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2006 Independent Review of Code of Conduct for Film, Exhibition and Distribution

**Undertaken by Neill Buck of Neill Buck & Associates Pty
Limited for the Board of Management Film, Exhibition and
Distribution Code of Conduct Management Committee.**

April 2006


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Introduction and Methodology

This is the report of an independent review of the Code of Conduct for Film Exhibition and Distribution (the Code). This Code has been in place for nearly 10 years. Details on the costs, number of calls and other operational arrangements are found in Appendix One. This information should be read in association with this report.

Like all such Codes, if they are effective, this Code is a cost effective and efficient form of self regulation.

The Code is administered by a small secretariat within the Office of the Conciliator in Sydney and the representative Committee of Management is chaired by an Independent Chair who receives a small per diem for this task.

As a result of my enquiries I have made a series of recommendations in response to the terms of reference I was provided with by the Committee.

The Review was conducted during March and April 2006.

In conducting the review I considered a number of documents provided by the Conciliator and Code Committee and the ACCC guidelines. I also received a series of oral submissions and information provided by the parties to the Code and other interested persons.

The ACCC's previous reviews of conduct in the industry and the Code in 1997, 1999 and 2001 have been taken into account in this review.

It was not appropriate to call for formal submissions hence I conducted a series of interviews in person and by phone with interested parties. In this type of review the parties are often unwilling to provide such submissions but will give freely of their time to explain their point of view.

Given this approach the review took longer than anticipated due to problems with the availability of key stakeholders.

Terms of Reference for the Review were provided by the Committee of Management for the Code. They were:

1. Report on whether the Code is operating effectively and also consistently with the ACCC Guidelines for Developing Effective Voluntary Codes of Conduct.

In order to consider this Term of reference I sought to establish the following:

- What are the industry's and other stakeholder's aspirations for an effective code in this sector;
-

- How the Code performs when benchmarked against the matters considered in the ACCC Guidelines for Developing effective Voluntary Industry Codes of Conduct (ACCC 2005);
- What are the risks associated with the current code in its operation and its failure to operate effectively in terms of the aspirations of participants and stakeholders.

Report on whether the Code meets the current expectations of the industry generally and the present challenges faced, following consultations with industry parties, including non signatories.

In order to consider this term of reference I undertook the following:

- Conducted open and private interviews with stakeholders and interested parties;
- Reviewed documents and reviews relating to the Code including identifying the issues that may have given rise to the Code, the extent to which they are relevant today and any new issue which may have emerged;
- Assessed the enquires, complaints and conciliation arrangements under the Code;
- Considered the role of the Chairman, the Conciliator, the Committee of Management and stakeholders in the Code.

In conducting the Review I took account of the ACCC Guidelines for the Developing Effective Industry Code and my experience in conducting such reviews.

I formulated a set of benchmark questions for the review based on ACCC Guidelines which I either asked directly or attempted to address in each of the interviews conducted as well as in consideration of the documents, procedures and reports on the code.

They were:

What are:

- the issues the code should address;
- the benefits of the code to stakeholders;
- the rules necessary to achieve the objectives;
- the costs of administering the code;
- how this cost is going to be funded;
- the resources available to develop an effective code?

Are the following benefits obtained from the Code:

Is there:

- greater transparency of the industry;
- greater stakeholder or investor confidence in the industry;
- compliance with the Act to significantly minimise TPA breaches;
- competitive marketing advantage from belonging?

Is the Code:

- more flexible than government legislation and can be amended easily;
- able efficiently to keep abreast of changes in industry's needs;
- less intrusive than government regulation;
- likely to lead to industry participants have a greater sense of ownership of the code, leading to a stronger commitment to comply with the Act;
- a quality control mechanism within the industry;
- providing complaint handling procedures that are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies?

Does the Code have:

- widespread support of industry;
- representatives of the key stakeholders, including consumers, consumer associations, the government and other community groups on its management committee;
- an effective system of complaints handling?

Does the Code take account of:

- the issues in the industry and the nature of the industry including:
 - the size and structure of the industry or sector for which the code is proposed;
 - other industry circumstances such as the geographic spread and cohesiveness of the industry;
 - the history of the industry in relation to the conduct or objective the code is aiming to address?

What is the current degree of confidence, trust or credibility the parties have with the Code and each other?

Would another regulatory arrangement deliver better outcomes?

Does the current model represent the minimum necessary to achieve the identified objectives, in a manner which imposes the least cost of compliance on the parties?

Are there commercially significant sanctions available that will achieve credibility with and compliance by participants, and also engender stakeholder confidence in the code?

Does the Code incorporate a strategy that will raise participant awareness of the code and its contents, including its complaints handling provisions?

Are industry members aware of the Code, its strengths and/or limitations?

In Section 4 of the report I have undertaken a benchmarking process against each of these questions.

I received the full cooperation and assistance of all people approached in the Review including the major distributors and their representatives, small and large exhibitors in city and rural and regional areas and the Code Conciliator and Chair of the Code Committee. I was also able to conduct informal discussions with staff of the ACCC.

In all cases I found people who were committed to an appropriate regulatory regime in the sector focussing on some form of self regulatory system.

Previous Reviews – Why there is a Code

I found the work of Ross Jones in 1997 and the ACCC in 1999 and 2001 to be particularly helpful.

I did not attempt to replicate the work undertaken by the ACCC in 2001 but used this work as a basis for testing the outcomes of that review.

A number of people suggested that more of the ACCC's recommendations should have been adopted. In order to assess this I have reviewed the recommendations in light of my findings in this review and have set out comments against each below.

This sector has been the subject of many reviews dating back to the 1920s. There have been a number of Royal Commissions notably in the 1930s.

Over the years the issues have remained similar. They have all related a characteristic in the industry of imbalance in power between the distributor and the exhibitor particularly the small exhibitor in rural and regional Australia. Several of those parties have alleged unconscionable or at least unfair practices by distributors and bullying and victimization.

The 2001 review undertook extensive marketplace surveys and made series of recommendations. This was a most thorough review and appears to have taken account of wide range of views in a practical and appropriate manner. It provides a useful benchmark to form a view about conduct in the industry and the effectiveness of the Code over the ensuing period.

On the basis of my enquires I could see little difference in the issues and conduct in the market since that review.

The ACCC made 35 recommendations many of which were not taken up. It seems to me that each of the recommendations was valid and appropriate given the issues that I identified.

However this is a voluntary code. Parties sign because they see it as a good idea. Not all distributors or exhibitors have signed the Code. Prescribing the Code would probably not affect this take up but making the Code mandatory would.

In 2001 the current government appeared unlikely to take up the option of mandating a Code involving the issues addressed in this Code. As noted elsewhere in this report the government has recently considered seriously a similar mandatory code for the service station industry (Oil Code) and for the Retail Grocery Sector.

It seems that the industry should be aware that the government is unlikely to be as reluctant to adopt a more prescriptive form of regulation as it was several years ago. Clearly those who represent the constituents of rural and regional Australia have expressed serious concern about the loss of amenity in regional centres and may see this as a means of redressing the loss of such amenities. There is no evidence to

suggest that this would be an outcome of the imposition of a mandatory code. The reverse is more likely as it would make supply to small exhibitors too great a risk for distributors.

In order to avoid duplication of previous work I have set out below comments on each of the 2001 ACCC report's recommendations in light of my enquiries.

2001 Report Recommendation 1

The ACCC recommends that section 4 of the Code be amended to clarify the meaning of 'fair and equitable'.

This was not done. It should be in terms set out in the ACCC report.

The effectiveness of such a term is limited by the willingness of the parties to take it seriously regardless of the definition.

While it is not essential, such an amendment would send a message to all parties about how serious the parties are to give effect to the Code and appropriate business relationships. I have commented on the notion of fair and reasonable elsewhere.

2001 Report Recommendation 2

The ACCC recommends that section 5.3 of the Code be amended to require a distributor to include its good faith estimation of the expected return of a new site, in its grounds for a decision whether to supply that site.

Done

2001 Report Recommendation 3

The ACCC recommends that section 8 of the Code be amended to include a provision requiring distributors to give reasons for a refusal to supply advertising material. This provision should mirror the existing section 8.1, including a specified time for supply of reasons (three working days).

Done

2001 Report Recommendation 4

The ACCC recommends that section 8.1 of the Code be amended to require distributors, upon request, to supply written reasons for non-supply within three working days.

Not done; currently 4 days

2001 Report Recommendation 5

The ACCC recommends that section 8.2 of the Code be amended to require each distributor to supply information of upcoming product release to all exhibitors (as opposed to individual exhibitors). This information could be supplied by way of each distributor's website.

This has been done although the addition of reference to 10.6 seems redundant in a web listing.

Elsewhere in the report I discuss the issue of contracts being entered into without details of films.

2001 Report Recommendation 6

The ACCC recommends that section 8.3 of the Code be amended to require distributors to negotiate, agree and advise all exhibitors of terms of supply prior to the booking deadline for each film.

Done. The issue of running time and classification are important and the addition of "where possible" in the current 8.3 negates the effect of part of this.

2001 Report Recommendation 7

The ACCC recommends that section 9 of the Code be amended to include an obligation on distributors to reasonably consider all requests by exhibitors to review the session requirements for a film which has under-performed.

An amendment was made to this effect in the Code. It is unlikely that the current wording would require the distributor to do anything under this section and in my view this clause should be amended to reflect good faith rather than the current wording which appears to avoid the issue.

The point of this section is that some negotiations should take place. Both parties should understand that negotiation does not imply that one or other party will necessarily give ground.

I understand that this does occur from time to time; hence such a clause would merely reflect good practice.

2001 Report Recommendation 8

The ACCC recommends that section 10 of the Code be amended to include obligations on distributors:

- **to provide flexibility in policies for exhibitors, having regard to the following matters:**
 - **film hire rates, length of seasons, session requirements, advice of terms, advertising,**
 - **bonds and guarantees;**
 - **to provide flexibility in policies for heritage cinemas;**
-

- **to ensure the quality of prints supplied to exhibitors; and**
- **in relation to any other matters determined by the Code Administration Committee.**

This appears not to have been done. In my view adding this section would be an act of good faith by the distributors.

Therefore in order to ensure balance in the Code a suitable and simple set of clauses should be added in line with the ACCC's recommendations. These are the type of standard terms and conditions which I would have expected to see in this Code given the nature of the relationships and the intent of the Code. The lack of such terms stand as a good argument for some form of mandating suitable terms under these headings.

This section of the Code is currently misnamed as it appears (excepting clause 10.3.1) to contain no obligations on distributors.

2001 Report Recommendation 9

The ACCC recommends that section 15 of the Code be amended to include a definition of the conciliation process.

This appears to be defined in Clause 14.1.

Recommendation 10

The ACCC recommends that section 14 of the Code be amended to include a definition of the role of the Conciliator.

Done.

Recommendation 11

The ACCC recommends that section 2.1.2 of the Code be amended to include the word 'timely' in the Code objectives.

This has not been done. It appears to me from the issues raised in this review that timeliness is a critical issue for all parties who want to be able to resolve a matter and move on to the next film while at the same time retaining an effective commercial relationship.

Not having timely settlement of disputes means that issues carry on past the actual dispute time and date and become embedded in the relationship leading in some cases, I understand, to relationship breakdown.

2001 Report Recommendation 12

The ACCC recommends that the ‘early intervention’ dispute resolution procedures form part of the Code.

The critical part of this issue lies with the nature of the internal dispute resolution system in each company.

I would expect as per the Code that each distributor would have a documented internal dispute resolution system including a time frame.

At the same time this should include an internal Code compliance system. I have discussed the elsewhere.

In practice the disputes are often resolved by negotiation, by reference to the Managing Director of the company, by a telephone call to the office of the conciliator and some quick intervention such as a call by the Conciliator’s staff. This quick and effective system should be included in the Code and documented in the “in company” systems. One company could produce template systems that could be published by the Code committee for the benefit of other distributors and for the information of all parties.

2001 Report Recommendation 13

The ACCC recommends that section 15.1.1 of the Code be amended to require:

- **a party complained against to respond in writing within two working days after receiving a written complaint; and**
- **the parties to make every effort to resolve a dispute in good faith by no later than four working days from the date upon which the complainant raised the issue.**

The ACCC also recommends that section 15.1.2 of the Code be amended to require the Conciliator to deal with a matter within seven working days of a matter being referred to him/her.

It seems to me that some of these sections of the Code are very vague and unhelpful. It is not clear the statement in this section of the Code, “what in the time considered reasonable by the complainant,” may mean.

It is not clear the extent to which the parties have used clause 15.1.3 (b) (ii) and involved the industry association. This seems to me to be consistent with the need to address some balance of power or perception of balance of power issues in these relationships. It may also be the precursor of some form of authorised collective negotiations.

In practice I understand matters (which are going to be resolved) are resolved quickly so why would shorter time frames not be included in the Code? The only conclusion one can draw from their absence is an unwillingness of the parties to attempt to

resolve the matters quickly. There is no positive obligation on the parties to actually resolve in this section. It is about timeliness and good faith.

At the base of the problem here is the lack of confidence in the process. Unfortunately changes to this confidence may only occur over time and then only if both parties to a dispute act reasonably and in good faith.

2001 Report Recommendation 14

The ACCC recommends that:

- **section 15.1.1 of the Code be amended to simplify wording in accordance with the new recommendations; and**
- **the new simplified Notice of Dispute developed by the Code Administration Committee be included as an appendix to the Code.**

Not done. A notice of dispute would be helpful in guiding the parties as to how to set out the issues and also in making clear in simple terms how the process may work i.e. some form of flow chart.

2001 Report Recommendation 15

The ACCC recommends that the Code be amended to require each major distributor to develop an internal dispute resolution policy.

This is an appropriate recommendation and should be published on their website and form part of each organisation's compliance program. I have discussed this in detail elsewhere.

2001 Report Recommendation 16

The ACCC recommends that section 16 of the Code be amended to give the Conciliator the ability to set a time and date for conciliation.

This was not done. In practice the conciliator does this but it would be helpful if this is something that is set out in the code.

2001 Report Recommendation 17

The ACCC recommends that section 16 of the Code be amended to include a non-exhaustive list of the types of information that should be included in recommendations made by the Conciliator (eg time limits, reference to the film/s in question and other relevant information).

This recommendation was made to aid in the specificity of conciliator recommendations. It seems to me that the parties have the opportunity to ask the conciliator for clarity in what they are determining. In my experience in such conciliator recommendations are developed in consultation with the parties in order to find a sensible solution and resolve the dispute.

Nevertheless such an inclusion would help parties understand what is possible under the Code.

2001 Report Recommendation 18

The ACCC recommends that section 16.4 of the Code be amended such that parties shall not be allowed legal representation before the Conciliator but must ensure the attendance of a person authorised to settle a dispute.

This is an appropriate recommendation. It is a basic principle of such dispute systems that all parties come to the dispute on as equal a footing as possible. It is sometime appropriate for one party to have a helper to represent them. Adding legal advisors may escalate a dispute into a legal confrontation.

It is a fundamental part of this type of dispute resolution that the parties present are able to resolve the dispute at the time and this should be added to the Code.

2001 Report Recommendation 19

The ACCC recommends that the Code Administration Committee take steps to publicise the requirements in section 16.5 of the Code that information revealed during the conciliation process remains confidential.

The ACCC also recommends that the parties to a conciliation enter into confidentiality undertakings.

In order to conduct dispute resolution in good faith and equitably parties need to have confidence in the process. Failure to follow this basic principle of confidentiality reduces or eliminates any confidence the parties may have in the process

2001 Report Recommendation 20

The ACCC recommends that the Code be amended to include a conciliation agreement proforma.

This is a good idea and will lead to inexperienced parties or those lacking confidence in the process gaining a better understanding of the process and hopefully being more willing to use it.

2001 Report Recommendation 21

The ACCC recommends that where a Conciliator's recommendation is not adopted, the identity of the parties, the nature of the dispute and the recommendation be included in an Information Bulletin to Code signatories (in addition to being included in the annual report).

Provided a suitable agreement is entered into, as per Clause 19 and 20, and this forms part of the Code procedures, this is a necessary part of any process and should be adopted.

2001 Report Recommendation 22

The ACCC recommends that section 15 of the Code be amended to provide that a party who fails to adopt a Conciliator's recommendation will cease to be a signatory to the Code.

The party in question will have a right of appeal to the Code Administration Committee. A party who ceases to be a signatory to the Code by reason of the operation of section 15 can only be reinstated with the approval of the Code Administration Committee.

It seems to me that the lack of a sanction such as this makes the Code quite weak.

Inclusion of such a sanction may make some reluctant to join. However the government and the ACCC will always retain the right to mandate the Code. This is a strong incentive to sign up and comply.

I have discussed the lack of commercial sanctions for non compliance under this Code elsewhere and consider this to be a serious deficiency in this Code.

2001 Report Recommendation 23

The ACCC recommends that the Code Administration Committee prepare a report on alternative dispute resolution processes involving binding decisions that might be appropriate for inclusion in the Code in place of the current process.

I understand that this discussion did take place. It seems likely that if recommendation 22 is adopted then this need will be reduced.

2001 Report Recommendation 24

The ACCC recommends that the MPDAA and the COAA meet every six months, or at another regular interval decided between the two organisations.

I understand that this happens and I was told that the improved dialogue was one of the features of the Code. One of the challenges discussed elsewhere is the ability of small businesses to get away from their businesses to attend such meetings.

2001 Report Recommendation 25

The ACCC recommends that the resolution relating to recognition of regional and country cinemas form part of the Code.

It seems likely that unless the industry does recognise this group in the code then the government will come under increasing pressure to take some action in the form of mandating the Code to facilitate this outcome.

Most issues relate to this group so it seems logical that they be included.

2001 Report Recommendation 26

The ACCC recommends that the Code be amended to include a section titled *Film Hire Rates*. This section should specify that all exhibitors should be offered hire rates reflecting the number of weeks after national release they receive the film. The section should be accompanied by examples and explanatory notes. The Code will still provide for a distributor to form its distribution strategy on a film-by-film basis. This section will provide a point of reference for negotiations. This section may also be referred to in the event of dispute, to determine whether there has been a breach of the Code.

This Code contains only a small number of principles. One of those missing relates to film hire rates in the form set out above. This is something that should be added in plain English to clause 9 of the Code.

2001 Report Recommendation 27

The ACCC recommends that the Code be amended to include a section titled *Film Policies*. This section should specify that minimum seasons for cinemas with four screens or less should not exceed four weeks. The section should also specify that there should be no policy requirements on an exhibitor who receives a film after the minimum season has finished.

The Code will still provide for a distributor to form its distribution strategy on a film-by-film basis. The section will provide a point of reference for negotiations. The section may also be referred to in the event of dispute, to determine whether there has been a breach of the Code.

As with recommendation 26 this represents the type of good practice principles that must underpin this type of Code.

2001 Report Recommendation 28

The ACCC recommends that: section 8.3 of the Code be amended to require terms of supply to include any applicable bonds and guarantees; and bonds and guarantees be listed in the amended section 10 of the Code as an issue that distributors must have regard to in considering flexibility in negotiations.

This falls into the same category as the above two recommendations and is important.

2001 Report Recommendation 29

The ACCC recommends that the Code Administration Committee: develop a Code education manual or compliance program for use by both exhibitors and distributors (eg a Powerpoint presentation). The manual or program should specifically address the dispute resolution procedures; identify appropriate cases and policies to publicise the operation of the Code; and provide Information Bulletins on a regular basis (eg quarterly). This would be an appropriate vehicle for publicising the cases and policies mentioned above.

In my view this is an area of deficiency in this Code.

All of the parties and stakeholders (associations) have assumed that because the code is place that it will be self-promoting and that confidence in the code will occur over time as matter of form. This is a false assumption and these relationship based codes require the active intervention of the parties to educate their staff, signatories and potential signatories as to the benefits and opportunities that flow from Code membership. It is important also to manage the expectations of parties and potential signatories.

This is self-regulation and as such it is limited and requires the active commitment and good will of all parties to work. It does not provide an automatic solution to the challenges of business or commercial relationships.

In addition to the work of the Code Committee distributors should take action to promote their commitment to the Code. This could take the form of internal compliance programs and in documents sent to all exhibitors such as contracts and other communication to highlight that they are a Code signatory and committed to complying.

2001 Report Recommendation 30

The ACCC recommends that the Code Administration Committee give attention to: increasing awareness of the role, function and structure of the Committee; and alternative structures for the Committee in order to maintain confidence in this forum by the industry (particularly independent exhibitors).

This follows from the comments on 29 above and my comments relating to the challenge for individuals in small business to attend the meetings. At the same time it is also a challenge to ensure that those who do attend are representative of their likely constituency as far as possible.

2001 Report Recommendation 31

The ACCC recommends that the Code be amended to include the pilot scheme proposed by the National Trust (NSW), as a reference point for flexibility which may be exercised in respect of all heritage cinemas.

This may require authorisation by the ACCC but represents a sensible solution to the problem.

It will probably require one of the distributors to take a lead in this matter. Any such arrangement should reflect the commercial reality of such businesses and not provide an unreasonable advantage to one small cinema owner over another. The extreme solution would be for one or more of the distributors to acquire the cinemas as part of a philanthropic contribution to the sector.

2001 Report Recommendation 32

The ACCC recommends that, at its next meeting, the Code Administration Committee consider amendments to the Code to specify tenure for the roles of Chairperson and Conciliator.

I was surprised that this recommendation was not taken up. The ACCC did not call for the incumbents to be removed rather than they should have a limited tenure followed by an open process to reappoint them. It is difficult to argue that industry knowledge is important but such things need to be seen to be done in the interest of procedural fairness and natural justice.

2001 Report Recommendation 33

The ACCC recommends that the resolution relating to retaliatory behaviour form part of the Code.

This is a worthwhile addition to the Code. It would be useful to attach a sanction to this such as removal from the Code or some form of apology. I formed a view that such behaviour would not be sanctioned by entities that are signatories to the Code. In my experience it is more likely to be the conduct of an individual within a company.

On this basis I would expect that each signatory in their internal compliance program would include a disciplinary provision relating to this type of conduct including realistic in-company sanctions. On the basis of my interviews such compliance arrangements do not currently exist. I have discussed compliance programs elsewhere.

Retaliation remains a major fear of exhibitor signatories.

2001 Report Recommendation 34

In order to reinforce the need for ongoing compliance with the *Trade Practices Act*, the ACCC recommends that relevant excerpts of the Act be attached to the Code (but not form part of the Code).

It is not clear which part of the Act is most relevant. It would seem more appropriate to ensure that effective education on the Code occurs in the sector and that each company who is a signatory has a compliance program which is consistent with the systems outlined in the ACCC November 2005 publication **Compliance Programs**. A similar publication for small business was published by the ACCC in April 2006.

Both publications are available for no charge from the ACCC website
www.accc.gov.au

2001 Report Recommendation 35

If these measures fail to resolve industry concerns, then the ACCC recommends that the Minister for Regulation and Financial Services consider prescribing the Code.

I believe that the sector should have the opportunity to take up the recommendations of this Review particularly as they related to principles of terms of trade, realistic sanctions and education and in-company compliance programs before the government moves to the next step. Obviously the failure to take up the recommendations after this Review and continuing dissatisfaction from small exhibitors would in itself make the imposition of a mandatory code solution more likely. I see this as real incentive at this time.

The Nature of the Industry

According to the public reports from the Motion Picture Distributors Association cinema box office revenue for 2005 was \$274.9m. This was 10% down on the previous year but preliminary statistics for 2006 shows the level of revenue back to 2004 record levels. This is in part explained by the availability of movies that attracted the public's attention.

The exhibitor market is dominated by 3 players: Hoyts with 24%; Amalgamated Holdings (including Greater Union, Birch Carroll and Coyle) 32% and Village 14%. On this basis the balance of the industry or smaller players represent 32% of the industry.

It is hard to find out how many screens there are in Australia. It is clear that the exhibitor market is divided into several classes of companies:

- Major multi screen exhibitors which are significant companies in their own right or part of larger conglomerates;
- Smaller exhibitors with multiple screen in one or two locations;
- Small exhibitors with two screens located in suburban and rural and regional Australia;
- Single screen commercial exhibitors generally located in rural and regional Australia;
- Single screen exhibitors operating on a part time basis in small communities or in facilities used for other purposes;
- Single screen exhibitors operating in heritage listed cinemas. (I understand that there may be some two screen exhibitors in heritage cinemas.)

It is hard to see how some of the smaller cinemas remain viable but small business people in my experience are resilient and overcome many obstacles by hard work and persistence.

As an economic market this market may well form part of a larger market for the supply or entertainment with other types of entertainment substitutable for the market for cinema seats. It is not clear if there are local markets for the supply of such services based in a regional community. Given the availability of other media in these communities it is likely that that such local markets for cinema seats have not existed for many years as stand alone markets.

There are a number of major distributors and a varying number of minor distributors.

What is most apparent in this market is the imbalance of power between the large distributors (who are often subsidiaries of global corporations) and the small exhibitors.

A number of people I spoke to during the review attempted to explain that this industry was different because of the pricing model, the nature of the commodity and the fact that every film involves a new contract. The principle terms and conditions of supply vary depending on the film but primary elements of the contract remain the same.

I could see few differences between the structure and operation of this industry and similar supply chain and distribution-based industries such as petrol where there are a substantial number of independents; soft drinks and even manufacturing and distribution companies.

This industry involves supply of goods and services, marketing and promotion and relationships managed by contract between suppliers and retailers.

The product can be defined as the supply of film or entertainment services.

The manner of payment includes for example, payment as a percentage of gross or net seat sales and bonds. This in turn varies with the nature of the film, the stage it is in its cycle of release and the nature and size of the exhibitor i.e. the quantity of service/product purchased.

Equally the allegations and claims that inform the justification for the Code are common across many small business/large business relationships. The allegations of unfair and unconscionable conduct made to me are similar to those I have heard before and suffer from a similar lack of proof. Without complainants coming forward with details such as: documents; file notes of conversations; tape recordings, contracts or details of patterns of behaviour, such allegations are problematic.

The current Code is an appropriate and helpful response to this type of scenario and short of some form of mandatory code, as currently in place in the franchise sector and anticipated in the oil retailing and grocery sector, is potentially a good solution (subject to the adoption of the recommendations from this report).

However it is only as good as the people who use it, the extent to which the process is trusted and the extent to which the parties come to it in good faith. The current code is deficient in a number of good practice areas.

As with many parts of Australian industry this sector has seen a number of rationalisations. Starting with the advent of television in the 1950s and followed by a succession of changes such as colour television, video and DVD. The most recent issue has been characterised by the rise of the home theatre, the bringing forward of the timing of cable and DVD release of films.

In this case the time between the release of a film and the release of the film to DVD has substantially reduced.

In rural and regional Australia each wave has led to the demise of exhibitors in some centres. In other cases the cinemas have been able to expand, taking single screens to multiple screens. A similar change has occurred in cities and large regional centres with the growth of multiplexes.

Another significant change has come in the way in which films are made and released.

During the course of the review several major films were released or about to be released.

In the case of one major film that I used as a case study, the film was marketed to exhibitors and contracts entered into, prior to any of the following information being available to (either the distributors or) the exhibitors who contracted to show the films:

- the length of the film;
- the classification of the film; and
- any type of critical review of the film.

On any reading, this type of contract in relationships between small and large businesses must create the opportunity for issues. This is exacerbated by the time-limited nature of the contract.

The two issues which have remained constant over the past 10 years have been the imbalance of power between the distributors and the small exhibitors and allegations of harsh and oppressive behaviour against the exhibitors.

In the latter case there is little evidence available to support such claims either in code disputes, complaints to the code or in actions by the ACCC. It is easy to make such an allegation to a reviewer or to others. It is another thing to present evidence on the record to substantiate such claims.

It would be remiss to not report the allegations in this report with the above qualifications. Coupled with these allegations are claims of fear of retribution and a lack of confidence in the Code as reasons why exhibitors will not bring forward evidence to the Code to substantiate such claims.

The Distributors for their part deny such claims and were most concerned when I told them of the allegations.

The number of exhibitors who are signatory to the Code appears on the evidence of the 2001 ACCC report and my enquiries to be too low. This reflects a lack of effort by the sector to promote the code over recent years.

One of the issues to emerge during the course of the review concerned the differential treatment of large and small exhibitors by the distributors.

One of the critical principles in the Code is that distributors will treat exhibitors “fairly and equitably”. This was taken to mean by some small the exhibitors that they should be treated the same as large exhibitors.

In each case I attempted to raise the fact that large users of services or purchases of goods in a market, will always receive more favourable terms and conditions of supply than small users of service and purchasers of goods. This argument was dismissed by some small exhibitors on the grounds that this industry was different. I do not believe it is different in this regard.

As set out above I agree with all of the recommendations of the ACCC’s 2001 report and was surprised that so many were not already implemented. I have discussed these important recommendations above and explained why I see them as important and worthy of adoption. I have made a number of similar recommendations.

In particular I agree with the definition proposed by the ACCC of “fair and equitable”:

“In determining what constitutes “fair and equitable” dealing within the meaning of the Code, regard should be had to the relative strengths in the bargaining positions of the relevant parties, and their willingness to negotiate in good faith.”

This seems to be a sensible addition to the Code. It is not onerous and does not constrain the distributors in the practical application of commercial principles. On the other hand it is always necessary for small businesses to acknowledge the disparity of significance between their position in a complex and large scale supply chain. It remains within the discretion of any enterprise not to supply every business or customer who seeks supply if they have a legal reason.

A more useful discussion of “fair and equitable” related to claims of harsh treatment by individuals in distributor companies. Again no significant evidence was produced to support this claim. Documents were promised in one case but never materialised.

The absence of such information and the existence of a Code of Conduct should mean that this less formal means of resolution and communication can be used to address these allegations without the need for major and intrusive investigations or mandatory codes.

One of the major issues facing the sector was that any dispute will be time critical. Given the lifespan of a film and the fact that all the disputes I could identify were film specific disputes, this creates major challenges for any dispute system.

With this in mind the Distributors provide access to the Managing Director for any exhibitor unhappy with their treatment by a company. Such an initiative is worthwhile. It should also be supported by a series of compliance and promotional activities inside and outside the distributors, to demonstrate that this is a serious and significant initiative to address issues arising from the relationship between distributors and exhibitors.

It seems clear that the code has achieved some significant outcomes. It has made Managing Directors of distributors communicate with exhibitors and visa versa.

The Code seems to have the most applicability in the relationship between the distributors and the small exhibitors, notably in rural and regional Australia.

These are typically one or two screen exhibitors who often operate at the margins of the distributor's business using small business models completely removed from those used by the typically large companies who characterise the major distributors and larger exhibitor groups.

In some cases these exhibitors have particular challenges in operation including the size of the community, the proximity of a larger exhibitor, or in several cases the fact that the cinema used is heritage listed. In the case of heritage listed cinemas or single screen exhibitors in rural and regional centres, communities and government should decide how badly they want such facilities. Just as rural and regional communities have to develop arrangements to encourage particular services to come to and remain in some towns, so if the cinema is such an important business, then suitable arrangements should be made.

It does not seem reasonable to ask large companies to subsidise or support loss making ventures in rural and regional Australia, when banks and other institutions, including government themselves, have not been forced to sustain non viable or non economic operations in rural and regional Australia.

On the other hand, if the relationship is viable and commercial and the parties agree to treat, then there is no reason for the distributors to behave in any other way than with fairness and equity. Where evidence of such contrary conduct is apparent, then the matter should be brought to the attention of the Code initially and the Australian Competition and Consumer Commission, who should investigate it and as appropriate take action.

In this regard I find Clause 20 problematic. I do not think it appropriate for any company or individual to be restricted in their access to a regulator by their agreement to participate in the Code. I would expect as a matter of form, that the ACCC would seek to send the complainant back through the Code process.

Similarly it seems surprising to this reviewer that the small exhibitors have never sought to join together to collectively negotiate terms and conditions with the distributors. It would seem that this is an area where government, by facilitating the

authorisation of such conduct, could make a constructive contribution to assisting in ensuring the viability of exhibitors in rural and regional Australia.

These small companies appear to have many issues in common but lack the resources to get together to seek authorisation of the ACCC to collectively negotiate standard or particular terms which may be more favourable to their particular needs in rural and remote Australia.

For their part there is capacity for the distributors to more actively contribute to the effectiveness of the Code. This could be done by developing simple “in house” code compliance arrangements. These could include

1. Developing and supporting promotional activities for the Code to ensure that the strengths and limitations of the Code are understood by all in the sector and that more small exhibitors take advantage of the code.
2. Developing and promoting their internal compliance activities including:
 - making managers accountable for compliance with the Code;
 - training all staff on the Code and the company commitment to complying with the letter and spirit of the code;
 - developing a formal complaints system for complaints by exhibitors, including for example, that where complaints are made to the Managing Director they are recorded and records kept to facilitate continuous improvement.
5. Ensuring that all parties understand the company’s commitment to the Code by adding information about the code and how to contact it on the bottom of all contracts and communication with their exhibitor customers.
6. Examining ways in which special case exhibitors such as single screen and heritage listed cinemas may be assisted.

For their part the exhibitors need to also take action.

The challenge of small business is that the owners and managers are of necessity locked into their business including mortgages and other encumbrances. They do not have time to attend meetings and become involved in such issues as the management of the Code. The sector has also had trouble organizing its own association of exhibitors. If the small players are to be successful they may need some assistance to organize themselves.

For those who, not unreasonably, choose to remain independent then they may find it increasingly difficult to survive no matter how fair and equitably they are treated by the major distributors.

The other important point is that this is a voluntary code.

Distributors and exhibitors are under no obligation to sign up to the Code. This is an important limiting factor.

Such codes should provide principles and processes which help ensure that the players remain within the law. They also provide a useful forum for communication, for resolving disputes and ensuring compliance with the Code.

The incentive for large players to join the Code rests beyond just corporate citizenship. There are two other main incentives:

- Industries run the risk of the ACCC investigating (and where appropriate prosecuting) allegations of exploitation of power imbalances manifesting as unconscionable conduct and/or misleading and deceptive conduct;
- If the industry demonstrates that it is unable to address the issues through an effective voluntary code, it runs the risk that a mandatory code will be imposed.

As for the Code itself, it seems tired and taken for granted by many of those involved. It needs an injection of enthusiasm and commitment from all parties. This includes commitment to promote the Code internally and externally by distributors and commitment by exhibitors to use the Code and engage with the Code to address allegations of conduct in breach of the Code.

The Code needs to adopt many of the 2001 ACCC report recommendations. None of these are onerous but they may streamline the process and reduce the level of apparent distrust in the Code.

This includes reviewing the current incumbents in the Chair and also the Conciliator.

It seems to me that they are both appropriate and competent at their tasks.

While I would expect them to be reappointed, their positions should be reviewed and in the case of the facilitator re-advertised. The parties should note the value-for-money that both these people provide and the likely cost of another party to provide the same services. Equally because the incumbents know the industry they are well able to come to terms with particular issues.

The most complained about the issue concerned the timeliness of addressing issues. This is hard to sustain given the small number of disputes that have come forward. Equally the availability of alternate processes such as calls to the Conciliators office and direct access to Managing Directors office in part goes to reducing this challenge.

But if the disputes are on a film by film basis and the life of the film is short as is the time available to make a decision, having a dispute running for weeks after the film has been and gone is probably unhelpful. For small businesses and the distributors the

world has moved on, probably through several films and contracts before the issue can be resolved.

This is by far the strongest argument I can see for collective negotiation by the smaller exhibitors as well as the establishment in the Code of a realistic set of contract principles in line with those I have recommended. Such pre-emptive action reduces the likelihood of such principles being mandated in a mandatory code.

This industry would seem to be on an upwards economic cycle in 2006. While this may be influenced by the current group of films and their popularity, the issues for the sector remain unresolved.

The Recommendations of this Review provide an opportunity for the industry to take matters into their own hands before the government decides to do so.



Benchmarking Good Practice

In this section I have addressed the February 2005 ACCC guidelines and principles on good practice for voluntary codes.

I sought answers to these questions in interviews and document reviews.

**Are the following benefits obtained from the Code:
Is there:**

- **greater transparency of the industry:**

Comment: It is clear that this code has improved communication and caused companies to consider the manner in which they deal with the other participants in the industry. Terms and conditions are now available and parties understand the nature of their relationships. I received a number of allegations that the distributor companies are reluctant to put some issues in writing. In part this must be due to the issue of timing but also this leaves no paper trail for any dispute.

- **greater stakeholder or investor confidence in the industry**

The small stakeholders remain frustrated by the imbalance of power in this industry. This appears not to have impacted the larger players.

- **compliance with the Act to significantly minimise TPA breaches**

As there has been no substantive litigation or settlement by the ACCC in this industry it is arguable that breaches of the Act have been minimised. A number of matters raised with me appeared to contain elements that if made out could breach the Trade Practices Act. The challenge is that these matters whilst raised with me may not have been raised with the ACCC. Under the current Code signatories are prohibited from taking their complaint to the ACCC until they have exhausted the Code process. I will recommend that this clause be amended to make the Code process an optional but preferable alternative to taking a complaint to the ACCC.

- **competitive marketing advantage from belonging?**

There does not appear to be any evidence of this outcome. I will recommend that signatories to the Code who have effective internal dispute resolution processes and internal code and trade practices compliance programs, should advertise that they are compliant. The advantage is simple good corporate citizenship and recognition of ethical conduct. It also sends a message to staff regarding the type of culture expected by the Executive of the company.

Is the Code:

- **more flexible than government legislation and can be amended more easily?**
-

This is clearly an advantage. However I note that the Code was not amended to take account of a number of substantive recommendations from the 2001 review. Some of those recommendations are also included as recommendations from this review.

- **able efficiently to keep abreast of changes in the industry's needs?**

The Code Committee should be able to achieve this. The major deficiency in this Code is a lack of principles, accountability and sanctions.

The Code has not addressed the issues associated with the changing nature of distribution and the collapse of the time between film completion and release.

Following this review I would hope that the Code Committee would take account of the matters raised and recommendations to amend the Code.

- **less intrusive than government regulation?**

The Code is not particularly intrusive in that for exhibitors it sets out issues that are part of the normal operations of the industry.

Apart from dispute resolution clauses in the Code, there are there are few requirements specific to distributors which would effect their operations.

- **likely to lead to industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply with the Act?**

This is a problematic area. The Code is not seen as being helpful by many small exhibitors. There is a need for better promotion of the benefits of the Code. In some ways the benefits at this stage are limited to dispute resolution. If the recommendations on principles for distributors is accepted this may change.

For distributors the Code has opened lines of communication. It seems that some distributors see the fact that the Code is in place as an end in itself. I think the Code and the Code Committee need to inject some life into the Code through promotion, reinvigorating internal compliance programs and making some key amendments to the Code.

- **a quality control mechanism within the industry?**

This Code has performed this function up to a point (see comments above).

- **providing complaint handling procedures that are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies?**

The Code Conciliation process, formally and informally, meets all these prescriptions. Some in the industry do not believe this and do not have confidence in the process. I

believe this to be misplaced and should be overcome by the recommendations of this Review.

This will involve all parties realising that the Code is a good thing, it can be effective and it is a far preferable solution for large and small players than some type of mandatory government intrusions into the sector.

Does the Code have:

- **widespread support of the industry?**

Not as widespread as it should.

- **representatives of the key stakeholders, including consumers, consumer associations, the government and other community groups on its management committee?**

The committee is representative but it struggles (as do all such bodies) to attract small business people to be involved. This is a time and cost issue.

- **an effective system of complaints handling?**

I believe it is a most effective form of complaint handling.

Does the Code take account of:

- **the issues in the industry and the nature of the industry including:**
 - **the size and structure of the industry or sector for which the code is proposed?**

Yes. There is room for amendment to the Code to improve this - see recommendations.

- **other industry circumstances such as the geographic spread and cohesiveness of the industry?**

I do not believe that the Code takes account of the needs of small exhibitors as effectively as it could. This is a risk for those who prefer a Code to mandatory processes. The cinema as a key amenity in rural and regional Australia is an emotive issue that appears not to have captured the attention of politicians at this time. This is surprising.

- **the history of the industry in relation to the conduct or objective the code is aiming to address?**

The Code has not gone as far as it could to address the issues of the industry. I see structural deficiencies and have recommended that a number of changes be made.

What is the current degree of confidence, trust or credibility the parties have with the Code and each other?

There is insufficient trust and confidence in the Code from all parties.

The distributors make a substantial contribution to the Code and its processes but do not appear to have adopted the Code as part of their overall compliance processes.

The exhibitors have not taken up the Code as well as could be expected. There is a reluctance to address issues and also to some extent an unrealistic expectation that the Code will somehow overcome the disadvantages they face in an industry characterised by large players with market power.

This is a feature of commerce and is not likely to be redressed by a Code or by government intervention for that matter.

As a consequence of these aspirations the small exhibitors may lose sight of the real benefits associated with the Code.

For their part the distributors will have to work hard to overcome the perception that if you use the Code you will be treated harshly. I do not believe for the most part that this is in fact the case.

Would another regulatory arrangement deliver better outcomes?

No, assuming the recommendations are adopted.

Does the current model represent the minimum necessary to achieve the identified objectives, in a manner which imposes the least cost of compliance on the parties?

See recommendations

Are there commercially significant sanctions available that will achieve credibility with and compliance by participants, and also engender stakeholder confidence in the code?

No. This is an area of deficiency in this Code. While it is necessary to temper this with the risk of signatories withdrawing or not signing up, the credibility of any code rests on its capacity to apply commercially significant sanctions.

I would expect that as with all codes it is rarely or never necessary to use sanctions.

Does the Code incorporate a strategy that will raise participant awareness of the code and its contents, including its complaints handling provisions?

This is an area of deficiency which should be addressed and I have made series of comments on how to do this in the report. It is up to all parties to the Code, not just the distributors to do this.

Are industry members aware of the Code, its strengths and/or limitations?

No, but I hope this report and associated attention on the Code issues will assist in that process.

Conclusion

This industry is challenged by diversity.

There is a cohort of small exhibitors who make up the parties most likely to benefit directly from the Code. Most of these are located in rural and regional Australia.

For the larger players, both distributors and exhibitors, there are substantial advantages in the Code. Most notably it is a minimalist and light touch form of regulation. For the most part it keeps the ACCC out of the industry and ensures that government does not move to introduce costly and intrusive legislation or mandatory codes of practice.

It is this latter risk that drives my surprise that the industry chose not to implement what were quite reasonable recommendations from the 2001 review.

In recent times that ACCC has taken the type of issues contained in the recommendations to the 2001 Report and made them into a guideline on Codes. I do not think this industry can afford to ignore these issues.

There is clearly sufficient dissatisfaction amongst the exhibitors regarding the behaviour of distributors to justify a closer examination of the industry by the ACCC. In my view a strong and effective Code should negate that need.

I would note that I am not convinced of the merit or otherwise of the claims of those who believe there are problems in this industry. That was not my charter.

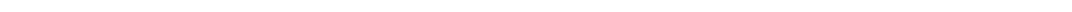
I will say if there is fault it lies in part with both groups. On the one hand some believe that the Code in its present form is sufficient and should be left to get on with the job. On the other there are people who believe the Code or for that matter the ACCC can somehow redress the normal imbalances in power between small and large business in an open and competitive marketplace. Neither is correct.

There is room for improvement in the Code:

- it needs to be better promoted by all parties;
 - companies need to take their compliance obligations arising from the code more seriously;
 - the administration of the Code needs to be refreshed;
 - the Code itself needs to be amended to reflect contemporary good practice in such codes; and
 - industry players need to be realistic about what the Code can and should be able to achieve.
-

Importantly, I conclude that implementing these principles and the recommendations that flow from them will require action to give the Code some teeth as it impacts on distributors and for small exhibitors to be more realistic about what such self regulation can achieve.

I found the people in this industry to be hard working and committed to the industry, and its stakeholders. I would hope that this Code can help facilitate continued success for all parties.



Recommendations

As Independent Reviewer of the Code I make the following recommendations to the Committee of Management.

- 1. That section 4 of the Code be amended to clarify the meaning of ‘fair and equitable’ as set out in the text.**
- 2. That the Code adopt suitable sanctions for non compliance with the Code. These including amending section 15 of the Code be amended to provide that a party who fails to adopt a Conciliator’s recommendation will cease to be a signatory to the Code and that this can be publicised.**

The party in question will have a right of appeal to the Code Administration Committee. A party who ceases to be a signatory to the Code by reason of the operation of section 15 or any other sanction can only be reinstated with the approval of the Code Administration Committee.

- 3. That Code signatories be made aware of the obligations of signatories to the Code and sign to signify their agreement to the terms and requirements of the Code.**
- 4. That section 8.3 of the Code be amended to delete the words “where possible”.**
- 5. That section 9 of the Code be amended to:**
 - include an obligation on distributors to reasonably consider all requests by exhibitors to review the session requirements for a film which has under-performed;**
 - allow a framework for negotiations;**
 - setting out what the parties may consider to be good practice; and**
 - apply plain English to the section.**
- 6. That section 10 of the Code be amended to include principles and standards of performance for distributors in the following areas (see examples in 6a, 6b and 6c below):**
 - film hire rates;**
 - length of seasons;**
 - session requirements;**
 - advice of terms;**
 - advertising;**
 - bonds and guarantees;**
 - quality of prints supplied to exhibitors; and**
 - any other matters determined by the Code Administration Committee.**

Failure to meet these principles including but not limited to those below should be grounds for sanction under the Code.

6a. Specifically the Code should include a section titled *Film Hire Rates*. This section should specify that all exhibitors should be offered hire rates reflecting the number of weeks after national release they receive the film. The section should be accompanied by examples and explanatory notes. (These sections should not limit the opportunity for a distributor to form its distribution strategy on a film-by-film basis within these parameters.)

6b. Specifically the Code should include a section titled *Film Policies*. This section should specify that minimum seasons for cinemas with four screens or less should not exceed four weeks. The section should also specify that there should be no policy requirements on an exhibitor who receives a film after the minimum season has finished.

6c. Section 8.3 of the Code be amended to require terms of supply to include any applicable bonds and guarantees; and bonds and guarantees be listed in the amended section 10 of the Code as an issue that distributors must consider in regard to flexibility in negotiations.

7. That section 2.1.2 of the Code be amended to include the word ‘timely’ in the Code objectives.

8. That each signatory company be required to have in place an internal dispute resolution procedure, advertise this procedure and put in place compliance programs to assure the procedure.

9. That section 15 of the Code be amended to tighten timeframes to address the need to manage disputes quickly. This should include a process map with times to establish what is required by when of all parties including the Conciliator and the current informal telephone system used by the Conciliator.

10. That:

- **section 15.1.1 of the Code be amended to simplify wording; and**
- **a Notice of Dispute developed by the Code Administration Committee be included as an appendix to the Code.**

11. That section 16 of the Code be amended to give the Conciliator the ability to set a time and date for conciliation.

12. That section 16 of the Code be amended to include a non-exhaustive list of the types of information that should be included in recommendations made by the Conciliator (eg time limits, reference to the film/s in question and other relevant information).

13. That section 16.4 of the Code be amended such that parties shall not be allowed legal representation before the Conciliator and amended to ensure the attendance of a person authorised to settle a dispute at any conciliation conference.

14. That the Code be amended to include a conciliation agreement proforma that addresses the ability of the Conciliator and the Code Committee to give effect to recommendation 13.

15. That in the event that a Conciliator's recommendation is not adopted, the identity of the parties, the nature of the dispute and the recommendation should be included in an Information Bulletin to Code signatories (in addition to being included in the annual report).

16. That special consideration be given in the Code to regional and country cinemas.

17. That the Code Administration Committee: develop Code education and awareness material such as a brochure, website material, manual or compliance program for use by both exhibitors and distributors. The manual or program should specifically address the dispute resolution procedures; identify appropriate cases and policies to publicise the operation of the Code; and provide Information Bulletins on a regular basis (eg quarterly). This would be an appropriate vehicle for publicising the cases and policies mentioned above.

18. That signatories to the Code be required to provide a link to the Code website on their site as part of the specification of the internal dispute resolution system.

19. That the Code be amended to include an arrangement to provide flexibility in the relationship with heritage cinemas (and single screen cinemas if appropriate) noting any potential issues that may require ACCC authorisation.

20. That the Code Administration Committee consider amendments to the Code to specify tenure for the roles of Chairperson and Conciliator.

- **That the position of the current Chairman be reviewed now.**
- **That the position of Conciliator be opened to expressions of interest from him and/or other interested parties.**
- **That associated with this selection criteria should be considered for both positions.**

21. That an appropriate sanction be added to clause 19 on retaliatory behaviour.

22. That the Code be amended to require each distributor to have in place in-house code compliance arrangements based on Australian Standard 3806 (2006)– Compliance Programs including:

- **making managers accountable for compliance with the code;**
-

- **training all staff on the code and the company commitment to complying with the letter and spirit of the code;**
- **developing a formal complaints system for complaints by exhibitors including for example, where complaints are made to the Managing Director they are recorded and records kept to facilitate continuous improvement;**
- **ensuring that all parties understand the company's commitment to the Code by adding information about the Code and how to contact it on the bottom of all contracts and communication with their exhibitor customers;**
- **other AS3806 elements such as reporting and risk assessment.**

23. That Clause 20 of the Code be amended to not restrict the access by a signatory to the ACCC and that at the same time the Conciliator and the ACCC develop a memorandum of understanding that would encourage the ACCC to refer complaints back to the Code.

24. That the Committee Review the Code again in 3 years time.

Neill Buck – Independent Reviewer April 2006

Film Code Statistics, Costs and Operational Arrangements

146 enquiries received since beginning of Code

15 enquiries between 31 July 2005-1 May 2006

Approx 52.2% calls from NSW

Approx 22.8% calls from VIC

Approx 12.5% calls from QLD

Approx 7.3% calls from WA

Approx 3.7% calls from SA

Approx 1.5% calls from ACT

Most if not all calls are from rural/regional areas.

Cost of running the Code:

- FEDCAC budget comes from yearly mandatory contributions totalling \$44,400 from its member bodies (MPDAA, ICAA, AIDA, Greater Union, Hoyts, Village).
- Fees of Secretariat, Chairman and Conciliator may be anywhere between \$25,000-\$30,000 per year.
- Cost of Code around \$35,000-\$40,000 per year (inc meetings, website hosting and renewal, bank service charges etc)

Cost of Conciliation

- Parties share cost of conciliator equally.
 - Conciliator paid by committee for any non-Secretariat time not payable by the parties (eg. attending and reporting to Committee meetings)
 - Usually pay upfront cost of \$600 each
 - Conciliations take 2-3 hours plus preparation time.
 - Average cost of a normal conciliation \$1,200
-