

The Senate

Standing Committee on
Environment, Communications
and the Arts

The effectiveness of the broadcasting
codes of practice

June 2008

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Table of Contents

| | |
|---|------------|
| Committee membership | iii |
| Recommendations | vii |
| Acronyms and abbreviations | xi |
| Chapter 1 - The Committee's Inquiry..... | 1 |
| Referral of the inquiry | 1 |
| Terms of reference..... | 2 |
| The Committee's approach | 2 |
| Conduct of the inquiry | 4 |
| Acknowledgments | 5 |
| Chapter 2 - Television and Radio Regulatory Framework | 7 |
| Legislation | 7 |
| Industry..... | 7 |
| Government | 8 |
| Codes of practice | 9 |
| ACMA's role in industry codes | 10 |
| Co-regulation..... | 10 |
| Chapter 3 - Coarse Language in Television and Radio Programs..... | 13 |
| Influence of the media on behaviour..... | 13 |
| Attitudes to broadcasting coarse language | 15 |
| Potential solutions | 18 |
| Chapter 4 - Effectiveness of the current classification standards..... | 21 |
| Classification of material..... | 21 |
| Figure 4.1—Weekday Classification Zones Timetable | 24 |

| | |
|---|-----------|
| Effectiveness of the classification system - television | 27 |
| Figure 4.2—Representation of current classification standards..... | 32 |
| Figure 4.3—Representation of proposed adjustments to classification standards | 33 |
| Effectiveness of the classification system - radio | 38 |
| Chapter 5 - Operation and effectiveness of the complaints process | 41 |
| Complaints process..... | 41 |
| Effectiveness of the current complaints system | 44 |
| Chapter 6 - Related Matters | 59 |
| Advertising | 59 |
| Electronic games..... | 59 |
| Current legislation before the Senate | 60 |
| Appendix 1 - Submissions | 63 |
| Appendix 2 - Public Hearings | 65 |
| Appendix 3 - Tabled documents, additional information and answers to questions taken on notice | 67 |
| Tabled Documents..... | 65 |
| Additional Information..... | 65 |
| Answers to questions taken on notice | 65 |

Recommendations

Recommendation 1

The Committee recommends that, no later than the end of 2010, the government considers a review of ACMA, with a focus on ACMA's role in the broadcasting co-regulatory system, to determine if ACMA is effectively working with relevant industry bodies to maintain a fair balance in Australia's broadcast media.

Recommendation 2

The Committee recommends that the provision of parental lock-out become an industry standard for digital televisions sold in Australia. The Committee also recommends that the feasibility of using datacasting to provide a more detailed description of program content and the reasons for a program's rating which could be accessed by the viewer.

Recommendation 3

The Committee recommends that ACMA investigate whether the inclusion of additional age-specific symbols in the G and PG categories offer any advantages over the current system.

Recommendation 4

Each industry code of practice should clarify terms used for classification and consumer advice as much as is practicable (eg. 'occasional', 'some' and 'frequent'). Codes should also contain a clear discussion on the principles for classification, such as 'impact', that may be used to determine a program's classification.

Recommendation 5

The Committee recommends that ACMA and Free TV Australia investigate, as part of the current review of the Commercial Television Code of Practice, the issue of the appropriateness of the current evening time zones having regard to claims of changed patterns of television usage by children.

Recommendation 6

The Committee does not wish to tell television stations what they should or should not include in news and current affairs programming. However it recommends that ACMA, in consultation with broadcasters, review the sections of the Classification Code applying to news and current affairs programming, with regard to the use of graphic and disturbing imagery and excerpts from M or higher rated programs in news and current affairs broadcasting in early evening time zones.

Recommendation 7

Free-to-air television stations should show the classification watermark throughout program promotion to increase viewer awareness of the classification of the program being promoted.

Recommendation 8

The Committee recommends that television broadcasters should give consideration to permanently displaying the classification symbol of a program on screen along with the letters indicating which classifiable elements are present in the program. The Committee believes that there is scope for broadcasters to place this information next to watermarks, which are now displayed by all free-to-air stations.

Recommendation 9

The electronic programming guide on digital free-to-air television stations should contain the classification of the program being viewed and the consumer advice relevant to the program.

Recommendation 10

The Committee recommends that ACMA, in consultation with industry bodies for radio, considers implementing the use of verbal warnings in their next codes of practice.

Recommendation 11

The Committee recommends that all free-to-air commercial television stations should maintain a log of all telephone complaints received, including a short summary of the complaint, and provide that log to Free TV Australia and ACMA.

Recommendation 12

All broadcasters should amend their codes of practice and website capabilities to allow viewers to make complaints about the code by email or electronically. Email and electronic complaints about code-related issues should receive the same response as a written complaint.

Recommendation 13

Similarly worded complaints received by email, electronically or in writing may receive a standard written response from the broadcaster following notification to, and approval by, ACMA.

Recommendation 14

Codes of practice should contain a formal undertaking by broadcasters that they will direct complainants as appropriate. Industry bodies and ACMA should ensure that their staff are aware of how to re-direct complaints received in error and inform complainants where this occurs.

Recommendation 15

The Committee recommends that, by the time of the next triennial review of free-to-air television codes of practice, broadcasters should seek to respond to all complaints received within 15 working days.

Recommendation 16

Each broadcaster should have a nominated complaints officer within the organisation whose sole role it is to respond to complaints. The officer should be separate from the program production and scheduling sections and from the area responsible for classifying or rating programs. Officers should receive relevant training in the appropriate code of conduct and complaint management. The contact details of the complaints officer should be published on the website of the broadcaster, industry body and ACMA.

Recommendation 17

Broadcasters should ensure that responses to complaints are comprehensive, deal with the substantive issue and are courteous in tone.

Recommendation 18

ACMA should develop a practice of testing compliance with standards and codes of practice by conducting investigations into a sample of programs that may, in its opinion, raise issues with regard to the appropriateness of the classification received.

Recommendation 19

In the event that SBS or the ABC fails to comply with an ACMA recommendation within a 14 days period of receiving such a recommendation, ACMA should automatically provide a report to the Minister on the matter.

Recommendation 20

ACMA should limit its use of unenforceable undertakings from broadcasters in relation to a breach of the code. The second time that a broadcaster is found to be in breach of the same part of the code within the duration of its code of practice, ACMA should use its existing powers to impose additional conditions on a license of the broadcaster. In the event of subsequent breaches, ACMA should use its powers to:

- **Pursue a civil penalty;**
- **Refer the matter for prosecution as an offence;**
- **Suspend or cancel the license; or**
- **Impose an enforceable undertaking.**

Chapter 1

The Committee's Inquiry

Referral of the inquiry

1.1 On 20 March 2008, the Senate referred the matter of the effectiveness of broadcasting codes of practice to the Senate Standing Committee on Environment, Communications and the Arts, for inquiry and report by 9 June 2008. The Committee presented a brief interim report to the President of the Senate on 6 June 2008.

Background to the inquiry

1.2 On 18 March 2008, Senator Cory Bernardi speaking in the Senate raised the issue of coarse and obscene language on television, using the television program *Ramsay's Kitchen Nightmares*, broadcast by the Nine Network in Australia, to highlight his objections.

1.3 Senator Bernardi was clear that his own beliefs do not embrace censorship; however, he stated that:

... there is no excuse for gratuitous bad language to be broadcast repeatedly if it has no real bearing on the material being shown, in a relatively early time slot, and when it can clearly be beeped out or censored. I say this not because I believe in censorship but because I believe strongly that what we broadcast on our televisions has a profound impact on how we conduct ourselves, over the course of time.¹

1.4 The Senator expressed the view that the administration of broadcasting standards did not reflect attitudes within the Australian community. Noting the relatively small number of complaints received by the broadcaster with regard to the *Ramsay* programs, particularly when compared with the high viewer ratings, Senator Bernardi suggested that this was not a fair representation of public attitudes to offensive language on television.

1.5 The complaints process for those who are offended by broadcast content, Senator Bernardi argued that it:

... dissuades a lot of people from making complaints or identifying areas of our public broadcasting system where they have particular problems. I also believe that there is an opportunity for us in government to review the process to give ordinary Australians more of a say and more of an impact on what is acceptable for viewing on our public broadcasting system.²

1 Senator Bernardi, *Senate Hansard*, 18 March 2008, p. 1198.

2 Senator Bernardi, *Senate Hansard*, 18 March 2008, pp 1197-1198.

1.6 This inquiry was referred to the Committee on the motion of Senator Bernardi.

Terms of reference

1.7 Under the terms of reference, the Committee undertook an examination into the effectiveness of the broadcasting codes of practice operating within the radio and television industry, with particular reference to:

- (a) the frequency and use of coarse and foul language (swearing) in programs;
- (b) the effectiveness of the current classification standards as an accurate reflection of the content contained in the program;
- (c) the operation and effectiveness of the complaints process currently available to members of the public; and
- (d) any other related matters.

The Committee's approach

1.8 This Committee does not see its responsibility as being an arbiter of public taste. As a group the Committee is not going to express a view on the use of particular words on air. Having reviewed the regulatory system the Committee believes that it is basically sound but that it requires strengthening in some areas.

1.9 Throughout this report the Committee has made recommendations aimed at strengthening the role of the regulator, the Australian Communications and Media Authority (ACMA). The Committee has also made recommendations with regard to the description of program ratings (G, PG, etc), time zones and the content of promotions for M and MA15+ shown in early evening time slots. It has also recommended changes to the way in which commercial broadcasters deal with complaints.

1.10 The Committee believes that there needs to be a greater appreciation by the regulator and on the part of those who would impose a range of social obligations on broadcasters of the business realities of commercial broadcasting. Business organisations are required to comply with the law that regulates them but within that regulatory framework they can be expected to pursue strategies which maximise their market share and advertising revenue. This places the onus very firmly on ACMA to represent the public interest with regard to broadcasting standards.

1.11 The need to generate ratings for particular programs and broadcasters as a basis on which to sell advertising and, increasingly, the competition from less regulated subscription television, will tend to push commercial broadcasters in the direction of testing the limits of codes of practice by putting ever more controversial or sensational programs to air. ACMA, while not acting as a censor, could better address community concerns with regard to program content by acting as a restraining hand on that tendency.

1.12 There are two distinct aspects to this inquiry. The first goes specifically to the use of coarse language, but more generally to the acceptability of content of a contentious nature, and relates to the elusive concept of community standards. There are several categories of material that is deemed to be unsuitable for broadcast on free-to-air television under any circumstances. These include 'sustained, relished or excessively detailed acts of violence', explicit sexual material, 'very coarse language that is aggressive and very frequent' and detailed description or portrayal of illegal drug use and suicide.³

1.13 'Milder' forms of all this material may be shown with an appropriate classification. What level of coarse language, (or violence, drug use or sex scenes) is acceptable under what conditions, particularly on free-to-air television and radio is determined by reference to a range of factors, most particularly 'community standards'; the need to protect minors and the context in which the material is used.

1.14 It is clear from this brief summary that there is significant latitude for interpretation at the margin of the various categories in determining what material may be shown and at what times. For example, what is 'very' coarse language as distinct from merely coarse language, or 'very' frequent as distinct from frequent? As the views expressed in submissions to the Committee make clear there is a wide divergence of opinion on what the 'community standard' is with regard to any of these matters at any given time.

1.15 In practice 'community standards' are not capable of a fixed definition – they are flexible, negotiable and highly dependent on context. Establishing community standards is best viewed as a continuous process or debate. This is clearly unsatisfactory to those who want either a complete absence of censorship or, alternatively, hard and fast boundaries defining what is acceptable, but it is the reality of a pluralist society.

1.16 The Australian Communications and Media Authority (ACMA) has a responsibility:

(h) to conduct and commission research into community attitudes on issues relating to programs and datacasting content; [and]

(i) to assist broadcasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards.⁴

1.17 The effectiveness of this process is at the core of this inquiry and the Committee considers issues with regard to it in Chapter 4.

3 *Commercial Television Code of Practice*, July 2004, p. 19, paragraph 2.17.

4 *Australian Communications & Media Authority Act 2005*, s. 10 (h) & (i). ACMA is the Commonwealth Government authority responsible for the regulation of broadcasting and internet content.

1.18 Underlying the question of community standards are the conflicting principles exemplified by the National Classification Code that:

- (a) adults should be able to read hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them; [and]
- (c) everyone should be protected from exposure to unsolicited material that they find offensive; ...⁵

1.19 Studies undertaken by ACMA suggest that there is wide-spread community support for the above principles. The balance between the competing imperatives is sought through the use of codes of practice, ratings systems and time zones with the objective of limiting the availability of inappropriate material at times when children are likely to be watching or listening and providing parents and others with guidance as to the content of programs so that they can monitor and manage their own and children's viewing. The second part of the inquiry examines the effectiveness of these processes and the possible changes that might be made to improve them.

1.20 Included in this part of the report is an examination of complaints procedures. Senator Bernardi's initial expression of concern about broadcasting standards and many submissions to the Committee suggest that community attitudes are not fairly represented in the deliberations of ACMA or of the broadcasting service providers because the procedures by which those who were dissatisfied with program content could make a complaint are, it is argued, cumbersome, slow and obscure and discourage people from pursuing complaints. The Committee examines the issues with regard to complaints procedures in Chapter 5.

Conduct of the inquiry

1.21 In accordance with its usual practice, the Committee advertised details of the inquiry in *The Australian* on 1 April 2008. The Committee also made direct contact with a range of organisations and individuals to invite submissions to the Inquiry. The Committee received written submissions from 86 individuals and organisations, as listed at Appendix 1.

1.22 A public hearing of the Committee was held in Adelaide on 23 May 2008. Details of the hearing, including a list of witnesses who gave evidence, are shown at Appendix 2.

1.23 During the course of the inquiry, the Committee became aware of an unauthorised disclosure of Committee proceedings, when one submitter, the Australian Christian Lobby (ACL), posted its submission on its website before the submission had been accepted or published by the Committee. This breach was drawn

5 *Classification (Publications, Films and Computer Games) Act 1995*, Schedule 1.

to the attention of the ACL, which apologised and immediately removed the submission from the Internet.

1.24 Particularly in light of ACL's prompt response, the Committee decided not to pursue the matter any further. However it reminds everyone who decides to participate in a Senate Committee inquiry that publication of a submission is a matter for the Committee. If someone decides to publish their submission before the Committee has done so, then that publication is not protected by parliamentary privilege, and submitters could expose themselves to legal action. It is therefore in the interests of both parliamentary Committees and submitters that the rules governing parliamentary procedure are respected.

Acknowledgments

1.25 The Committee wishes to express its appreciation to everyone who contributed to the inquiry by making submissions or appearing before it to give evidence.

Chapter 2

Television and Radio Regulatory Framework

Legislation

2.1 Two legislative instruments form the basis for the regulation of broadcasting content: the *Broadcasting Services Act 1992* (BSA); and the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act).

2.2 The BSA prescribes a co-regulatory model in which the industry, all broadcasting services (broadcasters) (eg. commercial television broadcasting licensees; commercial radio broadcasting licensees, and subscription service providers) and the government both have defined roles.

2.3 The Classification Act 'supports the National Classification Code, which sets out the overarching principles for classification'¹ of content relating to publications, films and computer games. All films, including those that are shown on television, are required to be classified under this Code. The classification of television and radio programs is not designated under either Act, allowing industry codes of practice or standards to be responsive to prevailing community standards.

2.4 Section 123(3A) of the BSA makes reference to the Classification Act which allows for the creation of guidelines, in requiring that the development of broadcasting industries' codes of practice align with the Office of Film and Literature Classification's film classification system.

Industry

2.5 The co-regulatory nature of the BSA allows the radio and television industry groups representing broadcasters to develop their own codes of practice:

It is the intention of the Parliament that radio and television industry groups...develop, in consultation with the ACMA and taking account of any relevant research conducted by the ACMA, codes of practice that are to be applicable to the broadcasting operations of...sections of the industry.²

2.6 The BSA does not impose a strict requirement for industry groups to develop codes. However, if no code of practice has been registered in a particular section of

1 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 10, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 8 April 2008).

2 *Broadcasting Services Act 1992*, s. 123(1).

the broadcasting industry, the Australian Media and Communications Authority (ACMA) must 'determine a standard in relation to the matter'³.

2.7 In the development of codes of practice, broadcasters may address matters of concern to the community, including but not limited to:

- preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry;
- methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority; and
- methods of classifying programs that reflect community standards⁴.

2.8 Specifically, community attitudes to a number of behaviours, including: the portrayal of physical and psychological violence; the portrayal of sexual conduct and nudity; the use of offensive language; the use of drugs, including alcohol and tobacco; and behaviour that incites or perpetrates hatred are to be taken into account.⁵

2.9 The codes of practice operate alongside license conditions that differ according to the category of broadcasting license (eg. commercial television broadcasting licenses or commercial radio broadcasting licences). The intention of this form of regulatory control is that it can be:

...applied across the range of broadcasting services...according to the degree of influence that different types of broadcasting services...are able to exert in shaping community views in Australia.⁶

2.10 Codes of practice are subject to regular review.

Government

2.11 ACMA, the federal statutory authority since July 2005, is responsible for the regulation of radio, television and internet content in Australia and for administering the BSA. Section 123 of the BSA states that ACMA is required to maintain a Register of all relevant industry codes of practice and to keep the Register 'open for public inspection'⁷.

2.12 ACMA may only include a code in the Register when it is satisfied that: the code of practice provides appropriate community safeguards for the matters covered

3 *Broadcasting Services Act 1992*, s. 125(2)

4 *Broadcasting Services Act 1992*, s. 123(2).

5 *Broadcasting Services Act 1992*, s. 123(3).

6 *Broadcasting Services Act 1992*, s. 4.

7 *Broadcasting Services Act 1992*, s. 124(1-2).

by the code; the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and members of the public have been given an adequate opportunity to comment on the code.⁸

2.13 The Special Broadcasting Service (SBS) and the Australian Broadcasting Corporation (ABC), established under the *Special Broadcasting Service Act 1991* and the *Australian Broadcasting Corporation Act 1983* respectively, are Australia's national broadcasters. They are 'self-administering and are not required to obtain...approval of their codes of practice'⁹.

2.14 It is the responsibility of ACMA under the BSA to determine standards that are to be observed by commercial television broadcasting licensees that relate to programs for children and the Australian content of programs.¹⁰

Codes of practice

2.15 The following codes of conduct are relevant to the Committee inquiry:

- Australian Broadcasting Corporation (ABC) Code of Practice, covering its television and radio interests as well as other media;
- Special Broadcasting Service (SBS) Codes of Practice, covering both radio and television interests;
- Commercial Television Industry Code of Practice;
- Commercial Radio Codes of Practice and Guidelines (September 2004)
- Community Broadcasting Code of Practice;
- Community Television Code of Practice;
- Subscription Broadcast Television Code of Practice;
- Subscription Narrowcast Television Codes of Practice¹¹;
- Open Narrowcast Television Codes of Practice;
- Open Narrowcast Radio Codes of Practice; and
- Subscription Narrowcast Radio Code of Practice.

8 *Broadcasting Services Act 1992*, s. 123(4).

9 Arts Law Centre of Australia Online, *Classification and Censorship*, <http://www.artslaw.com.au/LegalInformation/ClassificationCensorship/default.asp> (accessed 6 April 2008).

10 *Broadcasting Services Act 1992*, s. 122(1-2).

11 Narrowcasting services are broadcasting services whose reception is limited by being targeted to special interest groups; or by being intended only for limited locations, for example, arenas or business premises; or by being provided during a limited period or to cover a special event; or because they provide programs of limited appeal; or for some other reason. *Broadcasting Services Act 1992*, ss 17-18.

2.16 At the time of the inquiry, no code of practice for the datacasting industry had been approved by ACMA.

ACMA's role in industry codes

2.17 Commercial television codes of practice, the principal concern of this inquiry, are subject to review every three years. The review process involves ACMA and the broadcasters and requires extensive opportunity for public comment. Drafts of revised codes are developed by the broadcasters and their industry body in consultation with ACMA

2.18 Once an agreed draft of the revised code is developed it is released for public comment. To ensure that the public has a reasonable opportunity to make comment advertisements are placed in all major national and regional daily newspapers seeking submissions and respondents are given four to six weeks to provide a submission. The draft code may be amended in light of issues raised in submissions. This process is managed by Free TV Australia.

2.19 The draft is then provided to ACMA together with the submissions received, and ACMA may review the draft and seek further amendments to it. Once a final version of the draft is agreed it is registered by ACMA and becomes the industry code for the next three-year period.

2.20 The Committee believes that it would be a useful addition to this process if the submissions received were published either on ACMA's or Free TV Australia's website and if, in addition, ACMA released a response to the major critical comments.

Co-regulation

2.21 As noted above, the current system of control of content in broadcasting is one of 'co-regulation' in which the broadcasting service providers, working within a framework of general guidelines, develop and implement their own codes of practice and, in the first instance, deal with complaints relating to breaches of the code. The co-regulatory aspect of the system involves ACMA, as the regulator, being involved in the development, registration and enforcement of the codes.

2.22 A number of inquiries into ACMA's predecessor, the Australian Broadcasting Authority (ABA), were critical of the system as it then operated. The Productivity Commission report into Broadcasting in 2000¹² and a Senate Select Committee¹³ in the same year were critical of the system as it then operated.

12 Productivity Commission, *Broadcasting*, Report No. 11(2000), p. 453.

13 Senate Select Committee on Information Technologies, *In the Public Interest* (2000), paragraph 6.1.

2.23 Some contributors to this inquiry have also chosen to reflect on the nature of the system and the performance of responsibilities held by broadcasters, industry bodies and ACMA:

Broadcast licences are extremely valuable economic privileges granted by society. With such privileges, come social obligations to act with respect for community values and the needs of people. Social responsibility is a necessary reciprocal response to such a licence. Broadcasters have in practice failed to demonstrate such good faith commitments or willingness to exercise social responsibility.¹⁴

2.24 Professor Lesley Hitchens notes that:

... there have been ongoing concerns about the effectiveness of the broadcasting co-regulatory scheme. Reporting on its inquiry into broadcasting, the Productivity Commission was critical of the limited monitoring role undertaken by the then regulator, the Australian Broadcasting Authority (ABA), and commented that the system was closer to one of self-regulation than co-regulation.¹⁵

2.25 Professor Hitchens went on to comment that:

If the system is to have credibility and be effective ... there needs to be a comprehensive investigation into the design and operation of the current co-regulatory arrangements.¹⁶

2.26 A common criticism in submissions to this Committee has been that ACMA does not take effective action against broadcasters found to be in breach of the codes of practice. Breaches of the codes with regard to content rarely result in anything more than the imposition of an unenforceable undertaking.

2.27 The Committee notes the concerns expressed by submitters about the co-regulatory system and the role of ACMA and agrees that the co-regulatory system would benefit from ACMA taking a stronger role in promoting and defending the public interest in the area of broadcast regulation. However, ACMA is a relatively new organisation thus the Committee is reluctant to be critical of it at this stage.

2.28 The Committee notes that ACMA has a very broad range of responsibilities including:

Allocating spectrum and numbers, licensing, monitoring compliance, investigating complaints, setting technical and content standards, registering industry codes of practice, participating in delegations on international standards setting and spectrum management, and undertaking

14 Australian Family Association, *Submission 85*, p. 4.

15 Professor Lesley Hitchens, *Submission 56*, pp 1-2.

16 *Ibid.*, p.2

quality research on key media and communications developments at home and abroad,¹⁷

And, that these '... responsibilities continue to broaden and diversify'.

2.29 It may be that regulation relating to broadcasting codes and program content would be better managed in a smaller, more focussed organisation.

Recommendation 1

2.30 The Committee recommends that, no later than the end of 2010, the government considers a review of ACMA, with a focus on ACMA's role in the broadcasting co-regulatory system, to determine if ACMA is effectively working with relevant industry bodies to maintain a fair balance in Australia's broadcast media.

Chapter 3

Coarse Language in Television and Radio Programs

3.1 This chapter examines the frequency of coarse and foul language in programs and investigates how such language is dealt with by the broadcasting codes of practice.

3.2 While the terms 'coarse' and 'foul' were not defined over the term of the inquiry, many submissions made explicit reference to the words 'f***' and 'c***', or condemned the language used in *Ramsay's Kitchen Nightmares* which initially prompted the inquiry.¹ These words, in particular, have therefore been defined as 'coarse' or 'foul' for current purposes.

Influence of the media on behaviour

3.3 While not a major focus of the inquiry, the Committee investigated available research on the effects that media consumption can have on attitudes and behaviour, particularly on children.

3.4 The Committee found little evidence in studies that indicated that exposure to coarse language in the media had any effect, positive or negative, on children. However, this was not true of violence. In a study on media and communications in Australian families, ACMA noted that:

[T]elevision violence can be linked to short-term increases in aggressive thoughts or behaviour. It is less clear whether these short-term influences translate into long-term violent behaviour and crime.²

3.5 Anderson and Bushman concurred with this statement, citing a conclusion by American professional groups:

Six major professional societies in the United States--the American Psychological Association, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American Medical Association, the American Academy of Family Physicians, and the American Psychiatric Association--recently concluded that "the data point

1 See *Submissions 1-3, 6-7, 17-18, 22, 24, 26-30, 32-33, 35-37, 39, 42-43, 45, 47-48, 51, 53, 58, 60, 64-65, 74, 76, 80, 82 and 85.*

2 Australian Communications and Media Authority, *Media and Communications in Australian Families 2007: Report of the Media and Society Research Project*, December 2007. http://www.acma.gov.au/webwr/assets/main/lib101058/maciaf2007_overview.pdf (accessed 30 May 2008).

overwhelmingly to a causal connection between media violence and aggressive behavior in some children".³

3.6 Similarly, the Committee found sources which claim that increased television viewing is a risk factor for the onset of drug use in adolescents.⁴

3.7 ACMA claims that the media does also have a positive effect:

Academic research finds that children learn from television, and that children use various media and communication activities in the development of their identities and in providing an important platform for social activity.⁵

Acquiring coarse or foul language

3.8 Ruth Wajnryb, applied linguist and columnist for the Sydney Morning Herald, observes that learning to swear is a natural part of a child's development:

In fact, swear words can appear as early as twelve months. In *Why We Curse*, Timothy Jay says that child swearing follows a predictable pattern. The active lexicon grows from three or four words in the first two years of life, to about 20 by the end of pre-school. Growth continues until it reaches about 30 words at pre-adolescence. Then during the teen years cursing rates peak, especially in boys. What happens afterwards tends to follow socio-economic lines. The adult cursing lexicon ranges from 20 to 60 words used publicly-not necessarily all on the same occasion.⁶

3.9 In a survey of 663 parents, the Raising Children Network found that:

It's not surprising that so many kids are picking up a few choice words – more than 40% of parents say they swear every day. Interestingly, of the parents who never swear, 19% believe their children are learning to swear from parents, suggesting there are quite a few Australian families where one parent has more colourful language than the other.⁷

3.10 Professor Wajnryb agrees that this behaviour is often learnt at home:

3 Craig A. Anderson and Brad J. Bushman, *The Effects of Media Violence on Society*, *Science* 29 March 2002: Vol. 295. no. 5564, pp. 2377 – 2379 DOI: 10.1126/science.1070765. <http://www.sciencemag.org/cgi/content/full/295/5564/2377> (accessed 3 June 2008).

4 Office of Drug Control Policy, *National Youth Anti-Drug Media Campaign*, http://www.mediacampaign.org/publications/primetime/tv_rationale.html#go17 (accessed 3 June 2008).

5 Australian Communications and Media Authority, *Media and Communications in Australian Families 2007: Report of the Media and Society Research Project*, December 2007. http://www.acma.gov.au/webwr/assets/main/lib101058/maciaf2007_overview.pdf (accessed 30 May 2008).

6 Ruth Wajnryb, *Language Most Foul*, 2004, p. 73.

7 Raising Children Network, http://raisingchildren.net.au/articles/survey_results_swearing.html (accessed 2 June 2008).

Of course, parents like to blame their [the child's] foul language on 'bad influences' in the child's peer group. It's a fairly sure bet that the parents of those influences are probably at home identifying *your* child as the bad influence. The fact is that kids swear because they copy the modelled behaviours around them, usually in the home. You stub a toe; you swear. Your child overhears and learns how to react in similar circumstances.⁸

3.11 It would appear that the use of foul language in the broadcast media is more likely to reinforce or normalise already acquired habits rather than be a significant cause of its adoption in the first place. The Committee notes the sparsity of evidence that connects media usage to inappropriate behaviours, particularly in relation to using coarse or foul language, and would welcome further research into this phenomenon.

Attitudes to broadcasting coarse language

3.12 As with any subject that generates vigorous discussion, contributors to this inquiry have come from people and organisations strongly opposed to the broadcasting of coarse and foul language, people and organisations strongly in favour of its broadcast, and those that sit in between.

Complaints about coarse language

3.13 Evidence supplied to the Committee from industry bodies representing broadcasters indicates that the broadcasters use, to a degree, the number of complaints they receive as a gauge of the success and efficacy of their respective codes. According to the Special Broadcasting Service (SBS), to date 'no formal complaints have been made about the use of language on SBS Radio.'⁹ With regards to television programming:

SBS considers that the Television Classification Code, in particular as it applies to language, is working effectively. This is evident in the low number of formal complaints SBS has received in relation to this category of complaints, with less than twenty being made in the last three years.¹⁰

3.14 Free TV Australia, the industry body representing the free-to-air commercial television stations, reports a similar situation, noting that:

There is also a very low level of complaints regarding the use of coarse language on television, with less than one complaint received by broadcasters on average each week over the last ten years. This is compared to the hundreds of hours programming broadcast each week and the millions of viewers watching commercial free-to-air television every day.¹¹

8 Ruth Wajnryb, *Language Most Foul*, 2004, p. 74.

9 Special Broadcasting Service, *Submission 41*, p. 3.

10 Special Broadcasting Service, *Submission 41*, p. 3.

11 Free TV Australia, *Submission 55*, p. 1.

3.15 Young Media Australia, whose role it is 'to stimulate and maintain public interest in the provision of suitable films and television programs for children'¹², states that:

YMA has not had high levels of complaint about language issues, but it may be an area where a closer monitoring study is needed to ascertain whether or not these codes are being observed, or need to be modified.¹³

3.16 Mr David Gyngell, Chief Executive of the Nine Network, has indicated that the word 'c***' will not be used by the station in the future:

That is not so much a comment on the operation of the classification system as an internal policy decision by Mr Gyngell as to what he believes is appropriate for us to be broadcasting.¹⁴

This action exceeds the current requirements of the code of practice for free-to-air television stations.

3.17 Several contributors to the inquiry made a connection between the increased suppression of certain language to increased censorship by the government:

I would urge the Committee to carefully consider the need to amend or tighten broadcasting codes of practice - I would not wish to see "over censorship" in our homeland which is meant to adopt free speech and expression as a fundamental freedom that we enjoy.¹⁵

3.18 While acknowledging the need to protect children by providing 'a system of program classifications, consumer advice text and broadcasting'¹⁶, the New South Wales Council for Civil Liberties 'reminds the Senate that freedom of expression is an important civil right in a free and democratic society and it should not be restricted lightly'.¹⁷

3.19 Similarly, Liberty Victoria stated that:

Whatever one's personal view of the program [*Ramsay's Kitchen Nightmares*] may be, Liberty Victoria believes that adults are entitled to determine for themselves what they will or will not watch. It is not the role of an individual Senator or a small minority of the public to dictate to the broader public what they can and cannot see.¹⁸

12 Young Media Australia, *Submission 79*, p. 1.

13 Young Media Australia, *Submission 79*, p. 3.

14 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 10.

15 Mr Barney Lee, *Submission 71*, p. 1.

16 New South Wales Council for Civil Liberties, *Submission 42*, p. 1.

17 New South Wales Council for Civil Liberties, *Submission 42*, p. 8.

18 Liberty Victoria, *Submission 78*, p. 2.

3.20 Many contributors presented the opposite view, indicating that it is the responsibility of the government to intervene. Mr Matthew Munn, for example, urges the Senate to 'please take some responsibility, raise the standards.'¹⁹ Reverend Jamie Long states that 'it is appropriate for government to provide boundaries for media.'²⁰

3.21 It should be noted that even those who expressed concern about the use of particular words generally stopped short of asking for an outright ban on such language. The Reverend Long, for example, sought more rigorous application of the classification standards and time zones to exclude 'foul' language from the pre-8.30 pm period.

3.22 The Catholic Archdiocese of Adelaide, while believing that the *Ramsay* programs had been misclassified, commented that 'The occasional 'F word' in an emotional exchange is contextualised as emphasis. This is easily understood even by young children'.²¹ The submission was, however, deeply concerned by the desensitizing effect of 'gross repetition' and the message that '...violent and abusive bad language is necessary to get your own way'.²²

3.23 An interesting response came from a private citizen in Queensland, a mother of four girls, who found the underlying values of the *Ramsay* program to be more important than the language issue:

If my girls followed the example of Gordon Ramsay and swore like troupers but were hard working, devoted to their families, against drugs and alcohol and saw the best or the potential in people I would be extremely proud.²³

3.24 The writer, along with many others, saw a range of other issues, portrayals of 'unprotected promiscuous sex, binge drinking, drug use, violence and sexism', as matters of far greater concern with regard to media content.

3.25 A common theme of submissions seeking some tightening of standards was that the classification system did not offer sufficiently clear guidance as to the probable content of a program, regardless of whether the concern was language or other potential causes of offence, and that the early and mid-evening time zones, when children were most likely to be watching television needed to be policed more stringently.

19 Mr Matthew Munn, *Submission 6*, p. 1.

20 Reverend Jamie Long, *Submission 26*, p. 1.

21 Catholic Archdiocese of Adelaide, *Submission 27*, p. 4.

22 Catholic Archdiocese of Adelaide, *Submission 27*, p. 4.

23 Lisa Penridge, *Submission 76*, p. 1.

3.26 The Committee notes the polarisation between the many views of stakeholders in this inquiry. The pluralistic nature of Australian society is such that a consensus on the broadcast of coarse and foul language is unlikely to be reached.

Potential solutions

3.27 Submitters offered solutions to those who were offended by language on television. Mr Michael Brennan is one of several contributors who advocate parents taking a greater role in monitoring their children's media consumption:

Through carefully monitoring what they watch and showing an active interest in TV I am able to easily avoid shows that may feature coarse language, if by chance they are subjected to something that I don't want them repeating (not necessarily swearing).²⁴

3.28 A large number of contributors reflected that offence could be avoided if the television was turned off or the channel changed. YMA, however, are not supportive of this:

Sadly, however, the more concerned people do just switch off, the longer the unacceptable levels of offensive material continue unchecked, and uncommented upon. One cannot complain about something that one does not see.²⁵

3.29 It can be argued that, particularly for the commercial channels, the decline in ratings which would result from large numbers of people switching off would be a very effective way of changing the practices of broadcasters.

3.30 Others noted the impracticality or impossibility of continually monitoring children's access to broadcast media due to societal and economic pressures for children to be left unattended,²⁶ because of the reality that '[m]any kids of working parents come home to an empty house²⁷ and because of the dynamics of the ordinary domestic situation including busy parents, children of a range of ages with differing tastes, where older children may determine program choice for younger children, and increasingly, children with their own televisions.

3.31 Placing the burden of regulating children's viewing primarily on parents does require a recognition of these domestic realities and does emphasise the need for clarity in the classification system so that adults can have a high degree of confidence in the guidance they offer. An M classification permits the use of coarse language, '...appropriate to the story line or program context, infrequent and... not very

24 Mr Michael Brennan, *Submission 9*, p. 1.

25 Media Standards Australia, *Submission 48*, pp 6-7.

26 Ms Carol Smith, *Submission 13*, p. 1.

27 Peter Lavell, *Where do the children play?* Pulse ABC Broadcasting, 12 May 2005. <http://www.abc.net.au/health/thepulse/s1365080.htm> (accessed 3 June 2006)

aggressive'. Use that is 'more than infrequent' is only justified when it is '...particularly important to the ... program context'.²⁸

3.32 In the case of the Ramsay program, in which 'f***' was used eighty times in forty minutes, the Committee has some sympathy with the view that this was stretching the meaning of 'more than infrequent' to the limit. However the Committee notes that the advisory note broadcast at the start of the program did warn that it contained 'frequent very coarse language'. This is the strongest language advisory available under the code of practice.

3.33 In the absence of evidence of demonstrable harm to young people as a result of being exposed to bad language on television or that broadcasting plays a significant role in introducing the use of bad language among children and in the absence of an overwhelming community consensus that particular words be banned altogether, the Committee does not believe it is appropriate to make any recommendation with regard to imposing additional limits the use of the words 'f***' or 'c***' on Australian television beyond the requirements of the current classification system.

3.34 In Chapter 4 the Committee does consider some modifications to the rating system which may make the rating system a more accurate reflection of the content of programs and thus a more accurate guide to adults wishing to manage their children's and their own viewing so as to avoid offence.

3.35 The Committee notes that, with the advent of digital free-to-air television, it is possible to include parental lockout systems in the specification of the television.

Recommendation 2

3.36 The Committee recommends that the provision of parental lock-out become an industry standard for digital televisions sold in Australia. The Committee also recommends that the feasibility of using datacasting to provide a more detailed description of program content and the reasons for a program's rating which could be accessed by the viewer.

28 Free TV Australia, *Commercial Television Industry Code of Practice*, July 2004, p. 25. In rating a program other factors such as '...the merit of the production, the purpose of a sequence, the camera work, the relevance of the material and the treatment' can be taken into account. *Code*, p. 23. Taken together the imprecision of language – not very aggressive; more than infrequent – and the range of factors that can be considered, give the broadcaster very wide latitude in classifying a program. This is considered more fully in Chapter 4.

Chapter 4

Effectiveness of the current classification standards

4.1 This chapter investigates the operation of the current classification standards across television and radio broadcasting that form a significant element of each code of practice. It also considers the opinions and experiences of those who have raised concerns about various aspects of the effectiveness of the standards.

4.2 The Committee is aware that industry codes of practice contain broader information than classification standards. Given the lack of complaints by submitters on issues such as time occupied by non-program matter or closed captioning for hearing impaired or deaf people, for example, the Committee will restrict its analysis to classification standards only.

Classification of material

4.3 Section 123(2)(c) of the BSA allows each broadcasting industry group to include in their code of conduct its own system of classification for programs. If industry groups exercise the option to classify programs, it must comply with section 123A of the BSA, which reflects the principles set out in the Classification Act.

4.4 ACMA reports that:

As the Classification Act envisages, the process of making classification decisions is one of balancing rights and protections. A key guiding principle is that adults should be able to read, hear and see what they want. This principle must be balanced against the consideration that children should be protected from material that may harm and disturb them, and that everyone should be protected from exposure to unsolicited material that they find offensive.¹

4.5 Commercial television and open narrowcasting codes that elect to classify programs must also adhere to requirements relating to the classification of films.

4.6 ACMA notes that 'the concept of "community standards" is central to the classification principles'. Further, it states that:

The process of determining community standards is not a straightforward matter, as such standards are not able to be readily expressed or quantified. A pluralistic society such as Australia's will necessarily encompass multiple viewpoints, and there will be a variety of needs in relation to being able to access material, or being offered protections. The concept of a classification

1 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 12, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 8 April 2008).

framework is, however, based around the understanding that some form of judgement can be made, and that the standards so defined will be broadly accepted by the community.²

4.7 News, current affairs programs and sporting events are not required to be classified for television or radio broadcast. However, all codes of practice include provisions to ensure that material of this nature that is broadcast is suitable for the expected audience of the program.

Television classification

4.8 All television codes of practice use a series of classifiable elements to assist with the classification of a program. The frequency and treatment of the following elements in a program broadcast by any station will determine the classification:

- Violence;
- Sex and nudity;
- Coarse language;
- Drug use; and
- Themes (including adult themes, strong adult themes, medical procedures, supernatural themes, and horror).

4.9 'Impact' is also considered by all broadcasters in determining classifications—explicitly in the subscription television *Codes of Practice*,³ and implicitly with other broadcasters.⁴

4.10 Although broadcasters are not *required* under the legislation to consider the classifiable elements when implementing ratings for television programs,⁵ these classifiable elements are based to varying degrees on the *Guidelines for the Classification of Films and Computer Games*, made under the *Classification (Publications, Films and Computer Games) Act 1995*. This is explicitly acknowledged by a self-administering broadcaster, the ABC.⁶

2 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 13, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 8 April 2008).

3 Australian Subscription Television and Radio Association, *Subscription Broadcast Television Codes of Practice*, 2007, Subscription Broadcast Television, pp 6-9.

4 See explanation of 'Themes' in *Commercial Television Industry Code of Practice*, July 2004, Australian Broadcasting Corporation, *Code of Practice*, March 2007; and 'Television Classification Code' in Special Broadcasting Service, *Codes of Practice* 2008, pp 18-19.

5 Note, however, that commercial television broadcasters are required by the *Broadcasting Services Act 1992*, s. 123(3A) to apply the film classification system detailed in the *Guidelines for the Classification of Films and Computer Games*.

6 Australian Broadcasting Corporation, *Code of Practice*, March 2007, p. 11.

4.11 The *Guidelines for the Classification of Films and Computer Games* also asserts that assessing the impact of the material is an essential principle in determining classification, and that:

Assessing the impact of material requires considering not only the treatment of individual classifiable elements but also their cumulative effect. It also requires considering the purpose and tone of a sequence.⁷

4.12 There are strong similarities between program classifications that have been developed for commercial television stations Seven, Nine and Ten; ABC; SBS; and subscription broadcast television channels and the classifications required for films under the Classification Act. In ascending order, the film classifications are:

G General

PG Parental Guidance

M Mature

MA 15+ Mature Accompanied

R 18+ Restricted

X 18+ Restricted

RC Refused Classification.⁸

4.13 All broadcasters use the following classifications for television programs: G (General – suitable for all ages); PG (Parental Guidance recommended); and M (Mature). It should be noted that programs rated G and PG are not, necessarily, made specifically for children. The rating merely indicates that they do not contain elements that would require a more restrictive classification.

4.14 In addition, all broadcasters have a category for programs not suitable for people under 15 years (MA or MA 15+). SBS and commercial television stations include an additional classification for programs incorporating strong violence (MAV15+ and AV respectively). Subscription television stations include an R18+ (Restricted) category, although '[t]his classification category applies only to films'.⁹

4.15 With the exception of subscription television stations, codes of practice contain schedules of times when programs with different classifications can be screened. The schedule is based on 'the majority audience normally viewing at that time, with particular regard to the child component of the audience'¹⁰.

7 *Guidelines for the Classification of Films and Computer Games*, made under section 12 of the *Classification (Publications, Films and Computer Games) Act 1995*, p. 5.

8 *Classification (Publications, Films and Computer Games) Act 1995*, Part 2, s. 7(2).

9 Australian Subscription Television and Radio Association, *Subscription Broadcast Television Codes of Practice*, 2007, Subscription Broadcast Television, p. 9.

10 *Commercial Television Industry Code of Practice*, July 2004, p. 13.

4.16 SBS and commercial television channels may only show programs containing strong violence (MAV15+) between 9:30pm and 5:00am. The ABC Code of Practice requires that MA15+ programs begin no earlier than 9:30pm. SBS and commercial stations allow MA15+ and MA programs to begin at 9:00pm;¹¹ however, SBS notes that, in its case as an independent broadcaster:

The time zones indicated for each classification ... are guides to the most likely placement of programs within that classification. The recommended placements are not hard and fast rules and there will be occasions where programs or segments of programs will appear in other time slots.¹²

4.17 According to all codes of practice, programs rated M may be screened from 8:30pm. M-rated programs may also be shown between noon and 3:00pm on school days. PG programs may be screened on weekdays between 8:30am and 4:00pm and 7:00pm and 6:00am and on weekends at any time except between 6:00am and 10:00am. G-rated programs may be screened at any time.¹³ The timetable for weekday programming on commercial free-to-air television is at Figure 4.1 below.

Figure 4.1—Weekday Classification Zones Timetable

| | 5am | 6 | 8.30 | 12pm | 3 | 4 | 5 | 7 | 8.30 | 9 | 9.30 | 5am |
|------|-----|---|------|------|---|---|---|---|------|---|------|-----|
| P, C | | | | | | | | | | | | |
| G | | | | | | | | | | | | |
| PG | | | | | | | | | | | | |
| M | | | | | | | | | | | | |
| MA | | | | | | | | | | | | |
| AV | | | | | | | | | | | | |

14

4.18 Subscription television broadcasters may screen programs at any time although '[m]ost channels...schedule more adult material later in the evening'¹⁵:

The fact that the Subscription Broadcast Television (SBT) Codes of Practice do not contain classification time zone requirements, unlike the

11 Special Broadcasting Service, *Codes of Practice* 2008, p. 21; *Commercial Television Industry Code of Practice*, July 2004, p. 17; Australian Broadcasting Corporation, *Code of Practice*, March 2007, pp 12-15.

12 Special Broadcasting Service, *Codes of Practice* 2008, p.22.

13 Special Broadcasting Service, *Codes of Practice* 2008, p. 21; *Commercial Television Industry Code of Practice*, July 2004, p. 17; Australian Broadcasting Corporation, *Code of Practice*, March 2007, pp 12-15.

14 P & C – 'preschool' and 'children' are not classification standards. They are standards developed by ACMA that indicate programs made specifically for those age-groups.

15 Marion McCutcheon, *Is Pay TV Meeting Its Promise?*, Thesis for the degree of Doctorate of Philosophy of Murdoch University, 2006, p. 276.

codes for free-to-air television, reflects the different nature of SBT and free-to-air television industries and audiences.¹⁶

4.19 The Australian Subscription Television and Radio Association (ASTRA) argues that subscription television should be distinguished from free-to-air television because it is an 'opt-in' system in which the consumer chooses to enter into a contract to purchase certain services.¹⁷ In addition, all contracts executed between subscription broadcast television providers and patrons can include facility for a 'parental lock' function.¹⁸

4.20 Free-to-air and subscription television broadcasters are required to display the appropriate classification symbol of the program being screened at the beginning of the program. The classification symbol for a program being promoted will be displayed during the promotion. The commercial television stations also undertake to display the classification symbol 'as soon as practicable after each break'.¹⁹

4.21 The Commercial Television Industry Code of Practice also specifies that the appropriate classification symbol must be 'of at least 32 television lines in height, in a readily legible typeface, [and] must be displayed for at least 3 seconds'²⁰.

4.22 All free-to-air television broadcasting codes of practice require stations to provide audio and visual consumer advice²¹ at the beginning of each program. The code for commercial television stations also includes a voice-over script for each classification.

4.23 According to Free TV Australia, consumer advice:

[M]ust specify one or more of the classification elements set out below. Where the frequency of classification elements is not indicated in the listed terms, the adjective "some" or "frequent" should be used (e.g. "some nudity").

Language

- mild coarse language
- some coarse language
- frequent coarse language
- very coarse language

16 Department of Communications, Technology and the Arts, answer to question on notice 114, 24-27 May 2004.

17 Ms Debra Richards, Chief Executive Officer, Australian Subscription Television and Radio Association, *Committee Hansard*, p. 55.

18 Department of Communications, Technology and the Arts, answer to question on notice 114, 24-27 May 2004.

19 *Commercial Television Industry Code of Practice*, July 2004, p. 19.

20 *Commercial Television Industry Code of Practice*, July 2004, p. 19.

21 Consumer advice is information about the reasons for a particular classification (eg. contains mild coarse language).

- frequent very coarse language

Violence

- stylised violence
- mild violence
- some violence
- frequent violence
- realistic violence
- strong violence

Sex

- sexual references
- a sex scene
- sex scenes
- strong sex scenes

Drugs

- drug references
- drug use

Other

- adult themes
- strong adult themes
- medical procedures
- supernatural themes
- horror
- nudity²²

Radio

4.24 The Committee notes that the SBS *Codes of Practice 2008*, and the ABC *Code of Practice, March 2007* apply to both television and radio broadcasts.

4.25 Neither the Commercial Radio Australia *Codes of Practice and Guidelines* nor the *Community Radio Code of Practice* describes a system of classification that includes classifiable elements. Instead, both codes list material that may not be broadcast: that is, material that promotes or favourably depicts the behaviours in paragraph 4.23 above.²³ Programs with an explicit sexual theme as the core content may only be broadcast between 9:30pm and 5:00am.

22 Free TV Australia, Commercial Television Industry Code of Practice, July 2004, pp 20-21. [http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_\(including%20amendment%20for%20election%20period\)_060907.pdf](http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_(including%20amendment%20for%20election%20period)_060907.pdf) (accessed 28 May 2008). (slightly adjusted from original format for formatting purposes).

23 Commercial Radio Australia, *Codes of Practice and Guidelines*, September 2004, pp 4-5; *Community Radio Code of Practice*, <http://www.cbaa.org.au/content.php/20.html> (accessed 28 March 2008), Code. No. 2.

4.26 In considering the acceptability of language, 'the gratuitous use in a program of language likely to offend the anticipated audience for that program must be avoided' by the commercial radio licensee.²⁴

Effectiveness of the classification system - television

4.27 Among the views heard by the Committee was that:

[T]he current classification standards reflect current community standards. We do not believe that there is any evidence to support further restrictions to the classification standards.²⁵

4.28 Other submitters concurred with this view; a submitter noted that mechanisms for 'viewer education are more than adequate'²⁶ while the Young Liberal Movement Victoria went further, stating that:

YLM Vic believes that the current broadcasting and other classification codes are adequate to meet the community's needs. The codes facilitate the adequate provision of consumer information whilst preserving consumer choice. If anything, the codes go too far in regulating content and should, if anything, be relaxed.²⁷

4.29 Unsurprisingly, industry bodies and the independent broadcasters perceived the classification process as being very effective:

[T]he ABC believes its current policies, including effective classification, appropriate consumer warnings, awareness of target audience and context, and a rigorous complaints system, appropriately address community attitudes about what content should be broadcast. The ABC's Code of Practice operates effectively and allows flexibility for the Corporation to fulfil its obligations to a diverse Australian community.²⁸

4.30 In the case of community broadcasters, program producers are consulted when a program is classified. This is in addition to training that is provided to staff and volunteers to ensure that programs do not exceed the limits of their timeslot allocation:

Further, it is largely the case that community television stations approach classification quite cautiously. For example, if there is any doubt or question about the program classification it will usually be classified at the higher level to ensure a more sensitive audience is not likely to watch and be offended.²⁹

24 Commercial Radio Australia, *Codes of Practice and Guidelines*, September 2004, p. 5.

25 Liberty Victoria, *Submission 78*, p. 3.

26 Mr Edward Muscovaz, *Submission 17*, p. 1.

27 Young Liberal Movement Victoria, *Submission 57*, p. 2.

28 Australian Broadcasting Corporation, *Submission 80*, p. 2.

29 Community Broadcasting Association of Australia, *Submission 73*, p. 4.

4.31 However, the majority of respondents to this inquiry considered that one or more elements of the classification standards, applying to free-to-air television particularly, required adjustment or change. The Committee did not hear any evidence which suggested that subscription or community broadcasting services were the targets of significant complaints with regard to classification standards.

Symbols of the classification system

4.32 The Committee received evidence from YMA that the current classification symbols of G, PG and M:

... based as they are around the age of 15 yrs, (and not related to any real ages and stages of childhood) do not helpfully reflect the ages at which different age groups of children are vulnerable to certain portrayals.

YMA is of the view that these classifications would be more helpful, if they were changed to G (suits all), G8+ (suits those 8 and up) and G13+ (suits those 13 and up. These classes would then be followed by MA15+ (having legal force).³⁰

4.33 The Australian Family Association (AFA) has also expressed support for classification categories that differ from those currently used in classifying television programs, based on the Classification Act. The AFA notes that:

There are also continuing issues with classification categories that do not accurately reflect child and adolescent developmental needs. In many other countries, classifications include a category indicating appropriateness for older children or young teenagers. At present parents are often confused about the meaning of PG and M ratings for their child. Some M rated content might be better rated as PG 13+.³¹

4.34 Changing these symbols would bring Australia more closely in line with other countries, such as: Brazil, which has categories of appropriate viewing for under 16s, under 14s, under 12s, and under 10s, as well as more general viewing; Canada, which classifies children's viewing as suitable for under eight years and over eight years; and America, which distinguishes programs suitable for children above and below seven years.

4.35 The Office of Film and Literature Classification is responsible for classifying films under the Classification Act and broadcasting industries' codes are required to align with the film classification system. A qualitative research study among people of all ages in 2004 found that there was a common request to make film/video/DVD, TV and computer games classification symbols and advice the same, so that the system was as simple as possible for everyone to understand.³²

30 Young Media Australia, *Submission 79*, p.4.

31 Australian Family Association, *Submission 85*, pp 4-5.

32 Office of Film and Literature Classification, *Community Attitudes towards Media Classification and Consumer Advice*, March 2004, p. 7.

4.36 The Committee notes that the current classification symbols for film and television have high community recognition. The Committee is, therefore, reluctant to recommend a change of symbols or the addition of new symbols simply on the basis that other countries do it. However it is clear from many submissions to this inquiry that members of the community do not feel that the current system is sufficiently nuanced to provide reliable guidance as to the content of programs, particularly in the PG and M classifications.

4.37 It is also apparent from a number of submissions that viewers rely on the symbols to a much greater extent than on a detailed understanding of the wording of the standards or the codes of practice, however desirable that might be. Thus there may be benefits to be gained from introducing additional symbols which allow content to be matched more closely to particular age-groups.

Recommendation 3

4.38 The Committee recommends that ACMA investigate whether the inclusion of additional age-specific symbols in the G and PG categories offer any advantages over the current system.

Terminology

4.39 The consumer advice provided before a program is, of necessity, brief. Ideally it should be interpreted having regard to the actual standards set out in the code of practice. 'The enforcement of content and the notification of consumer advice'³³ can be improved but there must also be community awareness that, while consumer advice, along with a classification, is available, a 'wider understanding of the actual standards and their role is desirable'.³⁴

4.40 The clarity of the terminology used in the consumer advice of the classification standards was a source of concern to some, particularly in relation to 'impact' words (mild, moderate, strong) and terms such as 'very' or 'frequent' used as indicators of the incidence of coarse language. These terms were viewed as subjective and, according to the Community Broadcasting Association of Australia (CBAA), the result of this is that 'classification decisions are often made due to the personal opinion of the classifier'.³⁵

4.41 The Australian Christian Lobby (ACL) shares this opinion, agreeing that:

There is a great deal of leeway available to programmers in these loose guidelines and it is clear that television stations are more than willing to push the boundaries...³⁶

33 Mr Nicholas Green, *Submission 43*, p. 1.

34 Mr Peter Murray, *Submission 63*, p. 1.

35 Community Broadcasting Association of Australia, *Submission 73*, p. 4.

36 Australian Christian Lobby, *Submission 82*, p. 3.

4.42 Furthermore, the ACL believes that subjectivity in the consumer advice terminology is used by broadcasters to 'justify screening inappropriate content on artistic grounds.'³⁷ CBAA notes that:

Conversely, the understanding of program classification by the audience can also be a matter of opinion and perception. Various members of the community will have widely differing ideas of what may constitute 'moderate' or 'strong' impact.³⁸

4.43 The Committee is aware that such a clarification has been attempted for film classifications in the past. For example, in 1999, it was determined that coarse language at each classification could be identified:

At **G** level... [coarse language] might include "bloody" or "bugger".

At **PG** level... [coarse language] might include "shit".

At **M**... [coarse language] includes "f***".³⁹

4.44 These film guidelines contain no advice on how the terms 'some' and frequent' should be interpreted.

4.45 Free TV Australia notes the difficulty under the current classification system with assigning classification based on a count of certain words or behaviours:

The suitability of material for broadcast will depend on the frequency and intensity of the classifiable elements in the program, such as violence, sexual behaviour, nudity and coarse language. It will also depend on a range of other factors, such as the merit of the production, the purpose of a sequence, the tone, the camera work the relevance of the material, and the treatment. These factors must all be taken into account and carefully weighed.

This means that some actions, depictions, themes, subject matter, treatments or language may meet current community standards of acceptability in one program, but in another program may require a higher classification or be unsuitable for television.⁴⁰

4.46 The Committee appreciates the difficulty in developing codes of practice that are less subjective. However, industry bodies should make every effort to ensure consumer advice is as descriptive as possible. With regard to consistency, more detailed definition of the meaning of terms used should be included in codes of practice.

37 Australian Christian Lobby, *Submission 82*, p. 3.

38 Community Broadcasting Association of Australia, *Submission 73*, pp. 4-5.

39 *Guidelines for the Classification of Films and Videotapes* (Amendment No. 2) (GN 22, 2 June 1999) p. 2433.

http://www.ag.gov.au/www/agd/agd.nsf/Page/Classificationpolicy_Classificationlegislation (accessed 28 May 2008)

40 Free TV Australia, *Submission 55*, p. 9.

4.47 The Committee does not support the adoption of codes that proscribe specific words or phrases or seek to protect particular individuals or institutions from criticism or abuse. A brief review of the content of the lists of proscribed material produced by the Hays Office in the 1930's to control content of US films or the BBC's *Green Book* which set out guidelines for content in post-war Britain, suggests that the most immediate consequence of attempting such a list in contemporary Australia would be to expose the authors to ridicule.⁴¹

Recommendation 4

4.48 Each industry code of practice should clarify terms used for classification and consumer advice as much as is practicable (eg. 'occasional', 'some' and 'frequent'). Codes should also contain a clear discussion on the principles for classification, such as 'impact', that may be used to determine a program's classification.

4.49 It should also be noted that ACMA, in responding to complaints, usually includes extensive discussion of the reasons for its findings, which, by reference to specific examples, provide guidance to interpretation of terms. For example, in August 2006 ACMA upheld a complaint against an ABC program which looked at the content and history of a collection of erotic art accumulated by the Czarina Catherine the Great.

4.50 The report on ACMA's findings is seven pages long and, by relating the content of the program to the terms used in the classification code and discussing the nature of the complaint, and the ABC's defence of the M classification it had given the program, provides a very useful guide to the interpretation of terms used in classification. It also explores contextual and other factors relating to the treatment of the subject matter and the extent to which they influence the classification given to the program. The ABC noted, for example that the program's focus was on the artistic merit and historical background to the collection.

4.51 ACMA found that:

Although the code permits descriptions and depictions of sex and sexual activity in the context of a documentary, and while the depictions are

41 For example the Hays Office did not permit the portrayal of married couples (or anybody else) sharing a double bed, while David O Selznick, the producer of *Gone with the Wind*, required a special dispensation to include the final word of the phrase 'Frankly my dear, I don't give damn'. Sassoon, Donald, *The Culture of the Europeans: From 1800 to the Present*, p. 965. The *Green Book* banned '... jokes about lavatories, effeminacy in men, immorality of any kind; suggestive references to honeymoon couples, chambermaids, fig leaves, ladies' underwear'. This at a time when the *double entendre* was the stock in trade of popular culture, from sea-side postcards to the music halls. (Independent on Sunday, (UK), Jan. 12, 2003.)

artistic representations, it is considered that the cumulative impact of these classifiable elements is strong and therefore exceeds the M classification.⁴²

4.52 The Committee acknowledges that the ordinary viewer should not have to go to a multi-volume dictionary or the ACMA website for guidance before they turn on the TV for a quiet night in. However the community should be aware that there is an extensive and constantly evolving body of work which underpins the classification symbols and viewer advice.

Appropriateness of content within classifications

4.53 Of concern to some was that the classification categories of G, PG and M, in particular, are too permissive with what can be broadcast. Mrs Carol V. Phillips summarised this view, stating that:

There seems to be just a—I do not know the word for it—but a watering down of the standards set for what is offensive and what is not and what is appropriate and what is inappropriate in particular classifications.⁴³

4.54 Contributors to the inquiry made a number of recommendations to the Committee on how issues problems relating to clarity could be addressed. In the first instance, the Festival of Light noted that:

Parents, in particular, want a G classification which is guaranteed to be free of sex, drug use and nudity rather than being told that any treatment of these elements will have “very mild impact”.

At the top end of the scale it is important to clarify what will not be permitted even in the highest (MA15+/AV15+) classifications.⁴⁴

4.55 The Catholic Archdiocese of Adelaide offered a practical example of what might be done to clarify and improve what it considered to be poorly expressed classification categories with regard to language. Figure 4.2 shows the Archdiocese's written depiction of the current classification system. Figure 4.3 is the Archdiocese's suggestion for improvement.

Figure 4.2—Representation of current classification standards

| Classification | Description | Frequency | Context |
|-----------------------|--------------------|------------------|---|
| G General | Very Mild | Infrequent | When absolutely justified by storyline or context |

42 Australian Communications and Media Authority, *Investigation Report 1685*, August 2006 http://www.acma.gov.au/webwr/_assets/main/lib100638/report%201685%20-%20abc%20tv%20-%20the%20lost%20secret%20of%20catherine%20the%20great%20-%20woodcock%20-%2020300106.pdf (accessed 6 June 2008)

43 Mrs Carol V. Phillips, *Committee Hansard*, 23 May 2008, p. 67.

44 Festival of Light, *Submission 51*, p. 5.

| | | | |
|-----------------------------|----------------|---|---|
| PG Parental Guidance | Low Level | Infrequent | When justified by storyline |
| M Mature | No description | Infrequent [more frequent if justifiable] | When appropriate to storyline. Not very aggressive. |
| MA Mature Audience | Very Coarse | Not overly frequent or impactful | Important to storyline |

Figure 4.3—Representation of proposed adjustments to classification standards

| Classification | Description | Frequency | Context |
|-----------------------------|--------------------|---|---|
| G General | None | None | None |
| PG Parental Guidance | Very Mild | Very Infrequent | When absolutely justified by storyline or context |
| M Mature | Low Level | Infrequent | When justified by storyline |
| MA Mature Audience | Coarse | Infrequent [more frequent if justifiable] | When appropriate to storyline. |

4.56 Under the Adelaide Archdiocese's scheme, the G category could contain no material that could cause offence regardless of the circumstances.⁴⁵ Mr Paul Russell of the Catholic Archdiocese of Adelaide indicated that he was aware that terminology is still an issue, but that his classification system is a 'starting point'. In his view 'the timeslot principle is probably a more appropriate thing that I would like to look at'.⁴⁶

4.57 YMA also identified 'problems with the application [of classification criteria] to programs and to films on free-to-air TV'.⁴⁷ This sentiment was echoed by a number of contributors, who feel that the classifications standards are not necessarily wrong but are being misapplied:

[C]hild friendly and family viewing programs...have increasingly been taken over by adult themes.⁴⁸

45 Judging by the sensitivity of some of those who have made submissions to the Committee this would prove a very difficult objective.

46 Mr Paul Russell, Senior Officer, Office of Family and Life, Catholic Archdiocese of Adelaide, *Committee Hansard*, p. 72.

47 Young Media Australia, *Submission 79*, p. 4.

48 Ms Libby Battacci, *Submission 21*, p. 1.

The violence and explicit sexual content on TV seems to be creeping into earlier and earlier time slots, making it less of a medium for families to utilize.⁴⁹

4.58 In fact, programs classified PG may include low level coarse language, sexual content and violence that is mild in impact and adult themes that are 'carefully handled and mild in impact'.⁵⁰ Thus many parents may find PG material unsuitable, particularly for younger children.

4.59 There does appear to be a broad consensus that the G category should be contain extremely low levels of material that could be confusing or disturbing to children or that parents might find unsuitable or offensive. However the difficulty of applying this in practice is illustrated by the acceptability of words like 'bloody' and 'bugger' in the G classification for films, terms that a number of those who made submissions to this inquiry would find offensive.

Time zones

4.60 As discussed above, time zoning seeks to restrict particular classifications to times of day when children and young people are likely to be watching television. Many submissions argued that the utility of times zones was being undermined in two ways; the actual time zones no longer reflect the realities of children's behaviour and, as discussed above, the content that is allowed in early evening time zones is becoming 'more adult'.

4.61 With regard to the actual times it is argued that:

Whilst the current broadcasting codes of practice thoroughly address the issue of time slots and the subsequent time-appropriate language, over time the zones have become out of touch with the realistic television patterns of children.⁵¹

It is claimed that children are staying up later in the evening from earlier ages and thus are exposed to M rated material which is not appropriate for them.

4.62 The Committee is not aware of any research that actually demonstrates this, though it does appear to be a widely held view, and does not wish to recommend changes to time zones without some sound evidence on the subject. Moving the M and higher classification to later in the evening would tend to reduce the opportunities for adults to watch programs suitable for mature audiences.

49 Mr Peter Green, *Submission 44*, p. 1.

50 *Commercial Television Code of Practice*, p.24.

51 Federation of Parents and Citizens' Association of New South Wales, *Submission 53*, p. 3.

Recommendation 5

4.63 The Committee recommends that ACMA and Free TV Australia investigate, as part of the current review of the Commercial Television Code of Practice, the issue of the appropriateness of the current evening time zones having regard to claims of changed patterns of television usage by children.

4.64 The inquiry has heard that despite the consultation undertaken by the industry bodies in developing appropriate classifications, viewers may link assumptions about what constitutes a child-friendly show to the time zone in which the program is broadcast rather than primarily consider the classification that the program has been given. Mr Russell from the Adelaide Archdiocese commented that:

Parents will actually rely on time slots more than they do on program ratings. Time is a far easier tool for management for mums and dads because there is a direct relationship between bed times and the ages of their children and, therefore, the times that they will be watching television. Parents know that at the later time of viewing, the greater is the likelihood that their children might encounter a program containing elements deemed by them as inappropriate.⁵²

4.65 The problem of relying on a general understanding of time zones rather than the classification and consumer advice attached to particular programs was clearly expressed in a number of submissions to the Committee. For example;

It causes me much concern that "family" viewing times on TV are continually imbued with sex content, foul language and brutal scenes and dialogue expressing extreme violence and suffering.⁵³

4.66 The assumption that pre-8.30 television is a period for 'family viewing' and will only contain the mildest of material seems to be widespread.

4.67 The Committee is aware that the realities of domestic life make it difficult for many parents to monitor and control what children watch. Parents may not be present at the start of each program or when a program returns from a commercial break to see the classification symbol displayed; they may not be present at all times to control 'channel surfing'; an older child may have disproportionate influence on the viewing practice of younger siblings or the short-term benefits of an 'electronic baby sitter' may overcome a parent's concern about content.

4.68 At the practical level of assisting parents to manage their children's viewing or listening codes and time zoning may be considered rather blunt instruments. They can only provide general guidance. The Committee has made various recommendations

52 Mr Paul Russell, Senior Officer, Office of Family and Life, Catholic Archdiocese of Adelaide, *Committee Hansard*, p. 70.

53 Mr Peter Phillips, *Submission 68*, p. 1.

that may refine them to a degree but they cannot replace parental choice and supervision.

4.69 Current affairs programming and live sports broadcasting are not subject to classification. There have been complaints to this Committee and elsewhere about the content of news and current affairs programming and about advertising during sports broadcasting.

4.70 Current affairs broadcasting, as it tends more towards 'infotainment' relies increasingly on a diet of graphic and sensationalised reporting of violent crime, spectacular accidents and the like. These stories often have little intrinsic merit as news but do provide an opportunity to screen graphic images during early evening time slots which may be distressing to children.

4.71 A second category of news or current affairs story that is a cause of some concern is when television programs themselves become the story. For example, Mr Ramsay's programs and the some of the more prurient incidents in 'Big Brother' have become news stories. This results in the very material that was found offensive by some in a later time slot being televised much earlier in the evening as part of a news or current affairs program. With regard to live sports broadcasts complaints focussed on advertising which was considered unsuitable for children and young people.

Recommendation 6

4.72 The Committee does not wish to tell television stations what they should or should not include in news and current affairs programming. However it recommends that ACMA, in consultation with broadcasters, review the sections of the Classification Code applying to news and current affairs programming, with regard to the use of graphic and disturbing imagery and excerpts from M or higher rated programs in news and current affairs broadcasting in early evening time zones.

Program promotions

4.73 A common complaint made to the Committee was with regard to promotions for later programs screened by the network which were shown in earlier time zones.

There have been ongoing problems with Broadcasters airing higher impact promotional programming for their own shows containing depictions of sexual or violent behaviours or themes. This can include promotion for current affair program content. Such promotion is not in keeping with respect for the integrity of the code or with respect for the needs of children.⁵⁴

54 Australian Family Association, *Submission 85*, p. 9.

4.74 Some contributors went further, suggesting that the 'promotion of programs for more mature audiences within lower classified programs' should be limited.⁵⁵ The Commercial Television Code of Practice states that PG programming is allowed during G time zones such as 4:00pm – 6:00 pm weekdays. During that time period, news, current affairs or sports programs may contain promotions for M programs as it is considered that these programs are unlikely to attract large audiences of children.⁵⁶

4.75 Evidence was received that audiences find it difficult to exercise their right to turn off the TV to avoid offensive promotions for programs during ad breaks when the content of the show being promoted is not known:

I accept the argument that if I don't like Gordon Ramsay swearing his head off, I choose another channel, watch a DVD or turn the tube off. It is difficult to turn off the tube not knowing the content of the 15 second previews while watching a program about how to build a dog shed.⁵⁷

4.76 Mr David Coleman, on behalf of the Nine Network observed that promotions for shows with a higher classification than the program currently screening is prohibited under the code unless it has been modified so that inappropriate material is not screened:

[O]ur classifier will sign off on a promotion for an M-rated program that appears in PG that the promotion itself is PG in nature. So any of that M-related content would not appear in a promo.⁵⁸

4.77 Free TV Australia notes that promotions for station programs are classified and a symbol with the correct classification for the program is displayed.⁵⁹ However, the symbol must only be displayed for three seconds and the placement of the symbol is not prescribed. A voice-over program promotion transmitted during the closing credits of a program is not required to comply.⁶⁰

4.78 The Committee is aware of the sensitivity surrounding the promotion of station programs and notes the need for broadcasters to be vigilant in ensuring that codes of practice are adhered to.

55 Young Media Australia, *Submission 79*, p. 6.

56 Free TV Australia, *Commercial Television Industry Code of Practice*, July 2004, p. 29. [http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_\(including%20amendment%20for%20election%20period\)_060907.pdf](http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_(including%20amendment%20for%20election%20period)_060907.pdf) (accessed 28 May 2008).

57 Mr Edward O'Brien, *Submission 72*, p. 1.

58 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 6.

59 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 8.

60 Free TV Australia, *Commercial Television Industry Code of Practice*, July 2004, pp 20-21. [http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_\(including%20amendment%20for%20election%20period\)_060907.pdf](http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_(including%20amendment%20for%20election%20period)_060907.pdf) (accessed 28 May 2008).

Recommendation 7

4.79 Free-to-air television stations should show the classification watermark throughout program promotion to increase viewer awareness of the classification of the program being promoted.

New ideas for consideration

4.80 The Committee has heard evidence proposing new items for inclusion in a revised broadcasting codes of practice for free-to-air television, including the 'classification watermark', supported by submissions 4, 32 and 70; and the inclusion of the classification mark and classifiable elements in electronic programming guides (EPG) for Digital Television:

Regardless of the accuracy of the current classification standards, they are simply not effective because program classifications are only notified onscreen briefly prior to commencement of the program. To be functional, the classification of any non-G-rated TV program being broadcast between (say) 0500 and 2030 must be displayed on-screen at all times. The classification should also be transmitted as part of the EPG information available for optional self-censorship through digital tuners.⁶¹

Recommendation 8

4.81 The Committee recommends that television broadcasters should give consideration to permanently displaying the classification symbol of a program on screen along with the letters indicating which classifiable elements are present in the program. The Committee believes that there is scope for broadcasters to place this information next to watermarks, which are now displayed by all free-to-air stations.⁶²

Recommendation 9

4.82 The electronic programming guide on digital free-to-air television stations should contain the classification of the program being viewed and the consumer advice relevant to the program.

Effectiveness of the classification system - radio

4.83 Criticisms of radio programs did not feature as prominently as for television programs, although it was still subject to comment such as, 'on radio, the boundaries of the kinds of language used pushes further and further towards coarseness,

61 Mr Rory Delaney, *Submission 32*, p.1.

62 The public debate over the introduction of watermarks suggests that further watermarking would not be well received. Perhaps stations might consider replacing their own 'branding' with more socially useful classification information.

particularly on the popular music stations.⁶³ The Australian Christian Lobby (ACL) stated that:

If the television classification standards are not a reliable guide on the content of a program, the situation is far worse for radio.

Commercial radio programming is governed by its own Code of Practice and Guidelines with the ACMA acting as the regulator. The commercial radio code does not include a ratings system, meaning that there are no announcements made as a guide to the likely program content.⁶⁴

4.84 The majority of those who commented on the effectiveness of the classification system for radio made the link that radio should have a classification system similar to television, particularly in relation to the verbal warnings that are broadcast on television prior to the start of programs.

A similar classification structure as for television, therefore, should be put into place for radio, with announcements before programmes that are aimed at mature audiences, based on both the programme content, and the advertising content. There is also a need for warnings to be announced at various times throughout a programme, since not everyone tunes in before a programme begins.⁶⁵

4.85 The Committee is aware that some of the same objections applied to television can also be applied to radio.

Recommendation 10

4.86 The Committee recommends that ACMA, in consultation with industry bodies for radio, considers implementing the use of verbal warnings in their next codes of practice.

4.87 In conclusion the Committee wishes to reiterate its view that broadcasting codes with regard to programme content cannot satisfy every member of the community, they can only seek to reflect a broad consensus. Similarly, striking the balance between the freedom of adults to watch what they wish and the need to protect children will not be achieved to the satisfaction of all. Thus complaints about the system should not, automatically, be assumed to mean that it is failing.

4.88 The Committee believes that the combination of rating systems, consumer advice and time zoning is an effective way of reconciling the competing objectives of the regulatory system and the range of views in the community about program content. Thus the Committee has not recommended any radical changes to the system. It believes that a process of constant refinement is the appropriate direction to take –

63 Mr Gerard and Mrs Andrea Calihanna, *Submission 61*, p. 1.

64 Australian Christian Lobby, *Submission 82*, p. 12.

65 Young Media Australia, *Submission 48*, p. 9.

regular sampling of community opinion to ensure that Codes of Practice are broadly reflective of it and constant review of and improvement to ratings systems and consumer advice to assist individuals, particularly parents to manage their, and their children's, viewing habits.

4.89 The Committee notes that ACMA already samples public opinion and tests community standards through its specific inquiries and its research program. It might be a valuable additional tool if ACMA established an annual opinion survey on matters with regard to broadcasting standards. By testing public opinion on issues of continuing importance and newly emerging issues such a survey would provide a valuable indicator of current attitudes and of shifts in attitude taking place over time.⁶⁶

66 In making this suggestion, the Committee has in mind the annual Lowy Institute poll, *Public Opinion and Foreign Policy*.

Chapter 5

Operation and effectiveness of the complaints process

5.1 In the previous chapter the Committee stressed the need for constant sampling of public opinion with regard to broadcasting standards to ensure that codes of practice and program ratings remained aligned with community standards. An important aspect of that process is the level and content of complaints received by the broadcasters and the regulator. This chapter looks at the frustrations that some have faced in making a complaint, and analyses the overall rigour of the complaints process.

Complaints process

5.2 The process for making complaints about the content of a broadcast is set out in Part 11 of the *Broadcasting Service Act 1992* (BSA). The process reflects the co-regulatory nature of the BSA in that roles have been assigned to both industry and the Australian Communications and Media Authority (ACMA) and the intention behind this is evident from the Explanatory Memorandum to the BSA, which states that:

It is envisaged that, in the first instance, the complainant would take up the complaint directly with the service provider... This Part provides for complaints to be made to [ACMA] as an avenue of last resort if other mechanisms have failed...¹

5.3 The complaints system is not 'user friendly'. Complaints in relation to most matters relating to program content must be made to the broadcaster, but different processes apply depending on whether the complaint refers to the ABC, SBS or the commercial stations. Complaints about content must refer to a breach of a code of practice; different codes apply to each broadcasting sector. Thus a complainant must, in theory, have some understanding of the content of the codes.

5.4 A brief perusal of ACMA's web site shows that ACMA can receive complaints directly on a wide range of subjects including various types of advertising, (political, tobacco and medicine) and Children's Television Standards. However, complaints about other forms of advertising on television go either to the Advertising Standards Board, for content matters such as sex, nudity or language, or to the

1 The Parliament of the Commonwealth of Australia House of Representatives, *Explanatory Memorandum to the Broadcasting Services Act 1992* (commentary on Part 11) as quoted in Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 22, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 9 April 2008).

Australian Competition and Consumer Commission if the complaint relates to false or misleading statements.²

Role of the broadcaster

5.5 Each industry code of practice advises viewers or listeners on how to make a complaint if there is a belief that the broadcaster has breached its own code of practice. This is consistent with section 148 of the BSA which states that a complaint against a broadcaster must be made in accordance with the relevant code of practice³.

5.6 All broadcasting codes of practice stipulate that a complaint must be submitted in writing, and include identifying information, to the station on which the alleged breach occurred. Broadcasters are required to respond to the complaint within 30 business days⁴; complainants who do not get a response within this period may refer the complaint to ACMA for investigation. The complaint may also be referred if the complainant 'has received a response within that period but considers that response to be inadequate'⁵. In responding to a written complaint, broadcasters must advise the complainant that, if she or he is dissatisfied with the response, the complaint may be referred to ACMA.

5.7 Broadcasters are under no obligation to investigate complaints received more than 60 days after the program was broadcast. Broadcasters may choose not to investigate complaints that they judge to be frivolous, vexatious or not made in good faith.

5.8 The ABC Code of Practice provides for complainants dissatisfied with their initial response from the ABC Audience and Consumer Affairs to:

...request that the matter be reviewed by the Complaints Review Executive (CRE). The CRE is a senior ABC manager with editorial experience, who is separate from Audience and Consumer Affairs and content areas, and who can consider the complaint afresh.⁶

5.9 Complainants also have recourse to the ABC's Independent Complaints Review Panel where the complaint relates to 'allegations of serious cases of factual inaccuracy, bias, lack of balance or unfair treatment arising from ABC content.'⁷ Note

2 However the Committee notes that most of the organisations have a policy of passing complaints received in error to the proper recipient. See paragraph 5.39.

3 *Broadcasting Services Act 1992*, Part 11, s. 148.

4 Free TV Australia, *Commercial Television Industry Code of Practice*, July 2004, p. 51. s 7.10. [http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_\(including%20amendment%20for%20election%20period\)_060907.pdf](http://www.freetv.com.au/media/Code_of_Practice/Revised_Code_of_Practice_(including%20amendment%20for%20election%20period)_060907.pdf) (accessed 28 May 2008); Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, p. 5.

5 *Broadcasting Services Act 1992*, s. 148.

6 Australian Broadcasting Corporation, *Code of Practice*, March 2007, pp 18-19.

7 Australian Broadcasting Corporation, *Code of Practice*, March 2007, p. 19.

that the ABC, unlike the commercial broadcasters accepts complaint by e-mail (see below).

Role of ACMA

5.10 ACMA is required to investigate complaints that have been referred to it, providing that the complaint is not judged to be frivolous, vexatious or not made in good faith. ACMA's website lists investigations and findings relating to complaints about breaches of broadcasting codes.⁸

5.11 A condition of broadcasting licenses for the industries discussed is that they must 'comply with program standards applicable to the licence under Part 9 of this Act'⁹. Where ACMA has determined that a breach of a standard has taken place, it may:

- Impose an additional condition on the license;
- Refer the matter for prosecution as an offence;
- Issue a civil penalty notice;
- Issue a remedial direction;
- Suspend or cancel the license; or
- At any time, accept an enforceable undertaking.

ACMA may also take informal action in relation to breaches of standards.¹⁰

5.12 However, the Committee notes that ACMA is restricted in the action it can take where it is satisfied that a breach of a code of practice has occurred. Section 43 of the BSA allows ACMA to impose additional conditions on a license which would result in the broadcaster being forced to amend the code of practice to comply. Where a broadcaster:

... breaches such an additional license condition, ACMA may issue a remedial direction requiring compliance. In the event that the licensee does not comply with the remedial direction ACMA may:

- Pursue a civil penalty;
- Refer the matter for prosecution as an offence;
- Suspend or cancel the license; or
- At any time, accept an enforceable undertaking.¹¹

8 Follow links from http://www.acma.gov.au/WEB/STANDARD/pc=PC_90147 (accessed 17 April 2008)

9 *Broadcasting Services Act 1992*, Schedule 2, Parts 4-7.

10 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/assets/main/lib310007/acma_realitytvreview_finalreport_vol_1_30mar07.pdf (accessed 3 April 2008).

5.13 As with a breach of standards, ACMA may accept an informal undertaking without legislative sanction where a breach of a code has occurred. ACMA states that previously accepted informal undertakings 'have been successfully employed'.¹²

5.14 As self-administering organisations, the ABC and SBS cannot be compelled to comply with a ruling of ACMA. Instead, if ACMA is satisfied that a complaint against either of the broadcasters is justified, it can recommend that the broadcaster take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice. 'Other action' may include broadcasting or otherwise publishing an apology or retraction. If the broadcaster fails to take the action considered appropriate by ACMA, the Authority may give the Minister a report on the matter.¹³

5.15 Where ACMA is satisfied that a breach of a code has occurred in 'deliberate disregard of a code of practice that applies to...subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services', a different process applies:

ACMA may, by notice in writing given to the person, direct the person to take action to ensure that those services are provided in accordance with that code of practice.¹⁴

5.16 A failure to comply with such a notice is an offence.¹⁵

Role of Parliament

5.17 Section 128 of the BSA gives either House of Parliament the power to amend a code registered by ACMA or a standard developed by ACMA with the agreement of the other House.¹⁶

Effectiveness of the current complaints system

5.18 Very little evidence was provided to the Committee apart from broadcasters themselves to suggest that the current complaints system adequately meets the needs

11 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/_assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 9 April 2008).

12 Australian Communication and Media Authority, *Reality Television Review Volume 1*, Final Report, 30 March 2007, p. 21, http://www.acma.gov.au/webwr/_assets/main/lib310007/acma_realitytvreview_finalreport_vol1_30mar07.pdf (accessed 3 April 2008).

13 *Broadcasting Services Act 1992*, ss 150-153.

14 *Broadcasting Services Act 1992*, s. 141(2).

15 *Broadcasting Services Act 1992*, s. 142.

16 *Broadcasting Services Act 1992*, s. 128(1-2).

of complainants. Most contributors indicated that the system in general was discouraging:

Has this process been designed to frustrate and wear out complainants?¹⁷

What a farce – an absolute farce!!!¹⁸

The complaints process itself is a deterring regulation – it has become such an arduous task that the common viewer feels powerless to speak his/her mind.¹⁹

5.19 Community broadcasters and subscription broadcasters were not subject to the same level of criticism as free-to-air broadcasters. ASTRA attributes this to the fact that commercial broadcasters do not have direct relationships with their viewers:

ASTRA's members have a streamlined, effective and very efficient complaints process largely due to each subscription television operator having a call centre standing by to receive and address issues that may arise for their subscribers. Each operator has a vested interest in receiving feedback to ensure that subscribers are happy and to avoid 'churn': a term used to describe when a customer chooses to stop subscribing. Unresolved complaints are clearly to be avoided.

...

Consequently, complaints from subscribers are received over telephone and in writing. Telephone complaints are usually addressed at the time of the complaint then and there or if more complex, then very shortly afterwards. The process articulated in the codes of practice is designed to allow speedy resolution of issues directly from the supplier of the broadcast service...²⁰

5.20 ASTRA provided evidence that they 'are required to advise people that they can take it to ASTRA if they are not satisfied', however; 'ACMA does not receive that many complaints about our services'.²¹

5.21 Some submissions argued that the time taken to deal with complaints was an inevitable feature of a fair system and opposed significant change to the current process. For some, this is an acknowledgement of the responsibility given to the regulating bodies:

The ACMA has a very important job to do, seeing as the decisions they make now must be consistent, and will set precedents for years to come. As such,

17 Mr Desmond Kenneally, *Submission 39*, p. 1.

18 Mr Bruno D'Elia, *Submission 45*, p. 1.

19 Media Standards Australia, *Submission 48*, p. 4.

20 Australian Subscription Television and Radio Association, *Submission 77*, pp 3-4.

21 Ms Debra Richards, Chief Executive Officer, Australian Subscription Television and Radio Association, *Committee Hansard*, 23 May 2008, p. 54.

they should be able to take however long they feel is necessary in order for them to come up with their verdicts.²²

5.22 The New South Wales Council for Civil Liberties noted that shortening the allowed response time was not necessarily ideal:

If changes are made to the complaints procedure, it is of course important to ensure that the rules of natural justice are not compromised. Both complainants and broadcasters should be given adequate time to make submissions and replies. This might be frustrating to complainants, but it is a necessary requirement of the rule of law.²³

As the Committee notes below, it acknowledges that the Council's comments are relevant to investigations by ACMA but it does not consider that they justify extensive delay in responding to initial complaints.

Form of the complaint

5.23 The Committee heard that Commercial Radio Australia (CRA) considers that the low number of written complaints to ACMA indicates that the complaints system, whereby complainants are required to put their complaint in writing to the individual broadcaster, is effective.²⁴ CRA claimed a relatively small number of written complaints had advanced to investigation by ACMA.²⁵

5.24 Free TV Australia was unable to provide to the Committee with the number and nature of telephone complaints, or any statistics relating to the number of telephone complainants who went on to make a formal complaint in writing²⁶ although acknowledging that there were fewer formal written complaints than informal telephone complaints. Ms Flynn attributed this to the fact that:

...[O]nce they have rung up and had a conversation and someone has spoken to them, whether it is at the networks or with us, and that someone has listened to them. That is largely what they want to do; they do not necessarily want to go through a formal process.²⁷

5.25 Both Free TV Australia and the ABC also contended that telephone complaints did not necessarily relate to codes of practice, saying that those 'complaints

22 Mr Heath McDonough, *Submission 2*, p.2.

23 New South Wales Council for Civil Liberties, *Submission 42*, p. 7.

24 Ms Joan Warner, Chief Executive Officer, Commercial Radio Australia, *Committee Hansard*, 23 May 2008, p. 12.

25 Ms Joan Warner, Chief Executive Officer, Commercial Radio Australia, *Committee Hansard*, 23 May 2008, p. 12.

26 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 8.

27 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 8.

can be about the colour of someone's coat that day or their hair, or that they did not like the time that the program started and so on.²⁸

5.26 During the course of the inquiry, the Committee found that the ABC received nearly quadruple the amount of complaints over the previous two financial years compared with the free-to-air commercial television stations. Mr Gary Dawson, Director of Communications for the ABC indicated that the complaint figures also included radio figures. He attributed the large number of complaints to the fact that 'Australians do have a strong sense of ownership of the ABC, and they do tend to let us know'.²⁹

5.27 The higher volume of complaints was also attributed to the fact that complainants have more avenues with the ABC through which to pursue their complaint:

The ABC has a range of avenues available for audience members wishing to lodge such complaints, including electronic lodgement using a dedicated complaints form on the ABC's website, or through any of the other electronic entry points available for contacting the ABC. Complaints can also be sent by regular mail or faxed to the ABC. If an audience member prefers to make a complaint by telephone, the ABC generally seeks to respond on the spot or by return call.³⁰

5.28 The Committee's attention was drawn to concerns that industry bodies feel about amending codes of practice to allow formal complaints other than through writing, including the fear of mass email campaigns adding to a compliance burden³¹ or telephone complaints for non-code related issues.

5.29 The ABC seems to be able to manage complaints received via a number of media; the Committee does not accept that commercial broadcasters would be any more liable to find their compliance burden insupportable if they were required to provide greater access to complainants. With regard to distinguishing complaints about code and non-code related matters, again it is difficult to see why commercial broadcasters should be in any different position to the ABC. Broadcasting services already have a discretion to dismiss complaints as 'trivial, vexatious or in bad faith'. Sorting out code and non-code complaints should not be difficult.

5.30 The Committee notes that individual broadcasters are under no obligation to record or either provide details to ACMA of telephone complaints or note the

28 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 5.

29 Mr Gary Dawson, Director of Communications, Australian Broadcasting Corporation, *Committee Hansard*, 23 May 2008, p. 50.

30 Australian Broadcasting Corporation, *Submission 80*, p. 9.

31 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 5.

proportion of original telephone complainants to those who go on to make written complaints. However, the Committee considers that this information could prove valuable to broadcasters, industry bodies and ACMA in evaluating the effectiveness of codes of practice.

Recommendation 11

5.31 The Committee recommends that all free-to-air commercial television stations should maintain a log of all telephone complaints received, including a short summary of the complaint, and provide that log to Free TV Australia and ACMA.

5.32 A formal complaint is a serious matter that requires a formal investigation and that could potentially have significant ramifications for the broadcaster. However, the Committee believes that the system whereby formal complaints can only be made in writing is unduly restrictive and is not consistent with the technological capabilities of today's society.

5.33 The Committee commends the ABC for allowing complaints from the public through diverse forums, including telephone and online.

Recommendation 12

5.34 All broadcasters should amend their codes of practice and website capabilities to allow viewers to make complaints about the code by email or electronically. Email and electronic complaints about code-related issues should receive the same response as a written complaint.

5.35 ACMA should monitor complaints process and ensure that they are simple and accessible. For example, an industry standard should require that all broadcasters' home pages have a clearly visible and direct link to a complaints site which requires only one key stroke or mouse click to access it.

Recommendation 13

5.36 Similarly worded complaints received by email, electronically or in writing may receive a standard written response from the broadcaster following notification to, and approval by, ACMA.

5.37 This process would serve to alert ACMA to any programs subject to a large volume of complaints which could be used by the regulator as a basis to initiate an inquiry into the content of the program without waiting to receive a formal complaint.

How to complain

5.38 Feedback to the inquiry suggests that there is confusion as to how to complain under the current system:

YMA is aware that a major portion of the audience for free-to-air TV do not know to whom, and how to make an effective complaint, should they wish to do so.

The system is fragmented, with viewers needing to make complaints either to the commercial channel they are watching, or the ABC, or SBS, or the AANA, or to ACMA (for children's C and P programs and ads), or to Pay TV.³²

5.39 The Australian Catholic Bishops Conference provides a solution to the confusion surrounding appropriate complaints body:

We recommend that government have a greater and easier process for feedback from the Australian public. We recommend a national hotline number be established for people to call and leave a verbal report on any audiovisual material about which they wish to complain or commend.³³

5.40 With regards to the method of complaint, Free TV Australia reminded the Committee that:

...[U]nder our code of practice we have to provide publicising [sic] of the code under section 7.5. We have to provide regular on-air information about the code and its complaints procedures. Licensees will broadcast 360 on-air spots each calendar year across all viewing zones. This information must be closed captioned. So, it is across all viewing zones in a week to ensure it is not just seen at 11.00 pm—you will see it at breakfast, prime time and so on. Approximately between 4,500 and 5,500 copies of the code of practice itself are downloaded from our website each month.³⁴

5.41 The Committee understands that it is a cause of frustration to some that the appropriate body to complain to may not be immediately apparent. However, the Committee is aware that it is the current practice of broadcasters, industry bodies and the government co-regulator to direct complainants to the appropriate broadcaster (or association, in the event that the complaint covers advertising) in the event that the complaint is made to the incorrect body in error.

Recommendation 14

5.42 Codes of practice should contain a formal undertaking by broadcasters that they will direct complainants as appropriate. Industry bodies and ACMA should ensure that their staff are aware of how to re-direct complaints received in error and inform complainants where this occurs.

Response time to complaints

5.43 The issue of the time taken to respond to complaints was identified by several contributors to the inquiry as a major source of frustration:

32 Young Media Australia, *Submission 79*, p. 7.

33 Australian Catholic Bishops Conference, *Submission 53*, p. 4.

34 Ms Julie Flynn, Chief Executive Officer, Free TV Australia, *Committee Hansard*, 23 May 2008, p. 5.

ACL is also concerned about the slow and ineffectual complaints process, which often fails to make any response to a complaint until the whole season of an offending program has aired.³⁵

5.44 Under current codes of practice, broadcasters have 30 working days to respond to a written complaint. According to Mr Coleman, this time allows 'discussion with people within the network about the classification of that particular episode and so on.'³⁶

5.45 Thirty working days should be more than adequate to respond to complaints. The complaint refers to a breach of the code. The program complained of will have been given a rating by the broadcaster according to the code and appropriate consumer advice prepared. The deliberations that were undertaken to do this will, presumably, be on the record within the broadcasting station. It cannot be difficult to review this process and advise the complainant of the basis on which a classification decision was made, or the judgements reached about particular content. If broadcasters are taking their responsibilities seriously then all the material necessary to provide a prompt response should be readily available.

Recommendation 15

5.46 The Committee recommends that, by the time of the next triennial review of free-to-air television codes of practice, broadcasters should seek to respond to all complaints received within 15 working days.

5.47 The only justification for a lengthy delay, other than the work involved, was offered by the NSW branch of the National Council for Civil Liberties; that natural justice required that the broadcaster be given ample time to respond to a complaint. The Committee does not accept that at this early stage in the complaint process issues of natural justice arise. The broadcaster is merely responding to a request from a dissatisfied consumer for an explanation with regard to some program content.

5.48 Once a complaint goes to ACMA, which has investigatory powers and the capacity to make finding and impose penalties, natural justice concerns may be real.

5.49 The Committee notes that, if its recommendations with regard to accepting electronic complaints are accepted, then the workload of broadcasters complaints units can be expected to rise. Thus it does not make any recommendation for a further reduction in response time. However ACMA should monitor broadcasters performance in responding to written complaints to ensure that the 30 day deadline is complied with.

35 Australian Christian Lobby, *Submission 82*, p. 3.

36 Mr David Coleman, Director of Strategy and Regulatory Affairs, PBL Media, *Committee Hansard*, 23 May 2008, p. 4.

5.50 The Committee is particularly disturbed by the accounts from submitters indicating that they received no response at all to complaints made which would appear to be a direct breach of the requirement of action from broadcasters.

On occasion that I have complained about the inappropriateness of content (eg sexual references, violence) during times when children are viewing, there has not been a reply from the network (or the ABA in the past) in question. Therefore I feel the complaints system has not been effective or accountable at all.³⁷

5.51 There may be cases where a complaint is treated as vexatious, trivial or not made in good faith and thus not investigated. However, even in those circumstances the complainant should be advised of the grounds on which the broadcaster has declined to act.

5.52 Should the complainant not receive a response or be dissatisfied with a response, they can refer the complaint to ACMA which states on its website that:

The timeframe for completion of a community broadcasting investigation is 12 weeks. However, this may not be achievable on occasions when there are several complex issues to consider and/or several broadcasts to review.³⁸

5.53 The Committee urges ACMA to review its own internal complaint management process to determine if a faster response time to complainants is possible.

5.54 As noted above, all responses to complaints should indicate that the complainant has the right to send their complaint to ACMA if they are dissatisfied with the broadcaster's response. However, ACMA's website indicates that this is not always the practice of broadcasters. On 23 May 2008, ACMA found that Channel Seven Melbourne breached complaints handling provisions after receiving a complaint for a report about suicide. ACMA found that:

...[W]hile the report itself did not breach the code, Seven failed to advise the complainant that they could refer the matter to ACMA if not satisfied with Seven's response.³⁹

5.55 In response to this breach, ACMA took informal disciplinary action. ACMA's website indicates that this is not an isolated breach of this requirement of the code.

5.56 The Committee notes that the failure of broadcasters to comply with basic complaints handling procedures does not build confidence in the broadcasters as the first 'port of call' for someone wishing to make a complaint. Nor does it encourage

37 Mr John Von Dinklage, *Submission 59*, p. 1.

38 Australian Communications and Media Authority, *Complaints and Investigations*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

39 Australian Communications and Media Authority, *ACMA Media Release 64/2008 – 23 May*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311171 (accessed 4 June 2008).

confidence that ACMA is providing effective regulation where it fails either to deter or punish a repeat offence. This point is discussed further below.

Internal clarity

5.57 Submitters to the inquiry also indicated that lack of clarity internal to the broadcasters over complaint handling added to the frustration of complainants. Mr Kevin Hogan noted that 'the present complaints mechanism is very much flawed with little or no transparency and practically no accountability.'⁴⁰ Professor Lesley Hitchens expanded on this:

There appears to be almost no information about how complaints are handled. Most of the websites of the commercial broadcasters give very little information about the complaints process, apart from the provision of a complaints form. Even this is often difficult to locate. The websites of FTVA and CRA provide information about the overall complaints process. However, there appears to be no information about what structures/processes the individual licensees have established for dealing with complaints.⁴¹

5.58 ACMA provides the following description of its complaint handling process on its website:

In conducting an investigation, ACMA requires the relevant licensee to thoroughly address the issues and provide evidence to support their claims. When an investigation is concluded, ACMA notifies the complainant of the result and provides a copy to the relevant licensee. This may be in the form of a letter or a report.⁴²

5.59 If ACMA does not find a breach, details of the complaint and the outcome of the investigation are published on ACMA's website, ACMA's monthly publication *ACMA Sphere* and ACMA's Annual Report. If ACMA finds a breach, ACMA's usual practice is to issue a media release, including details of any remedial action taken by the licensee and/or enforcement action taken by ACMA. The table of enforcement actions taken at licence renewal and as a result of breach investigations on ACMA's website is also updated.⁴³

5.60 In order to make the complaints process more transparent and accountable, Professor Hitchens suggests that there could be:

...a clearly identified person by whom complaints can be received and you have a review or perhaps a review process within that, even before it goes to ACMA and you publicise who that person is. I mean, it is quite interesting

40 Mr Kevin Hogan, *Submission 58*, p. 1.

41 Professor Lesley Hitchens, *Submission 56*, p. 3.

42 Australian Communications and Media Authority, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

43 Australian Communications and Media Authority, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311060 (accessed 4 June 2008).

that at the moment it is quite difficult to get the information on where to send your complaint and so forth. You can only send those complaints by letter or by fax. They seem to just go off, by and large, to the station at large. There is no specific person, for example, to whom you can address those.⁴⁴

Recommendation 16

5.61 Each broadcaster should have a nominated complaints officer within the organisation whose sole role it is to respond to complaints. The officer should be separate from the program production and scheduling sections and from the area responsible for classifying or rating programs. Officers should receive relevant training in the appropriate code of conduct and complaint management. The contact details of the complaints officer should be published on the website of the broadcaster, industry body and ACMA.

5.62 This is already the practice within the ABC.

5.63 The Committee considers that publishing details of all written complaints received (without identifying the complainant), including those both upheld and dismissed, will allow broadcasters to demonstrate the consistency of a decision against similar complaints. This may assist in providing clarity and improve public confidence in the process.

Unsatisfactory complaint handling

5.64 The Committee heard that, after negotiating the complex complaints process over a period of time, complainants often felt dissatisfied with the tone of the response received from the broadcaster or co-regulator, with formal responses to written complaints described as 'highly unsatisfactory and smacking of arrogance'.⁴⁵ Dr Frank Murphy notes that:

Management of the various channels will need to do a whole lot better in responding to correspondence from their viewing audience. What is at stake here is partly an adherence to old-fashioned courtesy...⁴⁶

5.65 Mr Graham and Mrs Carol V. Phillips provided the Committee with an example of typical responses received following complaints:

Once the letter of complaint is sent, we receive one or the other of these letters, or ones similarly worded, in response:

"Thank you for your letter regarding... We have referred the matter to...[a board of some sort]."

OR

44 Professor Lesley Hitchens, *Committee Hansard*, 23 May 2008, p. 68.

45 Dr Frank Murphy, *Submission 11*, p. 3.

46 Dr Frank Murphy, *Submission 11*, p. 6.

"Thank you for your letter in relation to... We are sorry that...offended you. We have reviewed the matter and found that, since very few complaints were received about this particular... your complaint is unfounded.⁴⁷

5.66 The Committee notes the distress that insensitive or abrupt responses to complaints have caused to members of the public who exercise their right to complain to broadcasters about what they believe to be a breach of a code. The implication in the response quoted above, that the number of complaints has a bearing on the validity of a complaint, is unacceptable.

5.67 The Committee believes that broadcasters have the opportunity to be transparent and accountable by providing some detail on *how* a decision was reached and the issues that were considered, not just the final decision itself. The educative function of such responses should not be ignored. While the Committee acknowledges that this might use more resources in the short term, it is likely to reduce the instances of multiple complaints on the same issue being sent by the complainant if the complainant receives a satisfactory response in the first instance.

5.68 The Committee believes that ACMA should also exercise greater initiative in conducting investigations into matters related to the implementation of Codes of Practice, not necessarily waiting for specific complaints. In many cases, for instance with regard to the Big Brother program and to the Ramsay program, community concern is first expressed through the media rather than through the formal complaints process.

5.69 If ACMA conducted more investigations on its own initiative it would help to clarify interpretation of standards and codes of practice and assist broadcasters in the task of classifying programs.

Recommendation 17

5.70 Broadcasters should ensure that responses to complaints are comprehensive, deal with the substantive issue and are courteous in tone.

Recommendation 18

5.71 ACMA should develop a practice of testing compliance with standards and codes of practice by conducting investigations into a sample of programs that may, in its opinion, raise issues with regard to the appropriateness of the classification received.

Lack of change resulting from a complaint

5.72 Submission 86 relates an issue that resulted following a complaint:

I complained about an item on SBS TV, which was blatantly offensive. After following the prescribed steps (ie writing to SBS, waiting 60 days for a

47 Mr Graham and Mrs Carol V. Phillips, *Submission 25*. p. 1.

response, sending the response to the Australian Communications and Media Authority ('ACMA')), the item was found to be in breach of SBS' own Code of Practice. However there was **no consequence whatsoever** for SBS apart from having nominally being found to have breached its own Code.⁴⁸

5.73 As independent broadcasters, ABC and SBS are subject to a different penalty system than commercial broadcasters. As detailed above, ACMA cannot compel either of these stations to comply with a ruling. ACMA can recommend that the station publish a retraction or apology, and if the broadcaster fails to take action considered appropriate, ACMA may give the Minister a report on the matter.

Recommendation 19

5.74 In the event that SBS or the ABC fails to comply with an ACMA recommendation within a 14 days period of receiving such a recommendation, ACMA should automatically provide a report to the Minister on the matter.

Penalties

5.75 A number of submissions conveyed the frustration felt by those who view ACMA as ineffective in enforcing the codes of practice and thus engendering respect for them in the industry:

The inutility of complaint processes and the ineffectiveness of sanctions make the regulator's function completely unsatisfactory.⁴⁹

5.76 Submissions to the inquiry advocated an increase in the frequency of use of penalties:

Coast FM feels that despite the effectiveness of current broadcasting codes of practice, the consequences for breaching the codes of practice must be of more detriment to the offending organisation.⁵⁰

5.77 Ten per cent or more of those making a submission to this inquiry advocated the immediate use of financial penalties by ACMA if a broadcaster is found to have broken its broadcasting code of practice. The Festival of Light makes the argument that:

Licensees are enjoying a privilege in being given access to the airwaves. This privilege carries it with the legal and social responsibility to comply with the codes of practice which are developed by the respective industry sectors. There ought to be a financial penalty for any breach of the code.⁵¹

48 Name withheld, *Submission 86*, p. 1.

49 Mr Gerard Flood, *Submission 49*, p. 1.

50 Central Coast Community FM Radio Association Inc., *Submission 50*, p. 6.

51 Festival of Light, *Submission 51*, p. 9.

5.78 It is generally known among those concerned that ACMA has the power under certain circumstances to impose a financial penalty. However, contributors were of the opinion that ACMA is a 'toothless tiger, diminishing respect for the codes and the ACMA's authority'⁵², because it chooses not to exercise its regulatory powers in a manner that results in a significant consequence for the broadcaster, or because it has few powers to exercise in relation to the ABC and SBS.

5.79 An example of this can be found in a judgement on 4 June 2008 that the Nine Network breached safeguards for reports about suicide and provision of warnings:

ACMA found that the segment contained a detailed description of the suicide method, and was not straightforward in its presentation of the facts. ACMA also found that while the segment contained a warning, it did not precede the segment, as the code requires.⁵³

5.80 Despite the potentially distressing nature of this breach, ACMA chose to use the least of its powers in only undertaking informal action against the Nine Network:

Nine has advised ACMA that it will incorporate the findings in its regular training program for staff. As well as asking Nine to ensure that any future reports about suicide comply with the code, ACMA has also recommended to Nine that relevant help line numbers be provided as part of such reports so viewers have access to support if required. ACMA will be encouraging all broadcasters to consider such an approach to ensure that vulnerable viewers are made aware of help available to them when incidents of suicide are reported.⁵⁴

5.81 The Committee is of the opinion that ACMA fails significantly, through repeated use of informal disciplinary action in response to breaches of the code, to act in a manner consistent with both its powers and its responsibility.

52 Federation of Parents and Citizens' Association of New South Wales, *Submission 53*, p. 7.

53 Australian Communications and Media Authority, *ACMA Media Release 68/2008*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311187 (accessed 4 June 2008). Note that the *Commercial Television Code of Practice* specifically identifies "realistic depiction of methods of suicide" as "material not suitable for television" which "must not be broadcast"; p. 19.

54 Australian Communications and Media Authority, *ACMA Media Release 68/2008*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311187 (accessed 4 June 2008)

Recommendation 20

5.82 ACMA should limit its use of unenforceable undertakings from broadcasters in relation to a breach of the code. The second time that a broadcaster is found to be in breach of the same part of the code within the duration of its code of practice, ACMA should use its existing powers to impose additional conditions on a license of the broadcaster. In the event of subsequent breaches, ACMA should use its powers to:

- **Pursue a civil penalty;**
- **Refer the matter for prosecution as an offence;**
- **Suspend or cancel the license; or**
- **Impose an enforceable undertaking.**

5.83 The Committee understands the frustrations of audiences making complaints under this system and thanks those who have offered suggestions whereby these impediments can be overcome. The Committee believes that the recommendations it has made will, if adopted, significantly improve the complaints process.

Chapter 6

Related Matters

6.1 During the course of the inquiry, some submitters raised other issues associated with broadcasting or the media in Australia. This chapter examines some of the issues that do not fit within the first three terms of reference.

Advertising

6.2 Contributors to this inquiry raised a number of issues relating to advertising on television and radio, including:

- Confusion about the appropriate complaints mechanism;
- Perceived loosening of restrictions in terms of content, particularly with regard to sexual content;
- Relaxation of restrictions during live sporting events; and
- Response to complaints.

6.3 Who to complain to about inappropriate advertising has been an issue raised with the Committee. Advertisements broadcast on television and radio are required to comply with the Australian Association of National Advertisers Code of Ethics. If a complainant feels that the broadcaster has not complied with the time zone requirements under the code of practice, a complaint may be made to the broadcaster. Other complaints regarding commercial advertising should be referred to the Advertising Standards Board.

6.4 The Committee is aware that advertising during live sporting events is not subject to the same requirements as non-sporting events. These advertising rules have been developed and ratified through proper procedure. However, the Committee notes that it is the right of any member of the public to have their opinion heard on this subject.

6.5 A number of contributors expressed disappointment in the handling of complaints about advertising, similar to the situation of complaints about programs described in Chapter 5 of this report. The Committee does not condone complainants being treated with a lack of respect, and again notes the right of any member of the public to complain.

Electronic games

6.6 An issue raised by the Young Liberal Movement Victoria, and supported by the NSW Council for Civil Liberties, is the lack of a classification scale 'for adults only' for electronic games:

Currently both television and film have classifications for 'adults only' content. This ensures that this category of media is accessible for those in the appropriate age bracket (over 18).

In the case of television this requires responsible parental supervision and in the case of film, adherence to legal requirements by cinemas and DVD hirers and sellers.

No such 'adults only' classification scale exists for electronic games.

Instead, electronic games deemed to contain 'adults only' content are banned from sale in Australia. As a result, game studios are forced to either modify their products and release edited versions or decide to not release their product in Australia at all.

The irony is that these games are fairly accessible online.¹

6.7 The Committee notes the inconsistency of the current situation but is aware that the matter is under review by the Attorney-General's Department.

Current legislation before the Senate

6.8 The Committee is aware that the bill entitled the *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Bill 2008* has been presented and read for the first time in the Senate. YMA objects to the intention of part of the bill that proposes to:

...[A]mend the classification procedures for films that are compilations of episodes of a television series so that an application for classification of such a film may be accompanied by a report that complies with conditions set out in a new Commonwealth instrument...²

6.9 YMA objects on the grounds that:

If passed, this legislation will give undue weight to recommendations by the TV industry, which will presumably be based on the classification given by the network that screened it.³

1 Young Liberal Movement Victoria, *Submission 57*, p. 3.

2 Explanatory Memoranda, *Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Bill 2008*, http://parlinfoweb.parl.net/parlinfo/view_document.aspx?ID=2891&TABLE=EMS (accessed 4 June 2008).

3 Young Media Australia, *Submission 79*, p. 7.

6.10 The Committee is aware of the proposed legislation and notes that the Senate will examine the merits of the bill in due course.

Senator Anne McEwen
Chair

Appendix 1

Submissions

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|----|--|
| 1 | Mr Craig Scott |
| 2 | Mr Heath McDonough |
| 3 | Ms Robyn Scheuffele |
| 4 | Mr Matt McCaul |
| 5 | Mr Michael and Mrs Leanne Casanova |
| 6 | Mr Matthew Munn |
| 7 | Mr Dan and Mrs Adeline Keenan |
| 8 | Mrs Evelyn Feltoe |
| 9 | Mr Michael Brennan |
| 10 | Ms B Dalgety |
| 11 | Dr Frank Murphy |
| 12 | Ms Nola Drum |
| 13 | Ms Carol Smith |
| 14 | Tasmanian State School Parents & Friends Inc |
| 15 | Mr Michael Sobb |
| 16 | Mr Gordon Kelly |
| 17 | Mr Edward Macovaz |
| 18 | Mr Edward Ellis |
| 19 | Mr Paul and Mrs Genevieve Swan |
| 20 | Mr Chris Foley |
| 21 | Ms Libby Batticci |
| 22 | Mr M and Mrs C Keith |
| 23 | Ms Juliet Kirkpatrick |
| 24 | Mr John Smith |
| 25 | Mr Graham and Mrs Carol V Phillips |
| 26 | Rev. Jamie Long |
| 27 | The Catholic Archdiocese of Adelaide |
| 28 | Mr Eddie Bent |
| 29 | Mr Chris Ryan |
| 30 | Mr Chris Hermann |
| 31 | Dr Helen Wiles |
| 32 | Mr Rory Delaney |
| 33 | Mr Mark Heuzenroeder |
| 34 | Ms Tess Fogarty |
| 35 | Mr Trevor Dean |
| 36 | Mr Richard Davis |
| 37 | Mr Alan Hoysted |
| 38 | Mr Bryan Hooley |
| 39 | Mr Desmond Kenneally |
| 40 | Mr Geoffrey and Mrs Betty Bartlett |
| 41 | Special Broadcasting Service Corporation |

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|----|---|
| 42 | NSW Council for Civil Liberties |
| 43 | Mr Nicholas Green |
| 44 | Mr Peter Green |
| 45 | Mr Bruno D'Elia |
| 46 | Mr Leon Voesenek |
| 47 | Mr Marc Florio |
| 48 | Media Standards Australia Inc |
| 49 | Mr Gerard Flood |
| 50 | Central Coast Community FM Radio Association Inc. |
| 51 | Festival of Light Australia |
| 52 | Australian Catholic Bishops Conference |
| 53 | Federation of Parents and Citizens' Association of New South Wales |
| 54 | Commercial Radio Australia |
| 55 | Free TV Australia |
| 56 | Professor Lesley Hitchens |
| 57 | Victorian Young Liberal Movement |
| 58 | Mr Kevin Hogan |
| 59 | Mr John Von Dinklage |
| 60 | Mr Tim Bennett |
| 61 | Mr Gerard and Mrs Andrea Calilhanna |
| 62 | Mr Klaus Clapinski |
| 63 | Mr Peter Murray |
| 64 | Federal Church and Nation Committee, Presbyterian Church of Australia |
| 65 | Mr Stuart Blackmore |
| 66 | Catholic Archdiocese of Melbourne |
| 67 | Mr Gary Hunter |
| 68 | Mr Peter Phillips |
| 69 | Ms Moira Blau |
| 70 | Jesmond Early Education Centre Inc |
| 71 | Mr Luke McCormack |
| 72 | Mr Edward O'Brien |
| 73 | Community Broadcasting Association of Australia |
| 74 | Mr Barny Lee |
| 75 | B.A. Tierney |
| 76 | Ms Lisa Penridge |
| 77 | Australian Subscription Television & Radio Association (ASTRA) |
| 78 | Liberty Victoria |
| 79 | Young Media Australia |
| 80 | Australian Broadcasting Corporation (ABC) |
| 81 | Ms Therese Sellick |
| 82 | Australian Christian Lobby |
| 83 | No submission |
| 84 | Rev. Stefan Slucki |
| 85 | Australian Family Association |
| 86 | Name Withheld |

Appendix 2

Public Hearings

Friday, 23 May 2008 – Adelaide

PBL Media

Mr David Coleman, Director of Strategy and Regulatory Affairs

Free TV Australia

Ms Julie Flynn, Chief Executive Officer

Commercial Radio Australia

Ms Joan Warner, Chief Executive Officer

Ms Sarah Herbert, Manager, Legal and Regulatory

New South Wales Council for Civil Liberties

Mr Michael Walton, Committee Member

Federation of Parents and Citizens Associations of New South Wales

Mrs Helen Walton, Country Vice-President

Ms Maren Wilson, Policy Officer

Australian Communications and Media Authority

Mr Christopher Cheah, Acting Deputy Chair

Mr Richard Fraser, Manager, Content Assessment

Ms Nerida O'Loughlin, General Manager, Industry Outputs

Ms Andree Wright, Executive Manager, Codes, Content and Education

Australian Broadcasting Corporation

Mr Gary Dawson, Director, Communications

Mr Michael Ward, Head, Television Policy

Australian Subscription Television and Radio Association (ASTRA)

Ms Debra Richards, Chief Executive Officer

Professor Lesley Hitchens (Private Capacity)

Mr Albert Phillips and Mrs Carol Phillips (Private Capacity)

Catholic Archdiocese of Adelaide

Mr Paul Russell, Senior Officer, Office of Family and Life

Appendix 3

Tabled documents, additional information and answers to questions taken on notice

Tabled Documents

International Covenant on Civil and Political Rights – Article 19 and UN Human Rights Committee on Article 19(3), tabled by the New South Wales Council of Civil Liberties, 23 May 2008

Screen shots from the Free TV Australia website outlining the complaints process, tabled by Free TV Australia, 23 May 2008

Guidelines relating to ACMA's enforcement powers under the *Broadcasting Services Act 1992*, tabled by Free TV Australia, 23 May 2008

Additional Information

Australian Communications and Media Authority – *Media and Communications in Australian Families 2007*

Australian Communications and Media Authority – *Reality Television Review*, Volume 1, Final Report

Answers to questions taken on notice

Commercial Radio Australia, 23 May 2008

Federation of Parents and Citizens' Associations of New South Wales, 23 May 2008

