

**FAO:** Australian Government Department of Infrastructure, Transport, Regional Development, Communications, and the Arts (DITRDCA)

## ISGA Response to the Australian Government’s Public Consultation Paper: Modernising Australia’s Classification Scheme – Stage 2 Reforms

### Introduction

**ISGA welcomes the opportunity to make a submission to the DITRDCA consultation on ‘Modernising Australia’s Classification Scheme – Stage 2 Reforms’.** We support the Government’s engagement with industry and have been pleased to provide our perspective, particularly during last year’s introduction of mandatory minimum classifications for computer games, which updated the classification of social casino games to R18+. Not only does this bring Australian classification in line with international classification, it also brings the establishment of a Restrictive Access System, a vital consideration to ensure effective age assurance that will significantly impact mobile games – yet to be defined in digital settings.

### About the International Social Games Association

The International Social Games Association<sup>1</sup> (ISGA) is a global non-profit industry association established in 2013 to develop and communicate global best practices in social games, i.e. games played on mobile devices. ISGA represents a section of social games businesses, and our members include Playtika, Playstudios, Pixel United, Huuuge Games, SciPlay, and Zynga. ISGA is strongly committed to promoting games industry self-regulation, as well as game-player education through initiatives such as the Smart Mobile Gamers<sup>2</sup> website, which has been developed with leading digital safety organisations, clinical psychologists, and games researchers.

ISGA is committed to engaging with policymakers in researching the online games sector and has invested in and published independent research based on real player data<sup>3</sup>. Furthermore, ISGA has a regularly updated set of Best Practice Principles (BPP) based on the core values of consumer protection, accountability, and transparency. Our latest iteration<sup>4</sup> extends the principles in areas such as in-app purchases, advertising practices, privacy compliance and player safeguards. We are proud to be taking the lead in responsible standards for the sector and we are pleased that our BPP have been endorsed by an Australian Parliamentary committee:

*‘The International Social Games Association (ISGA), the global industry body for social games companies (including simulated gambling games) specifically discourages its members from promoting simulated gambling products to users under the age of 18 years. The ISGA also provides an online resource called ‘Smart Mobile Gamers’ to give guidance, tips, and advice on topics such as parental controls and managing in-game spending. It has partnered with digital safety organisations and experts to create this website.’<sup>5</sup>*

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<sup>1</sup> [www.i-sga.org](http://www.i-sga.org)

<sup>2</sup> [www.smartmobilegamers.org](http://www.smartmobilegamers.org)

<sup>3</sup> [www.i-sga.org/research/](http://www.i-sga.org/research/)

<sup>4</sup> <https://www.i-sga.org/best-practice-principles/>

<sup>5</sup> Australian Government response to the House of Representatives Standing Committee on Social Policy and Legal Affairs report: *Protecting the age of innocence (2021)*. Available at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/Onlineageverification/Government\\_Response](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Onlineageverification/Government_Response)

Australia has established itself as one of the most important markets in the world for the mobile games industry. Approximately 55% of Australians engage with online games primarily on their mobile devices, reflecting the dynamic yet intricate nature of the global mobile gaming market. Our organisation has an ongoing objective of facilitating effective policy development, which directly and indirectly relates to the regulation of mobile games, across major jurisdictions, including Australia.

Since our establishment in 2013, ISGA has consistently engaged with regulators worldwide in navigating emerging issues in digital games, such as online safety, consumer protection, and privacy by design. Most recently, we responded to the Australian eSafety Commissioner's consultation on the Draft Online Safety (Relevant Electronic Services – Class 1 Material) Industry Standard. Following our engagement in Stage 1 of the classification updates, we commend the Federal Government's continued commitment to updating the National Classification Scheme (the Scheme) and safeguarding vulnerable members of our community, particularly children.

## Executive Summary

On behalf of the mobile games industry, ISGA encourages efforts to clarify the types of content that should be subject to classification and to better define potential arrangements for a national regulator.

We support the attention given to defining the scope and purpose of the Scheme, including the definition of 'classifiable content'. **ISGA strongly believes that there should be a clear separation between the Scheme with the eSafety Commissioner's role as the online safety regulator. It is imperative R18+ rated social games are not treated by the Australian government in the same manner as harmful content, notably pornography and terrorism-related violence.**

Accordingly, the Scheme should not be extended to accommodate the growth of user-generated content online, which is the responsibility of the eSafety Commissioner. Equally, 'classifiable content' should not come under the remit of the eSafety Commissioner in addition to the Scheme. To ensure the highest possible level of online safety for Australians, regulatory and statutory organisations must have clear and certain roles and responsibilities – and there must be continuing oversight.

Furthermore, the role of a national regulator should reflect a clear separation of responsibilities. With the eSafety Commissioner's leadership role in regulating online safety and the rise of similar regimes worldwide, aligning approaches is essential.

We encourage the eSafety Commissioner's efforts to collaborate with international regulatory bodies, such as Ofcom, online safety regulator in the United Kingdom, where online safety regulation and classification are kept separate. Therefore, **ISGA respectfully submits that it would be inappropriate for the eSafety Commissioner to regulate the Scheme considering the importance of distinguishing between classifiable content and user-generated content** – fundamental to the Online Safety Act.

Finally, ISGA acknowledges that the second stage of classification reforms will be confined to three broad areas. We particularly support the need to avoid matters which fall within the remit of the Online Safety Act, especially given the statutory review of its operation. Nevertheless, **the Scheme must have a role in defining the Restrictive Access System**, as this is a core component of 18+ rated games, which is integral to protecting children from age-inappropriate material.

## Purpose and scope of the National Classification Scheme

ISGA broadly supports the proposed criteria for the definition of ‘classifiable content’, which outlines what material should be classified under the Scheme, notwithstanding the importance of moderating user-generated content – ‘one of the biggest changes in the way people consume content’<sup>6</sup>. As such, we agree that due to the high volume of user-generated content being made available, it would likely be impractical to require each piece of this content to be classified. Regulation of user-generated content is therefore appropriately covered by the Online Safety Act, which is enforced by the eSafety Commissioner.

Australia’s Online Safety Act is a world-first landmark framework that has most notably been followed in Europe with the Digital Services Act, and more recently in the United Kingdom (UK) with the Online Safety Act. All follow the same broad aims, to hold online services accountable for the safety of their users. In-scope services must therefore build systems and processes that effectively prevent harm at an earlier stage. Moreover, obligations are proportionate, meaning the largest platforms will have greater obligations, as they will have the capacity to address the high volume of user-generated content on their services.

Here, global consistency will be an extremely effective tool in enabling in-scope services to operationalise compliance. The work of the eSafety Commissioner in leading the way in sharing best practices, and as Chair of the Global Online Safety Regulators Network, demonstrates this. Nonetheless, Australia’s Online Safety Act takes a novel approach (by international standards) to the classification of user-generated content by classifying such content in a way which corresponds to the manner in which films and games are classified under the Scheme. The eSafety Commissioner therefore regulates potentially harmful online material classified or likely to be classified RC, X18+ or R18+ in respect of the Online Safety Act. This blurring of the lines of scope and obligations not only brings uncertainty but also creates an approach that diverges from international perspectives.

For example, the UK’s Online Safety Act aims to protect children from online harm, empower adults to exercise greater control over what they see on social media, and places legal responsibility on tech companies to prevent and swiftly remove illegal content. In-scope services include user-to-user services, search engines, and pornography content providers. While the rules largely focus on user-generated content, a section was added to later iterations of the bill; pornography content, which may be professionally produced, has been included to subject providers of such content to age verification obligations. Pornography content is clearly an exception<sup>7</sup> to the rule that must be addressed in online safety legislation – we also acknowledge the eSafety Commissioner’s important role in addressing this.

On the other hand, the Scheme serves as a framework to provide parents and carers with advice on the content of video games, and the Classification Board applies consumer advice where necessary. Australia is also a participating ratings authority of the International Age Rating Coalition (IARC), an organisation providing free tools that provides game developers a questionnaire which produces country-specific classification information for mobile and digital games. The Scheme’s role in providing important consumer advice that integrates with major game app providers means that users can apply effective content filtering on their/their children’s devices. Video games that are professionally produced, distributed on a commercial basis, and directed at an Australian audience, will continue to

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<sup>6</sup> *Public Consultation Paper: Modernising Australia’s Classification Scheme - Stage 2 Reforms (2024)* Department of Infrastructure, Transport, Regional Development, Communications and the Arts. Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/classification-public-consultation-paper-cleared-final-accessibility-enhanced.pdf>.

<sup>7</sup> *Protection of children from harmful impacts of pornography (n.d.)* Unicef. Available at: <https://www.unicef.org/harmful-content-online>

be effectively regulated by the Scheme. Therefore, the focus of the Scheme should rightly remain on ‘classifiable content’, and the focus of online safety rules should be limited to user-generated content, with the exception of porn content, as per the UK.

Australia’s Online Safety and Security Memorandum of Understanding<sup>8</sup> with the UK is evidence that bilateral cooperation will enable both countries to lead the international agenda and shape a global consensus on tackling online harms. To ensure international harmony, in this case, a differentiation must be made between pornographic content and content that is professionally produced for commercial purposes film and mobile/video game content that are subject to classification. In addition, the difference between user-generated content and commercially produced content should be clarified to provide certainty. ISGA supports the steps taken by government to achieve this in the Scheme.

### A framework for evidence-based classification guidelines

ISGA supports the establishment of an independent Classification Advisory Panel or similar body. Classification guidelines should be regularly reviewed by a broad-church panel made up of relevant stakeholders, including stakeholders with industry experience, to give expert advice. As per the Stevens Review<sup>9</sup>, the advice of such a panel should be informed by empirical evidence, community research, international best practice, and consultation with stakeholders.

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

ISGA is supportive of efforts by government in Australia to harmonise the regulatory regime and update it for the digital world, including by exploring the potential for a single national regulator – a decision that must be taken with a great level of care. Ultimately, a key question revolves around clarifying the content to be classified. As outlined above, we support narrowing the definition of ‘classifiable content’ to capture online video on-demand providers and online games stores directed at Australians and exclude user-generated content. Considering this important distinction, and echoing the Stevens Review, it would be counterproductive to engrain the eSafety Commissioner as the single national regulator.

In clarifying the scope and purpose of the Scheme, it is acknowledged that, due to the high volume of user-generated content (regulated by the Online Safety Act) being made available, it would likely be impractical to require each piece of content to be classified. The regulation of user-generated content is a mammoth task that requires a great level of resources. As such, it is pleasing that the eSafety Commissioner has received record investment<sup>10</sup>, which will enable a quick response to Australians seeking support when subjected to harmful abuse online and ensure the regulator can keep up with growing demand for its takedown schemes. Globally, we have entered a new era of internet regulation and online safety that makes services responsible for protecting their users from harm in a manner

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<sup>8</sup> *Memorandum of Understanding (MOU) with the UK set to improve safety for Australians online (2024)* Department of Infrastructure, Transport, Regional Development, Communications and the Arts. Available at: <https://www.infrastructure.gov.au/department/media/news/memorandum-understanding-mou-uk-set-improve-safety-australians-online>

<sup>9</sup> *Review of Australia classification regulation (2020)* Neville Stevens AO. Available at: <https://www.infrastructure.gov.au/sites/default/files/documents/review-of-australian-classification-regulation--may2020.pdf>

<sup>10</sup> *Record investment to improve the safety of Australians* to improve the safety of Australians online (2023) The Hon Michelle Rowland MP. Available at: <https://minister.infrastructure.gov.au/rowland/media-release/record-investment-improve-safety-australians-online#:~:text=Our%20world%2Dleading%20online%20safety,for%20vulnerable%20people%20and%20children.>

hitherto unseen. Such an undertaking requires immense cooperation amongst various stakeholders, along with clear and certain messaging. Assigning the eSafety Commissioner an additional role of classification regulator will dilute the work being done via the Online Safety Act and diverge from other international approaches.

In the UK, Ofcom, historically the communications regulator, is now formally the regulator for online safety. Crucially, although the same organisation is responsible for both communications and online safety, the two regimes are approached differently and kept completely separate. Ofcom has hired at scale, creating a new team of nearly 350 people (with another 100 this year) 'dedicated to tackling online safety, including new hires from senior jobs at Meta, Microsoft and Google'<sup>11</sup>. Unlike Australia, the UK's method for defining harmful content under online safety laws is not shared with the means for classifying professional films, television programs, and games. To avoid uncertainty, classifiable content must be kept separate from user-generated content, meaning a new framework cannot be a regulator that is responsible for both.

### Restricted Access System

Further to information provided above, paramount to classification is a separation between classifiable content and user-generated content, due to the uncertainty of both types of content being classified using the Scheme. As such, efforts made to distinguish the two are encouraged. Likewise, we appreciate that the second stage of reforms does not wish to consider matters which fall within the remit of the Online Safety Act. Still, **ISGA firmly believes that classification reforms must consider materialising the Restrictive Access System (RAS) requirement for the digital world.**

According to the consultation paper, current arrangements create an unequal regulatory regime for the same material when it is delivered physically or virtually. An example of this is the RAS. While this age verification requirement for content classified as R18+ has been a mainstay for the physical world, in practice, it has not been properly applied to the digital world. Given the diversity of the online world, which encompasses the mobile app ecosystem, streaming, PC/console etc., it is clear that a one-size-fits-all solution cannot apply. Furthermore, if classifiable content is to be distinguished from content privy to the Online Safety Act, the classification regulator must play a role.

Given the global nature of the mobile games industry, if a RAS is to be effectively implemented in Australia, it is vital that the industry plays a leading role in working closely with government on the testing and development of a RAS. At the outset, to avoid significant, unintended consequences for the protection of Australian consumers, the mobile games industry must be continually consulted with regarding the age assurance pilot which the Australian government has just announced.

### Conclusion

ISGA appreciates the opportunity to contribute to this important consultation and would be pleased to provide further elaboration or information on this submission.

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<sup>11</sup> *Ofcom poaches Big Tech staff in push to enforce new internet curbs (2024) Financial Times*. Available at: <https://www.ft.com/content/19e9da57-5da4-40bc-989d-9820bf3d2aff>