Submission to

Australian Law Reform Commission: National Classification Scheme Review

Subject

Response to Discussion Paper 77

Date

November 17, 2011

1. INTRODUCTION

This paper has been prepared in response to the ALRC's Discussion Paper 77 (**Discussion Paper**) on Australia's National Classification Scheme. The Interactive Games and Entertainment Association (**iGEA**) welcomes and supports many of the proposals set out in the Discussion Paper and commends the ALRC's approach to framing a new National Classification Scheme.

This paper initially sets out iGEA's suggested changes to the key proposals which would have a significant impact on Australia's computer game industry. Following this, the paper explores each of the ALRC proposals providing more detailed comments. The iGEA has not responded to any proposals or questions which were not relevant to the iGEA or where the iGEA did not have a particular position.

The iGEA looks forward to further discussion to assist the ALRC with creating Australia's new National Classification Scheme.

2. ABOUT US

The iGEA is an industry association representing Australian and New Zealand companies in the computer and video game industry. iGEA's members publish, market and/or distribute interactive games and entertainment content and related hardware. The following list represents iGEA's current members:

- Activision Blizzard
- All Interactive Distribution
- All Interactive Entertainment
- Disney Interactive Studios
- Electronic Arts
- Findlay Marketing
- Fiveight
- Gamewizz Digital Entertainment
- Microsoft
- Mindscape
- Namco-Bandai Partners
- Nintendo
- QVS International
- SEGA
- Sony Computer Entertainment
- Take 2 Interactive
- THQ Asia Pacific
- Total Interactive
- Ubisoft
- Warner Bros. Interactive Entertainment

3. ALRC PROPOSALS AND IGEA'S SUGGESTED PROPOSAL

The iGEA supports a majority of the ALRC's proposals set out in the Discussion Paper, however there are several proposals which in the iGEA's view require change, including:

(a) Proposal 7-1(b): that the Classification Board must classify computer games produced on a commercial basis and likely to be classified MA 15+ or higher (**Relevant Games**);

(b) Proposal 7-3: that content providers may use an authorised classification instrument to classify media content, other than media content that must be classified; and

(c) Proposal 9-1: that one set of classification categories shall apply to all classified media content as follows: C, G, PG 8+, T 13+, MA 15+, R 18+, X 18+ and RC.

While the remainder of this paper explores the above issues and the Discussion Paper in detail, iGEA's fundamental position is that Proposal 7-1(b) be removed and that Proposal 7-3 be amended so that authorised classification instruments can be used for all computer games including Relevant Games. This would effectively mean that:

(a) Relevant Games would need to be classified before they were sold, hired, screened or distributed in Australia (in accordance with Proposal 6-2) which would ensure that children were protected from material likely to harm or disturb them;

(b) Computer games, including Relevant Games, may be classified by the Classification Board, an authorised industry classifier (in accordance with Proposal 7-2) or through the use of an authorised classification instrument (approved by the Regulator in accordance with Proposal 7-5);

(c) The Classification Board would continue to have the ability to audit classification decisions, and in particular decisions relating to Relevant Games (in accordance with Proposal 7-6) which would ensure that the Classification Board continued to provide the classification benchmarks necessary to ensure consistency of classification decisions.

The iGEA submits that such an approach would amount to a balanced approach to all of the guiding principles set out for the Discussion Paper, particularly including that:

(d) Australians should be able to read, hear, see and participate in media of their choice;

(e) children should be protected from material likely to harm or disturb them;

(f) consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;

(g) the classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services;

(h) the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets; and

(i) classification regulation should be kept to the minimum needed to achieve a clear public purpose, and should be clear in its scope and application.

(emphasis added)

The iGEA also suggests that the ALRC considers proposing that the Regulator is able to recognise equivalent classification schemes in territories outside of Australia. Upon recognising an overseas classification scheme the Regulator should be able to deem that, in the absence of any classification decision by the Classification Board, the Australian media content would inherit an equivalent Australian classification category. For example, for computer games classified 'PEGI 3' using the Pan European Game Information (**PEGI**) classification scheme, the Regulator may deem that such computer games would, unless otherwise determined by the Classification Board, be 'G' in Australia.

The above provides an overview of iGEA's preferred amendments to the ALRC proposals on the classification of computer games in Australia. The remainder of this submission explores each of the ALRC proposals and the questions raised by the ALRC throughout the Discussion Paper.

4. ALRC PROPOSALS

4.1. Proposal 5–1 A new National Classification Scheme should be enacted regulating the classification of media content.

The iGEA supports this proposal.

4.2. Proposal 5–2 The National Classification Scheme should be based on a new Classification of Media Content Act. The Act should provide, among other things, for:

(a) what types of media content may, or must be classified;
(b) who should classify different types of media content;
(c) a single set of statutory classification categories and criteria applicable to all media content;
(d) access restrictions on adult content;
(e) the development and operation of industry classification codes consistent with the statutory classification criteria; and

(f) the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws.

The iGEA agrees that the Classification of Media Content Act should provide for the above key issues. In addition to those listed in proposal 5-2, iGEA also suggests that the Classification of Media Content Act clearly deals with:

(g) who shall be liable for a breach of the Classification of Media Content Act; and

(h) the scope of the Classification of Media Content Act's application (specifically dealing with circumstances where media content is made available over the internet from an overseas source).

4.3. Proposal 5–3 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 new National Classification Scheme.

The iGEA agrees that the Classification of Media Content Act should provide for the establishment of a single agency responsible for overseeing the National Classification Scheme and providing the enforcement backbone necessary to ensure the overall effectiveness of the new National Classification Scheme.

4.4. Proposal 5–4 The Classification of Media Content Act should contain a definition of 'media content' and 'media content provider'. The definitions should be platform-neutral and apply to online and offline content and to television content.

As stated in our response to Proposal 5-2 and throughout iGEA's submission to the ALRC's issues paper, the Classification of Media Content Act should contain definitions which clearly address the uncertainties of the prevailing National Classification Scheme. The new National Classification Scheme needs to clearly indicate who shall be liable for a breach of the Classification of Media Content Act, including in the following key circumstances:

(a) When a retailer imports a computer game directly from an overseas source rather than through an Australian distributor; or

(b) When a developer sells a computer game using an online service, such as the Apple AppStore.

For example, in certain circumstances when a content provider distributes its content through the Apple AppStore, Apple's terms would apply so that Apple would act as agent for the content provider and the content provider would be considered the ultimate 'seller' of the content. The Classification of Media Content Act would need to address this type of arrangement and identify if the content provider, Apple, or both would be considered a 'media content provider'.

4.5. Proposal 6–1 The Classification of Media Content Act should provide that feature-length films and television programs produced on a commercial basis must be classified before they are sold, hired, screened or distributed in Australia. The Act should provide examples of this content. Some content will be exempt: see Proposal 6–3.

The iGEA supports this proposal.

4.6. Proposal 6–2 The Classification of Media Content Act should provide that computer games produced on a commercial basis, that are likely to be classified MA 15+ or higher, must be classified before they are sold, hired, screened or distributed in Australia. Some content will be exempt: see Proposal 6–3.

The iGEA originally proposed in its response to the ALRC issues paper that all media content should be classified except small online content products (it being intended that mobile phone applications and smaller games that are delivered over the internet should be outside the scope of the National Classification Scheme and therefore not require classification). The Discussion Paper addresses this point and states that, rather than exempting all of these games from the classification obligation, only Relevant Games should be classified.

The iGEA appreciates that there is a need to ensure that games which have a higher classification are classified, however the iGEA does not accept that such classification should only be applied by the Classification Board. This issue is further explored in our response to Proposal 7-1.

The iGEA members understand the value of ensuring that consumers are provided with classification information regardless of whether it is a legal requirement. For example, in the United States of America (**USA**) classification of computer games is not a legal requirement, however the USA computer game industry voluntarily supports and adheres to a voluntary industry approach to computer game classification (through the Entertainment Software Ratings Board (**ESRB**)). The iGEA therefore welcomes the proposal for voluntary classification for computer games other than Relevant Games.

4.7. Proposal 6–3 The Classification of Media Content Act should provide a definition of 'exempt content' that captures all media content that is exempt from the laws relating to what must be classified (Proposals 6–1 and 6–2). The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. This content should not be exempt from the proposed law that provides that all content likely to be R 18+ must be restricted to adults: see Proposal 8–1.

ALRC has proposed that the definition of 'exempt content' should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. The iGEA would like to confirm that the definition would also provide that computer games shown at game festivals are also exempt.

The ALRC's discussion on exempt films, television programs and computer games provides a list of exempt content including 'films for training, instruction or reference'. The iGEA would like to confirm that the categories of exempt computer games will also include software for training, instruction or reference.

4.8. Proposal 6–4 If the Australian Government determines that X 18+ content should be legal in all states and territories, the Classification of Media Content Act should provide that media content that is likely to be classified X 18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screened or distributed in Australia.

The iGEA supports this proposal.

4.9. Proposal 6–5 The Classification of Media Content Act should provide that all media content that may be RC must be classified. This content must be classified by the Classification Board: see Proposal 7–1.

The Discussion Paper states that content providers should assess content before they publish it, however, in circumstances where there is a large quantity of content, it may be impractical to pre-classify content and therefore such content providers should have a mechanism to allow users to flag content that may be R-18+, X-18+ or RC. The current proposal states that all media content that may be RC must be classified by the Classification Board. The ALRC should ensure that the Classification of Media Content Act clearly addresses the issue of intermediaries providing large quantities of content and the steps that must be taken by intermediaries to avoid liability under the Classification of Media Content Act for inadvertently providing R-18+, X-18+ or RC content. While the actual steps might be set out in industry codes, the Classification of Media Content Act should not be silent on the issue.

4.10. Proposal 6–6 The Classification of Media Content Act should provide that the Regulator or other law enforcement body must apply for the classification of media content that is likely to be RC before:

(a) charging a person with an offence under the new Act that relates to dealing with content that is likely to be RC;

(b) issuing a person a notice under the new Act requiring the person to stop distributing the content, for example by taking it down from the internet; or

(c) adding the content to the RC Content List (a list of content that the Australian Government proposes must be filtered by internet service providers).

The iGEA supports this proposal

4.11. Proposal 6–7 The Classification of Media Content Act should provide that, if classified content is modified, the modified version shall be taken to be unclassified. The Act should define 'modify' to mean 'modifying content such that the modified content is likely to have a different classification from the original content'.

This proposal is consistent with the recommendations in iGEA's response to the ALRC issues paper. This proposal will effectively allow certain modifications of computer games, including expansion packs and downloadable content, to legitimately share the classification of the original game and be marked accordingly. The iGEA welcomes this proposal.

4.12. Proposal 6–8 Industry bodies should develop codes of practice that encourage providers of certain content that is not required to be classified, to classify and mark content using the categories, criteria, and markings of the National Classification Scheme. This content may include computer games likely to be classified below MA 15+ and music with explicit lyrics.

As set out above in our response to Proposal 6-2, the computer game industry is familiar with and supports voluntary classification schemes and understands the value that consumers place on classification information. The iGEA welcomes the opportunity to develop codes of practice to encourage computer game providers to classify and mark content in accordance with approved and agreed industry standards.

4.13. Proposal 7–1 The Classification of Media Content Act should provide that the following content must be classified by the Classification Board:

(a) feature-length films produced on a commercial basis and for cinema release;

(b) computer games produced on a commercial basis and likely to be classified MA 15+ or higher;

(c) content that may be RC;

(d) content that needs to be classified for the purpose of enforcing classification laws; and

(e) content submitted for classification by the Minister, the Regulator or another government agency.

The iGEA does not agree with the requirement that Relevant Games must be classified by the Classification Board. Relevant Games should be able to be classified by authorised industry classifiers and through the use of authorised classification instruments for the following reasons:

(f) While the ALRC has stated that this decision aligns with the guiding principle that children should be protected from material likely to harm or disturb them, there is

a risk that the decision will be contrary to a number of the other guiding principles, including:

(i) The classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services – Currently the majority of games that are exclusively distributed over the internet, including computer games that are playable on mobile devices, are relatively simple and may not necessarily fall within the Relevant Games category. However, as technology continues to evolve, smaller game developers will inevitably be able to make sophisticated high quality games that may fall within the Relevant Game category. If the Classification Board is required to classify every Relevant Game that is made available on the international market, it is unlikely that the new system would be able to cope with any high volume of such Relevant Games. Proposal 7-1(b) therefore risks inheriting the same problems that the current National Classification Scheme created when dealing with the massive amount of computer games distributed over the internet.

(ii) The classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets – The international computer game industry appreciates the difficulties of providing classification information for the massive amount of computer games that are now available on the internet for the international market. It is essential that Australia's new National Classification Scheme does not prohibit Australia from participating in any international approach to classifying computer games that are delivered to the international market, including any Relevant Games. Proposal 7-1(b) would create a significant barrier to Australia's participation in any international solution to classifying the massive amount of computer games that are delivered exclusively over the internet and on mobile devices.

(iii) Classification regulation should be kept to the minimum needed to achieve a clear public purpose – The ALRC has indicated that authorised industry classifiers are appropriate when classifying films that have not been theatrically released (including possibly X-18+ films) and other media. The ALRC has also referred to certain classification instruments that are used effectively by the Pan European Games Information Organisation and the ESRB. Use of authorised industry classifiers, or the use of an authorised classification instrument, complimented by an efficient and reliable audit and complaint handling system, would comfortably satisfy all of the guiding principles as set out in the Discussion Paper. Proposal 7-1(b) therefore goes beyond what is needed to achieve the public purpose of Australia's new National Classification Scheme.

(iv) Australians should be able to read, hear, see and participate in media of their choice – As set out above, there is a massive amount of digitally distributed computer games and online games, including Relevant Games, that are available in the international market. International game developers, including independent developers, have accessed the international market through the currently low cost and accessible method of digital distribution. For example, a small independent developer in Melbourne can create an iOS application for the iPhone or iPad and then, very easily, offer the application for sale around the world using the Apple AppStore. Conversely, an independent developer from Canada has the same opportunity to distribute their application around the world, including in Australia. The iGEA submits that, if any territory required the developer to submit their application for formal classification at any cost, it is likely that the developer would simply choose not to distribute the application in that particular territory. The iGEA submits that requiring the Classification Board to classify Relevant Games would ultimately lead to overseas developers, in particular independent developers, choosing not to distribute their Relevant Games in Australia. In these circumstances, Proposal 7-1(b) would conflict the guiding principal that Australians should be able to read, hear, see and participate in media of their choice.

(g) The ALRC has proposed that MA 15+ content should no longer be a restricted category of classification. The iGEA does not agree with requiring Classification Board intervention for a classification category that is not a restricted category.

(h) The ALRC has proposed a classification requirement for films generally, while only a portion of these films (films for cinema release) require classification by the Classification Board. In contrast, the ALRC have effectively proposed that all computer games, irrespective of release platform, which require classification in Australia should be classified by the Classification Board. This is not a uniform approach to media content and places an unfair burden on the computer game industry.

The iGEA proposes that the ALRC Proposal 7-1(b) be removed. Otherwise, the ALRC agrees with Proposals 7-1(a), (c), (d) and (e).

4.14. **Proposal 7–2 The Classification of Media Content Act should provide that for all media content that must be classified—other than the content that must be classified by the Classification Board—content may be classified by the Classification Board or an authorised industry classifier.**

The iGEA welcomes this proposal which will allow computer game publishers and distributors to choose whether to have content classified by the Classification Board or an

authorised industry classifier. There may be circumstances where a computer game publisher or distributor would prefer the Classification Board to classify a computer game rather than an authorised industry classifier. For example, a computer game publisher may elect to use the Classification Board to classify a computer game to avoid any significant recall or repackaging costs that may follow a Classification Board audit of an authorised industry classifier's decision. Proposal 7-2 allows providers to use their commercial judgement to determine who should classify their content.

4.15. Proposal 7–3 The Classification of Media Content Act should provide that content providers may use an authorised classification instrument to classify media content, other than media content that must be classified.

ALRC Proposal 6-2 states that Relevant Games must be classified before they are sold, hired, screened or distributed in Australia. Since these games must be classified under the Classification of Media Content Act, authorised classification instruments would only be able to be used for games classified C, G, PG 8+ and T 13+.

The international computer games industry is currently exploring the use of classification instruments to automatically determine computer game classifications and classification markings in relation to each territory around the world. Prohibiting the use of authorised classification instruments for higher impact games will significantly undermine Australia's ability to participate in the global approach to address the massive availability of computer games on the internet. The iGEA therefore requests more flexibility in how authorised classification instruments can be used. This request is consistent with the guiding principle for the review that the classification regulatory framework should not disadvantage Australian media content and service providers in international markets.

The use of authorised classification instruments should at least be allowed for all unrestricted classification categories. ALRC's Proposal 8-3 states that MA 15+ will no longer be a restricted category therefore the iGEA submits that authorised classification instruments should at least be allowed for MA 15+ computer games.

4.16. Proposal 7–4 The Classification of Media Content Act should provide that an authorised industry classifier is a person who has been authorised to classify media content by the Regulator, having completed training approved by the Regulator.

iGEA supports this proposal.

4.17. Proposal 7–5 The Classification of Media Content Act should provide that the Regulator will develop or authorise classification instruments that may be used to make certain classification decisions.

iGEA supports this proposal, subject to the comments in response to Proposal 7-3.

4.18. Proposal 7–6 The Classification of Media Content Act should provide that the functions and powers of the Classification Board include:

(a) reviewing industry and Board classification decisions; and

(b) auditing industry classification decisions.

This means the Classification Review Board would cease to operate.

Provided that the Classification of Media Content Act addresses any perceived bias in accordance with the ALRC's comments in paragraph 7.93 of the Discussion Paper, the iGEA supports this proposal.

4.19. Proposal 7–7 The Classification of Media Content Act should provide that the Regulator has power to:

(a) revoke authorisations of industry classifiers;

(b) issue barring notices to industry classifiers; and

(c) call-in unclassified media content for classification or classified media content for review.

iGEA supports this proposal.

4.20. Proposal 8–1 The Classification of Media Content Act should provide that access to all media content that is likely to be R 18+ must be restricted to adults.

The ALRC Discussion Paper states that it does not propose that content providers should be expected in all cases to assess content to determine whether it is likely to be R18+. The Discussion Paper goes on to state that the ALRC proposes that providers of content that is likely to be R18+ should not need to be trained to determine the likely classification of content and that, if access to the content is restricted, the objectives of the law – particularly the protection of minors from adult content – are met.

iGEA agrees with Proposal 8-1, however, the legislation needs to ensure that those who do not classify content, but simply restrict access to content to adults, are not in breach of the Classification of Media Content Act.

4.21. Proposal 8–2 The Classification of Media Content Act should provide that access to all media content that has been classified R 18+ or X 18+ must be restricted to adults.

iGEA supports this proposal.

4.22. Proposal 8–3 The Classification of Media Content Act should not provide for mandatory access restrictions on media content classified MA 15+ or likely to be classified MA 15+.

iGEA supports this proposal. As set out in iGEA's response to Proposals 7-1 and 7-3, since MA 15+ would no longer be a restricted classification category, MA 15+ should not be subject to any higher level classification requirement, such as:

(a) not allowing classification through the use of an authorised industry classifier; or

(b) not allowing the use of an authorised classification instrument.

4.23. Proposal 8–4 The Classification of Media Content Act should provide that methods of restricting access to adult media content—both online and offline content—may be set out in industry codes, approved and enforced by the Regulator. These codes might be developed for different types of content and industries, but might usefully cover:

(a) how to restrict online content to adults, for example by using restricted access technologies;

(b) the promotion and distribution of parental locks and user-based computer filters; and

(c) how and where to advertise, package and display hardcopy adult content.

iGEA supports this proposal.

4.24. Proposal 8–5 The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, before broadcasting the content, on packaging, on websites and programs from which the content may be streamed or downloaded, and on advertising for the content.

iGEA supports this proposal and the ALRC's comments that marking standards are better set out in industry codes.

4.25. Proposal 8–6 The Classification of Media Content Act should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

(a) the likely audience of the advertisement;

(b) the impact of the content in the advertisement; and

(c) the classification or likely classification of the advertised content.

iGEA supports this proposal.

4.26. **Paragraph 8.73 – Public display of media content**

The ALRC has stated in paragraph 8.73 of the Discussion Paper that 'the Act might provide for a rule in relation to the public display of media content, perhaps prohibiting the public display of media content likely to be classified MA 15+ or higher.'

The iGEA is concerned that this statement conflicts with the ALRC's proposal that MA 15+ should not be a restricted category of media content. While the ALRC has addressed certain legitimate practices of publicly displaying MA 15+ content (such as at festivals and in appropriate advertising), any attempt to generally prohibit the public display of MA 15+ media content should be approached cautiously to avoid any unintended and unnecessary consequences which would prevent other legitimate and appropriate practices of publicly displaying MA 15+ content.

4.27. Proposal 9–1 The Classification of Media Content Act should provide that one set of classification categories applies to all classified media content as follows: C, G, PG 8+, T 13+, MA 15+, R 18+, X 18+ and RC. Each item of media content classified under the proposed National Classification Scheme must be assigned one of these statutory classification categories.

While iGEA mostly agrees with the new categories proposed by the ALRC, the renaming of the M category to T 13+ may be problematic. ALRC is currently proposing relatively strict classification obligations on computer games which are likely to be MA 15+ or higher. iGEA perceives a risk that, if the current ALRC proposals become law, computer games which would have otherwise been classified in the M category would be classified MA 15+ and therefore be subject to stricter classification obligations (i.e. must be classified by Classification Board and not allowed to be classified by an authorised classification instrument).

The iGEA suggests that the classification guidelines and any industry codes clearly establish that computer games that would otherwise have been classified M are now likely to be classified T 13+.

In Proposal 8-3 the ALRC has proposed that MA 15+ no longer be a restricted category of media content. The iGEA suggests that MA 15+ be renamed to M15+ in order to highlight that MA 15+ is no longer a restricted category of media content.

4.28. Proposal 9–2 The Classification of Media Content Act should provide for a C classification that may be used for media content classified under the scheme. The criteria for the C classification should incorporate the current G criteria, but also provide that C content must be made specifically for children.

iGEA supports this proposal.

4.29. Proposal 9–3 The Classification of Media Content Act should provide that all content that must be classified, other than content classified C, G or RC, must also be accompanied by consumer advice.

iGEA supports this proposal.

4.30. Proposal 9–4 The Classification of Media Content Act should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.

iGEA supports this proposal. While the ALRC has recommended that the Classification Board should create guidelines for the language used in consumer advice, such guidelines should not be prescriptive and industry should be allowed to develop its own language for consumer advice to address any technological developments and innovations.

4.31. Proposal 9–5 A comprehensive review of community standards in Australia towards media content should be commissioned, combining both quantitative and qualitative methodologies, with a broad reach across the Australian community. This review should be undertaken at least every five years.

iGEA supports this proposal.

4.32. Proposal 11–1 The new Classification of Media Content Act should provide for the development of industry classification codes of practice by sections of industry involved in the production and distribution of media content.

iGEA supports this proposal.

4.33. Proposal 11–2 Industry classification codes of practice may include provisions relating to:

- **(a) guidance on the application of statutory classification obligations and criteria to media content covered by the code;**
- **(b) methods of classifying media content covered by the code, including through the engagement of accredited industry classifiers;**
- **(c) duties and responsibilities of organisations and individuals covered by the code with respect to maintaining records and reporting of classification decisions and quality assurance;**
- **(d) the use of classification markings;**
- **(e) methods of restricting access to certain content;**
- **(f) protecting children from material likely to harm or disturb them;**
- **(g) providing consumer information in a timely and clear manner;**
- **(h) providing a responsive and effective means of addressing community concerns, including complaints about content and compliance with the code; and**

(i) reporting to the Regulator, including on the handling of complaints.

iGEA supports this proposal.

4.34. Proposal 11–3 The Regulator should be empowered to approve an industry classification code of practice if satisfied that:

(a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;

(b) the body or association developing the code represents a particular section of the relevant media content industry; and

(c) there has been adequate public and industry consultation on the code.

iGEA generally supports this proposal however it is critical that there are provisions in the Classification of Media Content Act which address the issues that may arise throughout the creation of industry classification codes of practise, including:

(d) relevant timeframes for Regulator review, public consultation and Regulator approval;

(e) empowering the Regulator to provide guidance or relief in any transitionary period when an industry classification code of conduct is being considered; and

(f) outlining any appeal or review mechanism for situations where the Regulator does not approve an industry classification code of practice.

4.35. Proposal 11–4 Where an industry classification code of practice relates to media content that must be classified or to which access must be restricted, the Regulator should have power to enforce compliance with the code against any participant in the relevant part of the media content industry.

Proposals 11-1, 11-2 and 11-3 set out a number of criteria for the development of industry classification codes of practice, including that such codes can only be developed by a body or association representing a particular section of the relevant media content industry. Provided that such criteria are properly enforced, the iGEA supports this proposal.

4.36. Proposal 12–1 A single agency ('the Regulator') should be responsible for the regulation of media content under the new National Classification Scheme. The Regulator's functions should include:

(a) encouraging, monitoring and enforcing compliance with classification laws;

(b) handling complaints about the classification of media content;

(c) authorising industry classifiers, providing classification training or approving classification training courses provided by others;

(d) promoting the development of industry classification codes of practice and approving and maintaining a register of such codes; and

(e) (liaising with relevant Australian and overseas media content regulators and law enforcement agencies.

In addition, the Regulator's functions may include:

(f) providing administrative support to the Classification Board;

(g) assisting with the development of classification policy and legislation;

(h) conducting or commissioning research relevant to classification; and

(i) educating the public about the new National Classification Scheme and promoting media literacy.

iGEA supports this proposal.

4.37. Proposal 13–1 The new Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia.

iGEA supports this proposal.

4.38. Proposal 13–2 State referrals of power under s 51(xxxvii) of the Australian Constitution should be used to supplement fully the Parliament of Australia's other powers, by referring matters to the extent to which they are not otherwise included in Commonwealth legislative powers.

iGEA agrees with this proposal.

4.39. Proposal 14–1 The new Classification of Media Content Act should provide for enforcement of classification laws under Commonwealth law.

iGEA supports this proposal.

4.40. Proposal 14–2 If the Australian Government determines that the states and territories should retain powers in relation to the enforcement of classification laws, a new intergovernmental agreement should be entered into under which the states and territories agree to enact legislation to provide for the enforcement of classification laws with respect to publications, films and computer games.

iGEA agrees with this proposal, however this is subject to the state and territory laws being limited to the enforcement of the new National Classification Scheme rather than prescribing how and what should be classified. If the new National Classification Scheme requires amendment in the future (i.e. by introducing a new classification category, changing the guidelines for classification, etc) it should not be subject to the approval from each state and territory.

4.41. Proposal 14–3 The new Classification of Media Content Act should provide for offences relating to selling, screening, distributing or advertising unclassified material, and failing to comply with:

(a) restrictions on the sale, screening, distribution and advertising of classified material;
(b) statutory obligations to classify media content;
(c) statutory obligations to restrict access to media content;
(d) an industry-based classification code; and
(e) directions of the Regulator.

iGEA supports this proposal.

4.42. Proposal 14–4 Offences under the new Classification of Media Content Act should be subject to criminal, civil and administrative penalties similar to those currently in place in relation to online and mobile content under sch 7 of the Broadcasting Services Act 1992 (Cth).

iGEA supports this proposal.

4.43. Proposal 14–5 The Australian Government should consider whether the Classification of Media Content Act should provide for an infringement notice scheme in relation to more minor breaches of classification laws.

While the iGEA's support for this proposal is largely dependent on the terms of any infringement notice scheme, the iGEA generally supports the notion of an infringement notice scheme for more minor breaches of the Classification of Media Content Act. The infringement notice scheme should clearly identify what constitutes a 'minor breach' and provide the infringer with an opportunity to remedy the breach prior to issuing them with an infringement notice.

5. ALRC'S QUESTIONS

5.1. Question 7–1 Should the Classification of Media Content Act provide that all media content likely to be X 18+ may be classified by either the Classification Board or an authorised industry classifier? In Chapter 6, the ALRC proposes that all content likely to be X 18+ must be classified.

The iGEA submits that all media content likely to be X 18+ may be classified by either the Classification Board or an authorised industry classifier.

5.2. Question 7–2 Should classification training be provided only by the Regulator, or should it become a part of the Australian Qualifications Framework? If the latter, what may be the best roles for the Board, higher education institutions, and private providers, and who may be best placed to accredit and audit such courses?

The iGEA supports the general proposal that classification should become a part of the Australian Qualifications Framework or similar, however this should be approached cautiously. The iGEA anticipates that many organisations will require a number of

authorised industry assessors and therefore classification training should be low cost and should be able to be undertaken within a reasonably short amount of time. It is also critical that classification training involves the relevant industry sectors and bodies who have created any industry classification codes of practice.

5.3. Question 12–1 How should the complaints-handling function of the Regulator be framed in the new Classification of Media Content Act? For example, should complaints be able to be made directly to the Regulator where an industry complaints-handling scheme exists? What discretion should the Regulator have to decline to investigate complaints?

iGEA supports the view that those responsible for classifying content should be able to initially handle complaints about the classification decision, with the Regulator intervening when necessary. This approach is largely dependent on the ease of which consumers are able to identify the entity who is responsible for classifying the particular content. If there is likely to be any difficulty in identifying responsible entities, it would be ideal to have a classification 'clearing house' to direct concerned consumers to responsible entities.

The Regulator should have total discretion to decline to investigate complaints.