



FILM INDUSTRY ASSOCIATIONS RESPONSE TO THE CLASSIFICATION REVIEW

Re: Review of Australian classification regulation 2020

Thank you for giving the Australian theatrical film distributors and exhibitors the opportunity to submit their views on the Review of Australian Classification regulation. This submission represents the views of a coalition of associations representing the film industry: the Motion Picture Distributors Association of Australia, the Australian Independent Distributors Association, the National Association of Cinema Operators and Independent Cinemas Australia, referred to in this submission as the **FIA** (Film Industry Associations).

The FIA have worked effectively with successive Governments to ensure the Classification Scheme is responsive to community expectations, industry requirements, technological advances and changes to how content is delivered and consumed. We take this opportunity to commend the Government for its ongoing work in this area and for its intention to implement a more effective and contemporary classification framework that services the interests of all Australians.

The National Classification Scheme (NCS) has a direct impact on distribution business models. This review provides a critical and timely examination of the legislative and policy framework and functionality of the system. It is an important opportunity for Government to keep pace with accelerating technological change, shifting community standards and dynamic content consumption trends and behaviour.

We are aware of the wide-ranging scope of this review and the multiple stakeholders directly impacted by any proposed changes to the current system. For this reason, the FIA will restrict its focus to matters that pertain directly to the business of distribution for public exhibition of films.

PART 1: CLASSIFICATION CATEGORIES AND STANDARDS FOR FILMS AND COMPUTER GAMES

1: Classification categories

Q1: Are the classification categories for films and computer games still appropriate and useful? If not, how should they change?

The FIA propose the introduction of a new classification category, between PG and M, designed to bridge the gap between the targeted age groups.

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 believes 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.

In the 2018 Classification Annual Report, Classification Board Director, Margaret Anderson proposed the introduction of a classification level in between PG and M. The Board – which classifies hundreds of films titles annually – identifies a growing trend of films, aimed at a teenage demographic, that exceed what can be accommodated in the PG classification level, but do not warrant a mature perspective, as required at the M classification category (“*recommended for mature audiences 15 and over*”)

This has, for example, caused the following films to be classified M: ***Jurassic World: Fallen Kingdom***, ***Solo: A Star Wars Story***, ***Maleficent*** and ***Thor Ragnarok***, which, the Board indicates, are suitable for an audience under 15 years old.ⁱ

The Classification Branch submission to the 2011 ALRC review highlighted the benefits of an additional category between PG and M, in line with international best practice such as PG13 in the USA or 12+ in the UK. They observed that currently, all three advisory classifications for films (PG, M and MA15+) are hinged to the 15-years age group.

By way of example:

- ***Maleficent*** was rated M in Australia, but received the lower PG classifications in the US, UK and in NZ.
- ***Spiderman: Far From Home***, also rated M in Australia – about a teenage boy, set in high school – was PG-13 in the US and 12 in the UK.
- ***Harry Potter and the Half Blood Prince***– based on a book for young teens - was rated M in Australia, but PG in the US and 12 in the UK.
- ***The Chronicles of Narnia: Prince Caspian*** – also based on a book for young teens – was rated M in Australia, but PG in the US and the UK.ⁱⁱ

Nomenclature and guidelines require further consideration but we suggest it could be:

- PG13 – indicating that the content is mild+ in impact and suitable for people over 13 years. Some material may not be appropriate for children under 13 years of age and guidance from parents or guardians is recommended; or alternatively
- YP - Young Persons – indicating that the content is mild+ in impact and is suitable for young adults over 13 years of age with guidance from parents or guardians recommended.

Although there may be two PG categories, the age-descriptor is clear and unambiguous.

If a PG13 category is adopted, further consideration of the PG descriptor will be necessary. A change to “Parental Guidance recommended” would ensure a logical progression of age-advisory ratings.

Both the Classification Board and the Department’s own research studies have made credible arguments supporting the introduction of a PG13 rating. The FIA have identified several problems with the current system that would be resolved with a PG13 rating category.

- 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.

Researchⁱⁱⁱ shows that the understanding of ratings varies significantly across categories: 20% of respondents were confused about the difference between PG and M and 36% confused about the difference between M and MA15+. Three quarters (74%) of the new titles

released on Australian screens in 2019 were rated either PG (20%), M (36%) or MA15+ (17%), making it important to implement changes that provide clarity.

The Department's general public survey^{iv} suggested that adult Australians were particularly likely to refer to classification ratings when choosing media for minors, making clarity critical for unrestricted categories. The research^v confirmed that 73% of Australian parents would prefer material for children to include age guidance: demonstrating that current ratings would be more useful to parents if they incorporated a greater age differentiation across lower level categories.

A PG13 rating is transparent, useful and explanatory and will eliminate some confusion, particularly for parents. It fulfils one of the key principles of the National Classification Scheme to provide clear, unambiguous age-guidance to help parents make informed decisions.

- 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. PG13-rated films will not require a mature perspective and will therefore reduce the escalation of ratings.

In the absence of a PG13 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 by the FIA in response to Part 2/Question 9 (Page 7).
- 4) Australia is out of step with the majority of 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^{vi}.

Australian films could well be a key beneficiary of a new PG13 category, with recent titles such as *Ali's Wedding*, *Three Summers*, *Jasper Jones*, *Emo the Musical*, and *Top End Wedding* all rated M but appropriate for, and/or targeted to, a teen audience.

The endorsement of this new rating by the Classification Review is critical to advancing this important modification. Further consultation could then ensue to identify and define detailed guidelines.

The FIA do not support the removal of the unrestricted M-category nor countenance its' replacement with a PG13 rating. M is a critical category for films that do require a mature perspective yet fall short of the need to have a restrictive rating. It is an essential category for the commercial exploitation of a substantial number of films with recent examples including ***A Star is Born, Just Mercy, Bombshell, Richard Jewell, Midway, JoJo Rabbit*** and ***Knives Out***.

2: Classifiable elements

Q2: Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'themes/Violence/sex/language/drug use/nudity' reflect community standards and concerns? Do they need to change in any particular classification category or overall? Are 'themes' understood and is there sufficient guidance on what they mean?

The FIA believe that the classification system should provide consumers who are actively seeking guidance on the content of filmed entertainment, with enough information to make informed decisions at the point of purchase, about what they or their children watch.

The Department's 2015 research^{vii} confirms that classification is used most often in relation to choosing media for children and occasionally to inform people's own media choices.

Acknowledging that there are shifts in community standards over time, the FIA members 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.

Changing attitudes resulted in intense discussion in 2019 about the inclusion of mental health issues, such as suicide, in consumer advice accompanying a film's rating. With growing concerns around such issues, the FIA members are receptive to changes that provide sufficient information to consumers to make informed decisions about the films they want to see and to guide people who are vulnerable to certain themes.

The Classification Branch's 2014 study^{viii} into classifiable elements concluded that *"Although consideration could be given to creating additional classifiable elements, simply labelling some content types alongside classifiable elements in consumer advice is likely to perform the same function. Relevant content types include cruelty/abuse/malicious behaviour, sexual violence and suicide."*

The Guidelines need to be monitored and evolve regularly to maximise their relevance and utility in a convergent media environment. But the system also has inbuilt checks and balances whereby changes to community standards and expectations are likely to trigger consumer complaints and prompt review.

Audiences, with access to a massive range of content across multiple platforms, are increasingly sophisticated in their understanding of classification ratings and guidelines. If sufficient information is provided, they seem to be able to make informed decisions.

PART 2: MODERNISING CLASSIFICATION LEGISLATION

4: Content to be classified

Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?

The FIA maintain that, subject to existing exemptions, all professional screen content should be classified and contend that neither the distribution platform nor the size of the potential audience should influence decisions about what content should be classified.

It is hoped that the review will resist the imposition of greater constraints or higher regulatory burdens on theatrical exhibition where classification is more easily enforceable.

The FIA members would like the current exemptions for events and festivals to be maintained.

5: Applying the same classification standards across delivery formats

Should the same classification guidelines for classifiable content apply across all delivery formats (e.g. television, cinema, DVD and Blu-ray, video on demand, computer games)?

The FIA recognise the value of a clear and consistent classification system across all delivery platforms and endorse a standardisation of ratings and categories.

Without compromising a homogenised classification system, some variations may be required to meet the specific characteristics of different content types and distribution models. For example, user interaction makes computer games a distinctly different category from other screen formats and thus it might be viewed differently.

Any changes should enhance the system without causing confusion. Changes should also be flexible and adaptive for administering classification into the future, allowing for evolving platforms and delivery mechanisms.

Retrospective issues regarding content already released would also need to be addressed. There should be no requirement to re-classify content unless it is modified.

6: Classification processes

Consistent with the current broadcasting model, could all classifiable content be classified by industry, either using Government-approved classification tools or trained staff classifiers, with oversight by a single Government regulator? Are there other opportunities to harmonise the regulatory framework for classification?

The FIA members support the ACCC's Digital Platform Inquiry report which recommended a harmonised content classification system.

We endorse a range of industry self-classification models, overseen by an Australian Government regulator and welcome, as one alternative, the development and implementation of an online self-classification tool that will allow for greater flexibility, speed and reduced costs in the process of classifying films for public exhibition in a rapidly evolving digital cinema environment.

Industry participants should be free to determine what model of self-classification best serves their requirements, provided content is accurately and consistently classified in accordance with the Code

and Films Guidelines. Any model of self-classification should not result in the imposition of additional charges to industry.

Self-regulation is not new to classification. There are several international and local examples of successfully functioning self-regulatory systems for games, television and film. Using different methodologies, these systems are proving to have high levels of accuracy and compliance with relevant legislation and do not appear to be raising significant concerns amongst consumers.

A self-regulatory system must build in safeguards to maintain public trust and confidence in the classification scheme. These could include:

- A clear code of conduct and set of rules to which all distributors and distribution platforms are committed,
- The availability of an online National Classification Scheme training program, developed by the Classification Branch, or a regulator, for all content classifiers,
- Clearly defined penalties for deliberate and/or consistent misuse.

Film distributors and exhibitors have a proven track record of compliance with current classification legislation. While there were over **85 million admissions** to Australian cinemas in 2018/19, the Classification Branch recorded only **124 complaints**^{ix} about classification (0.0001%).

The FIA support the establishment of a single Regulator with primary responsibility for regulation of the National Classification Scheme, including approval and monitoring of industry classification codes of practice and enforcement of theatrical exhibition compliance.

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.

An easy to understand and consistent approach to the classification of content, under an appropriate regulatory regime, such as already exists with the ACMA for some platforms, would be acceptable to FIA members, as long as regulatory obligations and costs are not onerous.

7: Reviews of classification decisions

If a classification decision needs to be reviewed, who should review it in a new regulatory framework?

A review process for classification decisions is an essential component of a functional classification scheme. However, the current review system is no longer fit-for-purpose. It is expensive and unfeasibly time-consuming in an environment where digital distribution has minimised 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 independent of the original classification decision.
- Review assessors are trained and knowledgeable.

- Reviews can be triggered by distributors if (when applicable) an online self-assessment tool is not providing accurate ratings.
- Reviewers should be based in a single location with access to secure digital cinema facilities.

8: Classification Governance

Is the current co-operative scheme between the Australian Government and the states and territories fit for purpose in a modern content environment? If not, how should it be changed?

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;”*^x 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.

The FIA 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.

9: Other Comments

Are there other issues that a new classification regulatory framework needs to take into account?

The cinema industry has been advocating a change to the Commensurate Trailer regulation for many years. Under the current scheme, trailers for an unclassified film are assessed **based on the “likely classification” of the feature film being advertised**. These trailers can only be screened prior to films that have the same or higher classification than the **likely classification** of the film being advertised.

In 2012, the ALRC recommended the classification of trailers should no longer be solely dependent on the anticipated classification of the film but take into account:

- 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.

The industry proposes that trailers for unclassified films are assessed **on the actual content of the trailer**, while taking into account the corresponding audience for both the film being screened and the trailed film. Trailers would primarily be screened with films that are rated one category lower than the likely classification of the film being advertised, as long as the content of the trailer, if it were to be classified, would not be rated higher than the feature film it is being shown with.

Screen Audience Research Australia research^{xi} in 2018 confirmed that cinema trailers are the primary source of information about new movies for regular cinemagoers. Restricting the ability to trailer films undermines the commercial potential for many films.

The commercial limitations of the current scheme are exacerbated during holidays - the most important period for family films where trailering opportunities to commensurate audiences are commercially critical. G-rated films are often released during school holidays, but, as most post-holiday films will likely have a higher rating than G, there are few opportunities to advertise these titles.

Examples that demonstrate the practical impact of commensurate trailering regulation on film advertising include:

- While the trailer for *Dora The Explorer* (PG) included only G-rated content, it could not be trailed with *Toy Story 4* (G) during the June/July school holidays last year despite both films being aimed at the same audience.
- With very few R-rated films in cinemas, opportunities for trailering other R-rated films are very limited. *Overlord* (R18+) could not be trailed in cinemas at all as there were no other R-rated films in cinemas prior to its release. Films playing in cinemas at the opportune time for this trailer to screen included *Halloween* and *The Girl in the Spiders Web* – both rated MA15+ and aimed at a similar target audience to *Overlord*.

Under the proposed trailer reforms requested by the FIA, a trailer with MA15+ content could be produced and screened prior to an MA15+ film aimed at the target audience for *Overlord*.

- The trailer for *Bad Boys For Life* (MA15+) had no MA15+ elements but could not trailer prior to films with a similar demographic appeal, such as *Gemini Man*, *Ford vs. Ferrari* and *Ad Astra* – all rated M.
- Australian films, often rated M or above, are particularly affected by the commensurate trailer regulation. *Jasper Jones* (M) could not be trailed prior to *Lion* (PG) even though the intended audience was considered to be the same for both films. A PG-rated trailer for *Jasper Jones*, screened prior to *Lion*, may have helped the film attract a larger audience.
- Currently, the Australian film *Miss Fisher & the Crypt of Tears* (rated M) is targeted at the same audience as the classic remake of Jane Austin's *Emma* (rated PG) but even a trailer with only PG-content cannot be used to advertise the film prior to screenings of *Emma*.

Proposed changes to the trailering regulations will:

- 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, 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 with no or few restrictions online.

Some observers have made the argument in the past that showing trailers for films with a likely higher rating than the principal feature film increases pressure on parents whose children want to

see those films. The FIA do not accept this argument. The proper role of the Classification Branch and National Classification Scheme is to inform and guide parents to determine the appropriateness of content for their children and families, but the ultimate decision about what their children can watch is up to parents.

The FIA are committed to ensuring only appropriate trailers are shown in cinemas. Sensible trailer guidelines, and the industry's long history of compliance, will ensure that cinema trailers do not cause harm or disturb minors, nor cause offense.

It is important to emphasise that, given the high costs involved in the production and distribution of trailers, it is not commercially viable for industry to market films to anyone other than the target audience. Additionally, exhibitors and distributors take seriously the responsibility of ensuring that consumers are not exposed to inappropriate content in cinemas.

We thank you for the opportunity to contribute to this consultation process and look forward to further participation in the consultation process.

Sincerely,

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The **Film Industry Associations** is made up of the Motion Picture Distributors Association of Australia (MPDAA), the National Association of Cinema Operators-Australasia (NACO), the Australian Independent Distributors Association (AIDA) and Independent Cinemas Australia (ICA). These associations represent a majority of businesses operating in the cinema distribution and exhibition sector.

The Motion Picture Distributors Association of Australia

<http://www.mpdaa.org.au/>

The MPDAA is a non-profit industry association representing the interests of theatrical film distributors to Government, media, industry and other stakeholders on issues such as classification, accessible cinema and copyright. The MPDAA members are Paramount Pictures Australia, Sony Pictures Releasing, Universal Pictures International, Walt Disney Studios Australia and Warner Bros. Entertainment Australia.

The National Association of Cinema Operators

<https://naco.asn.au/>

NACO is a national organisation established to act in the interests of all cinema operators. It hosts the Australian International Movie Convention on the Gold Coast, 2019 being its 73rd year. NACO members include the major cinema exhibitors Amalgamated Holdings Ltd, Hoyts Cinemas Pty Ltd, Village Roadshow Ltd, as well as the prominent independent exhibitors Reading Cinemas, Palace

Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas and other independent cinema owners which together represent over 1400 cinema screens.

Independent Cinema Australia

<http://www.independentcinemas.com.au/>

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. ICA's members range from single screens in rural areas through to metropolitan multiplex circuits and iconic arthouse cinemas including Palace Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas, and Majestic Cinemas. ICA's members are located in every state and territory in Australia, representing over 601 screens across 154 cinema locations.

Australian Independent Distributors Association

<http://aida.film/>

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 US 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).

REFERENCES

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<https://www.classification.gov.au/about-us/corporate-reporting/annual-reports/classification-board-and-classification-review-board-annual-reports-2017-18>
- ⁱⁱ <https://www.common sense media.org/> **Common Sense Media website** is a well-regarded, online rating resource that aggregates ratings by experts, parents, children. It recommends this film for age 10+ⁱⁱ. A review by a thirteen-year-old says “*Okay movie for tweens-younger will be scared and older will be bored.*”
- ⁱⁱⁱ Nov 2016 **Classification: Usage and Attitudes Study, Department of Communications and the Arts**
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- ^{vi} **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, Australia, 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,
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