

**Australian Home Entertainment Distributors  
Association (AHEDA) submission to the Senate  
Legal and Constitutional Affairs References  
Committee**

**Inquiry into the National Classifications Scheme  
and a Proposal for Reform**

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## Introduction

### **About AHEDA**

The Australian Home Entertainment Distributors Association (AHEDA) represents the \$1.3 billion Australian film and TV home entertainment industry covering both packaged goods and digital content.

Formed in 1983 as the Video Industry Distributors Association (VIDA), the Association has grown and adapted along with the industry. VIDA became the Australian Visual Software Distributors Association (AHEDA) with the incorporation of games. When games distributors set up their own association - coupled with the continual technological led shifts in the home entertainment landscape such as the rise of Blu-ray disc, 3D and digital - the Association became AHEDA on 1 February 2011.

In 2010, AHEDA members moved over 76 million titles worth \$1.29 billion in wholesale sales. These figures do not include member's digital sales.

The Association speaks and acts on behalf of its members on issues that affect the industry as a whole such as: intellectual property theft and enforcement, classification, media access, technology challenges, copyright and media convergence. AHEDA works closely with a range of stakeholders to achieve its aims including government, media and industry. AHEDA is also increasingly looking to work with members and broader industry participants to conduct relevant channel campaigns and activities to promote the home entertainment film and TV sector.

The Association currently has 12 members including all the major Hollywood film distribution companies through to wholly-owned Australian companies such as Roadshow Entertainment, Madman Entertainment, Hopscotch Entertainment, Fremantle Media Australia and Anchor Bay Home Entertainment.

AHEDA is also proud to support the Starlight Children's Foundation and drives the annual Starlight Movie Month campaign.

### **The Senate Review**

AHEDA is pleased to be able to respond to this Senate Committee review into certain aspects of the National Classifications Scheme. AHEDA has been at the forefront of working with successive Governments in reforming the Classification Act to make it more responsive to industry requirements and meet developments in technology such as the invention and explosion of the DVD as a format for watching films and TV shows. The majority decisions of the Classification Board and the Classifications Operations Branch (COB) is home entertainment (film-other) decisions so any review into the Scheme is of primary interest to AHEDA. This submission responds to the Terms of Reference (ToR) but also puts forward an argument and model for wider reforms that it will also be making to the Government. To date and feedback AHEDA has received is that the proposed changes at the macro level has bi-partisan support which is pleasing.

## **The National Classifications Scheme**

AHEDA fully supports the spirit and intent of the National Classifications Scheme which commenced on 1 January 1996 (the Scheme); namely to provide information and guidance to the public, parents and children about the suitability of content such as film and TV shows.

As an industry we fully comply with the Scheme and the Classifications Act and we recognise it is in our interests to ensure our content is well understood and age appropriate; in fact the major distribution companies, their brands and reputations are worth more than any one title or rating. All AHEDA members, for example Disney, are deeply concerned about protecting its reputation and brand at all cost; this concern then matches the intent of the Scheme.

However, AHEDA also sees limitations in the Scheme and the way it is governed through legislation such as the Classifications, Broadcasting and Telecommunications Acts which regulate different platforms but the same content. The Classifications Act is an analogue piece of legislation in a digital world.

## **Recent changes to the Classifications Act**

Over the past six years AHEDA has promoted changes to the Classifications Act to reflect the changes in technology such as the DVD now being the main way people watch home entertainment films and many TV shows (the Act pre-dates the DVD format let alone the internet). Despite the former Office of Film and Literature Commission (OFLC) opposition at that time, it is pleasing that successive Governments have supported industry arguments for sensible change.

The recent incremental updates AHEDA has promoted to the *Classifications (Publications, Films and Computer Games) Act 1995* over the past few years include:

- Additional content other than the main feature to be self-assessed;
- Adoption of the TV series self-assessment scheme (where the show has been previously broadcast on Australian TV); and
- Allowing the advertising of unclassified films on DVD.

While these incremental changes are welcomed, technology and business models are moving so quickly that a new way of adhering to the National Classifications Scheme for the same content across different platforms is needed - moving away from the 35 millimetre theatrical print and printed press days to create a seamless digital system for a digital age. The current system was simply not designed for the modern reality of a film being released simultaneously at the theatre, on subscription or free TV, on DVD, over the internet and on mobile devices.

## **Confusion over scope of the Classifications Act**

This confusion manifests itself when trying to understand the legal scope of the Classifications Act and whether it covers content on the internet. AHEDA has been advised by the Attorney-General's Department (Dr Susan Cochrane, 2<sup>nd</sup> November 2009) that the Act

“does not exclude” classifying content on the internet but can only consider such content if a valid application is received. This matches evidence given to a Senate Estimates Committee hearing by Classifications Board Director Mr Donald McDonald on 19 October, 2009.

The Act itself predates the internet and it is unclear whether the Classifications Act in fact covers content on the internet despite careful wording used around the Act “*does not exclude*” the Board from classifying content; this confusion is also due to the fact that the Broadcasting and Telecommunications Acts cover internet and other digital content classification so which Act applies?

AHEDA has previously been advised by the Classifications Board, its former Director and the former OFLC that it does not have a mandate to classify and assess content made available via the internet. In this matter, the only thing that is clear is that there are many confused people both in industry and government proving that the system needs urgent reform.

#### The role of the Commonwealth<sup>1</sup>

The Commonwealth’s contribution to the National Classification Scheme includes the *Classification (Publications, Films and Computer Games) Act 1995*. The Commonwealth Classification Act establishes the Classification Board and sets out the procedures the Classification Board follows in making its classification decisions. The Act also establishes the review mechanism, the Classification Review Board, which, on application, reviews decisions made by the Classification Board.

#### The role of the States and Territories<sup>2</sup>

Under the National Classification Scheme the States and Territories are responsible for the enforcement of classification decisions. Each State and Territory has classification enforcement legislation to complement the Commonwealth Classification Act. The enforcement legislation sets out how films, publications and computer games can be sold, hired, exhibited, advertised and demonstrated in each State or Territory. Some States and Territories have reserved censorship powers and varying classification requirements, which are outlined in their legislation.

The Senate is looking at a number of aspects of a federated national classification scheme where the current commonwealth mandate is restricted to the Commonwealth Copyright Act. In other words, on certain issues such as enforcement, AHEDA notes that the Senate can only make recommendations to the States and has no jurisdiction to introduce legislation in the Commonwealth Parliament.

#### **Proposed ALRC review in the Classification Scheme**

AHEDA has been actively engaging with the Government to promote the need for reform of the Scheme. The original agreement between the States and the Commonwealth in 1995 has as one of its aims:

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<sup>1</sup> [http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy\\_Nationalclassificationscheme#section3](http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy_Nationalclassificationscheme#section3)

<sup>2</sup> [http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy\\_Nationalclassificationscheme#section3](http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy_Nationalclassificationscheme#section3)

*“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;”*<sup>3</sup>[emphasis added].

We welcome the Federal Government, along with the States and Territories, having the Australian Law Reform Commission (ALRC) conduct a wholesale review into the Scheme. As referenced in response to the ToR item b) later in this submission, it is clear that some elements of the federated scheme are not meeting its original ambition of making the system uniform and simple. When each State or Territory can make its own laws government the sale and advertising of films we run the risk of each jurisdiction having its own localised rules which is a major concern and issue. Retailers, for example Kmart, JB HiFi, Coles and Woolworths for example have national catalogues and feature DVDs heavily (and they show the classification ratings clearly of each film). However, South Australia enacted a law in 2010 which makes national retail catalogues unworkable in that State.

This submission proposes a new national system that returns uniformity to the Scheme to create better outcomes and make it workable in the 21<sup>st</sup> century.

Kind regards

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**SIMON BUSH**  
Chief Executive  
AHEDA

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<sup>3</sup>[http://www.scag.gov.au/lawlink/SCAG/ll\\_scag.nsf/vwFiles/SCAG\\_Censorship\\_Intergovernmental\\_agreement.pdf/\\$file/SCAG\\_Censorship\\_Intergovernmental\\_agreement.pdf](http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/vwFiles/SCAG_Censorship_Intergovernmental_agreement.pdf/$file/SCAG_Censorship_Intergovernmental_agreement.pdf)

## AHEDA Analysis of the Scheme And A Proposal For Reform

### Current System and Its Limitations

The basis for the need to review and update the way the National Classifications Scheme is governed is that the cumbersome legislation which underpins the Scheme is not serving the government, the community or industry.

An example of the current fragmented system is as follows:

- A free-to-air TV network broadcasts a TV show episode (self-regulatory regime under the Broadcasting Act governed by ACMA);
- The same TV show is available to be downloaded and watched from the TV network's website directly following the broadcast (self-regulatory regime under the Broadcasting Act governed by ACMA);
- The same TV show is available to be viewed via a mobile phone or other mobile device (self-regulatory regime under the Telecommunications Act governed by ACMA); and
- The TV show is made available on DVD format (governed by the Classifications Act and administered and approved by Classifications Operations Branch).

A similar scenario applies for films whereby different pieces of legislation and classifications systems apply whether it is available for viewing on TV, the internet, the cinema or on DVD. This year has seen the example (first of many) of a major film (The Curious Case of Benjamin Button) being released day and date on subscription TV, for download via the internet and for purchase for sale or hire on DVD. For each platform a different scheme applies for the same content!

The sub-optimal outcomes I believe of the current system include:

- Confusion by industry and the consumer over the entire classifications system and which system applies at any given time depending on how the same content is packaged;
- Lack of consistency in classifications and consumer advice (or none at all) from one channel or platform to the next – obviously this is perhaps one of the worst outcomes if consumers are left confused;
- Different classification ratings and advice can be given to the same content on different channels (ie differing from when shown on TV to the rating the Classifications Operations Branch or the Board may apply);
- Cost to industry in managing different regimes and systems for classification and potential for industry to inadvertently make a mistake due to the confusing nature or simply not comply; and
- Any attempts by policy makers to make the regime more confusing or onerous could lead to content being moved off-shore to circumvent Australian domestic laws but still make

the content available to Australian consumers (principally over the internet)<sup>4</sup>. Sadly, this has already occurred.

Historically, AHEDA members mostly have to comply with the Classifications Act and the time consuming and expensive Classifications Operations Branch (COB) processes but increasingly the Broadcasting and Telecommunications Acts and their guidelines regarding content is becoming more relevant.<sup>5</sup>

Australia recently become one of the first markets in the world where DVD distributors are making available a second digital copy of a film when they purchase a DVD where the digital copy is accessed by a key and unlocked over the internet which enables the digital content to be moved in an electronic file format to multiple devices and stored on hard drives without breaking any copyright or intellectual property laws.

AHEDA believes that a true Australian National Classifications Scheme should be homogenous and consistent across channels making it easy to understand and comply with by both industry and Australian families and consumers. The current fragmented system does not achieve this and without reform will only get worse.

AHEDA research into the classification system confirms the different treatment across channels or platforms and a recent case study (Attachment A) demonstrates the inconsistent classification of commercial content across these different channels, as well as the different industry bodies administering consumer complaints.

Table 1 below (page 9) illustrates the different ratings which apply across different platforms and highlights some of the problems with the current system. For example, Free TV and Subscription TV for some reason are quite different in that FreeTV has its own unique ratings including those of C, P and AV 15+ which do not apply to any other media platform.

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<sup>4</sup> Noting the policy making process of the former Howard Government regarding the regulation of content over the internet and specifically the age verification device policy which in AHEDA's view, as indicated by its submission to government at the time, led to poor policy outcomes with unintended consequences which was left to ACMA to implement (which to its credit did so sensibly and smoothly).

<sup>5</sup> According to the latest available annual report from the OFLC, in 2006/07 the category which covers DVD applications for assessment, Film – Other, accounted for over 4,600 applications or around 80% of the total OFLC workload. The OFLC received in this same period almost \$7 million in fees from industry to have content classified.



Table 1: Classification Codes for the Different Media Channels

| Internet            | Mobile | Free TV              | Subscription TV | Film/DVD/Game       |
|---------------------|--------|----------------------|-----------------|---------------------|
| -                   | -      | C or P <sup>6</sup>  | -               | -                   |
| - <sup>7</sup>      | -      | G <sup>8</sup>       | G               | G                   |
| -                   | -      | PG                   | PG              | PG                  |
| -                   | -      | M                    | M <sup>9</sup>  | M                   |
| MA15+               | MA15+  | MA15+                | MA15+           | MA15+ <sup>10</sup> |
| R 18+ <sup>11</sup> | R 18+  | AV 15+ <sup>12</sup> | R 18+           | R 18+               |
| -                   | -      | - <sup>13</sup>      | -               | X 18+ <sup>14</sup> |

 Regulated under the *Broadcasting Services Act*

 Regulated under the *Broadcasting Services Act* and the *Telecommunications Act*


 Regulated under the *Classifications Act*

Table 2 below (page 10) shows that each platform or channel has a different scheme for the awarding of classification ratings as well as handling any consumer complaints.

For example, physical DVD's, films and games require a detailed and lengthy application to the COB and its Board, accompanied by a large application fee, in order to be granted a rating within 21 days. The other media platforms use industry codes and self-assessment under the framework of the National Classifications Scheme.

<sup>6</sup> Content classified C or P on Free TV represents suitable viewing for Children or Preschool Children

<sup>7</sup> Internet and Mobile services are not required to put classifications for any content under MA15+, and any content classified X18+ or RC are prohibited on these services.

<sup>8</sup> Programs on Free TV also need to show consumer advice before the program starts, in case it may have lower graphics but still suitable for the classification. For example, a program can be classified PG but it may contain a small amount of coarse language.

<sup>9</sup> Subscription TV only needs to provide consumer advice for films and drama programs classified M and MA15+.

<sup>10</sup> Identification is needed for sale/hire of films and DVDs classified MA15+ unless the minor is accompanied by an adult/guardian, and films and DVDs classified R18+.

<sup>11</sup> Internet and Mobile services are only allowed commercial content classified as R18+ subject to a restricted access system.

<sup>12</sup> Content on Free TV classified AV15+ is similar to MA15+, except there are strong violent themes, or violence is the central theme to the program. However, Subscription Television does not classify programs with strong violence as AV15+, they use MA15+.

<sup>13</sup> Free TV are unable to broadcast content classified R18+ or above.

<sup>14</sup> Films classified as X18+ are only subjected for viewing and purchasing in ACT and NT.

Table 2: Ratings Assessment and Administering Complaints by Media Channel

| Internet                                    | Mobile | Free TV                                       | Subscription TV                               | Film/DVD/Game        |
|---|--------|---|---|----------------------|
| ACMA; or Classification Board (if referred) | ACMA   | First need to talk to the licensee; then ACMA | First need to talk to the licensee; then ACMA | Classification Board |

The current system is complicated, onerous and a major cost on industry (and Government), which can be further appreciated by reading the following email communication from the Classifications Operation Branch to its customers in July this year:

*Dear Valued Clients,*

*The Classification Board made nearly 6,800 decisions in the 08/09 financial year and the Classification Operations Branch (formerly the OFLC) processed more than 6,600 applications from companies such as yours. The Board itself is a small team, with approx. 15 individuals viewing material on any given day. The Applications Section, which handles all applications in the first instance, prepares them for the Classification Board and responds to all enquiries, is a team of just ten people.*

*The processing of applications by both the Applications Section and the Classification Board is governed by strict deadlines set out in the Classification Act and Regulations, **with the turnaround of standard applications having a 20 working day limit, and a five day limit on priority-paid applications. Many applications are complex, and many run to over a 1000 minutes. All of this makes the process of classification demanding and time-critical. Despite these restrictions, the Board always does whatever is in its power to accommodate specific needs and individual circumstances [emphasis added].***

*One of the many critical issues in the process is the state of the material submitted for classification, the DVDs, Blu-rays, publications and games of various formats. In order to provide timely classification services to you, the Classification Board asks you to consider the following:*

- *Please test your discs and ensure they work before submitting them – many applications are stalled when it is discovered that discs are faulty, and often this isn't discovered until well into the 20 day turnaround period. This can seriously disadvantage production and marketing schedules.*
- *Do not provide films or TV series on an excessive number of separate discs – you should attempt to consolidate material whenever you can onto fewer discs with reasonable viewing durations (eg 100 or 200 mins). An application containing 25 separate discs of 20 minute TV episodes can cause delays in processing due to continuous loading and unloading of discs and tracking disc numbers and order, particularly if discs contain extraneous material. This is particularly the case for Blu-ray.*
- *Try to ensure what you submit resembles the make-up of the final product intended for market – submitting a single program over several discs, sometimes containing extraneous material, is confusing and time-wasting. As far as possible, what you submit should be what will appear in Australian shops.*
- *Be clear about what is to be classified – The Classification Board understands that in some circumstances you will need to submit discs that include material you do not want to include in the application. This is not an ideal situation, and the Board is not obliged to accept such material, so please make clear on your application **IN WRITING** what is to be viewed and what is to be ignored. If you need to, copy material to another disc so it's in the correct order and reflects the final product. If it's confusing and untidy to you, it will be confusing and untidy to the Classification Board.*

- *If you are applying for a classification of a game, including a disc showing examples of game-play illustrating the highest classifiable elements of the game will be a great help to the Classification Board and potentially speed up the classification process.*
- *Game code should be provided in a format which is ready to be played. If you are unsure what formats are acceptable, please contact our technical support team at*
- *Gameplay footage and any other documents should be provided on a separate disc. Please do not put video files on the same disc as the game code.*
- *For clients submitting 35mm prints, they must arrive “head-out”.*
- *Leave time in the production/marketing cycle for the classification of your product – many applicants fail to leave sufficient time for the Board to classify material before it goes to market. We make every effort to complete classifications as soon as possible, but due to the large and constant stream of applications the Board must reserve the right to use all the processing days allocated to it by legislation if circumstances dictate.*

*The Classification Board and the Applications Section are keenly aware of the many issues facing distributors, producers, importers and marketers of classified material in Australia, but applicants must take responsibility for making the effort to present material in way that is easy and clear to access and interpret if we are to keep to, and improve, classification turnaround times [emphasis added]. In some circumstances, the Classification Board has the right to reject or halt an application in the scenarios described above. To help avoid this situation, please take note of the suggestions above. If you are in any doubt, please contact an Applications Officer.*

*Lastly, the OFLC ceased to exist 3 years ago. This organisation is called the Classification Operations Branch (COB). Please ensure that material you post to us (please inform those who post on your behalf) is marked with the correct name to ensure it gets to us.*

Kind regards,

**David Emery**  
**Manager, Applications**  
**Classification Operations Branch**  
**Attorney-General's Department**

This email to COB clients demonstrates the complexity of managing the Scheme as it currently stands and in some ways is bureaucracy gone mad. The time and effort of distributors dedicated to undertake training, complete detailed and lengthy applications and comply with the Scheme, as well as the \$7 million in annual fees submitted, means there has to be a better way from a pure process point of view.<sup>15</sup>

The highlighted section in the email above is another important issue for AHEDA members and it impacts on the effectiveness of the Scheme more generally. This highlighted section clearly states that the COB cannot meet demand and timing considerations of the industry for the marketing and sale of its products. This issue will also be solved by the proposed solution put forward in this submission.

Evidence provided by the Director of the Classifications Board, Mr Donald McDonald to the Senate Legal and Constitutional Affairs Legislation Committee on 19<sup>th</sup> October, 2009 gives

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<sup>15</sup> Noting also the difficulty the government has in the collection of fees from industry in order to classify content as AHEDA has pointed out previously in submissions to government that it has over-collected fees and is now in the difficult process of working out how the Commonwealth can reimburse applicants.

further insight into how the current system is becoming more complicated and that the current structure is not the right mechanism to classify content:

*“In 2008-09 the Board....received applications for classifying 4,792 films, 1,095 computer games and 197 publications. Consistent with recent years, the viewing time per application has increased...Primarily this is due to the continued trend of the release of boxed sets of television and other DVD material”.*

Other sectors calling for similar reforms:

AHEDA is aware that the games association and FreeTV have also made submissions or held forums on how to classify content in a digital world and the confusion surrounding the current systems in a convergent environment.

This issue is not limited to home entertainment film and TV content but also broadcasters, ISPs, portal owners, content aggregators and games distributors.

## **International Examples**

From some preliminary research AHEDA has undertaken into classifications systems around the world, it appears Australia stands out as having an overly complicated and directly government controlled scheme.

No other country has a classifications system which is run by the government with government bureaucrats processing applications and fees and supposedly viewing all materials as they are required to do under the Act; which is physically impossible to do with 15 COB employees and 4,792 applications of films alone over the past year (source: Mr McDonald, Senate Estimates, 19 October, 2009).

A snap shot of different international schemes is provided below.

USA: Motion Picture Association of America Ratings Board runs the industry self-assessment scheme and is technically voluntary but compliance is close to 100%.

United Kingdom: [Currently due to the illegality of the Video Recordings Act the system is voluntary]. Films are classified by the British Board of Film Classification which is an industry selected and independent non-government Board whose director sets policies. There is a legal issue and review at present in the UK in that the Video Recordings Act underpinning the scheme has been found to be invalid and that: “The Government has therefore urged the industry in the interim to comply with the provisions of the VRA on a voluntary and best practice basis. The BBFC will continue to classify video works submitted by distributors on a voluntary basis for this period.”

European Union: Pan European Game Information (PEGI) covers games and software and is governed by an industry code and ratings given by an independent administrator.

Canada: Operates a federated model with each province deciding ratings; however, they are currently reviewing/reforming their system into a single system.

New Zealand: The Act empowers the Labelling Body to issue labels for films, videos, DVDs and computer games it has rated or cross-rated G, PG or M from Australia or Britain. The Labelling Body must send anything that would receive a higher classification to the Classification Office for classification, after which the Classification Office will direct the Labelling Body to issue the appropriate label.

AHEDA understands that the NZ Government is undertaking a review of its system based as a result of representations from local films and games distributors. There is potential for a joint Australia/NZ government approach to classification reforms and unifying our systems and Codes. It should be noted that Australian based home entertainment film distributors also have New Zealand in their geography and remit which units shipped across the Tasman once manufactured in Australia.

Sweden: The Government has decided to close the board of film censors, Statens Biografbyra, in 2011, 100 years after it was founded. From then on, any film will be able to

be released in Sweden, as long as it does not break laws governing such things as child pornography. The current age-related rating system — general, 7, 11 and 15 — will be kept though and any film that is not submitted to the new national ratings body, as yet unnamed, will automatically get a 15 rating.

Future global approach of western English speaking countries:

As content and its digital distribution becomes more global in nature (arguably it already is) arbitrary sovereign state boundaries become less relevant and by definition as do government regulations. It may be appropriate at some future stage to consider an international approach to classification of content from English speaking western countries but is outside the scope of this submission.

I would also like to point out that Australia and New Zealand has entered into a Closer Economic Relations (CER) agreement and the New Zealand system of “stickering” or labelling over Australian ratings (which they use as guide in any case) is another cost borne by industry that AHEDA will be speaking to the New Zealand Government about. Most AHEDA members also distribute DVDs into New Zealand. This is something the Australian Government may also care to raise either directly or through SCAG processes and AHEDA understands the NZ Government is considering reforms to its classifications process.

## The Guiding Principle For Reform

### Same content, Same rating, Single system, Different platform

In reforming the current system AHEDA proposes that the reform agenda follow a guiding principle such as:



This guiding principle will assist in policy development and reforms to the Scheme and the way content should be classified in Australia given the digitisation of content with the proposition that the Scheme and its governance should enforce a single system whereby the same rating should apply regardless of how the film or TV show is watched.

## A New Model

AHEDA has taken the reform's guiding principle of **same content, same rating, single system, different platform** to help shape a new model for delivering on the intent of the National Classifications Scheme which we don't believe are currently being met.

An easy to understand and consistent approach to the classification of content, under an appropriate regulatory regime such as already exists with ACMA for some platforms with a complaints process to the Classifications Board would lead to:

- Greater industry compliance of the current excellent classification scheme we have in Australia;
- Greater awareness by the consumer and consistency of classifications markings and consumer advice across different channels;
- Greater adoption of ratings and consumer advice which does not apply to all platforms; and
- Making it easier for industry to understand and comply with Australian classifications rules thereby not driving content to be hosted off-shore to circumvent local laws.

### The Way Forward: A Home Entertainment Classification Code of Practice

AHEDA proposes that government adopt the model that all filmed and TV content be classified and approved by trained industry classifiers (self-assessment) fulfilling the National Classification Scheme's current principles and governed by an industry Code of Practice. This model would align and compliment other industry codes which govern free to air broadcasters (FreeTV Code) and subscription TV (ASTRA Code) and build on the self-assessment approaches already embraced under the Classifications Act and by both sides of government in recent years.

AHEDA proposes that the current policy for theatrical films does not change and that they continue to be classified by the Classifications Board and this rating will carry through or guide the same content when it is released on other platforms as is currently the case for DVD and internet. This will cover a large amount of content.

In addition, the distribution of TV series on DVD or via the internet or mobile devices will continue, as is the case under current legislation, to be guided by the broadcasters' rating.

Any modifications or changes to content that has been previously classified by the COB or changed in an impactful way (eg 2D to 3D), will be governed by a new Industry Code of Practice and be self-assessed.

Further, AHEDA proposes that the new Home Entertainment Code of Practice for the classification of content only apply to the following categories:

- Exempt (E)
- General (G)
- Parental Guidance (PG)
- Mature (M)
- Mature Accompanied (MA15+)



Content that is likely to be classified at the higher legally restricted R18+ and X18+ categories would continue to be rated by the Classifications Board as an added safety mechanism.

All distributors operating in the Australian market will be required to have Code and self-assessment training which is to be run by the industry association (AHEDA). The courses and training materials will be governed and approved by ACMA (the current government COB training modules will be used as a starting point for future training needs under a Code). Importantly, a distributor does not need to be an AHEDA member to access the training courses and thus qualify under the Scheme and Code.

This model would be the most efficient and efficacious as it:

- Embraces and enhances recent Government reforms regarding industry self-assessment and large sections of the industry (and AHEDA members) have existing government (COB) trained or authorised self-assessors. Thus the model proposed is an extension of current practice and it becomes more efficient by removing the requirement to submit the application to a government authority for a process driven approval which is costly, complicated to administer by government and takes too long and only covers one platform;
- This model and Code is more nimble and can adapt to new technology and platforms (eg 3D films in the home, merging of games and film and links to online content);
- Saves the government (tax payer) money in administrative costs;
- Aligns with existing systems and codes and would lead to greater consistency; and
- Opens up the possibility of enhancing the Scheme by the adoption of ratings below MA15+ and of consumer advice across all channels including into the mobile and internet domains (should the government wish).

#### How would complaints be handled under this AHEDA Industry Codes of Practice model?

It is proposed that the Classifications Review Board be retained and any complaints about ratings be referred directly to the Board via ACMA (to weed out vexatious complaints) rather than adopt other industry codes where the complaint goes to the distributor in the first instance (such as in TV codes where the complainant has to first refer their complaint to the advertiser or broadcaster), then ACMA and then the Board (depending on the process and channel). It is worth noting that the numbers of referrals to the Board for the review of classified films and TV shows is close to zero (low single digits).

States and Territories would continue to have special authority to ask the Review Board to assess the rating given to content. States and Territories are also required to maintain their current enforcement roles.

## **Conclusion**

Aligning and updating the system would not be a difficult process as the systems exist at present to leverage ACMA industry codes of practice to generate a reformed and consistent National Classifications Scheme for Australia to the benefit of all and this would align to current government policy and major reforms such as the NBN.

The benefits to industry and importantly to the consumer and parents that will flow from an enhanced Scheme should make it acceptable to the entire community.

Technology and the digitisation of content and convergence of platforms such as games consoles connected to the internet to download content will only make the need for reform more urgent. The days of ignoring this issue are gone and AHEDA is willing to work with the Government, Opposition, minor parties and the Senate to develop a 21<sup>st</sup> century Scheme which continues to protect and educate Australians regardless of the way they choose to access content.

## ATTACHMENT A: CASE STUDIES

### Case Study: Underbelly Series 1 Uncut

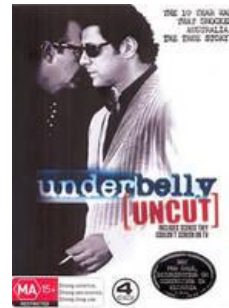
The following is a case study demonstrating inconsistency across different media platforms, and strangely even within the one platform.

The Australian produced Underbelly TV series was a huge hit on Australian television and a similarly huge hit when released on DVD becoming the biggest selling DVD of 2008.

However, research conducted by AHEDA has shown how the system is confusing and leads to outcomes which can only be concluded adversely affect the consumer through inconsistent ratings advice as well as ratings which no one understands.

#### The classifications ratings for Underbelly Series 1 Uncut:

1. The DVD Series 1 Uncut version goes on sale across Australia and is rated MA15+ (May 2008);



2. Channel 9 aired the Uncut version of the first series of *Underbelly*, rating the program AV15+ (19<sup>th</sup> May 2009,);
3. Channel 9's website showed classification for the Uncut series as AV (20<sup>th</sup> May 2009); and

| Show Info |   |
|-----------|---|
| Cast:     | Madeleine W<br>Kestie Moras<br>Stewart, Dan |
| Country:  | Australia                                   |
| Duration: | 60 mins                                     |
| Episode:  |   |
| Genre:    | Drama                                       |
| Rating:   | AV  |

4. The Channel 9 website classified the same Uncut series as MA (2<sup>nd</sup> July 2009).

This single example demonstrates the inconsistency of classification ratings not only across different media

| Show Info |           |
|-----------|-----------|
| Cast:     |           |
| Country:  | Australia |
| Duration: | 60 mins   |
| Episode:  |           |
| Genre:    | Drama     |
| Rating:   | MA        |

channels but also within the one channel causing confusion for Australian consumers.

If this program was to be shown on subscription television, the classification category would be MA15+, as the code of practice for subscription television has outlined their classification symbols up to MA15 +. They do not recognise content as AV15+.

Further to the classification symbols on free-to-air television, licensees are required to provide additional consumer advice before programs commence regarding the graphics of the program. For example, Channel 9 could classify the Uncut series of *Underbelly* as MA15+ with consumer advice on extra graphics showing strong violence. Therefore, maintaining a consistent classification category for this program across different media channels.

## Terms of Reference

AHEDA will specifically comment on the Terms of Reference in summary below with the substantive position on reforms made in the main preceding sections to this submission.

### **a) the use of serial classifications for publications;**

AHEDA makes no specific comment except that any system must be workable and not place a ‘time for rating burden’ on a publisher that would place delays on getting a product to market.

### **b) the desirability of national standards for the display of restricted publications and films;**

AHEDA is not sure what the ToR means when it refers to the “display of restricted publications and films”. If this is referring to advertising and not the public exhibition or make available for sale of hire of films, such a national system is in place and currently exists.

However, if b) is to mean advertising as “display” then there are major issues and problems around the advertising of materials due to the fact that one State in South Australia has recently decided to make certain amendments to its Classification legislation. The South Australian Parliament, without consultation, passed classification amendments which came into effect in January 2010. The amendments changed the way films could be advertised and displayed in that State.

AHEDA along with the Australian National Retailers Association (ANRA) identified a range of problems and unintended consequences with the legislation and jointly have argued for changes. Amendments we jointly put forward are currently being considered by the SA Government and have been approved by Family First and the legislation’s author Hon Dennis Hood. Mercifully, the SA Police and Minister sensibly agreed last year to place a moratorium on enforcing the new laws until the issues had been dealt with and resolved.

What the SA example does show is that a single State changing its laws affects a national retailing market thus creating a massive headache for retailers. This case study supports the AHEDA proposition behind the need for single market and set of rules governing classification in this country. Each State making its own rules is not only confusing for consumers, it makes running an efficient market almost impossible in the film and TV industry and goes against the original aim of the cooperative scheme stated goals.

### **c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;**

Enforcement is a matter for the States and Territories and any changes should be considered in an all-encompassing review of the Scheme as is proposed by the ALRC.

**d) the interaction between the National Classification Scheme and customs regulations;**

Classification ratings are a useful additional tool in the fight against copyright piracy. AHEDA would support additional enforcement actions by the Australian Customs Service whereby a person entering Australia brought in on their person more than 10 DVDs that are clearly pirated or non-classified in any jurisdiction to be surrendered to the ACS for destruction. The current law suggests that the amount must be considered a “commercial quantity”. This needs a stronger definition and less ambiguity placed on it by the Government.

**e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;**

AHEDA has no comment.

**f) the impact of X18+ films, including their role in the sexual abuse of children;**

AHEDA has no comment as its members do not distribute X rated films.

**g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;**

All films should be classified under the laws of the day. Anything that is rated or would likely be rated RC should not be published or sold. As such certain elements described in g) would likely be RC. Other such depictions of showing sex or violence in the restricted 18 years and over category, AHEDA supports the current community standards and CoB interpretations and also the philosophy that consenting adults should be able to view what they wish without the heavy hand of government making decisions for them.

**h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;**

AHEDA understands that billboard and poster advertising falls under the advertising standards and sees no reason for the expansion of the current Scheme to include other advertising and questions the role of the Commonwealth in government billboards and posters.

**i) the application of the National Classification Scheme to music videos;**

AHEDA has no comment.

**j) the effectiveness of the ‘ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes’;**

AHEDA has no comment.

**k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;**

AHEDA notes that community debates around the sexualisation of children is within the parameters of magazine and TV advertising not around film as such.

**l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;**

Refer to detailed arguments in the preceding submission. AHEDA believes there is need for reforms and consistency in this area.

**m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;**

Refer to detailed arguments in the preceding submission. AHEDA believes there is need for reforms and consistency in this area.

**n) the Government's reviews of the Refused Classification (RC) category; and**

AHEDA is aware of the Government's intention to refer a review of the Scheme to the ALRC with approval from SCAG with a draft Terms of Reference being published. AHEDA is not aware of any specific review into the RC category and AHEDA does not support the inclusion of anything currently deemed RC by the CoB for film to become made available in categories of G through to R18+ and X18+.

**o) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General's Department.**

No comment.