



**Submission by
Free TV Australia**

Committee on Children and Young People

*Inquiry into sexualisation of children and
young people*

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EXECUTIVE SUMMARY

- Commercial free-to-air broadcasters have the strongest safeguards of any media platform to limit the exposure of children to potentially unsuitable material.
- This suite of safeguards is working effectively to meet community expectations for content on commercial free-to-air television.
- Under the Commercial Television Industry Code of Practice (Free TV Code), advertisers must comply with the Codes administered by the Australian Association of National Advertisers, including the *Code for Advertising and Marketing to Children*, which contains specific prohibitions on the sexualisation of children in marketing communications at section 2.4.
- The *Children's Television Standards* (CTS) set out strict rules about the content of certain children programs, and additional advertising restrictions during those programs. Each Free TV member is required to show at least 360 hours of CTS programming every year.
- In addition to the CTS and the AANA Code, the Free TV Code sets strict classification criteria, and all material must be broadcast in accordance with classification zones.
- The Free TV Code also contains comprehensive rules about the placement of certain advertisements and promotions.
- The level of complaint about these rules is low (and declining), and compliance among broadcasters is very high. Each of these sets of rules is supported by a robust complaints system and enforcement framework.
- The media landscape is fragmenting rapidly, with children and young people accessing media content from a wide range of platforms and services.
- Many of these other platforms are largely unregulated. Commercial free-to-air television remains the safest place for children to access content in this new media landscape.

Introduction

Free TV Australia (Free TV) represents Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide fifteen distinct channels of content in each market across a broad range of genres, as well as rich online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by more than 13.6 million Australians.

Free TV Australia welcomes the opportunity to contribute to the Committee for Children and Young People's *Inquiry into sexualisation of children and young people*.

There are a range of protections currently operating on commercial free-to-air television to protect children from inappropriate material.

The Children's Television Standards (CTS) contains a range of protections which apply during designated C (Children) and P (preschool) programming. Broadcasters are required to show 360 hours of programming, which must first be cleared by the ACMA against strict content criteria.

Additional robust safeguards are contained in the Commercial Television Industry Code of Practice (Free TV Code), which includes rules about the classification of content, classification zones and advertising placement. The Free TV Code was recently reviewed and registered by the ACMA in November 2015. A Code of Practice cannot be registered unless the ACMA is satisfied that it provides "appropriate community safeguards".¹

Finally, the various Codes developed by the Australian Association of National Advertisers (the "AANA Codes") contain rules about the content of advertising across all media platforms, including commercial free-to-air television. Free TV supports these Codes in a range of ways, including by withdrawing television commercials that are found in breach of the rules.

Levels of complaint about these rules is low (and declining), and compliance among broadcasters is very high. Each of these sets of rules is supported by a strong complaints system and enforcement framework.

These comprehensive protections mean that commercial free-to-air television remains the safest, most strongly regulated media platform in Australia.

¹ Subparagraph 123(4)(b)(i) of the BSA

Current safeguards on commercial free-to-air television

1. AANA Codes

Under the Free TV Code, advertisers are expected to comply with relevant platform-neutral Codes which cover the content of advertising, such as the *Code of Ethics* and the *Code for Advertising and Marketing to Children* administered by the Australian Association of National Advertisers, and the ABAC *Responsible Alcohol Marketing Code*.²

While these Codes are voluntary, there is a very high compliance rate, especially among advertisers on commercial free-to-air television.

These Codes provide a range of protections regarding the content of advertisements, including a section in their *Code for Advertising and Marketing to Children* which specifically deals with (and prohibits) the sexualisation of children in marketing communications.

Relevantly, section 2.4 of the AANA *Code for Advertising and Marketing to Children* provides as follows:

2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not employ sexual appeal;*
- (b) must not include sexual imagery in contravention of Prevailing Community Standards; and*
- (c) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.*

Complaints under these AANA Codes are considered by the Advertising Standards Board (ASB), which is made up of a range of representative members of the community. The ASB considers complaints about any form of published or broadcast advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayal of sexuality and nudity and health and safety.

Free TV members support the ASB processes.

Free TV members have an agreement in place with the ASB and AANA stating that an advertisement found to be in breach of the AANA Codes will be withdrawn from future broadcasts.

Broadcasters also refer any relevant complaint received by them to the ASB for investigation.³

² Free TV Code, Clause 5.7.1

³ Free TV Code, clause 7.3.3

2. Children's Television Standards

Commercial free-to-air broadcasters are subject to the CTS, which are made by the ACMA pursuant to section 122 of the BSA.

The CTS require each commercial free-to-air broadcaster to broadcast at least 390 hours of programming specifically for school aged children (260 hours) and pre-schoolers (130 hours).

Program criteria

Only programming which has been classified by ACMA under specific criteria within the CTS can be counted toward this quota. The programming must be entertaining, suitable for viewing by children and must be specifically designed with their educational and emotional needs in mind.

This programming must be shown at certain times of day, and is subject to strict advertising restrictions.

Advertising limits

No advertising at all is permitted during pre-school programming screened in accordance with the CTS.

During programs for school age children screened under the CTS, advertising is permitted but is subject to additional content requirements (eg cannot contain a popular character or personality).

Complaints under the CTS can be made directly to the ACMA.

3. Commercial Television Industry Code of Practice

The Free TV Code contains a further suite of safeguards to provide all viewers (including parents and carers) with information about the programming on commercial free-to-air television, as well as a range of measures to restrict content that may not be appropriate for children.

The Free TV Code was reviewed in 2015. In accordance with the process set out at section 123 of the *Broadcasting Services Act 1992* (BSA), Free TV developed the Code and conducted an extensive public consultation process over 8 weeks.

A revised version of the Code and all submissions were then provided to the Australian Communications and Media Authority (ACMA). The ACMA registered the Code in November 2015, being satisfied that the revised Code provided appropriate community safeguards for the matters that it covered, and that the public had been given an opportunity to comment on the Code.⁴

⁴ In accordance with subsection 123(4) of the BSA

Classification

All material broadcast on commercial free-to-air television (except news, current affairs and sports) must be classified.⁵

The Free TV Code establishes a scheme for classification of material on television.⁶ This system has been in place for commercial free-to-air television since the inception of the Code system in 1992, and continues to effectively provide clear classification advice to viewers.

The television classification system under the Free TV Code contains a greater level of detail for each classifiable element than the National Classification Scheme guidelines for Films. However, the markings and categories used are the same and these are generally well understood by all consumers (except for two categories unique to commercial free-to-air television).

Sex and Nudity are classifiable elements for each of the classification categories, which means those matters will be specifically taken into account and assessed when a program or other material is classified. For example, the PG classification criteria stipulates that depictions of and verbal reference to sexual activity must be restrained.

News, Current affairs and sports programs are exempt from classification under the Free TV Code, however broadcasters are required to take care in the selection of material for such broadcasts, taking into account the likely audience. These categories of exempt content are long standing, and in line with the recommendations of the Australian Law Reform Commission (ALRC).⁷

Under the Free TV Code, the classification of a program will be displayed on the screen at the beginning of a program, after each break, and in any promotion for that program (where practicable).⁸ This information is also readily available in the electronic program guide. Consumer advice is also provided for some programs.

These measures ensure that there is ample information for viewers about the likely content of programs on commercial free-to-air television, so they can make informed viewing choices for themselves and their family members.

Classification zones

The Free TV Code sets out classification zones, which mean that high-level content is not permitted at certain times.

⁵ Free TV Code, clause 2.1.1

⁶ See: Appendix 1 to the Free TV Code

⁷ Australian Law Reform Commission (ALRC) [Final Report – Classification – Content Regulation and Convergent Media](#), p 141

⁸ Free TV Code, clauses 2.5.2 and 2.5.3

At present these classification zones are as follows:

Classification	Time permitted
P, C	Any time
G	Any time
PG	Any time
M	7.30 pm – 6.00 am 12 noon -3 pm on School Days
MA	8.30 pm – 5.00 am

These classification zones commenced on 1 December 2015.

The Free TV Code also contains a number of additional special care provisions to further moderate content during certain times or programs:

- No M classified advertisements or program promotions permitted between 7.30 pm and 8.30 pm during Sports programs, G programs and PG programs. This rule lasts to 9.30 pm for movies and sports.⁹
- An M program between 7.30 pm and 8.30 pm must have prominent and legible consumer advice at the start about the content of the program. This is also required for all Films classified PG and above, all content classified MA15+, and any other program which contains material of a strength or intensity which the licensee reasonably believes viewers may not expect¹⁰.
- No promotions for M or MA15+ shows are allowed during a G classified program principally directed to children which is screened between 5.00 am and 8.30 pm.¹¹

The classification zones provide an appropriate balance between limiting children’s exposure to potentially unsuitable material (including material of a sexual nature), and giving adults the opportunity to enjoy a wide range of programming - noting that high-level content on other platforms is generally available on-demand, or without time restrictions.

Advertising placement restrictions

Section 6 of the Code sets out a range of advertising placement restrictions, which limit the times at which commercials for certain products and services can appear on television.

⁹ Code, clause 2.4.1

¹⁰ Code, clause 2.5.1

¹¹ Code, clause 2.4.4

In summary:

- No advertising for R18+ movies or computer games is allowed between 5.00 am and 8.30 pm (except between 12-3 on school days);¹²
- No advertisements for contraceptives permitted in any G program at any time;¹³
- No advertisements for adult services permitted between 5.00 am and 11.00 pm.¹⁴

Commercials for adults, or for adult products which may have a sexual connotation are therefore restricted during the times and programs that children are likely to be watching television. The level of restriction appropriately escalates in line with the nature of the product (i.e, advertisements for sex lines are more restricted than advertisements for contraceptives).

Although it is less relevant to the terms of reference for the Inquiry, there are also rules about alcohol and gambling advertisements:

- Alcohol advertising is not permitted between 5.00 am and 8.30 pm (except during a Sports program on a weekend or public holiday, or between 12-3 on School Days).¹⁵
- A commercial relating to betting or gambling cannot be broadcast:
 - On any day, in any program classified G or lower between:
 - 6.00 am and 8.30 am; and
 - 4.00 pm and 7.00 pm; and
 - during any program that is broadcast between 5.00 am and 8.30 pm and principally directed at children.¹⁶
- Gambling and betting commercials are also subject to extensive restrictions during live sporting events.¹⁷

Complaints under the Free TV Code are made initially to the broadcaster in line with the system set out at Section 7 of that Code. If a viewer is unhappy with their response, or they do not receive a response within 60 days, then the complaint can be escalated to the ACMA.

The complaints system for the Code is widely publicised by broadcasters, with on-air advice about the process, and an accessible online complaints form. Free TV also produced a series of Fact Sheets about the protections in the Code. Two relevant Fact Sheets are attached to this submission:

¹² Free TV Code, clause 6.4.2

¹³ Free TV Code, clause 6.3.1

¹⁴ Free TV Code, clause 6.3.2

¹⁵ Free TV Code, clause 6.2.1

¹⁶ Free TV Code, clause 6.5.1

¹⁷ Free TV Code, clause 6.5.1 and Appendix 3

- Classification Zones
- Protections for Children.

As noted earlier, the Free TV Code was recently registered by the ACMA, recognising that it provided appropriate community safeguards.

Strong compliance record

Broadcasters have very strong compliance levels across their regulatory obligations, and complaint levels are in decline.

Of the 1911 complaints made to broadcasters under the Code of Practice in 2014-15, the ACMA found just three Code breaches in 2014-15. None of these breaches related to a classification issue, or placement of high level content.

This is an exceptional compliance record, especially in light of the reach of commercial free-to-air television, and the volume of material broadcast each day.

Changing viewing habits

The media market today is rapidly evolving and fragmenting, with families and young people using an increasing range of delivery platforms and content sources.

New entrants are flooding into the market driven by new technology, business models and consumer behaviour. Competitors – especially new entrants such as streaming services – are not subject to the same level of regulation as commercial free-to-air broadcasters, and in many cases do not even pay their fair share of taxes in Australia.

Young people are driving the use of these emerging technologies in the new media environment. The latest Nielsen multi-screen report shows that over a month, teens aged 13-17 spent almost half of their screen time watching video on the internet, a smart phone or tablet.¹⁸

It is also relevant to note that parents and carers of children and young people now have a myriad of options to manage their viewing, including:

- parental locks, which are now ubiquitous following the transition to digital television;
- on-demand streaming services (such as Netflix, Presto and Stan),
- information contained in Electronic Program Guides,
- DVDs,
- on-demand content such as iTunes, Foxtel Go and ABC iView;
- two popular government funded, advertisement-free children's channels (ABC2 and ABC3); and
- dedicated subscription children's channels (such as Discovery Kids, Nick Jr and Disney Jr).

¹⁸ OzTam, Regional TAM & Nielsen, *Australian Multi-screen Report, Quarter 3, 2015*, pp 13

The Free TV website contains a special information page about the use of parental locks, following on from a recent on-air campaign by broadcasters on the availability and use of parental locks.

Research indicates that families with children are also heavy users of on-demand content (such as ABC iView)¹⁹, and that the child audience for commercial free-to-air television is in decline. There has been an overall 9% decline in the average daily number of children watching commercial free-to-air television between 2001 and 2013.²⁰

Many of these other platforms are unregulated. Commercial free-to-air television remains the safest place for children to access content in this new media landscape.

¹⁹ See: Australian Communications & Media Authority *Research Snapshot – Supply & demand*: <http://www.acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Supply-and-demand-Catch-up-TV-leads-Australians-use-of-catch-up>

²⁰ Australian Communications and Media Authority (2015) *Children's television viewing – research overview*, p 11 : <http://www.acma.gov.au/~media/Research%20and%20Analysis/Research/pdf/OverviewChildrens%20television%20viewingFinal%20pdf.pdf>