (M category) has resulted in these films being classified as exceeding PG and therefore M (moderate impact level) or in the case of *Mean Girls*, its impact level was a high PG but did not warrant exceeding PG.

Films such as these and their classification are most often polarising in the community, and frequently result in complaints to the Board. If another classification category with an impact of 'mild+' existed, these films could have been accommodated within it. Such a classification would also act as an additional, instantly identifiable form of consumer information and ensure that both parents and young people are given a more accurate indication of the impact level of the material.

The Board acknowledges that any changes to current classification categories would have impacts on commercial television and public broadcasters, particularly with respect to classification time zone requirements. If, for example, a Mild+ type classification category is adopted, it would either need to exist within current PG time zones, or sit at the beginning strata of the M time zone. It would of course be open for television and other broadcasters to edit PG-13-type material to bring it out of the PG-13-type category and into a conventional, more restrictive PG classification.

The Board is not suggesting that the new classification category would be applied retrospectively.

Recommendation 2.

The implementation within the Code of a Mild+ classification category with an impact level that sits between PG and M to accommodate content specific for young people aged 13- 14 years.

A National Classification Scheme for all media content

The first principle of the Code notes: “(a) adults should be able to read, hear, see and play what they want.”

In the Board’s view it is clear that the opening principle of the Code does not define a particular format of media or content delivery format (hard copy or online), nor does it preference some formats over others. Despite this, the Act only empowers the Board to classify under the current scheme hardcopy, film, computer games and publications. This is a contradiction and extremely limiting in our contemporary media environment.

Similarly, the Board’s view is that the Australian community defines media content broadly and beyond the three current media types the Scheme articulates. This opening principle of the Code is a strength, and in the Board’s, view ensures the principles are robust enough and fit for purpose to encompass the evolving definition of media content today and ongoing for the future.

Recommendation 3.

The updating of principle:

(a) of the code to: “Australian adults should be able to read, hear, see and participate in media of their choice.”

As such the Board supports a National Classification Scheme (The Act, The Code and Guidelines) inclusive of all media content available to Australians.

The Scheme should include a broad and flexible definition of media content not by type or format (film, computer games, publications) but by defining ‘characteristics’ or ‘formal elements’ that the Code in fact already implicitly acknowledges:

“(a) adults should be able to read, hear, see and play what they want.”

- ‘read’ - text and images
- ‘hear’ - audio, sound effects and soundtrack
- ‘see’ - text, images, moving or static
- ‘play’ - interact with, make choices, affect the outcome

The contemporary media environment is characterised by the convergence of ‘traditional’ media formats, blurring boundaries between common terms such as film, computer game and publication, that in turn leave the current classification scheme wanting. In the Board’s view, media characteristics, rather than the ‘traditional’ media type, should be acknowledged in the scheme as not being mutually exclusive. Increasingly many, if not all, are present within content consumed in

an online delivery format, and further content consumed in a cinema as a theatrical release can include, not only additional content, but also interactive content when later released online. Notwithstanding this, a future is easily conceivable where viewing content at the cinema will include AR, interactive elements.

Therefore, in line with the principles of the code, which in actuality is the core of the Board's classification practice, classification decisions are not predicated or largely influenced by the media format (film, computer game, publications) or delivery format (hard copy or online) as much as by the treatment of the content being consumed, informing considerations of context and therefore impact level and classification. In the Board's view the Scheme should account for the characteristics or formal elements of media content as noted above as contributing or mitigating factor within treatment of the content - I.e. the same story told in text versus moving, interactive images will likely have differing impact levels and classifications.

Recommendation 4.

The implementation a National Classification Scheme for all media content that defines classifiable media characteristics or formal elements rather than media types or delivery formats.

A single set of Guidelines for the Classification of all Media Content

For the reasons noted above, the existing *Guidelines for the Classification of Films 2012*, *Guidelines for the Classification of Computer Games 2012*, and the *Guidelines for the Classification of Publications 2005* must be repealed and replaced.

In line with the principles of the Code the Board supports under a new National Classification Scheme for all media content, the development and implementation of a single set of statutory guidelines with a single set of impact level classification categories for the classification of all media content in Australia, irrespective of the media type or delivery format.

The new Guidelines should be titled '*Guidelines for the Classification of media content*'.

Under the current media regulatory environment, classification decisions for films may be made using a variety of guidelines, including the Board's Film Guidelines, guidelines set out under the Commercial Television Industry Code of Practice, guidelines set out under the Australian Subscription Television and Radio Association (ASTRA) Code of Practice, guidelines set out under the ABC Code of Practice or guidelines set out under the SBS Code of Practice.

Australian consumers expect content to be classified at the same level regardless of the type of media and particularly the delivery format of that content. To meet the Australian community's expectations of a contemporary classification system is to implement a scheme and supporting Guidelines underpinned by classification consistency and harmony across all segments of the media industry. In the Board's view this requires all segments of the media industry to operate under a uniform set of guidelines for the classification of all media content.

In doing so, this would formalise existing practice across multiple agencies, as well as enhance consumer confidence in the classification system, related agencies and their classification decisions, independent of the delivery platform.

The Board is acutely aware of media convergence in the current digital age and the resultant blurring of distinctions between different forms of media particularly publications, audio, films and computer games, with such convergence being evidenced by the creation of new technological devices as well as the development of new forms of interactive content. For example, *Black Mirror: Bandersnatch*, available on the Netflix streaming platform, is neither a traditional film nor a computer game. It has been variously described as a “sprawling fantasy novel” merged “into a video game”; and “an immersive, nonlinear film that uses the ‘branching narrative’ storytelling format and allows viewers — through touch screen or their remotes, depending on the device — to pick between a series of two choices as they go along, giving them control over how the plot unfolds”. Convergent media of this type continues to grow and is being created for a diverse range of audiences, within this range of classification rating impact levels – for children, young people and adults.

Black Mirror: Bandersnatch is an example of the new type of interactive content being developed by content creators and distributors, that fails to sit neatly in either a film or computer game category and is delivered online via streaming service through a smart TV, laptop or smartphone, in essence anywhere at any time. Which set of current statutory guidelines should be applied when assessing it for classification or are most relevant under the current guidelines?

Recommendation 5.

The development and implementation of a single set of statutory guidelines with a single set of impact level classification categories known as the ‘Guidelines for the Classification of media content’ under which all agencies and segments of the media industry operate.

Question 2.

Do you support the proposed criteria that defines what material should be classified under the Scheme?

The Board supports the classification of as much media content as is possible. This is in line with the principles of the Code and the Board focus on classification, not censorship, and through its work making as much content available for all Australians as possible by facilitating their agency to make informed choices for themselves about which media content they consume.

In so doing, the Board supports having a clear criterion that defines what material should be classified under the Scheme. This criterion should account for all media across all delivery platforms, acknowledging that there are challenges in the classification of certain content now available to Australian consumer. Classifiable content criteria that includes the delivery formats - physical or online are no longer relevant, which is why the Board supports the criteria proposed with some amendments.

The Stevens Review recommended that the focus of classification should be on content that is most relevant and important to Australian consumers, and proposed the development of the following criteria:

1. Professionally produced - content with higher quality production values
2. Distributed on a commercial basis – to capture organisations or individuals that distribute media content as part of their business, as opposed to individuals or community groups whose main purpose is not to distribute media content for commercial gain
3. Directed at an Australian audience – a selection of content is specifically made available for Australia or marketing is specifically directed at Australians
4. Classification is the responsibility of the service provider who makes the content available in Australia, regardless of who originally makes the content
5. Online content is only classifiable where it is uploaded by the service provider itself, to clarify that user-generated content that is professionally produced and distributed on a commercial basis does not require classification.

The Board supports the proposed criteria partially.

Considerations to address the shortcomings of the proposed criteria are put forward below, that while challenging to resolve in practice, must be addressed in a contemporary media environment.

In the Board's view on the focus on 'content that is most relevant and important to Australian consumers' does not directly state but implies, all media content on all delivery platforms that is available to Australians. It is generally accepted that in a globally connected world, Australian adults have an expectation to consume any content that is available to them. In accordance with the first principle of the Code, there is no one definition of content that is overwhelmingly more relevant to Australians adults, but rather Australian adults in all their diversity find a range of diverse content relevant to them at any one time and over time. The concept of 'relevance' is not productive.

Similarly, the Act and Code acknowledges that there may be classifiable content that some sections of the Australian community may find offensive, however this, by implication, acknowledges that for the majority of the Australian community, through the test of the standards of decency generally accepted by reasonable adults is permissible, acceptable and relevant. In the Board's view this reinforces that a definition of 'relevant' is too narrow and can create constraints in a future where community standards and thereby what Australians find relevant evolves and changes.

The focus of classification should be on content that is accessible and available to Australian consumers.

The Board notes that in four years since the Stevens Review (2020) there has been exponential growth and convergence of media technology, content and consumption. A signature of this has been the personalisation of content through algorithms in online delivery platforms, whether that be broadcast on demand, streaming services or user-generated content and social media platforms such as TikTok and YouTube.

From an industry perspective the broad and cheap access to media production technology and platforms with which to professionally and consistently produce content, publish it in market fast and target a particular audience, has blurred the boundaries between 'amateur' and 'professional',

between ‘commercial’ and ‘not for profit’, and between the ‘media industry’ and ‘user-generated’ content. A criterion for classifiable content must accommodate a context whereby these established and well-understood categories splinter and lose their value in the classification system and have less and less importance to the media content consumer.

Without doubt though, the Board recognises and seeks criteria that can best enable the Scheme to deliver relevant value to the Australian community - consumers and publishers - and function effectively, in that it enables adults to see, hear, read, and play what they want, while also protecting children and young people from harm, and remains in tune with community standards in a dynamic contemporary media environment.

In regard to the proposed criteria, comments include the following:

Criteria 1. Professionally produced - content with higher quality production values

- In the Board’s view this criterion as it stands is not useful and too specific, and based on a ‘traditional’ concept of media production being of either ‘high’ and ‘low’ quality and aesthetics.
- Production values is not a useful definition of this criteria as creators and publishers intentionally utilise low production values for ‘artistic’ and ‘narrative’ treatment of content.
- A wide range of online content, commonly understood as user-generated such as TikTok reels and YouTube shorts have very high production values, and are created systematically and regularly with a particular intent, by an organised entity, for a regular and particular audience.
- In the Board’s view regardless of ‘high or ‘low’ production values, Criteria 1 should be defined by assessing the context of the content, its creation and audience, and whether its creator is commonly recognised as being part of a profession in the media industry i.e. Film Director, Novelist, Computer Game Developer, Netflix, ABC on Demand, Social Media Influencer, TikToker, You Tuber.

Recommendation 5.

Criteria 1. Be amended to - Professionally produced - content created through the systematic and regular intent of an organised entity for a particular audience.

Criteria 2. Distributed on a commercial basis – to capture organisations or individuals that distribute media content as part of their business, as opposed to individuals or community groups whose main purpose is not to distribute media content for commercial gain

- In the Board’s view this is inextricably linked to the Board’s definition of Criteria 1. Professionally produced.
- Furthermore the ‘traditional’ definition of commercial is rendered inadequate with regard to a range of online platform content, in particular user-generated content where typically the content creator / publisher is not engaged in a commercial exchange with the consumer – as

is the case for theatrical film and box office takings – but rather through the garnering of the content consumers ‘likes’ or ‘subscribing’ that are monetised through an agreement with a third party, often unknown to the consumer, in exchange for access to that audience, as is the case with Tik Tok and You Tube amongst others. This is a deliberately contracted commercial business model and must be accommodated with the definition of this criteria.

Recommendation 7.

Criteria 2. be amended to - Distributed on a commercial basis - content that is professional produced for financial gain and other benefit, directly or indirectly, on any delivery platforms.

Criteria 3. Directed at an Australian audience – a selection of content is specifically made available for Australia or marketing is specifically directed at Australians

- In the Board’s view regardless of whether content is specifically directed at or made available Australians or not, as per the point above related to being ‘relevant to Australians’, if content is accessible to Australians in Australia as per the Code, ‘adults should be able to read, hear, see and play what they want.’
- Therefore, the Board contends that most Australians would agree that if they can access content in Australia, it should warrant classification.
- The important consideration is that in a globally connected media context where content is available regardless of delivery platform, a National Classification Scheme is designed and administered within the context of Australian community standards and laws.

Recommendation 8.

Criteria 3. is amended to Directed at an Australian audience – content, regardless of delivery platform that is accessible to Australians.

Criteria 4. Classification is the responsibility of the service provider who makes the content available in Australia, regardless of who originally makes the content

- In the Board’s view the criteria of service provider are too narrow. The intent of the criteria being that the entity – person or group who makes it commercially available to Australian consumers -- should be the focus.
- The criteria then incorporate not only traditional commercial publishers of content such as film distributors, but also accommodates TikToker and You Tuber who create and distribute

content commercially via service providers such as TikTok and You Tub social media platforms.

- The use of the term ‘service provider’ is a more typical term used in online content distribution, for a platform, telcos or website self-publishing company.
- It does not encompass ‘traditional’ content such as film computer games of publishing, commercial self-distribution
- Similarly, these content creators, many of whom operated in the online media context, can be defined as at once content creator and distributor to audiences.
- The term ‘publisher’ is more appropriate and consistent with the current Scheme, making the distinction between the entity responsible for making the content accessible and distributing it commercially, ensuring it is classified if required, instead of the delivery platform through which it is made available.

Recommendation 9.

Criteria 4. be amended to Classification is the responsibility of the publisher distributing content commercially and available in Australia on all delivery platforms.

Criteria 5. Online content is only classifiable where it is uploaded by the service provider itself, to clarify that user-generated content that is professionally produced and distributed on a commercial basis does not require classification.

- Consistent with the previous criteria above, if content is professionally produced, distributed commercially, and accessible to Australians, regardless of the delivery platform the content should be classified.
- For this purpose, the ‘traditional’ definition of ‘user-generated content’ is no longer relevant and should be replaced by the concept of ‘entrepreneurial generated content’ as a fit for purpose definition of online content that is professionally produced, distributed on a commercial basis, and made available to Australians.
- In proposing this definition, there is an inherent issue of scale in the mandatory classification of all classifiable online content and the resources that would be required to undertake it.
- However, the existing precedent in the Act, ‘submittable publications’, discussed later in the is paper, points to a way of addressing classifiable online content that can’t be accommodated in the current Scheme through the mechanism of ‘Submittable media content’.
- As part of a ‘submittable media content’ mechanism, like the existing ‘Submittable publications’ mechanism, publisher would self-classify in the first instance under the imprimatur of an ‘Industry Duty of Care Code’, not unlike IARC classification self-survey digital tool, or the Broadcast (self-classification) code of practice, both of which include the application of a classification rating and a consumer advice.

- These options and any others in the future should be underpinned by a single set of Guidelines for the Classification of Media Content, and thereby consistent and harmonised industry classification ratings and consumer advice language in the interest of consumer confidence, clarity of understanding and ease of use.

Recommendation 10.

Criteria 5. Is amended to - Online content that is professionally produced, distributed commercially and accessible to Australians is to be defined as 'Entrepreneurial generated content' and meets the criteria of classifiable content.

Recommendation 11.

That a more fit for purpose definition of user-generated content be created to account for media content that does not meet the classification content criteria to ensure individuals and community groups are exempt from classification..

Recommendation 12.

That 'Entrepreneurial generated content be self-classified in the first instance by publishers, adhering to a Duty of Care Industry Code.

Recommendation 13.

The concept of 'submittable media content' as a mechanism for 'calling in' unclassified Entrepreneurial generated content that meet similar criteria to that of the current Submittable publications be implemented.

Recommendation 14.

The definition of User Generated Content be updated to accommodate content creation outside of professional routines and practices and does not have an institutional or a commercial market context. It may be produced by non-professionals without the expectation of profit or remuneration with motivating factors including connecting with peers, sharing information, and the desire to express oneself.

Other considerations in the defining classifiable content

In considering the criteria with which to define classifiable content these other considerations are identified.

Exempt content - News, Current Affairs and Sports

The scope of 'entertainment' content needs to be better defined than it currently is. A significant quantity of material broadcast on television, online and some streaming services falls in the entertainment categories of News, Current Affairs and Sports. Owing to the character of this material, it is not of the kind that is currently classified under the current Scheme but does form a significant part of the media content available to Australian consumers.

Accordingly, in any harmonised National Classification Scheme accountable for all media content, consideration must be given to whether or not this material should be exempt from classification across all media types and delivery platforms, as it is already for broadcast television. The use of guidelines relating to material which may cause distress in News and Current Affairs programs, such as those found in clause 3.2 of the *Commercial Television Industry Code of Practice*, should also be considered. The exemption from classification of sports should not extend to include comedy or light entertainment/variety programs with a sports theme or association (e.g. World Wrestling Entertainment (WWE)).

Recommendation 15.

That the exemption from classification for News, Current Affairs and Sports Programs be retained and made consistent across all delivery platforms.

Online content – industry self-classification

Developments in the easy and efficient classification of types of online content, whether it be entrepreneurial generated or user-generated, such as You Rate It by the Netherlands Institute for the Classification of Audio-visual Media (NICAM) and the British Board of Film Classification (BBFC) demonstrate the capacity to simply and quickly classify these categories of online content, and thereby afford a level of protection to children, young people and adults from material that is likely to harm or disturb them.

You Rate It is a simple tool that is used by uploaders of online content to rate their own content by answering six questions (similar to the IARC self-classification Tool for mobile computer games

already utilises under the current Act) about their content on: behaviour; drugs; horror/ fear; [coarse] language; sex; and violence. It also includes a facility for viewers to report content which might be illegal. *You Rate It* makes all ratings freely available.

The BBFC has also initiated a licencing of their classification rating labels for self-classified online content that has met certain criteria and thereby endorsed by the BBFC. This approach encourages online content creators and publishers to use the ‘trusted brand’ of the BBFC to validate its content and ultimately drive increased audience engagement and by extension commercial outcomes.

The You Rate It website, which is jointly managed by NICAM and the BBFC, invites other interested organisations and rating bodies to join them in this project. The Board supports Australia’s participation.

Recommendation 16.

Entrepreneurial generated and user-generated online content, should be self-classified in the first instance, for example, by the You Rate It tool (or similar).

Recommendation 17.

Online content that undertakes the self-classification process should use, under licence, the National Classification Scheme’s markings and consumer Advice.

Gaps – Unclassified classifiable content

Not all publishers of classifiable content under the current Scheme are currently submitting it for classification, resulting in unclassified material being available to consumers. Some of this material may warrant Refused Classification.

The definition of ‘film’ in section 5 of the Classification Act is broad and includes theatrical release films, home entertainment on hard copy media (e.g. DVD, Blu-ray), as well as film content downloaded or streamed to customers via the internet. Any unclassified content needs to be classified in accordance with the provisions currently contained in the Classification Act. This means that the *Classification (Publications, Films and Computer Games) (Markings and Consumer Advice) Determination 2014* (the 2014 Determination), also applies to classified and unclassified content. In 2000, the then-Minister for Communications, issued a declaration specifically excluding online video content and internet streaming services from the definition of ‘broadcasting services’ contained in the *Broadcasting Services Act 1992* (BSA), the effect of which was that the regulation of content within these services moved from the BSA to the Classification Act.

However, not all streaming services are using the current classification processes established under the Classification Act. It has been of particular concern to the Board that when Amazon Prime commenced streaming in Australia, it utilised the Australian classification markings including the CTC (Check the Classification) marking. Similarly, other streaming services such as Stan are presenting content with classification markings and consumer advice that has not been determined by the Classification Board.

This projects a false understanding to Australian consumers that Amazon Prime and Stan are undertaking the Australian classification process, when they have not. The objective of the 2014 Determination is to “ensure that consumers have ready access to clear classification information to inform their choices about publications, films and computer games.” The complementary laws of the States and Territories contain provisions dealing with the consequences of not displaying markings and consumer advice in accordance with section 8 of the Classification Act and the 2014 Determination. This highlights the current lack of compliance with classification laws.

In contrast, through the Classification Tools partnership with Netflix and Spherex (Apple TV+ content) all content available to Australian consumers on these delivery platforms is classified under the Scheme. It is encouraging that with the recent legislative changes related to Industry self-classification, bringing into effect the Accredited Classifier mechanism, some high-profile content has been classified by the Stan Streaming Service. While this is a long way from compliance with the current Scheme it shows a pathway to encourage other delivery platforms to begin to comply.

Recommendation 18.

All classifiable content regardless of delivery format is classified in accordance with Australian classification laws and standards.

Question 3.

Are there any other issues with the current purpose and scope of the Scheme that should be considered?

In regard to the current purpose and scope of the Scheme the following issues should be considered:

- Updating legislation and guidelines where required
- Enforcement and compliance
- Conditional Cultural Exemptions
- Consistency of consumer advice and training
- Trailers and the commensurate audience rule
- The re-classification of content and community standards
- Industry self-classifiers cannot prohibit their own content by classifying it Refused Classification

Updating legislation and guidelines where required

The Classification legislation of Australia needs to be updated in order to ensure consistent and aligned classification of content, decision-making and enforcement.

In the contemporary media environment, the focus on the ‘traditional’ delivery platforms of content such as films, computer games and publications are redundant owing to the exponential growth and instantaneous nature of digital media. The same classification rules need to apply to the classification of all classifiable content regardless of delivery platform, whether it is accessible to consumers online or offline.

The existing *Classification Act* provides that the Commonwealth, state and territory ministers responsible for classification must agree unanimously to any amendment of the Code, and classification guidelines.

Classification of content needs to achieve a clear public service which is set out in clause 1 of the Code. The several regimes that currently exist for the classification of content by the Board and the regulation of television and online content provided by mobile carriers contained in the *Broadcasting Services Act*, needs to be simplified and harmonised.

Given that the Australian Government is responsible for regulating online content, it is best placed to take on the full legislative and enforcement responsibility for the classification and regulation of all media content in Australia. Therefore, the current national co-operative scheme should be replaced by a centralised Commonwealth Scheme - although it is acknowledged that this is not within the scope of this review.

At minimum the Classification Act should be amended so that the onerous requirement for unanimous agreement be revised to a majority agreement when it comes to updating the Classification Guidelines, and on a regular cycle so they reflect community standards and respond effectively to a contemporary and convergent media environment.

Recommendation 19.

That the Classification Act be amended to majority agreement when it comes to updating the Classification Guidelines, and that this be undertaken on a regular cycle of every 4-5 years.

Enforcement and compliance

The current co-operative Scheme has resulted in different standards of enforcement and application of compliance across the states and territories. Without the will to enforce classification regulations and to ensure that all classifiable content of all media types is submitted for classification, the rules will continue to be applied in a piecemeal fashion, if at all.

It is still an expectation of Australian consumers that there will be restrictions on the publishing of certain media and that the access to some media should be restricted by age. The retention and enforcement of action for offences in relation to selling, screening, distributing or advertising certain categories of material whether classified or unclassified is an important pillar of the Scheme and should be managed and applied consistently, nationally.

The inclusion in the new classification laws of provisions for their enforcement under Commonwealth law is required. Any future Scheme should require publishers of classifiable content to have it classified and to provide offences and penalties for failure to do so. A future Scheme should also provide for restrictions on access to content and on the sale, screening, provision online or other distribution of content.

Recommendation 20.

That future Scheme should require classifiable content publishers to have content classified and to provide offences and penalties for failure to do so. These powers should vest in the National Regulator for media content.

Conditional Cultural Exemptions

Following on from legislative amendments made to the Classification Act in September 2014 relating to conditional cultural exemptions (including film festivals and games' expos), the routine role of the Director of the Board in reviewing festival applicants' unclassified films or games for publication, has been removed. The onus has shifted to the applicant to conduct a reasonable assessment of the likely classification of unclassified content and to impose age restrictions upon attendance.

These amendments have created a situation *whereby a person who works* (paid or voluntary) for, represents, or otherwise is associated with, an organisation that is registering an event (for a film festival or a games' expo) does not require any training in classification, yet is making assessments about the likely classification of unclassified media. Conversely, if a *cultural institution* such as an art gallery or museum wants to have the status of being an 'Approved Cultural Institution' (ACI) it must have been formed wholly or mainly for the purposes of carrying on activities of an educational, cultural or artistic nature *and* must have a person who has satisfied training requirements in relation to classification, in order to publish unclassified content. These amendments need to be reviewed and rectified so as to restore harmony to the regulatory framework.

Furthermore, the issue of defining an online Festival or event in relation to section 6H needs clarifying to manage the existing four-screening per state rule in the current legislation, which was developed for theatrical presentation of film. During the COVID pandemic, many Film Festivals moved to an online model to maintain their presence, during which the then Director of the Board interpreted the intent of the four-screening rule as a maximum per person capacity translated into viewings online. This means that if an average screening in a cinema contains 300 people, four screening equates to approximately 1200 people. Therefore, online delivery of festivals, regardless of the duration of access to the content has been capped as a condition of the 6H exemption to a maximum of 1200 views as permissible.

Post-COVID many film festivals have maintained some form of online delivery as a hybrid model, which the four-screening per state condition does not accommodate. This lack of clarity has also been exploited by some film festival organisers allowing an unlimited amount of views of online content to occur which is not in the spirit of the existing legislation. The Board suggests amending the legislation to include a definition of a maximum amount of online viewing permissible based on the average person capacity of a standard cinema and apply that by a multiple of four as a base condition for only screenings.

Recommendation 21.

The existing conditional cultural exemption provisions in the legislation be reviewed and rectified, so that there is consistency in the training of people seeking to register an event in order to restore harmony to the regulatory framework around the publishing of unclassified content.

Recommendation 22.

That the four-screening per state condition be amended in the legislation to account for onsite in cinema screenings and online viewing to account for the post COVID hybrid film festival model with a clear definition of the total number of viewing permissible included.

Trailers and the commensurate audience rule

The current Scheme provides for restrictions on the advertising of films, games and publications. For example, if a film that is intended for theatrical release is yet to be classified, but a distributor wants to advertise it as a forthcoming release, screening the trailer before another feature film that has been classified, then the trailer for the unclassified film can only be shown to ‘commensurate audiences’ (that is, for example, if the trailer is for a *film that is likely to be classified* MA 15+, then the trailer cannot be shown before a feature film that is classified G, PG or M).

There have been previous representations by sections of the entertainment industry that there should be a shift away from considering the *likely classification of the unclassified film* to classifying the contents of the actual trailer. Film trailers are conceits used to set up the basic premise of the film and do not disclose critical plot points. *If* the trailer was classified, it is highly likely that it would obtain a *lower* classification in many circumstances than the *likely classification* of the unclassified feature film. This would then enable the trailer to be screened potentially to a wider audience, as the commensurate audience rule would no longer limit the screening of the trailer to the intended audience of the film’s likely classification.

The self-interest of industry cannot outweigh the protection of the public. If the commensurate audience rule was amended to permit the rating of the film trailer itself, thereby allowing the trailer to be screened before feature films that are at a lower classification than the feature film is likely to be classified at, this would create an anomalous situation in the classification of media, as it would invite people who are legally restricted from viewing certain content, or for whom certain content is not recommended, to consider accessing that content.

Recommendation 23.

There should be no change to the commensurate audience rule for the screening of trailers in cinemas.

Consistency of consumer advice

Consistency in the provision of consumer advice across classification methods in the industry is a clear issue within the current Scheme.

The formulation and application of appropriate consumer advice (along with the classification rating) is of central importance to the classification process and of high value for the consumer and industry alike. Without this advice, consumers are only given “half the story” about the content with which to make an informed choice.

Under Section 20 of the Classification Act, consumer advice must be determined by the Board giving information about the content of a film or game which is classified G, PG, M, MA 15+, R 18+ or X 18+. The Board has a discretion to determine consumer advice for a publication.

Industry Authorised Assessors make recommendations to the Board for classification and consumer advice about additional content being attached to previously classified films being released through home entertainment (e.g. Blu-ray), and certain computer games that the Board can accept or change as required. Classification Tools and the newly commenced Accredited Classifiers are empowered to make classification decisions with the same legal status as a Board decision. However, the legislation empowers the Board to review, revoke and change the classification and consumer if necessary.

All three of these classification mechanisms, while addressing industry needs for greater options and flexibility in the classification of content, are underpinned by the Board defining and setting the classification standards through which they operate, as well as the training for each of these mechanisms. Ultimately through legislation has the power to consistency with current Board practice and standards. The quality assurance responsibility is more central to the importance of the role of the Board, acknowledging its classification expertise as the industry benchmark.

Similar provisions to Section 20 of the Classification Act are provided in the various television classification guidelines. For example, clause 2.5.1 of the *Commercial Television Industry Code of Practice* requires that “prominent and legible Consumer Advice must be given at the start of:

- a) a Film classified PG or above;
- b) all Programs classified M which commence between 7.30 pm and 8.30 pm;
- c) one-off Programs and very short series classified M;
- d) any Program classified MA 15+; and
- e) any other Program which contains material of a strength or intensity which the Licensee reasonably believes viewers may not expect.”

The content of this consumer advice is left up to the discretion of the commercial television classifiers and therefore lacks consistency, even though many previous members of the Board once completing their term, are quickly employed by the Free TV, pay TV and streaming sector. A further endorsement of the expertise of the Board as the industry benchmark.

Public and commercial television broadcasters use their own sets of consumer advice, which are often limited in scope and may not align with the consumer advice provided by the Board, even when they are using the Board's classification for a film or series to be broadcast on television. A film the Board has classified PG with consumer advice of mild fantasy themes, animated violence and coarse language may be classified PG with consumer advice of *mature* themes, *stylised* violence and *infrequent* mild coarse language for a television broadcast. This lack of consistency may create confusion for consumers.

Multiple forms of consumer advice now exist in the Australian market – the format used by the Board, the format used by Broadcast Free To Air TV and then the format used by the Netflix Classification tool (while based on Board standards often repeats the modifier before each advisory element) and finally other streaming services, not in partnership with the Board and utilising a classification tool, who are ad hoc, generating their own consumer advice for some content and not others.

In regard to a future Scheme for all media, in order to achieve consistency and harmony in classification processes there must also be alignment in the wording and application of consumer advice across all media and delivery platforms.

The formulation of consumer advice needs to be consistent and simplified in order to minimise consumer confusion. The Board acknowledges this may be at the cost of flexibility. However, in line with current practice for the setting of standards for Authorised Classifiers, Classification Tools and Accredited Classifiers, it proposes to extend this wide ranging but fixed set of consumer advice, derived from the Board standards consumer advice list, across the wider industry, including Broadcast Television and streaming service. It should supersede all other standards or codes and should be coupled with training undertaken by the Board and Branch as is currently the case for the aforementioned mechanisms currently using Board standards. Already accepted as the industry standard, and acknowledged as a 'trusted source' by the community, the Board would thereby extend its role in defining and setting standards, training and quality assurance under a future Scheme.

Recommendation 24.

That consumer advice for the media industry (other than the Board's) be defined, set and standardised by the Board, for all media across all delivery platforms, along with the expansion of industry training, and be used by all classification processes through industry.

The re-classification of content and community standards

Currently, once a media item is classified, its classification category and consumer advice are valid indefinitely, unless subsequently re-classified. This classification and consumer advice - or lack thereof (as many older classification decisions did not require the formulation of a consumer advice at the time), bind all subsequent publishers¹ of the media. There are currently significant limitations around the re-classification of media in Australia. Under a future Scheme these restrictions should be reviewed and amended.

Re-classification of media is provided for in sections 37 – 41 of the Classification Act. Pursuant to section 39, it is only the Minister responsible for the administration of the Act who may request the Board to re-classify a publication, film or game (and only after a period of two years has elapsed since classification). If the Board is requested to re-classify a media item, the Director of the Board must invite submissions and the Board must consider any submissions that have been made.

Unless the provisions in section 37 – 41 are activated, classification decisions do not expire. This means that a film that was classified G or R 18+ in the year 2000 retains that classification in 2024 despite the passage of time bringing changes to classification categories, the Guidelines and – more importantly – community standards and expectations. Clearly this is not in the spirit or intention of the Act “(a) the standards of morality, decency and propriety generally accepted by reasonable adults...” or the Code “(d) the need to take account of community concerns...”.

If classification is to be undertaken to give effect to community standards of morality, decency and propriety (as is required under the Act and Code), there needs to be a legislative acknowledgment that those standards will inevitably change over time and therefore, provision must be made for a simple mechanism to allow for the re-classification of content.

Despite complaints and feedback from consumers and industry alike regarding previous classification decisions, the Board has no capacity to re-classify content of a film, computer game or publication, or indeed an application from law enforcement, in accordance with today’s Guidelines and community standards. With ever-evolving community standards and a dynamic media environment, affecting not only how people consume content but also its impact on them, there is a need for a flexible and rational approach to reviewing archaic and ‘out of step’ classifications and consumer advice for previously classified media.

While classifications should not ‘expire’ per se, there should be legislative acknowledgement that a classification may be ‘reviewed’ by way of re-classification after a specified period of time. It is proposed this time period be 10 years. It is understood that some European jurisdictions already adopt this approach and others are considering it, as is the case most recently with the BBFC who in February this year reclassified several classic films including *Mary Poppins*, which was rated U for Universal upon its 1964 release, and is now rated PG in the UK because of its use of a racial slur. Raising the age rating for the beloved children’s classic what is considered in contemporary Britain use of discriminatory language.

As in the afore noted example, such re-classifications could be initiated because they no longer align with the current Guidelines and / or current community standards, either by the Board on its own initiative, more consistently as part of the expanding quality assurance role of the Board. This would be expanding the existing audit and review of current decisions by other classification mechanisms. A further trigger could be in response to a third party’s application – likely the publisher, or it is the

¹ Section 5 of the Classification Act defines **publish** as “includes sell, offer for sale, let on hire, exhibit, display, distribute and demonstrate”

focus of ongoing complaints, request or enquiry. There would of course need to be restrictions placed around the re-classification process so as to avoid frivolous or vexatious requests.

Recommendation 25.

Amend sections 37-41 of the Classification Act to allow for the re-classification of content by the Board, either upon the Board's own initiative, or upon application, or implied request (arising, for example out of an enquiry or a complaint).

Industry self-classifiers cannot prohibit their own content by classifying it Refused Classification

A robust Scheme must be able to not only differentiate between impact levels of classifiable elements, but also recognise content that is so abhorrent that it should be Refused Classification, as it offends against the standards of morality, decency and propriety generally accepted by the adults in the community the classification system is serving.

There are also other provisions in the Code that provide grounds for refusing classification for certain content, namely:

- that which describes or depicts in a way which is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 years of age (whether the person is engaged in sexual activity or not); and
- that which promotes, incites, or instructs in matters of crime or violence.

Section 9A of the Classification Act contains specific provisions for refusing classification for content that *"advocates the doing of a terrorist act"*.

Previous Reviews including the ARLC Review and Stevens Review recognise the importance of certain content being prohibited and not being able to be published in Australia. This position is an important principle which a future Scheme must clearly articulate. With a proposed move toward greater harmonisation of classification industry wide, which also necessitates an increasing reliance on industry to self-classify, it must be recognised that self-classification does not lend itself to content being Refused Classification.

One of the Board's most important statutory functions is determining when content exceeds what is allowed under classification legislation and guidelines for both industry and law enforcement applicants. This includes content that deals with matters including crime or violence, sex, drug use and terrorist activity that is deemed to *"offend against the standards of morality, decency and propriety generally accepted by reasonable adults"*, and is consistent with the general principles underlying the Code that *"minors should be protected from material likely to harm or disturb them"* and that everyone - children, young people and adults - should be protected from exposure to unsolicited material that they find offensive.

In taking a risk-based approach, to harm minimisation and protection, it is important that content is Refused Classification at first instance, rather than on review. Ensuring that material which is potentially offensive to the community, or in breach of the law, is submitted to the Board in the first instance for classification, is the way to minimise the potential exposure and harm that a system of self-classification poses. The recent legislations require industry classifiers - Classification Tools and

Accredited Classifiers - to make an assessment that the content is likely to be X 18+ or Refused Classification and thereby warrants referral for classification to the Board, undertaking that they should not proceed to classify it in the first instance. In any future Scheme this mechanism must be maintained.

Recommendation 26.

That the onus remains on industry self-classifiers to identify content that warrants classification by the Board in the first instance, because it may be Refused Classification.

Recommendation 27.

That the Board or any future classification function be the only authority that may determine an X 18+ and 'Refused Classification' decision.

Question 4.

Do you support changes to the definition of a 'submittable publication' to provide clarity on publications requiring classification under the Scheme?

The Board supports changes to the definition of a 'submittable publication; and notes that any future definition of classifiable content in a future Scheme content needs to include content that is currently classified under the Publications Guidelines.

In relation to hard-copy publications, any future Guidelines would need to contain provisions relating to the display and wrapping of restricted hard copy publications, acknowledging that there has been a proliferation of online publications since the last update of the Guidelines for Publications in 2005 and as such provision for the visual display and access to restricted online publication content should be included.

Currently, the definition of a publication under section 5 of the Classification Act is broad: "*any written or pictorial matter*" (but does not include a film, a computer game or an advertisement for a publication, film or computer game).

The current definition of "submittable publication" in the Classification Act: "*an unclassified publication that, having regard to section 9A [of the Act] or to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions that:*

- (a) are likely to cause the publication to be classified Refused Classification; or*
- (b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or are unsuitable for a minor to see or read."*

To provide clarity about unclassified publications requiring classification under a future Scheme for all media content, the definition of a “*submittable publication*” should be amended to the following: *An unclassified publication that, having regard to section 9A [of the Act] or to the Code and the classification guidelines to the extent that they relate to publications, containing any written or pictorial matter, the content of which:*

- a) should not be sold or displayed as an unrestricted publication (as it is unsuitable for children and young people – those under the age of 15 years - to see, read, or hear), or*
- b) should be legally restricted to adults (as it is unsuitable for young people – those over the age of 15 years – to see, read or hear), or*
- c) should be Refused Classification.*

The important distinction being, (as outlined in Question 1), that minors should be defined in more detail within the Code as children and young people and this should translate to this definition.

This has relevance to the classification impact level and therefore suitability of the current Unrestricted classification category, as it is available to people under the age of 15 years (children and some young people), unless noted otherwise with the inclusion of the consumer advice of M (Mature) – Not recommended for readers under 15 years (young people). Therefore, consideration of a classification category distinction between publications that are, or are not suitable for readers under the age of 15 years is required, and go some way to clarify community misconceptions and interpretations of some publication’s age suitability.

Therefore, the Board the current publications guidelines and classification categories are unnecessarily convoluted, not aligned with contemporary views on the development of children and young people and inappropriate to the digital world. It is proposed to adopt the current equivalent Film and Computer Games classifications of G, PG, Mild+, M, MA 15+, R 18+ and X 18+ for publications as per the table below.

Parental Guidance and a Mild+ should replace Unrestricted, and would account for the distinction between children (PG - 5-12 years) and young people (Mild+ - 13-14 years and M – 15- 17 years), with the M category not being a legally restricted category. Thus, acknowledging for publications content the ages of 13 and 14 where a child transitions to being defined as a young person, and as such parents are the best judge of their young people and content that is more than mild or that which requires a mature perspective at the M category.

Current Publications Classification	Proposed Equivalent Classification
Unrestricted Publications classification	G General Is for a general audience. Some G publications contain content that do not interest children.
Unrestricted Publications classification	PG Parental Guidance Recommended Content classified PG may not be of interest to a child or young person. Some content may

	contain material which some children and young people may find confusing or upsetting and parental guidance is recommended.
Unrestricted Publications classification	Mild+ Parental Guidance Recommended Content classified Mild+ is not suitable for children. Parental guidance may be required for young people under the age of 13 years.
Unrestricted – M (Mature) – Not recommended for readers under 15 years (young people) Publications classification	M Recommended for mature audiences Content classified M is not suitable for children. Parental guidance may be required for young people under the age of 15 years. MA15+ to be added
No equivalent Publications classification	MA 15+ Not suitable for people under 15. Content classified MA 15+ is considered not suitable for persons under the age of 15. It is a legally restricted category.
Category 1 – Restricted Publications classification	R 18+ Restricted to 18 and over Material classified R 18+ is legally restricted to adults. Some material classified R 18+ may be offensive to sections of the adult community.
Category 2 – Restricted Publications classification	X 18+ Restricted to 18 and over A specially legally restricted category which contains only sexually explicit material between consenting adults.

Submittable media content

As noted previously, within the context of a future Scheme and a single set of statutory guidelines for the classification of all media content, regardless of the delivery platform, the concept of ‘submittable content’ should be examined. Expanding the precedent of ‘submittable publications’ as a mechanism to classify a category of content which is published on a scale beyond the resources of any classification system, could be applied to classifiable online content in a similar way, for similar reasons.

“Submittable content’ should incorporate both publications and online content (plus accommodate any future, unforeseen content format or delivery platform) and subsume the existing ‘submittable publications’ mechanism in the Act. Its definition would maintain the legislative mechanism for unclassified publications, and expand it to encompass any format and would include content such as

hardcopy books, audio books, kindle download, e-zine, digital magazines or even a downloadable PDF of a self-published novel via a website. This would meet the communities' common understanding of publications regardless of the delivery platform.

It follows that by incorporating online publications the concept of 'submittable' should be expanded to include all unclassified, classifiable online media content. As mentioned previously, there is a clear need for redefining the broad and diverse category of 'user generated content' to then define as distinct 'entrepreneurial generated content', into a future criterion of classifiable content as discussed earlier.

A proposed definition of 'Submittable content' is:

Any unclassified publications and online content, irrespective of its delivery platform, of which:

- should not be accessible, sold or displayed, as it unsuitable for a child or young person, or
- should be legally restricted to adults, or
- should be Refused Classification.

The onus would still be being on the publisher, whom often online is also the creator, to self-classify or to submit content for classification in the first instance if it meets the definition of classifiable content. Alternatively, as is currently the case, the publisher could be compelled to provide the content for classification through 'call in' powers.

Recommendation 28.

That the current definition of "submittable publication" in the Classification Act be deleted and replaced with:

Any written or pictorial matter, the content of which:

- *should not be sold or displayed as an unrestricted publication (as it unsuitable for a child to see or read); or*
 - *should be legally restricted to adults; or*
 - *should be Refused Classification.*
-

Recommendation 30.

That any future Scheme and Guidelines for the classification of all media content include provisions relating to the display and wrapping of restricted hard copy publications and considerations access restrictions for online publications.

2. A framework for evidence-based classification guidelines

The Australian Classification Board supports the case for reform.

Overview of the Board’s response to the possible reform options:

Recommendation 31.

A more expansive concept of ‘submittable content’ be examined, incorporating ‘submittable publications, as well as all other unclassified online content, in all delivery platforms, as a legislative mechanism to address ‘entrepreneurial generated content’ as distinct from ‘user generated content’.

Reform Option	Board Response
<p>Establish a Classification Advisory Panel (CAP) comprising experts from academic fields relevant to classification (including psychology, child development and media studies) as well as representatives from community organisations and those with industry experience, be established to consult on regular updates to the Guidelines.</p>	<p>Supported with amendments.</p> <p>The Board agrees with the objective of the reform to <i>“Establish a Classification Advisory Panel (CAP) ... to consult on regular updates to the Guidelines.”</i></p> <p>However, have proposed alternate criteria and additional options in Section 2. Recommendations.</p>
<p>The CAP would not be a decision-making body, but would provide advice to the Commonwealth and State and Territory Governments on possible updates to classification criteria.</p> <p>Advice would be informed by empirical evidence, community research, international best practice and consultation with stakeholders, to help ensure that the decisions made are evidence-based and consider community attitudes so that the Scheme is responsive to community expectations.</p>	<p>Supported with amendments.</p> <p>The Board agrees with the objective of the reform, that, <i>“The CAP would not be a decision-making body, but would provide advice... informed by empirical evidence, community research, international best practice and consultation with stakeholders, to help ensure that the decisions made are evidence-based and consider community attitudes.”</i></p> <p>However, have proposed alternate criteria and additional options in Section 2. Recommendations.</p>

<p>The establishment of a CAP, or similar body, could provide a robust mechanism to inform a fulsome review of the Guidelines.</p> <p>This could include consideration of a number of issue-specific recommendations made by the Stevens Review, emerging issues such as in relation to the classification of certain publications, and issues of community concern as they arise.</p>	<p>Supported with amendments.</p> <p>The Board agrees with the objective of the reform that the, <i>"...CAP, or similar body, could provide a robust mechanism to inform a fulsome review of the Guidelines."</i></p> <p>However, have proposed alternate criteria and additional options in Section 2. Recommendations.</p>
--	---

In addition to the responses to the options proposed in the Public Consultation Paper, the Board outlines a number of additional reform recommendations in the following sections.

Questions 5.

Do you support the establishment of an independent Classification Advisory Panel or similar body?

The Board supports the establishment of an independent Classification Advisory Panel (CAP).

As the Stevens Review noted, there is no mechanism for regular reviewing and updating of the classification guidelines to reflect community standards.

To date there has been limited research and data collected in relation to the guidelines and community standards, as well as other related issues such as child development and the impact of the classifiable elements on young people. For this reason, any future National regulator must include a research function that is responsive to community issues related to classification and explores those identified by the Board through its experience and expertise in classification.

However, the most pressing issue is a mechanism in the legislation that allow for the revision of the Guidelines on a regular cycle, to ensure it is in line with dynamic community standards and also robust enough that they are not reviewed too regularly, so as to give the Board, consumers and industry certainty, stability and consistency in the Scheme and the classification decisions made.

The Film and Computer Games guidelines have not been updated for 14 years (2012), while the Publications guidelines have not been updated for 29 years (2005). In the context of the exponential growth of media technology and its convergence, this is significant. Furthermore, along with the lack of consistency and alignment between the three current guidelines, it is clear they are no longer fit for purpose, out of step with some community standards and in the case of the publications guidelines drastically inadequate.

Under the present Scheme, being a co-operative agreement between the Commonwealth and the states and territories, has unintentionally, made amending the guidelines a challenge. However, this must be addressed. The concept of a CAP drawn together from a pool of classification relevant subject matter experts, called on, when and as required may be the most appropriate mechanism to address this issue without a wider examination of the current Schemes co-operative agreement – which is out of scope in this review. The CAP pool should be vetted nominees endorsed by the Commonwealth and States and territories as empowered under a future Scheme, as a mechanism to examine, address and recommend amendments and updates review of the guidelines or indeed a future single set of Guidelines for the Classification of media content on a regular cycle of 4-5 years.

Depending on the issue at hand, the group of CAP members would be called by the Commonwealth via the Assistant Secretary, as delegated by the Minister, with notice to the states and territories, and be comprised of members with the appropriate mix of expertise, drawn from the endorsed pool appropriate to the focus of the CAP meeting agenda. The CAP should meet quarterly to ensure its in touch with key issues raised by the Board, the community or through their knowledge in their areas of expertise. The CAP should include as permanent member the Director of the Board and the Assistant Secretary Classification (as Chair), as both key stakeholders and subject matter experts.

Similar to the proposed concept of a CAP, the British Board of Film Classification (BBFC) utilises an Advisory Panel on Children's Viewing (APCV). The APCV has 12 members and is an independent body that advises the BBFC on issues concerning the interests of children and young people. Its members provide a wide range of skills and expertise connected with child welfare and contribute to the development of BBFC policies and standards.

The BBFC also utilises a Youth Panel of six young people from around the UK who are regularly consulted in face to face and online meetings, to ensure the BBFC continues to reflect the views of young people in all areas of their work, including age rating decisions and wider policy and communications initiatives. The New Zealand Classification Office (NZCO) also utilise a Youth Advisory Panel (YAP) that was established as part of a wider youth engagement strategy in 2018. The YAP ensures that youth voices are considered as part of the daily classification decision making process. The YAP inform decisions when classify content that is aimed at or may impact young people. Yap members help plan and deliver youth-targeted projects and develop resources for public outreach. Their views are also sort in an ad hoc basis when working on issues that directly affect them, such as restricted classification decisions.

In addition to a CAP, and in line with the earlier recommendation to amend the Code principles to note children and young people, a Youth Advisory Panel should also be formed to provide critical insight into the impact of media content, the validity of the guidelines and feedback Board standards. Youth Advisory Panel data would be shared directly with the CAP as relevant and should be managed at the agency level by the Board and / or a Community Engagement Team as part of a future National Regulator for all media content.

The CAP Pool of members should be derived from self-nomination and recommendation of individuals that meet a clear skills matrix for the range of subject matter expertise required. The CAP must have clear governance through a Terms of References. CAP members ship should be for a capped term - potentially in line with the review cycle of the Guidelines (4-5 year) to ensure CAP pool was also evolving with community standards and the latest in research related to classification.

The BBFC utilise a four-year cycle to review and update its guidelines through wide public consultation of up to 12,000 people across the UK, as well as their Youth Panel and Advisory Panel on Children's Viewing. This is considered current best practice and should committed to as part of a future Scheme.

While the CAP is proposed to operate at a level aligned with the Commonwealth and states and territories decision making, and that they will predominately be made up of subject matter experts, it is equally important to seek insights and feedback from across the Australian community in all its diversity, that could inform the Board's daily classification decision making and also advise the CAP. These 'Community Reference Groups' should prioritise youth (as noted earlier), multi-cultural / non-English speaking back grounds and First Nations perspectives. Community Reference Groups should rote more frequently than the CAP on a 2 years cycle. The CAP and any other Community Reference Groups should be managed by the Community Engagement Team of a future National Regulator.

Recommendation 32.

That an independent from government CAP drawn from a self-nominate pool of commonwealth and states and territories endorsed subject matter experts relevant to classification.

Recommendation 33.

The term for CAP Pool members is up to maximum of 4 years with the CAP meeting 4 times per year, which is aligned to a review and update of the classification guidelines.

Recommendation 34.

That the Director of the Board be a standing member of each CAP meeting, along with the Assistant Secretary Classification as Chair.

Recommendation 35.

That Community Reference Groups focussed on youth, multi-cultural and First Nations be established that liaises directly with the Engagement function of a future National regulator.

Questions 6.

What issues or expertise relevant to the classification environment would you like to see represented in a Classification Advisory Panel or similar body?

There is wide range of expertise required for the CAP pool that is relevant to classification environment and as noted above, a pool of relevant expertise should be vetted, endorsed and available to be drawn upon for CAP meeting dealing with specific issues and ideas.

The subject matter experts should be drawn from academia, specific agencies or organisations and / or individuals with substantial experience and standing in the community should at a minimum include areas such as:

- Media industry - film, computer games, publications, social media, content producer and publishers
- Cultural, socio-economic
- Gender
- First nations
- Accessible – people with a disability
- Generational – youth and seniors
- Children and families
- Technology

As noted, care in defining the terms of reference and a skills matrix is of the highest importance. It should be endorsed by the Commonwealth and states and territories, along with the endorsement

process of CAP pool members, to ensure a political or structural bias doesn't occur – for example an Anglo, male academic perspective. The CAP Pool and each meeting membership should be designed to be diverse in perspective, representation and expertise, in the same way the current legislation calls for the Classification Board to be broadly representative of the Australian community and therefore diverse in its opinions and perspectives.

The CAP should provide evidence-based advice and recommendations, first and foremost on the review and updating, on a regular cycle (4-5years) of all three current classification guidelines or a future single set of Guidelines for the classification of media content; as well as evidence-based advice and recommendations on classification related issues including but not limited to:

- The need to acknowledge youth as a specific demography with particular media consumption habit and broadening the classification impact levels to include something similar to a PG 13 rating.
- Harm minimisation for children and youth across a range of classifiable elements including sexualised imagery.
- Community standards on the element of language and whether a mandatory M for F**k language or MA 15+ for C**t language is still relevant or can be determined contextually.
- Community standards for other classifiable elements, in particular sex scenes and sexualised imagery, violence, drug use and tolerance for low level proscribed drugs.
- Alignment of classification element thresholds and definitions across all media in one set of guidelines (as noted earlier in this paper).
- A consideration of current Board standards and advice/ feedback.
- The redefining and aligning of the definition of submittable publications.
- The concept and practical application of 'submittable content'.
- Clarifying a definition of classifiable content related to the distinction between 'user generated content' and 'entrepreneurial generated content' and its practical implications.

Recommendation 36.

The CAP should be implemented that is made up of a pool of diverse classification related subject matter experts nominated by and endorsed by the Commonwealth and states and territories.

Recommendation 37.

A Terms of Reference and skills matrix for CAP Pool membership is developed and endorsed by the Commonwealth and states and territories

Recommendation 38.

That each CAP meeting is made up of relevant but diverse members to be representative of vary perspectives about the issue(s) at hand.

Recommendation 39.

Working group perspective on key issues for upcoming CAP meetings are sort and tabled in the relevant CAP meeting.

Question 7.

Are there any aspects of the *current Guidelines* that you would like the Classification Advisory Panel or similar body to consider?

As noted earlier, there is mis-alignment across the three current guidelines (Films, Computer Games and Publications), across impact levels and definitions provided within, for each of the six classifiable elements, resulting in a lack of consistency in how the impact of elements are treated and applied by the Board, depending on the media content they occur in. A future Scheme must use a single set of guidelines for all media content, to align with current community standards.

The CAP, with input from Community Reference Groups, would examine, advising and recommend how the current challenges and inadequacies of the Guidelines can be resolved to enable a harmonised classification system, fit for purpose for all media content and that underpins a quality, risk-based decision-making process that is clear and consistent for Australian consumer and industry.

Updating the Guidelines - the Classifiable Elements

The six classifiable elements – Themes, Violence, Sex, Language, Drug Use and Nudity - that are currently used by the current Guidelines should be continued in any future single set of guidelines (subject to the suggested variations discussed below), in conjunction with the consideration of their treatment in context, when determining the impact of material.

Despite minor variations and codifications, these elements are well established in the community, with industry and utilised by the Board, Classification Tools, Authorised Assessors, Accredited Classifiers, and with variation, are also the basis of Broadcast Television and the wider media/entertainment industries classification information in Australia. They are also widely used and understood in many other jurisdictions, including the UK, the USA, New Zealand and South Korea.

The most pertinent issues related to the six classifiable elements are discussed individually below and are raised in the interests of harmonisation of classification across all media, consistency for industry in their application regardless of delivery platform and efficacy and value to the Australian consumers. The six classifiable elements are still the most relevant to the broad Australian community and useful in reference to reflecting community standards.

The recurring issues for the CAP to consider across the classifiable elements include:

- the current names of some of the elements;
- the current definitions contained in the existing Guidelines;
- the manner in which content is assessed;
- the resulting limitations on classifying certain content;
- the unnecessary application of Refused Classification to certain content that could otherwise be accommodated at a lower classification level but for certain current restrictions.

Classifiable element - Themes

'Themes' are defined identically in the Film and Computer Games Guidelines (2012) as, "*Social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism*". This is not, nor can it ever be, an exhaustive list. There is a variation of this definition contained in the Publications Guidelines (2005) where the term "*Adult themes*" is defined.

Of note is that historically the Board used Adult themes in classifying film and Broadcast Television currently still uses Adult themes in its classification practice, a hangover from previous direct alignment to Board classification terms. The definition of themes must be identical across all media and delivery platforms.

Other guidelines, such as the *Commercial Television Industry Code of Practice*, specify elements such as suicide or dangerous imitable activity, while the British Board of Film Classification (BBFC) lists dangerous behaviour, discrimination, and threat and horror as specific classification elements. In Australia, these concerns all fall comfortably under the broader umbrella of themes, and the flexibility of the current approach, in conjunction with considerations of treatment, context and impact, is sufficient to accommodate current and future thematic issues and concerns.

However, Board practice ensures that **consumer advice** for some specific themes needs to be carefully formulated and applied to be useful for consumers. Consumer advice of 'mild themes', for example, may not carry enough meaning. In practice, the Board strives to provide specific consumer advice where there is an overriding or particularly impactful theme, identifying fantasy, supernatural, science fiction and horror themes, as well as animal treatment, surgical procedures, and injury detail, and more recently in 2023, issues of community concern such as suicide, self-harm, bullying, abuse, due to research findings, have been introduced and applied regardless, if present at the most impactful level of content or the upper limit of one level below.

Recommendations 40.

That any future Guidelines include a definition of themes that is expanded from the current definitions in the existing Guidelines to include a broad array of contemporary social issues, events and content.

Recommendations 41.

That consumer advice for themes be confined to only the most impactful thematic material determining the classification category of the content, and that additional consumer advice for 'issues of community concern' are included if present only at the highest impact level or the upper limit of one level below.

Classifiable element - Violence

Notwithstanding community concerns relating to violence in computer games in recent years, the Guidelines for Film and Computer Games should be identical, and absorbed into one, single set of 'Guidelines for the classification of media content'.

There is also a variation of the definition of 'violence' contained in the current Publications Guidelines where the term still refers to acts of violence but is thereafter limited to an *obvious* threat of violence or its result. This should no longer be the case and the Publications Guidelines should also be absorbed into one, single set of 'Guidelines for the classification of media content'. This will result in consistent classifications across all media and delivery formats. Currently this is not the case.

The below identifies the differences that are currently taken into consideration when the Board is assessing violence in films and computer games (noting that there are differences also in relation to sex, nudity and drug use). These additional requirements and restrictions for computer games result in many of them being arbitrarily pushed into higher classification categories, resulting in consumer and industry confusion regarding the impact of classifiable content, across media types.

	FILM GUIDELINES	GAMES GUIDELINES
G	Violence should have only a low sense of threat or menace, and be justified by context. Sexual violence is not permitted.	Violence should have only a low sense of threat or menace, and be justified by context. Sexual violence, implied or otherwise , is not permitted.
PG	Violence should be mild and infrequent, and be justified by context. Sexual violence is not permitted.	Violence should be mild and infrequent, and be justified by context. Sexual violence, implied or otherwise , is not permitted.
M	Moderate violence is permitted, if justified by context. Sexual violence should be very limited and justified by context.	Moderate violence is permitted, if justified by context. Sexual violence, implied or otherwise, is not permitted

	FILM GUIDELINES	GAMES GUIDELINES
MA 15+	<p>Violence should be justified by context.</p> <p>Sexual violence may be implied, if justified by context.</p>	<p>Violence should be justified by context.</p> <p>Strong and realistic violence should not be frequent or unduly repetitive.</p> <p>Sexual violence, implied or otherwise, is not permitted.</p>
R 18+	<p>Violence is permitted.</p> <p>Sexual violence may be implied, if justified by context.</p>	<p>Violence is permitted. High impact violence that is, in context, frequently gratuitous, exploitative and offensive to a reasonable adult will not be permitted.</p> <p>Actual sexual violence is not permitted.</p> <p>Implied sexual violence that is visually depicted, interactive, not justified by context or related to incentives or rewards is not permitted.</p>

The inconsistent use of descriptors for the classifiable elements themes, sex and language all refer to **the impact test of ‘very mild’**, however, in violence the impact is described as ‘low’. At best this should have been described as ‘very low’ to be consistent with a G classification impact of ‘very mild’. Any future Guidelines need to redress this inconsistency align to ‘very mild’.

The restrictions in the current guidelines around **‘sexual violence’** are an unnecessary impediment to classification of content. For example, *This Is the Police* and *This is the Police 2*, are management simulation games, in which the player dispatches emergency services and law enforcement to randomised events. The player is graded on the timeliness of response and the appropriateness of the resources allocated.

The games contain references to sexual violence that are *not* visually depicted, interactive or related to incentives or rewards, *however*, as the current Guidelines state that “*sexual violence, implied or otherwise, is not permitted*” within the G, PG, M or MA 15+ classifications, both of these games had to be classified **R 18+** with consumer advice of references to sexual violence. Without these restrictions in the Guidelines, these games could have been accommodated at an M classification level.

Community concerns in computer games (and films) can be addressed and safeguarded through the proper consideration of treatment, context and the effect of interactivity (including incentives and rewards), which may increase the impact of *any* of the classifiable elements. An additional safeguard is provided by the ability to Refuse Classification for material which offends against community standards to the extent that it should not be classified, as provided by the Classification Act and the Code.

The current Film Guidelines under the classification **X 18+** state, in part, *“No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category.”* Although, content at this impact level is rarely classified by the Board now - an impact of the exponential proliferation of online delivery platforms - this blanket prohibition has resulted in the inability to classify certain categories of ‘pornographic’ films in the X 18+ classification category and in a future Scheme for all media content may have unintended consequences for pornographic content available online.

A sub-genre of pornographic films, are parodies of mainstream feature films and have included, for example, scenes of violence. In the film, *Star Wars XXX A Porn Parody Feature*, there are intermittent scenes of violence when Obi Wan uses a light-saber to implicitly cut down an alien and a male with a scarred face. Given that the film contained real depictions of actual sexual activity *and* violence, not necessarily in the same scene, it could *not* be accommodated within either the R 18+ or X 18+ classifications and had to be Refused Classification pursuant to item 1(a) of the films table of the Code.

Removing restrictions on violence within the X 18+ category would enable certain pornographic films with discrete and contextually appropriate depictions of violence to be classified X 18+. This change would not ‘open the floodgates’ to the legalisation of *all* pornographic films containing violence, because those films with depictions of sexual violence, sexualised violence or coercion would still be Refused Classification, as these depictions would be excluded from the X 18+ category pursuant to item 1(a) in the various tables of the Code.

Recommendation 42.

That any future Guidelines for content include the definition of ‘violence’ in the List of Terms that is currently contained within the Film and Games Guidelines.

Recommendation 43.

That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of violence for each classification category, eliminating existing variations between media types.

Recommendation 44.

That any future Guidelines for content remove the blanket prohibition on depictions of violence in films containing sexually explicit activity ('pornographic films'), relying instead upon consideration of context and the prohibitions contained in the Refused Classification category.

Classifiable element - Sex

The existing Guidelines relating to the element of sex, which includes depictions of sexual activity, sexual references, sexual innuendo and sexualised imagery, broadly reflect community standards and concerns. However, once again there are additional restrictions in the current Computer Games Guidelines, particularly the prohibition of “*sexual activity related to incentives or rewards*” in all but the R 18+ classification category, which should be removed.

	FILM GUIDELINES	GAMES GUIDELINES
G	Sexual activity should be very mild and very discreetly implied, and be justified by context.	Sexual activity should be very mild and very discreetly implied, and be justified by context. Sexual activity must not be related to incentives or rewards.
PG	Sexual activity should be mild and discreetly implied, and be justified by context.	Sexual activity should be mild and discreetly implied, and be justified by context. Sexual activity must not be related to incentives or rewards.
M	Sexual activity should be discreetly implied, if justified by context.	Sexual activity should be discreetly implied, if justified by context. Sexual activity must not be related to incentives or rewards.
MA 15+	Sexual activity may be implied.	Sexual activity may be implied. Sexual activity must not be related to incentives or rewards.
R 18+	Sexual activity may be realistically simulated. The general rule is “simulation, yes – the real thing, no”.	Depictions of actual sexual activity are not permitted. Depictions of simulated sexual activity may be permitted.

	FILM GUIDELINES	GAMES GUIDELINES
		Depictions of simulated sexual activity that are explicit and realistic are not permitted.

As with the element of violence, these additional restrictions are inconsistent and unnecessary. Community concerns can be addressed and safeguarded through the proper consideration of treatment, context and the effect of interactivity (including incentives and rewards) in computer games. This can increase the impact of any of the classifiable elements, as well as the ability to Refuse Classification for material which offends against community standards and exceeds the R 18+ impact level.

The current inconsistencies between the element of sex for films and computer games would be resolved if the Computer Games Guidelines were harmonised, along with the Film Guidelines under a future single set of Guidelines for all media content. This would enable the current restrictions in the Computer Games Guidelines on “*Depictions of actual sexual activity*” and “*Depictions of simulated sexual activity that are explicit and realistic*” to be accommodated within the **X 18+** classification category which is restricted to adults.

In the Film Guidelines for the X 18+ classification category, which allows for depictions of consensual sexually explicit activity between adults, there is a sample list of impermissible sexual fetishes (“*such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting*”), which is unnecessarily prescriptive and should be removed. Depictions of legal sex acts between consenting adults should not be subject to an immediate prohibition and instead should be assessed like all other content in regards to treatment and context.

The Code, in clause 1 (d)(ii), requires that classification decisions are to take account of community concerns about “*the portrayal of persons in a demeaning manner*”. Consideration of this principle in part informs application of Item 1 (a) of the Refused Classification category in the various tables in the code which requires that media which depicts, expresses or otherwise deals with “*matters of sex ... or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by a reasonable adults ...*” must be Refused Classification.

In addition, the Guidelines also contain confusing restrictions regarding sexual activity by 16 and 17year-olds:

“As the category is restricted to activity between consenting adults, it does not permit any depictions of non-adult persons, including those aged 16 or 17, nor of adult persons who look like they are under 18 years. Nor does it permit persons 18 years of age or over to be portrayed as minors.”

These statements are redundant and need to be removed as Item 1(b) of the Refused Classification category in the Films table states that films will be Refused Classification if they:

“describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not).”

Recommendation 45.

That any future Guidelines for content include the definition of 'sexual activity' in the List of Terms that is currently contained within the Film and Games Guidelines.

Recommendation 46.

That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of sex for each classification category, eliminating existing variations between media types.

Recommendation 47.

That any future Guidelines for content remove the prescriptive list of impermissible fetishes and references to 16- and 17-year-olds in the X 18+ classification.

Classifiable element - Language

As this classifiable element relates only to coarse language, it is preferable that it is retitled to reflect this. It should be noted there is discriminatory language (e.g. racial slurs), but this kind of language is currently assessed under the element of themes. This should be reviewed and considered for inclusion in language, as has been the case in Britain most recently.

It is important to clearly delineate the kind of material which needs to be assessed under this element, that is, Coarse Language only. The Board is conscious that 'language' consists not only of verbal and visual instances but also crude gestures, and applies the 'coarse language consumer advice when they are present in the content at the most impactful level.

Therefore, the 'List of Terms' in the future 'Guidelines for all media content' should include a definition of Coarse Language as per the current Board Standards Guidelines (2024):

"Coarse language refers to words that are vulgar, or used to curse and swear on the basis that they are impolite, rude and/or offensive. Coarse language includes verbal and visual instances, as well as muted or 'bleeped' words, subtitles or text (e.g. graffiti or handwriting).

Hand gestures which correspond with the following coarse language are to be classified under the element of Language.

A gesture should be classified at the same level as the corresponding verbal or visual use of coarse language.

- *Cock - 'mimicry of fellatio'*
- *Fuck - 'reversed middle finger'*

- *Fuck - 'reversed vees up'*
- *Wanker - 'sweeping clenched fist from side to side'*

Because of the need to adjust to community standards over time and the importance of treatment and context, it is impossible as well as undesirable to set out a comprehensive list of words and gestures which may cause offence at each classification category. However, the publication of an *indicative* coarse language list of words and expressions is supported in order to inform consumers and industry. The Board already informally shares its own coarse language standards guidelines list with colleagues in Broadcast Television, which was an industry benchmark with which to assist their classification decision making.

The publishing of this list would be in addition to the 'More information about the content' field on the Classification website, which the Board has undertaken to complete for all current media content it classifies - public exhibition films, other films including streaming and DVD / Blu-Ray and computer Games, to enable another layer of more detailed consumer information beyond the classification rating and consumer advice.

Finally, the only differences in the descriptions relating to coarse language between the current Film and Games Guidelines are in the M and MA 15+ classifications and are shown in the table below.

	FILM GUIDELINES	GAMES GUIDELINES
M Impact: Moderate	Coarse language may be used. Aggressive or strong coarse language should be infrequent and justified by context.	Coarse language may be used. Aggressive or strong coarse language should be infrequent, justified by context, and not gratuitous, exploitative or offensive.
MA 15+ Impact: Strong	Strong coarse language may be used. Aggressive or very strong coarse language should be infrequent.	Strong coarse language may be used. Aggressive or strong coarse language should be infrequent, and not exploitative or offensive.

There is confusion for the Board by the use of the terms 'strong' and 'very strong' in the M and MA 15+ categories respectively, to euphemistically refer to two offensive words – F**k and C**t respectively. By using 'strong' and 'very strong' as attempts to describe these two words, it has generated conflict with the impact qualifiers for these classifications.

At the M classification, the impact qualifier is 'moderate', so the sentence in the table above should be re-worded to read, "Aggressive or *moderate* coarse language should be infrequent and justified by context." Similarly, at the MA 15+ classification, the impact qualifier should be 'strong', and the sentence should read, "Aggressive or *strong* coarse language should be infrequent."

Furthermore, the Film Guidelines currently neglect to state that coarse language at MA 15+ needs to be "*justified by context*" (as is the requirement for the classifiable elements of themes, violence,

drug use and nudity at MA 15+, and the requirement for language at M). By inserting this requirement at MA 15+ it then negates the requirements in the Computer Games Guidelines that language not be “exploitative or offensive”. There is a similar requirement at M which is equally redundant.

Recommendation 48.

That the element currently named ‘Language’ be re-named ‘Coarse language’ to reflect the content being assessed.

Recommendation 49.

That any future Guidelines for content include a definition of ‘Coarse language’ that distinguishes it from other thematic language, and that it includes spoken language and gestures.

Recommendation 50.

That the proposed future single set of statutory Guidelines provide descriptions of allowable content for the element of ‘coarse language’ for each classification category, eliminating existing variations between media types.

Recommendation 51.

That an indicative coarse language list for each classification level be published on the Classification Website.

Classifiable element - Drug use

This classifiable element currently only relates to proscribed (illegal) ‘drug use’. The only definition of ‘drug use’ currently available to the Board is that in the Glossary of Terms in the Publications Guidelines, which defines drug use as, “The use of proscribed drugs. Proscribed drugs are those specified in Schedule 4 (referred to in Regulation 4A (1A) (e)) of the Customs (Prohibited Imports) Regulations.”

Despite the element being called ‘drug use’, the Board does not limit its assessment of this element simply to ‘use’, but extends it to include ‘references’, both verbal and visual. Therefore, its current title is inconsistent with other elements such as ‘sex’, which equally relates to both activities and references.

This classifiable element should be re-titled 'Drugs'. It would continue to address proscribed drug use and references, depictions of drug paraphernalia, visual symbols, and depictions of drug-induced states or effects.

In order to align with common sense community expectation, this classifiable element should be extended to incorporate the misuse of legal drugs such as prescription medications, which are currently assessed under the element of themes. This expanded definition of 'drugs' needs to state that it does not extend to caffeine, alcohol or tobacco, which are not assessed in Australia, except where, for example, there is excessive alcohol consumption wherein it is considered under the element of themes.

By way of contrast, the Commercial Television Industry Code of Practice refers to "depictions of, or verbal reference to, illegal drugs", while the classification guidelines in the ABC Code of Practice state, at the G classification category, "The depiction of the use of legal drugs should be handled with care. Illegal drug use should be implied only very discreetly and be justified by context." At the PG classification category, the ABC Guidelines state, "Discreet verbal references and mild, incidental visuals of drug use may be included, but these should not promote or encourage drug use."

As with the elements of violence and sex, there are additional restrictions in the Computer Games Guidelines, particularly the prohibition of "drug use related to incentives or rewards" at every classification category and the prohibition of "interactive illicit or proscribed drug use that is detailed and realistic".

	FILM GUIDELINES	GAMES GUIDELINES
G	Drug use should be implied only very discreetly, and be justified by context.	Drug use should be implied only very discreetly, and be justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.
PG	Drug use should be justified by context.	Drug use should be infrequent and justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.
M	Drug use should be justified by context.	Drug use should be justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.

	FILM GUIDELINES	GAMES GUIDELINES
MA 15+	Drug use should be justified by context.	Drug use should be justified by context. Drug use related to incentives or rewards is not permitted. Interactive illicit or proscribed drug use is not permitted.
R 18+	Drug use is permitted.	Drug use is permitted. Drug use related to incentives and rewards is not permitted. Interactive illicit or proscribed drug use that is detailed and realistic is not permitted.

As noted earlier, the additional restrictions on drug use related to incentives and rewards in computer games should be removed. This is because community concerns will be addressed and safeguarded through the proper consideration of treatment, context and the effect of interactivity (including in-game incentives and rewards) on drug use, as well as through the ability to refuse classification to material which offends community standards to the extent that it should not be classified.

Similarly, the prohibition on interactive illicit or proscribed drug use also needs to be removed from the R 18+ classification to give effect to clause 1(a) of the Code, which states that, “adults should be able to read, hear, see and play what they want”.

Recommendation 52.

That the element currently named ‘Drug use’ be re-named ‘Drugs’ to reflect the content being assessed.

Recommendation 53.

That any future Guidelines for content include a definition of ‘Drugs’ that includes both proscribed drugs and the misuse of legal drugs (but does not extend to caffeine, alcohol and tobacco).

Recommendation 54.

That the proposed future single set of statutory 'Guidelines for all media content' provide descriptions of allowable content for the element of 'Drugs' for each classification category, eliminating existing variations between media types.

Classifiable element - Nudity

The element of nudity is adequately addressed in current Guidelines and accurately reflects community standards and concerns.

However, additional restrictions are again placed on the Guidelines for Computer Games so that nudity *"must not be related to incentives or rewards"*, causing computer games that otherwise might be classified at the PG classification category to be classified as R 18+.

It should be noted there is a wide variety of graphics engines used in development of computer games. Not all games utilise graphics that are 'photo-realistic'. Certain styles of games still employ only 8-bit graphics engines, which are deliberately 'blocky' and naïve in pictorial style. As such the treatment of nudity stylistically and aesthetically varies widely and contributes to the impact.

	FILM GUIDELINES	GAMES GUIDELINES
G	Nudity should be justified by context.	Nudity should be infrequent and justified by context. Nudity must not be related to incentives or rewards.
PG	Nudity should be justified by context.	Nudity should be infrequent and justified by context. Nudity must not be related to incentives or rewards.
M	Nudity should be justified by context.	Nudity should be justified by context. Nudity must not be related to incentives or rewards.
MA 15+	Nudity should be justified by context.	Nudity should be justified by context. Nudity must not be related to incentives or rewards.
R 18+	Nudity is permitted.	Nudity is permitted.

In a contemporary media environment these additional restrictions for computer games need to be removed.

Furthermore, it is clear that the lack of definition of 'nudity' in the current Film and Computer Games Guidelines is resulting in mis-interpretation by consumers and industry alike as to what constitutes 'nudity' in a classification context. The only existing definition of 'nudity' sits in the current Publications Guidelines and therefore this needs to be incorporated in any future Guidelines:

"Nudity can consist of frontal or rear below waist visuals, full frontal or full rear visuals for both sexes, or breast nudity for females. The amount of detail is determined not only by the content of the nudity shown, but by other factors including closeness and size of visuals, realism, and clarity."

Recommendation 54.

That any future Guidelines for content include the definition of 'nudity' in the List of Terms that is currently contained within the Publications Guidelines.

Recommendation 56.

That the proposed future single set of statutory 'Guidelines for the Classification of all media content' provide descriptions of allowable content for the element of 'nudity' for each classification category, eliminating existing variations between media types.

The impact of interactivity

Currently, from a practical, day-to-day working point of view in applying the Guidelines, there is an inconsistent treatment of the concept of 'interactivity' between Film and Computer Games and the restrictions imposed around it. This must be addressed as a matter of urgency by a future CAP and single set of Guidelines for all media content, with its increasing centrality to a media environment of technological and content convergence.

In the current Film Guidelines, the one paragraph relating to interactivity sits under the sub-heading of "Assessing impact", whereas in the Computer Games Guidelines, the six paragraphs relating to interactivity are a separate concept with their own heading of "Interactivity and computer games", rather than forming part of assessing impact. In both Guidelines, interactivity is an inclusive definition: "use of incentive and rewards, technical features and competitive intensity".

A more practical, common definition of interactivity, is required including in-game, or even in-content incentives and rewards, and one that acknowledges that it may and equally may not, increase the impact of any of the classifiable elements. Currently the concept of interactivity is regarded as a stand-alone concept when classifying computer games only, but is viewed as part of assessing impact when classifying a film. This distinction should be amended or in the context of a future single set of Guidelines be rectified to be applied in assessing impact for all media content.

It is imperative in our contemporary media context, concepts such as interactivity have the same weight and understanding irrespective of the media type being classified. New and future media, including virtual and augmented reality theatres and devices, will incorporate interactivity in various forms.

Interactivity should be considered for each classifiable element. Assessing interactivity is part of assessing impact. This then allows interactivity to be considered and assessed as part of context, and accords with the approach taken to considering treatment through frequency, tone, stylisation, visual effects, musical scores, sound effects and other impact accentuation techniques that are used across all media that either contribute or mitigates the impact of each element and the content as a whole.

Recommendation 57.

That any future Guidelines for content position interactivity as part of the essential principles with which to assess impact in relation to the six classifiable elements.

Recommendation 58.

The CAP reviews all current guidelines to align impact levels, definitions and differing restrictions across classifiable elements, with the aim that under a future National Classification Scheme of developing a single set of Guidelines for all media content.

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

The Australian Classification Board supports the case for reform.

Overview of the Board’s response to the possible reform options:

Reform Option	Board Response
<p>That responsibilities for classification at the Commonwealth level should be consolidated into a single national regulator.</p> <p>The single national regulator would have wide ranging responsibilities which may include training and accrediting classifiers, quality assurance of classification decisions, enforcement of compliance for online classifiable content and maintaining the National Classification Database.</p>	<p>Supported.</p> <p>The Board agrees with the objective of the reform, <i>“That responsibilities for classification at the Commonwealth level should be consolidated into a single national regulator.”</i></p> <p>However, have proposed additional options in Section 3. Recommendations.</p>
<p>At present there are two primary models for the regulation of content in Australia that could inform the development of future options. – ACMA and the eSafety Commissioner.</p> <p>Both of these models are co-regulated between government and industry through the use of industry standards and codes of practice.</p> <p>Views are being sought on the applicability of either... as well as any other considerations that should inform the development of fit-for-purpose regulatory and governance arrangements for classification in Australia</p>	<p>Supported in part.</p> <p>The Board agrees with the objective of the reform, <i>“the development of fit-for-purpose regulatory and governance arrangements for classification in Australia.”</i></p> <p>However, have proposed additional options in Section 3. Recommendations.</p>
<p>The future role and responsibilities of the Classification Board and Classification Review Board...to be considered in the design of any new fit-for-purpose regulatory model.</p> <p>The expansion of industry self-classification ...has seen a shift in the role of the Classification Board from making primary classification decisions to providing quality assurance of industry self-classification decisions.</p>	<p>Supported in part.</p> <p>The Board agrees with the objective of the reform to consider the, <i>“... future role and responsibilities of the Classification Board ...to be considered in the design of any new fit-for-purpose regulatory model.”</i></p> <p>However, have proposed additional options in Section 3. Recommendations.</p>

In addition to the responses to the options proposed in the Public Consultation Paper, the Board outlines a number of additional reform recommendations in the following sections.

Question 8.

Do you support the consolidation of classification functions under a single national regulator at the Commonwealth level?

The Board supports the consolidation of classification functions under a single national regulator at the Commonwealth level.

It is essential for the integrity of any future Scheme that a truly independent classification decision-maker is kept in place, to ensure the application of Australian community standards and remain a trusted source of classification information for consumers and a high quality and trusted service for industry. The Board's skills and experience with all forms of media, its industry standing and public confidence mean that it is ideally placed to fulfil the essential classification function in a future national regulator.

Within the current classification landscape there are multiple agencies responsible for dealing with complaints from members of the public about classification decisions. The Board proposes that a future national regulator should assimilate these disparate complaints avenues.

In order to maintain classification benchmarks and correlate these with evolving community standards, the Board must have material that it classifies, which ranges across genres, impact levels and media types. This content can be broadly termed 'the edge cases', content that pushes boundaries, blurs typical conventions in narrative, style and impact, contains identified issues of community concern or is considered controversial and / high profile, which often results in a 'borderline' classification decision, one which sits either at the upper limit or the lower limit of classification rating. This is the most polarising content for the community, usually prompting complaints to the Board. It is this time spent classifying such content in particular – the 'action research' in applying the guidelines – that enables the Board to set its benchmarks and standards, and thereby the standard used by industry self-classifiers.

Recommendation 59.

That there should be a single national regulator whose responsibilities cover the classification processes of all media content, regardless of delivery platform including for law enforcement.

Recommendation 60.

This regulator should assimilate the functions relating to classification processes and complaints handling currently carried out by the Classification Board, Free TV, ASTRA, ACMA and the Office of the eSafety Commissioner.

Recommendation 61.

That the Board forms part of the new regulator as the classification function and:

- sets the standards of Australian classification for all media;*
 - undertakes auditing and benchmarking of classification decisions made by industry self-classifiers and digital tools, and can vary or revoke these classification decisions and can classify this content;*
 - undertakes auditing and benchmarking of industry self-classifiers and digital tools, and can direct the refinement of the tools in order to generate classification decisions that are applicable and consistent with Australian classification standards;*
 - is responsible for the functions under section 22CA of the Classification Act recommending or otherwise to the Minister a proposed classification tool;*
 - provides the training and accreditation of industry self-classifiers and assessors and monitors their performance and directs remedial action;*
 - undertakes classification of content at first instance, upon receipt of a valid application, for particular commercial and law enforcement applicants;*
 - undertakes the review of classification decisions currently performed by the Classification Review Board, as well as operating as the review body for all other decisions made under any new scheme.*
-

Recommendation 62.

That the Board's transfer to the classification function of a future National regulator, its role and scope, are enshrined in the legislative instruments establishing the new government regulator.

The Board supports and recognises the need for further industry self-classification and is broadly supportive of a move towards establishing a multi-faceted classification process. This would require appropriate safeguards and for the system to operate under a single set of classification guidelines for all media types. Oversight by a single Government regulator is preferred, with the Board's future role forming part of this entity.

Question 9.

What key considerations should inform the design of fit-for-purpose regulatory arrangements under a single national regulator model?

Form follows function

A future single national regulator should not be created as a bolt on of some to one particular other existing agency related to the classification of media content.

Rather, a new independent, convergent, single National regulator built to be fit-for-purpose be built through a transparent process of:

- Identifying the needs of Australian consumers and industry
- identifying the gaps in the current Scheme
- identifying how they can be address
- reviewing best practice locally and internationally
- identifying the range of functions, skills and expertise that should be brought together from across all exiting agencies
- organisational structure that is by design, connected and aligned to a clear purpose, as one agency, delivering holistic national, end to end, media regulation
- including within its structure a robust stand-alone (key department with executive level representation) classification function with a scope for all media content

In building a new independent agency from the 'ground up', the classification functions, and other existing agency expertise and specialisation - ACMA, the Office of the e-safety Commissioner - and should integrate with no single one specialisation, organisational culture and or expertise taking precedent or authority over another.

While it is acknowledged that ACMCA with its long history and experience in traditional 'big media' and the eSafety Commissioner regulates potentially harmful online material classified or likely to be classified RC, X18+ or R18+, their application to the full range of classifiable content has not been and should not be tested.

For ACMA, in the context of both its own principles-based approach that identifies ownership and control, community standards and local content as ongoing issues, and a situation where not only do significant platform-based distinctions prevail (for example, broadcasting is highly regulated, classification within it is self-regulated to a Code of practice, and the Internet is for the most part not regulated), but where the development of new services within online platforms creates its own anomalies that can't be accommodated. For the eSafety Commissioner working in partnership industry, with influence, and a focus on only high impact, RC or content that contravenes the criminal code or section (9A of the Classification Act (Terrorism) is not conducive to expertise in classifying the equal complexities of content spanning Very mild G to Strong MA 15+ and particular the 'borderline cases where context can tip content form one classification to another.

Rather the strengths of each agency should be brought together along with those of the classification Board and aligned to be a catalyst for a robust and multidimension Media Content Regulator. While the current legislation is acknowledged as an inhibitor to each agency working in a connected, aligned strategy, so too, the current the organisational structures, industry lenses via specialisation and professional cultures of each (including that of the Board), is an impediment to the individuals within them, let alone the agencies themselves as a whole, working in partnership for greater consumer and industry outcomes.

A complex and fast developing media environment demands new solutions for regulation. As legal regulation is a conservative tool for impact, it changes its specific instruments more slowly if at all but continues to be relevant. Self-regulation is a much-acclaimed approach towards the media, although it is not the perfect solution and a panacea to any problem. Self-regulatory bodies can find it difficult to gain public trust. A single national regulator should balance both which is more likely a co-regulation model and as such will contribute to a more administratively streamlined, and due to economies for scale, cost effective agency.

In their submission to the ALRC Review 20123, ACMA stated that a single regulator would be:

- Better for citizens: a single approach to the application of community standards and protections within the new scheme.
- Better for the consumer: a one-stop-shop with less chance of being given ‘the run-around’.
- Better for industry: superior, faster decision-making with increased expertise and a consistent approach.
- Better for Government: cost savings from economies of scale.
- More logical: converging platforms will incontrovertibly require a converged regulator.

Areas where communications and media regulation are likely to intersect with content classification and regulation under a single national regulator would include:

- the handling of complaints, investigations and relevant enforcement functions;
- promoting the development of industry codes and approving and maintaining registers of such codes;
- liaison and interaction with relevant Australian and overseas media content regulators and law enforcement agencies in the areas of online content regulation, cyber-safety and cyber-security; and
- educational activities in the digital environment.

Recently formed, convergent media regulators in other jurisdictions internationally include the Office of Communications (Ofcom) in the United Kingdom and the Media Development Authority (MDA) in Singapore. Convergent media regulators drawn together from a range of existing media regulatory agencies are bound by collective principles and purpose, and the pillars of expertise and the existing agencies specialisations and expertise as equal pillars of the regulator would be the right, fit-for -purpose model. ‘Bolting’ together existing agencies systems that are unfamiliar in working with each other let alone being one and the same entity, with existing agendas, may not consider or at worst, deliver the best outcome across all media content. The International Telecommunications Union has observed that ‘a more consistent approach can be taken within the [single] regulatory authority as it adapts to changing technologies’, and that a single regulator ‘resolve[s] some of the overlap of regulatory functions and bring[s] down the cost of overall regulation’.

The future single National regulator should be independent form Government, should not be an existing agency expansion and it should not be an industry-operated body, to oversee issues related to the regulation of all media content. Furthermore, common theme of all reports on convergent media regulation policy is that incremental change is no longer sufficient. Media regulation cannot continue to be primarily based upon the platform of delivery (print, radio, television, the internet) when convergence has dislodged the technological bases that used to tie content to platforms. A future national regulator must be predicated on media content rather than delivery platform.

ACMA noted in 2011, “In terms of policy and regulation, the key issue arising from convergence is the manner in which it breaks the link between media content and delivery platforms. Convergence points towards a shift from vertically-integrated industry ‘silos’ (print, broadcast, telephony, etc.), and the associated need for sector-specific regulation, to a series of horizontal layers of (1) infrastructure; (2) access devices; (3) applications/content services; and (4) content itself.” Its central regulatory consequence is that “regulation constructed on the premise that content could (and should) be controlled by how it is delivered is losing its force, both in logic and in practice”.

A single national regulator should contribute to a more administratively streamlined scheme. A single regulator, that incorporates classification and media content regulation within a wider

portfolio of responsibilities, may be more responsive to the challenges of media convergence than a framework where similar functions are separated on a platform-related basis.

The Convergence Review 2012 recommended that new single national regulator should have the following features and functions:

- Given the pace of change in the digital economy, the regulator needs to have broad powers to make rules within the policy frameworks determined by parliament.
- The regulator should have scope to adopt flexible, managed regulation and to apply self-regulation, co-regulation or direct regulation as the circumstances require.
- It should also have a range of appropriate sanctions to encourage compliance.
- Within the framework of policies and principles established by legislation, the regulator should operate at arm's-length from government and industry except for a limited range of specified matters.
- The regulator should have secure funding and cost-recovery mechanisms.
- The regulator should have broad powers to encourage media diversity.
- The regulator should have flexible powers to deal with content-related competition issues.

Further, the single national regulator' classification function should have responsibilities which include:

- the classification of media content including that for law enforcement
- setting classification benchmarks and industry standards
- training and accrediting of Broadcast classifiers, industry self-classifiers and digital tools
- quality assurance of classification decisions
- media content safety and harm minimisation
- enforcement of compliance for classifiable content
- Community engagement and education
- Research and community consultation
- maintaining the National Classification Database.

The Board's expertise in the application of the current Act, Code and Guidelines in the classification up to 6,600 hours of diverse media content annually, should form the core of the classification function of any future single national regulator of media content.

Recommendation 63.

A fit-for-purpose single National regulator should be design based on the necessary functions, skill and expertise required to regulate a contemporary media environment and not be anyone existing agency that has subsumed others.

Recommendation 64.

That the classification function be formed with the classification related functions, skills and experience of existing agencies - ACMA, the Office of the e-safety Commissioner and the Australian Classification Board.

Recommendation 65.

That the Board should form the core of the new classification function in a future National regulator.

Community engagement and education

There has been a distinct lack of direct community engagement and education campaigns in recent years to inform the Australian public about the differences between the classification categories, the advent of digital classification tools and industry self-classification and the appropriateness of consumers lodging complaints with the Board about decisions.

It is important that consumers are able to inform themselves of the impact level of the six classifiable elements in each classification category and the type of material that may be accommodated therein. It is the impact of the classifiable elements which is determinative of the classification of content.

Over at least the past seven years, there has not been an active engagement and education program about classification-related matters for members of the Australian public and the industry.

There is limited information available for *consumers* on the Australian Classification website about the classification levels and the classifiable elements from a practical perspective. A recent website development has seen the inclusion of 'More information' about the content of films, computer games and publication classified by the Board. The purpose of this is to provide consumers with a very limited précis of the content in the film relating to the six classifiable elements, at any classification level, regardless of the overall classification. However, there is very limited awareness of this initiative and how it aids consumer and industry alike in making informed decisions and choices.

Furthermore, within the classification website the path for lodging a complaint about any matter is not easy to navigate. There is no instruction provided to consumers that they should be lodging complaints about decisions made by the classification tools with the Board (given that tool decisions are deemed to be decisions of the Board pursuant to legislative provisions contained in the Classification Act).

The Board is also conscious that even though its members are by design required to be representative of the Australian community and that the Act and the Code requires the key principle of community standards to be considered when making decisions, the Board itself has little to no direct engagement with the Australian public and industry to inform and reflect on its standards when applying the Guidelines.

Both the British Board of Film Classification (BBFC) and the New Zealand Classification Office (NZOC) maintain key consultative groups that regularly meet with their classification specialists to test their standards. This is more than a CAP of subject matter experts noted for discussion in this review, which the Board supports and the BBFC and NZOC also work with, it is a more grass roots approach and includes, a youth panel, a first nations and in the case of the BBFC a survey of up to 12,000 Britain's to as part reviewing and re-setting their classification standards.

Furthermore, both the BBFC and NZOC deliver education programmes for senior school students in critically unpacking and assess media content through the classification process. The expertise and skills needed for classification of media content that the Board possess from thousands of hours of content viewing and applying the guidelines can extended in programmes for young people and their parents and grandparent, developing their skills in media literacy as critical consumers of media and by extension critical producers of content.






In a convergent media environment, where most young people carry a smart phone and regularly engage with diverse media, much of its social media, prioritising the development of their media literacy skills to discern trusted sources of information and critical assess content is a core competence and life skill in the 21st Century. Such skill will then translate into children and young people, highly media literate and conversant, to be the next generation of content producers with impact on the Creative Economy. This is an outcome a future national regulator with such a focus in education and engagement can have an impact on and is a unique value proposition little explored by Government to date.

Under a future national regulator an engagement and education function should be included that would develop channels for consultation with focus groups in the community, to provide education resources for students and young people, their teachers and parents, and promote the important work of classification as a trusted source, that enable the public to make informed choices for themselves as to what they see, hear, play, read or participate in.

For example, an education campaign should be developed and implemented nationally, to provide easily digested and pertinent information about the classification categories and their impact levels and suitability for viewing by different groups of people.

The Board is of the opinion that greater dissemination of information, particularly targeted at consumers, is required about the six classifiable elements and the classification categories, as well as information about different kinds of consumer advice. This would give greater credence to the classification website being regarded as the primary source of truth about classification decisions, as well as providing the means for consumers to more fully inform themselves. With a progressive move towards industry self-regulation of classification of content, it is imperative that there is a library of robust and contemporary information available to consumers about classification content that can be anticipated at each level (as well as readily and easily accessible complaint mechanisms about classification decisions).

For example, the following kind of tabulated information that Board already has developed as markers of its current standards and also used for industry self-classification standards Classification Tool and Accredited Classifiers, should, in the Board's opinion, should be provided on the Classification website or indeed an easy to use App, that is accessible at the point of consumer decision making of which content is appropriate. The BBFC App already provides such information via an App and is a benchmark for how this can be done. Using this, consumer could readily inform themselves as to the type of content that *may* be classified and visually depicted or verbally referenced within each classification category, for each classifiable element. A sample for the classifiable element of nudity that could be available via the Classification website or an App is in the table below.

 <p>Very mild</p>	<p>Depictions of nudity may include:</p> <ul style="list-style-type: none"> • Infrequent occurrences • Often partially obscured • Very brief scenes • Stylised representations include paintings, murals, statues • Brief full-frontal nudity in documentary/archival contexts (colour or black and white footage and still photographs) • Naked animated characters, where the animation is basic and simple (eg: <i>The Simpsons</i>) <p>Verbal references to nudity are exceptionally rare as nudity is predominantly a <i>visual</i> classifiable element.</p>
 <p>Mild</p>	<p>May include:</p> <ul style="list-style-type: none"> • Infrequent occurrences • Brief visuals of breasts and buttocks which are not the focus of the scene • Full length nudity shot from behind or side view, to obscure genital detail • Full frontal nudity, with genitals, in a documentary context or archival footage – may include singing, dancing, jumping around
 <p>Moderate</p>	<p>May include:</p> <ul style="list-style-type: none"> • Infrequent occurrences • Brief glimpses of genitalia – but no close-ups • Full-length nudity may be shown – may be shadowed or a distance-shot • Breast nudity with nipples and areolae (male nipples are <i>not</i> nudity)
 <p>Strong</p>	<p>May include:</p> <ul style="list-style-type: none"> • Full-length frontal, including genitalia • Genitalia may be in close-up (no sexual arousal)
 <p>High</p>	<p>May include:</p> <ul style="list-style-type: none"> • Frequent occurrences • Prolonged and detailed depictions • Sexualised depictions, that is, sex and nudity are linked (eg: sex scene in which the element of nudity is depicted and impact is heightened by the element of sex) • Genital focus • Sexual arousal

The overdue engagement with and education of the Australian public and industry must be addressed to share useful information about the *current* impact levels of the classifiable elements for the existing classification categories, the need for this becomes more critical if there are any changes made to any aspect of classification of content in Australia through a future Scheme and single set of guidelines for all media.

Online and social media campaigns, for example through Instagram as is the BBFCs approach, the development of a user-centred App making information available anywhere anytime, especially at the point of decision making, as well as the ongoing expansion of the Classification website, with the aim of making it a truly valuable consumer and industry resource, would be both cost effective, as well as engaging consumers and industry where they are sourcing daily information and content – mobile and online.

Recommendation 66.

That a community engagement and education function be included in a future single National regulator organisation focussed on promoting the classification related information, and programmes.

Recommendation 67.

A social media campaign be developed in conjunction with a user-centred App sharing classification related information.

Recommendation 68.

That the Classification website be enhanced to make available classification related information, programmes and resources and a mechanism for public and industry feedback including complaints, latest decisions and updated industry benchmarks.

Research and community consultation

It is as important that a future national regulator includes a research and community consultation function that partners with academic and community groups, as well as the Board, in order to have access to regular, rigorous, evidence-based research that is published, into the attitudes and expectations of Australian consumers regarding classification-related matters. In particular, this research and consultation is not undertaken only or predominantly in metropolitan cities on the Eastern seaboard of Australia as has generally been the case for a variety of reasons. This research must also include broad surveys of the Australian population as well as specific demographics, including those of children, families and young people, those from non-English speaking backgrounds and Indigenous Australian to truly understand the contexts that classification decisions are being utilised in a diverse Australian community. Sample sizes must be statistically significant: the confidence interval and the confidence level must withstand scrutiny. Most researchers use the 95% confidence level and the Board supports this as a minimum.

The Board in its classification function within a future National regulator must participate in the development of research briefs and consultation interview scopes, as the expertise of the Board is also held within performing its 'action research' each day through the application of the standards and guidelines in classification decisions across a wide variety of content and impact levels. This

deep understanding of classification and its challenges adds value to the setting out the objectives, target audience and the deliverables, in order to ensure the data captured is pertinent, relevant and of use.

Research may be achieved not only by formal and structured research programs, but by utilising other approaches to gain insights, for example, the New Zealand Office of Film and Literature Classification (the NZOFLC) has a school education program called “Censor for a Day”, where students watch one of several available films which have all recently been classified. Each year the program presents in multiple locations around New Zealand, upwards 800 students and 50+ teachers from a range of schools. The program is not only about teaching young people about the classification system and developing their critical skills in interpreting media content, it allows the NZOFLC to hear and capture their views about classification-related matters.

It is important that as part of a future Scheme consideration is given to how media and entertainment companies, and social media may influence classification perceptions, expectations, and tolerances, both of consumers and industry, and how this may impact the Australian community.

Future research should also engage with issues such as perceptions about whether or not the classification decisions of digital tools, for example, have shifted tolerances for the inclusion of certain depictions and references to classifiable elements and impact levels, and how they differ from human classifiers decision making and the standards they set.

Recommendation 69.

That a dedicated research and community consultation function is included in a future National regulator which partners the classification function and academic and community groups to conduct of research and garner insights into classification-related matters and issues.

Question 10.

Is there a role for the Classification Board and the Classification Review Board under a single national regulator model?

As noted earlier, there is a role for the Classification Board but not for the Classification Review Board under a single national regulator.

The Classification Board

The Board’s expertise and experience in interpreting and applying the current Act, the Code and the Guidelines in classification decision across a wide variety of media content including law enforcement, is unparalleled and will be essential to fulfil a future classification function. The value the Board will bring to a future national regulator is outlined below

Maintaining consistency of classification standards and decisions

Classification processes are currently fragmented across content delivery formats. Television content is self-classified by broadcasters, online-only computer games are classified using the approved IARC tool, and some streaming content is classified using the approved Netflix and Spherex tools. With

the recent expansion of industry self-classification through Accredited Classifiers and the provisions for classification decisions made by Broadcast Television, to be deemed a Board decision, there is an even greater challenge in maintaining consistency, one the Board has a deep understanding of. The Board has a recognised role with consumers and industry, as a standard-setting decision-maker which classifies media content from a variety of sources. In addition to acting as a decision-making body, the Board's role is increasingly a quality assurance, one that facilitates an evolving co-regulation model of greater industry self-classification with Board oversight. The Board in undertaking quality assurance may also, of its own initiative, audit and if necessary revoke decisions made by industry self-classification digital classification tools and Accredited Classifiers. A safe guard for the community and a mechanism to ensure consistency in classification decision making regardless of how it was made.

The Board also regularly provides classifications and evidentiary certificates for law enforcement bodies, including investigations into criminal and terrorist activities, under section 87 of the Classification Act, which includes a wide variety of media formats, most of which is high impact and exceeds the Guidelines resulting in a Refused classification. Some of this, such as content submitted by enforcement bodies or content that which is likely to be Refused Classification, is simply not suitable for industry self-assessment. Greater industry self-classification cannot come at the expense of consumer protection.

Recommendation 70.

That the Board, as part of a future national regulator, undertakes quality assurance of industry self-classification decisions across all media and delivery platforms.

Recommendation 71.

That the Board, as part of a future national regulator, sets of standards and accredited training for industry self-classifiers and digital tools.

Recommendation 72.

That digital tools partners and broadcast classifiers undertake the same Board standards and accredited training course in the classification of media content in Australia, as Accredited Classifiers and Authorised Assessor prior to classifying content to promote consistency and a harmonisation of the classification system.

Setting Benchmarks

One of the strengths of the Board and its current position in the Australian classification landscape is that its decisions serve as benchmarks for industry, in particular, industry self-classifiers, digital tools authorised assessors and broadcast classifiers. Industry self-classifiers cannot make classifications in a vacuum, and Board decisions – which continually are responding to a variety of media content and evolving to reflect shifts in community standards – provide context for the classifications and consumer advice, generated by others.

As the Board's role evolves further toward a quality assurance function, it is more important than ever that the Board's auditing decisions are communicated to industry in a timely fashion, so that the benefit of benchmarking is amplified across industry; in other words, the results of benchmarking cannot be limited to merely the applicant or assessor whose content decision has been reviewed by the Board. It is important that industry receives timely notification of misapplied classifications and the reasons for these being overturned by the Board.

Recommendation 73.

The Board as part of a future national regulator, defines, sets and shares classification benchmarks with industry as part of the classification functions service.

Independence and diversity

One of the strengths of the Board is its independence from government and industry and the diversity of its members.

The Board's members, by design, enshrined in the Act, are required to be broadly representative of the Australian community and its decisions and are therefore objective and free of industry self-interest as the Board operates in the public interest.

The Board also operates independently of any government, Commonwealth or states and territories. This is especially important to ensure transparency and to avoid any bias attached to a classification decision. The Board is once removed from approaches by government Ministers advancing arguments on public policy platforms that certain content, for example, a film, be Refused Classification because the 'message' in the film is currently at odds with some government policy. As the Board is an independent statutory authority, it is not beholden to Ministerial direction. However, the Board is also not 'tone deaf' as to the debates and dialogues occurring with politics, industry and of course the community and is mindful of the intended or indeed unintended interpretation of every classification decision it makes.

It is imperative that any future iteration of the classification function in a future national regulator is not subject to political interference or dictation in the classification of media content, and continues to be founded on principles of transparency and consistency with legislated guidelines to maintain the integrity of and high regard for classification decision making.

Recommendation 74.

That the core of a future national regulator's classification function, the Board is independent in its decision making and diverse and representative of the Australian community in its membership and this be enshrined in legislation.

The Classification Review Board

To maintain standards and public and industry confidence, classification decisions must always be subject to an audit process and be open to a review process at the request of applicants or the Minister.

Under the current scheme, Classification Board decisions can be reviewed by the Classification Review Board, an independent statutory body. The Review Board exists separately to the Classification Board and convenes only when needed. Only certain people (typically the applicant, but also the Minister or a “person aggrieved”) can make an application for review, and the cost of a review – currently \$10,000 – is prohibitively expensive.

While the applicant makes a detailed submission to the Review Board, any documentation relating to the Classification Board's original decision, including the report, and other notes and materials recorded by the individual members of the original Classification Board panel, is not considered, and the Board has no representative present to state the basis of their decision making.

The review process is a new classification decision that supersedes the Board's, made by the members of the Review Board that, who typically have limited classification experience as they are not full-time classifiers and are called upon rarely (there were only 3 reviews undertaken in 2022/23 and to date there have been no reviews in this financial year).

This leads to the Review Board creating classification decisions that are not necessarily consistent with either the statutory Guidelines or Board standards and benchmarks (which goes to both guiding and responding to community expectations). For example, the film, *Rocketman* (2019), a dramatic bio-pic about Elton John, was originally classified on 5 April 2019 as MA 15+, Strong coarse language. As submitted, this film appeared to be missing end credits and a few sequences appeared to be ungraded.

A *modified* version of the film was classified on 16 May 2019, also as MA 15+, Strong coarse language. Having regard to the Film Guidelines, Board standards and benchmarks, and community standards, the impact of particular language in these films was ‘very strong’ and therefore, the films warranted a legally restricted classification of MA 15+. The Board noted that the films contained other coarse language that could be accommodated in a lower (M) classification level.

On 21 May 2019, upon application, the Classification Review Board, reviewed the *modified* version of the film and notwithstanding the use of very strong coarse language, classified the film M, Mature themes, drug use, sex scene and frequent coarse language. This decision is at odds with classification decision making by the Board for two reasons:

- very strong coarse language in accordance with the Film Guidelines and Board precedent requires an MA 15+ classification.
- ‘frequent’ as a modifier for coarse language is not possible at an M classification given that the film guidelines require that “*aggressive or strong coarse language should be infrequent*”; further the film contained not only strong coarse language but very strong coarse language.

In the Board’s opinion, the current review process of Board decisions is both prohibitively expensive and liable to produce inconsistent decisions. The Board currently reviews decisions by digital tools, and Accredited classifiers, without the need to refer them to the Classification Review Board even though the legislation deems them decisions of the Board.

As such, the Board believes it is best placed to review its own decisions, either by convening a full panel of Board members, or by designating reviews of decisions to a specific sub-committee of the Board. The Board also believes that the cost structure of reviews should be significantly reduced. Moving the functions of the Review Board into the Board would be the easiest way to achieve this, and would result in decisions that accord with the Guidelines.

Recommendation 75.

Under a future national regulator, the Board undertakes all reviews of classification decisions across all media, including its own, using a defined and transparent protocol.

Question 11.

Are there any gaps or unintended consequences that may be caused by consolidating classification functions under a single national regulator at the Commonwealth level?

It is often difficult in the abstract, to foresee gaps or unintended consequences that maybe caused by consolidating classification functions under a single national regulator at the Commonwealth, rather than the benefit with hindsight.

Rather, there are a range of considerations, often based on the previous experience of other jurisdictions and / or research that may be instructional in the design of a fit for purpose convergent regulator in the Australian context and include:

- Governments often responded to challenges to the media regulation posed by rapid technological change with a series of issue specific regulatory responses, rather than a holistic approach. Telstra notes in 2012 that, “After more than a decade of incremental changes, the National Classification Scheme as it stands today is a complex arrangement of parallel and sometimes overlapping systems of classification...”
- By casting ‘convergence’ as an Australian media issue which requires an Australian regulatory response, it negates the challenge of the need expanding models to account for it being a global phenomenon. The outcomes of a review and its implementation can

- conceivably be obsolete by the time they're published, overtaken by global developments which pay scant attention to Australian regulators (Newton, 2011).
- The Agency of European Innovators notes: In order to cope with the challenges of the digital platforms national regulatory authorities should be not only buffer bodies standing at arm's length from the government but genuinely independent and strong ones. They should have real competences to act. Another principle underpinning their activities is to pursue consistent practices, to be transparent in order to generate trust.
 - It further notes: The regulation of social media should respect fundamental rights, including the right to information and freedom of expression. However, regulation of social media will be something new and distinct from existing media regulation.
 - The cultural shift for all current media regulator is the shift in culture, from direct monitoring and enforcement (a gap in the current Scheme), to a more oversight role to assess if the self-regulation set-up system of the platform is working properly.
 - A fundamental challenge is also with respect to the scope, competences, skills, structure and operation of any future single regulator. A cost benefit analysis will be also necessary to provide more data and analysis whether it would be economically justified to create a new body instead of extending or reforming the current one.
 - One challenge for convergent regulators is to avoid prioritising infrastructure and service delivery issues over questions of media content. Otherwise, 'issues of culture would come secondary to arguments on efficient market mechanisms and competition'
 - The question of how to balance content questions of the social and cultural dimensions of media regulation with technical and economic regulation is a complex issue of regulatory design.
 - The extent of the future single national Regulator's independence from ministerial direction is an important issue for consideration.

Recommendation 76

That any future national regulator, "give equal weight to the social and cultural dimensions of media regulation, including classification regulation, as to economic and technical regulation".

Thank you for reviewing and considering this submission.

The Australian Classification Board

30 May 2024

