



Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014

Written questions on notice for the Attorney-General's Department

Schedule 1 – Classification tools

Ensuring appropriate protection for children

1. The Australian Council on Children and the Media recommended that an automated assessment system developed in the Netherlands (known as the Watch Wiser system) should be considered in the Australian context, as it has been developed and is overseen by a scientific committee.

Is the department aware of this system? If so, what is the department's view of the utility of this system in the Australian context?

Revocation of approval for classification tools

2. The approval of particular classification tools may be varied or revoked by the minister under the new section 22CB proposed in the Bill.

If the approval of a particular classification tool is revoked, how will this affect content that has already been classified using that tool?

Would such content need to be re-classified?

Answer to Question 1:

The Department is aware of the Watch Wiser automated assessment system, also known as the Kijkwijzer scheme, which is used in the Netherlands. This tool has been operating since 2001 to classify films and television programs in the Netherlands under their self-regulatory classification system. At a threshold level the scheme demonstrates that automated classification systems are neither new nor untested in international experience. However, there are some differences between the Watch Wiser scheme and the

Australian proposal. The film content classified by Watch Wiser is content that, in Australia, is submitted to the Classification Board for classification. The Watch Wiser tool is not used to classify computer games—these are classified using the Pan European Game Information (PEGI) system.

The classification tool being considered for a trial in Australia is known as the International Age Rating Coalition (IARC) tool. It is designed for classifying mobile and online computer games that are not currently submitted to the Classification Board for classification. This particular tool is newer than the system used in the Netherlands. The IARC tool being considered for trial in Australia has been developed collaboratively between some of the world's leading rating authorities, including PEGI. A key benefit of the tool is that it allows distributors and developers to make a single application and receive simultaneous tailored classification decisions for multiple jurisdictions. It currently includes the participation of rating authorities representing 36 countries.

The tool is similar to the Watch Wiser system in that it is based on distributors responding to a questionnaire and receiving an automated classification decision.

The purpose of the trial that will be conducted in Australia is to evaluate the effectiveness and suitability of this classification tool for use in the National Classification Scheme. It is not anticipated that other classification tools will be approved for use until the conclusion of the trial.

The form, capacity and operation of individual classification tools will be examined by the Department before a tool is considered for approval. Information about a tool's utility and suitability for use in the Australian classification system will be provided to the Minister to assist his consideration.

Ultimately, the Minister's approval of a tool will depend on whether it satisfies the requirements in the Classification Act. The Minister will also have regard to the matters set out in the guidelines for approval of classification tools.

Answer to Question 2:

New section 22CB will enable the Minister to vary or revoke the approval of a classification tool. New subsection 22CB(2) provides that the revocation of a classification tool takes effect at the time specified in the instrument which revokes the approval of that particular classification tool. The intention of new subsection 22CB(2) is that a revocation of the approval cannot take effect retrospectively. This means that a classification decision that has been produced by a classification tool prior to the revocation of an approval for that tool will remain valid after the revocation of that tool. This is important to provide certainty for both consumers and content creators.

However, the amendments will ensure there is sufficient capacity for misleading or incorrect classifications to be remedied. These include:

- new section 22CH, the Board retains the power to revoke an incorrect classification decision produced by an approved classification tool even if the approval of that tool has been revoked
- under the Classification Act the Minister can seek a reclassification once a two year period has elapsed from the initial date of classification; and
- under the Classification Act, a review of the initial classification decision is available on application.

Schedule 5 – Determined markings and consumer advice

3. Schedule 5 of the bill specifies that the minister may determine high level principles relating to classification markings as well as the display of those markings and consumer advice. The Australian Home Entertainment Distributors Association and Motion Picture Distributors Association of Australia have both noted that there is currently no indication as to what these high level principles might be.²

Has the department considered what these high level principles might be?

If so, can you share with the committee what is likely to be contained in these high level principles?

4. Under the proposed changes in Item 5, Schedule 5 of the Bill (new paragraphs 20(1)(a) and (b)), the Classification Board must determine consumer advice for all 'G' rated content. The MCAA argued that this proposed requirement would be 'redundant, misleading and possibly alarmist', and that the current arrangement is preferable, whereby the Board has discretion to provide consumer advice for G rated material where necessary.

What is the department's response to the concerns raised by the MCAA?

Why was the decision taken to mandate the provision of consumer advice for G rated material?

Are there any problems arising from the current system of optional determinations for G rated material that this change is attempting to address (for example, where a lack of consumer advice on G rated content was problematic)?

Answer to Question 3:

New subsections 8(1A) and 8(1B) provide that the Minister may determine principles relating to the manner in which markings and consumer advice are to be displayed. There are currently several legislative instruments which deal with how classification markings must be displayed on content and in advertising. The current markings determinations set out in great detail requirements about the precise size, presentation and placement of markings.

Following the passage of the Bill, the multiple existing instruments will be replaced by a single new legislative instrument that provides clearer and simpler high level principles for the display of classification markings and consumer advice.

The Department is currently developing this legislative instrument, which will be open for industry consultation prior to its introduction. The instrument will require that the correct classification markings are prominent, readily identifiable and clearly legible on classified publications, films and computer games. The legislative instrument may also prescribe:

- the types of classified product that must display markings (for example, films and computers displayed on a screen, storage devices, containers for storage devices etc.); and
- the types of markings that classified products must display, such as the classification symbol or classification square, or combination box which includes the consumer advice.

The principles are directed to ensuring the objectives of markings requirements are met without imposing prescriptive requirements (which risk becoming outdated, are difficult to comply with in a technical sense and costly for Governments to maintain and administer). They will provide industry with clear guidance about what how markings are to be displayed, focussing on the essential requirements: that markings are visible, legible and displayed accurately.

Answer to Question 4:

Consumer advice is an integral part of classification, as it provides additional information about the content of a film, computer game or publication.

The Department is of the view that making consumer advice mandatory at the G classification is desirable because it will assist parents in making better and more informed choices about the content that their children see and play. Moreover, consumer advice is particularly important for content in the lower classification categories because the youngest children are more sensitive to exposure to certain content. Content in the lower classification categories generates complaints to the Classification Board on the basis that parents were not warned about certain elements in the film or computer game (for example, that a film contains scenes which may frighten very young children), despite the very mild impact of the material overall.

This amendment will also make the G classification category consistent with all other classification categories in relation to the requirement to provide consumer advice. Content that is classified G may contain no classifiable elements or classifiable elements which are very mild in impact only. The mandatory provision of consumer advice will ensure that products with no classifiable elements become more easily differentiable from products which contain very mild classifiable elements.

Additionally, section 20 of the Classification Act provides that the Board must simply determine consumer advice 'giving information about the content of the film or game'. The section gives the Board a broad discretion in relation to the consumer advice it determines and indicates that consumer advice is not confined to describing classifiable elements. For example, the Board may provide advice to the effect that a product is 'suitable for all ages'. The Guidelines for the Classification of Computer Games and the Guidelines for the Classification of Films provide that some G content contains themes or storylines that do not interest children. Similarly the Board may provide consumer advice to this effect.

The requirement for the Board to provide consumer advice at G will ensure that consumers receive more information about material classified G. This will enable consumers, and parents in particular, to make better informed choices about the entertainment material they select for themselves or their children.

Schedule 6 - Offence provisions

5. The Australian Subscription Television and Radio Association expressed concern in its submission that television services provided online may be inadvertently captured under the proposed offence provisions in new section 8AA of Schedule 6 of the Bill, and recommended that the explanatory memorandum should include a statement to clarify that online television services will not be caught under this provision.⁴

Can the department confirm whether television services provided online would be captured under the Bill?

Does the Bill's EM need to be revised to clarify this point?

Answer to Question 5:

New section 8AA will create an offence for a person, in trade or commerce, who uses a determined marking in relation to goods which are not a publication, film or computer game or services that are not for the purposes of the classification system. For example, a person will commit an offence if the person uses a determined marking on tangible goods, such as pyjamas or a car for the purpose of selling those goods. A person will also commit an offence if the person uses the determined marking for the R 18+ classification to advertise an adults-only service.

The Australian Subscription Television and Radio Association (ASTRA) has expressed concerns that the use of classification markings on television content provided via online services is inadvertently captured by the offence in new subsection 8AA(2).

Subsection 8AA(2) is not intended to apply to 'services' which involve the provision of goods to which new subsection 8AA(1) may apply. For example, the online delivery of television programs will not be a service to which new subsection 8AA(2) applies. This is because television programs are goods in the form of films and the use of determined markings with respect to films is not prohibited under subsection 8AA(1). This means that determined markings may be applied to television programs delivered online without breaching subsection 8AA(2).

Amendments to the Explanatory Memorandum for the Bill may clarify this further and will be considered by Government.

Other questions on notice raised in submissions made to the Senate Legal and Constitutional Affairs Legislation Committee

During the submissions made at the Senate and Legal Constitutional Affairs Legislation Committee Inquiry into the Bill, two questions were taken on notice by the Department. The Department will address these questions below.

Who pays for a classification made by the Classification Board after a classification tool decision has been revoked?

Professor Handsley, President of the Australian Council on Children and the Media, raised the question as to who pays for the cost of a classification made by the Classification Board following the revocation by the Board of a classification decision that has been produced by a classification tool.

New section 22CH will give the Board the discretion to revoke a classification decision produced by an approved classification tool if the Board is of the opinion that it would have given the material a different classification or assigned different consumer advice for the material. The Board can exercise this power on

its own initiative. If the Board decides to revoke the classification of the material, the Board must then classify this material itself. No fee is payable in this circumstance.

Section 22CH will also enable a publisher or other person who may have a commercial interest in changing a classification decision produced by a classification tool to make an application for the Board to consider revoking the decision. The Bill appropriately allows for a fee to be charged for such an application, which would need to be made within the relevant period set out in the legislation.

Will the public or experts be able to interrogate the assumptions built into the classification tool model?

Senator Ludlam asked the Department whether the public or experts would be in a position to interrogate the assumptions built into the model of a classification tool.

The priority in evaluating a tool for possible use in Australia, and the success of a tool that has been approved is the outcomes and decisions that that tool will produce. This will be determined by the ease of use for content creators and the predictability and reliability of classifications produced by any particular tool. While the assumptions or algorithms a particular tool is based on will direct how it operates, we do not consider that it is necessarily desirable for an expert to have the ability to interrogate the assumptions that are built into a classification tool. Access to such information may jeopardise the integrity of the classification tool, particularly if a content creator was able to “game” the system and work out in advance what answers to enter into the questionnaire in order to produce a particular classification decision.

Similarly, the Department would not enter into technical debate with producers of tools in the future about the algorithm or assumptions that they rely on to demonstrate the benefits of their tool - the most important factor in determining whether the Minister should approve a classification tool is that the tool produces classification decisions that are consistent with those of the Classification Board.

To ensure transparency and accountability in the classification decision-making process, a range of information will be publicly available:

- The Guidelines to which the Minister must have regard when determining whether to approve a classification tool will be published on the Department’s website(www.classification.gov.au) which can be accessed by the public and industry;
- The approval instrument for the classification tool will be published on the Department’s website;
- All decisions that are produced by the classification tool will be incorporated into the National Classification Database that can be accessed through the Department’s website; and
- Decisions that have been produced by a classification tool and are subsequently revoked and classified by the Board will also be published in the National Classification Database that can be accessed through the Department’s website.
- Results of audits of tools and any issues arising, such as complaints about the tool, high profile decisions that have been produced by the tool will also be included in the existing accountability mechanism such as the Classification Board’s annual report required under section 67 of the Classification Act.