



EXPLANATORY NOTE
REVISED COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE
REGISTERED BY THE AUSTRALIAN COMMUNICATIONS AND MEDIA
AUTHORITY
WITH EFFECT FROM 1 JANUARY 2010

1. What this package contains

This package contains two documents.

- This Explanatory Note, an overview of the Code (Part A), an overview of the main changes (Part B), an overview of the main provisions in the Multi Channel Appendix (Part C) and an Explanatory Table outlining all of the amendments (Part D).
- The registered Code and accompanying Advisory Notes.

2. Process leading to Registration by the ACMA

Free TV Australia and the ACMA reached agreement in July 2009 on the terms of the draft Code that was appropriate for release for public comment. Free TV Australia sought public comment on the draft Code in advertisements in the press in every state and territory on Saturday 15 August 2009. The Explanatory Note and the draft Code were published on the Free TV Australia website (www.freetv.com.au) from Friday 14 August 2009.

Free TV Australia also distributed a press release to the parliamentary press gallery, the metropolitan and regional press, radio and television.

Free TV distributed 537 copies of the draft Code and the accompanying Explanatory Note to those organisations and members of the public who had expressed an interest in the Code.

The public comment period was 6 weeks. Formal extensions of up to two weeks were allowed and submissions were accepted up to 9 October 2009.

Comments received through the public consultation process were considered in the preparation of the final draft of the Code. The Code was then submitted to the ACMA for registration. The ACMA registered the Code with effect from 1 January 2010 on the basis that it was satisfied that:

- it adequately deals with the matters it covers;
- it is endorsed by a majority of commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

PART A: OVERVIEW OF THE CODE

1. The purpose of the Code

The content of commercial television is regulated under the Code of Practice which has been developed by Free TV in consultation with the public and registered with the ACMA.

The Code regulates content in accordance with community standards, assists viewers in making informed choices about their television viewing and provides effective procedures for receiving and handling viewer complaints.

The Code operates alongside the requirements of the *Broadcasting Services Act* and the ACMA Standards which regulate the content of children's programs and advertisements directed to children and the Australian content of programs and advertisements.

The Code is intended to provide clear guidance to television station staff and viewers on what is required in each of the areas it covers. The provisions of the *Broadcasting Services Act* mean that stations may ultimately be subject to serious penalties for non-compliance with the Code.

The Code covers the following key areas:

- classification of program material and provision of consumer advice. Classification is based on an established system of viewing zones which is mainly intended to protect children from unsuitable material, and to provide consumer information in the form of on-screen classification symbols, and advice for higher-classified programs;
- accuracy, fairness and respect for privacy in news and current affairs. A range of provisions ensure high standards in news and current affairs;
- time limits on non-program matter. These balance the need to fund the thousands of hours of program material broadcast by each television station each year against the desire of viewers for a relatively uncluttered program presentation;
- classification and placement of commercials, community service announcements and program promotions; and
- complaints-handling by stations.

The industry recognises that there are additional matters on which guidance is of assistance to reporters and program producers as to the appropriate way in which to present certain material and reflecting current community standards. Attached to the Code, (but not formally part of the Code due to their advisory nature) are a series of Advisory Notes, which contain guidance, advice and recommendations to television station staff.

Advisory Notes deal with:

- the portrayal of women and men; of cultural diversity of Aboriginal and Torres Strait Islander people and of people with disabilities;
- privacy considerations and the framework in which decisions regarding privacy matters must be made. This Advisory Note was expanded in the last Code review;
- guidance on when an advertisement is directed to children. This Advisory Note was introduced in the last Code review;
- treatment of participants in Reality Television programs.

These Advisory Notes supplement the principal obligations in the Code dealing with all of the abovementioned matters.

2. The complaints process

A key function of the Code is to provide a complaints procedure through which viewers can comment on material broadcast, and on other issues covered by the Code.

The Code requires television stations to:

- promote the Code and the complaints process across all viewing zones

- record and pass on to key staff the substance of all telephoned complaints relating to matters covered by the Code
- advise callers how to lodge a formal written complaint
- investigate and respond in writing to all written complaints relating to matters covered by the Code
- advise complainants they may refer their complaint to the ACMA for investigation; and
- provide quarterly reports on the number and substance of all Code complaints.

The Code places the onus on broadcasters in the first instance to respond to community complaints. Experience confirms that this encourages a responsive and interactive dialogue between the industry and the community it serves. Viewers and stations benefit from this interaction. Viewers have immediate access to comment on material, and station classifiers and programmers use this feedback to monitor community standards.

The first point of access for many viewers is the telephone. The substance of all telephone complaints received regarding matters covered by the Code are recorded and passed on to key staff. Viewers who wish to proceed further with a complaint are advised to write to the relevant television station or from 1 March 2010 to lodge a complaint via the electronic form on the Free TV website. Television stations investigate all written complaints relating to Code matters and provide a substantive written response to each complainant. The Code places strict timelines on this process. Where complaints are investigated and upheld by stations remedial action is taken to minimise the risk of recurrence.

If a complainant is not satisfied with a station response to their complaint, the Code provides that the complainant may refer the matter to the ACMA for investigation.

3. The operation of the Code

The Code attempts to balance and provide for the various interests of our diverse society in the delivery of commercial television services. Free TV considers that the current Code is operating very well and, based on viewer feedback received by stations, an overwhelming majority of viewers appear to be highly satisfied with the standard of programming they are receiving on commercial television.

- Each year, each commercial television station transmits over 60,000 hours of programming and the average viewer watches over 1000 hours of television.
- Each quarter, Free TV provides to the ACMA a summary of all Code complaints received by stations during the preceding three months. Between July 2004 (introduction of the previous Code) and 30 September 2009 (the most recent Quarterly Code Complaint Report), the average number of complaints received by all licensees combined was 259 complaints per quarter or less than 5 complaints per month for each commercial station.
- Over the period (July 04 – Sept 09), the number of complaints that were agreed by licensees to be breaches of the Code amounted to just over 3% of the total number of complaints.
- There has been a downward trend in the overall pattern of complaints per quarter over the period, from almost 249 complaints per quarter in 2003/2004 to just under 227 in 2008/2009.
- The ACMA's Annual Reports show that the number of complaints referred to and investigated by the ACMA in the period July 2004 – June 2009 was 383 complaints. Of those 124 (or 32% of total investigations) were found to be in breach of the Code.

PART B: OVERVIEW OF THE MAIN CHANGES

The primary areas of change to the Code relate to the addition of a Multi-Channel Appendix (see Part C below), amendments to the complaints handling provisions to allow for the receipt of complaints via the electronic lodgement system, a new provision dealing with the presentation of participants in reality television programs, amendments to the classification criteria for MA (sex and nudity) and amendments to the news and current affairs, non-program matter and complaints handling sections.

The Explanatory Table accompanying this document outlines in more detail the specific amendments to each of the Code provisions and also notes any related changes to other Code provisions.

Reality television participants [Clause 1.9.7]

Reality television programs are occupying increasing amounts of time on commercial television. In response to community concerns, Free TV has included a new category of proscribed material in clause 1.9.7 to prohibit material which presents participants in reality television programs in a sexual way which seriously devalues that person.

Free TV has also includes an Advisory Note on Reality TV. The Advisory Note will provide guidance to producers on factors to consider in the presentation of participants in reality television broadcasts.

CLASSIFICATION [SECTION 2]

MA Classification criteria [Appendix 4 – Television Classification Guidelines]

The emphasis that the implication or simulation of sexual behaviour must be discreet has been removed, since the term "discreet" is potentially confusing in the context of MA classified content. The category retains the overall requirement that visual depictions of sexual behaviour and nudity be relevant to the program context. The amendments also clarifies that verbal references to sexual activity may be detailed but the impact may not be high.

PROGRAM PROMOTIONS [SECTION 3]

Promotions of an MA program are now permitted at anytime, except in children's and pre school programs, provided the promotion complies with the classification criteria for that time slot and the content and scheduling restrictions in the Code around some G and PG programs.

NEWS AND CURRENT AFFAIRS PROGRAMS [SECTION 4]

Free TV has included additional provisions in the news and current affairs section of the Code.

The amendments are designed to:

1. clarify that an assessment of the accuracy of factual material presented in news and current affairs programs will be determined in the context of the segment in its entirety;
2. encourage broadcasters to voluntarily correct errors of fact at the earliest opportunity; and
3. confirm that a broadcaster will not breach the privacy provisions of the Code if the consent of the person is received. In the case of broadcasts using material about a child, the broadcaster must always exercise special care.

Free TV has clarified the way in which errors of fact in news and current affairs programs are to be assessed under the Code. The clarification will be pursuant to new clause 4.3.1.1 which provides that:

“4.3.1.1 An assessment of whether the factual material is accurate is to be determined in the context of the segment in its entirety. “

Factual statements should not be considered in isolation from the surrounding program. The accuracy of a factual statement should be reviewed in the context of the program its entirety.

Networks have identified that on-air corrections have been readily made in appropriate circumstances. Free TV has included drafting in the Code which will encourage broadcasters to promptly correct demonstrable errors of fact using the most suitable remedial action under the relevant circumstances.

Specifically, Free TV has included additional language to clause 4.3.11 which will provide that a failure to comply with the requirements in clause 4.3.1 to broadcast factual material accurately will not be taken to be a breach of the Code if a correction, which is adequate and appropriate in all the circumstance, is made within 30 days of the licensee receiving a complaint or a complaint being referred to the Australian Communications and Media Authority (whichever is later).

This amendment is intended to provide an incentive for broadcasters to provide timely and adequate corrections where appropriate.

NON-PROGRAM MATTER [SECTION 5]

The amendments to Section 5 are intended to provide licensees with additional flexibility in short promotions in program breaks. Both of these will not count toward the non program matter hourly limits.

Amendments also clarify the maximum and average number of minutes of non program matter which are permitted during an election period and which are scheduled in a news program.

HANDLING OF COMPLAINTS TO LICENSEES [SECTION 7]

Objectives and scope [Clauses 7.1 – 7.5]

Amendments have been made to the complaints handling section to provide that, from 1 March 2010, complainants can make a complaint via the electronic lodgement system on the Free TV website. Amendments also clarify when a complaint falls within the scope of the Code. They are aimed at ensuring the complainant provides sufficient information so the licensee can identify the program or part of a program they are referring to.

Time limits on Responses to Code Complaints [Clauses 7.10 – 7.14].

The process for licensees broadcasting on relay to pass on complaints to other licensees has been simplified. The first licensee can now pass on the complaint directly to the originating licensee.

No further response required [Clauses 7.17 – 7.18]

The amendments provide that if a complainant makes multi Code complaints about a program or series of programs, a licensee need only respond to the first complaint. unless the subsequent complaints raise new and distinct issues.

Further, if a licensee receives a series of complaints from a number of people about the same broadcast they may respond with a generic response (although a substantive response to the issues raised must be provided).

PART C: THE MULTI-CHANNEL APPENDIX

Introduction

This section of the Multi-Channel Appendix sets out the scope of the Appendix and notes that it applies to classification time zones and time occupied by non-program matter on a licensee's multi-channel. It also provides that all other aspects of the content on a multi-channel are regulated under the provisions of the Code.

Future Review of the Multi-Channel Appendix

The Multi-Channel Appendix allows for reviews of the Appendix as required from time to time by broadcasters. This will allow for the rules to be amended in a more flexible way provided that the ACMA is satisfied that an adequate period of consultation has been provided for and that the amendments provide appropriate community safeguards.

2.1 Consequential Amendment to the Code

A consequential amendment to Clause 1.8 is required to refer to amendments to the Multi-Channel Appendix.

- 1.8.1 For the avoidance of doubt, the Multi-Channel Appendix may be amended pursuant to Clause 2 of that Appendix.

Classification Time Zones

All programs and films broadcast on the multi-channel will be classified in the same way as programs on the existing channels. Programs will be classified in accordance with the Television Classification Guidelines and films in accordance with the National Classification Board Guidelines.

For programs on multi-channels a simplified time zone system has been adopted under which programs up to a PG classification may be shown between 5 am and 9 pm. The existing time zones for M, MA and AV programs remain. This means that during the day PG programs may be shown at any time. On school days, M programs may be shown between noon and 3pm.

Licensees will be required to provide consumer advice in PG programs in the extended timezones which contain material which parents or guardians of children may not expect.

Free TV has committed to a public education campaign which will include publicising the new Multi-Channel Appendix and extended PG time zones on the Free TV website and an on air campaign on the digital multi-channels.

With the availability of a parental lock mechanism in many digital set top boxes as additional protection for viewers, Free TV is confident that extended PG timezones on digital multi-channels will provide appropriate community safeguards.

3.1 Consequential Amendment to the Code

A consequential amendment to Clause 2.6.1 of the Code is required to refer to the Multi-Channel Appendix.

2.6.1 The time zones set out in Clause 3 of the Multi-Channel Appendix apply to all material required to be classified on a licensee's multi-channel.

Time Occupied by Non Program Matter

Free TV has included a more flexible regime for the regulation of time occupied by non-program matter on free-to-air multi-channels.

The Multi-Channel Appendix removes the requirement to maintain average amounts of non-program matter across the broadcast day.

PART D: EXPLANATORY TABLE

Clause references refer to numbering in the revised Code.

Subject	Clause	Change	Related changes
SECTION 1: INTRODUCTION			
Various Clauses beginning cl 1.2.1	Various	Updates from ABA (Australian Broadcasting Authority) to the ACMA (Australian Communications and Media Authority)	
Compliance with Code	1.7	Clarifies that clause 1.6 does not apply to significant errors of fact in news and current affairs programs which are subject to clause 4.3.11.	
Amending multi-channel appendix	1.8.1	A new clause 1.8.1 has been included to provide that the Multi-Channel Appendix may be amended from time to time as determined by licensees and with agreement of the ACMA.	
Proscribed Material	1.9.7	Inserts a clause proscribing the broadcast of material presenting participants in reality television programs in a highly demeaning or highly exploitative manner. An Advisory Note on Reality Television has also been included to provide guidance to program producers on factors to consider in the presentation of participants in reality television programs.	Advisory Note Reality Television
	1.11	Amends the name of the AANA Code to "Code for Advertising and Marketing Communications to Children"	
SECTION 2: CLASSIFICATION			
Various Clauses beginning 2.1.6	various	Updates the name of the Office of Film and Literature Classification to the National Classification Board.	

Subject	Clause	Change	Related changes
Classification of Films	2.3.3	Amended to incorporate the National Classification Board Guidelines by reference	Appendix 5
Classification Time Zones on multi channels	2.6.1	Clause 2.6.1 has been added to clarify that the timezones set out in Clause 3 of the Multi-Channel Appendix apply to all materials required to be classified on a licensee's multi-channel. PG programs will be permitted between 5am and 9pm.	
Consumer Advice for certain programs	2.21.1	Amended to provide that the MA and AV symbol must be accompanied by the text "Not suitable for persons under the age of 15", as agreed by Free TV and the National Classification Board.	2.21.3.3
	2.21.3.3	Amended to provide that for all MA and AV programs, the consumer advice voice-over must say "Not suitable for persons under the age of 15", or other text agreed by Free TV and the National Classification Board.	2.21.1
SECTION 3: PROGRAM PROMOTIONS			
Promotions for Programs Classified MA	3.2 and 3.14	Amended to permit promotions for MA programs at any time except during C and P programs, provided the material is suitable for the classification zone in which it is shown and it complies with the other scheduling and content requirements for G and PG programs.	3.14
Restrictions in G viewing periods	3.8	Replaces the words "which start at" to "which are scheduled to start at" for consistency with 3.11	
Promotions for programs classified MA or AV	3.15 and 3.2.1	Retains the restrictions on promotions of AV programs	3.2
Display of Classification Symbols	3.16	Amends the reference from clause 2.18.3 to clause 2.18.	2.18

Subject	Clause	Change	Related changes
SECTION 4: NEWS AND CURRENT AFFAIRS PROGRAMS			
News and current affairs programs	4.3.1	The term “present” has been replaced with “broadcast “.	
	4.3.1.1	New Clause 4.3.1.1 provides that the context of the segment in its entirety is relevant in determining whether there has been an error of fact.	
	4.3.5.1	A new clause 4.3.5.1 clarifies that, subject to the requirements of clause 4.3.5.2 in relation to children, the privacy clause will not be breached if the prior consent of the person is obtained prior to broadcast of the material.	
	4.3.11	Clause 4.3.11 has been amended to provide that a failure to comply with the requirements in clause 4.3.1 to broadcast factual material accurately will not be taken to be a breach of the Code if a correction, which is adequate and appropriate in all the circumstance is made within 30 days of the licensee receiving a complaint or a complaint being referred to the ACMA (whichever is later).	
SECTION 5: TIME OCCUPIED BY NON-PROGRAM MATTER			
Definitions	5.4.3.1	Amended to provide that only program promotions longer than 10 seconds (rather than of any length) amount to non-program matter under clause 5.4. Further, the reference to material "which promotes the station or its activities" has been deleted since it is inconsistent with clauses 5.5.8.5 and 5.5.11.	
	5.5.8	Amended to extend the time limit for the broadcast of the visual material amounting to exempt non-program matter set out in cl 5.5.8.1 to 5.5.8.5 from 10 seconds to 30 seconds and remove the limitation in cl 5.5.8.2 that a spoken or visual listing of programs be broadcast "that day/evening".	5.5.4

Subject	Clause	Change	Related changes
Hourly limits	5.6.3	Amended to clarify that 15 minutes of non-program matter is permitted per hour at the times covered by the clause, although added restrictions may apply in C and P periods.	5.6.3.1
	5.6.3.1	Inserted to provide that where an hour includes a news program during an election period, 16 minutes of non-program matter is permitted, so long as on average, no more than 15 minutes comprises non-program matter which is not political matter.	5.6.3
	5.7.2	Removed and included as new clause 5.8.	5.8
	5.7.3	Amended to clarify that the 16 minute per hour limit on non-program matter at "all other times" (i.e. other than the period specified in clause 5.7.1) applies in non-election periods.	
	5.7.4	Inserted to provide, "at all other times" (i.e. other than the period specified in clause 5.7.2) in election periods, a 16 minute per hour limit for non-program matter, plus one minute per hour of non-program matter that is political matter and scheduled in a news program.	5.8
	5.8	Inserts the provision which was previously clause 5.7.2 requiring licensees to supply Free TV for public release an hourly summary of political advertising and other non-program matter in respect of each day in which an additional minute has been utilised under cll 5.7.2 or 5.7.4.	5.7.2, 5.7.4
Non-Program Matter on Licensees' Multi-Channels	5.10	Inserts a new clause which provides that Clauses 5.6 – 5.10 of the Code (relating to the requirement to maintain average amounts of non program matter across the broadcast day) do not apply to non program matter on a Multi-Channel.	
Non-Program Content Displaced by Policy Speeches or Debates	5.11.2	Amended to provide that displaced non-program matter which is made up in other hours will not be included in the calculation of the average number of minutes of non-program matter permitted in that hour under clause 5.6 or clause 4.2 of the Multi-Channel Appendix.	

Subject	Clause	Change	Related changes
Make-Up of Non-Program Matter from Certain Broadcasts	5.12.2	Amended to provide that displaced non-program matter which is made up in other hours will not be included in the calculation of the average number of minutes of non-program matter permitted in that hour under clause 5.6 or clause 4.2 of the Multi Channel Appendix.	
	5.12.3	Inserted to provide that Clause 5.12.2 does not apply to non program matter broadcast on licensees' multi channels.	
Make up of non program matter from the broadcast of a sporting event	5.13	Amended to include "or clause 4.2 of the Multi Channel Appendix" after the words "clause 5.6"	
SECTION 6: CLASSIFICATION AND PLACEMENT OF COMMERCIALS AND COMMUNITY SERVICE ANNOUNCEMENTS			
Children's Television Standards	6.20	Clause 6.20 has been amended to provide that Children's Television Standards 30-34 will be incorporated by reference.	
SECTION 7: HANDLING OF COMPLAINTS TO LICENSEES			
Objectives	7.1.4	Amended to provide that an object of the Section is to ensure that licensees respond promptly to written complaints received by the licensee within 30 days of the relevant broadcast.	7.2, 7.3
Scope	7.2	Amended to clarify that a complaint must identify, in sufficient detail, the material broadcast (including by reference to the date and time of broadcast, if possible); the nature of the complaint and the identity of the complainant.	7.1.4, 7.3, 7.14
	7.3	Confirms and clarifies that Section 7 does not apply to complaints which do not satisfy the requirements of clause 7.2.	7.1.4, 7.2

Subject	Clause	Change	Related changes
	7.4	Amended to clarify that a complainant need not refer to specific code clauses.	7.2
	7.5	Amended to provide that from 1 March 2010, a complaint may be made by lodging the electronic form on the Free TV Australia website.	7.6
Time Limits on Responses to Code Complaints	7.11	Amended for consistency with changes to clause 7.2 and 7.15.	7.2, 7.15
	7.13	Amended to provide the licensee 10 working days to refer a complaint to another licensee directly where the second licensee is responsible for the broadcast complained of (rather than requiring the first licensee to provide the second licensee's contact details to the complainant).	
Resolution of Complaints	7.16	Inserts a new provision which provides that a licensee need not provide a substantive written response to a complainant if the matter raised by the complainant is or has become the subject of legal proceedings.	
No Further Response Required	7.17	Inserts a new provision that provides that if a person makes multiple Code complaints about a program or series of programs, the licensee is only obliged to respond to the first complaint, unless the subsequent complaints raise new and distinct issues.	
	7.18	Inserts a new provision which provides that if a licensee receives a series of complaints from a number of people or group of persons about the same broadcast, the licensee may respond with a generic response on the issues subject to the obligation in clause 7.10 to provide a substantive written response to all issues raised in the complaint.	

Subject	Clause	Change	Related changes
Appendices			
AANA Codes	Appendices 1 and 2	The most recent versions of the AANA Advertiser Code of Ethics and the Code for Advertising and Marketing Communications to Children have been included in the revised Code.	
Television Classification Guidelines	Appendix 4		
Various clauses beginning 2.1	Various	Replace “behaviour” with “activity” consistent with the amendments to MA15+ sex and nudity	
Mature Audience (MA) Classification	5.2	Amended to remove the requirement that visual depictions of intimate sexual behaviour be implied or simulated only discreetly. Clarifies that verbal references to sexual activity may be detailed but the impact may not be high (ie no higher than strong). Visual depiction of nudity, verbal references to sexual activity must be relevant to the story line or program context and impact shall not be high (ie no higher than strong).	
Multi Channel Appendix	Appendix 6		
Scope	1.1, 1.2	The Multi-Channel Appendix will apply to classification time zones and time occupied by non program matter on digital multi channels. Regulation of content other than in relation to time zones and non program matter are determined by the other provisions of the Code.	
	1.3	Includes a definition of multi-channel to distinguish it from the core channels (before analogue switch off) and primary channels (after analogue switch off).	

Subject	Clause	Change	Related changes
Future Review of the Multi-Channel Appendix	2.1 and 2.2	Provides that the Multi-Channel Appendix can be reviewed from time to time as determined by the broadcasters and the ACMA.	1.9.1 Code
Classification Zones	3.1 - 3.5.	PG programs will be permitted on digital multi-channels between 5am and 9pm. M, MA and AV programs can be shown during the time zones in clauses 2.10-2.12 of the Code.	2.6.1 Code
	3.6	Requires licensees to provide consumer advice with any PG classified programs in the extended PG timezone that contains material of a strength or intensity which the licensee reasonably believes parents or guardians of young children may not expect.	
Public Education Campaign	4.1 and 4.2	Provides a commitment by broadcasters to publicise the new Multi-Channel Appendix and extended PG timezones through information on the Free TV website and on air promotions on the digital multi-channels.	
Time occupied by non program matter	5.1 and 5.2	Provides upper limits on the amount of non program matter permitted on digital multi-channels. Averaging requirements do not apply for non program matter on digital multi-channels.	5.10 Code