



**NATIONAL CLASSIFICATION SCHEME REVIEW  
FOXTEL RESPONSE TO ALRC DISCUSSION PAPER**

**18 November 2011**

## **INTRODUCTION**

FOXTEL welcomes the opportunity to submit a response to the Australian Law Reform Commission's (ALRC) discussion paper, *National Classification Scheme Review* (the Discussion Paper), dated September 2011.

FOXTEL's response to the Discussion Paper is structured as follows:

1. The **Executive Summary** outlines key submissions, including aspects of the ALRC's proposed classification framework that FOXTEL supports, and a number of areas concern.
2. **Part A** provides a brief overview of FOXTEL's services and the classification framework under which it currently operates.
3. **Part B** provides comments on the ALRC's reform principles, endorsement of co-regulation and industry-based classification, as well as comments on the foundations of the proposed classification scheme, such as a new Act and regulator.
4. **Part C** details responses on specific issues of interest to FOXTEL, including: classification processes and categories; arrangements for accrediting industry classifiers and ensuring their decisions are transparent and reliable; and, consumer safeguards such as time zones, consumer advice and complaint-handling arrangements.
5. **Part D** lists each proposal and question set out in the Discussion Paper, with a brief response where relevant.

## **EXECUTIVE SUMMARY**

In overview, FOXTEL submits:

- That the ALRC's reform principles are endorsed, particularly where they support a regulatory framework which is responsive and adaptive to changes in both community standards and technology, and which does not impede competition or innovation. It is very important that the ALRC has recognised that classification regulations should be kept to a minimum to achieve a clear public policy purpose.
- That, as identified by the ALRC, co-regulation remains the most effective and efficient model for broadcasting classification regulation. A scheme facilitating the ongoing development of industry codes of practice, supported by a legislative framework, allows rules to be updated flexibly as community standards evolve. Proposals for the ongoing use of industry classifiers are also welcomed as being both effective and efficient, as are proposals for the ongoing role of industry in handling complaints.
- That there is merit in the ALRC's recommendations that there should be consistency in the assessment and classification of content across platforms. Proposals for platform-neutral regulatory settings are accepted in relation to classification categories. However, in relation to other community safeguards—such as classification time zones, and requirements for consumer advice—careful consideration should be given to both the unique features of each media platform and the way in which consumers use them.

FOXTEL makes a number of suggestions in response to particular proposals in the Discussion Paper, including in relation to:

- **registration of industry codes of practice**—where it is submitted that there should be a single regulator responsible for registration and enforcement;
- **classification categories**—where it is suggested that the proposed T13+ category, in particular, is likely to create confusion;

- **the scope of proposed classification rules**—FOXTEL submits that careful consideration should be given to genres of programming which must be classified, having regard to the likely audience of niche programming on some FOXTEL channels;
- **consumer advice**—where it is submitted that current consumer advice settings for FOXTEL are appropriate, and expanded requirements are not warranted;
- **industry classifiers**—FOXTEL supports stronger training requirements, and suggests any powers to impose sanctions on classifiers should focus on re-education to ensure the reliability of their classifications; and
- **classification checks and safeguards**—FOXTEL does not support the ALRC’s proposals for post-classification audits of industry decisions, since processes allowing the community to lodge complaints about program classifications are working well to identify matters of concern.

## **PART A: FOXTEL AND CURRENT ARRANGEMENTS FOR CLASSIFICATION**

FOXTEL is Australia's leading subscription television (STV) provider and is connected to over 1.65 million homes on cable and satellite through retail and wholesale distribution. FOXTEL delivers more than 200 channels covering news, sport, general entertainment, movies, documentaries, music and children’s programming.

Current arrangements for the classification of content provided on FOXTEL’s platform are set out in two codes of practice developed by the Australian Subscription Television and Radio Association (ASTRA), and registered by the Australian Communications and Media Authority (ACMA) under section 123 of the *Broadcasting Services Act 1992* (BSA):

- The Subscription Broadcast Television Codes of Practice (SBTV Codes)
- The Subscription Narrowcast Television Codes of Practice (SNTV Codes)

FOXTEL is subject to both the SBTV Codes and SNTV Codes (the Codes) because it provides both subscription broadcasting and subscription narrowcasting services, as defined in the BSA.

The Codes provide that:

- Films and drama programs must be classified.<sup>1</sup>
- For programs classified PG or higher under the SBTV Codes, a classification symbol must be displayed at the commencement of the program and in program guides.<sup>2</sup>
- For programs classified M or MA15+, consumer advice providing reasons for the classification must be given at the commencement of the program.<sup>3</sup>
- Complaints about compliance with the Codes, including the classification and consumer advice provisions, are first to be made to the broadcasting licensee. The licensee must respond to written complaints within 60 days; and, where it responds in writing it must advise the complainant that if they are dissatisfied with the response they may lodge a complaint with the ACMA for investigation. Complainants can also refer the complaint to the ACMA if no response is received from the licensee within 60 days.<sup>4</sup>

The Codes provide for the application of the classification system contained in the Guidelines for the Classification of Films of Computer Games (the Guidelines), the legislative instrument under which the Classification Board (CB) classifies films for cinema-release, DVDs and computer

---

<sup>1</sup> SBTV Codes, clause 3. SNTV Codes, clause 3.1.

<sup>2</sup> SBTV Codes, clause 3.4.

<sup>3</sup> SBTV Codes, clause 3.5. SNTV Codes, clause 3.2.

<sup>4</sup> SBTV Codes, clauses 5.1–5.2. SNTV Codes, clauses 2.4–2.6.

games. Importantly, and as set out below, this illustrates that STV has over time, and continues to promote consistency of classification across media types—a key object of the ALRC’s proposed reforms.

In addition, and like other sections of the broadcasting industry, FOXTEL is subject to standard classification-related licence conditions set out in the BSA, including prohibitions on broadcasting material that has been classified X18+ by the CB or falls within the RC category (refused classification).<sup>5</sup>

As set out below, FOXTEL considers that the current Codes operate effectively, as evidenced by the relatively low number of classification complaints received.

## **PART B: FOUNDATIONS OF THE PROPOSED SCHEME**

### **The ALRC’s reform principles and critical variables**

FOXTEL supports the eight reform principles set out by the ALRC in Chapter 4 of the Discussion Paper. We agree that the classification scheme should continue to balance sometimes competing objectives—for example:

- that Australians should be able to read, hear and see—as well as participate—in the media of their choice (principle 1); while
- children should be protected from material likely to harm or disturb them (principle 3).

We agree that communications and media services should broadly reflect community standards, noting a diversity of views, cultures and ideas (principle 2); and, that the regulatory framework should be responsive and adaptable to technological change (principle 5).

In particular, FOXTEL’s submissions about:

- ensuring consumer advice obligations are properly targeted, and ensuring the ongoing role of industry complaints-handling, are informed by principle 4, which states that:

*consumers should be provided with information about content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;*

and

- the importance of striking the right regulatory balance so that consumers are protected, but undue administrative burden is avoided, especially when compared with international competitors, are informed by principles 6 and 7, which provide that:

*the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets;*

and

*classification regulation should be kept to the minimum needed to achieve a clear public policy purpose, and should be clear in its scope and application.*

Finally, we agree that classification regulation should focus on content, not the delivery platform (principle 8). However, we note that in relation to some community safeguards—such as classification time zones—there remain good reasons to distinguish platforms.

---

<sup>5</sup> Schedule 2 of the BSA contains standard licence conditions, with Part 6 setting out conditions for subscription television broadcasting licences and Part 7 setting out conditions for class licensed services.

We note that the ALRC has provided a list of critical variables which are helpful in determining how classification and other consumer safeguard regulations should apply according to the characteristics of the platform or service.<sup>6</sup> We endorse each of the four variables:

- **The potential for risk, harm or impact associated with the content in question**—this is an important consideration since the nature of some services may mean there is a limited risk of, for example, children inadvertently being exposed to higher-impact content.
- **The degree of community concern**—assessing community concern and expectations is relevant to questions such as whether user generated content should be classified, and how much consumer advice is necessary depending on the way in which the consumer obtains the content.
- **The likelihood of industry self-managing its own relationship with its customers and the community**—this variable is very relevant to consideration of STV providers, who have a strong business interest in providing reliable classifications and targeted consumer advice to ensure subscribers remain satisfied with the service.
- **The extent to which non-compliance with regulations generates reputational risk or diminished market standing**—for the reasons set out above, it is clearly in the interests of STV providers to protect their reputation in the market-place, to attract new subscribers and retain existing subscribers.

### **The proposed Classification of Media Content Act**

Although FOXTEL submits that the current classification framework for STV has worked very effectively to date, it is acknowledged that, in light of convergence, there is merit in a framework which further supports consistency in the assessment and classification of content delivered on any platform.

To this end, proposals such as platform-neutral definitions of terms like ‘media content’ and ‘media content provider’ are supported.<sup>7</sup> Similarly, the establishment of standard statutory classification categories, in relation to which further detail can be provided in industry-developed codes of practice, is considered appropriate.

However, FOXTEL submits that any new framework:

- should not preclude the differential application of regulation on the basis of the nature of the service in question, and consumer expectations of that service; and
- should not create duplication and inefficiencies, such as numerous regulators with which STV must deal, and parallel industry code development processes.

### **Co-regulation**

FOXTEL is pleased that the ALRC has endorsed co-regulation, where industry is able to develop codes of practice to support statutory classification provisions, and administer those codes.<sup>8</sup> As recognised in the Discussion Paper, co-regulation (like self-regulation) can offer advantages over direct regulation, including:

- greater flexibility and adaptability;
- potentially lower compliance and administrative costs;
- the benefit of using industry knowledge and expertise to directly address industry-specific and consumer issues; and

---

<sup>6</sup> Discussion Paper, paragraph 4.59.

<sup>7</sup> Discussion Paper, proposal 5–4.

<sup>8</sup> Discussion Paper, paragraph 11.39.

- quick and low-cost complaints-handling.<sup>9</sup>

Compared with legislation, industry codes of practice are flexible and adaptable because they are developed, approved and reviewed outside the Parliamentary process. For example, the ASTRA Codes are developed in consultation with the ACMA, and their regular review—informed by research undertaken by the ACMA, and extensive consultation with members of the public—means that they can take account of issues of community concern that arise from time to time.

FOXTEL also strongly supports co-regulatory arrangements under which the licensee remains the first port of call for customer complaints. FOXTEL leads the industry in implementing 'world's best practice' for customer care and the handling of customer complaints. As noted above, STV providers have an interest in ensuring customers' complaints and queries are dealt with effectively and efficiently.

Not only does industry complaint-handling result in quicker outcomes for subscribers, but recent evidence demonstrates that there is a community expectation that those providing content would be responsible for providing advice on standards and ratings.<sup>10</sup>

FOXTEL cautions the ALRC against recommending a scheme under which classification codes would be developed separately to codes for other broadcasting matters, and which would be registered by different regulators. Of particular concern is the suggestion, at paragraph 5.29 of the Discussion Paper, that classification codes would be governed by the new classification framework (and presumably the proposed new regulator), whereas non-classification matters would continue to be regulated by the ACMA under the BSA.

Any proposal that required separate codes, and code development processes (potentially involving different regulators) is strongly resisted by FOXTEL because it is likely to result in:

- an increase in resources required by both industry groups and government;
- consultation fatigue for the public; and
- industry codes no longer being a 'one-stop-shop' for consumers and industry, as different provisions may be set out in different instruments registered at different times.

### **Industry classification**

FOXTEL supports the ALRC's proposal that broadcasters, including STV licensees, continue to be subject to a regime based on industry classification of content.<sup>11</sup> As noted by the ALRC, '[a] key benefit of industry classification is that it is likely to generate cost savings and create other efficiencies, such as reducing the time it takes to classify product'.<sup>12</sup>

The ALRC refers, in Chapter 7 of the Discussion Paper, to submissions made during earlier consultations, including that:

- the familiarity of industry-classifiers with their product is likely to lead to quicker and more accurate classification;
- industry classification is efficient where content is received and broadcast in large volumes; and
- industry classification is appropriate in the television context, which can be subject to pressing timeframes.

---

<sup>9</sup> Discussion Paper, paragraph 11.17, citing a 2002 OECD study.

<sup>10</sup> ACMA, *Digital Australians – Expectations about media content in a converging media environment*, October 2011, page 54.

<sup>11</sup> Discussion Paper, paragraph 11.40.

<sup>12</sup> Discussion Paper, paragraph 7.26.

FOXTEL agrees with these submissions and is pleased the ALRC has recognised industry's longstanding involvement in the classification of television content.<sup>13</sup>

Specific comments about training and accreditation of industry classifiers, and the transparency of their decisions, are set out below.

## **PART C: SPECIFIC ASPECTS OF THE PROPOSED SCHEME**

### **Classification categories**

FOXTEL agrees with the ALRC that:

*[w]ell understood [classification] categories are essential if a classification system is to inform and guide people's entertainment choices and assist parents to choose content for their children.*<sup>14</sup>

The ALRC cites submissions received in earlier consultations suggesting that the current classification categories are generally well understood, although there may be a need for better descriptions of the categories.<sup>15</sup>

On the basis of these submissions, and other research conducted over the last decade which has found high levels of familiarity with existing classification symbols,<sup>16</sup> FOXTEL does not see the justification for the ALRC's preliminary view, at paragraph 9.10 of the Discussion Paper, that there is merit in modifying the names and markings of some of the existing categories.

Rather, existing evidence appears to suggest that a clarification or further explanation of existing categories is more appropriate—which would involve consumer education.

However, should the ALRC be minded to recommend altering the categories, FOXTEL submits that there should be sound evidence warranting the addition of new age references to the classification categories, namely:

- replacing the existing PG category with PG8+; and
- replacing the existing M category with T13+.

FOXTEL submits that research to obtain this evidence would need to assess stages of child development recognised by appropriate experts.

Notwithstanding these submissions, FOXTEL offers comments below on the proposed introduction of the T13+ classification.

Our principal concern with the T13+ classification is that it may give the erroneous impression that the relevant programming is 'made for' teenagers, rather than merely being suitable for, or not harmful to teenagers 13 years and older. The community may be familiar with the C and P classifications, set out in the *Children's Televisions Standards 2009*, which denote programming *made specifically for* children and pre-school children. Without clarification, it would be reasonable to assume that the T13+ classification was similarly 'made for' teenagers.

In addition, over time, content that would currently fall within the M classification may be either 'pushed up' into the MA15+ category or 'pushed down' into T13+ category. That is, M content which must currently be moderate in impact would begin to contain either higher-impact content

---

<sup>13</sup> Discussion Paper, paragraph 7.50.

<sup>14</sup> Discussion Paper, paragraph 9.10.

<sup>15</sup> Discussion Paper, paragraphs 9.6 and 9.8.

<sup>16</sup> In consumer research conducted by the ACMA for its 2007 review of reality television, 96.8 per cent of survey respondents stated they were familiar with the classification symbols shown before programs. The ACMA observed that this result was consistent with findings of a 2003 study conducted by the Australian Broadcasting Authority. See ACMA, *Reality Television Review – Final Report*, March 2007, page 66.

permitted in the MA15+ category; or, would need be adjusted down to ensure that it is milder in impact and so suitable for an audience as young as 13 years.

The removal of the M classification category may have an adverse impact on the marketability of, and overall strength of mainstream content targeted to adults. Given the likely association of T13+ with teenagers, this marking may deter adults from selecting the content. Instead, adults may be more likely to see the MA15+ category as containing the content targeted to them. This is likely to result in adult audiences being exposed to higher-impact content overall—since the category permits treatment of classifiable elements such as violence, sex, language and nudity which is strong, not just moderate.

To avoid the potential problems identified above, the category could either:

- be left unchanged—that is, the M category be retained (this is FOXTEL's preferred position);
- be qualified to confirm that the content is not 'made for' teenagers (although this may, in practice, be difficult to do succinctly and the association with 'teen' may remain confusing); or
- focus on the age marking (that is, remove the 'T' so that the category would be '13+'; and, similarly, 'PG8+' would be '8+').

### **Practical impact of changing classification categories**

In addition to the need to educate the community about any changes to the classification categories, it should be noted that category changes would result in the imposition of significant costs on broadcasters, and other media providers, who would be required to adjust systems and processes and re-train staff.

FOXTEL submits that any such changes would need to be made subject to appropriate transitional arrangements which, at minimum, would provide:

- clarity about how to deal with material already classified under existing provisions (FOXTEL submits that any new classification categories should not apply retrospectively); and
- a realistic period between enactment and commencement of the changes.

### **Scope of the proposed scheme**

The ALRC has proposed that, subject to a number of exemptions, the new Act should provide that television programs produced on a commercial basis must be classified before being sold, hired, screen of distributed.<sup>17</sup>

FOXTEL is pleased that, as with current regulations, the following exempt categories would continue to be exempt from the classification requirements set out in the proposed Classification of Media Content Act:<sup>18</sup>

- news and current affairs;
- sport;
- recordings of live performances;<sup>19</sup> and
- films for training, instruction or reference.

---

<sup>17</sup> Discussion Paper, paragraph 6.56.

<sup>18</sup> Discussion Paper, paragraph 6.65.

<sup>19</sup> FOXTEL agrees with the proposal, at paragraph 6.57 of the Discussion Paper, that content other than commercially-produced feature films, television programs and computer games—for example, radio programs, artworks and music—does not need to be classified unless it would fall within the X18+ or RC categories. For the avoidance of doubt, FOXTEL submits that **music videos**, including but not limited to recordings of live performances, should also be expressly exempted from the broadcasting regulations.



However, although the ALRC suggests that its proposal 'should not greatly affect the number of television programs classified before broadcast on Australian television',<sup>20</sup> it appears that, without further clarification, its proposal *would* result in a significant expansion of the classification regulations—compared with the current requirements under the SBTV Codes and SNTV Codes that only films and drama must be classified.

This outcome would arise because genres such as light entertainment, documentary and reality programming would, for the first time on STV, be required to be classified.

Although, in practice, FOXTEL currently assigns a classification to a wider range of genres than film and drama without this being a regulatory requirement, the effect of the ALRC's proposal would be a significant regulatory expansion.

Any expansion of this nature should be carefully assessed in light of the ALRC's reform principles. In particular, FOXTEL notes principle 7, which provides that classification regulation should be kept to a minimum to achieve a clear public policy purpose.

In this assessment, FOXTEL encourages the ALRC to consider the potential for risk, harm or impact associated with genres which would be regulated for the first time (one of the critical variables listed as relevant by the ALRC). Given that many of the channels provided on FOXTEL's platform are targeted to niche audiences, and are often of limited appeal to children, it may not be necessary to expand the classification obligations as proposed.<sup>21</sup>

### **Industry classifiers – training, accreditation and decision-making**

As noted above, FOXTEL supports the ALRC's endorsement of industry classification. FOXTEL also supports the ALRC's view that there is:

*...the need for a more formalised and consistent training and accreditation framework for media classifiers, in order to ensure consistent decisions that safeguard the effectiveness and integrity of the National Classification Scheme.*<sup>22</sup>

FOXTEL agrees that there are a number of shortcomings with the Trained Content Assessor and Authorised Television Series Assessor (ATSA) schemes, including that the period of training is very limited, and yet results in accreditation to make decisions that are ratified, upon recommendation, by the CB. This means that the decisions of relatively inexperienced industry classifiers can be given legal force.

FOXTEL strongly supports the establishment of a new training and accreditation framework, and submits that it should be developed in close consultation with industry, and industry bodies such as ASTRA and the Media Classifiers' Association of Australia.

FOXTEL considers that the revised training scheme should include an appropriate period of 'on the job training' or practical experience as a precondition to accreditation under the tutelage of an experienced professional classifier. Where experienced professional classifiers seek accreditation, the scheme should allow for recognition of their experience (as is often the case with practical legal training courses which qualify lawyers for admission to court).

FOXTEL submits that, once qualified, the decisions of accredited classifiers should carry weight and precedent value, as is currently the case with decisions of the CB. While the ALRC notes that it

---

<sup>20</sup> Discussion Paper, paragraph 6.58.

<sup>21</sup> As noted by the ALRC in the Discussion Paper, at paragraph 6.38, '[i]f content will only be seen by a small audience of adults, then there may be less demand for classification information. The more people are likely to see a piece of content, the greater the likely demand for classification information. If children are likely to see the content, then the need for classification information may also grow. Such arguments might justify expecting popular television channels to classify content they broadcast, but not overseas television channels that may also be watched on the internet'.

<sup>22</sup> Discussion Paper, paragraph 5.21. FOXTEL supports the ALRC's statement, at paragraph 5.33, that the training and accreditation framework is one aspect of the new scheme that should be 'drafted more or less from scratch'.

is not appropriate 'to compel a content provider to use the classification of another industry classifier in circumstances where they disagree with the original decision',<sup>23</sup> it should be open to a subsequent classifier to rely on the decision of the first classifier.<sup>24</sup>

Furthermore, as with decisions of the CB, FOXTEL submits that the decisions of accredited industry classifiers should be made available on a national database accessible by all accredited classifiers. Importantly, the scheme should require the classifier to enter into this database their reasons for the classification—including examples of key depictions or themes—as this will assist the subsequent classifier to note the elements that resulted in the classification. This is particularly important when the reasoning for a decision is relied upon to edit content. Where the classification has been given for a television series (for example, on DVD), the database should record details about each episode in the series.<sup>25</sup>

### Likely classifications

A number of the ALRC's proposals in Chapters 6 and 8 of the Discussion Paper turn on the likely classification of content, being the classification the content is likely to be given if were formally classified. For example, the ALRC proposes that:

- computer games produced on a commercial basis, which are *likely* to be classified MA15+ or higher, must be classified before they are sold, hired, screened or distributed in Australia;<sup>26</sup>
- access must be restricted to all media content that is *likely* to be R18+;<sup>27</sup>
- all media content *likely* to be X18+ must be classified before being sold, hired, screened or distributed in Australia;<sup>28</sup>
- content must be reclassified if its modification means that it is *likely* to have a different classification from the original classified content;<sup>29</sup> and
- media content *likely* to be RC must be classified before various enforcement steps may be taken.<sup>30</sup>

FOXTEL submits that the scheme should either provide that content is required to be classified or it is not required to be classified. A scheme which permits assessment of likely classifications could not only be confusing, but result in cursory consideration of content. The objective of the classification scheme is not expected to be met if cursory consideration of content results in the provision of unreliable information.

If a classifier decides the 'likely' classification of content, then a decision has already been made. That is, the 'likely' pre-decision is, in fact, a classification decision. FOXTEL submits that a better approach is to specify content types which require formal classification, and to tie requirements such as access restriction to formal classifications. Therefore, 'likely' should be replaced with 'is', making those decisions binding.

---

<sup>23</sup> Discussion Paper, paragraph 7.53.

<sup>24</sup> This proposal would address the issue of double-handling, identified by the ALRC at paragraph 5.8 of the Discussion Paper.

<sup>25</sup> These submissions are broadly consistent with the ALRC's recommendation in the Discussion Paper, at paragraph 7.104, that '...industry codes or practice should include information on maintaining records of classification decisions and summaries, advising decisions to the Regulator and internal quality assurance controls'.

<sup>26</sup> Discussion Paper, Proposal 6–2.

<sup>27</sup> Discussion Paper, Proposal 8–1.

<sup>28</sup> Discussion Paper, Proposal 6–4.

<sup>29</sup> Discussion Paper, Proposal 6–7.

<sup>30</sup> Discussion Paper, Proposal 6–6.

## Classification instruments

FOXTEL notes the ALRC's proposal that the new classification system should permit the use of classification instruments such as online, interactive questionnaires, which have been authorised by the regulator, and which generate classification decisions which are then automatically notified to the regulator.<sup>31</sup>

FOXTEL considers that such proposals should be very carefully considered and that reliance should not be placed on simplistic 'tick the box' classification tools. Given the central importance of context in classification, it is difficult to see how such an automated process could meaningfully take account of subtleties in the presentation of classifiable elements.

## Time zones

The ALRC has asked, at question 8–1, whether broadcast television should continue to be subject to time zone restrictions. FOXTEL submits that free-to-air television licensees should continue to be subject to time zone restrictions.

As recently noted by the Convergence Review Committee,<sup>32</sup> and as recognised by the ALRC,<sup>33</sup> many consumers will continue to expect the free-to-air broadcast environment to be a safe place for young people based on time zones and/or access controls. In the ACMA's recent research into community expectations regarding digital media, it was found that Australians continued to have an expectation regarding time zone restrictions on free-to-air television:

*Most participants saw an ongoing role for current policy mechanisms (time zoning, ratings, classifications, and consumer advice and content warnings) for protecting children from unsuitable content broadcast on free-to-air television.<sup>34</sup>*

FOXTEL notes that time zones do not apply to STV services, and strongly submits that they should not apply to STV or to other fee-based or on-demand services in the future. Time zones are not relevant to content that consumers pay for and/or which can be accessed by consumers at any time that is convenient to them.

STV subscribers expect to be able to see the material they want through the service they pay for at the time they wish to see it, similar to the way in which a customer may rent a DVD or go to a cinema. Not imposing time zones on STV also recognises that STV providers have greater control over how content is delivered and accessed on their platforms.

FOXTEL offers a suite of children's channels, with content that parents can be confident is both suitable for, and targeted to children. Access to these channels is supported by FOXTEL's 'Mini Mote', which limits access to eight pre-programmed FOXTEL children's channels, with the option to pre-set two other channels of the parent's choice. To the extent that one objective of time zones is to assist parents to plan and control their children's viewing, this technological tool also meets this objective.

FOXTEL subscribers also have the benefit of an advanced, consistent and integrated parental lock system, which gives them greater control over the content that they and their families and household members can access. FOXTEL provides support to its customers to assist them in ensuring control over the type of content that can be accessed through their STV service, and promotes the availability of its parental lock.

---

<sup>31</sup> Discussion Paper, paragraphs 7.65—7.67.

<sup>32</sup> Convergence Review Discussion Paper, *Community Standards*, September 2011, page 14.

<sup>33</sup> Discussion Paper, paragraph 8.51: '...a community expectation that television channels are safe, particularly for children, at certain times of the day, may suggest that time-zone restrictions are still relevant'.

<sup>34</sup> ACMA, *Digital Australians – Expectations about media content in a converging media environment: qualitative and quantitative research report*, October 2011, page 4.

## Consumer advice

The ALRC proposes that the Classification of Media Content Act provide that all content that must be classified, other than C, G or RC content, must be accompanied by consumer advice.<sup>35</sup> This means that television programs classified PG8+, T13+, MA15+ and R18+ would be required to be accompanied by consumer advice.

The ALRC's proposal would involve an expansion of the current consumer advice requirements for STV, with programs currently classified PG (and which would fall within the PG8+ category under the proposed scheme) requiring consumer advice for the first time.

FOXTEL submits that this is an unnecessary expansion and is inconsistent with the ALRC's reform principle 7—that classification regulation should be kept to the minimum needed to achieve a clear public policy purpose.

As identified by the ALRC,<sup>36</sup> consumer advice should focus on content that has the most impact (for example, 'strong violence' or 'high level sex scenes'). Given that the PG category cannot contain content that is more than **mild** in impact, this category is unlikely to contain depictions, references or themes that are strong enough to warrant the requirement for advice.

It is also relevant to assess whether content in the PG category is generally of concern to parents. In this regard, the ACMA's *Media and Communications in Australian Families 2007* report found that, where parents set rules on the basis of the types of programs their children are allowed to watch they 'tend to align very closely with ratings or programming guidelines, that is, that their child is only allowed to watch programs rated [that is, classified] C, G, P and PG'.<sup>37</sup>

The important finding in that section of the report was that these parents group PG programs with C, G and P programs as being suitable for their children. This suggests that even without consumer advice parents are confident to allow their children to watch PG programs.

On this basis, FOXTEL submits that the administrative burden on industry of new consumer advice regulations is not warranted.

More generally in relation to consumer advice, FOXTEL:

- supports the ALRC's proposal that the Classification Board publish guidelines for generating standardised consumer advice,<sup>38</sup> although such guidelines should not be overly prescriptive beyond the classifiable elements (for example, it is not appropriate for consumer advice to include a reference to genre or a synopsis);
- cautions against any prescriptive requirements for written and verbal consumer advice—the technological capability of the relevant platform should be taken into account (such as the ability for FOXTEL viewers to confirm the classification of a program at any time by pressing the 'i' button on the FOXTEL remote control). The ALRC should have regard to the significant cost of requirements for verbally-delivered information, where this information can be provided via other technological means;
- submits that for on-demand content, there should be no requirement for on-screen classification information, or verbal consumer advice, because the classification information is available to the purchaser at the point of sale (similar to when hiring a DVD, buying a cinema ticket or purchasing a movie from iTunes); and

---

<sup>35</sup> Discussion Paper, proposal 9–3.

<sup>36</sup> Discussion Paper, paragraph 9.38.

<sup>37</sup> ACMA, *Media and Communications in Australian Families 2007*, December 2007, page 117.

<sup>38</sup> Discussion Paper, paragraph 9.43.

- submits, for the avoidance of doubt, that consumer advice should be required only for programs, and not for program promotions or excerpts.

### **Classification markings**

Like consumer advice, FOXTEL recognises that classification markings are an important way of providing classification information to viewers. FOXTEL agrees with the ALRC's view that, given that content is delivered in so many different ways in the converged media environment, rules about classification markings are best placed in industry codes of practice.<sup>39</sup> This approach allows for more flexible adjustment of the rules as technology develops.

However, it is noted that this position is not entirely consistent with proposal 8–5 in the Discussion Paper, which contains a list of obligations which may be contained in the Classification of Media Content Act. FOXTEL submits that while that Act should empower industry groups to include rules about classification markings in their codes, it should not prescribe circumstances in which those markings must be used.

### **Restricted access arrangements**

FOXTEL supports the ALRC's proposal that there should be no mandatory access restrictions on MA15+ media content, as the impact of content at this level is not considered sufficiently high to warrant restriction.<sup>40</sup>

FOXTEL also supports the ALRC's proposal that R18+ content be subject to restricted access arrangements.<sup>41</sup> In addition to providing functionality allowing viewers to block channels, set viewing restrictions by classification category and set purchase restrictions, FOXTEL's parental control system is already set so that R18+ programming is only available via PIN access. These arrangements are consistent with the requirements of the ASTRA Codes.<sup>42</sup>

FOXTEL supports the ALRC's position that while the Classification of Media Content Act might provide for minimum requirements, the details of methods of restriction should be set out in industry codes, approved and enforced by the regulator.<sup>43</sup>

### **Classification checks and safeguards**

FOXTEL strongly submits that the current complaints-handling scheme set out in the ASTRA Codes is the most effective way of providing checks and safeguards to ensure that the classification of STV content is correct. FOXTEL is pleased that the ALRC has endorsed the existing approach under which:

- complaints about television programs are, in the first instance, made directly to the organisation that made the classification decision, and only elevated to the regulator where the complainant does not receive a response or the complaint has not been satisfactorily resolved;<sup>44</sup> and
- guidance on complaints-handling mechanisms is set out in industry codes.<sup>45</sup>

However, there are two aspects of the ALRC's proposal for classification checks and safeguards which FOXTEL strongly opposes.

---

<sup>39</sup> Discussion Paper, paragraph 8.58.

<sup>40</sup> Discussion Paper, proposal 8–3.

<sup>41</sup> Discussion Paper, proposals 8–1 and 8–2.

<sup>42</sup> SBTV Codes, clause 3.2. SNTV Codes, clause 3.4.

<sup>43</sup> Discussion Paper, paragraph 8.19.

<sup>44</sup> Discussion Paper, paragraph 7.100.

<sup>45</sup> Discussion Paper, paragraph 7.101.

The first area of concern is the ALRC's proposal for routine post-classification audits by the CB of industry decisions.<sup>46</sup> The ALRC states that the purpose of these audits would not necessarily be to correct decisions; rather, they would be focussed on proactively managing industry classifiers to ensure erroneous decisions are not made.<sup>47</sup>

While it is assumed that the CB would bear the direct costs of such audits, industry would still be required to expend significant staff resources participating. In light of the ALRC's reform principle 7, about keeping regulation to the minimum necessary to achieve public policy outcomes, FOXTEL submits that there is no case for auditing requirements which warrant the costs that would be imposed on both government and industry. This is particularly the case because:

- proactive steps to promote accurate classification decision making can be taken by enhancing the industry training scheme, as set out above; and
- reactive steps are already available via the complaints-handling and investigation arrangements currently in place.

The second area of concern is the proposed sanctions regime for industry classifiers. Whereas current arrangements for broadcasting place the obligations for correct classification, and liability in relation to enforcement action, on broadcasting licensees, the ALRC proposes '...a regime of sanctions that might be applied against industry classifiers who repeatedly classify content wrongly should also be set out in legislation'.<sup>48</sup>

The ALRC proposes powers that would allow classifier authorisations to be revoked, barring notices to be issued to industry classifiers, and the ability to call in content for review.<sup>49</sup> The ALRC notes that these sanctions would be similar to those that already apply under classification legislation, and related legislative instruments—and that they are intended to be applied only if other informal actions have not been successful.

FOXTEL submits that it should be clear in any future legislative scheme that sanctions against classifiers are a last resort, and that other measures must first be applied. In addition, where sanctions are imposed, they should relate only to classifier authorisations, and not result in barring or content call-ins.

FOXTEL submits that sanctions relating to classifier authorisation should focus first on re-education—for example, enforceable training. Stronger action in relation to accreditations would only be appropriate if a classifier failed to comply with re-training requirements.

### **Researching community standards**

FOXTEL agrees with the ALRC that periodic reviews of the criteria for classification decision-making would be usefully informed by relevant research.<sup>50</sup> The use of research, conducted by the ACMA, is already a feature of the legislative framework in the BSA for the development and registration of broadcasting industry codes of practice.<sup>51</sup>

As with current arrangements for broadcasting, FOXTEL submits that an independent statutory agency is best placed to conduct research into community standards to inform any review of classification criteria.

---

<sup>46</sup> Discussion Paper, paragraphs 7.97–7.98.

<sup>47</sup> Discussion Paper, paragraph 7.99.

<sup>48</sup> Discussion Paper, paragraph 7.102.

<sup>49</sup> Discussion Paper, proposal 7–7.

<sup>50</sup> Discussion Paper, paragraph 9.67.

<sup>51</sup> Section 123 of the BSA notes that it is the intention of the Parliament that in developing codes of practice relevant industry groups take into account research conducted by the ACMA.

FOXTEL supports the proposal that such research combines both quantitative and qualitative methodologies, and be undertaken every five years to obtain longitudinal data.<sup>52</sup>

---

<sup>52</sup> Discussion Paper, proposal 9–5.

**PART D: RESPONSES TO THE ALRC'S PROPOSALS AND QUESTIONS**

<b>The Proposed Classification Scheme</b>	
<p><b>Proposal 5–1</b> A new National Classification Scheme should be enacted regulating the classification of media content.</p>	<p>FOXTEL is generally supportive of a new classification scheme to the extent it seeks to achieve consistency in the assessment and classification of content delivered on any platform.</p> <p>However, platform-neutral regulations should not be an end in themselves, since consumers have different experiences and expectations of different platforms. For example, evidence suggests that classification time zones remain important for FTA television, but are not necessary for STV (which, for example, has an advanced parental controls); and, are not practical for on-demand services.</p>
<p><b>Proposal 5–2</b> The National Classification Scheme should be based on a new Classification of Media Content Act. The Act should provide, among other things, for:</p> <ul style="list-style-type: none"> <li>(a) what types of media content may, or must be classified;</li> <li>(b) who should classify different types of media content;</li> <li>(c) a single set of statutory classification categories and criteria applicable to all media content;</li> <li>(d) access restrictions on adult content;</li> <li>(e) the development and operation of industry classification codes consistent with the statutory classification criteria; and</li> <li>(f) the enforcement of the National Classification Scheme, including through criminal, civil and administrative penalties for breach of classification laws.</li> </ul>	<p>Any new Act should confirm the role of co-regulation as a central tenet of the classification framework, including provisions facilitating the development of industry codes of practice and industry complaints-handling, and the accreditation of industry classifiers.</p> <p>Where the new Act provides statutory criteria for matters such as classification categories and access restrictions, it should also provide, as proposed by the ALRC, for industry-specific guidance on these matters to be given in industry codes of practice.</p>
<p><b>Proposal 5–3</b> The Classification of Media Content Act should provide for the establishment of a single agency ('the Regulator') responsible for the regulation of media content under the new National Classification Scheme.</p>	<p>FOXTEL supports the establishment of a single regulator. It would be inefficient to establish separate regulators for registering codes relating to classification and non-classification matters. It would also be more efficient to have a single regulatory agency—currently the ACMA for broadcasting—responsible for assessing compliance and, where necessary, taking enforcement action.</p>
<p><b>Proposal 5–4</b> The Classification of Media Content Act should contain a definition of 'media content' and 'media content provider'. The definitions should be platform-neutral and apply to online and offline content and to television content.</p>	<p>FOXTEL supports these platform-neutral definitions.</p>



<b>What Content Should be Classified?</b>	
<p><b>Proposal 6–1</b> The Classification of Media Content Act should provide that feature-length films and television programs produced on a commercial basis must be classified before they are sold, hired, screened or distributed in Australia. The Act should provide examples of this content. Some content will be exempt: see Proposal 6–3.</p>	<p>Without further clarification this proposal would result in a regulatory obligation that significantly more STV content be classified than is currently required.</p> <p>Notwithstanding the ALRC’s proposal to carry forward traditional exemptions (for example, for news and sports programming), genres others than film and drama would appear to be included.</p> <p>FOXTEL submits it is unnecessary to expand classification obligations in this way. The nature of STV means that many channels, which show programming such as light entertainment and reality television, are targeted to niche adult audiences, and not children. Therefore, the risk of children being inadvertently exposed to higher-impact material is low.</p>
<p><b>Proposal 6–2</b> The Classification of Media Content Act should provide that computer games produced on a commercial basis, that are likely to be classified MA 15+ or higher, must be classified before they are sold, hired, screened or distributed in Australia. Some content will be exempt: see Proposal 6–3.</p>	<p>No comment.</p>
<p><b>Proposal 6–3</b> The Classification of Media Content Act should provide a definition of ‘exempt content’ that captures all media content that is exempt from the laws relating to what must be classified (Proposals 6–1 and 6–2). The definition of exempt content should capture the traditional exemptions, such as for news and current affairs programs. The definition should also provide that films and computer games shown at film festivals, art galleries and other cultural institutions are exempt. This content should not be exempt from the proposed law that provides that all content likely to be R 18+ must be restricted to adults: see Proposal 8–1.</p>	<p>FOXTEL supports the ongoing exemption from classification requirements for: news and current affairs; sport; recordings of live performances; and, films for training, instruction or reference.</p>
<p><b>Proposal 6–4</b> If the Australian Government determines that X 18+ content should be legal in all states and territories, the Classification of Media Content Act should provide that media content that is likely to be classified X 18+ (and that, if classified, would be legal to sell and distribute) must be classified before being sold, hired, screened or distributed in Australia.</p>	<p>No comment.</p>
<p><b>Proposal 6–5</b> The Classification of Media Content Act should provide that all media content that may be RC must be classified. This content must be</p>	<p>No comment.</p>

classified by the Classification Board: see Proposal 7–1.	
<p><b>Proposal 6–6</b> The Classification of Media Content Act should provide that the Regulator or other law enforcement body must apply for the classification of media content that is likely to be RC before:</p> <p>(a) charging a person with an offence under the new Act that relates to dealing with content that is likely to be RC;</p> <p>(b) issuing a person a notice under the new Act requiring the person to stop distributing the content, for example by taking it down from the internet; or</p> <p>(c) adding the content to the RC Content List (a list of content that the Australian Government proposes must be filtered by internet service providers).</p>	No comment.
<p><b>Proposal 6–7</b> The Classification of Media Content Act should provide that, if classified content is modified, the modified version shall be taken to be unclassified. The Act should define ‘modify’ to mean ‘modifying content such that the modified content is likely to have a different classification from the original content’.</p>	<p>FOXTEL agrees that if content is modified it should be reclassified.</p> <p>However, as detailed in Part B of this submission, FOXTEL does not support regulations which require classifiers to decide on ‘likely classifications’. FOXTEL submits that the scheme should either provide that content is required to be classified or it is not required to be classified. This is because the ‘likely’ pre-decision is, in fact, a classification decision.</p>
<p><b>Proposal 6–8</b> Industry bodies should develop codes of practice that encourage providers of certain content that is not required to be classified, to classify and mark content using the categories, criteria, and markings of the National Classification Scheme. This content may include computer games likely to be classified below MA 15+ and music with explicit lyrics.</p>	<p>FOXTEL supports the proposal that industry codes of practice should be able to include guidance on matters that fall outside the scope of mandatory regulations. A current example is that in addition to classification rules, the ASTRA SBTV Codes give guidance on the overarching intention of the classification scheme (including the principles that adults should be able read, hear and see what they want, while minors should be protected from harmful material).</p>
<b>Who Should Classify Content?</b>	
<p><b>Proposal 7–1</b> The Classification of Media Content Act should provide that the following content must be classified by the Classification Board:</p> <p>(a) feature-length films produced on a commercial basis and for cinema release;</p> <p>(b) computer games produced on a commercial basis and likely to be classified MA 15+ or higher;</p> <p>(c) content that may be RC;</p>	No comment.

<p>(d) content that needs to be classified for the purpose of enforcing classification laws; and</p> <p>(e) content submitted for classification by the Minister, the Regulator or another government agency.</p>	
<p><b>Proposal 7–2</b> The Classification of Media Content Act should provide that for all media content that must be classified—other than the content that must be classified by the Classification Board—content may be classified by the Classification Board or an authorised industry classifier.</p>	<p>FOXTEL strongly supports a framework which enables and recognises the decisions of appropriately accredited industry classifiers. Other classifiers should be able to access and rely on the decisions of accredited industry classifiers—via a central database—to avoid unnecessary double-handling of content.</p>
<p><b>Question 7–1</b> Should the Classification of Media Content Act provide that all media content likely to be X 18+ may be classified by either the Classification Board or an authorised industry classifier? In Chapter 6, the ALRC proposes that all content likely to be X 18+ must be classified.</p>	<p>No comment.</p>
<p><b>Proposal 7–3</b> The Classification of Media Content Act should provide that content providers may use an authorised classification instrument to classify media content, other than media content that must be classified.</p>	<p>FOXTEL cautions against reliance on simplistic ‘tick the box’ classification tools. Given the central importance of context in classification, FOXTEL submits that it is difficult to see how such an automated process could meaningfully take account of subtleties in the presentation of classifiable elements.</p>
<p><b>Proposal 7–4</b> The Classification of Media Content Act should provide that an authorised industry classifier is a person who has been authorised to classify media content by the Regulator, having completed training approved by the Regulator.</p>	<p>As detailed in Part C of this submission, FOXTEL supports a more robust training and accreditation framework for authorised industry classifiers. It is appropriate that the regulator, as well as relevant industry organisations be involved in the development of that framework, and that the framework be administered by the regulator.</p>
<p><b>Proposal 7–5</b> The Classification of Media Content Act should provide that the Regulator will develop or authorise classification instruments that may be used to make certain classification decisions.</p>	<p>As noted above, FOXTEL is cautious about the adoption of automated classification tools. However, if the ALRC is minded to recommend such tools, it is considered appropriate that the regulator have a role in assessing and authorising such instruments.</p>
<p><b>Question 7–2</b> Should classification training be provided only by the Regulator, or should it become a part of the Australian Qualifications Framework? If the latter, what may be the best roles for the Board, higher education institutions, and private providers, and who may be best placed to accredit and audit such courses?</p>	<p>Where the regulator accredits external training providers, FOXTEL submits that such providers should be empowered to accredit industry classifiers.</p>
<p><b>Proposal 7–6</b> The Classification of Media Content Act should provide that the functions and powers of the Classification Board include:</p> <p>(a) reviewing industry and Board classification decisions; and</p>	<p>FOXTEL does not support the proposal that industry classification decisions may be audited. As detailed in Part C of this submission, there is an ongoing role for existing complaints-handling processes for broadcasting. Industry complaints-handling, overseen by the regulator, is the most efficient and appropriate</p>

<p>(b) auditing industry classification decisions.</p> <p>This means the Classification Review Board would cease to operate.</p>	<p>mechanism by which concerns about classification decisions can be raised.</p>
<p><b>Proposal 7–7</b> The Classification of Media Content Act should provide that the Regulator has power to:</p> <p>(a) revoke authorisations of industry classifiers;</p> <p>(b) issue barring notices to industry classifiers; and</p> <p>(c) call-in unclassified media content for classification or classified media content for review. <i>12 National Classification Scheme Review</i></p>	<p>As detailed in Part B, FOXTEL considers that sanctions against classifiers should be a last resort. Where sanctions are imposed, they should relate only to classifier authorisations—and not result in barring or content call-ins—and should focus first on re-education.</p>
<p><b>Markings, Advertising, Display and Restricting Access</b></p>	
<p><b>Proposal 8–1</b> The Classification of Media Content Act should provide that access to all media content that is likely to be R 18+ must be restricted to adults.</p>	<p>FOXTEL supports the proposal that access to R18+ material should be restricted to adults and notes that R18+ content on the FOXTEL platform is already restricted to adults. However, as submitted above, FOXTEL does not support regulations which turn on ‘likely’ classification—and recommends that the word ‘likely’ be removed from the recommendation.</p>
<p><b>Proposal 8–2</b> The Classification of Media Content Act should provide that access to all media content that has been classified R 18+ or X 18+ must be restricted to adults.</p>	<p>As above.</p>
<p><b>Proposal 8–3</b> The Classification of Media Content Act should not provide for mandatory access restrictions on media content classified MA 15+ or likely to be classified MA 15+.</p>	<p>FOXTEL agrees that access to content classified MA15+ should not be subject to mandatory restriction requirements. However, in practice, FOXTEL subscribers are able to set parental control mechanisms on the FOXTEL platform to prevent children from accessing content with particular classifications.</p>
<p><b>Proposal 8–4</b> The Classification of Media Content Act should provide that methods of restricting access to adult media content—both online and offline content—may be set out in industry codes, approved and enforced by the Regulator. These codes might be developed for different types of content and industries, but might usefully cover:</p> <p>(a) how to restrict online content to adults, for example by using restricted access technologies;</p> <p>(b) the promotion and distribution of parental locks and user-based computer filters; and</p>	<p>FOXTEL supports the proposal that the detail of methods of restriction for particular platforms should be set out in industry codes.</p>

(c) how and where to advertise, package and display hardcopy adult content.	
<p><b>Question 8–1</b> Should Australian content providers—particularly broadcast television—continue to be subject to time-zone restrictions that prohibit screening certain media content at particular times of the day? For example, should free-to-air television continue to be prohibited from broadcasting MA 15+ content before 9pm?</p>	<p>In overview, and as detailed in Part B, FOXTEL submits that:</p> <ul style="list-style-type: none"> <li>• recent evidence shows that consumers see an ongoing role for time zones on FTA television—this is appropriate given the near universal reach of FTA television, and broad appeal of FTA channels (which are more likely to attract children);</li> <li>• times zones should <b>not</b> apply to STV or to other fee-based or on-demand services in the future—FOXTEL has an advanced and integrated parental control system to assist parents protect their children, which makes time zones on STV unnecessary; and</li> <li>• it is impractical to impose time zones on non-linear services.</li> </ul>
<p><b>Proposal 8–5</b> The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, before broadcasting the content, on packaging, on websites and programs from which the content may be streamed or downloaded, and on advertising for the content.</p>	<p>FOXTEL submits that rules about classification markings are best placed in industry codes of practice.</p>
<p><b>Proposal 8–6</b> The Classification of Media Content Act should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:</p> <p>(a) the likely audience of the advertisement;</p> <p>(b) the impact of the content in the advertisement; and</p> <p>(c) the classification or likely classification of the advertised content.</p>	<p>FOXTEL agrees that non-program material, including advertisements and program promotions, should be consistent with the classification of the program in which they are shown.</p>
<p><b>Classification Categories and Criteria</b></p>	
<p><b>Proposal 9–1</b> The Classification of Media Content Act should provide that one set of classification categories applies to all classified media content as follows: C, G, PG 8+, T 13+, MA 15+, R 18+, X 18+ and RC. Each item of media content classified under the proposed National Classification Scheme must be assigned one of these statutory classification categories.</p>	<p>FOXTEL agrees with the recommendation that one set of classification categories should apply to all classified media content.</p> <p>However, as there is evidence that current classification categories are generally well understood, the case for change in the categories themselves does not appear to be made. Clarification or further explanation of existing categories may be more appropriate.</p>

	In particular, the proposed T13+ classification category may give the erroneous impression that content in this category is targeted to teenagers, and result in adult viewers tending to select higher-impact MA15+ content. This may have an adverse impact on the marketability of, and overall strength of mainstream content targeted to adults.
<b>Proposal 9–2</b> The Classification of Media Content Act should provide for a C classification that may be used for media content classified under the scheme. The criteria for the C classification should incorporate the current G criteria, but also provide that C content must be made specifically for children.	No comment.
<b>Proposal 9–3</b> The Classification of Media Content Act should provide that all content that must be classified, other than content classified C, G or RC, must also be accompanied by consumer advice.	Without further clarification, this proposal would result in a significant expansion of the classification regulations compared with the current requirements for STV. For the reasons set out in Part C, FOXTEL submits that this is not necessary.  Any expansion of classification obligations should be carefully assessed in light of the ALRC’s reform principle 7, which provides that classification regulation should be kept to a minimum to achieve a clear public policy purpose.
<b>Proposal 9–4</b> The Classification of Media Content Act should provide for one set of statutory classification criteria and that classification decisions must be made applying these criteria.	As noted above, FOXTEL supports the consistent application of classification criteria across platforms, noting that industry codes of practice should be able to give additional industry-specific guidance.
<b>Proposal 9–5</b> A comprehensive review of community standards in Australia towards media content should be commissioned, combining both quantitative and qualitative methodologies, with a broad reach across the Australian community. This review should be undertaken at least every five years.	FOXTEL supports a program of regular research, conducted by the regulator, to review the evolution of community attitudes to, and standards in relation to media content.
<b>Refused Classification Category</b>	
<b>Proposal 10–1</b> The Classification of Media Content Act should provide that, if content is classified RC, the classification decision should state whether the content comprises real depictions of actual child sexual abuse or actual sexual violence. This content could be added to any blacklist of content that must be filtered at the internet service provider level.	No comment.
<b>Codes and Co-regulation</b>	
<b>Proposal 11–1</b> The new Classification of Media Content Act should provide for the development of industry classification codes of practice by sections of	FOXTEL strongly supports the ongoing role of industry-developed codes of practice.

<p>industry involved in the production and distribution of media content.</p>	
<p><b>Proposal 11–2</b> Industry classification codes of practice may include provisions relating to:</p> <ul style="list-style-type: none"> <li>(a) guidance on the application of statutory classification obligations and criteria to media content covered by the code;</li> <li>(b) methods of classifying media content covered by the code, including through the engagement of accredited industry classifiers;</li> <li>(c) duties and responsibilities of organisations and individuals covered by the code with respect to maintaining records and reporting of classification decisions and quality assurance;</li> <li>(d) the use of classification markings;</li> <li>(e) methods of restricting access to certain content;</li> <li>(f) protecting children from material likely to harm or disturb them;</li> <li>(g) providing consumer information in a timely and clear manner;</li> <li>(h) providing a responsive and effective means of addressing community concerns, including complaints about content and compliance with the code; and</li> <li>(i) reporting to the Regulator, including on the handling of complaints.</li> </ul>	<p>FOXTEL strongly supports a regulatory framework allowing these matters to be dealt with in industry codes of practice.</p>
<p><b>Proposal 11–3</b> The Regulator should be empowered to approve an industry classification code of practice if satisfied that:</p> <ul style="list-style-type: none"> <li>(a) the code is consistent with the statutory classification obligations, categories and criteria applicable to media content covered by the code;</li> <li>(b) the body or association developing the code represents a particular section of the relevant media content industry; and</li> <li>(c) there has been adequate public and industry consultation on the code.</li> </ul>	<p>In addition to evidence gained during public consultation, the regulator should also be required to consider research it has commissioned on community attitudes to, and standards, in relation to classification.</p>
<p><b>Proposal 11–4</b> Where an industry classification code of practice relates to media content that must be classified or to which access must be restricted, the Regulator should have power to enforce compliance with the code</p>	<p>Such enforcement powers are consistent with existing powers available in relation to broadcasting, and are considered appropriate.</p>

<p>against any participant in the relevant part of the media content industry.</p>	
<p><b>The New Regulator</b></p>	
<p><b>Question 12–1</b> How should the complaints-handling function of the Regulator be framed in the new Classification of Media Content Act? For example, should complaints be able to be made directly to the Regulator where an industry complaints-handling scheme exists? What discretion should the Regulator have to decline to investigate complaints?</p>	<p>FOXTEL strongly submits that broadcasters should remain the first port of call for complaints under a co-regulatory framework. Complainants should only be able to elevate a complaint to the regulator where the complaint has not been adequately resolved by the broadcaster, or where the broadcaster has failed to respond within a set time period.</p> <p>Industry complaints-handling results in quicker outcomes for subscribers, and is more efficient for both industry and government.</p> <p>FOXTEL submits that the regulator—for broadcasting, the ACMA—should have the discretion to decline to investigate complaints, not only where the complaint is frivolous or where the complainant is vexatious, but also where the regulator forms the view that, considering the nature of the complaint, it is not in the public interest to use public resources to conduct an investigation.</p>
<p><b>Proposal 12–1</b> A single agency (‘the Regulator’) should be responsible for the regulation of media content under the new National Classification Scheme. The Regulator’s functions should include:</p> <ul style="list-style-type: none"> <li>(a) encouraging, monitoring and enforcing compliance with classification laws;</li> <li>(b) handling complaints about the classification of media content;</li> <li>(c) authorising industry classifiers, providing classification training or approving classification training courses provided by others;</li> <li>(d) promoting the development of industry classification codes of practice and approving and maintaining a register of such codes; and</li> <li>(e) liaising with relevant Australian and overseas media content regulators and law enforcement agencies.</li> </ul> <p>In addition, the Regulator’s functions may include:</p> <ul style="list-style-type: none"> <li>(f) providing administrative support to the Classification Board;</li> <li>(g) assisting with the development of classification policy and legislation;</li> <li>(h) conducting or commissioning research relevant to classification; and</li> </ul>	<p>FOXTEL supports a single regulator having responsibility for administering any revised regulatory framework for classification, including the matters set out in this proposal.</p> <p>However, as noted above, for broadcasting, the regulator should only be required to investigate a complaint if it has not been resolved by the broadcaster in question, or where the broadcaster has failed to respond to the complainant within a set period.</p> <p>As mentioned above, the regulator should have the discretion to decline to investigate a complaint.</p>



(i) educating the public about the new National Classification Scheme and promoting media literacy.	
<b>Enacting the New National Classification Scheme</b>	
<b>Proposal 13–1</b> The new Classification of Media Content Act should be enacted pursuant to the legislative powers of the Parliament of Australia.	FOXTEL supports the establishment by federal legislation of any revised classification framework.
<b>Proposal 13–2</b> State referrals of power under s 51(xxxvii) of the <i>Australian Constitution</i> should be used to supplement fully the Parliament of Australia's other powers, by referring matters to the extent to which they are not otherwise included in Commonwealth legislative powers.	No comment.
<b>Enforcing Classification Laws</b>	
<b>Proposal 14–1</b> The new Classification of Media Content Act should provide for enforcement of classification laws under Commonwealth law.	FOXTEL supports legislation which provides for enforcement of classification regulations at the federal level.
<b>Proposal 14–2</b> If the Australian Government determines that the states and territories should retain powers in relation to the enforcement of classification laws, a new intergovernmental agreement should be entered into under which the states and territories agree to enact legislation to provide for the enforcement of classification laws with respect to publications, films and computer games.	No comment.
<b>Proposal 14–3</b> The new Classification of Media Content Act should provide for offences relating to selling, screening, distributing or advertising unclassified material, and failing to comply with:  (a) restrictions on the sale, screening, distribution and advertising of classified material;  (b) statutory obligations to classify media content;  (c) statutory obligations to restrict access to media content;  (d) an industry-based classification code; and  (e) directions of the Regulator.	No comment.
<b>Proposal 14–4</b> Offences under the new Classification of Media Content Act should be subject to criminal, civil and administrative penalties similar to those currently in place in relation to online and mobile content under Sch 7	As above.

of the <i>Broadcasting Services Act 1992</i> (Cth).	
<b>Proposal 14–5</b> The Australian Government should consider whether the Classification of Media Content Act should provide for an infringement notice scheme in relation to more minor breaches of classification laws.	No comment.