

Modernising Australia's Classification Scheme - Stage 2 Reforms Response to Consultation Paper

Introduction

This submission represents the views of a coalition of associations representing the cinema sector - the Motion Picture Distributors Association of Australia (MPDAA), the Cinema Association Australasia (CAA), the Australian Independent Distributors Association (AIDA) and Independent Cinemas Australia (ICA) - the key stakeholders representing the Australian cinema exhibition and distribution industry – referred to as the **Film Industry Associations (FIA)**ⁱ.

The distribution and exhibition sectors thank the Government for the opportunity to contribute to the conversation about developing a flexible, adaptive and fit-for-purpose classification system.

This industry generated \$1.28 billion in box office revenue in 2019ⁱⁱ (the year before the pandemic), with box office in 2024 tracking towards an estimated \$900 million, affected by the 2023 US actors and writers strikes. The commercial success of films rewards a range of local and global production and distribution entities and supports the health of cinemas and the businesses that rely on their survival. Across Australia, regional and suburban cinemas are often the backbone of communities with a host of other retail businesses reliant on the cinema drawing patrons to leave their homes (shops, bars, restaurants to name a few).

In 2023 there were over 58 million visits to cinemas in Australiaⁱⁱⁱ and yet, in the 2022/2023 FY, the Classification Branch received only 83 complaints^{iv} regarding both cinema and Home Entertainment releases.

The industry also distributes to and exhibits Australian made feature films in cinemas across Australia, the existence of which are made possible by the range of investments and other support offered by the Commonwealth, State and Territory governments, as well as the investment of Australian distributors and private investors. It is in the interests of all those stakeholders to see that the Classification Scheme is fit for purpose.

While the FIA acknowledge and applaud the changes made in the Stage 1 classification review, a critical issue affecting the financial health of the cinema sector is the Advertising Scheme for unclassified films which is dealt with at Section 3 below. Despite the support expressed by various Classification Branch and Board personnel over 10+ years, this matter remains unresolved. Knowing how infrequently Classification Reviews occur, we urge the Government to seize this reform process to consider changes to the Advertising Scheme, particularly in this rapidly evolving and volatile entertainment ecosystem.

Acknowledging the differences in our distribution, marketing and exhibition models, the FIA make no recommendations regarding AVOD, SVOD and commercial and subscription broadcasting.

Purpose and scope of the National Classification Scheme

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

As the Consultation Paper makes clear the principles of the National Classification Scheme (NCS) are to allow adults to watch, hear and read what they want; children should be protected from material that might harm or disturb them and everyone is protected from unsolicited material that may cause them offense. The mechanisms to achieve this encompass classifying material according to its content; supplying consumer advice; and restricting access to some classifications based on age.

The FIA believe that the guiding principles are still relevant in the contemporary media environment and that the essential purpose of classification is to provide consumers with adequate advice and information

at the “point of purchase” to make informed decisions about what films they or their children choose to see.

The Department’s own research in 2015^v confirmed that classification is used most often in relation to choosing media for children and occasionally to inform people’s own media choices. To provide parents with more clarity about the appropriateness of films for their children, the FIA’s have for many years been advocating the introduction of a new classification category, between PG and M, designed to bridge the gap between the targeted age groups.

We understand that this is not fully within the scope of this reform, but we want to ensure that this issue remains on the Government agenda and is considered as an integral element to a logical, effective and unambiguous classification system. For this reason, we have included this proposal as **ADDENDUM A** to this submission.

2. Do you support the proposed criteria that defines what material should be classified under the Scheme?

The FIA continue to support the principle that feature films shown in Australian cinemas should be classified prior to being screened. However, it is hoped that the review will resist the imposition of greater constraints or higher regulatory burdens on theatrical distribution and exhibition where classification is more easily enforceable.

As expressed in the submission made on behalf of the Australia New Zealand Screen Association, reforms should aim to reduce the unbalanced regulatory burden on cinemas under the *Classification Act*, particularly in comparison to the *Broadcasting Services Act*.

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

THE ADVERTISING SCHEME FOR UNCLASSIFIED FILMS

The FIA have been petitioning Government for changes to the Advertising Scheme for Unclassified Films and Computer Games (the Advertising Scheme) for over a decade. Despite multiple exchanges where Classification Board members and Department staff have acknowledged the complexity and unfair restrictions to this critical component of the cinema business, requests for change have been ignored and refused.

The self-regulated Advertising Scheme allows unclassified films to be advertised subject to two conditions:

- the advertised film has been assessed for its likely classification by an Authorised Advertising Assessor, or by the Classification Board, for the purpose of advertising the content before it has been classified, and
- trailers for unclassified films can only be screened with feature films that have the same or higher classification as the likely classification of the film being advertised. This is known as the **commensurate audience rule**.

Each state and territory, in its classification enforcement legislation, separately details how and when advertising may be shown in a cinema.

INDUSTRY PROPOSAL

It is proposed that trailers for **unclassified** films be allowed to screen with films **one category lower** than their likely classification as long as three criteria are met:

- 1) that the content of the trailer would not be classified higher than the feature film it is being shown with;

- 2) that the trailer is relevant, appropriate and suitable for that audience, particularly in regard to children, with no trailers being screened to people who may be legally restricted from viewing the film being advertised – albeit, in some cases, with a parent or guardian; and
- 3) that it is clear to the consumer that the rating of the trailer and that of the film being advertised may be varied and they should “Check The Classification” – see more detail below.

For example, a film may have a likely classification of MA15+, while the trailer promoting that film may be rated M because the content in the trailer itself does not include any MA level content. That trailer could be screened prior to M, MA15+ and R rated films – after due consideration is given to the likely classification of the film and the appropriate and relevant audience for the trailer.

We propose that trailers cannot be played prior to films with a rating more than one category lower than the likely classification of the film, regardless of the trailer content. For example, a trailer for an MA film could not be screened prior to a PG film. And a trailer for an M film could not be screened prior to a G film.

To ensure audiences clearly understand the target audience of the film being advertised, it is suggested that all cinema trailers be preceded by a “Tag”, as occurs in the USA and on many online trailers. This tag will provide clarity as follows:

<p>The following trailer is rated M</p> <p>The film being advertised may have a different rating.</p> <p>Please Check the Classification</p>
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The tag will include a “call to action” for consumers to check the classification of the film closer to its release date.

THE VALUE OF SCREEN TRAILERS

The importance of cinema trailers cannot be overemphasised, with research showing that more than 50% of all Australians typically find out about new movies being released in cinemas by seeing the trailer screen before another movie.^{vi} The ADG General Public Survey of 2015^{vii} reinforced the importance of cinema in deciding on films to watch.

Usually, a trailer will screen in cinemas about two months before the film is released. With trailer release dates often overlapping completion of the film and piracy concerns frequently leading to delayed delivery of feature materials, it’s unlikely that the film being trailered will have been classified. It’s equally unlikely that the film will have been viewed by the distributor when a trailer is released. However, the distributor generally has sufficient information to identify the prospective audience and, when scheduling the upcoming film, will select films with a similar target audience, based on the genre, themes and tone of the film, as well as the level of classifiable elements.

There are a very limited number of trailer opportunities in cinemas and ensuring they are screened to an audience who is likely and able to see the advertised film is of paramount importance to all sectors of the screen industry.

INTERNATIONAL COMPARISONS

The Australian approach to trailer classification contrasts that of many other jurisdictions.

For example, in **New Zealand**, the Film and Video Labelling Body (FVLB), collaborated with the industry to successfully develop the *Good Practice Guidelines for the Exhibition of Trailers with Unrestricted Feature Films*.

All film trailers are treated as separate publications and rated under three categories according to the content of the trailer only: G – General, PG - Parental Guidance or M – more suitable for mature audiences 16 years and over.

They do not consider the likely rating of the films. Any trailer that is rated G, PG or M can be screened before any film although the FVLB recommends that trailers that are rated M, do not screen before G and PG rated films. However, it is not a breach of the Act to do so.

Like New Zealand, trailers in the United Kingdom, the USA and Singapore are assessed and rated on their **actual content** either by a government body or an industry-established organisation, irrespective of the likely rating of the film the trailer is advertising. The content of the trailer determines its placement prior to films with the same or a higher rating.

Specific processes vary however there are common requirements in relation to the assessment of trailers. These include consideration of the broader audience, the likely audience to which the advertisement will be screened; and factors such as the potential impact on children. These considerations would be integral to the proposed triling proposal made below.

INDUSTRY CONCERNS

The cinema industry associations have raised several concerns regarding this scheme:

- Film marketing opportunities are eroded even when there is a correlation between the feature film and the film being advertised, particularly for films targeting audiences over 15 years in both the M and MA15+ categories. Any film that is likely to get MA misses out on all triling of M titles, despite the fact most of the audience would be legally able to attend an MA film.
- It is incongruous that trailers are widely available online, accessible to anyone, anytime and watched by millions of people^{viii}.
- Cinema classification restrictions are more stringent and limiting than those for television and the internet. Contradictory regulation allows, for example:
 - Alcohol advertisement to be screened ahead of a G or PG classified feature film -where the audience for these films may be largely comprised of children – rather than a trailer with no high-impact classifiable elements.
 - Gambling/sports betting advertising – an industry that is 100% restricted to people 18+ - is permitted to advertise during any sporting event broadcast on free to air television and BVOD services.
- One of the most impactful limitations of the current scheme from a commercial perspective is often highlighted around school holidays when G rated films aimed at kids tend to be released. Most post-holiday films will likely have a higher rating than G, however the legislation limits opportunities to screen those trailers in this busy period.
- **Australian films** are often adversely impacted by the Commensurate Audience Rule because most Australian films fall into the M, MA and R rating categories^{ix}. In 2023, 52 (60%) of the 86 Australian titles released in cinemas were classified M, MA or R^x.

31 of the 86 released films were funded by Screen Australia for production in 2023. Of these, 19 (61%) were classified M and MA^{xi}. The net result is that the Australian Government is funding the production of films while supporting legislation that limits adequate opportunities to trailer these films in cinemas. Particularly in comparison to international, IP-driven films with global marketing campaigns, Australian films are generally disadvantaged by substantially lower promotional budgets. And without local tax incentives benefits, marketing funds for local theatrical releases are limited.

Examples of Australian features affected by the commensurate audience rule.

Note: generating awareness commences many months prior to the release of an Australian film because of the need to create this awareness locally as opposed to riding on the awareness generated from the US and international market. Trailer opportunities on audience-appropriate films in the market can be sought three or four months prior to release.

Note: all box office and admissions data are from Numero.co – the industry source of box office data for distributors, cinemas, media and Government.

FURIOSA: A MAD MAX SAGA (MA). This significant Australian film is based on a rare globally recognised Australian IP franchise with an investment of millions of dollars from the Federal and State Governments through various film tax incentives.

The film was given an MA rating a few weeks prior to its release on 23 May 2024, stifling the ability to promote the film in cinemas. The trailer could not be screened with the following films which were deemed to have a commensurate/relevant adult audience but were rated M:

1. KINGDOM OF THE PLANET OF THE APES
2. THE FALL GUY
3. GODZILLA X KONG
4. CHALLENGERS
5. GOLDA
6. DUNE PART 2

The distributor was unable to market the film to the 732,000 people who saw these 6 films in cinemas between 8 May (when the film was classified) and 23rd May (when the film was released).

In-cinema trailer opportunities for the final critical marketing weeks prior to the release of FURIOSA were limited to the only MA film in cinemas - BOY KILLS WORLD - an action/sci-fi/fantasy film with a limited release and not considered to be the same audience as those who are likely to see FURIOSA. Since 8th May 2024, BOY KILLS WORLD has had under 3,500 admissions.

OF AN AGE (MA). This award-winning Australian film, released in March 2023, was primarily an arthouse audience film, which would have benefited enormously if it was permitted to trailer on similar arthouse films. The titles identified as audience appropriate for OF AN AGE were:

1. TILL (released 19th March 2023, rated M): 9,000 admissions.
2. WOMEN TALKING (released 16th Feb 2023, rated M): 40,000 admissions.
3. THE SON (released 9th Feb 2023, rated M): 22,000 admissions.
4. THE WHALE (released 2nd Feb 2023, rated M): 147,000 admissions.
5. TAR (released 26th Jan 2023, rated M): 170,000 admissions

The commensurate trailer rule meant that OF AN AGE was unable to trailer to the 388,000 people who saw these 6 films in Australian cinemas.

THE ROYAL HOTEL (MA). This critically acclaimed take on misogyny in Australia with two female protagonists, would have been able to promote the film with an M-rated trailer with HUNGER GAMES: BALLAD OF SONGBIRD AND SNAKES (M), THE MARVELS (M) and KILLERS OF THE FLOWER MOON (M). These three films had a total of 1,165,000 admissions.

Instead, only a handful of MA rated titles were released in the month prior to THE ROYAL HOTEL and those films skewed to male audiences (EXPEND4BLES, SAW X and DUMB MONEY, for example, with a total of 406,000 admissions).

COMBAT WOMBAT: BACK 2 BACK (PG). The distributor could not trailer this Australian animated movie on G rated films even though the trailer was rated G in New Zealand, and the trailer content was assessed to be appropriate for a G-audience. This prevented the film triling to the 1.17 million Australians who went to the cinema to see G-rated MIGRATION - the biggest animated movie of the summer.

THE DROVER'S WIFE: LEGEND OF MOLLY JOHNSON (released May 2022, rated MA). The titles identified as appropriate for THE DROVER'S WIFE were:

1. WEST SIDE STORY (released 26th Dec 2021, rated M)
2. KING RICHARD (released 13th Jan 2022, rated M)
3. SPENCER (released 20th Jan 2022, rated M)
4. BELFAST (released 3rd Feb 2022, rated M)
5. DEATH ON THE NILE (released 10th Feb 2022, rated M)
6. THE DUKE (released 31st March 2022, rated M)

The commensurate trailer rule meant that THE DROVER'S WIFE was unable to trailer to the 1.6 million people who saw these films in Australian cinemas.

The ideal trailer opportunity in the period immediately before release would have been the period dramas DOWNTON ABBEY: A NEW ERA (rated PG, released in over 300 cinemas, 562,000 admissions) and FAREWELL MR HAFMANN, (rated M and released in 30 cinemas, 22,000 admissions). The audiences for both these films were considered to be commensurate with that of THE DROVER'S WIFE and the ability to play an M-rated trailer prior to these films would have had a potentially significant impact on the box office revenue.

The film, also with significant Australian Government investment, has earned \$1.9m in BO revenue and, had this film been able to trailer on all the audience-appropriate titles mentioned above, the increase in awareness would have propelled the box office to far greater heights.

Examples of **international features** affected by the commensurate audience rule.

NAPOLEON (MA). The film was justifiably rated MA 15+ prior to release, primarily for realistic, historical battle violence. This rating restricted triling with some M-rated titles like KILLERS OF THE FLOWER MOON, A HAUNTING IN VENICE and PAST LIVES which had similar audience demographics to NAPOLEON.

ALLELUJAH (M). The film skewed to an older audience (being a Judi Dench film) but could not be advertised prior to similar films such as LIVING (PG) and FISHERMAN'S FRIENDS 2 (PG). These were the only films appealing to the older audience in the lead-in to that release. Particularly with these older skewing films, the talent do not come to Australia to support marketing efforts, so distributors and exhibitors are more reliant on trailer exposure than ever.

JOHN WICK: CHAPTER 4 (MA) The distributor noted that a trailer cut with only M-rated content would have been able to play with the following films in the corridor leading to this film's release: CREED (M), CHAMPIONS (M) SHAZAM (M) and ANT MAN & THE WASP (M) – all deemed to have similar target audiences.

The FIA Response to the Stevens Review 2020^{xii}

In his 2020 review of classification, Neville Stevens concluded that *"On balance, I have decided not to recommend changes to the 'commensurate audience rule' for advertising unclassified films in*

Commonwealth laws...". The FIA are taking this opportunity to respond to the reasons given by Stevens for his decision.

- 1) Stevens wrote that the commensurate audience rule should not change because he was *"...unconvinced that the potential commercial advantages outweigh community concerns. Sections of the Australian community have concerns about films being marketed to children, in cinemas in particular, that ultimately are not considered appropriate for them to access"*.

The FIA contend that if this argument was applied to much of the legitimate advertising targeting children – on the internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies^{xiii}; in other words everything from online ads and pop ups, television and streaming services (including catch-up services) supermarkets, billboards, on sporting uniforms and sports fields, etc - it would have a significant negative impact on the ability to advertise products and services like alcohol, tobacco, pornography, gambling, and junk food, to name a few.

Stevens stated that the views of *"community groups such as the ACCM that the marketing of a wider variety of films to children may be of concern to some parents"*. While noting *"the differences in treatment of trailers both online and on broadcast television"*, it feels incongruous to the FIA that Stevens places the burden of regulation on theatrical releases when the exposure of kids to film trailers in cinema is insignificant in comparison to the volume of advertising they face on every other media platform where they find content.

For example, the 2023 Australian Television and Media study^{xiv} concluded that (a) 72% of children aged 8-10 most commonly watch screen content on free video services – such as YouTube - and that they are being exposed to gambling ads at relatively high rates: 32% of ages 8-10, 43% of ages 11-15 and 40% of ages 16-17 saw gambling ads in the past 7 days.

The 2022 NSW Youth Gambling Study^{xv} reported *"frequent and pervasive"* exposure of adolescents to gambling ads, most commonly on YouTube but also on outdoor billboards and posters at news agencies. Although it is illegal for Australians under the age of 18 to gamble, research^{xvi} indicates that around half of all young people in Australia have participated in some type of gambling by age 15, increasing to around three quarters of young people by age 19.

We fail to see why the cinema industry is held to a different standard when weighing the protection of the public against the self-interest of industry. For example, how could advertising Australian animated film COMBAT WOMBAT: BACK 2 BACK (rated PG) cause harm to the audiences watching G-Rated MIGRATION.

- 2) In a further rationale for rejecting the trailer classification proposal, Stevens wrote that *"Advertising in the cinema environment is considered by some parents to be a different experience to other media platforms because trailer advertising is carefully targeted at the audience seeing the feature film. Trailers may be more impactful on a significantly larger screen and louder sound in cinema..."*

At the same time, contradicting his assumption about the impact of screen size, Stevens recommended a 'classify once' principle that allowed, for example, a rating made for a broadcast television film to apply to the film if it were screened in cinemas.

The FIA contend that the now-legislated *"Classify Once"* principle nullifies the association between screen size and impact and makes Steven's rationale for rejecting change irrelevant.

- 3) Stevens notes that television commercials for film, regulated by broadcasting codes, are classified according to the content of the commercial with some placement rules to consider programs *"likely to attract a substantial child audience"* ^{xvii} He did not recommend any changes to current television

regulation of advertising for films, even though submissions from community groups such as the ACCM (now the ACM) proposed changes, criticising “*toned down trailers*” that “*mislead audiences*”, errors made by Clearads’ classification process and the inconspicuous placement of classification symbols. At the same time, Stevens makes note of the ACCM submission in his refusal to make changes to in-cinema advertising.

In Stevens’ acknowledgment of the views of “*community groups such as the ACCM that the marketing of a wider variety of films to children may be of concern to some parents*” the FIA question how the opinion of what appears to be a limited group of consumers has led to Government policy without research data to verify consumer attitudes and opinions on this matter.

The FIA maintain that the proposed changes to the commensurate audience rule are modest and considerate of the child audience and their parents or guardians. There is a perceived lack of trust on the part of Government that industry will implement the underlying principle of the commensurate trailer rules (to advertise films to commensurate audiences), despite a high level of film classification compliance reflected in the minimal number of complaints annually to the Classification Branch.

We believe that in addition to the imperative to use limited in-cinema trailer opportunities effectively and the State-enforcement of classification legislation, consumer complaints, as occurs now, will ensure industry compliance.

BENEFITS

This change would:

- Increase the accuracy of trailer placement.
- Increase industry’s opportunity to market upcoming feature films as well as provide a clear framework for authorised Assessors when assessing trailers.
- Bring Australia into line with countries such as NZ, the USA and the UK where trailers are assessed or classified based on their content.
- Reduce the restrictions on cinema advertising rules which are not applied to other platforms.
- Recognise the reality of how trailers are viewed online.

Because commensurate audience considerations will be applied to all trailer placements, audiences would continue to be protected from inappropriate content that might otherwise appear in a trailer.

4. Do you support changes to the definition of a ‘submittable publication’ to provide clarity on publications requiring classification under the Scheme?

We have no comments to make on this question.

A framework for evidence-based classification guidelines

1. Do you support the establishment of an independent Classification Advisory Panel or similar body?

As we understand what is being proposed in the consultation paper, the purpose of the Classification Advisory Panel (CAP) is to provide advice on the Guidelines based on evidence-based research.

What is not made clear is the relationship of the CAP to the Single Regulator discussed below. Nor is it clear whether this is to be a standing Panel or one that is convened from time to time to collate or commission research and provide advice based on that research.

The FIA support the proposal in the Stevens Review to develop a mechanism for periodic review and updating of the classification guidelines to reflect community standards. We believe that the recommendation for a report every four years is sufficient.

The Guidelines need to be monitored and evolve to maximise their relevance and utility in a convergent media environment. But the system also has inbuilt checks and balances whereby audiences, who are increasingly sophisticated in their understanding of classification ratings, are likely to complain and trigger reviews where the guidelines are out-of-sync with their expectations.

However, more important than the CAP is the need for regular and robust attitudinal research to continually evaluate and measure changes in community attitudes to the matters covered by the NCS. A model for this kind of research is that carried out longitudinally by Creative Australia^{xviii} into Australians participation in the arts.

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

The Stevens report recommended the Advisory Panel include experts in child development as well as those with industry experience. The Classification environment as it relates to motion pictures includes producers, distributors, exhibitors, and consumers. If the Panel is to exist it should be constituted by expert members drawn from each of those areas.

Skilful filmmakers can identify and use techniques that elicit emotion, reaction and empathy. They have a broad understanding of the emotional impact and intensity of films and are aware of the mechanisms used to produce these emotions. Distributors and exhibitors understand the impact of film on targeted demographic audiences – seeing it in practice every day in cinemas.

It is essential that experienced and knowledgeable filmmakers, distributors, and exhibitors are represented on an advisory panel to ensure discussions and decisions are grounded in a practical understanding of the impact of film on audiences in general and children in particular. Such discussions can only be considered holistic if the people who can highlight the purpose, strategy and consequences of these emotions are participants.

The FIA concurs with the views of the submission by the Australian Home Entertainment Association (AHEDA) that the CAP should not be empowered to make ad-hoc changes, and that any changes should provide industry with sufficient time to adapt.

The FIA urge the Government to consult with industry on all aspects of the CAP model, including participants, frequency, scope of discussions and the advisory nature of CAP recommendations to Government, particularly where such advice impacts the economic viability of the cinema sector.

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

Acknowledging that there are shifts in community standards over time, the FIA have no current concerns about the key classifiable elements. However, building flexibility into the NCS to allow the guidelines to adapt to changing public sentiment and expectation is critical to the success of a future-proof classification system.

The broadening of consumer advice in 2023 was important to Government to enhance the understanding of the NCS, and the cinema sector has always been and remains supportive of changes that provide clarity to consumers and sufficient information to make informed decisions. The sector swiftly adopted the new consumer advice categories and has been compliant in displaying them as required.

Fit-for-purpose regulatory and governance arrangements for classification.

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

The industry associations strongly oppose the inefficient, fragmented and unequal regulatory regime currently operating under Federal, State and Territory regulation and continue to support the creation of a single regulator with primary responsibility for the regulation of the National Classification scheme, including approval and monitoring of industry classification codes of practice, training and accrediting classifiers, enforcement of compliance, quality assurance of classification decisions and maintaining the National Classification Database.

The FIA recognise that broadcasting, AVOD and SVOD are subject to a different classification regime than that which applies to theatrical exhibition. To be clear, the FIA is not advocating for the National Classification Scheme to be extended to those media and is confident that a single regulator should be capable of managing multiple schemes and the legislation that underpins them.

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

The first consideration is whether the regulator will be a new organisation or an addition to the functions of ACMA. In 2012 the Convergence Review recommended a broad-based media regulator and gave considerable attention to how it should be structured^{xix}.

This included its relationship to government, corporate structure and governance and its level of accountability. It did not recommend enhancing the Australian Communications and Media Authority (ACMA) even though ACMA itself was formed in 2006 from the merger of the Australian Broadcasting Authority (responsible for regulating broadcasting licensing, ownership, content, and spectrum) and the Australian Communications Authority (responsible for regulating telecommunications and radiocommunications).

On the other hand, the Australian Law Reform Commission, also in 2012, in the final report of its *Classification – Content and Convergent Media* review, argued that ACMA was already a convergent regulator, but still argued for a single agency responsible for regulation of media content under the National Classification Scheme. It suggested its functions could include:

- (a) encouraging, monitoring and enforcing compliance with classification laws;
- (b) handling complaints about the classification of media content;
- (c) authorising industry classifiers and providing and approving classification training;
- (d) facilitating the development of industry classification codes and approving and maintaining a register of such codes;
- (e) liaising with relevant Australian and overseas media content regulators, classification bodies and law enforcement agencies;
- (f) educating the public about the National Classification Scheme;
- (g) providing administrative support to the Classification Board;
- (h) maintaining a database of classification decisions;
- (i) assisting with the development of classification policy and legislation;
- (j) conducting or commissioning research relevant to classification; and
- (k) promoting media literacy and cyber-safety.

Whether the Government has the appetite for a completely new regulator, with attendant cost and legislative complexity seems unlikely in the present circumstances. Particularly since a completely new regulator would need to deal with online safety, the legislation for which has been deemed out of scope for this consultation.

An easy to understand and consistent approach to the classification of content, under an appropriate regulatory regime would be acceptable to film industry associations, if regulatory obligations and costs are

not onerous. In the current context the FIA believe the ACMA is best placed to administer that regulatory regime, as recommended by the Stevens review.

We recommend that, for pragmatic reasons, the Regulator is the first point of contact for complaints about the classification of films, trailers, and advertising material for theatrical release. Ratings-related complaints cannot be made to staff in the cinema where a film has been viewed because exhibitors are not involved in the classification process and are unable to respond to objections. The distributor of that film may not be easily identifiable or accessible. We understand that other platforms may have effective mechanisms already established for consumer complaints that need no modification.

We also submit the original agreement between the States and the Commonwealth in 1995 stated that: *“The aim of the new scheme is to make, on a co-operative basis, Australia’s censorship laws more uniform and simple with consequential benefits to the public and the industry;”*^{xx} This has clearly not eventuated.

If the purpose of classification is to provide consistent information about content, variations in State legislation and/or enforcement generate confusion and misinterpretation, particularly in an environment where information and advertising are both national and global.

The 2011 ALRC Classification Review proposed that the Classification of Media Content Act be enacted pursuant to the legislative powers of the Parliament of Australia. This proposal was widely supported by stakeholders who pointed out that modern media content industries are national and frequently international in nature - particularly in a digital environment where communication is instantaneous. Differing state-based classification and enforcement regimes not only cause confusion but increase regulatory compliance costs for industry with little to no consumer benefit.

We believe the uncertainty of differing state-based regulation needs to be addressed through the creation of a consistent federal framework. Harmonisation of state and territory laws into a single federal scheme is essential to create an effective, centralised, and truly “national” National Classification Scheme.

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

The FIA and their stakeholders welcome the Stage One reforms that have allowed distributors to self-classify films. While the system is in its’ infancy, there is little doubt it will prove to be more efficient and cost-effective for both industry and Government.

The recent changes introduced the process whereby companies can have assessors trained and accredited by the government, with the Board offering quality assurance and oversight. The implication of this is that the role of the Classification Board is going to change over time, even without a single regulator in existence.

The functions of oversight and quality assurance now with the Board would need to be part of the regulator’s functions. Whether that means retaining the Board in some form or appointing people with expertise in classification to the staff of the new regulator to manage oversight and quality assurance is a question of governance. We support the existing model in broadcasting where individual broadcasters classify content against their relevant code of practice and the ACMA deals with cases when there is an unresolved complaint.

However, if there is still to be a review process for classification decisions the current system is no longer fit-for-purpose. It is expensive and unfeasibly time-consuming in an environment where digital distribution and piracy concerns have reduced the time between the delivery of a film and its release date.

Evolving digital technology has enabled time and cost efficiencies which must be incorporated into the review process.

A functional review system would include the following features:

- Assessors are trained and knowledgeable and independent of the original classification decision.
- Reviews can be triggered by distributors if (when applicable) an online self-assessment tool is not providing accurate ratings.
- Reviewers should have access to secure digital cinema facilities.

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

We submit that is difficult at this stage to assess gaps or unintended consequences until there is draft legislation, setting up the single regulator, available for comment.

ADDENDUM A

Proposal for a PG13 Advisory Rating Category

Australian film distributors and exhibitors believe that a timely update of the current classification ratings categories is paramount to ensuring the continued relevance and utility of classification. A greater age differentiation across lower-level rating categories will provide more clarity to parents about the appropriateness of films for their children. The FIA believe that the current M rating is too broad and results in some content being rated M which, upon closer analysis, is in fact not inappropriate for audiences younger than 15 years. This can have a negative impact on the commercial success of some films.

It should be noted that this proposal pertains only to films released in the cinema and not necessarily to other release platforms. A variation in classification ratings on different platforms is not unusual, for example the X18+ category is only applicable to films while commercial free to air television has P and C categories specifically identifying content for children and pre-schoolers.

In the 2018 Classification Annual Report, the Classification Board identified a growing trend for films, aimed at a teenage demographic, that exceed what can be accommodated in the PG classification level, but do not warrant a mature classification, as required at the M classification category (*“recommended for mature audiences 15 and over”*).

The Classification Branch submission to the 2011 Australian Law Reform Commission (ALRC) review highlighted the benefits of an additional category between PG and M. They observed that currently, all three advisory classifications for films (PG, M and MA15+) are hinged to the 15-years age group.

The FIA have identified several problems with the current system that would be resolved with a PG13 rating category. These are:

- 1) The current Australian classification ratings are ambiguous, leading to confusion, particularly regarding the three advisory ratings which are all pegged to a 15-years age group.
- 2) Under the current system, films that fit tonally at a PG level, are being pushed into a higher category which overstates the impact of the content, often due to minor elements. This “escalated” M-rating is not useful for parents seeking suitable films for young teens.

The result is that the younger, teen/tween audiences fall through the cracks with these existing ratings, a PG-13 rating would help with clarifying content for that in between audience in particular which is a significant segment of the movie going population.

In the absence of a PG-13 rating, many family-friendly films incur an M-rating, resulting in lower attendance and diminished revenue returns. This problem may be more acute for Australian and independent films that lack the brand-recognition and corresponding “franchise” familiarity of bigger titles.

PG13-rated films will allow for specific and appropriate films to be teen-targeted and achieve the films’ full commercial potential and, in turn, an economic return to the industry. Films can be scripted and edited for a teen audience without any ambiguity about what constitutes a “mature” viewer.

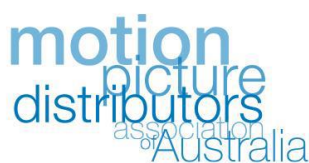
- 3) Current advertising regulation does not allow distributors to market films to the targeted audience. The PG13 rating will allow film advertising to be clearly directed at teenage audiences, both within the current commensurate trailer restrictions and under the revised system proposed in response to question three.

- 4) Australia is out of step with most regulated countries which, in a borderless online environment, causes further confusion. A teen-age rating exists in most comparable international jurisdictions: these include PG13 in the USA, R13 in NZ, 12A in the UK & Ireland, 14A in Canada, and a category for 12yo's in France, Spain & Japan.

Fifty-four of the sixty countries surveyed in the MPA Worldwide Survey of Classification Systems had some form of rating for children aged 11, 12, 13 or 14^{xxi}.

We do not support the removal of the unrestricted M category, nor its replacement with the PG13 category. M is critical for films that do require a mature perspective but fall short of the need for a restrictive category.

It is worth noting that Stevens acknowledged the current ratings system is not “*ideal*”, with feedback^{xxii} describing it as “uninformative”, “too broad” and confusing. He recommended that further work be undertaken on this matter.



The **Motion Picture Distributors Association of Australia (MPDAA)** is a non-profit industry association representing the aligned interests of theatrical film distributors in Australia – Paramount Pictures Australia, Sony Pictures Releasing, Universal Pictures International, Walt Disney Studios Motion Pictures Australia and Warner Bros. Entertainment Australia. The MPDAA members make available and promote the supply of a range of screen content to entertain all Australian audiences. Formed in 1926, the purpose of the MPDAA is to advance and support the interests of theatrical film distribution, particularly in regard to copyright, piracy, classifications and other relevant matters. The MPDAA takes an active role on relevant industry bodies to articulate the sector’s value to film exhibitors, affiliate businesses, the Government and the wider creative industry.



The **Cinema Association Australasia (CAA)** - previously The National Association of Cinema Operators - is the peak cinema body representing cinema operators across Australia & New Zealand - including Event, Village Roadshow, Hoyts, Reading and many independent and regional cinemas, including Palace, Wallis, Ace, Nova and Limelight. Our members represent in excess of 85 per cent of the box office generated across Australia and New Zealand. CAA continues to host the annual Australian International Movie Convention (AIMC), now in its 77th year, attracting key industry delegates from Australasia. NACO has an active relationship with other international cinema associations to facilitate best practices in, and protection of, an industry that has thrived for over 125 years.



The **Australian Independent Distributors Association (AIDA)** is a not-for-profit association representing independent film distributors in Australia, being film distributors who are not owned or controlled by a major Australian film exhibitor or a major U.S. film studio or a non-Australian person. Collectively, AIDA’s members are responsible for releasing to the Australian public approximately 75% of Australian feature

films which are produced with direct and/or indirect assistance from the Australian Government (excluding those films that receive the Refundable Film Tax Offset).



Independent Cinemas Australia (ICA) is a not-for-profit industry association that develops, supports, and represents the interests of independent cinemas and their affiliates across Australia and New Zealand. We represent 160 independent cinemas across 650 screens in Australia. Independent cinemas are mostly small and family businesses, often multi-generational, located in every state and territory in Australia from single screens in rural areas through to metropolitan multiplex circuits and iconic arthouse cinemas including Hayden Orpheum Picture Palace, Cinema Nova, Randwick Ritz, Palace Cinemas, Dendy Cinemas, Luna Cinemas, Cineplex Cinemas, Wallis Cinemas, and Majestic Cinemas.

ENDNOTES

ⁱⁱ Numero.co – the industry source of box office data for distributors, exhibitors, media and Government.

ⁱⁱⁱ Numero.co – the industry source of box office data for distributors, exhibitors, media and Government.

^{iv} Classification Board and Review Board Annual Report 2022-2023

<https://www.classification.gov.au/about-us/research-and-publications/classification-board-and-review-board-annual-report-2022-2023>

^v July 2015 **Classification Ratings: Research with the General Public**, Classification Branch/Attorney-General’s

Department <https://www.classification.gov.au/about-us/research-and-publications/classification-ratings-research-general-public>

^{vi} AUSTRALIAN CINEMA HEALTH TRACKER - SCREEN AUDIENCE RESEARCH AUSTRALIA (SARA)

Online survey with respondents sourced through an online consumer panel. Fieldwork conducted May 2017.

Sample: n=1,234. Age: 18+ years. National representation on age, gender and location

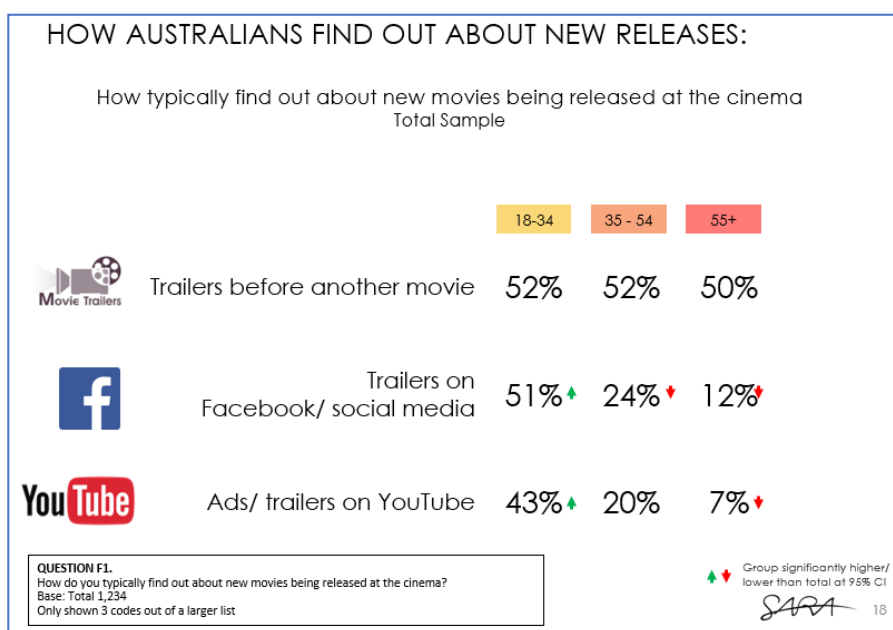
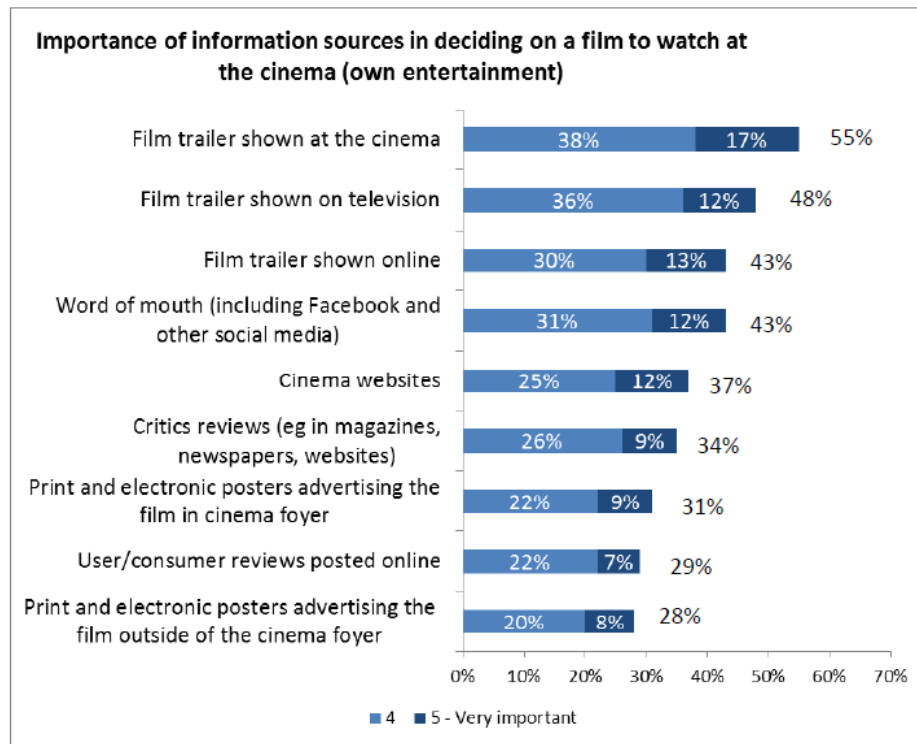


Figure 2: Importance of various information sources in deciding on a film for one's own entertainment



vii Source: AGD General Public Survey June 2015. n= 1,001

viii Advice from the Department of Communications previously stated that the internet is a 'public place', and therefore trailers for films classified MA15+ and R18+ or assessed as likely to be MA 15+ or R18+, are required under State and Territory legislation to be restricted (ie. using a restricted access system). Schedule 7 of the Broadcasting Services Act 1992 (BSA) also provides that content classified MA 15+ or R 18+, or likely to be MA 15+ or R 18+, must be subject to a restricted access system. Enforcement of the BSA is a matter for Australian Communications and Media Authority.

ix Numero.co – the industry source of box office data for distributors, exhibitors, media and Government. In 2023, 86 Australian films were released in cinemas with the following ratings: G – 2 films, PG – 15 films, M – 30 films, MA – 20 films, R – 2 films, exempt – 17 films

x Numero.co – the industry source of box office data for distributors, exhibitors, media and Government.

xi Numero.co – the industry source of box office data for distributors, exhibitors, media and Government.

xii Review of Australian classification regulation (the Stevens Review). Published March 2023
<https://www.infrastructure.gov.au/department/media/publications/review-australian-classification-regulation-stevens-review>

xiii The Australian Association of National Advertisers Children's Advertising Code
<https://aana.com.au/self-regulation/codes-guidelines/aana-code-for-advertising-marketing-communications-to-children/>

xiv The Australian Television and Media Survey - Prepared for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, April 2023
https://www.infrastructure.gov.au/sites/default/files/documents/2023-television-and-media-survey-key-results-april2024_0.pdf

^{xv} NSW Youth Gambling Study 2022. Commissioned by the NSW Responsible Gambling Fund
<https://www.gambleaware.nsw.gov.au/resources-and-education/check-out-our-research/published-research>

^{xvi} Growing Up in Australia: The Longitudinal Study of Australian Children (LSAC) Annual Statistical Report 2018. LSAC Annual Statistical Report 2018, Vol 9 – December 2019
[https://growingupinaustralia.gov.au/research-findings/annual-statistical-reports-2018/gambling-activity-among-teenagers-and-their-parents#:~:text=Although%20it%20is%20illegal%20for,et%20a.%2C%202011\).](https://growingupinaustralia.gov.au/research-findings/annual-statistical-reports-2018/gambling-activity-among-teenagers-and-their-parents#:~:text=Although%20it%20is%20illegal%20for,et%20a.%2C%202011).)

^{xvii} ClearAds Code on advertising films on television
<https://clearads.com.au/h-placement-code/>

^{xviii} <https://creative.gov.au/advocacy-and-research/creating-value/>

^{xix} Convergence Review, Appendix D
https://apo.org.au/sites/default/files/resource-files/2012-04/apo-nid29219_5.pdf

^{xx} <https://www.legislation.gov.au/Series/C2004A04863>

^{xxi} **MPAA Worldwide Survey of Censorship and Classification Systems 2018** (unpublished)

Countries with an age rating pertaining to children aged 11, 12, 13 or 14: Argentina, Belgium, Brazil, Canada, Chile, Colombia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Philippines, Portugal, Romania, Qatar, Russian, Singapore, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Venezuela, Vietnam,

Countries without an age rating pertaining to children aged 11, 12, 13 or 14: Australia, Bulgaria, China, Kenya, Poland, Ukraine.

^{xxii} Review of Australian classification regulation (the Stevens Review). Published March 2023
<https://www.infrastructure.gov.au/department/media/publications/review-australian-classification-regulation-stevens-review>

“As pointed out by submitters, it does seem less than ideal for a classification system which aims to protect children and inform parents to have three categories referencing the age of 15 and none below. It is also true that this makes Australia an outlier among international classification systems, many of which have categories that are age-based or incorporate a category at 12 or 13 years (see Appendix 3 and Appendix 4). The proposals relating to PG13/YP/Teen also align with one additional category that was consistently favourably received in the research”.