

Australian Communications and Media Authority Submission

Modernising Australia's National Classification Scheme: Stage 2 Reforms

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Executive summary

The classification decision-making framework, established by the national classification scheme, should be the basis for assessing classifiable content

Australia's existing national classification scheme consists of several long-standing and well-understood elements, including classification categories, classification criteria and classification symbols. This framework should be maintained under the proposed stage 2 reforms as the reference point for making classification decisions and conveying those decisions to content consumers.

Classification should be the primary framework for identifying content that should be subject to access restrictions in Australia. There should not be separate standards for assessing content harms that occur across platforms, except in circumstances where the classification decision-making framework may not be appropriate for dealing with the relevant harms, or where the harms may be platform specific, for example, online misinformation and disinformation and cyberbullying.

Refining and clearly defining the regulatory scope of the classification scheme will provide clarity and certainty for industry and consumers

In response to a media environment increasingly dominated by online content and distribution channels, it is critical that classification reform is pragmatic and targeted, with a focus on the types of content for which consumers expect or need classification guidance to make viewing decisions.

The ACMA supports the proposed scope outlined in the discussion paper, where a future classification scheme targets content that is professionally produced, distributed on a commercial basis, and directed to an Australian audience.

Clearly identifying the content that is required to be classified will provide greater certainty to industry, improve compliance rates, and benefit consumers who will better understand what they should expect from classification regulation, and under what circumstances they may make seek redress for potential breaches.

The ACMA, as Australia's media regulator, is best placed to administer a reformed national classification scheme

The classification scheme is mature and well-placed to move towards an industry-based classification model. In line with this deregulatory approach, and to better reflect the contemporary consumption and distribution of content, separate classification regimes should be consolidated and replaced with a simplified and nationally consistent set of rules and requirements that apply irrespective of content type and delivery platform, administered by a national classification regulator.

The ACMA is well-placed to administer this reformed national classification scheme. Our statutory independence, oversight of co-regulatory schemes, and increasing involvement with online content regulation position the agency to effectively oversee industry classification decision-making and to absorb the review mechanism currently undertaken by the Classification Review Board.

Efficiencies are envisaged through leveraging the ACMA's existing research and knowledge base and broader industry and consumer engagement activities to inform the development of classification standards and guidelines.

Introduction

The Australian Communications and Media Authority (ACMA) welcomes the opportunity to provide views on the second stage of reforms to modernise Australia’s classification regulatory framework. This is an important phase of the reform process, building on multiple reviews since 2012 that have highlighted the need for significant, structural changes to classification regulation.

Establishing fit-for-purpose regulatory and governance arrangements, with clear parameters around what content is to be classified and by whom, will deliver substantial benefit for audiences and consumers, industry and government.

In its 2020 submission to the Review of Australian Classification Regulation and Online Safety Legislative Reform, the ACMA expressed support for a federated platform-neutral classification regulatory framework, focused on content rather than the means of delivery. Such a framework would see the consolidation of films, publications, computer games, broadcasting, and online content classification regulation under the ACMA as the classification regulator.

While we maintain this broad position, our views have been further shaped and informed by developments since 2020 including:

- > increasing content consumption online¹ and declining distribution of content in physical formats²
- > the Government’s broader media reform agenda and its position that content ‘like’ television and radio should be regulated consistently across platforms
- > the expansion of the ACMA’s online regulatory remit to misinformation and disinformation on digital platforms and Australian content requirements for streaming services
- > the approval of a third classification tool and the commencement of the first stage of classification reforms that support a ‘classify once’ principle and expand options for industry to classify content
- > the publication of the report of the review of Australia classification regulation undertaken in 2020 by Mr Neville Stevens AO (the Stevens review)
- > the commencement of the *Online Safety Act 2021* which has intersections with the classification scheme and is currently the subject of an independent statutory review.

This submission sets out the ACMA’s regulatory and governance model to deliver a classification scheme that is better adapted to the contemporary content environment and can flexibly respond to community expectations, considering continuing media convergence and disruption brought about by the evolution of the internet.

The two-part submission outlines the ACMA’s views on what a reformed classification scheme could look like, and why the ACMA is best placed to provide oversight and enforcement of the reformed scheme.

¹ The Department of Infrastructure, Transport, Regional Development, Communications and the Arts 2023 [Television & Media Survey](#) reported that online services continue to dominate—the most common platform used to watch screen content was online subscription services (65%), followed by free video streaming services (61%), and commercial free-to-air TV, excluding on-demand TV (51%).

² See 7news, [Disney to stop releasing DVDs and Blu-ray discs in major change for Australian customers](#), accessed 8 May 2024; IBISWorld, [Video Game, DVD and Recorded Music Retailing in Australia - Market Size, Industry Analysis, Trends and Forecasts \(2024-2029\)](#), accessed 7 May 2024.

A reformed classification scheme

The national classification scheme, including its rating categories and associated symbols, has been a longstanding and well understood feature of the Australian media ecosystem.³ It remains an important source of advice for all consumers of media content – but particularly for parents and carers making decisions about appropriate film, TV or computer games content for those in their care – while providing a foundation for restricting access to harmful material that may not be suitable for certain audiences.

The ACMA's proposed scheme builds upon this strong foundation, while also envisioning a stronger role for industry to classify content according to rules made under a co-regulatory model. This proposed scheme also seeks to address concerns raised in previous classification reviews and inquiries, including the need for:

- > greater clarity about what content is required to be classified
- > regulatory arrangements that do not impose barriers to innovation and facilitate efficient, streamlined and cost-effective classification processes
- > less duplication and overlap of regulatory responsibilities, with effective and consistent regulatory oversight of content providers.

Proposed model for reformed classification scheme

Scope of reformed scheme

A reformed co-regulatory classification scheme would provide an overarching national framework against which content harms can be assessed. This would include:

- > standardised classification categories, impact thresholds, classifiable elements and classification symbols for all classifiable content, consistent with existing ratings that are most familiar to consumers
- > consistent requirements for what content must be classified and rules on associated matters such as labelling, display and access restrictions.

Classification decisions would primarily be the responsibility of those distributing the content, using either qualified and accredited classifiers or approved classification tools. Industry would also be primarily responsible for responding to consumer inquiries or complaints regarding their classification decisions.

The scheme, administered and overseen by a national classification regulator, would:

- > establish a classification 'standard' (i.e., a single instrument that sets out classification decision-making criteria) for use by all industry classifiers in making classification decisions,⁴ informed by research and community feedback including through the establishment of a community advisory board
- > permit the use of approved classification tools that deliver classification decisions based on criteria consistent with the common classification standard

³ While the National Classification Scheme (NCS) provides for the classification of films, computer games and publications, it does not cover content aired by broadcasters on their terrestrial broadcast service. Broadcasting services are explicitly excluded from the application of the *Classification (Publications, Films and Computer Games) Act 1995*. Broadcasters classify their own content under classification criteria set out in broadcasting codes of practice. Complaints about alleged breaches of broadcasters' classification decisions and associated classification rules may be escalated to the ACMA and investigated. Enforcement action may be taken for breaches. Online content falls within the remit of the NCS however, there are limited associated compliance and enforcement provisions.

⁴ We note that a single classification standard may set out common criteria applicable to all forms of content but could also accommodate additional criteria to reflect features unique to certain forms of content such as interactivity in computer games or text-only material in publications.

- > require industry classifiers to be trained and accredited by the classification regulator
- > provide an avenue for addressing escalated complaints about alleged breaches of classification rules and a review mechanism for potentially incorrect industry classification decisions⁵
- > establish a simplified enforcement regime that relies upon civil and administrative penalties that apply consistently across platforms and nationally.

While this model envisions a national classification regulator that establishes the classification rules and other elements of the framework, other regulators and government agencies would also be able to use the reformed classification scheme to make independent decisions about content that falls within their remit. This would reflect current arrangements whereby the eSafety Commissioner makes decisions about illegal content (e.g., terror content and child sexual abuse content), pornography, and other content that may pose risks of serious harm to the safety of individuals or groups under a system that utilises the national classification scheme.

Classifiable content

Under the proposed classification scheme, most media or entertainment content that is distributed by publishers, broadcasters, streaming services, studios or production companies would need to be classified, regardless of the platform or means of delivery.⁶

The ACMA agrees with the discussion paper, that the content required to be classified be determined in accordance with the following principles:

- > professionally produced,
- > distributed on a commercial basis, and
- > directed to an Australian audience.

While this would exclude most online user-generated content, some other categories of online content would also be explicitly exempt from classification requirements, for example, webpages, websites, and apps, in addition to content exempt under the current national classification scheme and existing broadcasting regime.⁷ This is on the basis that it would be difficult to classify webpages, websites and apps that generally contain a large volume and wide range of content that is regularly changing and often includes links and portals to other content. For example, classification decisions would need to reflect the highest impact content available on, or accessible through the site and to anticipate ongoing content changes (potentially restricting many sites to adults).

The scheme should also make clear whether content must be classified prior to it being made available to the public (i.e. films, TV programs and streaming services). Where content is not classified prior to release it would still be subject to the scheme and may be investigated by the national regulator under its complaints-based regime. In this regard, it would be useful to tighten the definitions of what publications require classification prior to release, such as graphic novels.

⁵ Under co-regulatory arrangements, industry would address all complaints in the first instance with the option for unresolved complaints to be escalated to the regulator, which would have discretion to investigate or review, having regard to public interest considerations similar to those that underpin broadcasting complaint assessments currently.

⁶ We note that the definition of content required to be classified may need to incorporate additional tests, for example, revenue or audience thresholds, to avoid capturing very small, new or emerging content providers.

⁷ While websites and apps may be exempt from classification, certain content on these services may be required to be classified. For example, an ABC website or app (such as the ABC iView player) would not be required to be classified, but programs and films available for streaming on these services would need to be classified—assuming they fall within the relevant definitions established under the reformed scheme.

Benefits of the proposed model

Under this model, the separate classification regimes for broadcasting content, films, computer games and publications would be consolidated under a single co-regulatory scheme, administered by the classification regulator. The combination of a consistent national classification regime, standardised complaint handling, investigation and review arrangements, and uniform enforcement measures and penalties would reduce bureaucratic complexity and increase consumer confidence in classification.

Like existing arrangements under broadcasting codes of practice, industry (whether broadcasters, film and computer game distributors, online content providers, streaming services, publishers, etc) would be solely responsible for classifying the content that it makes available to consumers. This would eliminate the need for a standalone Classification Board. Residual functions of the Board would be incorporated into the classification regulator, which would also assume responsibility for reviews of industry classification decisions allowing for the dissolution of the Classification Review Board.

Rationalising the government entities involved in classification would facilitate more efficient and cost-effective classification processes that are better suited to managing high volumes of content and would encourage ongoing innovation in this space.

The model also provides for regulatory parity for the same material, irrespective of whether it is broadcast over airwaves, distributed in physical formats, or streamed online. By clearly defining the content required to be classified and subject to related classification rules, it minimises existing regulatory ambiguity which improves certainty for industry and increases compliance.

As a consistent, nationally agreed, and recognisable framework for both assisting consumers with content choices and for identifying content that should be subject to access restrictions, classification should be the primary basis for assessing and managing content 'harms'. A reformed classification scheme would minimise the need for a standalone standard to regulate harms exclusive to online content.

The reformed classification scheme should be flexibly able to accommodate future areas of demonstrable consumer harms relevant across all content platforms. However, the ACMA acknowledges there will be some matters that are platform specific or where classification is not well-suited to addressing the relevant harms, for example online misinformation and disinformation, cyberbullying, technology-based abuse. Such matters require separate regulatory regimes, that need to be clear about the harms they address and establish specific tools for assessing and managing the respective harms.

Other observations relevant to the discussion paper

We agree with the discussion paper view that user generated content should not be within scope of the scheme. However, it is important to recognise that some content distributed via social media or online video sharing sites like YouTube may be thought of as 'UGC' but may nevertheless be professionally produced and have the 'look and feel' of content for which consumers would expect classification information.

Requiring this kind of content to be classified would introduce a range of challenges including how to determine whether content is distributed on a commercial basis (e.g., where content becomes popular and may be monetised over time), the capacity of individual UGC providers to undertake classification activities, and identifying individuals for the purpose of enforcing classification requirements where there is non-compliance.

Whether Australians expect that books, literature and publications more broadly must be classified and labelled with classification information should be tested, if the definition of submittable publications is proposed to be expanded. Such a proposal would oblige the classification of a large volume of content that has not previously been classified and would impose a significant regulatory burden on publishers and book distributors to comply. Libraries, schools, and other academic institutions would also be impacted in terms of complying with rules concerning display and access restrictions.

The ACMA as the national classification regulator

This section provides the ACMA's views on the role of a national classification regulator and presents our rationale for this role to be assumed by the ACMA.

A national classification regulator should have overarching responsibility for the reformed classification scheme. This would involve administering the day-to-day operation of the classification scheme nationally and across platforms as it applies to media and entertainment content (adopting the principles professionally produced, distributed on a commercial basis, and directed to an Australian audience). It would also be responsible for community standards research, stakeholder engagement and advice to government to inform the development and evolution of classification categories and classification decision-making criteria/standards—those elements of the scheme to which multiple regulators refer as part of their own content functions.

In the model envisaged by the ACMA, the classification regulator's role would involve:

- > overarching responsibility for the classification scheme's operation nationally and across platforms
- > approving co-regulatory arrangements including requiring improvements to these arrangements as necessary
- > developing and delivering classification training for industry classifiers and providing for their accreditation
- > developing and amending classification instruments, such as a single classification standard
- > monitoring and enforcing compliance with classification rules including quality assurance of industry classification decisions
- > acting as an escalated complaints handling body, addressing complaints about potential breaches of classification-related rules (e.g., labelling, display or access restrictions), and reviewing industry classification decisions
- > conducting research and consultation on classification matters including through an expert advisory panel to inform advice to government on the development of the scheme
- > collaborating with Australian and international regulatory counterparts
- > promoting community awareness and understanding of the classification scheme.

Expanding the ACMA's remit to incorporate responsibility for the classification scheme would be consistent with the recommendations of the Review of the Australian Communications and Media Authority in 2016 and the Steven's review.

The primary purpose of the classification scheme and the scope of content proposed to be the focus of a reformed scheme is closely aligned to the ACMA's existing functions. The ACMA has strong credentials in the development and management of co-regulatory schemes and associated complaints handling arrangements. Together with our demonstrated experience regulating content safeguards, it is logical and preferable that the ACMA take on the role of classification regulator.

As the communications and media regulator, Authority members and ACMA staff have strong relationships with industry content providers, a breadth and depth of experience with the regulation of professionally produced broadcast content, including working with

industry on the development of content safeguards, considering audience complaints, and investigating alleged breaches of broadcasting codes of practice.⁸

The ACMA also plays a key role in the current classification scheme; assessing and investigating complaints about broadcasting classification decisions made by industry and acting as the only eligible classifier for 'C' and 'P' programs under the *Broadcasting Services (Australian Content and Children's Television) Standards 2020*.⁹

Independent decision-making, a feature of the Classification and Classification Review Boards' operation, would be maintained as the ACMA is an independent statutory authority, whose Authority members are appointed by the government for terms that cannot exceed 10 years. Classification review decisions would be made under the ACMA's existing governance and administrative decision-making structure, where staff operate under delegation with oversight and decision-making by the Authority.

Transferring classification oversight to the ACMA, as part of its business-as-usual functions, would reduce administrative complexity and achieve efficiencies by harnessing existing organisational infrastructure and expertise directed to similar content regulatory activities.

Other observations relevant to the discussion paper

The ACMA agrees with the utility of an advisory panel to inform consideration of classification issues as proposed in the discussion paper. However, a separately established panel with ongoing functions, is potentially duplicative of the ACMA's research functions and may increase government costs and administration.

The ACMA is an evidence-based regulator with broad evidence-gathering and analytical capabilities including commissioning of targeted consumer research, analysing complaints and investigations data, collaborating with international regulatory counterparts, and engaging with academia, subject matter experts and consumer advocacy organisations. This work informs a range of regulatory activities including developing regulatory standards and guidelines and could be leveraged further to support classification regulatory activities.

There could be considerable efficiencies in utilising the existing research and stakeholder engagement expertise of the ACMA. The ACMA would be well-placed to set up a dedicated classification research program and convene an advisory panel on an as-needed basis to inform the review of specific classification guidelines or instruments and consider emerging issues. There would be flexibility for the ACMA to recruit panel members based on their suitability for the relevant project and to be representative of the broader community (upholding an important principle of the Classification Board and Review Boards' composition). The panel would benefit from access to the ACMA's broad evidence base, including data on consumer trends, classification review decisions, classification complaints, as well as relevant information on community attitudes in relation to regulated content safeguards.

The ACMA thanks DITRDCA for the opportunity to comment on this important phase of classification reform. We welcome further discussions on the development of options informed by this consultation process and would be happy to provide additional information or expand upon the views expressed in this submission.

⁸ Until the Office of the eSafety Commissioner was established in 2015, the ACMA was responsible for the Online Content Scheme that dealt with 'prohibited' and 'potential prohibited' content which covered higher impact content that was either classified or likely to be classified MA 15+, R 18+, X 18+ or RC.

⁹ The *Broadcasting Services (Australian Content and Children's Television) Standards 2020* provides for other bodies or individuals to make C and P classification decisions, where appointed in writing by the ACMA. The Standard also provides for C and P classification decisions to be made by commercial TV broadcasters (or someone that they appoint) once a new Free TV code is registered that provides for this to occur.