CHAPTER 2

Key issues

2.1 The committee heard general consensus that the National Classification Scheme (NCS) is in need of reform and that various stakeholders welcome the provisions of the Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014 (the Bill).

2.2 However, some submitters and witnesses raised issues about particular provisions of the Bill, most significantly:

- the types of classification tools the Bill will allow to classify content, and whether it is appropriate for these tools to classify some high-rated material;
- the need for tools to be transparent in their underlying principles and implementation;
- the potential industry abuse of self-assessment tools to give lower classification ratings to their products;
- what would happen should the approval of classification tools be rescinded by the Minister for Justice (minister);
- the power given in the Bill to officials of the Attorney-General's Department (the department) to refer material that has not been classified to law enforcement agencies;
- the changes to exemption arrangements, including for cultural and industry events, and whether the definition of 'social sciences' is too narrow;
- the new requirement for the Classification Board to include consumer advice for G rated content;
- whether the amendments made in Schedule 6 inadvertently capture television delivered online in proposed offence provisions; and
- other issues, including who would pay for the cost of appealing classification decisions made using classification tools.

General support for the Bill

2.3 Submitters and witnesses generally agreed Australia's classification regime needs updating and the Bill represents a positive first step towards wider reform of the NCS.

2.4 For example, Interactive Games and Entertainment Association (IGEA) described the current *The Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) as 'an analogue piece of legislation in a digital world' that is in need of significant reform.[1]

---

1 *Submission 4*, p. 2.

2.5 The submission made by the Australian Home Entertainment Distributors Association (AHEDA) strongly supported the Bill, which it said makes 'modest and sensible first steps in what we hope is a wider reform process'.[2]

2.6 The Australian Christian Lobby supported most of the Bill's provisions, which it said makes 'some useful amendments to facilitate more efficient classification in Australia'.[3]

2.7 Mr Bruce Baer Arnold and Dr Susan Priest noted the Bill would begin to address the difficulties the NCS is currently facing while maintaining existing safeguards for people who needed protection, including minors. They commented that the amendments achieve an 'appropriate balance between the need to provide effective protection for vulnerable people and reduction of regulatory burdens'.[4]

Issues raised during this inquiry

2.8 As noted, evidence received by the committee overwhelmingly supported the provisions of the Bill. However, some submitters raised issues about the Bill that should be discussed in this report, as they highlighted either provisions that were particularly welcomed or provisions that could be improved. These issues will be discussed in turn, by schedule.

Schedule 1—Classification tools

2.9 In general, witnesses and submitters supported the Bill's introduction of classification tools to the NCS, as they considered they offered a common sense improvement to the classification system. Evidence received by the committee suggested classification tools would give increased confidence to consumers about the material they accessed, as well as reducing costs and enhancing the compliance regime for industry.[5] However, there were several concerns raised about the use of classification tools, including:

- whether tools should be limited to assessing low-level material or simple products only;
- the need for transparency in the design of tools and their adoption by government, as well as the need to maintain oversight of their efficiency and reliability when implemented; and
- the processes around classification tools losing approval.

---

2 *Submission 5*, p. 3. Note also that the Motion Picture Distributors Association of Australia (MPDAA) and the National Association of Cinema Operators – Australasia (NACO) both made submissions explicitly supporting the views expressed by AHEDA. See *Submission 6* and *Submission 14* respectively.

3 *Submission 11*, p. 1.

4 *Submission 8*, p. 2.

5 For example see: AHEDA, *Submission 5*, p. 4; IGEA, *Submission 4*, p. 2; Australian Mobile Telecommunications Association (AMTA) and the Communications Alliance, *Submission 15*, p. 1.

Appropriate use of classification tools

2.10 The committee heard concerns from submitters about tools being used to classify material with high ratings (that is, above M or MA15+). There were also concerns raised about maintaining the reliability of lower levels ratings (G, PG and M). Moreover, the committee heard concerns that films and television programs would be better classified by human assessors, as they could apply more sophisticated frameworks than was possible through automated tools.

2.11 Family Voice Australia and the Australian Christian Lobby both submitted that tools should not be allowed to classify full-length films and computer games with high ratings, which they argued should still be classified by the Classification Board.[6] Both organisations were concerned self-assessment classification tools could potentially lead to certain sectors, particularly the pornography industry, intentionally giving lower ratings to their products to circumvent the classification system.[7]

2.12 The Media Classifiers' Association of Australia (MCAA) welcomed the introduction of a tool to classify simple mobile and online games that 'lack realism, emotional impact and narrative complexity' but argued questionnaire-style tools would be unsuitable for classifying films and television products, which should be left to the human assessors because:

> Accurate classification and consumer advice requires careful consideration of a program in full. It is not only an assessment of impact of the six classifiable elements (themes, violence, sex, language, drug use, nudity), but also an important assessment of context….In the MCAA's view [the nuances of context] would be very difficult to capture in a questionnaire-style tool.[8]

2.13 Other submitters and witnesses disagreed, arguing classification tools should be able to assess products at all classification levels. For instance, Mr Ronald Curry, Chief Executive Officer, IGEA, told the committee:

> We believe the classification tool must be able to classify the total spectrum of the game content which includes MA, R18 and RC for three important reasons, which are volume, engagement and for purpose. On volume, if we look at the ratio of restricted games classified last year by the Classification Board, it was around 17 per cent…. If classification tools cannot be used for restricted content, we doubt whether the board would be able to classify this massive amount of content by themselves. As far as engagement, if we look at a classification tool that can only classify part of the range of classification determinations, it is unlikely it will be fit for the purpose. Therefore, it is unlikely to be adopted by stakeholders, and we end up in the situation we are in today where nobody is using the scheme to classify a digital product.

---

6 Family Voice Australia, *Submission 2*, p. 3; Australian Christian Lobby, *Submission 10*, p. 2.

7 *Submission 10*, p. 2.

8 *Submission 12*, pp 3–5.

> [On purpose]…Limiting the use of a classification tool to only unrestricted content will not prevent that content from being accessible. Rather, it will ensure that such content continues to be made available without the safety net of having appropriate advice of the content's age appropriateness...[9]

2.14 The submission made by the Australian Council on Children and the Media (ACCM) argued the government should not be complacent about classification tools being able to accurately give ratings at the lower end of the spectrum. It argued young children were more likely to be exposed to products at low classifications, and so:

> …for the everyday protection of the child audience, it is vital that content is accurately classified at the G, PG and M levels…ACCM is opposed to any scheme that places the classification of materials at the lower levels in a self-regulated system, without full and public scrutiny of such a scheme.[10]

2.15 The department told the committee there were some safeguards in place to ensure ratings given by tools were reliable:

> If people want to be totally malicious and put something in we would pick it up through a number of other mechanisms, or safeguards, such as complaints that were coming in. If it was an R18+ level and above it would be subject to the audit that we do during the trial period. Also, if the product, let us say it is a games app, is available through a shopfront you will find that the shopfronts do not normally sell or would accept material that has a rating that is incorrect to that degree. So there are a number of different safeguards that we have available.[11]

Transparency and review of classification tools

2.16 The committee received evidence that classification tools should be transparent in their underlying methodology, as well as in their approval and implementation by government, in order to ensure continued public confidence in the NCS and to facilitate early detection of any flaws in or abuses of classification tools.

2.17 For instance, the Cyberspace Law and Policy Community, University of New South Wales Law, submitted there should be transparency in the underlying methodology of classification tools:

> Where a classification tool relies on a questionnaire in making decisions, it is important that the Regulator and the public understand how particular answers correspond to particular classifications. Where a classification tool employs a computer program to evaluate content, the source code should be made publicly available. In the event tools were to be designed based on

9 *Committee Hansard*, 28 July 2014, p. 4.

10 *Submission 13*, p. 3.

11 Mr Zahid Gamieldien, Senior Legal Officer, Classification Branch, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 26.

> machine learning techniques, third party evaluation would require at a minimum access to both the training data and the algorithm employed.[12]

2.18 Professor Elizabeth Handsley, President, ACCM, told the committee the Bill should include provisions to regularly review ratings awarded by classification tools, with the results available publically:

> We would want to see regular spot-checks, if I can use that kind of language—to see that there would be some kind of system for pulling out five per cent or 10 per cent of them and running them through the traditional system and seeing if they are lining up, and then having a report on what comes out of that.[13]

2.19 Civil Liberties Australia also considered that all decisions made by classification tools must be transparent, and furthermore considered their ratings should be easily challenged by industry. It therefore suggested trialling a shared system where an agreement between publisher and tool must be reached before a final classification is decided.[14]

2.20 The Arts Law Centre of Australia agreed any use of classification tools should be monitored carefully, stating in its submission:

> It is essential that any classification tools are subject to random auditing or similar by the Classification Board or the Minister in order to confirm the tools are achieving the desired outcomes.[15]

2.21 Mr Bruce Arnold and Dr Susan Priest recommended some government review of classification tools to ensure their effectiveness, undertaken within three years of the Bill being passed.[16]

2.22 Many of these concerns about transparency of ministerial decisions, the trial of certain tools and the possibility of review were addressed by the Attorney-General's Department:

> The approval and the conditions surrounding each tool need to be published on the web…. Guidelines for approving classification tools have to be published on the department's website. The approval of the tool also has to be on the website, along with any other conditions. Every decision that the tool makes will be put on the national classification database, so they will all be publicly available.[17]

2.23 The department thought it was unlikely the underlying coding or algorithms underlying tools would be available for public scrutiny:

---

12 *Submission 8*, p. 3.

13 *Committee Hansard*, 28 July 2014, pp 21-22.

14 *Submission 3*, p. 2.

15 *Submission 17*, pp 3-4.

16 *Submission 8*, p. 3.

17 Mr Gamieldien, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 26.

> On the actual coding and so forth behind it: I think if you have been spending two or three years to develop a tool to meet specific needs you would not give that coding or the logic behind it away unnecessarily. That would be commercial-in-confidence.[18]

2.24 Moreover, the department suggested in their answers to questions on notice that knowledge of the underlying code of certain tools was unnecessary, as their performance would be judged on results alone:

> …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.[19]

Classification tools losing approval

2.25 The submission made by the Cyberspace Law and Policy Community informed the committee that it was not clear what would happen under the new legislation should a tool lose its approval. It argued the Bill should include provisions to inform relevant consumers, the producer or host of the material, and the classifier of the material, of a relevant tool losing approval.[20]

2.26 The department confirmed the Bill has provision for the minister to vary or revoke the approval of a classification tool, but confirmed ratings given by that tool would still be valid. However, they informed the committee the new legislation:

> …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.[21]

Schedule 2—Referral of material to law enforcement agencies

2.27 The Attorney-General's Department responded to claims that the amendment would grant its officials new discretionary powers to refer content to law enforcement

---

18 Mr Stephen Sanders, Acting Assistant Secretary, Classification Branch, *Committee Hansard*, 28 July 2014, p. 26.

19 Attorney-General's Department, *Answers to questions on notice*, received 11 August 2014, p. 6.

20 *Submission 9*, p. 4.

21 Attorney-General's Department, *Answers to questions on notice*, received 11 August 2014, p. 2.

agencies by informing the committee the amendment did not give the department new powers, but rather reflected current practice in legislation:

> The current practice of the branch is to refer RC material to law enforcement. This does very little to change what is actually happening at the moment. It just makes the power explicit. So, in terms of creep, I do not know that there is very much risk of that because this is what is already occurring.[22]

Schedule 3—Exemptions

2.28 The committee heard broad support for the reforms made be Schedule 3. For instance, IGEA thought they would result in lower compliance costs for digital games exhibitions and trade shows hosted in Australia, which would have both cultural benefits for the Australian community, as well economic benefits for local industry.[23]

2.29 However, some submitters raised some concerns about provisions for exemptions made by the Bill. For example, the Australian Christian Lobby supported classification exemptions for low-rated content shown at cultural institutions or film festivals. However, it recommended classification be compulsory in cases where material is likely to be rated at MA15+ or higher.[24]

2.30 The Arts Law Centre argued the minister should provide further guidance to content providers interested in obtaining exemptions, including clarification of:

> …what proportion of content constitutes "mainly" comprising an exempt genre…and how to determine classification of their content as "content likely to be classified higher than PG…".[25]

2.31 The Cyberspace Law and Policy Community suggested the Bill's definition of 'social sciences' was too narrow and omitted to mention many mainstream subjects, such as history and law.[26]

2.32 Regarding the definition of 'social sciences' being too narrow, the Attorney-General's Department told the committee:

> Social sciences has a definition, which is exhaustive at the moment, in order to exclude particular types of social sciences. There is also a legislative instrument making power through which we could expand the range of social sciences that would be included in that category, if we found that those were not working.[27]

---

22 Mr Gamieldien, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 28.

23 *Submission 4*, p. 5.

24 *Submission 10*, p. 2.

25 *Submission 17*, p. 4.

26 *Submission 9*, p. 5.

27 Mr Gamieldien, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 28.

Schedule 4—Modifications

2.33 The provisions of Schedule 4 were broadly recognised as positive steps towards reducing the current burden of compliance on industry, increasing the competitiveness of Australian businesses, and streamlining classification decisions for low-risk material.[28]

Schedule 5—Determined markings and consumer advice

2.34 The committee heard some concerns that the introduction of compulsory advice at the G classification was not necessary, and may confuse consumers. For instance, the MCAA submitted this amendment was 'redundant, misleading and alarmist', as:

> By nature, the G classification is a safe place that does not require the provision of consumer advice. To provide additional classification information in this instance would be counterintuitive and confusing to consumers.[29]

2.35 Mr Marc Wooldridge, Chairman, MPDAA, supported this view. In the public hearing, he told the committee consumers are already familiar with the meaning and implication of a G rated product and there is no reason to change the current system:

> By way of reminder and clarification, the G rating is given to content suitable for a general audience—that is, for all ages—and this has been communicated to consumers for many years. Where the Classification Board has felt it to be necessary, they have the ability currently to provide additional consumer advice for G-rated films in the rare instance when it is deemed useful to consumers. The process seems to be working very well currently.[30]

2.36 Professor Handsley, ACCM, was also sceptical about the need for more information to be given at the G rating:

> We have always taken the view that G means it is general, it is appropriate for everybody; there is really nothing you need to know about that material and so there should not really be consumer advice on G. We can see that parents like having information….. But to mix it up as consumer advice tends to open up that possibility that G means something other than it is fine for everybody and that could maybe send mixed messages and have unintended consequences.[31]

---

28 See for example: the Interactive Games and Entertainment Association and the Game Developers' Association of Australia, *Submission 4*; MPDAA, *Submission 5*; AHEDA, *Submission 6*; and Arts Law Centre of Australia, *Submission 17*.

29 *Submission 12*, p. 4.

30 *Committee Hansard*, 28 July 2014, p. 2.

31 *Committee Hansard*, 28 July 2014, p. 19.

2.37 The department addressed these issues in their answers to questions on notice:

> 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…. This amendment will also make the G classification category consistent with all other classification categories in relation to the requirement to provide consumer advice.[32]

Schedule 6—Other amendments

2.38 The submission made by 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 the new section 8AA of Schedule 6 of the Bill. It recommended that the explanatory memorandum to the Bill should include a clarifying statement that this provision does not apply to online television services.[33]

2.39 In its replies to questions on notice, the Attorney-General's Department confirmed that section 8AA of Schedule 6 does not apply to online television services, and that the government would consider making this clear in the Bill's EM.[34]

Schedule 7—Simplified outlines

2.40 The committee received no comment from submitters or witnesses on Schedule 7 of the Bill.

Other issues

2.41 Professor Handsley, ACCM, raised the issue of who would bear the cost of appealing decisions made under the new classification regime. The department told the committee that it would cover the cost of review, should it be in the public interest to do so:

> On the issue of payment for a review, the normal application for review of a computer game fee would apply. But I would also note that there are exemptions to those fees—that if a community group approached their Attorney-General then that would be a cost that is borne by the Commonwealth, for that review to be carried out. So, there can be a few waivers in that situation. The director of the board also has the opportunity and the right to look at a game if she receives enough complaints or if the complaints are serious enough. In that case there would not be a cost to the applicant.[35]

---

32 Attorney-General's Department, *Answers to questions on notice*, received 11 August 2014, p. 3.

33 *Submission 6*, p. 2.

34 Attorney-General's Department, *Answers to questions on notice*, received 11 August 2014, p. 5.

35 Mr Sanders, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 24. See also: Attorney-General's Department, *Answers to questions on notice*, received 11 August 2014, p. 6.

Committee view

2.42 The committee heard a range of views about the proposed amendments this Bill would make to the NCS. However, it was evident that submitters and witnesses overwhelmingly regarded the provisions of the Bill as being good first steps towards long-overdue reform of the Australian classification regime.

2.43 There were some valid concerns raised about particular provisions of the Bill. In particular, submitters were concerned that the introduction of classification tools should not compromise the integrity of the NCS or reduce public confidence in the reliability of the ratings given by the Classification Board. The committee sees that there are some valid concerns about classification tools, particularly these tools being used to give high ratings to products. However, it is clear that the NCS does not have capacity to give ratings to every electronic game accessible to Australians, given the sheer number of products available and the limited resources of the Classification Board.

2.44 Considering this, the committee believes it is better for these products to be given a classification rating through the IARC trials, than for them to be available with no rating whatsoever.

2.45 The committee heard some concerns from submitters the Bill may extend the power of the Attorney-General's Department to refer certain material to law enforcement agencies without classification. However the committee understands this provision does not extend the powers of the Attorney-General's Department, but that it simply formalises a well-established procedure in these cases, which is working well.

2.46 The committee also heard concerns about the new requirement for the Classification Board to include consumer advice for G rated content, particularly that it may lead to public confusion about the G rating. However, the committee considers that this amendment will not confuse consumers unnecessarily. Rather, it is confident it will give consumers more information about what films and games are suitable for them and their families.

Recommendation 1

2.47 **The committee recommends that the Bill be passed.**

2.48 However, over the course of this inquiry, the committee heard some concerns that need to be addressed in this report. In particular, the committee would like to highlight the importance of transparency and accountability for the trial of classification tools. Additionally, the committee heard a compelling case for the provisions of Schedule 6 to be made clearer in the EM for the Bill.

2.49 Most importantly the committee sees a definite need for the Attorney-General's Department to approach trials of classification tools very carefully. This means that the decision to trial particular tools is transparent, with the department publishing the underlying guidelines informing ministerial decisions, as well as the approval instrument authorising particular tools.

2.50 It means also that the trial of particular tools must be monitored carefully by the department and the Classification Board. All decisions made by classification tools

should be subject to auditing throughout the trial period, and a full review undertaken upon completion.

2.51 Moreover, all ratings given by classification tools should be made public, to guarantee the classification process can be trusted by industry and the public alike. It should also be made clear how these decisions can be challenged by members of the public or by industry stakeholders. In cases where tools have been revoked, the decision and underlying reasons for the decision should be made clear and public through the National Classification Database.

2.52 The committee also heard that the amendments made by Schedule 6 of the Bill could be made clearer, to assure the television industry that the Bill is not inadvertently capturing television content delivered online in the proposed offence provisions.

Recommendation 2

2.53 **The committee recommends that the government ensures that the Bill's implementation and supporting material are clear and understood by stakeholders, in particular information regarding the approval and trial of classification tools, and the appeals process.**

Senator the Hon Ian Macdonald
Chair