



**Submission by
Free TV Australia Limited**

Senate Legal and Constitutional Affairs
Committee

Inquiry into the Australian film and literature
classification scheme

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EXECUTIVE SUMMARY

- The commercial free-to-air television industry supports the application of appropriate and clear classification standards in Australia.
- Material on commercial free-to-air television is heavily regulated.
- The Commercial Television Industry Code of Practice contains a classification scheme which is consistent with the Classification Board Guidelines against which all material broadcast on commercial free-to-air television is classified.
- The Commercial Television Industry Code of Practice further imposes mandatory time zones restricting the times at which material may be broadcast based on their classification.
- These requirements are developed in consultation with, and enforced by, the Australian Communications and Media Authority.
- As of February this year Parental Lock mechanisms have been mandated for all digital television equipment available in Australia, which allow parents to block access to material based on its classification.
- Children's programming is specifically regulated through the Children's Television Standard which includes a pre-classification process. This regulation is mandatory and unique in the world.
- All advertising must comply with both the above classification and time zone requirements and additional standards imposed by the Australian Association of National Advertisers.
- All music videos shown on commercial free-to-air television must comply with the above classification and time zone system, including the mandatory limit of PG for most of the day.
- No R18+ or X18+ material is broadcast on commercial free-to-air television.
- Commercial free-to-air broadcasters are subject to restrictions designed to ensure they do not broadcast advertisements or other content which sexualises children. They are also subject to specific restrictions about the sensitive portrayal of women.
- There is a very low level of complaint to broadcasters in relation to these issues.
- Broadcasters already have a robust classification system, but are concerned with the increasing regulatory burden being applied to the sector and any doubling up of regulatory roles which may lead to conflicting decisions.
- Broadcasters support the equal application of regulation across all platforms, including new media and emerging technologies.



1 Introduction

Free TV Australia represents all of Australia's commercial free-to-air television broadcasters. In 2011 commercial free-to-air television is the most popular source of entertainment and information for Australians, with our members providing nine channels of content across a broad range of genres, as well as rich online and mobile offerings, all at no cost to the public.

Free TV appreciates the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee's *Inquiry into the Australian film and literature classification scheme*.

Free TV welcomes the Senate's interest in Australia's classification standards. A strong classification system is of vital importance to free-to-air broadcasters and Free TV's members take very seriously their responsibility to meet community expectations with respect to the content they broadcast and the information they provide to viewers about that content.

In particular, Free TV's members agree that it is important to ensure that all Australians can continue to make informed choices about media content, in light of increasing access to media across a growing number of platforms.

The commercial free-to-air television networks are subject to extensive regulation regarding the classification of the content they broadcast and when and how content of certain classifications can be programmed. The television classification system is comprehensive and detailed and covers the wide range of content broadcast by the free-to-air networks.

Content of advertisements and programs on commercial free-to-air television is regulated by the Commercial Television Code of Practice (the Code) and, in the case of programs for children, the Children's Television Standard (CTS). The Code and CTS are legislated for under the *Broadcasting Services Act 1992* (the BSA). The CTS is developed by the Australian Communications and Media Authority (ACMA), while the Code is developed by industry in consultation with the ACMA.

Compliance with both the Code and the CTS are licence conditions of the commercial broadcast networks which are enforced by the ACMA. The ACMA has extensive powers to investigate complaints regarding non-compliance and apply penalties for breaches as appropriate. The Code is regularly reviewed to ensure it accords with prevailing community standards.

In addition, advertising is regulated by various codes developed by the Australian Association of National Advertisers (AANA).

This system of regulation, which is underpinned by a robust complaints handling process which applies across the Code of Practice, the CTS and the AANA Codes, is working well. This is evidenced by the fact that there is a very low level of complaint



about programming content (including advertisements), even though commercial free-to-air broadcasters are transmitting content twenty-four hours a day, three hundred and sixty five days a year across nine channels.

2 Classification of Commercial Free-to-Air Television

2.1 Code of Practice

The classification of commercial free-to-air television content is regulated primarily by the Code of Practice.

All films broadcast on television are classified under the guidelines provided by the Classification Board (formerly the Office of Film and Literature Classification), while programs and other content (eg advertising) are classified under a tailored system which is based on the Classification Board guidelines but provides more detailed guidance on specific subject matter.

The television classifications align with those of the Classification Guidelines – ie General (G), Parental Guidance (PG), Mature (M), Mature Audience (MA). Additional classifications, including Preschool Children (P), Children (C) and Adult Violence (AV), are also used to provide additional guidance for the audience on particular content. However, it is important to note that no material beyond the Classification Board's MA15+ standard is broadcast on commercial free-to-air television.

The more detailed system used for broadcast television was introduced specifically to suit the range of content shown in this medium (which includes drama, documentary, sport, news and current affairs, light entertainment and variety). It enables a wide range of program genres to be classified consistently against one set of guidelines.

2.2 Classification Time Zones

Clauses 2.6-2.13 of the Code prescribe broadcast time zones, which mandate when programs of different classifications may be shown.

These classification time zones are unique to commercial free-to-air television and do not apply to any equivalent medium such as pay television or radio.

The time zone system restricts what can be shown at particular times during the day, with more mature content restricted to later in the evening or times when children are not likely to be watching.

For example, only G or PG material may be played between 5:00am and 12:00pm, and 3:00pm and 8:30pm on weekdays, or between 5:30am and 8:30pm on weekends. PG material is restricted to certain times within this broader block. G programming must be very mild in impact and must not contain any matter likely to

be unsuitable for children to watch without supervision. PG programming must be mild in impact and remain suitable for children to watch with supervision.

Mature (M) programs may be shown from 8:30pm, Mature Audience (MA) from 9:00pm and Adult Violence (AV) only after 9:30pm.

2.3 Consumer Advice

Australia's television classification system is world leading with respect to the provision of consumer advice about classifications. All programs, when broadcast, must have their classification displayed at the programs start, after each break and during any promotion for the program. In addition, broadcasters must provide detailed consumer advice about the content of the program for:

- all MA and AV programs;
- all M and PG films;
- other one-off and short run M programs (eg telemovies, mini-series, series episodes presented in a feature film format, documentaries and specials);
- PG programs broadcast between 7pm and 8.30pm on weekdays or between 10am and 8:30pm on weekends that contain material of a strength or intensity which the parents or guardians of young children may not expect; and
- any other program which contains material of a strength or intensity which viewers may not expect.

The appearance and form of the advice is prescribed by the Code. The information must be provided in textual and audio form at the start of the program and as an abbreviation after each program break. Examples of consumer advice are: parental guidance is recommended for young viewers, some coarse language, mild violence, sexual references, a sex scene, and adult themes.

2.4 Children's programming

In addition to the provisions of the Code listed above, all children's (C and P) programming must comply with the requirements of the CTS.

The CTS requires networks to broadcast 390 hours of programming annually specifically for school aged children and preschoolers. This programming must be provided at certain times of day as prescribed by the CTS – ie between 7:00am and 8:30am and 4:00pm and 8:30pm weekdays, and between 7:00am and 8:30pm Saturday, Sunday and school holidays.

Only programming which has been cleared and certified by the ACMA can be counted toward this quota. The programming must be suitable for viewing by children and must be specifically designed with their educational and emotional needs in

mind. It must also comply with prescriptions with respect to depictions of gender, race and unsafe behaviour.

2.5 The Classification Process

All content to be broadcast by the commercial free-to-air networks undergoes a comprehensive classification and review system before it is put to air. An experienced in-house classifier reviews all material to determine its classification and whether it is appropriate for the time zone in which the program is scheduled.

The classification (and corresponding time zone) given to a program is determined by the in-house classifiers according to the impact (frequency and intensity) of key elements such as violence, sexual behaviour, nudity and coarse language.¹ Close consideration is given to the context of the material and its likely audience, and additional guidelines are provided with respect to content that may warrant particular attention.

For example, when classifying reality television programs, the network classifiers take into account the fact that the programs feature real people in unscripted situations, and the impact may be higher when compared to a fictitious drama program. Advertisements for some products such as alcohol and condoms can only be scheduled at certain times of the day, irrespective of the intensity of material in the ad itself.

2.6 News, Current Affairs and Sporting Events

Exceptions to the broader classification system are provided for news, current affairs and sporting events, which do not have to be classified provided that the licensee exercises care in selecting material for broadcast, having regard to:

- the likely audience of the program; and
- any identifiable public interest reason for presenting the program material.

However, consumer advice must still be provided before any such programs which contain content that is likely to seriously distress or offend a substantial number of viewers.

2.7 Advertising

All advertisements on commercial free-to-air television are subject to the full Code of Practice and CTS classification and time zone restrictions. They are classified and cleared by Commercials Advice, an entity set up by the members of Free TV. The advertisements are checked for compliance with a range of state and federal legislation and then classified under the Code of Practice. A placement code is

¹ Commercial Television Code of Practice – Appendix 4: Television Classification Guidelines Pg 23.



assigned to each advertisement which advises broadcasters of the times of the day the advertisement can be broadcast.

In addition to these standard classification requirements, any advertisements shown on commercial free-to-air television must also comply with a number of codes maintained by the AANA. These codes apply to advertisements in any form, be it published, broadcast or billboard, and relate to a broad range of issues including the use of language, the discriminatory portrayal of people, content aimed at children, portrayal of sexuality and nudity, and health and safety.

Complaints about potential breaches of the AANA Codes are considered by the Advertising Standards Board (ASB). The commercial free-to-air networks withdraw from broadcast any advertisement which is found by the ASB to be in breach of an AANA Code.

For some commercials, for example those dealing with important social issues such as drug abuse or anti-speeding ads, Commercials Advice will advise the networks to exercise care in placement. This signals to the networks that they should be mindful of the program and available audience within which they place the advertisement.

2.8 Enforcement

Complaints about breaches of the television classification system or time zone restrictions are investigated by the ACMA. Upon finding a breach the ACMA has the discretion to apply a broad range of penalties, including fines, enforceable undertakings and, in extreme cases, licence conditions or revocations.

A requirement for regular reviews is built-in to the Code of Practice, to ensure it remains in accordance with prevailing community standards.² The most recent Code review was concluded in 2010 following extensive community consultation. The current Code was registered by the ACMA in January 2010.

The CTS was most recently reviewed by the ACMA in 2009.

2.9 Mandatory Parental Lock

Most recently, a new element has been introduced to the television classification system to empower parents to determine what their children watch in the home.

As of 4 February 2011, a Parental Lock mechanism must be embedded in all equipment designed to receive digital television, allowing parents to limit the content their children can access based on the classification information provided by the broadcaster. Parents are able to use these locks to definitively control what television their children may view.

² Broadcasting Services Act 1992, s 123 and 123A

The parental lock mechanism is specifically designed to be easy to use, difficult to circumvent, and to apply even in a parent's absence. When activating a Parental Lock, parents are prompted to select a program classification level (eg 'PG and above') and PIN number for the lock. All programs at or above the designated classification level will then be blocked from showing on their television unless the PIN number is entered.

This provides an optional technical enforcement mechanism for the classification standards applied by television broadcasters. The commercial free-to-air broadcasters support this mechanism through the inclusion of accurate and detailed classification information in their broadcast signals.

Parental Locks are mandated for all digital television equipment manufacturers operating in Australia by the ACMA under its powers to set technical standards.³ The standard was prompted by a Ministerial direction, which described it as further protecting children from viewing material which may be inappropriate or harmful and supporting parents and guardians in protecting their children from such content.

3 Senate Review Issues

Free TV wishes to comment on the following issues from the Senate Committee's terms of reference.

3.1 the desirability of national standards for the display of restricted publications and films

As discussed above, the television classification scheme currently used by broadcasters, while supplemented by the Commercial Television Industry Code of Practice, is based on the Classification Board national guidelines. Free TV in general supports the continued application of national classification standards.

As is outlined further below, Free TV strongly endorses the application of equal regulation to all players. Due largely to the time zone system set out above, there is currently a significant gap between the regulations that apply to content provided on commercial free-to-air television and that on comparable platforms, such as pay television and IPTV, with far more restriction applied to free-to-air television. This creates a complex and confusing system for viewers, most of whom will be unaware that different standards apply to different platforms. Free TV therefore urges standardisation of classification regulation across all platforms.

³ Broadcasting Services Act 1992, s130B(1)

3.2 the impact of X18+ films, including their role in the sexual abuse of children; and the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;

Free TV wishes to comment on these issues only to note that commercial free-to-air broadcasters do not broadcast R18+ or X18+ content. All content shown on commercial free-to-air television must achieve an MA15+ equivalent classification or lower, and will be edited if appropriate to ensure this.

3.3 the application of the National Classification Scheme to music videos

Free TV notes that the comprehensive system of classification described above already applies to the broadcast of music video programs on commercial television. In any program featuring music videos, all videos are viewed by the network's classifiers to ensure that they are appropriate for the relevant classification time zone (usually G or PG). Any video found to be unsuitable is either edited before broadcast or not included in the program.

For G classified programs networks take extra steps to ensure the videos are very mild in impact and safe for children to watch without adult supervision, as required by the Code of Practice. For a PG program, the networks apply the Code at the lower end of the PG classification requirements as they are mindful that younger viewers could be watching these programs.

We note that music videos on other platforms are not subject to these strict time zone and classification requirements.

As a result of this comprehensive classification process, Free TV and its members receive few if any complaints with respect to music videos. The ACMA has never upheld any complaints about music videos being broadcast in inappropriate time zones and of the more than 1500 submissions that Free TV received as part of its most recent review of the Commercial Television Code, only 5 argued for additional classification laws with respect to music videos.

3.4 the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising

Networks take classification very seriously and are very mindful of the need to protect children from harmful images, including those which present overly sexual content or unhealthy gender stereotypes.

The Commercial Television Industry Code of Practice prohibits the depiction of certain sexual conduct, including explicit sexual acts. It also contains an advisory note on the depiction of men and women in reporting and programming, which



provides guidance on such issues as gender stereotypes and the portrayal of sexual violence.

The Code of Practice also contains provisions proscribing discrimination based on gender (Clause 1.9.6) and the presentation of reality television participants in a highly (sexually) demeaning or highly exploitative manner (Clause 1.9.7).

All networks have specialised children's programming which is classified by the ACMA under the CTS. The CTS strictly prohibits the broadcast of material that may unduly distress children or encourage them to engage in dangerous behaviours. These classification standards have proven very effective with respect to the issue of sexualisation of children, with the Senate Standing Committee on Environment, Communications and the Arts finding in its 2008 report *Sexualisation of children in the contemporary media* that the sexualisation of children in content and advertising during P and C programming was "not an issue."⁴

This highly successful system has only been strengthened by the introduction of mandatory Parental Locks, enabling parents to ensure that their children are not accidentally exposed to inappropriate content.

Once again, Free TV receives few complaints about these matters. Of over 1500 submissions to the last Code review, only 15 submissions expressed concern with the sexualisation of children and only 6 referred to the objectification of women.

With respect to advertising in particular – as discussed above, as well as being subject to the general Code and CTS requirements, advertisements broadcast on free-to-air television are also subject to codes maintained by the AANA.

The AANA's Code for Advertising and Marketing Communications to Children specifically states that advertising or marketing communications to children:

- a) must not include sexual imagery in contravention of prevailing community standards; and
- b) must not state or imply that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality.

The ASB has received only seven complaints regarding the sexualisation of children in advertising since 2009.

⁴Senate Standing Committee on Environment, Communications and the Arts (2008) *Sexualisation of children in the contemporary media*, p.36

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

As is demonstrated above, the classification framework that applies to the free-to-air broadcasters is currently effectively overseen by the ACMA.

However, Free TV is supportive of consistency in regulation across different platforms and media types. With this in mind, Free TV is concerned that the current system makes free-to-air broadcasters subject to regulation by multiple bodies. As content delivered via the internet or mobile device is not considered to be 'broadcasting' and hence is not subject to 'broadcasting standards', even if viewed on a television, this dual regulation burden falls unequally on broadcasters.

The ACMA, the ASB and the ACCC all have the ability to rule on the appropriateness of free-to-air television content across a range of issues. This creates unnecessary complexity in the system and raises the likelihood of inconsistent decisions, with different bodies potentially reaching different conclusions on the same matter.

Due to the overlapping roles of the ACMA and the Classification Board in overseeing classification on and off the television screen complexity and inconsistency often arises. There have been occasions when the ACMA's rulings on classification issues have differed from decisions of the Classification Board. For example, television programs granted a C certification by the ACMA (as required under the CTS) are regularly classified as PG by the Board.

This causes difficulty for free-to-air broadcasters, who will often be influenced by the Classification Board in their own classification decisions, and increases the likelihood of accidental breaches in cases where the ACMA and the Board have different views on the same piece of content. It also creates confusion for viewers, who may be unclear as to the appropriateness of material where different classifications apply in different formats.

In addition to the classification framework, there is also the issue of consistency of application and process in applying the framework. For example, no appeals process is available for the ACMA's classification findings, unlike those of the Classification Review Board. Notably different training and experience is required for those making decisions within the different organisations. And with the establishment of different precedents, each organisation also develops its own culture and informal triggers for classification rulings.

Free TV therefore recommends that any amendments to the current classification enforcement system be drafted with a view to introducing parity in regulation for all players in the market, ensuring that the level of regulatory oversight does not unduly burden particular platforms, and minimising the opportunity for inconsistent rulings by different bodies with respect to the same content.

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

Free TV supports equal classification standards for all media participants, and would be particularly concerned with any outcomes of the review that called for increased regulation of commercial free-to-air television without applying similar requirements to other equivalent platforms.

In 2011 a wide range of entertainment sources and electronic devices compete for people's attention. As well as the traditional platforms of free-to-air television, radio, newspapers, magazines, books, cinema, DVDs and CDs, consumers now have access to the internet, pay TV, IPTV, computer games, digital media players, mobile phones, smartphones and content on tablet devices such as the iPad. Young consumers in particular increasingly avail themselves of a wide range of content sources, often at the same time, many of which are completely unregulated.

Importantly, the divides between different media platforms are becoming less apparent to the consumer. People seamlessly access internet content on their televisions and broadcast content on their computers and smartphones, and move between free-to-air television, pay television and IPTV via a single electronic program guide.

These viewers are unlikely to be aware of the vast difference in regulation, including classification, that applies based on the content's origin and how it is delivered, and have a right to expect the same acceptable community standards with respect to any material they access. In this converged media environment, content regulations which apply inconsistently across platforms are anachronistic, and serve to create discrepancies and undermine the overall integrity of the classification system.

Market dynamics dictate that when material, and in particular advertising, is restricted on one medium, it merely redistributes to other, less regulated media. This leads to the inequitable outcome of having a disproportionate financial impact on the more regulated platform while at the same time resulting in no overall decrease in the public's exposure to the content.

When responding to issues which involve the entire media industry the Government must therefore take a cross-platform view in order to ensure an effective response and parity in regulation for all players.