



FreeTV
Australia

**Submission by
Free TV Australia Limited**

Australian Communications and Media
Authority

Reality Television Review 2007

By
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Executive Summary

- The Commercial Television Industry Code of Practice has been developed in line with the provisions of the Broadcasting Services Act 1992.
- It is working effectively with a low level of complaints in relation to the broad sweep of commercial television programming.
- Australian viewers have embraced reality television, particularly over the last five years. Reality programs are amongst the most loved Australian programs, and receive few audience complaints relative to their popularity.
- The content of these programs is in line with community standards and there is no evidence of widespread or systemic concerns. There have been 374 complaints to broadcasters since 2001/2002, only 14 were referred to ACMA and just 4 complaints were upheld.
- The television classification system is comprehensive and detailed to ensure that it covers the full scale of television programming which includes drama, documentary, sport, news and current affairs, light entertainment and variety as well as reality TV programming.
- There is no evidence that the Code cannot deal effectively with any concerns raised around reality TV programming.
- However, broadcasters recommend that Free TV Australia and ACMA work together to develop an advisory note in the upcoming Code review which will assist the industry and viewers to understand how the classification guidelines apply in a reality television context.
- The existing, co-regulatory complaints process deals effectively with complaints about reality TV programming. Under this system, the majority of cases are quickly resolved between the viewer and the broadcaster, with viewers assured of a timely and substantive response. Amending this system is likely to add an extra layer of bureaucracy to an already efficient system.
- The incidence of Code breaches is very low, particularly in the case of reality television. However, ACMA's ability to deal with breaches has been significantly enhanced by the Federal Parliament's decision to give ACMA increased enforcement powers. These powers take effect from 2007.
- Some concerns expressed in relation to reality television are outside the scope of the Commercial Television Code, for example, reality television content distributed over the Internet. Broadcasters understand that these concerns are being dealt with separately by the Government and support this approach.

Introduction

Free TV Australia is the industry body which represents Australia's commercial television licensees.

It develops and manages the Commercial Television Industry Code of Practice in a system of co-regulation between the industry and the regulator.

The Code is legislated for under the Broadcasting Services Act 1992. The BSA provides that the commercial television industry group “develop, in consultation with the [ACMA](#) and taking account of any relevant research conducted by the [ACMA](#), codes of practice that are to be applicable” to the industry. It also calls for regular reviews of the Code to ensure it is in accordance with prevailing community standards¹.

The most recent Code review was undertaken in 2003/04 and the current Code was registered by the Australian Broadcasting Authority in July 2004.

The review process included a six week public consultation process and over 1,300 submissions were received from members of the public and interested community groups. There were 47 substantive submissions.

Although reality television programs were prolific at the time of the review, no substantive concerns were raised about their content.

This submission addresses the following topics:

- **Section 1** addresses the difficulty of coming up with a precise definition of reality TV.
- **Section 2** addresses Question 1 of the discussion paper looking at what concerns exist about reality television; how widespread the concerns are; and the impact of reality television on viewers and participants.
- **Section 3** addresses whether or not the Code reflects community standards
- **Section 4** addresses Question 3 of the discussion paper with regards to the appropriateness of classification guidelines for reality television. It also outlines how existing mechanisms in the Code worked to address concerns about Big Brother Uncut in 2005.
- **Section 5** demonstrates how the current News and Current Affairs provisions of the Code work to safeguard the community with regard to the use of excerpts of reality TV shows.
- **Section 6** addresses Question 5 of the discussion paper outlining how the complaints mechanism is operating in an effective and timely manner.

¹ Broadcasting Services Act 1992 s.123 and 123A.

1 Origins and characteristics of reality television programming

Reality TV has been a part of television since its earliest days *Candid Camera* which commenced broadcasting in the United States in 1948 is probably one of the first examples.

In Australia there has been a wide range of programming that contains some of the elements that we recognise as reality television involving real people in extraordinary situations.

Academic writing² about reality television highlights the difficulty of defining reality television and agrees that it is a “catch-all category” that has been used in recent years to cover a style of programming that includes docu-soaps, game shows, observational contest programs and talent quest programs.

As the Reality Television Review discussion paper notes a precise definition of “reality TV” programming is difficult as it is not a single genre. This can be seen in Australia where the catch-all category has been applied to programming that ranges from cinema verite docu-soaps or factual programming such as *RPA* and *Border Security*, to observational contest programs like *Big Brother* and *Survivor* and talent quest programs such as *Australian Idol*, *Dancing with the Stars* and *Dancing on Ice*.

Given this diversity of content it is difficult to be precise about a definition of reality television.

Free TV agrees with the discussion paper’s analysis of the typical characteristics of reality television programming. But the paper itself notes that the list is not definitive and “may change over time as reality television programming models evolve”.

This highlights the difficulty of attempting to proscribe specific rules in a Code of Practice for a broad group of programs which do not always have the same characteristics or issues.

In some cases programming may be loosely included under a broad heading of “reality” when it actually fits more neatly into a specific category like documentary, variety, light entertainment or infotainment or factual programming.

For example, *Jamie’s Kitchen*, which is included as an example of reality television in the discussion paper, won an award in the United Kingdom for best documentary and was also nominated in the best feature category³.

As the discussion paper notes reality programs and documentaries share a number of common features and ACMA has developed guidelines on the meaning of “documentary” for the purposes of the Australian Content Standard.

² Annette Hill in “Reality TV: Audiences and Popular Factual Television” (Routledge 2005) describes reality TV as “a catch-all category that includes a wide range of entertainment programmes about real people.” Su Holmes & Deborah Jermyn in “Understanding Reality TV” (Routledge 2004) say “Debates over definition, we suggest, are inextricably enmeshed with the concept of generic hybridity in reality TV”. Richard Kilborn writes that reality TV is “something of a catch-all phrase” in “How Real Can You Get?: Recent Developments in ‘Reality’ Television” (European Journal of Communication 1994).

³ *Jamie’s Kitchen* won Best Documentary series at Broadcasting Press Guild Awards 2003 and was nominated in the Best Feature category of the BAFTA TV Awards 2002.

The guidelines state that a documentary program means “a program that is a creative treatment of actuality other than news, current affairs, sports coverage, magazine, infotainment or light entertainment program.”

The guidelines state that “reality” shows are programs that “depict ‘real people’ (non actors) in ‘real life’ (non-scripted) situations.” While the guidelines note that some forms of reality programming will be readily accommodated under the documentary definition, other forms, “particularly those in which participants are placed in a contrived situations, can pose difficulties for categorisation.”

Any attempt to draw up a set of guidelines on what constitutes reality television programs risks focusing on a range of programs which are extremely popular, have demonstrably raised no concerns with the community, and belong within another category of programming.

If ACMA does seek to define and separately regulate reality television in some way then we would recommend that:

- programs would need to meet all, not just some of the characteristics as determined by ACMA
- there is a clear carve out for programs such as docu-soaps and talent quests
- any program which meets the requirements of the documentary guidelines for the Australian content standard should be distinguished from reality television.

2 Community Standards regarding reality television programming

Internationally and in Australia the broad range of programs which fall under the “reality television” heading have been extremely popular. These programs are largely uncontroversial, and as Code complaints figures demonstrate, do not give rise to community concerns.

2.1 Does reality television give rise to concerns?

Since 2001, the broad scope of reality TV programs have dominated Australia’s top program lists. Indeed in 2006, 30 per cent of the top 20 programs were reality programs⁴. Over the last five years, sport is the only genre of programming which has had more programs in the top program lists than reality⁵. **Appendix 1** shows the top 20 programs for 2002 to 2006 inclusive, and demonstrates the popularity of reality shows.

Even though reality television programs are amongst the most watched programs on Australian television, broadcasters receive relatively few Code complaints about them. **Appendix 2** illustrates the level of code complaints each quarter since January 2000 where the mean number of complaints per quarter is about 240.

⁴ OzTAM data; 5 City Metro, All People, Calendar year, 2am-2am. Includes *Dancing With the Stars*, *The Biggest Loser*, *Australian Idol* and *Border Security*.

⁵ OzTAM data; 5 City Metro, All People, Calendar year, 2am to 2am (2002-2006 inclusive – see Appendix 1)

In the past five years, there have been a total of 3,834 complaints reported by licensees about all programs. In the same period, there have been just 374 complaints about the reality television programs. In other words, complaints about reality television programs have made up just 9.75 per cent of total complaints about television content over the past five years⁶. This is illustrated further in **Appendix 3**.

Of the 3,834 complaints about television programs, 310 were referred by the complainant to the ACMA, with 99 complaints upheld⁷. By contrast, just 14 complaints about reality television content have been referred to ACMA in the same period. The number of complaints upheld by the ACMA in this time was only 4⁸. As the Reality Television Review paper notes, these breach findings were specific to two episodes of *Big Brother Uncut*, in a single series of *Big Brother* (2005). This program has since been cancelled.

The number of complaints received by broadcasters about reality programming is low by any measure but especially so once the high ratings for such programs are taken in to account. For example the *Big Brother Daily Show* delivered more than 38 hours of content in 2006 to average audiences each day of 1.1 million viewers, yet it drew just 14 complaints over the year. *The Biggest Loser* had average audiences of 1.2 million viewers per show and despite delivering more than 32 hours of content in 2006, attracted just three complaints. And *Survivor – Panama Exile Island* drew no complaints despite average audiences of over 1 million⁹.

The success of international formats such as *Big Brother*, *Survivor*, *Idol* and *Dancing with the Stars* highlight their widespread popularity both in Australia and overseas.

Part of the appeal of reality television programming is the opportunity to observe ordinary people in a variety of different situations. This leads to private and public discussion of issues relevant to the lives of many people. Although these programs occasionally catalyse public debate, more often they are the source of widespread popular discussion on talk back radio, in newspapers and online.

The public interest in the successful competitors in *Dancing with the Stars*, for example, highlights an attraction of the genre; the opportunity to support your favourite and to participate in a discussion beyond the normal group of family and friends, over whether or not the judges have treated competitors fairly and who should win and why.

2.1.1 Controversy v Community Standard

It is important in considering these issues to distinguish between controversy and community standards. The television industry Code of Practice has a detailed classification system which is built around a community consensus about the type of content that can be shown on television. This community consensus is based on the likelihood of material causing offence or harm,

⁶ Complaints registered with Free TV from all commercial TV licensees from July 2001 to 22 Jan 2007. 06/07 figures refer only to complaints received and do not include any ACMA figures as they are not yet available. (See Appendix 3) The last six years are used because it is over this period that reality television has gained prominence.

⁷ Ibid.

⁸ Ibid.

⁹ OzTAM data 2006. 5 City Metro – All People

which in turn determines the appropriate times at which particular types of content can be shown. For instance there is a Community standard that X and R rated programs are not shown at all on commercial free to air television. And stronger material in the M and MA15+ category is limited to times when adults are the majority audience.

This is distinct from controversial issues, which may generate debate, division and criticism, but which nonetheless will not be regarded as offensive.

Content can be controversial, and catalyse a broad debate, without breaching community standards. In fact, controversy and debate are essential elements of a robust and healthy democracy. It is through this process that different viewpoints are heard, and the community reaches agreement on contested public issues.

The media frequently focuses on controversial issues for instance, the debate about immigration and multicultural policy. These debates are often heated, and comments are often made which offend some sections of the community. However, this does not mean that the debate itself is in breach of community standards and should be shut down.

Equally, while community attitudes vary and there is continuing discussion about the nature of the “reality” of reality television, the genre clearly raises a number of issues that reflect the debates going on in the community itself - questions about sexuality, bullying, peer pressure, race, religion and gender roles and relations.

This can have a positive effect in highlighting an issue and encouraging further community discussion about ethical issues. The fact that some members of the community take a strong dislike to some issues being raised at all is not a reason to ban or restrict comment.

Furthermore, the fact that these issues arise on the program does not mean that so-called “bad behaviour” is being condoned or promoted. On the contrary, the behaviour is usually condemned by other participants, viewers and the media and the offending contestants may even be punished or removed. Where there is a voting element to reality television programs, participants who are seen to engage in undesirable behaviour are inevitably voted off the program and it is generally the “nicest”, most dedicated or most talented person who wins.

Reality television programs also present a range of positive images and opportunities for participants and the wider community and many reality programs have an inspirational component. These programs follow people who have chosen to change their life for the better, and invite the audience to experience the hard work, motivation and joy associated with this journey.

For example, *Jamie's Kitchen Australia* provided 15 disadvantaged young adults with the opportunity to turn their lives around and learn a profession. Talent programs like *Australian Idol* provide young Australians from across the country with the chance to realise their dream of becoming a singer. *The Biggest Loser* profiles a group of people who are motivated to lose weight to improve their health and lifestyle, and provides them with the expert advice and training to do so.

2.2 Nature of Concerns

As demonstrated above (Section 2.1), there is no evidence of widespread community concern over the content of reality television programs.

In the last review of Commercial Television Industry Code of Practice there were no substantive submissions received relating to reality television programming. The main concerns contained in the submissions received were around general classification issues and children's programming times. Just seven of the 1,300+ submissions to the review, mentioned reality TV. Of those, one submission suggested that swearing should be left silent rather than bleeped out, another was concerned with advertising in factual programming and the remaining five did not raise any Code issues but were concerned with the style of programming generally.

This low level of concern is borne out in Code complaint and ratings figures.

Since the new Code commenced in 2004, just ten complaints about reality television have been referred to ACMA, and only four were upheld¹⁰. As the Reality Television Review paper notes, all of these upheld complaints related to two episodes of a single program, *Big Brother Uncut*, in a single series of *Big Brother* (2005). This program has since been cancelled, however, at the time, the breaches were effectively dealt with by ACMA and the broadcaster responsible.

The Reality Television Review paper also raises a controversy during the 2006 series of *Big Brother* in which two male housemates were removed from the program for breaching the program's rules. The eviction of the two men from the house by producers for breaking the rules sent a strong message that their actions were unacceptable and could not be tolerated under any circumstances. While it is true that the incident prompted a high level of media attention and public debate, the concerns that were expressed were beyond the scope of the television Code because they did not relate to material that was broadcast.

For example, some concerns were expressed about the behaviour being inadvertently streamed over the Internet. This is already being dealt with by the Government in the Content Services Bill 2007.

There is no evidence that viewers have a general concern about the content of reality television programs. In the few instances where ACMA has been asked to investigate a reality program, the complaints have been very specific and appropriately dealt with under the current Code. Any additional issues unrelated to content shown on television must be dealt with through the appropriate Federal or State law as they are outside the scope of a Broadcasting code.

¹⁰ Ibid. July 2004 – January 22, 2007.

2.3 Impact of reality television on viewers including children

Free TV is not aware of any research which suggests that reality television has any negative impacts on viewers, including children. Managing the impact of programming on viewers of all ages is dealt with comprehensively through a system of classification spelt out in detail in the Commercial Television industry Code of Practice.

The Code's classification system draws from the Office of Film and Literature Classification guidelines for its general categories, (G, PG, M, MA15+), but differs from it in that it is more detailed and includes specific time zones covering when certain programs may be broadcast.

Broadcasters also provide detailed consumer advice for all M and MA15+ programs and some PG programs. And most importantly any programs with a classification higher than G are clearly restricted from broadcast during certain time zones. The concept that more adult programming is allowable later in the evening is widely accepted. For example, Britain has the single "watershed principle" which means that adult content is allowed after 9pm and New Zealand uses an AO Category which means programs can only be shown after 8.30pm.

The classification given to a program is determined according to the impact (frequency and intensity) of key elements such as violence, sexual behaviour, nudity and coarse language¹¹. It is a key principle in classification that material that shows real people and events will have a greater impact than a similar situation in a fictional setting. Close consideration is given to the context of the material and its likely audience.

The Code classification system is designed to cover all forms of programming provided by commercial television. This includes drama, commercials, light entertainment, variety, documentary, reality television and sport. While it provides more detail than the OFLC Guidelines, it is deliberately expressed in general terms so that it reflects core community standards whilst retaining the flexibility to deal with evolving program genres and issues that cannot be foreseen. Clearly part of the consideration of "context" is the genre in which the material appears.

The guidelines are preceded by essential principles that clarify how a television station will determine the impact of a program. For example, the principles state that the suitability of material for telecast will be influenced by the purpose of a sequence, the tone, the camera work, the relevance of the material, and the treatment.

2.4 The impact of reality TV compared to other genres

Each television station employs expert, in-house classifiers to review programs before they go to air. When applying the classification guidelines to reality television, the classifiers allow for the fact that the programs feature real people in unscripted situations, and therefore the impact is likely be higher when compared to a fictitious drama program. For example, classifiers are likely to

¹¹ Commercial Television Industry Code of Practice – Appendix 4: Television Classification Guidelines Pg 23.

require more restrained use of coarse language, particularly if it is used in an aggressive manner.

For the same reason, behaviour which may be simulated in some detail in a drama program is not shown on reality television programs because it would be real, for example no actual sexual behaviour is permitted, and violence and drug use are rarely, if ever, shown.

The classification categories and time zones are well established and well understood by viewers. Research conducted by the Australian Broadcasting Authority¹² in 2003 looking at attitudes to violence on television found that there is an “extremely high awareness” of classification symbols, consumer advice and restrictions on the time a program is shown.

Once again, the generally low level of complaints about reality television programs when compared to their high ratings is evidence that viewers are generally satisfied with the content.

2.5 The effect of reality television programs on participants

Reality television programs are highly popular and it is not uncommon for many thousands of people to audition for programs if given the opportunity.

Participants in reality television programs actively agree to take part in the program. They are usually aged over 18, although occasionally may be 16 and over. Rigorous screening processes are undertaken to determine their suitability for particular shows, including medical and psychological assessments. An important part of contestant's selection is their ability to cope with the show's demands.

Before signing on, participants receive an extensive briefing from the producer and often a legal representative about the filming processes and responsibilities. It is also standard practice on programs like *Big Brother* and *Survivor* to have a qualified psychologist on hand to counsel participants before the show begins, as it progresses and as their participation ends. The fact that reality television programs have been a prominent feature of Australian television for so many years means that contestants have a reasonable idea about what participation involves, and how they will be portrayed on the program, and are therefore making an informed choice to audition.

Broadcasters and producers acknowledge their responsibility to look after the welfare of contestants on reality television programs and to ensure that contestants live in a safe environment. Many safeguards are used on-set to ensure that these obligations are met, ranging from having emergency evacuation procedures in place to ensuring that medical assistance can be provided to contestants whenever it is needed.

Reality television contestants are closely monitored whilst participating in the show. In some cases, such as *Australian Princess* and *Australian Idol*, a person is employed to live in the same house as the contestants to ensure their

¹² “Research into Community Attitudes to Violence on Free-to-Air Television”. Research conducted by AC Nielsen for the Australian Broadcasting Authority, 2003.

welfare and prepare their meals. Participants are always free to leave a program if they no longer wish to take part.

For many participants' involvement in a reality show opens up new opportunities and has a positive impact on their lives. Former reality TV contestants talk of their participation as a highly valued time because it enables them to try new experiences that would otherwise be out of reach. For example, most contestants on *Australian Princess* had never travelled overseas. In both series approximately five girls had the opportunity of travelling to the UK and being exposed to once in a lifetime experiences such as visiting Royal Epsom and seeing the Queen, speaking to expatriates at Australia House, and visiting castles and historical landmarks. Many participants in reality television shows have used their experience as the launching pad for a new career.

In reality TV as in life, adults make informed decisions about the situations they put themselves in and so long as no law is broken it is not the regulator's place to judge what is "best" for them.

3 Does the Code reflect community standards with respect to reality television programming?

The entire Code process is designed to ensure that programming on television is in line with community standards. It is a requirement of the BSA that the regulator must only register the code if it is confident it does reflect community standards and there has been sufficient public consultation.

The system for ensuring that the Code continues to reflect community standards is very thorough. The Code is reviewed every three years.

The process for the review includes:

- a detailed negotiation between Free TV and the regulator in the development of the draft revised code
- an extensive public consultation process which includes national advertising of the draft Code and a six week submission period
- a thorough review of all submissions by Free TV followed by a detailed report to the regulator including making all submissions available to the regulator
- a final discussion between Free TV and the regulator on the issues arising from the public consultation
- amendments to the revised Code taking into account the public submissions submitted to ACMA by Free TV

ACMA registers the Code in line with its obligations under the Act to ensure that the Code meets community standards.

The ACMA Board acts independently to determine that there are adequate safeguards in the Code and that there has been a proper public consultation.

This process has operated well over the last fifteen years and the Code has evolved and developed in that period to meet issues as they arise. An example of this can be seen in the new provisions covering the disclosure of commercial interests in factual programming. This element of the Code was developed in light of public debate surrounding the ABA's Cash for Comment inquiry into Commercial Radio.

It did not reflect any issues that had arisen in commercial television, but rather a recognition by broadcasters of the need for transparency in this area as programming styles changed along with the expectations of viewers.

The last Code review provides an example of how the system works to ensure the Code reflects community standards. One of the key issues of concern was a proposal to extend the PG time zones which had not been reviewed in many years and which reflected a time when children did not have the range of entertainment options available to them today.

The public submissions made it very clear that viewers did not support extending the PG time zones in the early hours of the weekend mornings, or into the late afternoon on week days. As a result the proposal was amended and the extension of the PG time zones was limited to half an hour on week days and did not include the early morning hours of the weekend.

As we have already noted, no substantive concerns about reality television were raised in the most recent Code Review even though many reality programs were on air, including *Big Brother* which began in Australia in 2001, three years before the Code review was completed. This demonstrates that although a small proportion of people do not like the genre, reality TV programming is broadcast in line with community standards.

Outside of the review period, the Code's consistency with community standards is measured through the public complaints process. As previously demonstrated, over the past five years complaints about reality television programs have made up just under 10 per cent of the overall complaints about television programming. This is a sure sign that the Code is working well and that audiences are generally satisfied with the classification of reality television programs.

<p>4 Are the existing mechanisms in the Code operating effectively to provide appropriate community safeguards with respect to reality TV programming</p>
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Reality television programs are subject to the same classification requirements of all commercial television programming. As discussed previously the Code rules are specifically designed to ensure that they meet the needs of all programming.

The classification guidelines are further strengthened by the time zone requirements and the use of consumer advice for M and MA15+ programs and some PG programs. This allows broadcasters to strike a balance between protecting children and catering for an adult audience through adult themes and content. As always, parents and guardians continue to play a vital role in monitoring what their children are watching.

As already mentioned, research by the ABA in 2003 demonstrated consumer awareness of the general classification system has increased significantly since the late 1980's largely because of the use of classification system and the accompanying consumer advice by broadcasters.

There is no demonstrated failure of that system in relation to reality television.

In the past five years, reality television complaints have made up just 9.75 per cent of all complaints to broadcasters. Of those 374 complaints, only 14 were referred to ACMA for investigation. This means that in 96 per cent of cases the issue was resolved between the broadcaster and the complainant, and there was no need for further intervention by the regulator.

Of the 14 complaints investigated by ACMA, 4 resulted in breach findings. Importantly, all of these breach findings related to two episodes of the program, *Big Brother Uncut* in the 2005 series.

4.1 Proposed Advisory Note

While we are confident the Code deals effectively with any concerns around reality TV programming, broadcasters understand that it is a document which evolves according to changes in programming and community views. For this reason, we propose that Free TV Australia and the ACMA work together to develop an advisory note in the upcoming Code review process which will assist the industry and viewers to understand how the classification guidelines apply in a reality television context.

4.2 Experience of existing mechanisms in relation to Reality TV

One of the distinguishing features of *Big Brother Uncut* was that it was rated MA, contained nudity and sexual references, and dealt with a range of adult themes. Not only was this the first and only time that ACMA has ever made a breach finding against a reality television program, it was also the first time that ACMA had made a breach finding about an MA rated commercial television program.

As a result, the investigation findings published by ACMA were useful in providing further detail about how the MA provisions of the Code should be applied, particularly in a reality television setting. Until these decisions, there was some confusion about what the MA clause allowed. This is an example of a situation where an advisory note would have been helpful in preventing unsuitable material from being telecast and certainly the advisory note proposed by broadcasters would draw on these findings.

After the ACMA breach findings against *Big Brother Uncut*, Network TEN made nine undertakings to ACMA designed to prevent a further breach of the Code. These undertakings were successful. Network TEN made a number of changes to the classification of *Big Brother Adults Only* in 2006. As a result no episode of *Adults Only* breached the Code. Furthermore, seven episodes of *Big Brother Adults Only* were broadcast in 2006, but only eight Code complaints were received, a dramatic drop from the 2005 series. Two of the complaints were

received after Network TEN had cancelled the show and it was no longer on air. An average of more than 900,000 people watched each episode of *Big Brother Adults Only*, so the complaints reflected a very minor proportion of the audience.

The low level of complaint and breach findings indicates that reality television does not need to be treated differently from other genres of programming.

Given the difficulty in defining reality television, any attempt to craft a special set of rules to apply to this kind of programming appears to us to be overly punitive and likely to impose requirements on a range of programming for which there has been no demonstrated concerns or failure of the proper protections already built in to the Code.

Despite reality television programs being shown in over 70 countries around the world, we are not aware of any specific set of regulations related to reality television, particularly in any similar jurisdiction to Australia (UK, US, Ireland, Canada and New Zealand).

<p>5 Does the Code provide appropriate community safeguards with respect to the broadcast of reality television excerpts in news and current affairs programs?</p>

The Code deals with news and current affairs separately from other forms of programming.

New and Current Affairs programs are exempt from the usual classification guidelines that apply to other programs. This allows them to report on subjects that might not otherwise be shown in a particular time zone. This is in recognition of the need for an open and free media which is one of the key stones of a democratic society.

However the Code makes it clear that this is not a blanket exemption. There are a range of protections built in to both the Classification section of the Code and the News and Current Affairs Section to ensure that the public interest is properly served and that there are adequate warnings for material that may seriously distress or offend.

In the Classification Section of the Code there are a number of relevant clauses. The first outlines the exemption for news and current affairs from the scope of the Classification rules.

Clause 2.4.1 of the Code states:

“These programs do not require classification, provided that the licensee exercises care in selecting material for broadcast having regard to:

2.4.1.1 the likely audience for the program; and

2.4.1.2 any identifiable public interest for presenting the program material”.

The next two deal with **all** material that may distress or offend viewers.

Clause 2.14 “Only if there is an identifiable public interest reason may a licensee broadcast a news and current affairs program contain material which, in the licensee’s reasonable opinion, is likely to distress or offend a substantial number of viewers.

2.14.1 If such material is likely, in the licensee’s, reasonable opinion, to seriously distress or seriously offend a substantial number of viewers then the licensee must provide the adequate prior warning required by Clause 2.26.”

To make clear the specific requirements on exempt news and current affairs programs there is a further section which specifically covers the warnings that must be made and where and how they are to be made.

2.25 A licensee must provide prior warning to viewers when a news and current affairs, or other program which does not carry consumer advice includes, for an identifiable public interest reason, material which in the licensee’s reasonable opinion is likely to seriously distress or seriously offend a substantial number of viewers. The warning must precede the relevant item in a news and current affairs program ...

2.26 Warnings before the broadcast of material of this nature must be spoken, and may also be written. They must provide an adequate indication of the nature of the material, while avoiding detail which may itself seriously distress or seriously offend viewers.

These Classification rules are reinforced in Section 4 of the Code which deals with News and Current Affairs programs.

Among the objectives laid out for this section of the Code is ensuring that

“4.1.2 News and current affairs programs are presented with care, having regard to the likely composition of the viewing audience and, in particular the presence of children;”

And again in 4.3.2 it is stated that in broadcasting news and current affairs programs, licensees:

“must provide the warnings provided by Clauses 2.14 and 2.25 of this Code when there is an identifiable public interest for selecting and broadcasting visual and/or aural material which may seriously distress or seriously offend a substantial number of viewers;”

The discussion paper asks:

Whether or not excerpts from reality television shows classified M or above should be allowed to be broadcast on news and current affairs programs during general viewing times.

Whether or not the provisions requiring warnings for news and current affairs programming are appropriate for excerpts from reality television programming rated at M or above.

Free TV submits that the same rules should apply to this kind of programming as applies to other matters covered by news and current affairs.

They should be judged on their general news worthiness, whether or not there is an identifiable public interest and if they are presented in such a manner that they comply with the Code provisions.

The Code protections outlined above should ensure that the material is presented in such a way that it is edited to ensure that the material is suitable for the program and timeslot and or a suitable warning is provided.

5.1 No complaints upheld

It should be noted that there have been very few occasions on which these provisions have been the subject of a complaint to the ACMA.

There were a small number of complaints following the broadcast of the *Big Brother* “turkey slap” incident on *Today Tonight* and *A Current Affair*. But only two complaints were referred to the ACMA.

Both complaints were dismissed by ACMA as the broadcasters had observed the requirements of the Code in editing and pixilating the material before broadcast.

6 Is the complaints mechanism in the Code operating effectively and in a timely manner in relation to reality television programming?
--

Between Code reviews the community is able to express its views through the complaints process. Over the last five years the complaints process has been streamlined in the following ways:

- Each television station must advertise the Code and the complaints process 360 times a year. The advertisement must be rotated across viewing times so that it is seen in prime time, children’s programming and in sport and news and current affairs.
- At the last Code review, commercial broadcasters introduced a new electronic complaints form which is available on broadcasters' websites and allows viewers to download a complaints form to fax or mail to the broadcaster.
- Free TV has also established a comprehensive and easily accessed website that takes people through the complaints process and assists them to identify the appropriate station to send their complaint.
- If a broadcaster receives a telephone call about a matter covered by the Code, the broadcaster must advise the caller of the Code complaints process.

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

After the last Code review Free TV sent copies of the new code and the explanatory note to everyone who had made a submission and made over 200 copies of the new Code available to interested parties with an open offer to provide more, as required. Since then, more than 1,400 copies have been mailed out in response to requests.

Free TV also put a guide to the new PG time zones on the website at the start of the 2004 summer school holidays to assist parents who may not have been aware of the changes to the Code.

The complaints process has worked well to address public concerns. Individuals are able to complain directly to the broadcaster who must reply in writing within 30 working days. In practice, broadcasters often respond in a far shorter period although the precise length of time depends on the complexity of the complaint. The response must advise the complainant that if they are not satisfied with the response they can take their complaint to the ACMA.

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

The co-regulatory approach to broadcasting was specifically adopted to ensure that complaints were addressed quickly and effectively. Allowing viewers to complain directly to broadcasters' means complaints can be resolved on the spot. The very small number of referrals to the ACMA shows that most complaints are resolved this way.

This approach also ensures that broadcasters get continual and immediate feedback on the content of programs. If complaints about reality television programs were able to go directly to the regulator, it would only slow down the process and introduce an added layer of bureaucracy to the system.

In broadcasters' experience, ACMA does conduct investigations in a timely manner. While there have been some calls for ACMA investigations to be completed within a matter of hours, this type of process would likely be in breach of procedural fairness and natural justice; two fundamental requirements of administrative law. It would expose ACMA to significant legal risk and the possibility of findings being challenged in court, resulting in lengthy delays.

As noted elsewhere the federal parliament has recently legislated to give ACMA an increased range of enforcement powers to ensure that they have a range of sanctions to address any repeated breaches. These act as a significant deterrent to breaching broadcasting regulations.

Free TV is required to report to ACMA on the number of complaints received by broadcasters on a quarterly and annual basis.

A review of complaints over the last five years demonstrates that concerns about reality TV make up just under one in 10 of all programming complaints lodged. Only one per cent of reality TV complaints have been upheld¹³.

The low level of complaints and breach findings is the clearest measurement that the Code is meeting community standards.

¹³ Complaints registered with Free TV from all commercial TV licensees from July 2001 to 22 Jan 2007. 06/07 figures do not include any ACMA data which is not yet available.

Conclusion

Australian viewers, like their international counterparts have embraced reality television programming. Over the past five years reality television programs have been amongst the highest rating programs on television, whilst attracting a relatively low level of Code complaints.

There is no evidence that reality television programs are out of step with community standards, or that there are widespread or systemic concerns about their content. Nor is there any evidence that reality television has had an adverse impact on participants. If anything, the evidence suggests that contestants have a positive experience and seek out the chance to appear on reality television programs for the unique opportunities they present.

This is largely because the current co-regulatory and classification system has worked well for over ten years. Creating additional classification rules for reality television is unnecessary and will create uncertainty because of the difficulty in coming up with a neat definition of the genre.

However, broadcasters recognise that classification guidelines do need to be applied differently to reality television programs to take into account the "real" context and different level of impact.

We therefore recommend that ACMA and Free TV work together to develop an advisory note to be included in the Code of Practice which would outline in more detail the special considerations that classifiers must take into account when classifying a reality television program.

Broadcasters are strongly of the view that the co-regulatory Code complaints and investigations process is working well, and is the most effective way of addressing viewer concerns in a timely manner. While the level of the compliance with the Code is very high, ACMA's ability to take action where breaches occur has been significantly strengthened with the passage of the Communications Legislation Bill, which gives ACMA tough, new enforcement powers.

Some of the concerns associated with reality television programs are outside the scope of the Commercial Television Code, for example, concerns about reality television content published on the Internet. As is appropriate, these concerns are being dealt with in the Content Services Bill.

Free TV Australia
1 February 2007

APPENDICES

Appendix 1

Top 20 Programs 2002 – 2006

2002

	Description (grouped)	Channel	Genre	AUD 000s
1	TEST AUSTRALIA - THE NATIONAL IQ TEST 2002	Network 9	Special	2,779
2	WORLD CUP SOCCER FINAL	Network 9	Sport	2,702
3	TEN'S AFL FINALS: 2002 GRAND FINAL COLLINGWOOD V BRISBANE	Network TEN	Sport	2,626
4	THE 2002 MELBOURNE CUP CARNIVAL: MELBOURNE CUP RACE	Network 7	Sports	2,503
5	BIG BROTHER FINAL EVICTION	Network TEN	Reality	2,301
6	CELEBRITY BIG BROTHER FOR CHARITY OPENING NIGHT	Network TEN	Reality	2,250
7	NRL GRAND FINAL DAY GRAND FINAL	Network 9	Sports	2,177
8	XVII COMM GAMES: PRIME TIME D5	Network 7	Sports	2,156
9	MICHAEL JACKSON'S FACE	Network 9	Specials	2,126
10	XVII COMM GAMES: OPENING CEREMONY	Network 7	Sports	2,085
11	9/11	Network 7	Specials	2,080
12	BIG BROTHER DAY ONE	Network TEN	Reality	2,046
13	ONE DAY CRICKET - AUSTRALIA V SOUTH AFRICA GAME 12	Network 9	Sports	2,036
14	WORLD CUP SOCCER SF 2	Network 9	Sports	2,023
15	STATE OF ORIGIN RUGBY LEAGUE NSW V QLD 3RD	Network 9	Sports	2,020
16	PAN PACIFIC SWIMMING CHAMPIONSHIPS 2002 DAY 6	Network 9	Sports	1,997
17	XVII COMM GAMES: PRIME TIME D6	Network 7	Sports	1,967
18	BIG BROTHER HOUSEMATES - WHO WILL THEY BE?	Network TEN	Reality	1,954
19	24-FINAL	Network 7	Drama	1,940
20	ONE DAY CRICKET - AUSTRALIA V SOUTH AFRICA GAME 6	Network 9	Sports	1,891

Sport	12
Reality	4
Specials	3
Drama	1

2003

	Description (grouped)	Channel	Genre	AUD 000s
1	2003 RUGBY WORLD CUP: FINAL: AUSTRALIA V ENGLAND	Network 7	Sports	4,016
2	AUSTRALIAN IDOL - THE FINAL VERDICT	Network TEN	Reality	3,300
3	THE BLOCK - THE AUCTION	Network 9	Reality	3,115
4	TEN'S AFL FINALS: 2003 GRAND FINAL COLLINGWOOD V BRISBANE	Network TEN	Sports	2,966
5	2003 RUGBY WORLD CUP: CLOSING CEREMONY	Network 7	Sports	2,726
6	2003 RUGBY WORLD CUP: FINAL: PRESENTATION	Network 7	Sports	2,614
7	AUSTRALIAN IDOL - LIVE FROM THE OPERA HOUSE	Network TEN	Reality	2,545
8	2003 RUGBY WORLD CUP: AUSTRALIA V ARGENTINA	Network 7	Sports	2,492
9	2003 RUGBY WORLD CUP: OPENING CEREMONY	Network 7	Sports	2,466
10	CRICKET WORLD CUP 2003 - FINAL - AUS V IND SESSION 1	Network 9	Sports	2,465
11	2003 RUGBY WORLD CUP: SEMI FINAL 1: NEW ZEALAND V AUSTRALIA	Network 7	Sports	2,429
12	THE BLOCK	Network 9	Reality	2,406
13	WORLD IDOL - PERFORMANCE SHOW	Network TEN	Reality	2,401
14	RUGBY LEAGUE GRAND FINAL	Network 9	Sports	2,352
15	BIG BROTHER FINAL EVICTION	Network TEN	Reality	2,267
16	THE BLOCK - MOVING OUT	Network 9	Reality	2,249
17	THE 2003 MELBOURNE CUP CARNIVAL: MELBOURNE CUP DAY - THE RACE	Network 7	Sports	2,244
18	BIG BROTHER - IN THEY GO	Network TEN	Reality	2,225
19	2003 RUGBY WORLD CUP: SEMI FINAL 2: FRANCE V ENGLAND	Network 7	Sports	2,143
20	CHARLIE'S ANGELS	Network TEN	Movies: feature films	2,079

Sport	11
Reality	8
Movies: feature films	1

2004

	Description (grouped)	Channel	Genre	AUD 000s
1	AUSTRALIAN IDOL - THE FINAL VERDICT	Network TEN	Reality	3,344
2	BIG BROTHER - THE WINNER ANNOUNCED	Network TEN	Reality	2,864
3	AUSTRALIAN IDOL LIVE FROM THE OPERA HOUSE	Network TEN	Reality	2,847
4	TEN'S AFL FINALS: 2004 GRAND FINAL PORT ADELAIDE V BRISBANE	Network TEN	Sports	2,796
5	THE 2004 MELBOURNE CUP CARNIVAL: MELBOURNE CUP-THE RACE	Network 7	Sports	2,471
6	SEVEN'S ATHENS OLYMPICS: OPENING CEREMONY (R)	Network 7	Sports	2,304
7	THE BLOCK THE AUCTION	Network 9	Reality	2,276
8	46TH ANNUAL TV WEEK LOGIE AWARDS	Network 9	Specials	2,274
9	FRIENDS FINAL	Network 9	Comedy	2,273
10	SEVEN'S ATHENS OLYMPICS: D2 PRIMETIME	Network 7	Sports	2,213
11	BIG BROTHER - THE FINAL EVICTION	Network TEN	Reality	2,169
12	TV WEEK LOGIES RED CARPET ARRIVALS	Network 9	Specials	2,122
13	DANCING WITH THE STARS: FINAL	Network 7	Reality	2,120
14	RUGBY LEAGUE GRAND FINAL	Network 9	Sports	2,107
15	AUSTRALIAN IDOL	Network TEN	Reality	2,095
16	SEVEN'S ATHENS OLYMPICS: D3 PRIMETIME	Network 7	Sports	2,038
17	ONE DAY CRICKET - AUSTRALIA V INDIA GAME 5 SESSION 2	Network 9	Sports	2,015
18	SEVEN'S ATHENS OLYMPICS: D1 PRIMETIME	Network 7	Sports	2,009
19	THE 4400 - PART ONE	Network TEN	Mini series	1,998
20	THE BLOCK OPEN FOR INSPECTION	Network 9	Reality	1,945

Sport	8
Reality	8
Specials	2
Comedy	1
Mini series	1

2005

	Description (grouped)	Channel	Genre	AUD 000s
1	SEVEN'S TENNIS: 2005 AUST OPEN FINALS - DAY 14 MEN'S FINAL	Network 7	Sports	4,043
2	TEN'S AFL FINALS: 2005 GRAND FINAL SYDNEY V WEST COAST	Network TEN	Sports	3,386
3	THE 2005 GRAND FINAL WRAP UP	Network TEN	Sports	2,981
4	THE 2005 GRAND FINAL PRE MATCH	Network TEN	Sports	2,593
5	RUGBY LEAGUE GRAND FINAL	Network 9	Sports	2,563
6	THE 2005 MELBOURNE CUP CARNIVAL: MELBOURNE CUP-THE RACE	Network 7	Sports	2,506
7	SEVEN'S TENNIS: 2005 AUST OPEN FINALS - DAY 14 MEN'S FINAL - PRE	Network 7	Sports	2,486
8	SEVEN'S TENNIS: 2005 AUST OPEN - DAY 12 NIGHT SESSION	Network 7	Sports	2,466
9	DANCING WITH THE STARS - GRAND FINAL	Network 7	Reality	2,340
10	SEVEN'S TENNIS: 2005 AUST OPEN - DAY 8 NIGHT SESSION	Network 7	Sports	2,297
11	DESPERATE HOUSEWIVES FINALE	Network 7	Comedy	2,290
12	BIG BROTHER - THE WINNER ANNOUNCED	Network TEN	Reality	2,282
13	DANCING WITH THE STARS 3 - GRAND FINAL	Network 7	Reality	2,224
14	DESPERATE HOUSEWIVES	Network 7	Comedy	2,147
15	TV WEEK LOGIE AWARDS ARRIVALS	Network 9	Specials	2,147
16	LOST: THE FINALE	Network 7	Drama	2,083
17	ONE DAY CRICKET - ASIA V REST OF THE WORLD SESSION 2	Network 9	Sports	2,082
18	EVERYBODY LOVES RAYMOND - THE FINALE	Network TEN	Comedy	2,066
19	SEVEN'S TENNIS: 2005 AUST OPEN FINALS - DAY 14 MEN'S FINAL-POST	Network 7	Sports	2,038
20	SEVEN'S TENNIS: 2005 AUST OPEN - DAY 10 NIGHT SESSION	Network 7	Sports	2,027

Sport	12
Reality	3
Comedy	3
Specials	1
Drama	1

2006

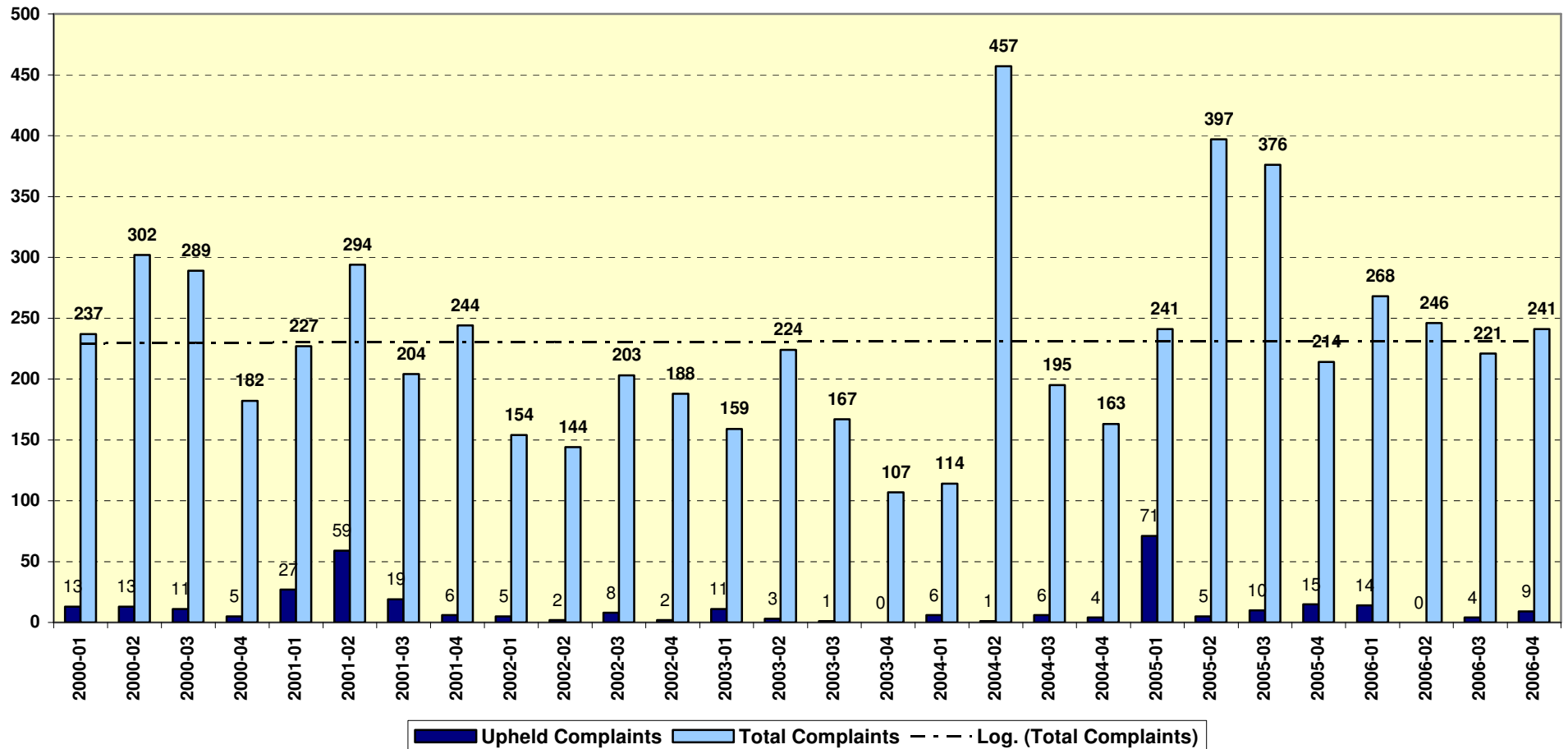
	Description (grouped)	Channel	Genre	AUD 000s
1	MELBOURNE 2006 COMMONWEALTH GAMES - OPENING CEREMONY	Network 9	Sports	3,561
2	TEN'S AFL FINALS: 2006 GRAND FINAL SYDNEY V WEST COAST	Network TEN	Sports	3,145
3	THE GREAT ESCAPE	Network 9	News/Current Affairs	2,790
4	AUSTRALIAN OPEN 2006 MEN'S FINAL - MATCH	Network 7	Sports	2,748
5	MELBOURNE 2006 COMMONWEALTH GAMES - CLOSING CEREMONY	Network 9	Sports	2,736
6	DANCING WITH THE STARS 4 - GRAND FINAL	Network 7	Reality	2,665
7	RUGBY LEAGUE GRAND FINAL	Network 9	Sports	2,553
8	TERRI IRWIN - THE EXCLUSIVE INTERVIEW	Network 9	Specials	2,516
9	THE 2006 GRAND FINAL WRAP UP	Network TEN	Sports	2,501
10	THE BIGGEST LOSER - FINALE	Network TEN	Reality	2,310
11	THE 2006 MELBOURNE CUP CARNIVAL: MELBOURNE CUP-THE RACE	Network 7	Sports	2,272
12	THE 2006 GRAND FINAL PRE MATCH	Network TEN	Sports	2,271
13	TV WEEK LOGIE AWARDS ARRIVALS	Network 9	Specials	2,260
14	MELBOURNE 2006 COMMONWEALTH GAMES - OPENING CEREMONY COUNTD	Network 9	Sports	2,229
15	AUSTRALIAN IDOL - THE WINNER ANNOUNCED	Network TEN	Reality	2,189
16	DANCING WITH THE STARS 4	Network 7	Reality	2,189
17	20/20 MATCH - AUSTRALIA V SOUTH AFRICA	Network 9	Sports	2,179
18	BORDER SECURITY - AUSTRALIA'S FRONT LINE	Network 7	Reality	2,119
19	SEVEN NEWS PRESENTS STEVE IRWIN: A TRIBUTE	Network 7	News/Current Affairs	2,114
20	AUSTRALIAN IDOL - THE FINAL VERDICT	Network TEN	Reality	2,108

Sport	10
Reality	6
News/Current Affairs	2
Specials	2

Source: OzTAM; based on calendar year; Total Individuals including guests; 2am - 2am; 5 City Metro
Dancing with the Stars has been included as Reality rather than Light Entertainment

Appendix 2

Code Complaints by Quarter 1 January 2000 – 31 December 2006



Appendix 3

COMPLAINTS REGISTERED ALL PROGRAMS VS REALITY TV PROGRAMS

	ALL PROGRAMS	REALITY	
		Total	%
Broadcast Hours			
COMPLAINTS TO NETWORK			
01/02	489	17	3.48%
02/03	460	8	1.74%
03/04	420	9	2.14%
04/05	917	148	16.14%
05/06	1,109	126	11.36%
06/07	439	66	15.03%
TOTAL	3,834	374	9.75%
UPHELD BY NETWORK			
01/02	27	0	0.00%
02/03	11	0	0.00%
03/04	5	0	0.00%
04/05	81	0	0.00%
05/06	36	0	0.00%
06/07	13	0	0.00%
TOTAL	173	0	0.00%
DISMISSED BY NETWORK			
01/02	462	17	3.68%
02/03	449	8	1.78%
03/04	415	9	2.17%
04/05	836	148	17.70%
05/06	1,049	126	12.01%
06/07	426	66	15.49%
TOTAL	3,637	374	10.28%
COMPLAINTS INVESTIGATED BY ACMA			
01/02	75	4	5.33%
02/03	36	0	0.00%
03/04	50	0	0.00%
04/05	88	1	1.14%
05/06	61	9	14.75%
06/07	N/A	N/A	N/A
TOTAL	310	14	4.52%
COMPLAINTS DISMISSED BY ACMA			
01/02	52	4	7.69%
02/03	18	0	0.00%
03/04	37	0	0.00%
04/05	56	1	1.79%
05/06	48	5	10.42%
06/07	N/A	N/A	N/A
TOTAL	211	10	4.74%
COMPLAINTS UPHELD BY ACMA			
01/02	23	0	0.00%
02/03	18	0	0.00%
03/04	13	0	0.00%
04/05	32	0	0.00%
05/06	13	4	30.77%
06/07	N/A	N/A	N/A
TOTAL	99	4	4.04%

*Please note that 06/07 as at 22/1/07