



## ***Modernising Australia's Classification Scheme - Stage 2 Reforms***

Submission to: The Australian Government Policy Reform Team

From: The Australian Home Entertainment Distributors Association (AHEDA)

Subject: Response to Consultation Paper on the National Classification Scheme Reforms

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### **Introduction**

The Australian Home Entertainment Distributors Association (AHEDA) appreciates the opportunity to contribute to the consultation process for the second stage of reforms to the National Classification Scheme (the Scheme). As a leading industry association representing home entertainment distributors across Australia, AHEDA is committed to ensuring that the Scheme remains relevant and effective in the rapidly evolving media landscape.

Established in 1983 under the name Video Industry Distributors Association (VIDA), the organisation has evolved alongside the industry's advancements. With the inclusion of games distribution, it transitioned into the Australian Visual Software Distributors Association (AVSDA). As the landscape continued to transform with technological innovations like Blu-ray discs, 3D, and digital platforms, AHEDA emerged on 1 February 2011 to reflect these changes.

AHEDA now serves as the collective voice for the thriving Australian film and TV home entertainment industry, encompassing both digital premium content and physical media (DVD and Blu-ray). In 2023 there were 54,000 digital titles bought or rented each day in Australia and 15,600 discs purchased each day. In 2021 AHEDA members had 1813 individual films and TV episodes classified through the Australian Classification Board's regulatory framework in accordance with the Guidelines and Code. The total home entertainment transactional market in 2021 was valued at \$404M. In 2022 the volume of films and TV episodes classified for home entertainment release by AHEDA Members was 2,191 however in a pandemic impacted marketplace the total market was \$378M.

AHEDA plays a pivotal role in advocating for its members' interests, addressing critical issues such as intellectual property protection, classification standards, media accessibility, technological developments, copyright enforcement, and media convergence. Through collaborative efforts with government bodies, media entities and industry stakeholders AHEDA strives to shape policies and initiatives that benefit the entire home entertainment sector.

Moreover, AHEDA actively engages its membership and the broader industry in targeted promotional campaigns and activities to foster awareness and appreciation for home entertainment film and TV content.

Counting among its members international film distribution companies including Universal Pictures, Sony Pictures Television, Paramount Home Media Distribution Australia, Walt Disney Company (Australia), Studiocanal Australia as well as esteemed Australian entities like Roadshow Entertainment, Madman Entertainment, Umbrella Entertainment, All Interactive Distribution and Defiant Screen Entertainment, AHEDA boasts a diverse membership base. Additionally, it collaborates with associate members including Foxtel, Fetch TV, Amazon Prime Video to further its objectives and initiatives. Our Members' film and TV digital media and DVD products are made available to Australian consumers through retail partners including AppleTV, Prime Video, Fetch, Foxtel, Google TV, YouTube, Microsoft, Cinebuzz, JB Hi Fi, Sanity.com, Coles, Woolworths, Leading Edge and independent re-sellers.

## **Response to Consultation Questions**

### **Q1. Are the guiding principles set out in the Code still relevant in today's media environment?**

AHEDA acknowledges the enduring principles of the Scheme outlined in the Code, which aim to balance freedom of expression with the protection of vulnerable audiences. These principles include allowing adults to read, hear, see, and play what they want, protecting children from material likely to harm or disturb them, and shielding everyone from unsolicited material that may offend.

However, the landscape of media consumption has evolved significantly since the establishment of the Scheme. The proliferation of digital platforms and user-generated content presents unique challenges for classification. AHEDA recognises the importance of adapting the Scheme to address these challenges while upholding its fundamental principles. The mechanisms to achieve these principles should encompass classifying material according to its content, supplying consumer advice, and restricting access to certain classifications based on age.

AHEDA's members firmly believe that the guiding principles are still relevant in the contemporary media environment. The essential purpose of classification remains to provide consumers with adequate advice and information when making a viewing choice, enabling them to make informed decisions about what films they or their children choose or are permitted to see.

### **Q2. Do you support the proposed criteria that define what material should be classified under the Scheme?**

AHEDA supports the proposed criteria for defining classifiable content, particularly the focus on professionally produced, commercially distributed, and Australia-targeted content. These criteria provide clarity and consistency in the regulation of content across different mediums.

We appreciate the distinction made between professionally produced content and user-generated content, which would be impractical to classify individually due to its volume.

The criteria appropriately capture online streaming providers and online games stores directed at Australian consumers, ensuring that significant content distributors adhere to classification standards.

However, AHEDA emphasises the need for flexibility to accommodate emerging trends and technologies in the media landscape. The Scheme should be dynamic enough to adapt to future developments in content creation and distribution, ensuring it remains relevant and effective.

### **Q3. Are there any other issues with the current purpose and scope of the Scheme that should be considered?**

One significant issue with the current Scheme is its focus on traditional media formats, which does not fully encompass the complexities of modern digital consumption. As media consumption continues to shift towards digital platforms, it is crucial to extend the scope of the Scheme to address these changes comprehensively.

Furthermore, the Scheme should consider the varying levels of risk associated with different types of content. For instance, low-risk cultural content should benefit from expanded classification exemptions to increase community access. Additionally, the relationship between the Classification Act and the Online Safety Act needs to be clearly defined to avoid regulatory overlap and ensure coherent governance of online content.

AHEDA supports the Film Industry Association's (FIA) proposal regarding the exhibition of trailers for unclassified films. Specifically:

- Trailers for unclassified films should only be shown with films that are one classification category lower than the likely classification of the advertised film, provided the content of the trailer does not exceed the classification of the feature film.
- Trailers should not be shown before films with a rating more than one category lower than the likely classification of the advertised film, regardless of the trailer's content. For example, a trailer for an MA film should not be screened before a PG film, and a trailer for an M film should not be screened before a G film.
- When advertising an unclassified film, trailers should include a tag encouraging viewers to check the classification closer to the film's release date.

These measures will ensure that audiences, particularly children, are not exposed to content that may be inappropriate for their age group, thereby enhancing the protective framework of the classification system.

### **Q4. Do you support changes to the definition of a 'submittable publication' to provide clarity on publications requiring classification under the Scheme?**

AHEDA supports changes to the definition of a 'submittable publication' to provide greater clarity on which publications require classification and to align the classification of publications more closely with the standards applied to films and games, promoting consistency across different types of media.

## **A Framework for Evidence-Based Classification Guidelines**

### **Q1. Do you support the establishment of an independent Classification Advisory Panel (CAP) or similar body?**

AHEDA supports the need for periodic review - and where considered necessary - the updating of the classification Guidelines to reflect community standards. The current model for consumer complaints regarding film or home entertainment classification is via the Australian Classification (Branch) where there were less than 100 complaints made in 2023 from a combined 83 million cinema admissions, digital film and TV transactions and DVD purchases. This reflects favourably on the application of the current guidelines in determining film classification being largely in step with community expectations. In a potentially consolidated regulatory environment AHEDA supports the concept of an independent Classification Advisory Panel (CAP) - though from the consultation paper it is unclear what the relationship would be between the CAP and the regulator. Such a body could play a crucial role in ensuring that classification guidelines are regularly reviewed and updated to reflect contemporary community standards, empirical evidence, and international best practices. The recommendation for a report every four years is sufficient.

### **Q2. What issues or expertise relevant to the classification environment would you like to see represented in a Classification Advisory Panel or similar body?**

The CAP would provide valuable insights from a diverse range of experts and stakeholders - though AHEDA feels strongly that the creative and commercial sectors of the film and TV industry should be represented on the CAP - ensuring that the approach to classification in Australia and the underlying processes are both comprehensive and responsive to societal changes. Given the skills and experience currently possessed by the Australian Classification Board (ACB) members and given the Classification Branch is the point of contact for the public regarding complaints about film and home entertainment classification ratings and advice there would be value in representation from the ACB on an advisory panel ensuring continuity and depth of expertise. The CAP should not be empowered to make changes on an ad-hoc basis; instead, it should operate within defined review periods, allowing time for industry to commercially adapt to any changes. This structured approach will balance the need for regular updates with the stability required by content producers and distributors.

### **Q3. Are there any aspects of the current Guidelines that you would like the Classification Advisory Panel or similar body to consider?**

As indicated AHEDA has received very few complaints regarding inappropriately classified content from the high number of films and TV episodes/series that have been classified with the ACB each year by our Members using the current Guidelines. The three essential principles which underlie the guidelines i.e. the importance of context, assessing impact and the six classifiable elements (themes, violence, sex, language, drug use, nudity) provide clear direction for decisions about ratings and advice and allow for the interpretation of changes in community attitudes and standards. AHEDA has no issues with the current Guidelines.

## **Fit-for-Purpose Regulatory and Governance Arrangements for Classification**

### **Q1. Do you support the consolidation of classification functions under a single national regulator at the Commonwealth level?**

Yes, AHEDA supports the consolidation of classification functions under a single national regulator at the Commonwealth level. The stage one classification reforms have provided some consistency in the process for classifying film and TV content across various media platforms. These reforms have made the classification process for cinema and home entertainment markets more similar to the way broadcasters classify their original programming, creating an environment where consolidating functions under a single regulator is feasible.

Retaining the national classification database for film and home entertainment content is important in any consolidation. Whichever regulatory body assumes the role of central classification regulator should integrate the skills and practices currently utilised by the Australian Classification Board (ACB) when dealing with film and TV content intended for release in the cinema or home entertainment sectors. This consolidation would streamline regulatory processes, reduce inefficiencies, and ensure a more consistent application of classification standards across different types of media, both physical and digital. The regulatory obligations and costs have been simplified and reduced under the Stage One classification reforms and any consolidation should not impact in these areas.

A single national regulator would be better equipped to address the complexities of modern media consumption, providing clearer guidance and enforcement. It would also be more responsive to the rapidly changing media landscape, ensuring that classification standards are applied uniformly and effectively. This consolidation would enhance the regulatory framework's efficiency and consistency, benefiting both the industry and consumers by providing a clearer, more predictable classification system.

However, AHEDA acknowledges that SVOD, AVOD businesses, and broadcasters operate under a different classification regime than film and home entertainment distributors. AHEDA is not advocating for the National Classification Scheme to be extended to these media. Instead, they believe that a consolidated national regulator should be capable of managing multiple schemes and the legislation that supports them.

### **Q2. What key considerations should inform the design of fit-for-purpose regulatory arrangements under a single national regulator model?**

Key considerations for designing fit-for-purpose regulatory arrangements include:

1. **Centralised Oversight:** Ensure that the regulator has comprehensive oversight of all classification functions, including training and accrediting classifiers, quality assurance, and enforcement. The current use of the national classification database is important for the long-term administration of films and TV series for AHEDA Members and it should be maintained under a single national regulatory for the film and TV content released by film and home entertainment distribution companies.

2. **Industry Collaboration:** Foster strong collaboration between the regulator and industry stakeholders to ensure that classification guidelines are practical and effectively implemented.
3. **Transparency and Accountability:** Implement robust mechanisms for transparency and accountability in the classification process, including regular public reporting, consumer research and stakeholder consultations.
4. **Consumer Protection:** Prioritise consumer protection by providing clear and accessible classification information and by becoming the centralised regulator for handling complaints efficiently.
5. **Technological Adaptability:** Ensure the regulator can quickly adapt to technological changes and emerging media formats, maintaining the relevance of classification standards.

### **Q3. Is there a role for the Classification Board and the Classification Review Board under a single national regulator model?**

AHEDA believes there is potentially a significant role for the Australian Classification Board (ACB) and the Classification Review Board within a single national regulator model. Our extensive experience working with the ACB and the Classification Review Board in classifying film and TV content for the Home Entertainment market underpins this belief. AHEDA has not interacted with ACMA or the eSafety Commissioner for classification purposes, our business process is built on proactively classifying film and TV content before public release.

The stage one classification reforms introduced in early 2024 have been well received by AHEDA and quickly adopted by our Members. These reforms include training modules developed by the ACB, the introduction of accredited classifiers for self-classification, increased usage of software tools (approved by the Minister) for content classification, and improved efficiency through the elimination of the need to re-classify content already classified for broadcast TV, provided it has not been modified. These changes have significantly streamlined the classification process for our Members.

The Classification Branch office has traditionally been the first point of contact for complaints about classification decisions for film and home entertainment releases. Maintaining this function under a national regulator is essential due to the high number of companies involved in distributing film and TV content in these sectors. Digital retailers, DVD retailers, and cinemas are not involved in the classification process, making a dedicated office crucial for addressing any classification concerns that arise.

Additionally, the ACB currently manages the national classification database, a resource we anticipate will remain available to our Members in a consolidated regulatory environment. This database is vital for ensuring that classification information is consistently and accurately maintained, providing a reliable reference for industry stakeholders and the public.

Their continued involvement would ensure that the classification process remains efficient, responsive, and well-supported, benefiting both the industry and consumers.

**Q4. Are there any gaps or unintended consequences that may be caused by consolidating classification functions under a single national regulator at the Commonwealth level?**

One potential gap is the handling of consumer complaints about classification ratings - which is currently managed by the Australian Classification Branch. Film distributors and home entertainment distributors are not equipped to address these issues effectively. To mitigate this, the single national regulator should establish a dedicated consumer complaints unit to manage and resolve classification-related grievances. Additionally, clear guidelines and support systems should be in place to assist industry stakeholders in adapting to the new regulatory framework without significant disruption.

As previously highlighted, the ongoing use of the National Classification Database would also be important for AHEDA members.

**Conclusion**

AHEDA commends the Government's commitment to reforming the National Classification Scheme to address the challenges of the modern media environment. The recently introduced Stage One reforms have been well received by AHEDA's members who have moved quickly to adopt the authorised assessor program or have engaged tech partners to utilise the software tools that have been approved for use in classifying film and TV content by the Minister. By adopting evidence-based reforms and engaging stakeholders through a transparent consultation process, the Government can ensure that the Scheme remains a trusted and effective tool for guiding media consumption in Australia.

AHEDA looks forward to continued collaboration with the Government and relevant stakeholders to help modernise classification in Australia.

***Chris Chard***

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