

**CODE OF CONDUCT**

**FOR**

**FILM DISTRIBUTION**

**AND EXHIBITION**

Revised 2022

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## 1. Background

- 1.1 The Code was initially developed in 1998 in consultation with the Australian Competition and Consumer Commission (**ACCC**).
- 1.2 Industry groups met under the auspices of the ACCC and agreed to adopt a voluntary code of practice and dispute resolution mechanism.
- 1.3 At the time of implementation, the ACCC saw the Code as a positive step by the industry to implement self-regulation to prevent disputes and to introduce an effective mechanism to deal with disputes when they arise.
- 1.4 Due to changes in industry conditions the Committee decided to review and update the Code in consultation with the industry. This process took place from 2018 to 2022.
- 1.5 The Glossary contains definitions of some of the expressions used in the Code.

## 2. Objectives

- 2.1 The objectives of this Code are:
  - 2.1.1 to provide a framework for fair and equitable dealings between all distributors and exhibitors;
  - 2.1.2 to provide a timely, non-legalistic, cost-effective and commercially orientated means of avoiding and settling disputes;
  - 2.1.3 to reduce the likelihood of litigation between parties to the Code;
  - 2.1.4 to record the commitment of distributors and exhibitors to combat film piracy; and
  - 2.1.5 to support exhibitors and distributors in achieving the best performance outcomes for all member films.

## 3. Scope

- 3.1 This Code applies to each distributor and exhibitor who is a signatory to this Code in their dealings with each other.
- 3.2 It is acknowledged by the signatories that this Code is intended to govern the conduct of the signatories but is not a contract between them and is not intended to be declared as either a voluntary or mandatory code under the *Competition and Consumer Act*.

## GUIDELINES

### 4. The Overriding Principle and Film Piracy Commitment

- 4.1 Each distributor and each exhibitor will deal with the other on a fair and equitable basis at arm's length and in the manner set out in this Code.
- 4.2 In addition to compliance with the requirements of this Code, regard should be had to the following in determining what constitutes dealing "on a fair and equitable basis":
  - 4.2.1 the legitimate commercial objectives of the distributor and the exhibitor; and
  - 4.2.2 the relative bargaining strengths of the distributor and the exhibitor; and
  - 4.2.3 whether, as a result of conduct engaged in by a party, the other party is required to comply with conditions that are not reasonably necessary for the protection of the legitimate interests of the first party; and
  - 4.2.4 whether a party is able to understand documents relating to the transaction or proposed transaction that are supplied by the other party; and
  - 4.2.5 the commercial basis on which, and the circumstances under which, a distributor could make the film available to another exhibitor, or an exhibitor could receive supply of an equivalent film from another distributor; and
  - 4.2.6 the extent to which a distributor's or exhibitor's conduct towards an exhibitor or distributor is consistent with that distributor's or exhibitor's conduct toward other like exhibitors or distributors in similar transactions; and
  - 4.2.7 the extent to which a party is willing to negotiate the terms and conditions of the transaction with the other party; and
  - 4.2.8 the extent to which a party acts in good faith.
- 4.3 Distributors and exhibitors recognise their joint responsibility to combat film piracy and agree to put in place commercially reasonable measures to prevent unauthorised recordings of films. These measures may include:
  - 4.3.1 for exhibitors, the installation of appropriate equipment to detect digital recording devices, appropriate surveillance and staff training programs to increase awareness; and

4.3.2 for distributors, the investigation and prosecution of copyright offences, the provision of secure content through encrypted files, decryption keys and watermarked Film Copies, and staff training programs to increase awareness.

## **5. Supply of Film Copies**

5.1 Each distributor must make its decisions as to whether an exhibitor will be offered supply of a Film Copy (whether in first run, a sub run or advanced screening) based on genuine commercial reasons.

5.2 For the purposes of section 5.1, genuine commercial reasons include reasons relating to:

5.2.1 the expected return from the exhibitor with respect to such supply, based (where available) on past box office returns from the exhibitor (or expected box office returns for any newly constructed cinema) and any other relevant considerations including the payment history of the exhibitor;

5.2.2 the expected success of the film, having regard to the timing of the release, the actors or directors involved in the film, the level of pre-release publicity, the film's overseas performance and other relevant considerations such as the expected audience, and the distribution strategy for the film;

5.2.3 the general condition and facilities of the cinema, including the auditorium, front of house, projection and audio facilities;

5.2.4 the extent of any proposed marketing and promotional activities of the exhibitor which may be of benefit to the film;

5.2.5 where an exhibitor's complex has been the subject of significant film piracy activities—the steps taken by the exhibitor to appropriately address the piracy risk.

5.3 Refusing to supply a Film Copy to an exhibitor because the exhibitor has previously raised a concern or dispute is not a genuine commercial reason.

5.4 Each distributor must, within four (4) working days after a written request by an exhibitor who has been refused supply of a Film Copy, provide such exhibitor in writing with the reasons for this refusal. Where the refusal was based on past box office returns relative to competing exhibitors, the distributor must not disclose the box office returns of any individual exhibitor without that exhibitor's consent.

5.5 Without limiting Sections 5.1, 5.2, 6, 9.1, 9.2, 9.3 and 9.4, distributors will not unfairly discriminate against any category or class of cinemas with respect to the supply of Film Copies. However, if a complex is reasonably identified by the distributor (having regard to specific

reliable information) as having been the subject of significant film piracy activities, then:

- 5.5.1 the distributor may reasonably defer or withhold the supply of Film Copies to the complex until the exhibitor appropriately addresses the piracy risk;
- 5.5.2 the distributor will give prompt notice to the exhibitor of a decision made by the distributor under Section 5.5.1, including reasonable details of the reasons for the decision; and
- 5.5.3 if the distributor makes a decision under Section 5.5.1 to defer the supply of a Film Copy after the film has been booked for the complex, then the distributor and the exhibitor will undertake good faith negotiations with a view to reaching agreement on the amended terms of supply for the film.

## **6. Flexibility of Trading Terms**

- 6.1 Subject to Sections 5.1, 5.2, 9.1, 9.2, 9.3 and 9.4, contracts between distributors and exhibitors will be freely negotiated in a manner which allows flexibility with respect to:
  - 6.1.1 film hire rates;
  - 6.1.2 length of seasons;
  - 6.1.3 sessions requirements; and
  - 6.1.4 bonds and guarantees.
- 6.2 Subject to Sections 5.1, 5.2, 9.1, 9.2, 9.3 and 9.4 and without limiting Section 6.1, negotiations between distributors and exhibitors may allow for flexibility in terms by way of trade off between film hire rates, length of seasons and sessions requirements.
- 6.3 Subject to Sections 5.1 and 5.2 and without limiting Section 6.1, contracts between distributors and exhibition chains or groups should allow flexibility between specific locations in the chain or group, in regard to supply of films, film hire rates, length of seasons and sessions requirements, and having regard to the specific circumstances of each screen.
- 6.4 Distributors and exhibitors acknowledge:
  - 6.4.1 the unique role that regional and country cinemas and cinema circuits play in their communities and consequently, the special importance of flexibility in the negotiations between distributors on the one hand and exhibitors who operate regional and country cinemas on the other hand; and

6.4.2 the important role that independent distributors play in the industry ensuring diversity of film on screen, funding of independent cinema and supporting the local Australian film industry.

- 6.5 Subject to Sections 5.1, 5.2, 9.1, 9.2, 9.3 and 9.4, should an exhibitor not wish to negotiate individual terms with a distributor under Section 6.1 then that exhibitor shall continue to trade with that distributor on the basis of that distributor's prevailing film policy.

## **7. Supply of Trailers and Advertising Materials**

- 7.1 Subject to availability and the distributor's terms and conditions, each distributor will make available to each exhibitor to which it intends to offer supply of a Film Copy access to trailers and reasonable quantities of advertising materials.
- 7.2 In advertising material entirely paid for by distributors, where it is not practicable for all exhibitors screening the film to be identified individually, no exhibitor shall be identified individually with the exception of capital city CBD locations and limited release films or where the distributor makes a good faith determination that the circumstances are exceptional and warrant the individual identification of an exhibitor.

## **8. Supply of Information**

- 8.1 Each distributor shall, periodically and as soon as is reasonably practicable, give reasonable details of its proposed upcoming product and release dates to all exhibitors by publication in appropriate media. Publication on the distributor's website or in film industry publications generally distributed throughout Australia will constitute publication in appropriate media for the purposes of this Section.
- 8.2 Prior to the booking deadline for a film, each distributor will in a timely manner give written notification to each exhibitor to whom it has offered, or intends to offer, a Film Copy of a film, of its intended terms of supply, and will in a timely manner confirm those terms in writing once the booking has been made. The terms of supply will include the booking deadline, rental terms, season and session policy, any applicable bonds or guarantees and any relevant promotional opportunities relating to the film.
- 8.3 Each distributor will ensure that the terms of supply also include where possible the running time and classification of the film provided that, if the distributor is unable to provide details of the running time and/or the classification of a film prior to the booking deadline, then:
- 8.3.1 the distributor will provide that information to each such exhibitor as soon as possible after it is known by the distributor;
  - 8.3.2 as part of the intended terms of supply written notification the distributor will provide its estimate of the running time and/or its

expectation of the classification of the film to the exhibitor, noting that it is an estimate, on the basis that the exhibitor will have no recourse whatsoever against the distributor if the information provided proves to be inaccurate; and

- 8.3.3 if an exhibitor schedules a film for screening relying on information provided by a distributor pursuant to Section 8.3.2, which information subsequently proves to be materially inaccurate, and the exhibitor will be demonstrably adversely affected because the information is materially inaccurate, then the parties will negotiate in good faith with a view to overcoming or minimising the adverse impact on the exhibitor (but the exhibitor will not, in any event, have any recourse against the distributor because the information provided by the distributor proves to be inaccurate).

Each distributor shall use its best endeavours to provide information about the duration of any exclusive theatrical window of release for the film to an exhibitor prior to the booking deadline for a film.

- 8.4 Where a distributor supplies a film to an exhibitor for exhibition, both the exhibitor and distributor will, on request, supply information to each other on the nature and extent of promotional and media activities in relation to the release of that film on a confidential basis.
- 8.5 Each exhibitor must upon request and on a strictly confidential basis, make available to any distributor who is a signatory to the Code, cinema-by-cinema and film-by-film box office receipts. Any distributor who receives that information must not make the information available to another exhibitor without the prior written consent of the exhibitor that supplied the information.
- 8.6 Subject to each exhibitor's contractual obligations with each distributor, an exhibitor may withhold box office returns requested under Section 8.5 if that exhibitor reasonably determines that the supply of that information will result in a competitor receiving an unfair competitive advantage.
- 8.7 If an exhibitor does not accept a Film Copy offered by a distributor under Section 8.2, upon request by that distributor the exhibitor will inform that distributor of the reasons why that exhibitor has chosen not to accept the Film Copy.

## **9. Terms of Trade Policies and Guidelines**

- 9.1 Each distributor must separately establish terms of trade which incorporate its policies and/or guidelines in relation to:
- 9.1.1 film hire rates, including film hire rates for Film Copies of films supplied after the national release dates;



- 9.1.2 length of seasons, including minimum seasons applicable to exhibitors with four (4) screens or less;
- 9.1.3 sessions requirements;
- 9.1.4 advertising;
- 9.1.5 bonds and guarantees;
- 9.1.6 the ongoing supply of Film Copies otherwise than in Digital Form;
- 9.1.7 the quality of Film Copies supplied to exhibitors;
- 9.1.8 for films supplied in Digital Form, the methods and timing of supply of DCPs and KDMs; and
- 9.1.9 3D glasses, including the provision of 3D glasses by exhibitors to their patrons and the treatment of revenues arising from the sale or hire of 3D glasses.

(known as **Terms of Trade Policies and Guidelines**).

- 9.2 Each distributor must make its Terms of Trade Policies and Guidelines available on a confidential basis to exhibitors and the Conciliator.
- 9.3 The Conciliator must take into account the Terms of Trade Policies and Guidelines in conciliating disputes made under the Code.
- 9.4 Where a distributor amends its Terms of Trade Policies and Guidelines, the amended Policies and Guidelines must be made available on a confidential basis to exhibitors and the Conciliator at least one month before the amended Policies and Guidelines come into force.
- 9.5 Where a film has under-performed substantially relative to the distributor's original estimate then, upon reasonable request by an exhibitor, the distributor must make a good faith review of the sessions commitment contractually agreed to between it and that exhibitor, having regard to all relevant factors including:
  - 9.5.1 the investment by the distributor in the release of the film; and
  - 9.5.2 the performance of the film relative to other films then currently available in the market to that exhibitor.
- 9.6 A distributor will not unreasonably refuse a request by an exhibitor to review the sessions requirement for a film.
- 9.7 Unless otherwise dealt with in the distributor terms of trade, an exhibitor will inform the distributor if it intends to reduce its sessions in the first two weeks of the release of a film.

- 9.8 In conducting a review under Section 9.5 or Section 9.6, the distributor will undertake good faith negotiations with the exhibitor with a view to promptly resolving the issue. The parties may apply the dispute resolution procedure set out in Section 15 to facilitate those negotiations.
- 9.9 The fact that a distributor has agreed to review a session commitment with respect to one location will not bind the distributor to review a session commitment with respect to any other location. Each case shall be considered on its own merits.

## **10. Exhibition Obligations**

- 10.1 Exhibitors will provide distributors on request with suitable credit references.
- 10.2 Exhibitors must not prevent or seek to prevent a distributor from supplying films to a competing exhibitor.
- 10.3 Each exhibitor and distributor must observe its agreed obligations to each other including:
- 10.3.1 the material terms of any exhibition agreement concluded between them;
  - 10.3.2 the timely provision of:
    - (a) accurate daily box office totals on a film-by-film basis to the distributor or the distributor's nominated representative; and
    - (b) accurate weekly box office returns on a film-by-film basis and session-by-session basis to the distributor including total receipts and the number of paid and complimentary admissions;
  - 10.3.3 the payment of licence fees or other sums to the distributor within the contractually agreed time;
  - 10.3.4 the conduct of promotions including complimentary admissions;
  - 10.3.5 allowing access to the distributor or its agent for records checking inspection and audit of box-office and cinema operating expenses on a confidential basis;
  - 10.3.6 the delivery of Film Copies including, in the case of Film Copies in Digital Form, the supply of DCPs and KDMs;

- 10.3.7 safe handling, exhibiting and timely return or destruction (as applicable) of Film Copies including, in the case of Film Copies in Digital Form, DCPs and KDMs; and
  - 10.3.8 the prohibition of duplicating Film Copies or sub-licensing rights.
- 10.4 Each exhibitor agrees, subject to the availability of materials:
- 10.4.1 to play any trailer supplied to it by a distributor relating to a film which it will be exhibiting, at reasonable times during a period of at least two weeks immediately before the opening date of such exhibition;
  - 10.4.2 to display prominently such posters and other advertising materials as have been supplied by a distributor relating to a film which it will be exhibiting, for a reasonable time but not less than two weeks immediately before the opening date of such exhibition; and
  - 10.4.3 in any advertising and publicity for such film to refer to such film as a release of the relevant distributor, and to comply with such credit obligations as have been notified to it by such distributor.
- 10.5 Each exhibitor must maintain its cinema or cinemas in good serviceable condition in line with generally accepted standards within the exhibition industry, including standards relating to cleanliness, acceptable temperature, improved access for the disabled and properly serviced and functioning equipment.
- 10.6 Each exhibitor must install complying digital projection systems in its cinemas in a timely manner. If a distributor considers that a digital projection system installed by an exhibitor is not a complying digital projection system then the distributor must:
- 10.6.1 give notice in writing to that effect to the exhibitor, including reasonable details of the manner in which the distributor considers the digital projection system is non-compliant; and
  - 10.6.2 allow the exhibitor a reasonable opportunity to rectify the non-compliance,
- provided that, if the non-compliance directly relates to the security of the distributor's Film Copies and other materials then, until such time as the security risk has been adequately rectified, the distributor may withhold or defer supply of its Film Copies and other materials to the exhibitor to the extent reasonably necessary to address the security risk.
- 10.7 An exhibitor who has failed to comply with any of the above requirements applicable to exhibitors after reasonable notice of the

distributor's objection to the exhibitor's behaviour may be considered as ineligible for supply of a Film Copy by a distributor.

## **ADMINISTRATION**

### **11. Code Administration Committee**

11.1 The Code is to be administered by a Code Administration Committee comprising an equal number of representatives (to a maximum of three (3)) of each of the following groups:

11.1.1 major exhibitors;

11.1.2 Major Distributors;

11.1.3 independent exhibitors; and

11.1.4 independent distributors.

11.2 The independent exhibitors shall be represented by two (2) members of the Independent Cinemas Australia Incorporated and one other non-aligned independent exhibitor representing not less than ten (10) non-aligned independent exhibitors who (in common with other representatives on the Committee) makes the financial contribution to the annual budget of the Code Administration Committee reasonably determined by the Committee, provided that if there is no nominee for that third position from a person who is not a member of the Independent Cinemas Australia Incorporated, then until that third position is filled by such a person, it may be filled by a member of the Independent Cinemas Australia Incorporated.

11.3 The independent distributors shall be represented by two (2) members of the Australian Independent Distributors Association Incorporated and one other non-aligned independent distributor representing not less than five (5) non-aligned independent distributors who (in common with other representatives on the Committee) makes the financial contribution to the annual budget of the Code Administration Committee reasonably determined by the Committee, provided that if there is no nominee for that third position from a person who is not a member of the Australian Independent Distributors Association Incorporated, then until that third position is filled by such a person, it may be filled by a member of the Australian Independent Distributors Association Incorporated.

11.4 All decisions of the Committee must be made by a decision of at least 75% of the Committee's representatives except for any decisions to amend the Code, appoint the independent chairperson of the Code Administration Committee and appoint the independent Conciliator, which must be by unanimous decision of all the Committee's representatives who vote on the issue.

11.5 The Code Administration Committee will, by unanimous decision of all the Committee's representatives who vote on the issue, appoint an independent voting chairperson of the committee. The term of the appointment of the independent chairperson:

11.5.1 shall not exceed three (3) years; and

11.5.2 will, as far as is possible, be determined so that there is a period of at least one (1) year between the end of the term of appointment of the independent chairperson and the end of the term of appointment of the Conciliator,

provided that the Code Administration Committee may appoint the same person as the independent chairperson for successive terms.

## **12. Role of the Code Administration Committee**

12.1 The role of the Code Administration Committee will be to:

12.1.1 appoint a Conciliator to be known as the Film Code Conciliator and publicise this appointment;

12.1.2 monitor the operation of the Code and adopt amendments to the Code, such amendments to be agreed following consultations by the members of the Committee with their respective constituent members who are signatories to the Code;

12.1.3 provide adequate financing for the administration of the scheme;

12.1.4 maintain a register of signatories to the Code;

12.1.5 appoint a person or entity as the Code Secretariat to provide administrative support services to the Committee and, if considered appropriate, to assist the Conciliator; and

12.1.6 raise and maintain awareness of the Code within the film exhibition and distribution industries.

## **13. Appointment of Conciliator**

13.1 The Code Administration Committee will appoint an independent Conciliator to serve for a term and upon conditions to be set by the Committee and shall have the authority to discharge the Conciliator.

13.2 The term of the appointment:

13.2.1 shall not exceed three (3) years; and

13.2.2 will, as far as is possible, be determined so that there is a period of at least one (1) year between the end of the term of

appointment of the Conciliator and the end of the term of appointment of the chairperson of the Code Administration Committee,

provided that the Code Administration Committee may appoint the same person as the Conciliator for successive terms.

- 13.3 The Conciliator will be an expert mediator of recognised integrity and stature who will command respect from all sectors of the industry. During his or her term of office the Conciliator may not hold any substantial interest in the film industry. The Conciliator shall disclose all holdings of any interest in the film industry prior to appointment and shall also disclose any subsequent purchases or acquisitions whether for value or otherwise, of such shares or securities to the Code Administration Committee.

## **14. Role of Conciliator**

- 14.1 Conciliation is the process in which a conciliator seeks to facilitate a negotiated agreement in which the parties to a dispute, with the assistance of the conciliator, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.
- 14.2 The Conciliator will have an advisory role on the content of the dispute and/or the outcome of its resolution, but not a determinative one. The Conciliator is to act in good faith and maintain a neutral, impartial position in assisting the parties to reach an agreement on a mutually accepted solution and to facilitate the negotiation process.
- 14.3 The Conciliator may, where the Conciliator considers it to be appropriate in connection with the conciliation of a dispute, express and record the Conciliator's opinion as to whether or not one or more parties to the dispute has acted on a fair and equitable basis within the meaning of Section 4.1.
- 14.4 The disputants shall bear their own costs of the conciliation and unless otherwise agreed, shall pay in equal shares the agreed Conciliator's fee and reasonable out of pocket expenses and any other reasonable costs of and incidental to the conciliation (such as hearing room fees).

## **15. Dispute Resolution Procedures - Informal**

- 15.1 Unless section 16 applies, the parties to a dispute shall undertake the following steps (as set out in the flow chart comprising **Appendix 1**):
- 15.1.1 the complainant shall endeavour to discuss the dispute with the appropriate representative of the other party with a view to reaching an amicable resolution of the dispute;
- 15.1.2 if, within the time considered reasonable by the complainant, either the complainant is unable to discuss the dispute with

the appropriate representative of the other party or the discussions fail to resolve the dispute, then the complainant shall:

- (a) notify the Code Secretariat of the dispute;
- (b) endeavour to discuss the dispute with the Managing Director or equivalent officer of the other party with a view to reaching an amicable resolution of the dispute;

15.1.3 if, within the time considered reasonable by the complainant, either the complainant is unable to discuss the dispute with the Managing Director or equivalent officer of the other party or the discussions fail to resolve the dispute, then:

- (a) the complainant shall notify the Code Secretariat of that fact and, if the complainant is a member of an industry association and elects to do so, shall notify the industry association of that fact and may request the Code Secretariat and/or the industry association to discuss the dispute with the Managing Director or equivalent officer of the other party;

(b) if so requested by the complainant:

- (i) the Code Secretariat or, if considered appropriate by the Conciliator, the Conciliator; and
- (ii) if considered appropriate by the complainant's industry association, the complainant's industry association,

will endeavour to discuss the dispute with the Managing Director or equivalent officer of the other party with a view to reaching an amicable resolution of the dispute.

Note: If two or more signatories have similar disputes with a respondent signatory, all parties may agree to try to jointly resolve the dispute. The parties can only share information or jointly agree to outcomes to the extent permitted by law (including any ACCC authorisation).

## **16. Dispute Resolution Procedures – Conciliation**

16.1 If, within the time considered reasonable by the complainant, a dispute is not resolved using the informal dispute resolution proceedings set out in Section 15.1 (notwithstanding that those procedures may not have been completed), or if the complainant otherwise determines that the dispute

should be resolved by conciliation proceedings, then the following procedures will apply (as set out in the flow chart comprising **Appendix 2**):

- 16.1.1 the complainant shall raise the matter in writing with the other party by way of a Notice of Dispute (a suggested form of which is set out in **Appendix 3**) setting out the background and issues in dispute, including the grounds on which it believes the Code has been breached and the specific outcomes desired (the Desired Outcomes);
- 16.1.2 the party complained against shall respond in writing within two (2) business days of receipt of the Notice of Dispute;
- 16.1.3 the parties shall make every effort to resolve the dispute in good faith and fairly at this level but by no later than four (4) business days from the date upon which the other party received the Notice of Dispute;
- 16.1.4 if the dispute is not resolved as above then the matter may be referred to the Conciliator by either party; and
- 16.1.5 the Conciliator shall deal with the matter within seven (7) business days of the matter being referred to him/her or within such other time as the parties and the Conciliator agree.

Note: If two or more signatories have similar disputes with a respondent signatory, all parties may agree to try to jointly resolve the dispute. The parties can only share information or jointly agree to outcomes to the extent permitted by law (including any ACCC authorisation).

16.2 The Conciliator will use every effort to conciliate a resolution to the dispute referred to him/her under Section 16.1.4. Failing agreement by the parties to a resolution of the dispute then the Conciliator may make a recommendation. A recommendation made by the Conciliator will address such matters as the Conciliator considers appropriate in the circumstances including, without limitation:

- 16.2.1 the Conciliator's opinion as to the nature of the dispute;
- 16.2.2 the Conciliator's response to the Desired Outcomes set out in the claimant's Notice of Dispute; and
- 16.2.3 indicative time periods for compliance with specific matters included in the recommendation.

16.3 If a recommendation made by the Conciliator under Section 16.2 is not adopted by the parties, the Conciliator will report to the Code Administration Committee the identity of the disputants, the nature of the dispute, the recommendation (and the basis for the recommendation) and either the reasons, if any, conveyed in writing to the Conciliator by any party not adopting the recommendation as to why it is not adopting the



recommendation or a statement to the effect that no such reasons have been conveyed to the Conciliator, and:

16.3.1 this information will be included in the next information bulletin issued by the Committee; and

16.3.2 the Committee will include this information in its annual report,

but the Committee will not disclose any confidential information obtained in the conciliation procedure.

## 17. Conciliation Proceedings

17.1 Subject to this Code the Conciliator shall determine his/her own procedures and, prior to the Conciliator dealing with the matter, the Conciliator will require the parties to enter into a conciliation agreement in the form of **Appendix 4** or in such other form as the Conciliator may consider to be appropriate in the circumstances (Conciliation Agreement) Each of the parties must execute the Conciliation Agreement and return it to the Conciliator (by email in the first instance if possible) without delay and, in any event, within 24 hours of receipt of the Conciliation Agreement from the Conciliator (which may be supplied to the parties by email).

17.2 The Conciliator, acting reasonably, will determine the time and date for the conciliation proceedings and, where possible, will include that information in the Conciliation Agreement supplied to the parties to the dispute.

17.3 Proceedings may include, for example:

17.3.1 hearings in the capital city of the State in which the dispute occurs;

17.3.2 telephone or video conferences;

17.3.3 exchange of submissions, documents and information by facsimile and/or mail and/or email;

17.3.4 opportunities for the parties adequately to state their case, and to correct or contradict any relevant statement prejudicial to it; and

17.3.5 ensuring that relevant documents considered by the Conciliator are disclosed to the parties to the dispute subject to their acquiescence.

17.4 Proceedings shall be as informal as is consistent with the proper hearing of the matter.

- 17.5 Parties shall not be allowed legal representation before the Conciliator, except that:
- 17.5.1 an in-house employee of a party who is legally qualified may represent that party before the Conciliator; and
  - 17.5.2 a legally qualified support person who is not an employee of a party may attend the conciliation proceedings to consult with, and provide assistance to, that party provided that the person does not present or seek to present that party's position before the Conciliator.
- 17.6 Each party to conciliation proceedings will ensure that either:
- 17.6.1 its representative in those proceedings is authorised to settle the dispute on behalf of the party (including by acceptance of a recommendation of the Conciliator); or
  - 17.6.2 arrangements are in place for the provision of a timely response by that party to any proposed settlement of the dispute (including by acceptance of a recommendation of the Conciliator).
- 17.7 All communications in relation to the conciliation of the dispute shall be in confidence and without prejudice. For the avoidance of doubt, the obligations of confidentiality under this section apply to the parties to the dispute and their respective related bodies corporate (as that expression is defined in the *Corporations Act 2001 (Cth)*).
- 17.8 No documents brought into existence by a disputant for the purpose of the conciliation process may be tendered in evidence by a party other than that disputant in any litigation of the dispute.
- 17.9 The parties shall report back to the Conciliator within 14 days on actions taken on any recommendation made by the Conciliator.

## **18. Educating Staff on Code Requirements**

- 18.1 Each distributor must provide any member of its staff who deals with exhibitors with annual training on the Code. For new staff, the first training must occur within 20 business days of commencement.
- 18.2 Each exhibitor must provide any member of its staff who deals with distributors with annual training on the Code. For new staff, the first training must occur within 20 business days of commencement.

Note: As a substitute for training, small independent distributors and exhibitors can instead provide relevant staff with a short document outlining their key rights and obligations under the Code.

## **19. Breaches of the Code**

- 19.1 At any time, a signatory or other party may notify the Code Administration Committee of an alleged breach of the Code by a signatory.
- 19.2 The Committee will investigate the alleged breach, giving the signatory a reasonable opportunity to respond to the allegations.
- 19.3 If the Committee determines that the signatory has breached the Code, it will:
- 19.3.1 issue a written warning to the signatory requesting that the signatory take steps to prevent further breaches; and
  - 19.3.2 publish details of the breach in its annual report.
- 19.4 Where a signatory shows blatant disregard for the Code—for example by repeatedly breaching a provision of the Code despite warnings—the Committee may (by a 75 per cent majority vote) decide to remove its status as a signatory to the Code.

## **20. Reporting Procedures**

- 20.1 The Conciliator shall report at least annually to the Code Administration Committee such matters as may be specified by the Committee including on the operation of the Code and its administration and the number and nature of complaints received and conciliated.
- 20.2 The Code Administration Committee shall produce an annual report on the Code and its administration, including a breakdown of the costs of Code administration, which will be made available to interested parties.

## **21. Retaliatory Conduct Prohibited**

- 21.1 No distributor or exhibitor may engage in retaliatory conduct against a distributor or exhibitor because the second mentioned distributor or exhibitor has invoked the provisions of this Code (including the conciliation procedures) to challenge the conduct of the first mentioned distributor or exhibitor.

## **22. Referral of Matters to the Australian Competition and Consumer Commission**

- 22.1 Where a complaint involving a breach of this Code involves a non-signatory to the Code, the complainant may refer the matter to the ACCC.
- 22.2 Whilst it is the intent of this Code that a complaint involving signatories to the Code is resolved through the Code mechanisms, the complainant may refer the matter to the ACCC.

## **23. Review and Evaluation of the Code and Schemes of Administration**

- 23.1 The Code Administration Committee will ensure that a formal independent review of the Code is undertaken every five (5) years.

## **24. Accession to the Code and Privacy Consent**

- 24.1 An exhibitor or distributor may become a signatory to this Code by written notification to the Code Administration Committee.

- 24.2 A signatory may cease to be a signatory to this Code by written notification to the Code Administration Committee.

- 24.3 A notification shall become effective upon its receipt by the Code Administration Committee or upon such date as may be specified in the notification.

- 24.4 Each signatory to this Code consents to the Code Administration Committee and the Code Secretariat advising other exhibitors and distributors (whether or not they are signatories to this Code), the Conciliator and the ACCC, and including on the website maintained by the Code Secretariat relating to the Code and in information bulletins, annual reports and materials advertising and promoting the Code issued by the Code Administration Committee or the Code Secretariat, all or any of the following information:

24.4.1 the name of the signatory;

24.4.2 the address of the signatory;

24.4.3 as applicable, the telephone number, facsimile number, email address and website address of the signatory;

24.4.4 the fact that the signatory is a signatory to this Code; and

24.4.5 the signatory classification and the Association affiliation (if any) of the signatory (as set out in Section 11.1).

## GLOSSARY

<b>cinema</b>	includes a drive-in cinema.
<b>complying digital projection system:</b>	a digital projection system which complies with the requirements of a majority of the Major Studios in order for the Major Studios to permit their films to be exhibited on the system.
<b>DCP:</b>	Digital Cinema Package, being the collection of digital files used to store and convey digital cinema audio, image and data stream for films which are made available in Digital Form.
<b>Digital Form:</b>	the digital format of a film which complies with the requirements of a majority of the Major Studios in order for the Major Studios to permit the film to be exhibited (described as "DCI Specification Compliance"), capable of being exhibited on complying projection systems.
<b>film:</b>	includes: <ul style="list-style-type: none"> <li>(a) feature length theatrical motion pictures in 2D or 3D format; and</li> <li>(b) programming content (other than feature length theatrical motion pictures, trailers and advertising content) in 2D or 3D format including, but not limited to, television programs, sporting events, theatrical stage productions, religious services, concerts, educational classes or presentations, live events, speeches and meetings.</li> </ul>
<b>Film Copy:</b>	any current or future medium in which a film is made available for commercial distribution including, without limitation: <ul style="list-style-type: none"> <li>(a) as a 35mm print; and</li> <li>(b) in Digital Form.</li> </ul>
<b>KDM:</b>	Key Delivery Message, being the security key encryption system used with digital projection systems which is unique and allows only a specific DCP to play on a specific cinema complex playback server for a specified period of time.
<b>Major Distributor:</b>	each of: <ul style="list-style-type: none"> <li>(a) Universal Pictures International Australasia;</li> <li>(b) Warner Bros. Entertainment Inc;</li> <li>(c) Sony Pictures Releasing Pty Ltd;</li> <li>(d) The Walt Disney Company Australia Pty Ltd; and</li> <li>(e) Paramount Pictures Australia Pty.</li> </ul>
<b>supply:</b>	in respect of a film includes: <ul style="list-style-type: none"> <li>(a) physical delivery of a 35mm print;</li> </ul>

(b) for a film made available in Digital Form:

- (i) physical delivery of a hard disk drive;
- (ii) terrestrial, cable or satellite delivery; and
- (iii) on-line delivery, being digital delivery by means of the Internet, any proprietary computer service, any local area telecommunications network or system used to communicate audiovisual work (including, without limitation, films) and/or any audio and/or video and/or digital data or content, on a point to point or point to multi-point basis (Network) and/or any other Network (linked by any transmission means including, without limitation, RF, broadband, wireless, satellite and coaxial or fibre optic cable).

## APPENDIX 1

### Flow Chart for Dispute Resolution Procedures – Informal

#### (Section 15)

##### Step 1

The complainant and appropriate representative of the other party discuss the dispute

if no resolution ↓

##### Step 2

The complainant notifies the Code Secretariat of the dispute and the complainant and the Managing Director or equivalent officer of the other party discuss the dispute

if no resolution ↓

##### Step 3

The complainant notifies the Code Secretariat and, if desired, its industry association and, if requested by the complainant, the Code Secretariat or the complainant's industry association discuss the dispute with the Managing Director or equivalent officer of the other party

if no resolution ↓

##### Step 4

The complainant takes no further action or continues discussions with the other party or refers the dispute to conciliation (refer **Appendix 2**)

Note: The complainant may refer the dispute to conciliation at any time.

## APPENDIX 2

### Flow Chart for Dispute Resolution Procedures – Conciliation

#### (Sections 16 and 17)

##### **Step 1**

The complainant gives a Notice of Dispute to the other party



##### **Step 2**

The other party responds in writing within 2 business days of receipt of the Notice of Dispute



##### **Step 3**

The parties seek to resolve the dispute within 4 business days of other party's receipt of Notice of Dispute



##### **Step 4**

Either party refers the dispute to the Conciliator



##### **Step 5**

The Conciliator deals with the matter within 7 business days after the dispute is referred for Conciliation (or such longer period as the parties agree) as follows:

- supplying a Conciliation Agreement to the parties for execution and return within 24 hours of receipt
- determining the time and date for the conciliation, and including such information in the Conciliation Agreement or, if this is not possible, notifying the parties
- advising the parties of the manner of conduct of the proceedings (refer section 17.3 of the Code)
- conducting the conciliation
- making recommendations to the parties for resolution of the dispute (refer section 16.2 of the Code)



##### **Step 6**

If a party fails to adopt the Conciliator's recommendations:

- it may notify the Conciliator in writing of its reasons
- the Conciliator will report to the Code Administration Committee (refer section 16.3 of the Code)
- the failure to adopt the recommendations will be included in the next information bulletin issued by the Committee and in the annual report of the Committee (refer sections 16.3.1 and 16.3.2 of the Code)



**APPENDIX 3**

**Notice of Dispute**

**(Section 16.1.1)**

**REFER NEXT PAGE**

**Notice of Dispute**  
**Code of Conduct for Film Distribution and Exhibition**

**TO:** *(name of Managing Director and Company being the Distributor/Exhibitor)*

We hereby give you notice under section 16.6.1 of the Code.

**Background and Issues in Dispute** *(describe what the dispute is about & how it arose)*

Non-supply of film.....*(name the film)*

Late supply of the film..... *(name the film)*

Unfair terms for the film..... *(name the film)*

Other..... *(name the film)*

**Grounds on which the Code has been breached** *(for example, that there is unfair and inequitable conduct under clause 4 of the Code)*

.....  
.....

**Desired Outcomes**

Payment Terms .....

Sessions (day/night).....

Period of Exhibition.....

Other .....

You are required under the Code to respond in writing within 2 business days of the date of receipt of this notice.

Both yourselves and ourselves are required by the Code to make every effort to resolve the dispute fairly and in good faith within 4 business days of the date of receipt of this notice.

If this matter is not resolved within 4 business days then it may be referred to the Code Conciliator for conciliation under the Code.

\_\_\_\_\_  
Name *(block letters)*

\_\_\_\_\_

\_\_\_\_\_  
Contact phone numbers

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed

**cc FEDCAC Secretariat – [Details]**

**APPENDIX 4**

**Conciliation Agreement**

**(Section 17.1)**

***REFER NEXT 4 PAGES***

AGREEMENT FOR APPOINTMENT OF  
CODE CONCILIATOR

This Agreement is made between:

and

**(the Parties)**

and

**(the Conciliator)**

It is agreed as follows:

1. The parties appoint the Conciliator to assist them to resolve the disputes between them referred to in Schedule 1 (**the Dispute**) in accordance with the provisions of the Code of Conduct for Film Distribution and Exhibition (**the Code**) and the Conciliator accepts the appointment.
2. The role of the Conciliator is to act in good faith as a neutral, impartial facilitator of constructive discussion between the Parties on the causes of the Dispute and to assist the Parties to reach agreement on a mutually acceptable solution to the Dispute.
3. The Conciliator may meet with any of the Parties or any of their advisers jointly or separately.
4. The Parties shall co-operate in good faith with each other and the Conciliator in an attempt to resolve the Dispute and shall instruct their advisers accordingly.
5. Each Party will ensure that either:
  - 5.1 its representative in the proceedings is authorised to settle the dispute on behalf of the Party (including, without limitation, by acceptance of a recommendation of the Conciliator); or
  - 5.2 arrangements are in place for the provision of a timely response by that Party to any proposed settlement of the dispute (including, without limitation, by acceptance of a recommendation of the Conciliator),

AND the Parties agree to inform the Conciliator immediately should their representative not have authority to settle the dispute on behalf of the Party (including, without limitation, by acceptance of a recommendation of the Conciliator).

6. Conciliation proceedings shall be as informal as is consistent with the proper hearing of the Dispute.

7. The Parties shall be allowed representation before the Conciliator if they so wish. The Parties shall not be allowed legal representation before the Conciliator, except that:
  - 7.1 an in-house employee of a Party who is legally qualified may represent that party before the Conciliator; and
  - 7.2 a legally qualified support person who is not an employee of a Party may attend the conciliation proceedings to consult with, and provide assistance to, that Party provided that the person does not present or seek to present that Party's position before the Conciliator.
8. The Conciliator may make appropriate recommendations for resolution of the Dispute in accordance with section 16.2 of the Code, in which case the Parties shall give serious consideration to such recommendations and report back to the Conciliator within such time as is specified by the Conciliator on actions taken on the recommendation. The Parties acknowledge that if a recommendation by the Conciliator is not adopted by the Parties the Conciliator is required under the Code to report to the Code Administration Committee the identity of the Parties, the nature of the Dispute, the recommendation (and the basis for the recommendation) and either the reasons, if any, conveyed in writing to the Conciliator by a Party not adopting the recommendation as to why it is not adopting the recommendation or a statement to the effect that no such reasons have been conveyed to the Conciliator, and that information will be included in the next information bulletin issued by the Committee and in the annual report of the Committee.
9. Subject to clauses 8 and 14, the Parties and the Conciliator shall not disclose to anyone not involved in the conciliation process any information or document given to them during the conciliation process unless required by law to make such a disclosure.
10. All communications in relation to the conciliation of the Dispute shall be without prejudice.
11. The Parties and the Conciliator agree that, to the extent permitted by law and subject to clauses 12 and 13, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents in, any proceedings whether or not the proceedings relate to the Dispute:
  - 11.1 any comment, suggestion, advice, opinion, statement or recommendation of the Conciliator;
  - 11.2 any statement by any Party or any of its advisers made during the conciliation process;
  - 11.3 any notes made by the Conciliator;
  - 11.4 any information prepared for the conciliation process;
  - 11.5 any settlement proposal whether made by a Party or the Conciliator;
  - 11.6 the willingness of a Party to consider any such proposal; or
  - 11.7 any communications between the Parties or between the Parties and the Conciliator and any internal notes made by the Parties or their advisers for the purposes of the conciliation provided that a Party who brings into

existence a document for the purpose of the conciliation may tender that document in evidence in any litigation of the Dispute.

- 12. Any Party may seek to enforce by judicial proceedings the terms of any settlement agreement intended to be legally binding on the Parties.
- 13. For the purpose of clause 12 any Party may call evidence of the settlement agreement including evidence from the Conciliator and any other person engaged in the conciliation process. The Party calling evidence of the settlement agreement agrees to indemnify the Conciliator for any legal costs and other expenses incurred by the Conciliator in giving evidence or in obtaining advice in relation thereto and shall pay in advance to the Conciliator the Conciliator's estimate of such costs and expenses.
- 14. A Party may terminate the conciliation at any time after consultation with the Conciliator. The Conciliator may terminate his involvement in the conciliation at any time after consultation with the Parties. The Conciliator may report to the Code Administration Committee any termination and the reasons for and the circumstances of the termination.
- 15. The Conciliator shall not be liable to a Party for any statement, act or omission relating to the conciliation unless the statement, act or omission is fraudulent.
- 16. The Parties together and separately indemnify the Conciliator against any claim for any statement, act or omission relating to the conciliation unless the act or omission is fraudulent.
- 17. The Parties together and separately will be liable to the Conciliator for the Conciliator's fees and disbursements described in Schedule 2 and shall pay to the Conciliator any such fees and disbursements in advance as may be requested by him. The Parties shall share equally such fees and disbursements and any venue and catering costs.

Signed

.....  
for and on behalf of

.....  
for and on behalf of

.....

.....

.....  
(Date)

.....  
(Date)

.....  
Conciliator

.....  
(Date)

**SCHEDULE 1**

THE DISPUTE

**SCHEDULE 2**

CONCILIATOR'S FEES AND DISBURSEMENTS

\$ (plus \$ GST) per hour for all time spent including travel, preparation, pre-conciliation discussions, conciliation and any recommendation preparation.