



# Senate Economics References Committee Inquiry into Personal Choice and Community Impacts

## Submission by the Department of Communications and the Arts, Sydney

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The Classification Branch of the Department of Communications and the Arts (the Branch) is responsible for administering Australian Government classification law and policy. The Branch is co-located with the Classification Board (the Board) and the Classification Review Board (the Review Board) in Sydney. The Branch provides secretariat support to the Board and the Review Board, and promotes compliance with the National Classification Scheme (the Scheme) by providing guidance and training for industry and government. The Boards are statutory bodies, independent from each other and from Government, and their services are partially cost recovered from fees charged to industry. The Classification Branch also provides operational and policy advice on classification issues to the Minister for Communications (the Minister) who is the Commonwealth minister with responsibility for classification.

## The National Classification Scheme

The Scheme is a cooperative arrangement under which the Board classifies films, computer games and certain publications for exhibition, demonstration, sale or hire in Australia. The Scheme commenced on 1 January 1996 and is underpinned by the Intergovernmental Agreement on Censorship (the Agreement) which the Commonwealth and the States and Territories agreed in 1995.

Responsibility for the Scheme is shared among the parties to the Agreement. The Commonwealth is responsible for the classification of content through the Board while the States and Territories are generally responsible for the enforcement of the Scheme through complementary legislation.

The Commonwealth Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act) establishes the Board. Most of the content that is submitted to the Board comes from commercial applicants. However, the Board also classifies material submitted by:

- federal and state and territory law enforcement agencies
- the Australian Border Force in relation to content at the border, and
- the Children's eSafety Commissioner in relation to internet content.

The Board does not classify programs for broadcast on TV, live performances or audio-only content. The Act also establishes the Review Board, which reviews decisions of the Board in certain circumstances upon application. The Minister has no responsibility for making classification decisions. The Minister, or any State or Territory classification minister, may ask for classification decisions of the Board to be reviewed by the Review Board, or for content to be reclassified by the Board after two years has passed since the content was last classified.

Member of the Boards are appointed by the Governor-General at the Minister's recommendation. The Classification Act states the appointment of members to the Boards should have regard to the desirability of ensuring that the membership of the Boards are broadly representative of the Australian community. The Classification Act also requires the Minister to consult with all State and Territory classification ministers on permanent appointments to the Boards.

The Commonwealth and the States and Territories have agreed to the National Classification Code (the Code) and the Classification Guidelines for publications, films and computer games (the Guidelines), which are tools to be used by the Board and Review Board in making their decisions. The Agreement requires that all non-minor amendments to the Scheme and any changes to the Code or the Guidelines must be considered and unanimously agreed to by all classification ministers.

## The classification process

Under State and Territory classification laws, all films and computer games must generally be classified before they can be exhibited, demonstrated, sold or hired in Australia. There are a number of categories of films and a smaller number of categories of computer games that are exempt from classification, such as educational, business, professional and scientific films and games (as long as they would otherwise be classified G or PG).

In contrast to films and computer games, only submittable publications need to be classified. Submittable publications are defined in the Classification Act as publications that contain depictions (ie. images) or descriptions (ie. text) that are:

- likely to be classified Refused Classification
- 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
- unsuitable for a minor to see or read.

There are also special exemptions that apply to unclassified publications, films and computer games that are exhibited at festivals and events such as film festivals and computer game expos, or at events organised by cultural institutions such as art galleries and museums. These 'Conditional

Cultural Exemption' arrangements, which came into effect in September 2015, seek to promote self-regulation within the arts sector by simplifying the process for event organisers to screen unclassified content. Event organisers no longer need to apply to the Director of the Classification Board for an exemption from the usual classification requirements and can now self-assess their eligibility for an exemption.

The Classification Code requires classification decisions to give effect, as far as is possible, to four key principles:

1. adults should be able to read, hear, see and play what they want
2. minors should be protected from material likely to harm or disturb them
3. everyone should be protected from exposure to unsolicited material that they find offensive, and
4. the need to take account of community concerns about depictions that condone or incite violence, particularly sexual violence, and the portrayal of persons in a demeaning manner.

Under the Classification Act, the matters to be taken into account in making a classification decision include the:

- standards of morality, decency and propriety generally accepted by reasonable adults
- literary, artistic or educational merit (if any) of the content
- general character of the content, including whether it is of a medical, legal or scientific character, and
- persons or class of persons to whom it is published or is intended or likely to be published (i.e. the audience).

Publications, films and computer games are generally classified against six classifiable elements: themes, violence, sex, language, drug use, and nudity. The Board's classification decisions consider the impact of each of these elements, including their frequency, intensity and level of detail, and their cumulative effect. The Board also considers the context of these elements, including the purpose and tone of the material and how it is treated.

Films and computer games are classified into six main categories:

- G: suitable for general viewing
- PG: parental guidance is recommended
- M: recommended for mature audiences
- MA15+: not suitable for persons under 15 years; under 15s must be accompanied by a parent or adult guardian
- R18+: restricted to persons 18 years and over, and
- RC: the content has been classified Refused Classification.

An additional category of X18+ exists for films containing consensual sexually explicit material. It is a legally restricted category which contains only sexually explicit material.

Publications are classified using different categories:

- Unrestricted: may include material that is not recommended for some readers; unrestricted publications that include material that is not recommended for readers under 15 may be required to carry consumer advice of 'Unrestricted—M—not recommended for readers under 15 years'
- Category 1—Restricted: not available to persons under 18 years and must be distributed in a sealed wrapper
- Category 2—Restricted: not available to persons under 18 years, may not be publicly displayed and may only be displayed in premises that are restricted to adults, and
- RC: the content has been classified Refused Classification.

Publications classified Category 1—Restricted or Category 2—Restricted are currently unable to be legally sold in Queensland.<sup>1</sup>

When the Board classifies content, it must generally determine consumer advice, which gives consumers more specific information about what to expect in the content. The current convention of the Board is to provide consumer advice on the highest impact classifiable elements, for example 'strong violence'.

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<sup>1</sup> Part 10 of the Classification Act additionally provides for special restrictions around the possession and supply of publications classified Category 1 or Category 2 (or unclassified publications likely to be classified as such) within any 'prohibited material areas' of the Northern Territory as determined by the Minister for Indigenous Affairs.

## X18+

The X18+ classification is a special and legally restricted category for films for sale or hire which contains only sexually explicit material (i.e. real depictions of actual sexual intercourse and other sexual activity between consenting adults). The legality of the sale or hire of X18+ films is generally a matter for the States and Territories. X18+ films can currently only be sold or hired in the Australian Capital Territory and the Northern Territory.<sup>2</sup> Films that are classified X18+ are not for public exhibition.

Under the Guidelines, the X18+ category does not allow for the following material:

- depictions of violence, sexual violence, sexualised violence or coercion
- sexually assaultive language
- consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers
- activities accompanied by fetishes such as body piercing, application of substances such as candle wax, 'golden showers', bondage, spanking or fisting
- depictions of non-adult persons, including those aged 16 or 17
- depictions of adult persons who look like they are under 18 years, and
- depictions of persons 18 years of age or over being portrayed as minors.

At the R18+ category, sexual activity may be realistically simulated. The general rule is 'simulation, yes—the real thing, no.' There are limited occasions where, considering impact and context, the Board has accommodated some depictions of actual sexual activity within the R18+ category. There is no test of impact or context in the X18+ category.

## Refused Classification

Publications, films and computer games may be classified Refused Classification, meaning they are unable to be legally exhibited, demonstrated, sold or hired in Australia under relevant State and Territory laws.

The Code states that content must be Refused Classification if it:

- depicts, expresses or otherwise deals with matters of sex, drugs misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified
- describes or depicts 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), or
- promotes, incites or instructs in matters of crime or violence.

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<sup>2</sup> Part 10 of the Classification Act also provides for special restrictions around the possession and supply of films classified.

X18+ (or unclassified films likely to be classified as such) within any 'prohibited material areas' of the Northern Territory as determined by the Minister for Indigenous Affairs.

The Guidelines provide further guidance on types of content that will be Refused Classification. This generally includes content that:

- promotes or provides instructions in paedophile activity, or describes or depicts child sexual abuse or other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years
- contains gratuitous, exploitative or offensive depictions of sexual violence, or violence with a very high degree of impact
- depicts practices such as bestiality
- contains gratuitous, exploitative or offensive depictions of activity accompanied by fetishes or practices which are offensive or abhorrent
- contains gratuitous, exploitative or offensive depictions of incest fantasies or other fantasies which are offensive or abhorrent
- provides detailed instruction or promotion in matters of crime or violence, or
- provides detailed instruction in the use of proscribed drugs or material promoting or encouraging proscribed drug use.

Section 9A of the Classification Act provides an additional requirement that a publication, film or computer game must be classified Refused Classification if it advocates the doing of a terrorist act. Content advocates the doing of a terrorist act if it:

- directly or indirectly counsels or urges the doing of a terrorist act
- directly or indirectly provides instruction on the doing of a terrorist act, or
- directly praises the doing of a terrorist act in circumstances where there is a substantial risk that praise might have the effect of leading a person to engage in a terrorist act.

However, a publication, film or computer game does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as a part of public discussion or debate or as entertainment or satire.