



Submission to

**Department of Communications and the Arts**

Subject

**Review of the Australian Communications and Media**

**Authority**

**Draft Report**

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# 1. Introduction

The Interactive Games and Entertainment Association (**IGEA**) welcomes the opportunity to respond to the Review of the Australian Communications and Media Authority (the **ACMA Review**) being undertaken by the Department of Communications and the Arts (the **Department**).

IGEA refers to its previous submission dated 17 August 2015,<sup>1</sup> which recommended the establishment of a single agency or “Regulator” responsible for the regulation of media content under the National Classification Scheme (**NCS**). In that submission, it was suggested that ACMA could assume the role of the single Regulator and that this would assist in reducing the administrative complexity with the current arrangements.

IGEA has reviewed the ACMA Review’s Draft Report (the **Draft Report**). This submission responds to aspects of the Draft Report that relate to classification and ACMA’s potential role under the NCS.

## 2. Executive Summary

1. IGEA believes that it is crucial for a single Regulator to take primary responsibility for the administration and regulation of a new ‘fit-for-purpose’ NCS.
2. IGEA supports the recommendations of the ALRC in its report entitled, “Classification – Content Regulation and Convergent Media”,<sup>2</sup> and in particular its recommendations to establish a new, single and national classification scheme, support a technology neutral classification regime, and also to create a single agency or “Regulator” responsible for administering and regulating the scheme.
3. IGEA agrees with the Department that content classification in Australia is currently fragmented and creates regulatory duplication. Furthermore:
  - a. Australia’s current classification system is administratively complex and poorly equipped to respond to the challenges of media convergence, digital content, and technological change and innovation. This is largely due to the co-operative State,

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<sup>1</sup> IGEA, *Review of the Australian Communications Media Authority* (17 August 2015)

<[https://www.communications.gov.au/sites/g/files/net301/f/submissions/Interactive\\_Games\\_Entertainment\\_Association.pdf](https://www.communications.gov.au/sites/g/files/net301/f/submissions/Interactive_Games_Entertainment_Association.pdf)>.

<sup>2</sup> Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media*, ALRC Report 118 (1 March 2012)

<<http://www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118>>.

Territory and Commonwealth scheme with layers of multiple laws, regulation and responsible regulatory bodies.

- b. There are a number of benefits in having a single Regulator responsible for content regulation, including creating a framework that is streamlined and flexible.
4. IGEA agrees that the ACMA is well placed to administer a harmonised classification scheme.
5. IGEA, however, does not believe that the proposals in the Draft Report are broad enough. IGEA recommends the Department should play a more comprehensive role in the NCS and undertake further work to fully implement the recommendations of the ALRC by:
  - a. Establishing a new, single and national classification scheme that regulates the classification of media content; and
  - b. Creating single entity or “Regulator” with primary responsibility for administering and regulating the single classification scheme, as opposed to merely moving some functions of the Classification Board and Classification Review Board to another entity.
6. Lastly, IGEA agrees with the comments of the ALRC mentioned in the Draft Report which state that there should be a greater role for industry in Australia’s classification system.

### 3. About IGEA

IGEA is the industry association representing the business and public policy interests of Australian and New Zealand companies in the interactive games industry. IGEA’s members publish, market, develop and/or distribute interactive games and entertainment content and related hardware. The following list represents IGEA’s current members:

- 18point2
- Activision Blizzard
- All Interactive Distribution
- Big Ant Studios
- Disney Interactive Studios
- Electronic Arts
- Five Star Games
- Fiveight
- Gamewizz Digital Entertainment
- Mindscape Asia Pacific
- Namco Bandai Entertainment
- Google
- Microsoft
- Nintendo
- Sony Computer Entertainment
- Take 2 Interactive
- Total Interactive
- Ubisoft
- VR Distribution
- Well Placed Cactus
- ZeniMax Australia

## 4. General Submission

The Draft Report recommends a number of changes to the current functions and roles of the ACMA. Importantly, for the purposes of Australia’s classification regime and the NCS, the Draft Report states the following:

***“The Review recommends a small number of changes...that the Department undertake further work to explore the potential to expand the ACMA’s remit to take on certain classification functions currently administered within the National Classification Scheme in order to harmonise online and offline classification functions”<sup>3</sup>***

### ALRC Recommendations

IGEA strongly emphasises the importance of the recommendations made by the Australian Law Reform Commission (ALRC) in its report entitled, “Classification – Content Regulation and Convergent Media”.<sup>4</sup> Importantly, in addition to recommending a brand new, single and national classification scheme via enacting a “Classification of Media Content Act” and supporting a technology neutral approach to content classification, the ALRC also recommended that:

***“The Classification of Media Content Act should provide for the establishment of a single agency (‘the Regulator’) responsible for the regulation of media content under the National Classification Scheme”<sup>5</sup>***

In making these recommendations, the ALRC identified two important points.

Firstly, the ALRC highlighted a number of significant issues with Australia’s current classification framework, including that it is poorly equipped to respond to the challenges of media convergence, content delivery, digital content, and technological change. The ALRC also found that there are inconsistencies in traversing similar content across media platforms, further exacerbated due to the

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<sup>3</sup> Department of Communications and the Arts, *Review of the Australian Communications and Media Authority – Draft Report* (May 2016), page 9 <<https://www.communications.gov.au/have-your-say/acma-review-draft-report>>.

<sup>4</sup> ALRC, above n 2.

<sup>5</sup> ALRC, above n 2, pages 103-4.

constant and largely unanticipated changes in media, technology, and entertainment goods and services. For these reasons, the ALRC recommended replacing Australia's current cooperative classification scheme with a central, Commonwealth legislative regime that regulates the classification of media content in a platform-neutral, technology neutral, and content-focused manner, with enforcement of classification laws incorporated under a single Commonwealth law.

Secondly, and in combination with the above recommendations, the ALRC identified a number of advantages in having a single Regulator that is primarily responsible for all forms of content regulation, including any classification matters relating to media content. These advantages included the creation of a more administratively streamlined scheme with a single body at the forefront that, as a result, would be more responsive and flexible to the challenges of media convergence and technological change and innovation.

Additionally, as indicated in the ALRC's report, ACMA itself stated that a single regulator would be:

- ***“Better for citizens: a single approach to the application of community standards and protections within the new scheme.***
- ***Better for the consumer: a one stop shop with less chance of being given ‘the run-around’.***
- ***Better for industry: superior, faster decision-making with increased expertise and a consistent approach.***
- ***Better for Government: cost savings from economies of scale.***
- ***More logical: converging platforms will incontrovertibly require a converged regulator.”***<sup>6</sup>

IGEA's previous submission<sup>7</sup> supported the recommendations tabled in the ALRC report and, in particular, the previously mentioned recommendations concerning a new, single national classification scheme and also the establishment of a single Regulator in charge of the scheme's administration and regulation. With the current climate of technological change and media convergence, the entity responsible for regulating the classification of computer games, television, films and other content needs to be flexible and adaptive. The recommendation for a single national

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<sup>6</sup> Australian Communications and Media Authority, *Submission to the National Classification Scheme Review* (November 2011), page 3 <[http://www.alrc.gov.au/sites/default/files/pdfs/cia\\_2489\\_australian\\_communications\\_and\\_media\\_authority.pdf](http://www.alrc.gov.au/sites/default/files/pdfs/cia_2489_australian_communications_and_media_authority.pdf)>.

<sup>7</sup> IGEA, above n 1.

Regulator charged with the administration and enforcement of content standards is crucial for a new, harmonised and single national classification scheme.

## Australia's Current Classification System

Australia's current classification scheme fails to fulfill the above necessities for a number of reasons. Firstly, there are a wide range of different and fragmented pieces of legislation and instruments that all play a role in the content classification space, which the ALRC made clear in its report in 2012.<sup>8</sup> For example, there exists the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), various pieces of State and Territory enforcement legislation, the Intergovernmental Agreement on Censorship, a number of other guidelines and regulations that underpin the classification cooperative scheme, the *Broadcasting Services Act 1992* (Cth), several internet industry codes, and more.

Moreover, there are a large number of different entities and agencies involved with classification, including the Department of Communications and the Arts, the Classification Board, the Classification Review Board, ACMA, Customs, and the Children's eSafety Commissioner. Additionally, each State and Territory has separate agencies that are responsible for classification policy and enforcement. The number of bodies involved in the classification space, combined with the fact that any change or reform to Australia's classification legislation requires agreement with all States and Territories, results in an administratively complex system that is slow to adapt to the fast-moving and innovative media content industries. This is especially the case for the interactive games industry, which is highly innovative and creative, perpetually creating and implementing new business models that change the manner in which content is delivered and enjoyed.

Importantly, the Department's Draft Report is in large agreement with the above views. It stresses that content classification in Australia is incredibly fragmented across various different bodies (including State and Territory law enforcement bodies) and that there is a level of regulatory duplication in terms of online films and computer games, whereby both the Classification Board and the Children's eSafety Commissioner play a part. Additionally, the Draft Report highlights the issue of media and internet convergence, which increasingly blurs the lines between the more traditional methods of content delivery. Because of this, adopting a fragmented, platform-based approach to

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<sup>8</sup> ALRC, above n 2, pages 49-56.

classification (as opposed to a single, harmonised, content-focused and technology neutral approach) causes unneeded complexity, confusion for consumers and businesses, and the double-handling of media and content classification.

## Recommendations

While IGEA supports the views of the Department, the recommendations in the Draft Report do not go far enough to ensure that Australia's NCS will be responsive and flexible enough to deal with the challenges of technological change and media convergence. To be specific, draft proposal 7 of the Draft Report only suggests that the Department shall "***undertake further work to expand ACMA's remit to include the functions of the Classification Board and Classification Review Board Scheme***".<sup>9</sup>

Instead, IGEA believes that the Draft Report's proposal should set out comprehensive, actionable and specific directions for the Department to start building Australia's new classification scheme. In particular, the proposal should require the Department to implement the recommendations of the ALRC by enacting a new and single Commonwealth national classification scheme and, in addition, establishing a single entity or Regulator, such as ACMA, that is responsible for administering and regulating the harmonised classification scheme. Merely moving some of the functions of the Classification Board and Classification Review Board to another entity is not what the ALRC intended, nor will it effectively resolve the negative aspects of Australia's current scheme.

To be specific, in recommending the establishment of a new and single national classification scheme that regulates the classification of media content, the ALRC stressed that a single agency or Regulator needs to have primary responsibility for administering and regulating the scheme. The ALRC stated that establishing this single Regulator was a "***central element of the new National Classification Scheme***".<sup>10</sup> In particular, the ALRC stated that the single Regulator should have responsibilities and functions that encompassed those not only held by the Classification Board (and Classification Review Board), but also by the Department of Communications and the Arts, the Classification Branch and ACMA. More broadly, it stated that the benefits of establishing a single Regulator, such as being more responsive to the challenges of media convergence, would come to

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<sup>9</sup> Department of Communications and the Arts, above n 3, page 42.

<sup>10</sup> ALRC, above n 2, page 325.



fruition if the Regulator “*incorporates classification and media content regulation within a wider portfolio of responsibilities*”.<sup>11</sup>

While there are a number of existing Government and independent bodies that could potentially take on the single Regulator role, in IGEA’s past submission, it was suggested that ACMA is best placed to take on this role. ACMA is an independent statutory authority that is already involved in administering online content standards and has jurisdiction for broadcast, internet, radio-communications and telecommunications. Additionally, as noted in the Draft Report, ACMA has knowledge of the broadcast, online communications and media sectors, and expertise in the classification of computer games and films.

Therefore, while IGEA agrees with the Draft Report that ACMA would be well placed to administer a harmonised classification scheme, its role needs to encompass more than simply some of the functions of the Classification Board and Classification Review Board. Instead, especially in light of the ALRC’s recommendations, IGEA suggests that ACMA is an entity that could fulfil the role of a single Regulator with primary responsibility for regulating media content under the NCS.

Lastly, IGEA strongly agrees with the comments of the ALRC mentioned in the Draft Report that there should be a greater role for industry in Australia’s classification regime. Industry has shown that it is aware and understanding of the importance of ensuring appropriate classifications, ratings and consumer advice are given to content, especially computer games. The games industry has already been innovative and progressive in this space, as highlighted by its formation of the International Age Rating Coalition (IARC).<sup>12</sup>

IARC is a partnership of the major computer games rating authorities from over 30 countries globally that created the “IARC tool”. IARC is an online questionnaire that is completed by content creators themselves, designed to quickly and easily determine the content of a game, and generate a rating and consumer advice deemed appropriate for the classification requirements of each participating global authority. This tool is quick and efficient, enabling the classification of a very large number of video games and ensuring that appropriate consumer advice is provided to the public. On 1 July 2015, the Attorney-General’s Department approved the use of the IARC classification tool for a

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<sup>11</sup> Ibid.

<sup>12</sup> See <<https://www.globalratings.com/>>.

period of 12 months in Australia.<sup>13</sup> To-date, this pilot has been very successful, enabling over 460,000 mobile and online computer games to be assigned an Australian classification, a number that *more than doubles* the total number of films, games and publications that have ever been classified in Australia in the past.<sup>14</sup> This example of IARC clearly shows the importance of ensuring that industry has a significant and ongoing role in Australia’s classification regime.

## 5. Conclusion

IGEA commends the Department’s view that it will consult further with stakeholders to determine the potential of expanding ACMA’s remit on classification matters. However, IGEA believes that ACMA’s functions should be extended to become the single Regulator primarily responsible for administering and regulating a new, single ‘fit-for-purpose’ NCS, which is flexible enough to deal with the vastly expanding and changing landscape of media content. IGEA trusts that the Department’s intention to undertake further work in this area will support the highly commended recommendations of the ALRC.

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<sup>13</sup> Attorney-General’s Department, *International Age Rating Coalition (IARC)*  
<<http://www.classification.gov.au/Public/Resources/Pages/Fact-sheets.aspx>>.

<sup>14</sup> Classification Board, *Search the Classification Database* <<http://www.classification.gov.au/pages/search.aspx>>.