



**Submission by
Free TV Australia Limited**

Children's Television Standards Review

Australian Communications and
Media Authority

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Table of Contents

Executive Summary	1
1 Introduction	2
2 Children's Viewing Patterns	5
2.1 Changing media landscape	5
2.2 Children's television viewing habits are changing	6
2.2.1 Children watch an average of around two hours of TV a day	6
2.2.2 Children are watching less television than they used to.....	7
2.2.3 Children are viewing with their parents.....	7
3 Providing for children to be specifically catered for in programming	8
3.1 Minimum Quota Levels	8
3.1.1 No increase in C and P quota levels	8
3.1.2 Additional weighting Australian C Drama	9
3.2 Criteria for C and P Programs	10
3.2.1 Appropriateness of classification criteria for C and P programs for today's Australian child audience.....	10
3.3 Timing of C and P Programs	10
3.3.1 Greater flexibility for C and P bands.....	10
3.3.2 ACMA proposal to provide incentives to broadcast children's programming in evening viewing hours	11
3.3.3 Credits for appropriate out of band programming.....	12
3.4 Program Placement.....	12
3.4.1 Remove the requirement to show C and P programming every weekday .	12
3.4.2 Continuous programming	13
3.4.3 Block programming.....	13
3.5 Promotion of C and P Programs.....	13
3.5.1 Promotions are a commercial decision.....	13
4 Providing for the effective and efficient operation of the CTS	14
4.1 Schedule variation and displacement.....	14
4.1.1 Use of current displacement provisions.....	14
4.1.2 Displacement of C programs is overly restrictive	14
4.1.3 Events of national importance	14
4.1.4 Period for rescheduling.....	15
4.1.5 Displacement of P programs	15
4.2 Pre Assessment Scheme	16
5 Positioning the CTS for the future media environment	16
5.1 Tradable obligations	16
6 Protecting children against possible from harmful effects of television	17
6.1 Overview	17
6.2 Compliance with existing regulations	18
6.3 Food and beverage advertising	19
6.3.1 Free TV position	19
6.3.2 Support for the Status quo.....	21
6.3.3 Should advertising provision to children be consolidated under the CTS ..	23
6.3.4 Industry to adopt a monitoring and reporting role.....	23
6.3.5 Restricting the volume and/or repetition of food and beverage advertising during C programs	23
6.3.6 Banning all food advertising during C programs.....	23
6.3.7 Banning all food advertising directed to children.....	24
6.4 Premium offers	25
6.5 Regulating prizes	26

Executive Summary

- The Children's Television Standards are a significant regulatory burden on commercial free-to-air broadcasters.
- These burdens include the production costs for children's programming, the restrictions on advertising and the costs of compliance with the regulatory obligations.
- The relative community benefit of the CTS is declining as fewer children watch regulated children's programming.
- The CTS should be amended to ensure that they are more flexible and relevant to the Australian child audience in the 21st century.
- There should be no increase in the current C and P quota levels and mechanisms should be introduced to acknowledge the additional resources required to broadcast C drama.
- The interpretation of the CTS criteria needs to be reviewed to ensure that they are still appropriate to the modern child audience.
- The pre-classification process should be overhauled to ensure that unnecessary burdens are removed.
- There needs to be greater flexibility in scheduling of children's programming to enable programs to be provided at a time when there is an audience able to view.
- ACMA should undertake further discussions with interested stakeholders to examine the proposal for a tradable obligations scheme that involves national broadcasters and digital channel providers.
- The advertising restrictions under the CTS and Commercial Television Industry Code of Practice (the Code) are working effectively to ensure that advertising messages to children are appropriate.
- Free TV is opposed to the imposition of advertising bans on food and beverage advertising directed to children.
- There is no evidence that further restrictions on food advertising to children will materially impact childhood obesity rates, but it is clear that bans will negatively impact broadcasters' ability to provide quality Australian children's programming.

1 Introduction

Free TV Australia is the peak industry body representing all commercial television stations licensed to broadcast throughout Australia under the *Broadcasting Services Act 1992* (BSA).

Free TV Australia welcomes the opportunity to respond to the Australian Communications and Media Authority's (ACMA) review of the Children's Television Standards (CTS).

The principles underlying the CTS have been in place for 23 years.

ACMA has recognised that there have been significant changes to the media landscape since the standards were first introduced.

This is the first wide scale review of the CTS, since the late eighties, but the current review does not seek to address whether the standards and the principles underlying them continue to be appropriate in today's environment. This is disappointing.

Australia is unique in the world in delivering the important social and cultural objectives of specific children's television programming through an advertising-funded model.

However, there is a significant regulatory burden with meeting these objectives. Clearly, this model is under pressure in today's environment.

In 1984, Australian children only had access to children's programming and the occasional feature film on free-to-air television.

In 2007, in addition to free-to-air television, Australian children have access to over 100 pay TV channels including; six dedicated children's channels, several music channels and a range of other channels of general appeal to children.

They also have access to the vast array of information and entertainment sources available on the internet, as well as DVDs, digital media players, computer games and increasingly video services through mobile phones, none of which were available when the CTS was created.

None of these platforms are subject to any of the programming requirements or advertising restrictions of the CTS or any other specialised children's content requirements.

The pace of change in children's use of media is set to increase even further with the advent of digital multi-channels and narrowcasting and datacasting services, combined with the rapid uptake of broadband services and mobile telephone video programming.

The commercial free-to-air model is already feeling the impact of the significant change in children's viewing habits with declines in the number of children viewing and the time spent watching.

Unfortunately the terms of reference for this review exclude any examination of the broader implications of the rapidly changing media landscape in which children are

now actively engaged. This should be considered in the context of the digital action plan.

At the very least this review should ensure that the standards are amended to operate more efficiently and with greater flexibility to make children's programming more relevant to the audience in the 21st century.

In this environment it is time to question the ongoing relevance of the current quota obligations. There is certainly no justification for an increase in the current quota levels and any change should more appropriately result in a reduction.

The CTS should be revised to provide greater flexibility for broadcasters and child viewers, particularly in the scheduling of children's programming.

The Australian pre-classification process, which is unique in the world, must be overhauled to make it more efficient so that broadcasters and producers do not continue to be hampered by overly bureaucratic processes.

Free TV welcomes the discussion on tradable quotas as a way of providing some greater flexibility in the standard. However, tradable quotas must include trading with national broadcasters and digital multi-channels as it is unlikely that commercial free-to-air broadcasters will trade between themselves.

Free TV does not support further advertising restrictions in children's programming.

All advertising restrictions in children's programming must be weighed against the objective of delivering children's programming through an advertising-funded model. This model is already being seriously challenged as noted above.

There is no evidence that further advertising restrictions will have any impact on issues such as childhood obesity. A report prepared for ACMA has concluded from a review of academic literature that there is no causal relationship between advertising and obesity.¹

Calls to introduce blanket advertising bans on all food advertisements directed to children fail to take into account well-documented, multi-factorial contributors to obesity including hereditary, environmental, social and cultural factors.²

Indeed in Australia childhood obesity rates have increased in inverse proportion to children's viewing of free-to-air commercial television, which has decreased.³

It is already clear from experience in the United Kingdom that such restrictions will have severe adverse effects on commercial broadcasters and their capacity to provide children's programming.⁴

This submission addresses the following topics:

¹ Television Advertising to Children Report prepared for ACMA by Jeffrey Brand, Bond University, page 42

² Ibid, page 41

³ ACMA Report on the Child Audience 2007, page 9

⁴ Following the introductions of ad bans in the UK, the regulator Ofcom has now been forced to undertake a review of children's programming and how it will be funded.

Section 2 examines children's viewing patterns and provides a framework for a discussion on how best to provide children's programming.

Section 3 reviews the appropriateness of the current C and P quota levels, the criteria for C and P programs and the need for greater flexibility in scheduling C and P content.

Section 4 looks at how to improve the effectiveness and efficiency of the operation of the CTS, in particular the rescheduling of displaced programs and the CTS pre-assessment scheme.

Section 5 examines the possibility of a tradable obligations scheme and the conditions under which this may be workable.

Section 6 takes an in-depth look at the success of existing regulations, the flaws in current research on the link between obesity and advertising and the negative consequences of further regulation of advertising to children.

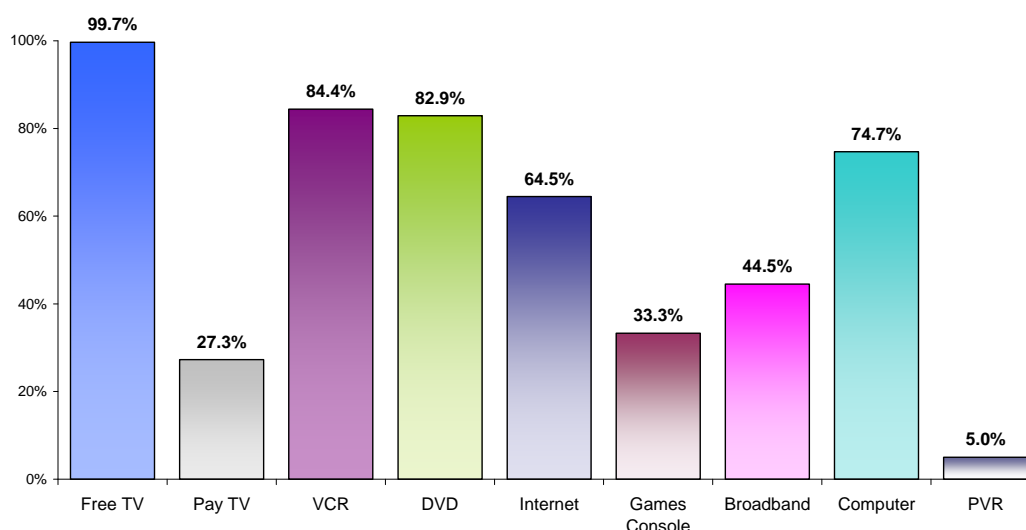
2 Children's Viewing Patterns

This section on children's viewing patterns provides further important context for Free TV's comments in this submission.

2.1 Changing media landscape

In 2007 a range of entertainment and information technologies competes for viewers' attention. As well as the traditional media of free-to-air television, radio, newspapers and magazines, consumers now have access to the Internet, pay TV, DVDs, computer games, digital media players and mobile phones. Australians continue to be early adopters of many of these new technologies.

Household Penetration of Technology⁵



Penetration of new technologies is very high among households with children.

Roy Morgan Research reports that as at 2006, 90.4 per cent of households with children under the age of 15 years have a personal computer, 83.3 per cent have a mobile phone, 66 per cent have a games console, 24.6 per cent have a MP3 player and 13.5 per cent have an iPod mobile digital device.⁶

In many cases, children themselves are driving take-up of these devices.

According to ACMA's 2005-06 Communications Report, 74.3 per cent of children aged 14 to 17 own their own mobile phone. Free TV estimates similar penetration rates for digital media players amongst this group.

⁵ Free TV and PVR penetration is a Free TV estimate; pay TV figure sourced OzTAM universal estimate 31 December 2006 (5 cap cities); VCR, DVD, games consoles and computer penetration figures sourced OzTAM Establishment Survey Q3 2006; Internet and Broadband figures sourced from ABS 2006 Census Cat. No. 2068.0

⁶ Inquiry into the Effects of Television and Multimedia on Education in Victoria – Roy Morgan Research Single Source, April 2005 – March 2006

Children are availing themselves of a wide range of alternative screen time activities increasingly in less regulated environments.

- Pay TV is not subject to the CTS programming requirements and advertising restrictions or any other children's content requirements.
- The internet is subject to content restrictions in relation to R, X and RC rated material, but again faces no obligations to provide children's content or to restrict advertising targeting children.
- Likewise, the new digital terrestrial channels to be auctioned shortly are not subject to the CTS.

2.2 Children's television viewing habits are changing

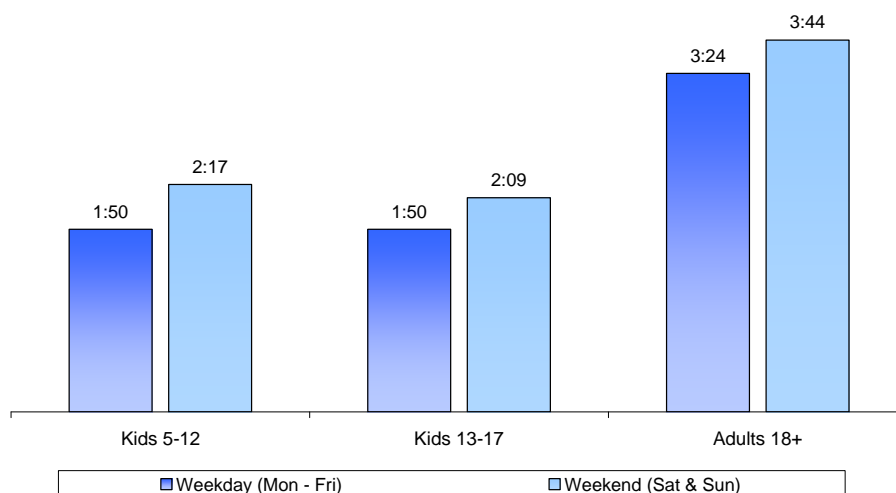
While television continues to account for the large proportion of time spent with media, in this highly competitive environment audiences are fragmenting and this is more evident amongst children than any other target or demographic.

These changes in viewing patterns are reflected in the OzTAM data outlined below which shows that the child audience on commercial free-to-air television is already fragmenting with declines in both the size of the audience and the amount of time children are spending watching television.

2.2.1 Children watch an average of around two hours of TV a day

Children watch considerably less television than adults, who watch an average of over three hours of television a day. Children watch slightly more TV on a weekend than they do during the week – about an extra 10 to 20 minutes.

Average Time Viewed - Total TV - Children and Adults ⁷

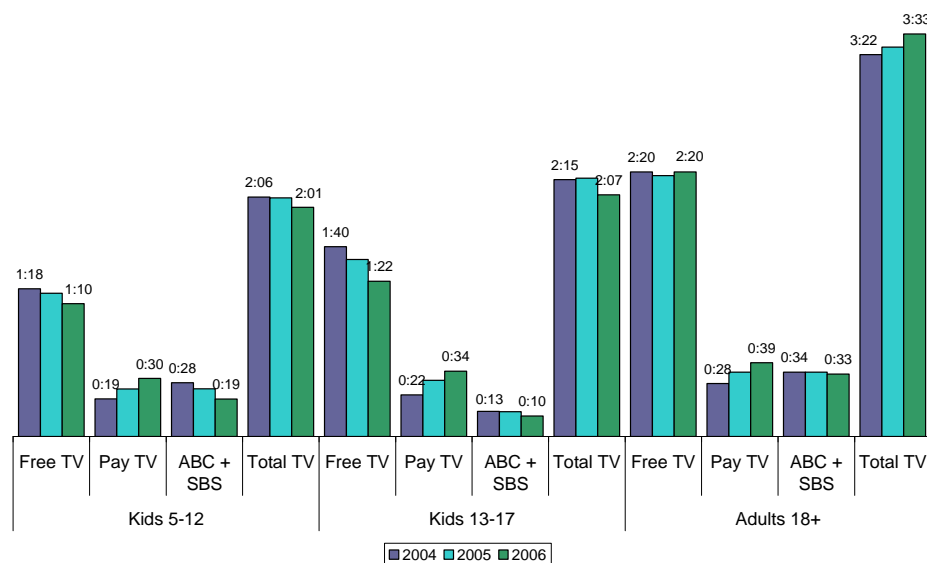


⁷ Source: OzTAM; 5 cap cities; 01 January - 30 June 2007; 2am - 2am; total daily TV viewing

2.2.2 Children are watching less television than they used to

Younger children and teens are all watching considerably less television than they did several years ago. Even with the advent of dedicated children’s channels on pay TV, the average time spent viewing television overall is down among children, while the average time spent viewing among adults has increased.

Average Time Spent Viewing TV – 2004 to 2006 ⁸



2.2.3 Children are viewing with their parents

The CTS is focused on providing specialist programming for children on general entertainment channels. But the OzTAM data, cited by the CTS review paper, confirms children’s viewing patterns have changed significantly since the regulations were introduced. That is, children are not watching these programs in large numbers. In fact, younger children watch family programs and a lot of viewing is done with an adult present.

On weekday evenings (6pm to 9pm), 60 per cent of children are watching Free TV with an adult. This is slightly higher on weekends, where 65 per cent of nightly viewing is with an adult.⁹

The top programs watched by teens are also dominated by family programs. Light entertainment and drama are key genres for this age group. Co-viewing is still quite prevalent, where 50 per cent of their Free TV nightly viewing is with an adult present.

There has been a significant shift in the media landscape over recent years and a corresponding shift in children’s viewing habits. Not only

⁸ Source: OzTAM; 5 cap cities; weeks 1-52 2004, 2006 and Weeks 1-53 2005; Variable - Average Time Viewed

⁹ OzTAM; 5 cap cities; Jan to June 2007; children 5-12 years; co-viewing with an adult

does this review need to take into account the current trends, but also anticipate likely future developments.

3 Providing for children to be specifically catered for in programming

3.1 Minimum Quota Levels

3.1.1 No increase in C and P quota levels

There is no justification for an increase in the quota levels. Any increase in quota would place a further regulatory burden on broadcasters without any resultant benefit for child viewers.

In the circumstances of a fragmenting commercial free-to-air audience, any change in CTS quota levels should more appropriately result in a reduction rather than an increase.

The current minimum quota levels are unique to Australian commercial free-to-air television. The national broadcasters and subscription television networks are not required to provide the same high level of children's programming as commercial free-to-air television.

Free TV is not aware of any other country in the world which imposes an obligation on commercial free-to-air networks to produce a required number of hours of programs specifically for preschoolers and primary school aged children with regulatory requirements for pre-classification.

The Issues Paper and associated ACMA research notes that:¹⁰

- Child audience numbers for C and P programs are declining.
- Children are spending less time watching commercial free-to-air television.
- Children are increasingly accessing a variety of other entertainment and information choices that are less regulated, such as pay TV and the Internet.

As the ACMA report found in analysing audience and ratings data for 2001, 2005 and 2006, only nine children's programs made the top 50 list of the highest rating programs in the 0 to 14 age group.

Even in the 1989 review it was clear that children preferred to watch general programming rather than the child specific programming required under the CTS.

¹⁰ ACMA Children's Viewing Patterns on Commercial Free-to-Air and Subscription Television, May 2007

The latest ACMA data simply confirms that the trend already evident in 1989 has accelerated with the advent of a range of alternative entertainment and information sources.

There is no indication that children (or their parents or carers) are seeking additional programming from the commercial free-to-air networks. In reality the converse is the case; children are increasingly opting for screen time activities other than C and P programs on commercial free-to-air television.

The regulatory burden on networks to produce and broadcast these programs is already onerous.

By definition, C programming attracts limited advertising revenue as a result of:

- the scheduling restrictions in the CTS (ten minutes per hour compared with between 13 and 15 minutes per hour at all other times);
- the types of ads which are permitted or relevant to the target audience - there are many ads which are not permitted to be shown; and
- many advertising categories are not relevant for the target audience (eg. insurance, motor vehicles).

Further, the highly restrictive content regulations in the CTS for advertising in C programs reduce the number of advertisers seeking a C classification. All of these factors contribute to a relatively limited pool of advertising revenue available for these programs.

Replacing advertising revenue for a program with wide appeal with the limited or no advertising revenue for additional C or P programming would have a further disproportionate financial impact on networks given audience fragmentation.

3.1.2 Additional weighting Australian C Drama

In Free TV's view and in recognition of declining child audiences particularly for C drama, the current C drama sub quota is not appropriate and does not recognise the cost of production for C drama which is significantly higher than for other C programs.

Increasing production costs along with decreasing advertising revenues makes C drama an expensive proposition for networks.

Free TV supports a mechanism for acknowledging the additional resources required to produce and broadcast C drama. Free TV proposes an amendment to the quota system whereby C drama programs receive twice the hours than would be otherwise attributed under the quota system.

That is, one hour of C drama would count as two hours for the purposes of the quota system.

3.2 Criteria for C and P Programs

3.2.1 Appropriateness of classification criteria for C and P programs for today's Australian child audience

The criteria for C and P programs under CTS 2 are not in themselves a problem but their interpretation and application must take into account the changing viewing needs and desires of children. This will provide the flexibility to create programs that cater for children in upper age groups.

The requirement for C programs to be designed specifically for children in the 6 to 13 age group is central to the C classification concept.

The 6 to 13 year age range was selected because this period was considered the most important phase in a child's emotional, intellectual, social and physical development. It is the time at which children are constructing views of the world in which they live; learning to cope emotionally, coming to terms with a new and ever increasing range of social contacts, laying the foundation for future educational and creative pursuits and experiencing rapid physical maturity.

However, children in the 21st century are more sophisticated and media savvy than 20 years ago. A 12 year old in 2007, has a very different set of ideas about what they want to see than a 12 year old in 1987.¹¹

The criteria for C and P programs within CTS2 should recognise the changing viewing needs and desires of children younger than 14 years of age.

3.3 Timing of C and P Programs

3.3.1 Greater flexibility for C and P bands

Free TV submits that the current C and P time bands do not reflect the vast social changes of the last 20 years and are no longer appropriate for the contemporary Australian child audience.

In the 1987 review of the CTS, the old 4.00pm-5.00pm C time band was replaced by a broader band of hours within which broadcasters could show children's programming.

Since that review, the Australian community has experienced substantial social transformation. The number of women in the workforce has increased dramatically. The number of children attending formal and informal day care has increased.¹² Many more children are also involved in formal out of school sporting, cultural and educational activities. More young families are living in the outer

¹¹ ABS Social Trends Report 4102.0

¹² According to ABS Australian Social Trends 2006, the number of children in before and after school care increased 34 per cent from 2002 to 2005.

suburbs of major cities and spending long hours commuting to and from work and school.

The current C and P time bands do not provide for the delivery of children's programs at accessible times for Australian children in 2007.

The time bands should be altered to reflect these social changes to better cater for children at times when they are actually able to watch.

There should be greater flexibility to schedule children's programming in the early morning (weekdays, weekends and school holidays) by extending the C band to begin at 6am each day. Additional programming opportunities in the early mornings on both weekdays and weekends will provide more accessible viewing options for children and their parents or carers.

The C band should be revised to:

- 6.00am to 8.00am Monday to Friday;
- 4.00pm to 8.30pm Monday to Friday;
- 6.00am to 8.30pm Saturday, Sunday and School Holidays.

The P band should be extended consistent with the C band to include an additional hour in the morning and to include time on weekends and school holidays when there are no pre-school or child care commitments and the available child audience is greater.

The P band should be revised to:

- 6.00am to 4.30pm Monday to Friday;
- 6.00am to 8.30pm Saturday, Sunday and School Holidays.

With diminishing weekday audiences, networks would welcome the flexibility to schedule more C and P programming earlier in the mornings on weekdays, weekends and school holidays and to show P programming on weekends and school holidays when children do not have the pressure of school work, sport and other extra-curricular activities.

3.3.2 ACMA proposal to provide incentives to broadcast children's programming in evening viewing hours

Providing incentives to broadcasters is unlikely to have any impact on network schedules. Early evening hours are part of prime-time which attracts broad, general audiences of which children make up a small part.

Free TV acknowledges that OzTAM ratings data shows that the peak viewing time for 0 – 14 year olds on commercial free-to-air television is in the evening between 7.00pm and 8.00pm. The child audience numbers at that time are however relatively low in comparison to the

remaining audience comprising adult viewers.¹³ OzTAM data also shows that 67 per cent of children viewing at that time are viewing with an adult which confirms that this period is predominantly for a mixed audience.¹⁴

It is Free TV's view that the types of programs broadcast at those times are a key driver of those audience numbers. Programs between 7.00pm and 8.00pm time band (which by definition will be classified G or PG) are suitable for a wide range of viewers and attract high numbers of adult viewers.

Replacing these popular programs with C or P programming will result in heavy losses of audience numbers (both children and adult). If the general viewing programs are replaced by lower rating C programs, the existing audience will migrate to other platforms where their viewing needs are met i.e. pay TV, DVDs etc.

It follows that advertising revenue will also be substantially reduced in that time period as previously discussed.

3.3.3 Credits for appropriate out of band programming

The CTS should include a mechanism for including programs in a network's quota requirements which are targeted to and watched by children but not broadcast during a P and C band.

For example, Network Ten broadcasts its news program for children, *TTN* at 11.30am on Tuesdays in all licence areas. Network Ten has chosen to broadcast *TTN* at a time when the target audience (i.e. school children) is available but which is not broadcast in a C or P band.

3.4 Program Placement

3.4.1 Remove the requirement to show C and P programming every weekday

Requiring broadcasters to show C and P programs for at least 30 minutes each day limits the flexibility required to maximize the child audience.

The requirement should be replaced with a quarterly requirement for a minimum number of broadcast hours which would allow broadcasters the flexibility to make up the minimum quarterly quota at any time during the C or P time bands.

Abolishing the weekly requirement to provide C and P programs and replacing it with a quarterly requirement will provide the broadcasters with the flexibility to schedule programs at times that are more likely to draw a greater child audience, such as school holidays, and genuinely

¹³ The child audience (0-14) during the 7.00pm to 8.00pm timeslot makes up just 13.3 per cent of Free TV's total viewing audience.

¹⁴ OzTAM; 5 cap cities, 1 Jan to 30 June 2007, children 0 to 14, watching Free TV

meet the objective of the CTS to “ensure that children are specifically catered for in programming including Australian programming”.

3.4.2 Continuous programming

The requirement in CTS 3(1)(c) for a licensee to broadcast C material for a “continuous period of time of not less than 30 minutes” may be unclear in practice for some producers. Most C programs run for 24 minutes with a permitted 5 minutes of advertising and 1 minute of promotional material. It may assist producers to make it clear that this requirement includes advertising and promotional material.

3.4.3 Block programming

Block programming will not necessarily assist in drawing more children to C and P programs. A key feature of the CTS going forward should be flexibility, including broadcasting programs in blocks, but this should not be a mandatory requirement as ACMA has posed in one of the program placement options. Most networks currently run C programs in one hour blocks on the weekends (for example, Network Ten broadcasts three C programs, *Wicked Science*, *Totally Wild* and *Scope* on Saturdays from 7:00am-8:30am and the Seven Network broadcasts *Blinky Bill's Around the World Adventure* and *Fairy Tale Police* from 11:00am to 12:00 on Saturdays).

The difficulty from a scheduling perspective is the restriction in CTS3 (2) which provides that no more than one C program in the same series may be broadcast during the C band except an Australian children's drama series or a non-Australian drama mini series. This can result in having to show repeats or programs out of order.

The flexibility to schedule all C and P programming in a consecutive hourly block would be welcomed by networks. This becomes particularly important when considering the scheduling of displaced programs.

3.5 Promotion of C and P Programs

3.5.1 Promotions are a commercial decision

Free TV is opposed to mandating of C and P program promotions within the CTS. The decision to undertake promotional activity is a commercial one for the networks.

There is no indication that networks' current promotional activity is inadequate.

The causes for declining child audiences can be attributed to many factors, as outlined above. The current level of promotional activity has no causal link with the declining child audience. Mandating increased promotional activity will have little impact on drawing a greater child audience to C and P programs. The commercial impact resulting from lost advertising time due to

increased program promotions will far outweigh any perceived benefit to the child audience.

Networks should retain the ability to promote programs in the most appropriate way. Broadcasters need to be able to balance the cost to the network of forgone advertising to place the promotion, against the potential increase in audience.

4 Providing for the effective and efficient operation of the CTS

4.1 Schedule variation and displacement

4.1.1 Use of current displacement provisions

The current displacement provisions in the CTS only allow broadcasters to displace both C and P programs in very limited “unexpected” circumstances. C programs can also be displaced to allow for coverage of events of national importance or major sporting events that are suitable for viewing by children; displacement of P programs is not permitted in these same circumstances.

Provided the programs are rescheduled and children and their parents/carers are notified of the change, there is no negative consequence of such displacement. The displacement provisions do not provide a means to circumvent the quotas or other CTS requirements. Displaced programs must still be broadcast in line with the CTS in order to count towards the quota.

4.1.2 Displacement of C programs is overly restrictive

The current displacement provisions are unnecessarily restrictive and place an undue burden on networks and the additional benefits to the child viewer from these restrictions are unclear. Of particular concern are the requirements that:

- programs may only be displaced by an event of national importance or a major sporting event both of which must be suitable for viewing by children; and
- the displaced program is rescheduled in a C band in the period of time from the beginning of the weekend preceding the date of the event to the end of the weekend following the event.

4.1.3 Events of national importance

Under the CTS an event must be of “national importance” in order to allow displacement. The emphasis on ‘national’ is too restrictive and the definition should be amended to include state events.

Broadcast of local news events are often just as relevant and important to local viewers as events of national importance. For example, the coverage of a live press conference held by Victorian Premier Steve Bracks to announce his formal resignation may not be

regarded as an event of “national importance”. Despite being a news event of significant public interest in Victoria, the CTS would not allow for displacement of a C program to cover the live announcement.

The practical interpretation of CTS 3 (i)(i) should, within reason, allow for displacement due to live coverage of events of licence area specific importance.

There is no evidence that this would result in a high number of displaced programs or that the resultant effect on programming would be problematic for child viewers.

Free TV would also support amendment of the displacement requirements to allow for displacement in a case where a major sporting event can reasonably be expected to run over time (but where live coverage of the event may not be shown if the event does not end up running overtime).

4.1.4 Period for rescheduling

The period within which a program is rescheduled is restrictive in practice and regularly causes scheduling difficulties for networks.

A period of 14 days (rather than the current seven days under the CTS) would provide greater flexibility for broadcasters to schedule a more appropriate position for a displaced C program while not causing undue difficulties for the child audience. It would also be sensible to allow the displaced program to be rescheduled to the same time (back to back with the scheduled program) within 14 days.

This would provide certainty for the child audience and enable them to watch a double episode of their favourite show at its usual time.

4.1.5 Displacement of P programs

Free TV submits that the displacement restrictions for P programs should be brought into line with the requirements for the displacement of C programs to allow broadcasters the flexibility to maintain live coverage of pre-scheduled events of national interest.

While pre-school children have a need for consistency and predictability of routines which help develop their concepts of order, time and cause, there is no evidence that extending the displacement rules available for C programs to P programs will cause any undue harm for pre-schoolers. Preschool children will still have available to them the proscribed amount of P programming annually on each network.

Provided the audience is notified of the scheduling change and the other requirements in the CTS are complied with, there is no reason why the displacement of P programs should not operate in the same way as for C programs.

4.2 Pre Assessment Scheme

The pre-assessment scheme should be significantly restructured.

Networks have consistently demonstrated compliance with the CTS criteria and have a high level of success with programs submitted to the ACMA pre-assessment process. The ACMA review paper reports that in 2005-06 it granted classification to 93 per cent of the C and P programs seeking approval.

The pre-classification system is however, unique to Australia. Other countries provide a general framework but do not require an external review process for pre-classification.

The ACMA pre-classification process is often lengthy, time consuming, resource intensive and subjective. The current requirements involve substantial additional costs and present timing difficulties through excessively bureaucratic and unnecessary script assessments.

Experienced C producers (i.e. those who have produced at least two C series) should automatically qualify as “accredited producers” who are subject to less onerous procedures as they have a proven understanding of the C requirements.

Accredited producers should only have to submit half of a series' scripts to achieve full C, supported by a statement from the producer that those submitted scripts are representative of the series in terms of C compliance.

Accredited drama producers should not have to submit subsequent script amendments made by directors and networks to the final draft scripts supplied by the writer unless in the producer's opinion they involve a substantial change that may impact on compliance with C requirements.

The pre-assessment scheme should differentiate between genres ie: documentary, quiz programs, non-drama and drama.

Subsequent series where the format is not changed such as a game show or magazine show should not require re-classification. For instance *It's Academic* on the Seven Network has been in production since the 1960s. It should not require pre-classification each year to be granted C classification. Similarly *Totally Wild* on the Ten Network is now in its 13th season and should not require re-classification each year.

5 Positioning the CTS for the future media environment

5.1 Tradable obligations

The ACMA review paper has raised the prospect of tradable quota schemes as an option to allow for increased flexibility in a changing media landscape.

The ACMA review paper terms of reference recognise that there will need to be a comprehensive review of content standards in the coming years, including the application of standards across different platforms.

Tradable quotas could provide greater flexibility for the standards prior to that more comprehensive review.

Free TV is concerned that the idea of tradable quotas still assumes that commercial free-to-air broadcasters alone continue to bear the entire burden of providing the social and cultural objective of providing children's programming.

As we have noted elsewhere in the paper this model is already under pressure and it cannot be assumed that in a fully digital environment the advertising-funded model of providing children's content through a condition of licence will continue.

In that context, Free TV supports further consideration of tradable quotas. However this scheme should not be limited to free-to-air broadcasters as suggested in the Allen Consulting Group report *Trading the Regulatory Obligations of Broadcasters*.

Given the fragmenting child audience and the small audience for C and P programs it is unlikely that commercial free-to-air broadcasters would trade quotas with one another.

Free TV submits that a scheme which enabled quota obligations to be met through showing children's content on digital multi-channels or through sub-licensing to national broadcasters, community television services or to narrowcasting and datacasting services could more appropriately position the CTS for the future media environment.

In order to determine how such a scheme might work, ACMA should convene a meeting of interested parties where such proposals can be canvassed.

6 Protecting children against possible from harmful effects of television

6.1 Overview

In addition to the requirements for commercial free-to-air broadcasters to provide quality programming specifically made for children, the CTS also contains a range of advertising restrictions designed to protect children.¹⁵

These elements of the CTS operate alongside the advertising provisions in the Commercial Television Industry Code of Practice (the Code)¹⁶.

¹⁵ These advertising restrictions include a complete ban on all advertising in P programs, volume restrictions on the number of ads in C programs and content restrictions on ads in C programs. These provisions are reproduced at Appendix 1.

¹⁶ The Code of Practice extends the application of the CTS advertising content restrictions to all advertisements directed to children. It also applies further content restrictions on food and beverage advertising directed to children. The Code of Practice provisions are reproduced at Appendix 2.

Free TV submits that:

- the advertising restrictions contained under the CTS and the Code are working effectively to ensure that advertising messages directed to children are appropriate;
- there is no need to tighten restrictions further by introducing bans on food and beverage advertising;
- premium advertising is appropriately regulated;
- the current restrictions regarding the presentation of prizes should be relaxed to acknowledge the value of a cash prize; and
- any review of advertising directed to children must apply across different platforms to ensure regulations remain relevant and do not disadvantage free-to-air viewers.

Currently advertising to children is highly regulated through a mix of standards (CTS), co-regulation (the Code) and self regulation (the AANA Code of Advertising to Children and the AANA Food & Beverages Advertising and Marketing Communications Code). This combination works well to deliver a range of regulatory levers that ensure children's interests are protected. In fact Australia has been at the forefront of developing this range of regulatory protections over the last twenty years.¹⁷

It should be noted that the existing regulatory framework already imposes a significant cost on broadcasters.

Given the accelerating fragmentation of the child audience it does not make sense to review, in isolation, the regulation of advertising directed to children on commercial free-to-air television.

The current regulatory framework means that alternative advertising platforms such as pay TV and the internet are increasingly attractive to advertisers.

Further restrictions on advertising to children on commercial free-to-air television will undermine the broadcasters ability to provide quality children's programming free-to-air, thereby disadvantaging the 73 per cent of Australian households who rely exclusively on free-to-air television.

6.2 Compliance with existing regulations

Broadcasters have always acknowledged the need to take special care when advertising to children and place a premium on ensuring that the regulations are observed in the spirit as well as the letter of the law.

The industry's commitment to the regulations is evident through:

- the extension of the provisions under the CTS to ALL advertising directed to children through the Code;

¹⁷ Baker & McKenzie, Comparative Review of the Regulation of Television Food Advertising to Children, 2007. For a copy of the report see Appendix 3.

- the lack of any breaches of the advertising restrictions over the past eleven years;
- the extremely low level of complaints about alleged breaches of the CTS or the Code; and
- a rigorous acceptance process for C classified advertisements.

The CTS advertising restrictions only apply to C and P programs. The Code takes this further by saying that all “advertising directed to children must comply with the CTS”.¹⁸

The number of complaints about advertising to children is also extremely low. There is no evidence from the complaints reported quarterly to ACMA, and its predecessor the ABA, that this has been an area of concern for parents or viewers.

The annual Code complaints reports demonstrate that viewers take a personal interest in what is shown on television and are keen to make their concerns known in relation to a wide range of issues.

The industry’s compliance record is confirmed by the review paper which specifically rules out addressing all but three of the advertising restrictions under the CTS as there is “no suggestion that the current CTS provisions...are operating ineffectively”.¹⁹

We agree with ACMA’s conclusion that these provisions of the CTS are working effectively and do not require review.

From time to time new issues arise in the area of regulation and it may be necessary to review the regulations to ensure they are still relevant.

The review paper has focused on just three issues in relation to advertising to children:

- 1) food and beverage advertising to children;
- 2) the use of premium offers in advertising to children; and
- 3) the presentation of prizes during C programs.

This submission will address each of these issues in turn.

6.3 Food and beverage advertising

6.3.1 Free TV position

Free TV is opposed to further restriction or ad bans on the regulation of food and beverage advertising to children.

- There is no causal link between food and beverage advertising and the increase in childhood obesity rates

¹⁸ Commercial Television Industry Code of Practice, 6.20, Page 45

¹⁹ ACMA, Children’s Television Standards Review, Issues Paper 2007, page 24

- The current regulations are a proper balance between the requirement to provide quality Australian children's programming through an advertising funded model and the need to ensure that advertising directed to children is responsibly regulated.
- The Commercial Television Industry Code of Practice has already adopted clauses specifically covering food and beverage advertising which are working
- Further restrictions will undermine the broadcasters' ability to continue to provide quality Australian children's programming.

The ACMA report notes that "whilst research indicates a relationship between television viewing and increased Body Mass Index, overweight and obesity, the contribution of television advertising to the relationship appears inconclusive at this time" (p30).

The literature review undertaken for ACMA by Bond University's Dr. Jeffrey Brand, *Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children*, found that:

"public health literature points to a range of multi-factorial contributors to obesity, including hereditary, environmental, social and cultural factors".²⁰

Dr. Brand reviewed the extensive research on the impact of television advertising on childhood obesity undertaken by the UK regulator, Ofcom in 2004. He concludes:

"Ofcom stated that it is difficult to determine the relative contribution of television advertising by comparison with all the other factors that influence children's food choice and health, and difficult to disentangle the contribution of television viewing as a factor associated with obesity".²¹

The case has therefore not been made that further restrictions or advertising bans will materially affect childhood obesity rates.

In fact the argument is weakened further by the fact that children are viewing less commercial free-to-air television and yet the obesity rate is rising.

As the ACMA report notes "concern about food and beverage advertising also needs to be considered in the context of the role of advertising in supporting the production of quality children's television programs". (p30)

The current regulatory mix achieves this outcome by ensuring that advertising directed to children has a range of restrictions that do not apply to general advertising on television. No case has been made that these regulations are not working.

Free TV has already addressed the issue of food and beverage advertising with the inclusion of two new clauses in the 2004 Code of Practice. These clauses are working well.

²⁰ Dr. Jeffrey Brand, *Television Advertising to Children, A review of contemporary research on the influence of television advertising directed to children*, 2007 page 41

²¹ *Ibid* page 42

To impose advertising bans on top of this comprehensive blanket of regulations would not be a “low” cost option as some have claimed.

There would be significant impacts on children's programming for which advertising is already limited.

It would also impact on the advertisers who would lose the ability to promote their products in the highly competitive Australian market.

This would include the major primary production sectors in Australia; meat, dairy, sugar, poultry, fruit and vegetables as well as the producers of manufactured goods.

For these reasons we believe the balance between responsible regulation and providing quality Australian children's programming is correct and does not need further restrictions.

6.3.2 Support for the Status quo

The current regulation of food and beverage advertising directed to children is appropriate and the status quo should continue to apply.

The current mix of regulations under the CTS, the Code, the AANA Code of Advertising to Children and the AANA Food & Beverages Advertising and Marketing Communications Code is responsible and has resulted in very few complaints to broadcasters or the Advertising Standards Bureau (ASB).²²

The regulations ensure that any food and beverage advertiser wishing to advertise to children on commercial free-to-air television must comply with a thorough and rigorous set of rules and regulations. These rules and regulations are summarised and presented as a flow chart at Appendix 4.

During the last review of the Code of Practice, broadcasters listened to the concerns of health officials and sections of the broader community and introduced two food and beverage clauses so that the community could be assured that these matters were being addressed. The final wording of the two clauses was influenced by submissions from some state health departments to ensure that the clauses were effective.

Free TV also worked closely with the Australian Association of National Advertisers (AANA) who developed a Code of Advertising to Children which is included as an Annex to the Commercial Television Industry Code of Practice.

Finally, to provide transparency on the application of the advertising restrictions under the CTS and the Code, an explanatory note was included with the Code to provide guidance on when an advertisement

²² In 2006, complaints about advertising to children made up just 2.5 per cent of the total complaints received by the ASB.

is determined to be “directed to children”. This advisory note is based on an earlier determination by the Australian Broadcasting Authority.

In the three years since the introduction of these clauses there have been no breaches of the food and beverage clauses, nor have they been the subject of formal complaint.

In that time Free TV has:

- conducted seminars with advertisers in Sydney and Melbourne in conjunction with the Australian Federation of Advertisers and the AANA, to educate advertisers on the new requirements of food and beverage advertisers under the Code;
- actively supported the AANA’s “Jo Lively” campaign based on the theme, “Eat Well. Play Well. Live Well.” All metropolitan and regional networks provided free airtime in children’s viewing times as well as across the day to support this industry-based initiative;
- actively supported the Victorian Governments “Go For Your Life” campaign and participated in the Victorian Governments’ ambassador program.
- continued to actively participate in state and federal seminars and summits on childhood obesity issues; and
- undertaken to increase the healthy food and lifestyle messages in programming as diverse as *TTN*, *What’s Good for You* and the *Biggest Loser*.

Since the introduction of the new clauses and the AANA Code, a number of prominent advertisers such as Arnott’s and McDonald’s have either reduced advertising directed to children or have withdrawn such advertising completely. Internationally, a number of companies including Kellogg’s have recently announced that they will only promote healthy products to children.²³

There has also been a significant change in the kind of advertising directed to children.

All advertisements that appear on television are cleared through Commercials Advice. The clearance process is designed to ensure that all advertisements meet the classification requirements under the Code and in the case of advertisements directed to children that they meet with the requirements of the CTS and the Code.

In recent years there has been a shift away from the fast food type of advertisements to a broader range of food advertisements. A Free TV review of commercials submitted for approval to Commercials Advice in 2006 reveals that food ads represented just 10.9 per cent of ‘C’ classified ads. Food ads represented just 11.3 per cent of all ‘G’ classified ads and the majority of these ads were for supermarkets (7.3 per cent).

²³ Kellogg’s Marketing to Children Practices Fact Sheet, June 2007

6.3.3 Should advertising provision to children be consolidated under the CTS?

The current mix of regulation is appropriate and should not be altered. The mix provides for a flexible and timely approach to regulation.

Broadcasters are able to respond to issues as they arise as they did with the introduction of the food and beverage clauses in the 2004 Code of Practice.

As we move forward into the digital environment with children viewing across platforms it does not make sense to continue to impose broadcaster specific obligations on a range of issues.

6.3.4 Industry to adopt a monitoring and reporting role

Free TV does not support Option 9.2 which suggests industry adopt a monitoring and reporting role over the next 18 months, in order to look at the CTS restrictions further.

Free TV already reports quarterly to ACMA on all complaints under the Code. If there are any complaints under the CTS they of course go directly to ACMA.

The AANA already publish six monthly figures on complaints to the Advertising Standards Board.

If the aim is to monitor industry and regulatory developments for another 18 months, before considering changes to the CTS, this should apply across all media platforms.

6.3.5 Restricting the volume and/or repetition of food and beverage advertising during C programs

There is no justification for further restrictions on the volume or repetition of food and beverage advertising during C programs. There are already a range of restrictions on advertising in C programs in particular a limit of 5 minutes per half hour.

There have been no complaints under the CTS or the Code about the volume of advertisements in C programs or the limited number of repetitions allowed.

6.3.6 Banning all food advertising during C programs

Banning all food advertisements during C programs on free-to-air television would threaten children's television production and is likely to do anything to address the rate of childhood obesity in Australia.

As outlined above C programs are already subject to a range of advertising restrictions.

As the ACMA review paper has noted, concern about food and beverage advertising needs to be considered in the context of the

“role of advertising in supporting the production of quality children’s programming”.

Advertising funds all free-to-air television production although as Children’s Television Report conducted for the Review by Kate Aisbett of Entertainment Insights found that “programming aimed at children does not have the same advertiser appeal”.²⁴

This is certainly consistent with the broadcasters’ experience. Most retail advertisers seek a general classification for their advertisements. There is not a lot of interest in advertising in C programs due to the restricted audience and the advertising restrictions that apply to C programs.

Broadcasters already struggle to fill the limited advertising slots available in C programs. This lack of interest has been compounded by the fact advertisers can now reach children on other platforms which don’t face the same level of regulation.

While there is no publicly available monitoring of ads on pay TV, anecdotally there is evidence that advertisers have already transferred advertising to pay TV channels due to the lighter regulatory approach.

Food advertisements cover a wide range of food products and services. Losing the ability to derive any revenue from these advertisements during C time would have serious implications for the viability of quality children’s programming.

As the Review paper states, the “broader issue of childhood obesity is one that is being addressed across a number of portfolios as part of a whole-of-government approach”.²⁵

Broadcasters support this approach.

6.3.7 Banning all food advertising directed to children

Free TV rejects the call for bans on all food and beverage advertising directed to children for the same reasons as those outlined above.

The *Broadcasting Services Act* requires that all regulation must be proportionate and not impose unreasonable regulation on broadcasters²⁶. Free TV strongly opposes Option 9.6 as it would be neither proportionate nor reasonable.

There is no evidence that a ban will work as the link between advertising and obesity is unproven and tenuous.

²⁴ Entertainment Insights, Children’s Television Production Project, 2007 page 19

²⁵ ACMA, Children’s Television Standards Review, Issues Paper 2007, page 31

²⁶ Broadcasting Services Act - s4(2) “...does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services.”

A proposal to introduce a blanket advertising ban on all food advertisements directed to children fails to take into account the well documented range of contributors to obesity, including hereditary, environmental, social and cultural factors.

Calls for bans also fail to take into account the impact on the advertiser funded model of free-to-air television. This solution is often viewed as “low cost” but that is not the case as there would be significant costs associated with a ban on all food ads directed to children as evidenced in the UK.

In November 2006, Ofcom introduced a range of restrictions on the advertising of foods high in fat salt and sugars (HFSS). The restrictions were introduced in February 2007 and were based on a nutrient profiling system that has already had to be amended to allow for the advertising of some dairy products.

More importantly it has been reported that the revenue cost to commercial free-to-air broadcasters is already around thirty million pounds and that ITV has cut children's programming by a similar amount.

There has been a collapse in the commissioning of original UK children's programming that has been exacerbated by the food and beverage advertising restrictions. Ofcom is currently holding a further review of children's programming and is due to make its first report later this year.

The UK example highlights that advertising bans cannot be viewed in isolation from the requirement under the CTS to provide children's programming.

This option should be ruled out immediately.

6.4 Premium offers

Free TV submits that the current guidelines on premium advertising have been operating adequately.

A complaint regarding premiums was made by the Coalition on Food Advertising to Children to the former Australian Broadcasting Authority.²⁷

The Authority conducted a thorough review of the complaints and dismissed them. In the process it determined that the current restrictions should be interpreted as meaning that the advertisement must focus on the product being advertised and not the premium.²⁸

²⁷ ABA Investigation Report File # 93/1883-03, 2001

²⁸ ABA Investigation Report File # 93/1883-03, 2001; page 7; “The ABA considered in particular whether any of the offers would be likely to create a false or misleading impression about the nature of the product in the mind of an ordinary child...”

Since then Free TV has applied this direction to all advertisements being submitted for approval through Commercials Advice which contain a premium offer.

The manager of Commercials Advice, Ruth Ward, has reported that since then the number of premium advertisements seeking approval has declined.

Free TV acknowledges that there has been widespread concern about the use of premiums not only on television but across all media platforms and in supermarkets. Internationally, a number of major film distributors such as Disney have announced that they will limit licensing of their characters to products being advertised to children.

In relation to television advertising, Free TV proposes that CTS 20 be amended to make it clear that the promotion of the premium, rather than the product, should occupy no more than one third of a commercial. This would ensure that the main message of the advertisement would be around the product and the time limit should ensure that the premium offer is "incidental" to the main product.

6.5 Regulating prizes

The restrictions in CTS 9 are currently too restrictive in the way they are interpreted and applied. The objective in CTS 9 is to ensure that prize-giving segments do not become surrogate product advertisements or promotional activities within programs.

However, broadcasters and producers do not believe that the restrictions should cover matters such as disclosing the value of the cash prize awarded at the end of a game show series, such as *It's Academic*.

The restrictions in CTS 9 should be redrafted to permit a host to reveal the value of a prize in appropriate circumstances.