

14 June 2011

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett,

Response to submission to the Senate Legal and Constitutional Affairs Inquiry into the Australian film and literature classification scheme from Mr David Tennant dated 7 June 2011.

The Australian Communications and Media Authority (the ACMA) would like to provide some clarifying comments to the above noted submission.

- Regarding differences between the *Guidelines for the Classification of Films and Computer Games* (the *Guidelines*) and the *ABC Code of Practice* (the *Code*), it is a matter of fact that these documents differ. On 1 April 2011, the ACMA provided a response to questions on notice to the Committee that outlined how the various main broadcasting codes of practice interact with the National Classification Scheme, including some detail of where they differ. This response is publicly available as it is published online with other submissions to the Committee.
- The ACMA notes that it has no role in developing or registering either the *Guidelines* or the *Code*.
- The ACMA investigates complaints according to the specific classification mechanism that applies to the broadcaster (e.g. the code/s of practice that apply to that specific broadcasting sector). To base an investigation finding on the *Guidelines* and/or Classification Board decisions where the governing classification mechanism is the *Code* would be a serious error in administrative decision making. What Mr Tennant describes as the ACMA 'completely [disregarding] the findings of the Classification Board' (see paragraphs 2.1.1.2 and 23.2.8) is in fact the ACMA utilising the correct regulatory framework.
- In relation to a statement (at paragraph 23.2.5) regarding the ACMA purportedly acting inappropriately by not addressing any differences between the *Guidelines* and the *Code* within its investigation report: It is germane that the investigation addressed the issue of whether or not the ABC correctly classified *Criminal Justice* under the *Code*. The investigation was not into the issue of why there are differences between the *Code* and the *Guidelines* and how these might have contributed to a difference in classification under the two mechanisms. Therefore it would not have been appropriate to include the discussion about the differences between the two mechanisms in the investigation report. A reference to the matter was included in the letter as a courtesy because the complainant had raised the issue in his complaint and the ACMA sought to provide clarity.

- In relation to a statement (at paragraphs 23.2.11 and 23.2.12) regarding the ACMA purportedly reproducing a submission from the ABC on the matter of a specific scene within *Criminal Justice* without explaining or justifying it: If the ACMA independently reaches a conclusion that aligns with a portion of a submission made by a broadcaster (or a complainant for that matter) it is appropriate for that agreement to be incorporated into the report in a transparent manner. In the instance cited, the investigation report included the relevant extract from the ABC's submission and the ACMA's independent finding. Further, Mr Tennant states that the ACMA provides no justification or reasoning for its decision in relation to the aforementioned scene. This is incorrect. Mr Tennant himself has quoted a section of the report that provides the reasoning for the scene being treated in the manner it was by the ACMA. That the ACMA's opinion may have accorded with the ABC's submission on a specific point within an investigation was immaterial to the outcome of the decision and appropriate reasons for the decision were provided by the ACMA within the investigation report.

We trust the above information will assist the Committee in finalising its inquiry and report.

Yours sincerely,

Jonquil Ritter

Executive Manager

Citizen and Community Branch