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Submission by the

Australian Home Entertainment Distributors Association

to the

Australian Law Reform Commission's

Issues Paper on the

National Classification Scheme Review

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Australian Government
Australian Law Reform Commission

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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 known as the 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 (Disney, Paramount, Sony, Twentieth Century Fox, Universal and Warner Bros) through to wholly-owned Australian companies such as Roadshow, Madman, and Hopscotch Entertainment, Fremantle Media Australia and Anchor Bay Home Entertainment.

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

The ALRC Review

AHEDA is pleased to be able to respond to ALRC review into 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 and now the convergence of platforms and digital distribution models.

It is worth noting that the majority of the workload and decisions of the Classification Board and the Classifications Operations Branch (COB) relates to AHEDA members for home entertainment (film-other) decisions so any review into the Scheme is of primary interest to AHEDA.

As indicated by the table below taken from the CoB 2009–10 Annual Report, the Classification Board received 7,302 applications and made 7,178 decisions. Of which 4,395 – or 60 per cent – related to home entertainment (DVD) film or TV content which AHEDA members distribute.

Thus the Classification Act and Scheme – and any proposed changes – affect AHEDA members more than any other single stakeholder.

Table 03 Applications received by format/source

Commercial applications	Applications received
Film (public exhibition)	425
Film (not for public exhibition)	3,983
Film (not for public exhibition) – ACA	141
Film (not for public exhibition) – ATSA	271
Computer games	1,101
Publications (excluding serial publications)	228
Serial publication declarations	63
Assessment of likely classification – film	55
Assessment of likely classification – computer games	5
Other applications	
Internet content	257
Enforcement (including Australian Customs and Border Protection Service)	220
Film festival exemptions	518
Fee waiver applications	35
Total	7,302

AHEDA has previously written to the Minister for Home Affairs, the Hon Brendan O'Connor proposing a new model is needed to reform the Scheme and is pleased that he has asked the ALRC to conduct this review. This Ministerial submission guided the AHEDA submission and evidence it gave to the recent Senate Legal and Constitutional Affairs References Committee Review into classification. In both submissions, AHEDA proposed a framework for contemplating reform and looks forward to discussing its merits with the ALRC.

This submission responds to the ALRC issues paper and the relevant and thought provoking questions it asks as a way to assist in the development of its future discussion paper. AHEDA has read the draft MPDAA (Motion Picture Distributors Association of Australia) submission to the ALRC Issues Paper and wishes to express our broad support for the views it contains.

In this submission, I have chosen to focus on a few key questions in some detail that in my opinion will frame the debate and policy development moving forward. In Attachment A I have provided a more detailed list of answers to the Issues Paper questions that relate to our industry for easy reference and completeness.

Kind regards

SIMON BUSH
Chief Executive
AHEDA

Background

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, 2nd 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[1]

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[2]

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.

A number of questions from the ALRC relate to the Federated Classification Scheme and possible reform options including the ability of the Commonwealth to force recalcitrant States into adopting reforms. This submission makes certain suggestions on this important issue and potential barrier to reform.

The original agreement between the States and the Commonwealth in 1995 has as one of its aims:

"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****;"*[3] [emphasis added].

It is clear that the federated Scheme and the worthy ambition cited above of making the system uniform and simple is being eroded. An example is where each State or Territory can make its own laws governing the sale and advertising of films leading to each jurisdiction having its own localised rules which causes major headaches. Retailers, for example Kmart, JB Hi Fi, 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.[4]

[1] http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy_Nationalclassificationscheme#section3
[2] http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy_Nationalclassificationscheme#section3
[3] http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/vwFiles/SCAG_Censorship_Intergovernmental_agreement.pdf/$file/SCAG_Censorship_Intergovernmental_agreement.pdf
[4] The Hon Dennis Hood MLC has agreed to amendments to the South Australian Classification (Publications, Films and Computer Games) (R18+ Films) Amendment Act 2009 which recognise the industry issues it raised but has yet to be agreed to by the SA Government and will still leave SA classifications laws different from other States.

Supply chain of film or TV content:

Traditional release approach of filmed content prior to 2009 (windows strategy):

Theatrical release ➡ DVD release (120 days) ➡ Subscription TV (210 days) ➡ Free TV (2 years)

Current and future release approach:

The release or windows strategy moving forward could be described as "blurred" in that current window strategies are being re-evaluated and are rapidly changing as the impact of digital distribution and online piracy creates both opportunities and threats for content distributors.

For example, only a minority of films made get a theatrical release. For those films with a theatrical window, the exclusivity of this window is being eroded with announcements by Warner Bros, Universal and Twentieth Century Fox this year that in the United States they will experiment with a premium Video on Demand (VoD) offering which is essentially a digital offering of the film prior to the traditional DVD release date 120 days after the theatrical release.

The windows beyond the theatrical release period from VoD, DVD, subscription TV are now blurred and can entail simultaneous release strategies for certain films. AHEDA expects this long-term trend to continue.

Later in 2011, members of the Digital Entertainment Ecosystem (DECE)[5] which include the major movie studios will be launching a cloud service called Ultra Violet which enables both physical and digital purchasing and viewing of filmed content across any platform (in other words the DRM technology will allow it to be played on any device). It may well be the case that service providers could make available a content streaming service to Australians from overseas.

There has also been examples in major international markets of a digital offering of a TV episode before the first free to air broadcast so the traditional business models cannot be relied upon in framing a new classification framework and only reinforces the need for the future scheme to be platform or channel agnostic (and consistent).

[5] http://www.uvvu.com/

AHEDA Response to Three Key Issues Paper Questions:

AHEDA has taken the view that the issues paper and the questions asked are a good way to frame the scope and role of a future classifications scheme. AHEDA looks forward to responding in detail to the Discussion Paper stage of the ALRC review into classification.

One of the key issues which need to be ascertained is to the scope of a scheme and what (content) should fall within it. However, such questions can only be answered if we have an understanding of what we want the scheme to actually do? It is with this in mind that AHEDA now responds.

Question 2: What should be the primary objectives of a national classification scheme?

AHEDA supports the intent of the Scheme as it currently stands but also strongly supports reform to recognise the realities of digital distribution, simultaneous release of content across platforms, the explosion in volume of content (including user generated) and the current fractured jurisdictional nature of the Scheme.

AHEDA believes that a national classification scheme should:

1. Provide information and guidance (via the rating and consumer advice) to parents, children and individuals on suitability and themes of content (as defined);
2. Be consistent across media platforms (same content, same rating, single system, different platform);
3. Be consistent across jurisdictions (accepting variations around availability of X rated content); and
4. For content MA15+ and below, industry to self-assess under an appropriate co-regulatory framework.

In addition, the Scheme should be clear on what content is in its remit (ie the definition of content needs to be clear). In other words, the regulatory headache around "simple" and non-contentious mobile computer games and applications could be nullified if these don't fall under the definition of content and thus fall outside the Scheme (therefore not required to be classified in any way).

The threshold question (in part covered by Question 5 of the issues paper) is what content should be covered by the Scheme needs careful attention. Currently much ambiguity and legal questioning by industry against government interpretations of the Classification Act is unhelpful.

Thus the ALRC should guide the government on **what** content should be administered by a reformed Scheme, and as part of this what **can** be administered in a digital distribution environment which is: instant, international, vast and often user generated.

In other words, the Scheme should focus on the content that "matters" and be implemented so that it can apply to as much content as possible directly by the content distributor.

Question 3: Should the technology or platform used to access content affect whether content should be classified, and if so, why?

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.

AHEDA notes that Free TV in its submission to the Senate review agreed that the current scheme with different ratings on different platforms is confusing for the consumer when it said: *"Free TV therefore urges standardisation of classification regulation across all platforms".*

Question 5: Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

What should be in the Scheme (however it is designed ie government regulated, co-regulated or self-regulated) and the definition of content should determine the rating not "potential impact". Such phraseology leads to ambiguity and dissention in the current interpretation of the Classifications Act. Of course "impact" of the material being assessed for a rating is part of the current scheme.

Such a debate is taking place around dimensionalisation (ie 2D to 3D) as has occurred in the past such as moving from black and white to colour.[6] The issue arises is when drawing a line around what affects impact can leads to shades of grey (and thus open to interpretation and confusion or poor policy). For example, if one argues, as the Board is attempting at present that dimensionalisation affects impact (that is #d is more impactful than 2D), then so to by extension of the same logic does screen size when viewing the content where a theatre screen with surround sound is more impactful than watching on a mobile phone or home television. Of course modern 3D TV sets can upscale 2D broadcasts to 3D so this interpretation cannot work or be regulated in the home. Such policy interpretations remove the focus on what is relevant and important and will only lead to objections, inconsistency of application and ultimately dissention from the Scheme.

AHEDA notes that impact is a key determinant for the Board in making ratings decisions as stated in the *Guidelines for the Classification of Films and Computer Games*:

> **Using the Guidelines: Essential principles**
>
> Three essential principles underlie the use of the Guidelines:
> · the importance of context
> · assessing impact
> · the six classifiable elements

[6] Of course 3D films have been available theatrically for 50 years (and on video/DVD nearly as long) so the current Board interpretation on 3D content requiring for theatrical a separate application all of a sudden is curious.

Except for the X18+ category, each classification category takes a similar form. It begins with an "impact test" that determines the threshold for the category. It then lists the six classifiable elements, with a statement limiting the content of each element.

Role of the Classifications Board should be to implement policy, not define it

AHEDA has been involved in working directly with the Classifications Operations Branch, and the Classification's Board over the past ten years (the former OFLC) and is of the view that the Board's remit should be to implement the Government's policy as defined in the Act (and its intent) in classifying films rather than establishing its own interpretations through onerous regulatory processes and actively seeking legal interpretations with the deliberate aim of broadening the scope of the Scheme about what should be classified.

Content designed for children, as per answer to Question 2 above, should be industry self-assessed and it should apply and be consistent across all platforms. The Scheme would have to ensure that industry is in a position (through relevant assessor training) to do the assessments and that there is a process by which complaints can be made to catch any content that is deemed to be rated G or PG which may have higher classifiable elements.

Children's TV Content:

AHEDA is of the view that episodic children's TV content today should not be required to be classified. The amount of pre-school aged children's specific TV programming is immense and the cost to classify is great. In terms of risk profiling the threat of allowing DVD distributors to put the G rating on the material without Board approval is a no brainer and should be allowed.

One must remember that there is an exemption for classification if the content has an educational purpose. AHEDA has in the past received legal opinion suggesting that much of this content need not be classified at all as it could be considered exempt using the basis of the educational nature of the content. Further, most of this material has already been publically broadcast and received a rating which does not apply at present to DVD or digital release.

Of course in a potential reformed scheme, the content could be self-classified with the rating consistently applied across all platforms.

Attachment A: Full list of ALRC Questions from Issues Paper and AHEDA's Summary Response

Question 1. In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

AHEDA supports the intentions of the Scheme but is also of the view that reform to the framework which regulates the Scheme is needed as it is currently unworkable in many areas. The intent of the Scheme is sound but the regulatory and legislative framework, its definitions and scope requires an overhaul as it is not serving the public nor industry.

Question 2. What should be the primary objectives of a national classification scheme?

See detailed answer in previous pages, but essentially it is to provide advice to consumers on the nature of the content they are seeking to purchase or consume (for content that falls inside a regulated scheme).

Question 3. Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

In summary no, the platform should not matter; it is the content which is important. See detailed answer in previous pages for more discussion in this. The key question is what content should be classified not whether content should be classified.

Question 4. Should some content only be required to be classified if the content has been the subject of a complaint?

It would depend on the design of the new Scheme. One could envisage that some content that is currently classifiable under the Classification Act be made exempt in a modernised Scheme and subject to a complaint, may need to be classified (eg a PG film that has been found to have some M elements that may originally have been assessed as exempt).

If some content is deemed to fall outside a future scheme, a complaints based mechanism that seeks a rating review on the previously exempt content in question may be a useful safeguard.

Question 5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

See detailed answer in previous pages.

Question 6. Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

No. What currently occurs under the Scheme is that the large distributors and major studios support and take the Scheme seriously and comply. It is some smaller niche importers and distributors that flout the system without fear or favour due to lack of enforcement by the State and Territories.

Question 9. Should the potential size and composition of the audience affect whether content should be classified?

No.

Question 10. Should the fact that content is accessed in public or at home affect whether it should be classified?

This is an interesting question and comes down to how content is accessed in the home for example, online streaming, IPTV, broadcast etc. Closed subscription based networks (whether internet based or cable "broadcasting" like Foxtel) could foreseeably be assessment free and fall outside the Scheme.

Of course, overseas based content and streams would fall outside a domestic classification Scheme if that content was either free, or the transaction had taken place off-shore for purchased content. There is some legal debate in Australia and variations between Australian States as to whether internet content accessed in Australia from overseas hosted servers is classifiable. Any reforms to the scheme must respond to this issue. Of course as we move to cloud based streaming servers, the cloud itself – where the content is hosted and accessed – could be anywhere in the world.

Again, the in-home accessing of content and the regulatory complications this brings in a converged world, means that self-regulation/assessment of content is the only way classification information can be applied to content.

Question 11. In addition to the factors considered above, what other factors should influence whether content should be classified?

How does one wish to regulate private and "walled garden" peer to peer networks that can have tens of thousands of members? The cloud is mentioned in the response to Question 10 above, so the ALRC needs to appraise itself of future delivery and business models in framing a new scheme.

Question 12. What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

AHEDA notes Government policy around web and ISP level filtering and its approach to site blocking. Blocking restricted (RC) online content would not affect AHEDA members but notes the issues surrounding the Restricted Access System (RAS) policy in attempting to block MA15+ and R18+ legal content.

AHEDA notes the RAS only applies to MA15+ content where a commercial transaction has taken place (as this is the only real way to determine age through a credit card authorisation online). This could be considered strange and selective policy as MA15+ content provided without a fee (ie free) does not require a RAS. In other words, regulation is only applied when the consumer pays for it. There are some business models that distribute filmed and TV content online with the return for the distributor from embedded advertising. This would fall outside the current RAS.

The only way AHEDA can imagine an online regulatory system working for classification is for the classification scheme to be uniform across platforms and for distributors to be able to self-assess.

Question 15. When should content be required to display classification markings, warnings or consumer advice?

The simple answer is at the point of sale or in the advertising where the classification is known.

Question 16. What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

The roles of these entities would become clearer when a new system is designed. For example a semi-regulated self-assessment model would potentially require an industry code to be established and mandated by a government agency and the relevant industry association. The industry association could also potentially have a role in governing and running self-assessor training courses.

It is important to note that industry bodies, like AHEDA, do not assess content as that is the rightful role of the distributor and this should remain the case. Studios rightfully treat release strategies for content and access to the content prior to public release in a very commercial-in-confidence manner.

Question 17. Would co-regulatory models under which industry itself is responsible for classifying content, and government works with industry on a suitable code, be more effective and practical than current arrangements?

The current arrangements are out-dated, impractical and leading to sub-optimal outcomes for both parents and industry and AHEDA fully supports a new regulatory model attached to an updated Scheme.

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.

The distribution of TV series on DVD or via the internet or mobile devices will continue, as is the intent under current legislation for DVD, to be given the same rating as that given by the Australian broadcaster who is the first "platform" to classify the content. In other words, TV content on DVD or the internet can simply use the broadcast rating which would lead to greater consistency and public awareness (and no need as per the new model to submit to a Classifications Board).

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.

States would lose their ability to generate local laws governing the advertising and sale of content.

Question 18. What content, if any, should industry classify because the likely classification is obvious and straightforward?

Industry should classify all content except for R18+ and X18+ due to their high impactful and often controversial nature.

The other obvious area for reform and industry self-assessment, as mentioned in a previous response, is around G rated children's television episodic content (pre-school).

Question 19. In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

In the proposed AHEDA model self-assessment of all content (except for R18+ and X18+) would take place. A small distributor will be able to access a trained industry assessor for minimal cost to ensure the content is classified appropriately. AHEDA has no view on whether exemptions should apply or subsidies granted for film festivals.

AHEDA would like to place on the record that the fees the government collects via the Classifications Operations Branch from applications is excessive at over $7million per annum with the majority of these fees coming from AHEDA members. The fees applied to applications mean that sometimes mainstream content is not made available (legally) to Australians.

An example is Universal Pictures Home Entertainment has in the past decided not to release a mainstream and popular TV series broadcast in Australia called Law and Order, due to the prohibitive fees on classifying long form TV content. The recent changes and the creation of the ATSA Scheme goes some way to fixing this issue but the new model proposed by AHEDA would ensure that more content can be made available to Australians.

Question 20. Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

Yes, the former OFLC had done a large amount of research which found the existing categories are well known and supported. The move to colour coding the ratings was a positive change and supported by AHEDA. Recent reforms to consumer advice which gives parents and individual's important information on the content has also been a process AHEDA has supported

Question 21. Is there a need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?

No. As per above, a lot of work on this issue has been done a few years ago and AHEDA would not support any changes to a system that is on the whole well understood and supported. Previous attempts at changing certain categories (eg MA15+) have rightly failed.

Question 22. How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

I think the question answers the problem in that they should be consistent across platforms full stop. Some leeway may be required around consumer advice and television broadcasting.

Question 23. Should the classification criteria in the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

Ideally yes. Any reduction in the potential for confusion and duplication is a good thing.

Question 24. Access to what content, if any, should be entirely prohibited online?

AHEDA would support the prohibition – should the government so desire – of any content online that would be deemed RC under current classification standards and definitions.

Question 25. Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

As per question 24.

Question 26. Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

Absolutely consistency across jurisdictions should be a primary aim as it currently purports to be under the original intent of the cooperative Scheme. However, it is clear this sensible intent has been eroded over the years with the States and Territories making their own laws and regulations on such things as advertising and marketing thereby making a uniform national approach to selling a legal film difficult.

A complete overhaul of the State and Territory classification legislation is required. AHEDA has been dealing with one State in South Australia making its own laws governing the sale and advertising of films which has had national implications as an unintended consequence (in this case around the advertising of films in national retail catalogues). Having different rules in each State is not conducive to running an efficient and productive national economy. Further, the new laws in South Australia around advertising and marketing of R18+ films would not apply online so again there is a strong mandate for the States and Territories to refer these powers to the Commonwealth.

Question 27. If the current Commonwealth, state and territory cooperative scheme for classification should be replaced, what legislative scheme should be introduced?

The classification legislation of the States and Territories should be reduced in scope to solely cover enforcement and review of ratings (ie complaints) to the Classification Board.

Question 28. Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?

Yes as is needed. See further detail in response to question 26 and 27.