

CHAPTER 1

Introduction and background

Referral and conduct of the inquiry

1.1 On 27 March 2014, the Senate referred the Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014 (the Bill) to the Senate Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 19 June 2014.¹

1.2 Details of the inquiry, including links to the Bill and associated documents, were published on the committee's website.²

1.3 The committee wrote to more than 70 organisations and individuals inviting submissions by 1 May 2014. The committee received 17 submissions, which are listed at Appendix 1.

1.4 The committee tabled an interim report on 27 May 2014, extending the final reporting date of this inquiry to 27 August 2014.³

1.5 A public hearing was held in Sydney on 28 July 2014. A list of witnesses who appeared at the hearing is at Appendix 2.

1.6 The committee's interim report, all submissions received and the *Hansard* transcript from the hearing can all be accessed on the committee's website.

Background

1.7 In Australia, every film and computer game, as well as some publications, need to be given classification ratings through the National Classification Scheme (NCS) before they can legally be made available to the public (see Figure 1).

1.8 The NCS is designed to provide consumers with information about publications, films and computer games, so that they can make informed decisions about appropriate entertainment material for themselves and their families. The NCS is underpinned by the principle that:

...adults should be able to read, hear, see and play what they want while recognising that minors should be protected from material likely to harm them and that everyone should be protected from offensive unsolicited material.⁴


1 *Journals of the Senate*, No. 26—27 March 2014, p. 741.

2 The committee's website can be found at www.aph.gov.au/senate_legalcon.






3 Senate Legal and Constitutional Affairs Legislation Committee, *Interim Report: Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014*, 27 May 2014, p. 1.

4 Explanatory Memorandum (EM), p. 2.

Figure 1: Australian classification ratings for computer games and films

 Australian Government
Attorney-General's Department

Use Classifications to Choose Computer Games and Films

	General	Very mild impact
	Parental guidance recommended	Mild impact
	Recommended for mature audiences	Moderate impact Not recommended for people under 15
	Not suitable for people under 15. Under 15s must be accompanied by a parent or adult guardian	Strong impact People under 15 must be accompanied by a parent or adult guardian to hire or buy these films or games or to see these films in a cinema. These games cannot be demonstrated in a public place
	Restricted to 18 and over	High impact People under 18 are not permitted to buy or hire these films or games or to see these films in a cinema. These games cannot be demonstrated in a public place
Check the Classification		Films or computer games can be advertised prior to being classified. Check the classification at the cinema or before hiring or buying films or computer games

AGE RESTRICTIONS APPLY

Source: Australian Classification website at www.classification.gov.au/Industry/Pages/Approvednotices.aspx

1.9 The NCS is a cooperative agreement between the Commonwealth and state and territory governments that was established in 1996.⁵ It is administered by the Commonwealth Attorney-General's Department (the department) within the portfolio responsibility of the Minister for Home Affairs and the Minister for Justice.⁶ It consists of three central elements:

- the underpinning legal framework *The Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act), which makes provisions for the National Classification Code (the Code)⁷ and establishes the Classification Board and the Classification Review Board;
- the Classification Board, an independent statutory body responsible for making classification decisions based on the Code; and
- the Classification Review Board, also an independent statutory body, that is able to review some classification decisions made by the Classification Board and provide a fresh classification decision where appropriate.⁸

1.10 Over recent years the NCS has struggled to keep pace with the technological shifts in the way Australians are choosing to consume media products, as well as the number of products available on new platforms, such as online TV and video games on portable devices.⁹

1.11 The Minister for Justice, the Hon Michael Keenan MP (minister), outlined the situation in the second reading speech introducing the Bill:

Currently, the Classification Board does not have the capacity to classify the vast amount of content that is available on mobile devices and online. As an example, last year the Classification Board made over 6,000 classification decisions across all forms of content. However, the digital market offers hundreds of thousands of computer games to consumers—which presents significant practical, logistical and compliance challenges for the current National Classification Scheme.¹⁰

1.12 In 2011 the Australian Law Reform Commission (ALRC) was commissioned to undertake a formal review of the NCS. The ALRC's final report made

5 'National Classification Scheme', available at www.classification.gov.au/About/Pages/National-Classification-Scheme.aspx (accessed 29 July 2014).

6 The Minister for Justice, the Hon Michael Keenan MP, available at www.ministerjustice.gov.au/ (accessed 14 August 2014).

7 'Classification Code', available at <http://www.comlaw.gov.au/Details/F2013C00006> (accessed 9 August 2014).

8 'National Classification Scheme', available at www.classification.gov.au/About/Pages/National-Classification-Scheme.aspx (accessed 7 August 2014).

9 The Hon Michael Keenan MP, Minister for Justice, *House of Representatives Hansard*, 19 March 2014, p. 2383.

10 The Hon Michael Keenan MP, Minister for Justice, *House of Representatives Hansard*, 19 March 2014, p. 2383.

57 recommendations, which, if implemented, would establish a new NCS designed to better respond to the current digital, convergent media environment.¹¹

1.13 The minister stated in his second reading speech that the development of this Bill has been informed by the ALRC's recommendations and represents only the 'first tranche' of government reforms to the NCS.¹²

Overview of the Bill

1.14 The Bill seeks to amend the Classification Act, the legal basis for the NCS. It also makes some consequential amendments to the *Broadcasting Services Act 1992* (Broadcasting Act). If enacted, the provisions of the Bill would:

- allow certain content to be classified using classification tools (such as online questionnaires that deliver automated decisions) (Schedule 1 of the Bill);
- broaden the scope of existing exempt film categories and streamline exemption arrangements for festivals and cultural institutions (Schedule 3 of the Bill);
- create an explicit requirement in the Classification Act to display classification markings on all classified content, and a new requirement to include consumer advice for G rated content (Schedule 5 of the Bill);
- expand the exceptions to the modifications rule so that films and computer games that are subject to certain types of modifications do not require classification again (Schedule 4 of the Bill); and
- enable the department to notify law enforcement authorities of potential Refused Classification content without having the content classified first, to help expedite the removal of extremely offensive or illegal content from distribution (Schedule 2 of the Bill).¹³

Key provisions of the Bill

1.15 This section discusses the key provisions of the Bill by schedule.

Schedule 1—Classification tools

1.16 Schedule 1 of the Bill seeks to amend the Classification Act to enable the minister to approve the use of classification tools being used in the NCS to rate certain content. The Explanatory Memorandum (EM) to the Bill states:

Classification tools, such as online questionnaires, might be developed by government, industry or classification bodies overseas. These tools will be capable of classifying content cheaply and quickly and will enable

11 ALRC, *Classification—Content Regulation and Convergent Media*, available at www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118 (accessed 6 August 2014).

12 The Hon Michael Keenan MP, Minister for Justice, *House of Representatives Hansard*, 19 March 2014, p. 2383.

13 EM, p. 3.

producers of content that is currently sold and distributed unclassified to more easily comply with classification legislation.¹⁴

1.17 The EM makes it clear these tools would supplement rather than replace the work of the Classification Board (Board). The Board would continue to play an important role in the classification of content, particularly material not able to be rated using tools or instances where the ratings given by a tool are overturned by the board – either on its own initiative or through a requested review.¹⁵

Types of classification tools that could be approved

1.18 The Bill makes a general provision for classification tools to be approved by the Minister, without making stipulations about their precise nature. However, existing classification tools are most commonly in the form of online questionnaires developed by industry or governments. Two examples will be discussed here:

- the International Age Rating Coalition (IARC) tool for classifying games and apps; and
- the Kijkwijzer (Watch Wiser) system, developed by the Netherlands government to rate to films and television programs.

1.19 The Attorney-General's Department is considering trialling the IARC classification tool for games and apps not currently submitted to the Classification Board.¹⁶

1.20 IARC was developed by the global interactive entertainment industry. This tool substantially streamlines the classification process for industry, as it allows developers to obtain ratings for many jurisdictions simultaneously by answering a single, simple set of questions online about their product. IARC is able to generate appropriate ratings for the product, taking into account the classification regimes of each country the product will be sold in (see Figure 2).¹⁷

1.21 The IARC system currently provides ratings for around 1.4 billion people in 36 countries.¹⁸ IARC also produces generic ratings that may be used by industry for products being distributed in territories lacking an official classification system.

1.22 Another model highlighted to the committee by some submitters as a potential basis for a new Australian system is the Watch Wiser system, used in the Netherlands to classify films and television programs.

14 EM, p. 13.

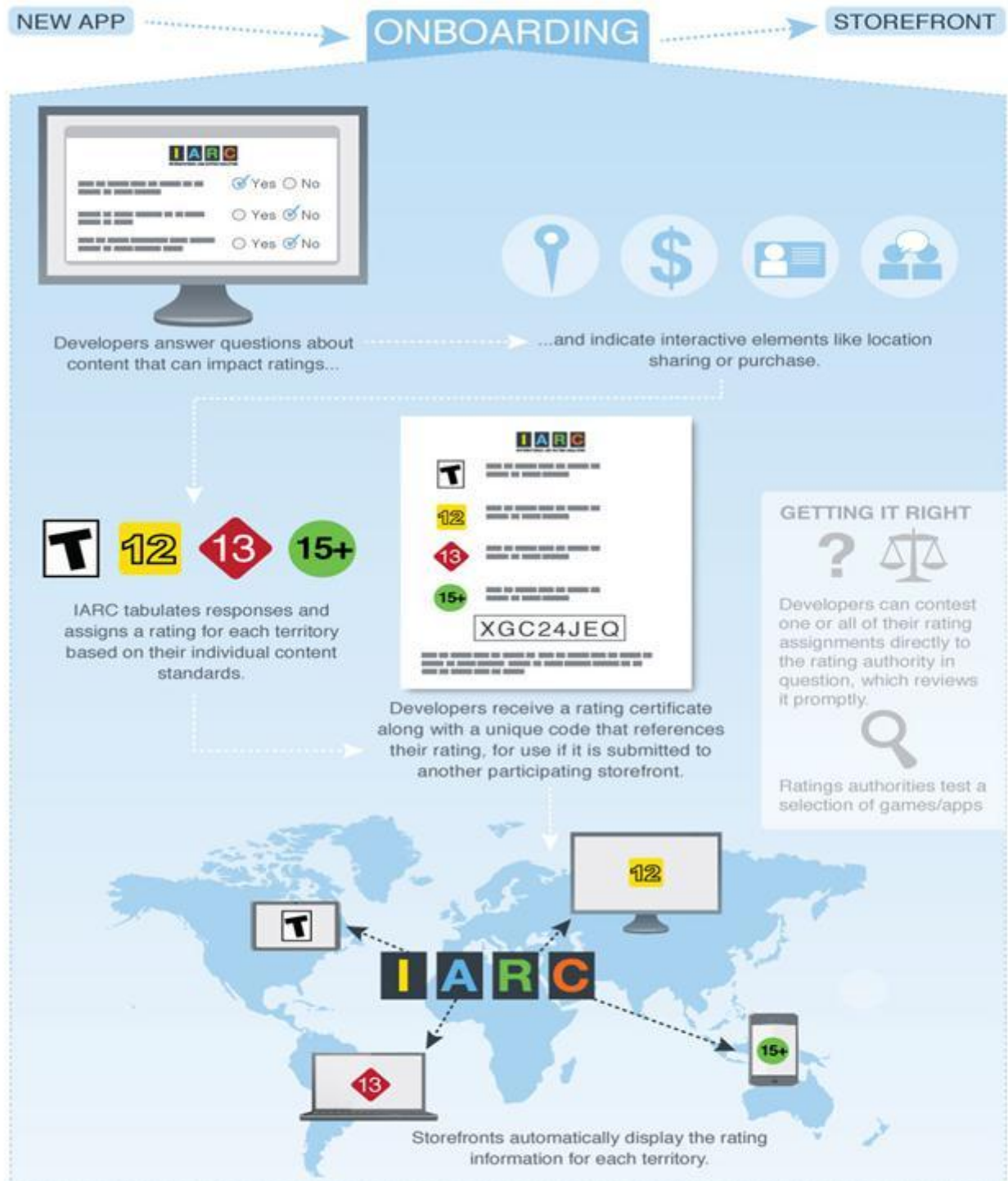
15 EM, p. 13.

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

17 'About IARC', available at www.globalratings.com/about.aspx (accessed 8 August 2014).

18 These countries include the USA, Canada, Brazil and Germany, as well as the 31 member countries of the Pan European Game Information (PEGI).

Figure 2: How IARC works



Source: IARC website available at www.globalratings.com/about.aspx

1.23 Like IARC, Watch Wiser is based on an online questionnaire filled out by producers. It has also been used to inform the development of the European system for rating video games and apps, the Pan European Game Information (PEGI).¹⁹

1.24 Watch Wiser is regarded as being a very successful part of the Dutch classification system, as both government and the general public have been satisfied by the reliability of the ratings it has been responsible for. Some notable features of its design include:

- its development by a scientific committee, which also maintains oversight of its functions and the ratings it gives;
- transparent processes, including public access to its underlying code;
- a good training system for assessors; and
- frequent review of the classification system for reliability and public satisfaction, including consultation with parents.²⁰

Schedule 2—Referral of material to law enforcement agencies

1.25 Schedule 2 of the Bill amends the Classification Act to enable officers of the Attorney-General's Department to notify law enforcement authorities of certain content without first having the content classified by the Classification Board.²¹ The EM states this provision is in the public interest, as some serious content, such as child abuse material, should be removed from distribution as soon as possible.²²

Schedule 3—Exemptions

1.26 Schedule 3 of the Bill seeks to: broaden some of the existing exempt film categories; establish additional exempt film categories for certain films covering natural history and the social sciences; and create exemptions allowing some unclassified content to be screened or demonstrated at festivals or special events by festival operators or cultural institutions.²³

1.27 These provisions are designed to streamline and simplify the current legally complex arrangements for content exempt from classification under the Classification Act.²⁴

19 Netherlands Institute for the Classification of Audiovisual Media (NICAM), *Kijkwijzer: An overview and account of the various principles underlying Kijkwijzer*, available at www.kijkwijzer.nl/upload/zijbalk2/50_NICAMkijkwijzerGB_02_Overview.pdf (accessed 8 August 2014.)

20 See Australian Council on Children and the Media (ACCM), *Submission 13*, p. 3.

21 EM, p. 17.

22 EM, p. 17.

23 EM, p. 19.

24 EM, p. 19.

Schedule 4—Modifications

1.28 Schedule 4 of the Bill would amend the Act to: improve the clarity of certain provisions; address legislative anomalies; and specify that certain modified versions of content will not need to be separately classified by the Board.²⁵

1.29 In particular, this schedule will allow for films and games being modified in minor ways to keep the rating previously given to them by the Classification Board, as long as the modification is unlikely to result in a new classification. Some examples of this include:

- format changes to films or video games, such as converting 2D versions to 3D, or vice-versa; and
- minor modifications or upgrades to computer games, such as the addition of costumes, provided these modifications are not likely to result in a different classification to the unmodified game.²⁶

Schedule 5—Determined markings and consumer advice

1.30 Schedule 5 provides for the minister to determine high level principles relating to classification markings as well as the display of those markings and consumer advice. It further stipulates these markings and consumer advice must be displayed on relevant products.²⁷

1.31 Schedule 5 also makes it mandatory for the Board to provide consumer advice for films and computer games at the G classification. The EM states this is being done because 'parents and guardians value additional classification information in relation to what their children see and play'.²⁸

Schedule 6—Other amendments

1.32 Schedule 6 clarifies certain provisions of the Classification Act to address legislative anomalies and to enhance its administrative efficiency. This schedule also makes consequential amendments to the Broadcasting Act.²⁹

Schedule 7—Simplified outlines

1.33 Schedule 7 makes provision to include simplified outlines for each part of the Classification Act. These outlines are intended only to assist readers to understand the broad provisions of Classification Act only, and do not replace the more comprehensive substantive provisions.³⁰

25 EM, p. 28.

26 EM, pp 28–32.

27 EM, pp 33–34.

28 EM, p. 34.

29 EM, pp 35–46.

30 EM, p. 47.

Financial and regulatory impacts and human rights issues

1.34 The implementation of the reforms introduced by the Bill would be met from existing resources by government. These reforms are expected to generate savings for industry, as they reduce the current regulatory and administrative burdens imposed by the current classification process.³¹

1.35 The EM states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.³²

Acknowledgment

1.36 The committee would like to thank the organisations and individuals that made submissions and gave evidence at the public hearing.

31 EM, p. 2.

32 EM, p. 3.

