



FreeTV
Australia

**Submission by
Free TV Australia Limited**

Australian Law Reform Commission

National Classification Scheme Review
Issues Paper

15 July 2011



TABLE OF CONTENTS

EXECUTIVE SUMMARY..... 1

1 INTRODUCTION..... 2

2 CLASSIFICATION OF COMMERCIAL FREE-TO-AIR TELEVISION..... 3

 2.1 CODE OF PRACTICE 3

 2.2 CLASSIFICATION TIME ZONES..... 4

 2.3 CONSUMER ADVICE 4

 2.4 CHILDREN’S PROGRAMMING 5

 2.5 THE CLASSIFICATION PROCESS..... 5

 2.6 NEWS, CURRENT AFFAIRS AND SPORTING EVENTS 6

 2.7 ADVERTISING 6

 2.8 THE COMPLAINTS SYSTEM..... 7

 2.9 ENFORCEMENT..... 7

 2.10 MANDATORY PARENTAL LOCK..... 8

3 ALRC REVIEW ISSUES 9

 3.1 QUESTION 2 - WHAT SHOULD BE THE PRIMARY OBJECTIVES OF A NATIONAL CLASSIFICATION SCHEME? 9

 3.2 QUESTION 6 – SHOULD THE SIZE OR MARKET POSITION OF PARTICULAR CONTENT PRODUCES AND DISTRIBUTORS, OR THE POTENTIAL MASS MARKET REACH OF THE MATERIAL, AFFECT WHETHER CONTENT SHOULD BE CLASSIFIED? 10

 3.3 QUESTION 16 – WHAT SHOULD BE THE RESPECTIVE ROLES OF GOVERNMENT AGENCIES, INDUSTRY BODIES AND USERS IN THE REGULATION OF CONTENT? 12

 3.4 QUESTION 20 – ARE THE EXISTING CLASSIFICATION CATEGORIES UNDERSTOOD IN THE COMMUNITY? WHICH CLASSIFICATION CATEGORIES, IF ANY, CAUSE CONFUSION? 13

 QUESTION 21 – IS THERE A NEED FOR NEW CLASSIFICATION CATEGORIES AND, IF SO, WHAT ARE THEY? SHOULD ANY EXISTING CLASSIFICATION CATEGORIES BE REMOVED OR MERGED? 13

 3.5 QUESTION 22 – HOW CAN CLASSIFICATION MARKINGS, CRITERIA AND GUIDELINES BE MADE MORE CONSISTENT ACROSS DIFFERENT TYPES OF CONTENT IN ORDER TO RECOGNISE GREATER CONVERGENCE BETWEEN MEDIA FORMATS? 13

4 OTHER ISSUES..... 14

 4.1 CLASSIFICATION TIMEZONES 14

 4.2 TRAINING AND ACCREDITATION 15



EXECUTIVE SUMMARY

- The commercial free-to-air television industry supports the application of appropriate and clear classification standards in Australia.
- There is a comprehensive and sophisticated set of rules governing content on free-to-air commercial television designed to ensure that viewers are able to make informed choices about the programming they, and their children, view.
- The Commercial Television Industry Code of Practice contains a classification scheme which is consistent with the Classification Board Guidelines against which all material broadcast on commercial free-to-air television is classified.
- The Commercial Television Industry Code of Practice further imposes mandatory time zones restricting the times at which material may be broadcast based on their classification.
- These requirements are developed in consultation with, and enforced by, the Australian Communications and Media Authority.
- As of February this year Parental Lock mechanisms have been mandated for all digital television equipment available in Australia, which allow parents to block access to material based on its classification.
- Children's programming is specifically regulated through the Children's Television Standards which include a pre-classification process. This regulation is mandatory and unique in the world.
- All advertising must comply with both the above classification and time zone requirements and additional standards imposed by the Australian Association of National Advertisers.
- Broadcasters already have a robust classification system, but are concerned with the increasing regulatory burden being applied to the sector and any doubling up of regulatory roles which may lead to conflicting decisions.
- Broadcasters support the equal application of regulation across all platforms, including new media and emerging technologies.
- The regulatory environment should reflect all the ways in which consumers are accessing content and should do so in a way which does not place an unjustifiably higher burden on some content platforms and not others.



1 Introduction

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

Free TV appreciates the opportunity to provide a submission to the Australian Law Reform Commission's National Classification Review Issues Paper.

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

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

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

Content of advertisements and programs on commercial free-to-air television is regulated by the Commercial Television Industry Code of Practice 2010 (the Code) and, in the case of programs for children, the Children's Television Standards 2009 (CTS). The Code and CTS are legislated by the *Broadcasting Services Act 1992* (the BSA). The CTS is developed by the Australian Communications and Media Authority (ACMA), while the Code is developed by industry in consultation with the ACMA.

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

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

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



programming content (including advertisements), even though commercial free-to-air broadcasters are transmitting content twenty-four hours a day, three hundred and sixty five days a year across nine channels – an annual total of 78,840 broadcast hours. In 2010 Free TV’s average daily reach was 13.8 million people.¹ Yet only 834 classification complaints were received for the whole year, with only six upheld by broadcasters.² In 2009-2010, the ACMA conducted 85 investigations into commercial television broadcasters, of which only 30 related to classification matters, with only 11 of those resulting in a breach finding.³

Whilst the classification regime for free-to-air television content remains sound, the ALRC’s review of the broader classification scheme is timely. The convergence of media platforms and distribution channels means that television-like content is increasingly available across a range of mediums. The same piece of content can now be seen on a range of platforms and on a range of devices. Under the current regulatory framework for content, that same piece of content is subject to different regulatory requirements depending on the platform over which it is delivered.

While free-to-air television is subject to strict requirements regarding classification timezones, advertising restrictions and program content designed to protect children from inappropriate content, few if any of these restrictions apply to other competing platforms. Not only is this an inequitable regulatory environment, it is also an inefficient one. We urgently need a more effective regulatory regime which covers all forms of media in a more equitable manner and this should be a focus for the ALRC’s Review.

This submission provides an overview of existing classification rules as they apply to commercial free-to-air television and also addresses relevant questions from the ALRC’s Issues Paper.

2 Classification of Commercial Free-to-Air Television

2.1 Code of Practice

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

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

¹ Source: OzTAM & RegionalTAM, 5 cap cities, 4 aggregated regional mkts plus Tasmania, total ppl, survey wks 7 –48 2010 (ex Easter), metro & regional combined for Free TV total

² Source: Free TV Code of Practice Complaints database

³ Source: ACMA Annual Report 2009-10



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

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

2.2 Classification Time Zones

Clauses 2.6-2.12 of the Code prescribe broadcast time zones, which mandate when programs of different classifications may be shown.

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

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

For example, only G or PG material may be played between 5:00am and 12:00pm, and 3:00pm and 8:30pm on weekdays, or between 5:30am and 8:30pm on weekends. PG material is restricted to certain times within this broader block. G programming must be very mild in impact and must not contain any matter likely to be unsuitable for children to watch without supervision. PG programming must be mild in impact and remain suitable for children to watch with supervision.

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

2.3 Consumer Advice

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

- all MA and AV programs;
- all M and PG films;
- other one-off and short run M programs (eg telemovies, mini-series, series episodes presented in a feature film format, documentaries and specials);



- PG programs broadcast between 7pm and 8.30pm on weekdays or between 10am and 8:30pm on weekends that contain material of a strength or intensity which the parents or guardians of young children may not expect; and
- any other program which contains material of a strength or intensity which viewers may not expect.

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

2.4 Children's programming

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

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

Only programming which has been approved by the ACMA can be counted toward this quota. The programming must be suitable for viewing by children and must be specifically designed with their educational and emotional needs in mind. It must also comply with prescriptions with respect to depictions of gender, race and unsafe behaviour.

2.5 The Classification Process

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

The majority of network classifiers have gained expertise through working for the Classification Board (previously the Office of Film and Literature Classification) and have many years' experience.

The classification (and corresponding time zone) given to a program is determined by the in-house classifiers according to the impact (frequency and intensity) of key elements such as violence, sexual behaviour, nudity and coarse language.⁴ Close consideration is given to the context of the material and its likely audience, and

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

additional guidelines are provided with respect to content that may warrant particular attention.

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

2.6 News, Current Affairs and Sporting Events

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

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

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

2.7 Advertising

All advertisements on commercial free-to-air television are subject to the Code and CTS classification and time zone restrictions. They are classified and cleared by Commercials Advice, an entity set up by the members of Free TV. The advertisements are checked for compliance with a range of state and federal legislation and then classified under the Code. A placement code is assigned to each advertisement which advises broadcasters of the times of the day the advertisement can be broadcast.

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

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

For some commercials, for example those dealing with important social issues such as drug abuse or anti-speeding ads, Commercials Advice will advise the networks to

exercise care in placement. This signals to the networks that they should be mindful of the program and available audience within which they place the advertisement.

2.8 The complaints system

The regulation of television program content is open and accessible to viewers through a well-managed and well-understood complaints process.

In the first instance, complaints regarding the Commercial Television Industry Code of Practice are required to be made directly to the broadcaster who is obliged to respond substantively within 30 working days.

The precise length of time depends on the complexity of the complaint. The response must advise the complainant that if they are not satisfied with the response they can refer their complaint to the ACMA. However, the vast majority of complaints are resolved between the broadcaster and the viewer.

If a complaint is referred to the ACMA, it then conducts its own complaint review and determines independently whether or not there has been a breach of the Code. In extraordinary circumstances the ACMA has the power to initiate an investigation without waiting to receive a public complaint.

In the event that the ACMA finds a breach of the Code, any action taken will depend on the seriousness of the breach and past compliance history (refer to section 3.6 below regarding enforcement of the Codes).

The existence of the complaints system is promoted to viewers through on-air advertisements. The Code requires that each television broadcaster advertise the Code and the complaints process 360 times a year. The advertisement must be rotated across viewing times so that it is seen in prime time, children's programming and in sport and news and current affairs.

If a broadcaster receives a telephone call about a matter covered by the Code, the broadcaster must advise the caller of the Code complaints process. Switchboard staff are also required to record the content of complaints about matters covered by the Code, and ensure this record is circulated to key staff.

Free TV also provides a phone service to assist complainants and mails out copies of the Code to individuals and interested groups who cannot access the website.

Since the introduction of an online complaints portal on the Free TV website in 2010, it is now easier than ever for viewers to lodge a complaint.

2.9 Enforcement

The ACMA is empowered under the *Broadcasting Services Act 1992* to enforce the regulatory framework for broadcasting content through a comprehensive suite of

enforcement measures. These provide for proportionate responses to breaches of the framework and act as a significant deterrent.

In relation to individual breaches of the Codes, the ACMA may impose an additional licence condition on the broadcaster, mandating compliance with the Code. Penalties may also apply for a breach of an additional licence condition, including remedial directions, civil penalties, criminal prosecution, suspension or cancellation of the licence, and the acceptance of enforceable undertakings.

This range of enforcement powers allows the ACMA to take a considered and proportionate response to a breach of the Code.

Recent enforcement action by the ACMA demonstrates the potential seriousness of the enforcement provisions in the *Broadcasting Services Act 1992*. In 2009, the ACMA accepted enforceable undertakings from the Nine Network in relation to the appropriate classification of program matter. In the event the ACMA believes the Nine Network has breached the undertakings, it may apply to the Federal Court for an order that the licensee pay the ACMA an amount equivalent to the financial benefit the licensee obtained by breaching the undertaking.

It is important to note that the ACMA may also take informal action in relation to Code breaches, such as working with licensees to put in place procedures and training to ensure the Code breach is not repeated.

These enforcement mechanisms are designed to provide a response to individual breaches of the Code. The *Broadcasting Services Act 1992* also provides the ACMA with a means of responding where it is satisfied there is evidence that a registered code of practice is not providing appropriate community safeguards, or where no code has been developed. In these circumstances, the ACMA is empowered to make a program standard. Compliance with program standards is a mandatory licence condition for commercial free to air television broadcasters.

A requirement for regular reviews is built-in to the Code, to ensure it remains in accordance with prevailing community standards.⁵ The most recent review of the Code was concluded in 2010 following extensive community consultation. The current Code was registered by the ACMA in January 2010.

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

2.10 Mandatory Parental Lock

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

As of 4 February 2011, a Parental Lock mechanism must be embedded in all equipment designed to receive digital television, allowing parents to limit the content their children can access based on the classification information provided by the

⁵ Broadcasting Services Act 1992, s 123 and 123A

broadcaster. Parents are able to use these locks to definitively control what television their children may view.

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

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

Parental Locks are mandated for all digital television equipment manufacturers operating in Australia by the ACMA under its powers to set technical standards.⁶ The standard was prompted by a Ministerial direction, which described it as further protecting children from viewing material which may be inappropriate or harmful and supporting parents and guardians in protecting their children from such content.

3 ALRC Review Issues

Free TV wishes to comment on the following questions raised in the ALRC's Issues Paper.

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

Any system of content regulation needs to be based on clear public interest principles or concepts, to determine what is regulated and to what end.

Free TV supports the existing objectives of the national classification scheme, which provide that:

- Adults should be able to read, hear and see what they want;
- Minors should be protected from material likely to harm or disturb them;
- Everyone should be protected from exposure to unsolicited material that they find offensive;
- The need to take account of concerns about depictions that could condone or incite violence, and the portrayal of persons in a demeaning manner.

⁶ Broadcasting Services Act 1992, s130B(1)

The classification of television programming is addressed through the *Broadcasting Services Act 1992* in a way that is consistent with the above outlined classification policy parameters. It prohibits the broadcast of certain programs, and restricts the time periods in which certain classes of program matter may be broadcast.

These principles continue to be supported by the overwhelming majority of Australian viewers and continue to provide appropriate policy parameters for the regulation of audio-visual content.

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

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

Free TV supports a consistent set of classification and content rules across platforms so that content is regulated consistently regardless of how it is delivered or accessed.

Traditionally, different levels of regulatory control have applied to the various platforms and distribution methods in place for audio-visual content.

For example, since commercial television is a freely-accessible medium, open to all Australians, a more stringent system of classification and content regulation has applied.

However, as noted by the Issues Paper “the growth, diversity and convergence of media technologies has arguably undermined the distinctions between media that underpin the current classification scheme.”

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

Importantly, the divides between different media platforms are becoming less apparent to the consumer. People seamlessly access internet content on their televisions and broadcast content on their computers and smartphones, and move between free-to-air television, pay television and IPTV via a single electronic guide. For the viewer, the delivery platform is generally irrelevant to their experience of the content. This is particularly the case when different delivery platforms merge into a single device, such as the Telstra T-Box which incorporates the delivery of free-to-air content, pay TV content, IPTV content, YouTube and video-on-demand content.



Connected TVs also look to deliver a seamless content experience for the viewer, who can switch between terrestrial broadcasts and Internet delivered content at the touch of a single remote control.

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

Under the current, fragmented regulatory regime if you chose to watch a program on free-to-air commercial television, it would be subject to:

- Pre-classification requirements
- Time-zone restrictions
- Time-zone restrictions on the type of advertising and promotions
- A range of other Code requirements (eg, animal cruelty rules, presentation of participants in reality television programming, etc)

The same content on pay TV:

- Is subject to classification guidelines
- Is not subject to time zones
- The type of advertising has minimal or no restriction.

The same content on IPTV is currently not regarded as broadcasting at all, due to the application of Minister Alston's 2000 determination that 'streaming is not broadcasting'.

Not only is this an inequitable regulatory environment, it is also an inefficient one and leads to 'regulatory bypass', whereby content and viewers simply migrate to less regulated platforms. Market dynamics dictate that when material is restricted on one medium, it merely redistributes to other, less regulated media. This leads to the inequitable outcome of having disproportionate financial impact on the more regulated platform while at the same time resulting in no overall decrease in the public's exposure to the content.

If we take as an example the existing regulatory objective to protect children from material which may be harmful to them, inconsistent treatment of the same content across platforms undermines this objective and does not serve the public interest in protecting vulnerable members of the community.

While free-to-air television is subject to strict requirements regarding classification timezones, advertising restrictions and program content designed to protect children from inappropriate content, few if any of these restrictions apply to other competing platforms.

Yet a child is not going to be any less impacted by harmful content if they access it via free-to-air TV, pay TV, IPTV, the internet or even time-shifted TV.



In Free TV's submission to the Government's Review of Convergent Media (Framing Paper – June 2011), we argued for a more effective regulatory regime which covers all forms of media in a more equitable manner. Free TV urges standardisation of classification regulation across all platforms.

The ALRC should work closely with the Convergent Media Review Committee to ensure that any regulatory proposals or reforms apply equally across platforms. When responding to issues which involve the entire media industry, the Government must take a cross-platform view in order to ensure an effective response and parity in regulation for all players.

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

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

Free TV supports the current scheme for the classification of television content as a successful example of a co-regulatory model for content regulation, which assigns specific roles for government, industry and users.

Under the co-regulatory system for the regulation of broadcasting content, broadcasters comply with codes of practice that are developed by the broadcasting industry in consultation with the regulator and the public. The ACMA is responsible for registering the codes, for monitoring compliance and for investigating unresolved complaints.

The co-regulatory framework for the regulation of broadcasting content includes a comprehensive suite of viewer protections, from requirements for content assessment of content prior to broadcast by network classifiers, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints-handling procedures and strong regulatory enforcement mechanisms.

There is also a key role for the viewer, who is provided with clear and comprehensive classification advice so as to be able to make an informed choice for themselves and their family.

There is built in to the framework a requirement for periodic review and public consultation, ensuring the full range of viewer protections continue to reflect community attitudes to broadcasting content.

This provides a well-rounded and comprehensive system that balances individual choice, viewer protections, industry accountability, government enforcement and regular review.

Free TV endorses the current co-regulatory model for classification of television content.

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

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

Qualitative and quantitative research is the best means of assessing community awareness and familiarity with classification categories, markings and consumer advice.

Public submissions processes typically attract contributions from well-organised advocacy organisations whose views may not necessarily reflect those of the broader community.

Free TV notes that research was last undertaken by the Office of Film and Literature Classification in June 2005 and submits that further research should be undertaken to inform the ALRC of prevailing community awareness and standards in the modern communications environment.

In particular, Free TV notes that the Commercial Television Industry Code of Practice contains a classification category, AV15+, which is specific to commercial free-to-air television and is not mirrored in the Classification Guidelines, nor the ABC, SBS or ASTRA classification schemes. It would be useful to assess whether this inconsistency should be rectified by removing the category and subsuming the content within the MA15+ category.

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

As noted above, Free TV strongly supports consistency in regulation across different platforms and media types.

Free TV is concerned that the current system makes free-to-air broadcasters subject to regulation by multiple bodies.

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

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



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

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

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

4 Other issues

Free TV wishes to comment on the following additional issues not addressed in the ALRC's questions for submitters.

4.1 Classification timezones

In its submission to the Convergence Review Framing Paper, Free TV raised concerns regarding the ongoing relevance and effectiveness of classification timezones. As the timezones form an integral part of the classification system for television content, Free TV believes these issues should also be considered as part of the ALRC's review.

As noted in section 2.2 of this submission, the broadcast day is strictly divided into classification time zones, restricting the time at which different kinds of content can be shown.

Different timezones apply for weekends/weekdays and during school holidays. This regulation is unique to free-to-air television.

Classification timezones were developed and implemented in an analogue world, prior to the emergence of pay TV, the Internet, IPTV and video on demand.



The effectiveness of this approach as a means to protect audiences is now questionable given that content comparable to that on free-to-air television is readily available on alternative platforms which are not subject to the timezones or the same level of classification assessment prior to broadcast.

The increasingly on-demand nature of content delivery also undermines the rationale for timezones. Timezones can also be seen as contrary to the strong trend in media consumption towards viewers accessing what they want, when they want. The ability to time-shift programming and the growing prevalence of 'on demand' content services place real pressure on a time-of-day approach to regulating content. As noted above, technology (in the form of parental locks) allows us to consider new ways of meeting community standards.

In a world where audiences are creating their own viewing schedules and are increasingly timeshifting content (as at May 2011, PVR penetration in Australia was 42%),⁷ the requirement to only show certain content at certain times of the day seems increasingly irrelevant and ineffective.

We need to make sure that the regulatory environment reflects all the ways in which consumers are accessing content and that it does so in a way which does not place an unjustifiably higher burden on some content platforms and not others.

4.2 Training and accreditation

Free TV would like to make some observations regarding the current processes for training and accreditation of classifiers.

We note that the Classification Board conducts an intensive three-month program which includes mentorship and practical experience. In comparison, the training programs for certified industry assessors are very brief (half-day or one-day). There is anecdotal evidence which suggests that this could be contributing to inconsistencies in classification decision-making, which in turn undermines the effectiveness and integrity of the National Classification Scheme.

The ALRC should consider recommending changes to the accreditation process to include more rigorous training requirements, with classifiers required to undergo minimum periods of supervision following training. Commercial free-to-air television broadcasters employ a number of full-time dedicated classifiers, many of whom have years of experience working in the industry and organisations such as the Classification Board.

⁷ Source: OzTAM <http://oztam.com.au/Documents/2011/PercentageOfHouseholdEstimates2011p5.pdf>