NETFLIX

Submission: Modernising Australia's Classification Scheme - Stage 2 Reforms

Netflix appreciates the opportunity to comment on the Consultation Paper: Modernising Australia's Classification Scheme - Stage 2 Reforms ("**Paper**").

Netflix is one of the world's leading streaming entertainment services with 270 million paid memberships in over 190 countries, enjoying TV series, films and games across a wide variety of genres and languages. Members can play, pause and resume watching as much as they want, anytime, anywhere, and can change their plans at any time.

Netflix is committed to providing a service that members can enjoy with their families. As a global entertainment service, Netflix invests in professionally-produced high quality content and a suite of parental controls for parents to manage viewing experiences within their households. Since launching in Australia in 2015, Netflix has worked closely with the Australian Government to ensure we take local community standards into consideration when applying local content classification ratings.

Netflix adds thousands of hours of content to its Australian catalogue each month. It is critical that we make efficient and accurate classification decisions so that our members in Australia can make informed decisions about their viewing choices, in a manner that is consistent with Australian community standards. To facilitate this, we developed Netflix's proprietary Classification Tool (explained in detail below), in partnership with the Australian Classification Board.

Netflix has been involved in Australia's review of its classification Scheme ("the **Scheme**") since the Stevens Review in 2020.[1] We have continued to support the goals of the classification review and reforms, ensuring that the Scheme provides classification information based on prevailing community standards for Australians and their families.

The Paper's recommendations to establish a Classification Advisory Panel and a single, consolidated regulator will help improve the outcomes of the Scheme by streamlining the way updates to the classification Scheme are considered, and the way classification decisions are reviewed and enforced.

The reforms outlined in the Paper also provide an opportunity to review whether the Scheme is appropriately structured to respond to the modern media environment and the shift towards self-classification amidst a significant increase in the volume of professional entertainment content made available to Australian audiences.[2]

When it comes to the provision of content on video on-demand services, we believe that clear,

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[1] See here for Netflix submission to the Stevens Review, 2024.
[2] Between July and December 2023, the Netflix Classification Tool alone produced 546 decisions according to the Netflix Tool Biannual Report, Jul - Dec 2023.

consistent and appropriate standards for the classification of content can be achieved without the need for overly prescriptive regulation. Australian broadcasters have for many years successfully self-classified content in a co-regulatory arrangement under the *Broadcasting Services Act 1992.* This has also been achieved through the voluntary TV Parental Guidelines system in the US.

We therefore see strong merit in classification and content regulation operating in a similar manner for broadcaster video on demand services and on-demand streaming services, with consolidation of all classification regulation under the ACMA and a shift to a self-regulatory arrangement.

As the Department assesses the design and implementation of these reforms, we'd encourage consideration of the extent to which the Scheme is flexible, outcomes-based, proportionate and can continue to adapt to emerging community standards. These principles are discussed in further detail below.

Netflix's 'approved classification tool'

Netflix classifies content using its approved Netflix Classification Tool ("**Netflix Classification Tool**"). The Netflix Classification Tool was approved in 2016 by the then Minister for Communications and the Arts following a successful pilot administered by the Department of Communications and the Arts (the "**Department**") in consultation with Netflix and the Australian Classification Board ("**the Board**").[3]

The Netflix Classification Tool is designed to produce classification decisions in accordance with the *Classification (Publications, Films and Computer Games) Act 1995 (Cth) (*the "**Classification Act***")*, the National Classification Code (the "**Code**") and the Guidelines for the Classification of Films (the "**Guidelines**"). It allows Australians to access films and series on Netflix with local ratings and consumer advice information issued efficiently and effectively by the Netflix Classification Tool, without placing an unnecessary burden on Australia's classification system.

Since its approval, Netflix has worked closely with the Board to ensure the Netflix Classification Tool continues to operate in a manner that is 'broadly consistent' with Australian community standards and decisions of the Board.[4] The Board conducts bi-annual reviews of the Netflix Classification Tool, and in its most recent review found that only one assessed title was not broadly consistent (whereby the Board lowered the rating by one rating). It also found that Netflix has been "responsive to a number of changes to the National Classification Scheme", with the Netflix Classification Tool continuing to align with the Board's classification standards.[5] Furthermore, Netflix Classification Tool decisions receiving classification-related complaints accounted for less than 1% of total decisions during the relevant period.

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[3] Department of Communications and the Arts, Classification (Publications, Films and Computer Games) Netflix Classification Tool Approval, 2016.

[4] The Netflix Classification Tool must produce classification decisions that are 'broadly consistent' with Australian community standards and with classification decisions made by the Classification Board. See page 3 of the Approval.

[5] Netflix Tool Biannual Report, Jul - Dec 2023.

We would therefore encourage the Department to ensure that future reforms do not unduly impact the important and effective role that approved classification tools and self-classification can play in classifying content in Australia.

Classification Advisory Panel

Netflix supports the principle of ensuring the Scheme reflects community standards and expectations. We agree that a Classification Advisory Panel ("**CAP**") could ameliorate challenges around reviewing and updating the Scheme, and help to ensure that the Scheme and its guidelines are evidence based.

However, we would encourage the Department to consult on the CAP's operating model before it is finalised. In particular, content distributors should have the opportunity to comment on the likely level of operational burden associated with regular updates to the Guidelines.

The development of the Netflix Classification Tool required considerable investment, including technical expertise and operational capacity. Most recently, we completed a comprehensive update of the Netflix Classification Tool in August 2023 to align with new consumer advisories issued by the Australian Classification Board under its updated *Classification Tool Logic Rules – Films*. This update took over four months and considerable effort for Netflix to build, test and implement.

We would therefore want to ensure that any updates to guidelines in line with the CAP's recommendations are impactful, proportionate and take into consideration the extensive time, effort and resources required to make these changes to approved tools, such as the Netflix Classification Tool.

Fit for purpose regulatory and governance arrangements

Netflix values our working relationship with the Classification Branch and the Board. While Netflix has not experienced any significant issues with the current governance structure, we recognise that there is duplication and fragmentation of classification responsibilities across a range of bodies. A single regulator will not only help to address these issues, but should also help to 'right size' classification governance in line with a reduction in demand for primary classification decisions.[6]

Netflix therefore supports the consolidation of classification responsibilities under the Australian Communication and Media Authority (ACMA).

The merits of the ACMA as the single regulator are well expressed in the Stevens Review: the ACMA is experienced in overseeing the co-regulatory classification arrangements and complaints handling

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[6] The Paper notes that the expansion of industry self-classification has shifted the responsibility of the Board and the volume of classification decisions they're responsible for. For example, the number of films classified by the Classification Board has been in decline since a peak of just under 7,000 in 2005-06 to 2,210 in 2021-22. It is anticipated that this trend will accelerate with the commencement of the accredited classifier scheme on 14 March 2024.

processes with Australian broadcasters under the *Broadcasting Services Act 1992.*[7] The ACMA will also be well positioned to ensure effective implementation of the 'classify once' principle between broadcasters and subsequent distributors.

Most relevant for Netflix, however, is the opportunity to identify and streamline regulatory responsibilities for on-demand streaming services which are currently captured under both the Classification Act and the *Online Safety Act 2021 (Cth)* ("**Online Safety Act**"). This is outlined in further detail in the section 'links with the Online Safety Act' below.

Other comments

As the Department considers future models and next steps for the Scheme, we would encourage consideration of the following additional elements:

- **Flexible and outcome-based -** Consumer advice is an integral part of the classification system and essential to ensuring that people can make informed viewing decisions.

    The current legal standard for an "approved classification tool" (such as the Netflix classification tool) is that it must operate in a manner that is "broadly consistent" with the Classification Board. Yet there have been a number of instances where the Classification Board has recommended changes to advisories where there have been only minor discrepancies between Netflix and the Board's advisories. See examples below.

Netflix advisories	Board recommendation
themes, Mild animated violence, scary scenes	Mild themes, animated violence and scary scenes
Coarse language, nudity	Coarse language and nudity
Strong Horror Themes	Strong horror themes
blood and gore, Strong sexual violence, horror themes and violence	Mature themes, violence, injury detail, sex scenes, drug use, sexualised imagery, crude humour and coarse language

    These recommendations were made following stage 1 reforms to the Classification Act which, when implemented in March 2024, aimed to "improve the efficiency of the [classification system] by *reducing unnecessary revocations for minor subjective differences* that do not materially affect the accuracy and usefulness of consumer advices. The Board will also be required to have regard to any technical limitations of tools as allowed for in agreements between the Commonwealth and tool operators".[8]

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[7] See page 116 of the Stevens Review.
[8] Page 2 of the Explanatory Memorandum for Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Bill 2022.

The most important outcome for consumers is that the final rating and advisories are appropriate in their classification, and effectively inform the viewer about the content. The system should not impose any regulatory disincentives, penalties or administrative burden on companies whose ratings or advisories are 'broadly consistent' but may deviate slightly from the Board.

We therefore believe there is an opportunity to shift to an outcomes-based and flexible approach that truly supports providers' ability to implement classifications that are 'broadly consistent' with the Board.

● **Complaints based -** As the Department considers the responsibilities of a consolidated, single regulator, we would encourage consideration of a shift towards a 'complaints based' model, consistent with existing regulation for broadcasters. This was first recommended in the Stevens Review, which recognised the effectiveness of broadcasters' complaints based model and stated it *"should be extended to other content providers, such as streaming services".*[9]

This approach would be in line with the ongoing shift of accountability for classifications from the Classification Board to industry (either through approved classification tools or accredited classifiers) and would also acknowledge that on the whole, industry has continued to produce classifications in line with community expectations. For example, the Biannual Classification report found that "Tool decisions receiving classification-related complaints were very low, less than 1% of total decisions in this period".[10]

In line with recommendations from the Stevens Review, consumer complaints could "be made to the *content provider in the first instance, and then, if the consumer is still dissatisfied, the complaint should be escalated to ACMA".*[11]

● **Links with the Online Safety Act.** We recognise that the matters relating to the Online Safety Act are out of scope for the review of the Scheme. However, we believe it is important to note the potential unintended consequences of linking the two Acts.

The Online Safety Act relies on the Classification Act's definition of Class 1 and Class 2 material, yet the two Acts regulate very different types of content. The references in the Online Safety Act to definitions from the Classification Act therefore do not always appropriately capture material that may, or may not be, harmful. For example, Class 2 material is defined broadly to include legal material such as R18+ material that adults can watch on streaming services, and X18+ material that includes pornography.

We are concerned that this provides the eSafety Commissioner with the power to request removal of content which is (1) legal, (2) professionally produced and that has been

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[9] See page 118 of the [Stevens Review](#).
[10] Netflix Tool Biannual Report, Jul - Dec 2023.
[11] See page 118 of the [Stevens Review](#).

appropriately classified under the Classification Act, and (3) produced for literary, artistic, or educational purposes.[12]

Further, not only is there duplication in the types of material that the two Acts regulate, but duplication in the services that they regulate. On-demand streaming services are required to adhere to classification requirements under the Classification Act because they provide access to content which is professionally produced and distributed on a commercial basis.

On-demand streaming services are also captured under the Online Safety Act. The Online Safety Act defines "on-demand services" by applying the *Broadcasting Services Act 1992 (Cth)* definition of online services provided by "broadcasters" (i.e. limiting this to catch-up TV services).[13] On-demand streaming services therefore fall outside of the definition of an "on demand service" and, unlike broadcasting video-on-demand providers, are considered a "designated internet service" provider and within the scope of the Online Safety Act. This means, for example, that streamers must comply with the (soon to be finalised) Class 1 Standards even though on-demand streaming platforms cannot, under the obligations of the Classification Act, provide access to Class 1 material.[14] We see strong merit in classification and content regulation operating in a similar manner for broadcaster video-on-demand services and on-demand streaming services. We would therefore support consolidation of all classification regulation under the ACMA, and an amendment to section 18 of the Online Safety Act to remove streaming services from the scope of the Online Safety Act, and treat them equally to broadcaster video-on-demand services.

Netflix will also be making a submission to the Statutory Review of the Online Safety Act to highlight this duplication.

We look forward to continuing to work closely with the Australian Government and the Department as it considers the design and implementation of its planned reforms. We would be pleased to discuss Netflix's submission further if this would be of assistance.

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[12] Section 11, Classification (Publications, Films and Computer Games) Act 1995.
[13] See section 18 of the Online Safety Act 2021 for the definition of an on-demand program service.
[14] See Section 4 Netflix Classification Tool Approval instrument here.