



**Submission by
Free TV Australia Limited**

Senate Environment, Communications and
the Arts Committee

Inquiry into the effectiveness of the
broadcasting codes of practice

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1 Executive Summary

- Australia's commercial free to air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences
- Accordingly, there is a comprehensive and sophisticated set of rules governing content on free to air commercial television designed to ensure that viewers are able to make informed choices about the programming they, and their children, view.
- Free TV supports the existing regulatory framework for television content as set down in industry-developed Codes of Practice, underpinned by minimum legislative safeguards in the *Broadcasting Services Act 1992*, and enforced by the Australian Communications and Media Authority (ACMA).
- The regulatory framework includes a comprehensive suite of viewer protections, from requirements for content pre-assessment and display of classification symbols, through to the provision of consumer advice and scheduling restrictions.
- The regulatory framework is accountable to the community through in-built mechanisms for review and community consultation, and a legislative requirement that the Codes must always provide adequate community safeguards.
- There is no evidence of widespread community concern regarding the classification of content generally, or language in particular, on commercial free to air television.
- Whilst a complete consensus within the community regarding acceptable television content is unlikely in a pluralistic society such as Australia, recent research shows that classification decisions accord with majority community views. An overwhelming majority of viewers have not recently seen television content that is of concern of to them.
- There is also a very low level of complaints regarding the use of coarse language on television, with less than one complaint received by broadcasters on average each week over the last ten years. This is compared to the hundreds of hours programming broadcast each week and the millions of viewers watching commercial free to air television every day.
- For those viewers whose expectations do not align with majority community views, the extensive requirements for pre-classification, consumer advice and warnings enable them to make informed individual choices about their television viewing.
- There is also a well understood and widely publicised complaints process which ensures broadcasters remain in touch with community attitudes and are held responsible for breaches of the regulatory requirements. ACMA has recently found that the complaints-handling mechanism is working effectively and in a timely manner.
- The next scheduled review of the Code is currently underway. Free TV endorses the existing processes of review, community consultation and ACMA approval of the Code as the most appropriate means in which to address any community concerns regarding television content or the Codes of Practice more generally.
- These existing provisions for community consultation and ongoing review provide a far more robust and reliable measure of community attitudes than isolated incidents of controversy or the views of vocal minorities.



2 Introduction

Free TV Australia is the peak industry body representing all of Australia's commercial free to air television licensees.

Free TV welcomes the opportunity to comment on the Senate Environment, Communications and the Arts Committee's inquiry into the effectiveness of the broadcasting codes of practice.

Commercial free to air television broadcasters take very seriously their responsibility to ensure that television content, and the way it is presented, accords with community expectations, particularly in regards to children and young audiences.

Also, it is contrary to the commercial interests of broadcasters to show material that offends or upsets viewers as mass-market appeal underpins the success of commercial television programming.

To this end, the current framework for the regulation of broadcasting content includes a comprehensive suite of viewer protections, from requirements for content pre-assessment, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints handling procedures and strong regulatory enforcement mechanisms.

The existing regulatory framework is based on the principle that individual viewers should be provided with sufficient information to make their own choices about the television content that is suitable for them, and their children to watch. This principle continues to be supported by the overwhelming majority of Australian viewers.

There is built in to the framework a requirement for periodic review and public consultation, ensuring the existing set of viewer protections continue to reflect community attitudes to broadcasting content.

Free TV endorses the existing mechanisms for periodic review and community consultation as the most effective and reliable way of ensuring the regulatory framework continues to reflect community standards.

Recent research shows no evidence of widespread community concern regarding the current rules for television content, with the majority of viewers having seen no content of concern on commercial free to air television in the last 12 months.

Single controversial incidents or the views of vocal minorities should never be misconstrued as reliable assessments of the effectiveness of the regulatory settings and the degree to which they reflect community standards.

In relation to the specific issue of swearing and coarse language, commercial free to air television broadcasters are committed to compliance with the full range of restrictions currently in place to limit the use of such language in programs and the time at which such programs can be shown.

The restrictions continue to reflect community standards with broadcasters receiving on average less than one complaint each week on this issue, despite the hundreds of hours of programming and millions of viewers of free to air television each week.

The regulatory treatment of coarse language, and of television programming more generally, reflects the views and expectations of the majority population. It would not be acceptable to the wider community for television standards to reflect the minority position at the most conservative, or the most liberal end of the broad spectrum of views within Australian society.

Such an approach would remove all but the most general programming from popular viewing hours. This would be unfair not just for broadcasters, but also for the majority of the Australian television audience, who evidence shows, are broadly satisfied with television standards.

For those viewers whose expectations may be different to those of the broader community, the requirements for consumer advice and pre-classification allow them to make informed choices about their viewing. There is also a widely publicised and well understood complaints process which ensures broadcasters are accountable to community standards and viewer feedback.

The communications regulator ACMA recently found that the “complaints handling mechanism is generally working effectively and in a timely manner”.¹

This Submission provides a detailed overview of the comprehensive suite of regulatory restrictions that currently apply to free to air television content. It also provides comment on the specific issues raised by the Inquiry’s terms of reference.

¹ ACMA report Reality Television Review p 94

3 Background

The *Broadcasting Services Act 1992* sets down a co-regulatory system for the regulation of broadcasting content, in which broadcasters comply with codes of practice that are developed by the broadcasting industry in consultation with the public. The Australian Communications and Media Authority (ACMA) is responsible for registering the codes, for monitoring compliance and for investigating unresolved complaints.

The current framework for the regulation of broadcasting content includes a comprehensive suite of viewer protections, from requirements for content pre-assessment, display of classification symbols, provision of consumer advice, scheduling restrictions, complaints-handling procedures and strong regulatory enforcement mechanisms.

There is built in to the framework a requirement for periodic review and public consultation, ensuring the full range of viewer protections continue to reflect community attitudes to broadcasting content.

This provides a well-rounded and comprehensive system that balances individual choice, viewer protections, accountability, regulatory enforcement and regular review.

3.1 Key policy principles applying to the regulation of television content

The policy parameters for the regulation of broadcasting content are addressed through two pieces of primary legislation: *Classification (Publications, Films and Computer Games) Act 1995* and the *Broadcasting Services Act 1992*.

Programs shown on commercial free to air television are regulated through a set of classification rules based on the overarching policy principles set down in the *Classification (Publications, Films and Computer Games) Act 1995* and National Classification Code:

- Adults should be able to read, hear and see what they want;
- Minors should be protected from material likely to harm or disturb them;
- Everyone should be protected from exposure to unsolicited material that they find offensive;
- The need to take account of concerns about depictions that could condone or incite violence, and the portrayal of persons in a demeaning manner.

The classification of television programming is addressed through the *Broadcasting Services Act 1992* in a way that is consistent with the above outlined classification policy parameters. It prohibits the broadcast of certain programs, and restricts the time periods in which certain classes of program matter may be broadcast.

The policy objectives set down in the *Broadcasting Services Act 1992* include several which are relevant to the regulation of broadcasting content. Those objects are set out in section 3:

- To provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;
- To encourage providers of broadcasting services to respect community standards in the provision of program material;
- To encourage the provision of means for addressing complaints about broadcasting services; and
- To ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

The model set out under the *Broadcasting Services Act 1992* for the regulation of content is a co-regulatory model. Under the co-regulatory model, minimum standards and mandatory requirements are set down in legislation, with more detailed operational parameters addressed through industry codes of practice, which are registered by ACMA (addressed in more detail below).

This is consistent with the underlying policy principles of the broadcasting regulatory framework, and communications regulation more widely. The co-regulatory approach was introduced through the enactment of the *Broadcasting Services Act 1992* as a departure from the previous more direct, interventionist regulatory approach.

The Explanatory Memorandum to the 1992 legislation explained that the co-regulatory approach is intended to:

establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants, to introduce flexibility into the regime to enable responsiveness to changing circumstances.²

The co-regulatory model aligns with international best practice in communications regulation and enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services.

3.2 Regulation of television content

The legislative basis for the regulation of television content is set out in Part 9 and Schedule 2 of the *Broadcasting Services Act 1992*.

Schedule 2 sets out the high-level requirements for the classification of content broadcast on commercial free to air television. Licence conditions at Schedule 2 prohibit the broadcast of a program that has been 'Refused Classification' or

² Explanatory Memorandum to the BSA

classified X18+ by the Classification Board.³ The broadcast of R18+ classified films is also prohibited, unless such films have been modified to make them suitable for broadcast.⁴

Mandatory requirements are also set down in the *Broadcasting Services Act 1992* in relation to films classified 'M' and 'MA 15+':

- Films classified 'M' may only be broadcast between the hours of 8.30pm and 5.00am, or between the hours of noon and 3.00pm on school days.
- Films classified 'MA15+' may be broadcast only between the hours of 9.00pm and 5.00am.⁵

Part 9 of the *Broadcasting Services Act 1992* provides for the development of codes of practice by industry groups and the determination of program standards by ACMA.

Subsection 123(1) provides that industry groups must develop codes of practice for the following sectors of the broadcasting industry:

- Commercial broadcasters
- Community broadcasters
- Subscription broadcasters
- Subscription narrowcasters

Codes must be developed in consultation with, and registered by ACMA. Before ACMA can register a code, it must be satisfied that the code provides adequate community safeguards and that the public has been given adequate opportunity to comment on the code.

The *Broadcasting Services Act 1992* provides guidance on matters to be covered in the codes at subsection 123(2):

- Preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry;
- Methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority;
- Methods of classifying programs that reflect community standards;
- Promoting accuracy and fairness in news and current affairs programs;
- Preventing broadcast of programs that simulate news or events in a way that misleads or alarms the audience;
- Preventing the broadcast of programs that depict the process of hypnosis, induce hypnosis, or involve processes of subliminal perception;
- Broadcasting time devoted to advertising;

³ *Broadcasting Services Act 1992* paragraph 7(1)(g) of Schedule 2

⁴ *Broadcasting Services Act 1992* paragraph 7(1)(ga) of Schedule 2

⁵ *Broadcasting Services Act 1992* subsection 123(3A)

- Methods of handling complaints from the public about program content or compliance with codes of practice, and reporting to ACMA on complaints so made; and
- Such other matters relating to program content as are of concern to the community.

The Codes are required by the legislation⁶ to take into account community attitudes in relation to:

- The portrayal in programs of physical and psychological violence;
- The portrayal in programs of sexual conduct and nudity;
- The use in programs of offensive language;
- The portrayal in programs of the use of drugs, including alcohol and tobacco;
- The portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability; and
- Such other matters relating to program content as are of concern to the community.

The role of assessing community standards in relation to broadcasting content is assigned to ACMA, based on relevant research.⁷

3.3 Commercial Television Code of Practice

As outlined above, there are minimum requirements to be met by broadcasting codes of practice in relation to classification of content. To this end, the Commercial Television Code of Practice contains detailed requirements for the assessment and scheduling of commercial free to air television program matter.

The Commercial Television Code of Practice incorporates two sets of classification guidelines.

In relation to films broadcast on television, the Code reproduces the Guidelines for the Classification of Films and Computer Games. In relation to other television program matter, the Code incorporates the Television Classification Guidelines.

The two sets of guidelines are generally consistent, with the use of the same classification symbols and classification thresholds (except for the television-specific 'AV' category). Where there are differences, the Television Classification Guidelines will generally be stricter than the film guidelines.

Indeed, the classification rules for television are stricter than for other audio-visual media, such as pay TV, cinema and DVD release.

⁶ Broadcasting Services Act 1992 subsection 123(3)

⁷ Broadcasting Services Act 1992 subsection 123(1)

All television programming, except news, current affairs and sporting events, must be classified under one of the sets of guidelines.

3.3.1 Classification categories

The categorisation of content into different classification types that are readily understood by consumers is widely used internationally to promote informed choice by adults about the content they access and to limit the risk of exposure to inappropriate content by minors.

The following classification categories are set down by the guidelines⁸, and are based on the classification categories set out under the National Classification Scheme (except for the television-specific categories of C, P and AV):

- C and P (Children's and Pre-School Children's)
 - Material classified by ACMA as either C or P under the Children's Television Standard as being specifically suited for children
- G – General
 - Material classified G is not necessarily intended for children but must be very mild in impact and must not contain any matter likely to be unsuitable to children to watch without supervision
- PG – Parental Guidance
 - Material classified PG may contain careful presentation of adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision
- M – Mature
 - Material classified M is recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is presented
- MA – Mature Audiences
 - Material classified MA is suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of sexual depictions, or coarse language, adult themes or drug use
- AV (Adult Violence)
 - Material classified AV is suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of violence, or because violence is central to the theme. In other respects, the classification's requirements are identical to the MA classification.

The Code also sets down a list of material that is unsuitable for television and must not be broadcast. This may be because of the matter it contains, or the way that it is treated.

⁸ Refer to Appendix 5 of the Commercial Television Industry Code of Practice

3.3.2 Classifiable elements

For each classification category, there is a series of 'classifiable elements', such as violence, sex, nudity, coarse language, drug use and themes. For each of these classifiable elements, there is guidance on what level of content is suitable for the particular classification level.

For example, for the use of coarse language in a program, the guidelines set the following thresholds:

- G – Very mild coarse language generally considered socially offensive or discriminatory may only be used infrequently when absolutely justified by the story line or program context.
- PG – Low-level coarse language may only be used infrequently, when justified by the story line or program context.
- M – The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.
- MA – The use of very coarse language must be appropriate to the story line or program context and not overly frequent or impactful.

The suitability of material for broadcast will depend on the frequency and intensity of the classifiable elements in the program, such as violence, sexual behaviour, nudity and coarse language. It will also depend on a range of other factors, such as the merit of the production, the purpose of a sequence, the tone, the camera work the relevance of the material, and the treatment. These factors must all be taken into account and carefully weighed.

This means that some actions, depictions, themes, subject matter, treatments or language may meet current community standards of acceptability in one program, but in another program may require a higher classification or be unsuitable for television.

The Code also includes guidance in relation to material that would not be suitable for broadcast.⁹ Material which can not be classified AV or lower, because of its content or the way it treats the content, is treated as unsuitable for television, and may not be broadcast.

⁹ Refer to clauses 2.16 and 2.17 of the Commercial Television Industry Code of Practice

The Code identifies material that is unsuitable in terms of the classifiable elements:

Violence – Sustained, relished, or excessively detailed acts of violence, unduly bloody or horrific depictions, strong violence that has high impact or which is gratuitous or exploitative or the depiction of exploitative or non-consensual sexual relations as desirable.

Sex and nudity – Detailed genital nudity in a sexual context, or explicit depiction of sexual acts.

Language – Very coarse language that is aggressive and very frequent.

Drugs – Detailed depiction of intravenous drug use, or instruction or encouragement in illegal drug use.

Suicide – Realistic depiction of methods of suicide, or promotion or encouragement of suicide.

There are also requirements to restrict and classify program promotions and advertisements, with particular regard to the suitability of that material for children.

Classification is undertaken by individual licensees, by experienced content assessors. The majority of network classifiers have gained expertise through working for the Office of Film and Literature Classification.

This approach ensures that television program matter can be assessed in a timely and efficient manner, but still consistent with the overall approach to content assessment set down in the National Classification Scheme.

3.3.3 Scheduling restrictions

The Code contains provisions to restrict the broadcast of certain classes of material to certain times throughout the day. The broadcast day is divided into different classification zones, designed to reflect the viewing habits of adult and child audiences.

For example, they reflect that only material suitable for children to watch without supervision (G programming) should be shown when children are most likely to be watching television without parental guidance. Restrictions on what programming can be shown become more lenient as children are less likely to be watching.

- C and P
 - These zones are movable within bands laid down in the Children's Television Standards. These zones overlap other classification zones and have precedence over them.

- G
 - Weekdays
6.00am – 8.30am
4.00pm – 7.00pm
 - Weekends
6.00am – 10.00am

In G Zones, only material classified G, C and P may be broadcast.

- PG
 - School days
5.00am – 6.00am
8.30am – 12.00 noon
3.00pm – 4.00pm
7.00pm – 8.30pm
 - School holidays
5.00am – 6.00am
8.30am – 4.00pm
7.00pm – 8.30pm
 - Weekends
5.00am - 6.00am
10.00am – 8.30pm

In PG zones, only material classified PG, G, C and P may be broadcast.

- M
 - School days
12.00pm – 3.00pm only
8.30pm – 5.00am only
 - Weekends and school holidays
8.30pm to 5.00am only

In M zones, any material which qualifies for a television classification may be broadcast (material classified MA and AV may only be broadcast after 9.00pm and 9.30pm respectively).

- MA
 - 9.00pm – 5.00am only
In MA zones, any material which qualifies for a television classification may be broadcast (material classified AV may only be broadcast after 9.30pm).

- AV
 - 9.30pm – 5.00am only

Classification Zones Table

Schooldays

	5am	6	8.30	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	Shaded	Shaded	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	Shaded	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	White	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	Shaded

School Holidays

	5am	6	8.30	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	Shaded	Shaded	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	White	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	Shaded

School Holidays

	5am	6	8.30	10	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	White	White	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	White	Shaded

3.3.4 Consumer advice and classification symbols

To assist viewers in making informed choices about the type of programming that is suitable for them and their families to watch, the Code includes requirements for consumer advice to be provided at the commencement of programs. Consumer advice alerts the viewer to the nature of the content, and the strength and/or frequency with which it is depicted.

Consumer advice is required for:

- all programs classified MA and AV;
- for one-off programs (including films) and short series classified M;
- for all PG films; and
- for PG films broadcast at certain times and which are of a strength or intensity that may not be expected by parents of young children.

The consumer advice must be shown on screen with a voice-over announcement at the commencement of a program, shown on screen in abbreviated form following the resumption of the program after each break and in program promotions.

The wording of the required consumer advice is set down in the Code, ensuring that consumers are provided consistent and easily understood messages about program content.

This includes a text description of the classification, the meaning of the classification, and specification of relevant classification elements.

For example, for PG classified programming, the PG symbol must be displayed and accompanied by the text “parental guidance is recommended for young viewers”. There must also be a specification of any classification elements and their frequency.

The voiceover for the program must say :

“The following program [or film or movie] is classified PG. It contains [classifiable element]. [This channel] recommends parental guidance for young viewers.”

3.4 Complaints process

The regulation of television program content is open and accessible to viewers through a well-managed and well-understood complaints process.

Complaints about the Commercial Television Code of Practice are required to be made directly to the broadcaster who is obligated to respond substantively within 30 working days, and must advise the complainant of their right to refer the matter to ACMA for investigation.

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 ACMA. However, the vast majority of complaints are resolved between the broadcaster and the viewer.

If a complaint is referred to 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.

Once a complaint is received by ACMA, the relevant licensee is provided with an opportunity to comment on the matter raised by the complainant and is often asked for a copy of the material broadcast.

ACMA is bound by the rules of procedural fairness in conducting broadcasting investigations and this largely determines the time in which investigations can be completed.

Affected licensees are provided an opportunity to comment on any proposed breach findings through the provision by ACMA of a preliminary report. Under section 180 of the *Broadcasting Services Act 1992*, ACMA is obliged to allow a person whose interests may be adversely affected by publication of matter in a report to make representations in relation to the matter.

ACMA must provide a 'reasonable period, not exceeding 30 days', for comments prior to the publication of the report. Any comments received are taken into account by ACMA in deciding whether to publish the report in full.

In the event that ACMA finds a breach of the Code, any action taken will depend on the seriousness of the breach (refer to section 3.6 below regarding enforcement of the Codes).

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.

Commercial broadcasters provide an 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 to.

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. Switchboard staff are also required to record the content of complaints about matters covered by the Code, and ensure this record is circulated to key staff.

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

3.5 Review of the Commercial Television Codes of Practice

There is, built into the regulatory arrangements for broadcasting content, an existing process for ensuring the ongoing adequacy of the Code. Free TV supports this process as the most appropriate means of ensuring that community expectations regarding broadcasting content continue to be met.

This process provides for the Commercial Television Industry Code of Practice to be reviewed every three years. As part of each review, it is the role of the regulator, ACMA, to take an evidence-based approach to assessing the adequacy of the Code.

The review process commences with a detailed discussion between broadcasters and the regulator on potential areas for review under the Code.

Free TV, on behalf of the broadcasters, then develops a draft in consultation with the regulator. The draft is then approved by the regulator for release to the public for comment. Following the public consultation phase, Free TV then provides copies of all submissions to the regulator for its consideration. Discussions then continue between the regulator and Free TV in relation to the issues raised by the public, which may result in further amendments to the Code. Following that process, the regulator then considers whether to register the Code.

There are important safeguards built into the Code review process, in which ACMA is only permitted to register a Code if it is satisfied that:

- it provides adequate consumer safeguards for the matters covered by the Code;
- it is endorsed by the majority of the commercial television stations; and
- members of the public were given an adequate opportunity to comment on it.

3.6 Enforcement

ACMA is empowered under the *Broadcasting Services Act 1992* to enforce the regulatory framework for broadcasting content through a comprehensive suite of enforcement measures. These provide for proportionate responses to breaches of the framework and act as a significant deterrent. Free TV endorses ACMA's role as the arbiter of broadcasters' compliance with community standards through enforcement of the Commercial Television Industry Code of Practice.

In relation to individual breaches of the Codes, ACMA may in the first instance, impose an additional licence condition on the broadcaster, mandating compliance with the Code. Penalties apply for a breach of an additional licence condition, including remedial directions, civil penalties, criminal prosecution,

suspension or cancellation of the licence, and the acceptance of enforceable undertakings.

This range of enforcement powers allows AMCA to take a considered and proportionate response to a breach of the Codes.

It is important to note that ACMA may also take informal action in relation to code breaches, such as working with licensees to put in place procedures and training to ensure the code breach is not repeated.

These enforcement mechanisms are designed to provide a response to individual breaches of the Code. The *Broadcasting Services Act 1992* also provides ACMA with a means of responding where it is satisfied there is evidence that a registered code of practice is not providing appropriate community safeguards, or where no code has been developed. In these circumstances, ACMA is empowered to make a program standard. Compliance with program standards is a mandatory licence condition for commercial free to air television broadcasters.

3.6.1 Compliance action undertaken by licensees

The actions of broadcasters to ensure compliance with the regulatory framework should also be considered in this context. Broadcasters are strongly committed to compliance and have instituted training and procedural requirements throughout their company organisations to minimise the potential for inadvertent breach of the Code and to ensure that complaints are handled appropriately.

Broadcasters conduct regular formal Code training sessions encompassing tailored guidance on the requirements of the Code and the complaints handling process. Switchboard staff are trained in Code issues, to ensure that callers are provided with uniform and correct advice on how to make a complaint.

Broadcasters provide their staff with copies of the Code and relevant training materials and ensure compliance issues are discussed with staff of all levels.

In the event ACMA makes a breach finding following an investigation, broadcasters will usually distribute those findings internally to relevant staff. The findings will also be used as an example during internal regulatory training sessions to ensure future compliance.

These proactive steps demonstrate broadcasters' commitment to compliance with the Commercial Television Industry Code of Practice.

4 Specific matters raised by the Committee

4.1 The frequency and use of coarse and foul language (swearing) in programs

Television programming is a reflection of contemporary society and to this extent, will include the kind of language which is in use in the community everyday.

However, Australia's commercial free to air television broadcasters take very seriously their responsibility to ensure that television content, including language, accords with community expectations, particularly in regards to children and young audiences.

This is provided for through the current framework for the classification of television content in Commercial Television Industry Codes of Practice.

4.1.1 The classification of language in television programming

The use and frequency of coarse language is a classifiable element in each of the classification categories for television content and therefore must always be considered by program classifiers. As set out earlier, the current system provides for a higher classification rating in proportion with the frequency and impact of coarse language in the program matter. Accordingly, stricter scheduling restrictions apply as the frequency and impact of coarse language in a program increase.

The Television Classification Guidelines include detailed direction to broadcasters as to how programming that contains coarse language should be classified:

- G – Very mild coarse language generally considered socially offensive or discriminatory may only be used infrequently when absolutely justified by the story line or program context.
- PG – Low-level coarse language may only be used infrequently, when justified by the story line or program context.
- M – The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.
- MA – The use of very coarse language must be appropriate to the story line or program context and not overly frequent or impactful.

Further, the Guidelines stipulate that very coarse language that is aggressive and very frequent will invariably be unsuitable for television.

The requirements for consumer advice at the commencement of programs and after program breaks, ensure that viewers are made of

aware of the presence of coarse language, and its frequency in an upcoming program. As coarse language is a classifiable element, the consumer advice preceding a show can specifically note the level and impact of coarse language in the program. In this way, viewers are able to make their own decisions as to what they feel is acceptable for them, and their families, to watch.

If a viewer feels that the frequency and impact of coarse language in a program exceeds the classification category, they are able to progress a complaint through the broadcaster concerned, and then, if unresolved, to ACMA. As already noted, ACMA has significant powers of enforcement if it finds that the regulatory framework has been breached. There is also in-built review provisions and legislative safeguards to ensure that the regulatory framework continues to reflect community standards.

4.1.2 A considered and sophisticated approach to classifying language is required

When assessing the appropriate classification for a program with respect to language, a high importance is given to contextual matters.

As with all of the classifiable elements, the impact of language in programming will depend not only on frequency, but also on relevant contextual matters such as whether its use was aggressive or demeaning, to whom the language was directed, and the setting in which the language was used. It will also depend on the purpose of the sequence, the tone and the relevance of the material to such things as character development, plot and the overall theme of the programming.

A particularly important contextual consideration will be the intent with which a person or character uses coarse language or swear words. Swear words are often used in a variety of ways, and the impact varies accordingly. People use swear words descriptively, idiomatically, abusively, emphatically and cathartically. Each different kind of use having very different impacts on audiences.¹⁰

For example, whilst a particular swear word may be extensively used in a program, in the absence of aggressive or malicious intent, its impact may not necessarily be strong. By contrast, a single use of a comparatively inoffensive swear word or coarse language in the depiction of a violent conflict, or when used with a strong sense of menace against vulnerable characters, may be more impactful.

The setting in which the language is used is also an important contextual consideration, with the impact varying according to such factors as the age or character of others present in the scene, and also the reaction of other people/characters in the scene. So, for example, if an adult character or person were to swear or use coarse language in a setting in which children or other vulnerable people were present, the

¹⁰ Steven Pinker *The Stuff of Thought* (Penguin Books, 2007) p 350

impact would be higher than the depiction of coarse language between adults of a similar age and personality in a relaxed social setting.

Similarly, if swearing or coarse language is used in a scene with no discernable reaction from other characters or persons, the language would be less impactful than if those others present were shown to take strong offence.

Audience expectations will also have a role in determining the impact of swearing and coarse language. Audiences may expect swearing and coarse language to be used by certain kinds of television characters in certain contexts, such as criminals in a crime drama. The impact of swearing and coarse language would be less in these circumstances.

The importance of context can be usefully illustrated by the differing classification treatment broadcasters apply to programs and program promotions.

Typically, at the commencement of a program, there may be a package of highlights shown to give an overview of what is coming up in that program, or recapping a previous episode. In many instances, what is acceptable to show in these highlights or promotions packages will be different from what is acceptable to show in the body of the program. This is purely because of context. So, for example, a program may contain scenes in which certain characters swear and use coarse language in a scene of tension or frustration which is the culmination of a storyline involving conflict and drama.

In that context, the language may illustrate the particular weaknesses of the character, or may be used to demonstrate the strength of their reaction to particular events. This context would typically justify the use of the language.

However, a program promotion or highlights of a coming episode may not show these key plot elements, making the use of strong language in isolation inappropriate. In these circumstances, broadcasters will edit out or conceal the use of that language.

The fact that the impact of any particular classifiable element, including language, will vary according to its context means that it cannot be judged by a simple calculation of the number of times an element appears in the programming.

Just as community attitudes are complex, subtle and sometimes difficult to quantify, the approach to classifying language on television must address many subtleties and variances and must be far more sophisticated than a simple prohibition on the use of certain words.

4.1.3 Are the current regulations for language adequate?

Free TV recognises that the regulatory measures in regards to television content will only be meaningful for so long as they continue to reflect community standards.

However, the process of determining community standards is not a straightforward matter in a pluralistic society such as Australia, where multiple viewpoints will necessarily exist.

The approach taken in content classification policy and practice recognises that some form of aggregation of community standards can be made, notwithstanding that complete community consensus on an issue, such as acceptable use of language within television programs, may not exist.

Hence, reference is made to the majority views within the community as reflecting community standards more broadly.¹¹

If we apply this approach to the specific issue of swearing and coarse language on commercial free to air television, we find no evidence that the existing regulatory treatment of language is inadequate or is failing to meet the standards of the wider community.

In the ten years to 2008, broadcasters received 6745 complaints under the Codes of Practice. Of these, only 485 related to language. That is, on average, 48 complaints each year, or less than one complaint each week.¹²

Further, ACMA's website shows that broadcasters have only been found to be in breach of the classification requirements for language on four occasions.¹³

When compared to the millions of Australians who watch commercial free to air television every day and the hundreds of hours of programming each week, this data provides no evidence of significant or widespread community concern. On the contrary, this data suggests that swearing and coarse language on television, and its regulatory treatment, is broadly reflective of majority community standards.

As already noted, ACMA is empowered to make program standards in circumstances where it is satisfied that a code or codes of practice have failed to provide adequate community safeguards. ACMA has not at any stage determined that the provisions of the Commercial Television Industry Code of Practice regulating coarse language have failed or that a program standard is required. In those instances where ACMA has been asked to investigate the use of coarse language on television, the complaints have been very specific and have been appropriately dealt with under the Code.

Also, the Codes of Practice are subject to periodic review to ensure they continue to reflect community standards. The last Code review took place 3 years ago. Only 1.4% of the more than 1300 submissions

¹¹ For example, in its *Reality Television Review*, ACMA based its conclusions on the adequacy of existing content regulatory provisions on evidence-based research into majority community standards. Similarly, research prepared for the Commonwealth Attorney-General's Department on the adequacy of film and computer game classifications based its positive findings on the majority views expressed in qualitative market research.

¹² Source: FACTS/CTVA/Free TV Australia Code of Practice Complaints Database Q1 1998 to Q4 2007

¹³ ACMA Television Operations Investigations - http://www.acma.gov.au/WEB/STANDARD/pc=PC_91717

received expressed concern about the level of 'bad language' on television.

Hence, on an evidence based approach, it can not be said that there is widespread community concern regarding the use of coarse language on television.

4.2 The effectiveness of the current classification standards as an accurate reflection of the content contained in the program.

As already noted, there is a comprehensive and sophisticated set of rules governing content on free to air commercial television designed to ensure that viewers are able to make informed choices about what they see and hear.

The key to the ongoing usefulness of these rules is the degree to which they continue to adequately reflect community standards and effectively communicate the content of programs.

To this end there are, built in to the Codes of Practice, and the National Classification Code (on which the Television Classification Guidelines are based), requirements for periodic, evidence-based review, including assessment against community standards.

Free TV endorses these existing review mechanisms as the most effective and reliable way of ensuring the ongoing effectiveness of the classification rules for television content.

4.2.1 Are the current classification guidelines adequate?

There is no evidence of widespread community concern regarding the current system for classification of television content.

Consumer attitude surveys recently undertaken by ACMA in the context of its *Reality Television Review*, showed that 78 per cent of people have not seen content on commercial free to air television during the last 12 months that caused them offence or concern.

ACMA's research also found that:¹⁴

- 96.8 per cent of respondents were highly familiar with classification symbols shown before programs;
- 94.3 per cent were highly familiar with consumer information shown before programs; and
- 88 per cent were highly familiar with the scheduling restrictions for different types of content.

In addition, over three-quarters of viewers are confident that they understand what each of the classification symbols used on television

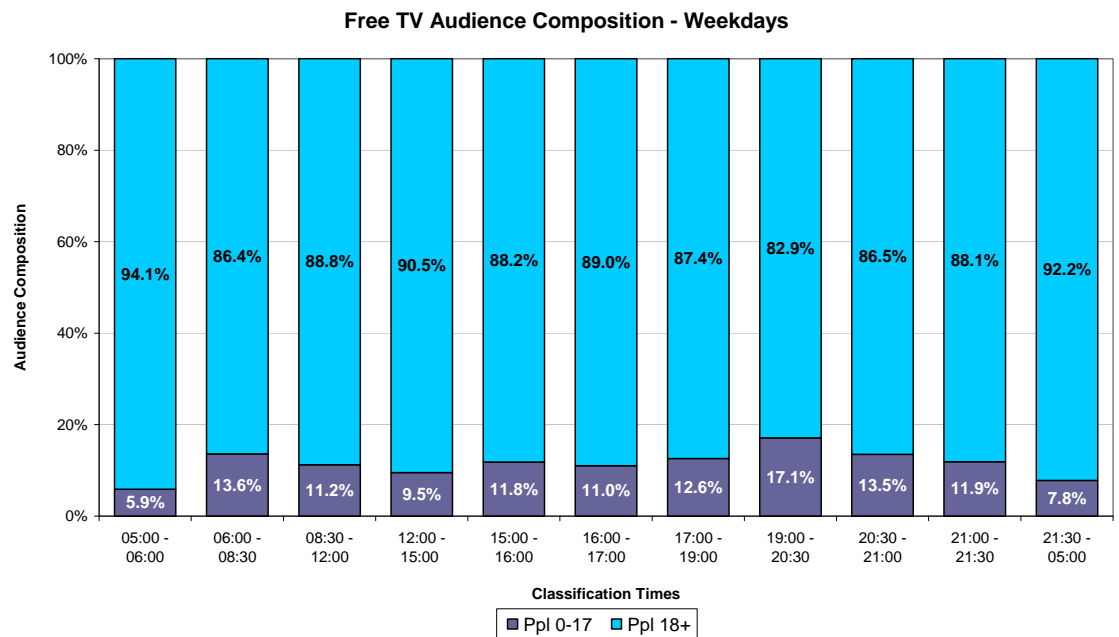
¹⁴ ACMA report Reality Television Review p 66

mean, with almost all of the remainder understanding some of the symbols used.¹⁵

On the basis of this research, ACMA concluded that there was no convincing evidence that the Code was failing to provide appropriate safeguards in relation to reality television programming, despite the controversy surrounding this genre at the time.¹⁶

ACMA’s standard-making power is also relevant in this context. As previously noted, under section 125 of the *Broadcasting Services Act 1992* ACMA is empowered to make program standards in circumstances where it is satisfied that a Code of Practice has failed to provide adequate community safeguards. No program standard in relation to television content classification has ever been made, further underlining the adequacy of the existing arrangements.

A review of ratings data for nightly viewing of commercial free to air television also shows that the scheduling restrictions for television content continue to reflect the viewing habits of adult and child audiences. As demonstrated in the table below, audiences after 8.30pm are predominantly comprised of adult viewers.



Whilst there will always be a divergence of views on what is acceptable television content in a pluralistic society such as Australia, and hence some complaints may be made, these can not be seen as a measure of wider community standards.

¹⁵ ACMA report Reality Television Review p 67

¹⁶ ACMA report Reality Television Review p 89

The regulatory treatment of television content, including coarse language, reflects the views and expectations of the majority population. It would not be acceptable to the wider community for television standards to reflect the minority position at the most conservative, or the most liberal end of the broad spectrum of views within Australian society.

Such an approach would remove all but the most general programming from popular viewing hours. This would be unfair not just for broadcasters, but also for the majority of the Australian television audience, who evidence shows are generally satisfied with television standards.

There is, built-in to the regulatory system for the classification of content, a recognition that by making reference to majority community views, there will be some viewers who may take offence to some programming – the needs of these viewers are addressed through the requirements for extensive consumer advice and warnings, providing them with the opportunity to make an informed choice about their viewing.

4.2.2 Requirement for ongoing review

As outlined in section 3.5 the Commercial Television Industry Codes of Practice are subject to periodic review, which includes an extensive public consultation process. ACMA is only permitted to register a reviewed Code if it is satisfied that the community has had a sufficient opportunity to comment, and that it meets the minimum requirements set down in the *Broadcasting Services Act 1992*.

The Code of Practice was last reviewed three years ago. The final Code as registered by ACMA included several concessions to respond to community concerns raised in these submissions.

This highlights the responsiveness of the existing co-regulatory arrangements, and in particular, the way the Code review process allows for community concerns to be expressed and addressed. The provision of classification rules within the Codes provides the opportunity for changing community attitudes to be reflected in the classification system.

The next scheduled review of the Code is currently underway. Free TV endorses the existing processes of review, community consultation and ACMA approval of the Code as the most appropriate means in which to address any community concerns regarding the current approach to television content classification.

It should be noted that ACMA and Free TV are required throughout this process to take into account any relevant research ACMA has undertaken. ACMA regularly conducts research into audience

attitudes¹⁷ and these studies provide robust and reliable assessments of community attitudes.

The Television Classification Guidelines are based on the National Classification Scheme and Guidelines, which are also subject to consultation and review. Prior to ratification by all Commonwealth, State and Territory Censorship Ministers, the National Classification Scheme is subject to a consultative process, ensuring they are broadly reflective of the wider Australian community.

Elements of the national classification system are subject to periodic review to ensure that classification tools remain in step with views about the suitability of material for the community and for particular age groups within that community. That periodic review generally comprises both a public submission process and research into community standards.¹⁸

In this context, the Commonwealth Attorney-General's Department recently undertook market research in relation to the adequacy of the classification categories in the National Classification Scheme, on which the classification system for television content is based. The clear findings of the research were that the classification scheme continues to reflect community standards.¹⁹

Free TV supports these existing mechanisms for consultation and review as the most appropriate means of ensuring the ongoing adequacy of the regulatory system. Regulatory and policy decision-making on classification issues will only be credible if based on robust, evidence-based review processes such as those set down for the Codes of Practice and the National Classification Scheme.

Single controversial incidents or the views of vocal minorities should never be misconstrued as reliable assessments of the effectiveness of the regulatory settings and the degree to which they reflect community standards. Such an approach would lead to decisions which unfairly restrict majority audiences' access to popular and widely accepted programming and the imposition of significant financial costs on broadcasters for no perceivable public policy benefit.

4.2.3 Should content be pre-vetted by ACMA?

Free TV is aware of suggestions that television program content should be pre-vetted by the broadcasting regulator ACMA.

The current regulatory framework continues to provide adequate consumer safeguards, is backed up by a robust complaints-handling process and a strong range of enforcement measures. There is no

¹⁷ For examples refer to ACMA's *Reality Television Review* (2007), the ABA's *Attitudes to Violence on Free-to-air Television* (2003) and *Community views about content on free-to-air television* (1999)

¹⁸ ACMA report *Reality Television Review* p 12

¹⁹ Galaxy Research: *Classification Decisions and Community Standards Report 2007*

[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)-Classification+Decisions+and+Community+Standards+-+Final+R.PDF/\\$file/Classification+Decisions+and+Community+Standards+-+Final+R.PDF](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)-Classification+Decisions+and+Community+Standards+-+Final+R.PDF/$file/Classification+Decisions+and+Community+Standards+-+Final+R.PDF)

evidence of regulatory failure in this regard, making extreme proposals such as this totally unwarranted.

As already noted, the large majority of viewers surveyed by ACMA as part of its *Reality Television Review* had not seen any content of concern on commercial free to air television in the last 12 months. ACMA found there was a “high level of acceptance of the current arrangements for the regulation of broadcasting content”.²⁰

There is also no evidence that broadcasters are failing to apply the classification guidelines properly. Television classification decisions have been broadly consistent with those made by the Classification Review Board for the public release of television content on DVD. For example, the Classification Review Board recently applied a rating of ‘M’ to the DVD release of *Ramsay’s Kitchen Nightmares*,²¹ consistent with the classification applied by the Nine Network in the television environment. Where classification decisions vary, television classifications are often more stringent, particularly with regards to consumer advice.

Such an approach would be regressive and contradictory to the co-regulatory approach set down in the *Broadcasting Services Act 1992*, which explicitly limits ACMA’s powers to pre-approve television programming.²²

With no evidence that broadcasters are failing to properly apply the classification guidelines, the benefits of such a proposal are difficult to identify. The significant delays that would arise in getting television program content to air would impose a significant financial and administrative burden on broadcasters, with no perceivable public policy benefit.

4.3 The operation and effectiveness of the complaints process currently available to members of the public

As required by the *Broadcasting Services Act 1992*, there is a comprehensive and well understood complaints handling process currently in place. Please refer to section 3.4 of this submission for a detailed description of the complaints handling process for television content.

The existing complaints process continues to work well to address public concerns and there is no evidence of regulatory failure in this regard. Free TV endorses the upcoming Code review process as the most appropriate means through which to address any perceived shortcomings or to make operational improvements.

²⁰ ACMA report Reality Television Review p 2

²¹ Refer to <http://www.classification.gov.au>, classification reference 4152245E

²² s 129

4.3.1 Timeliness of complaints handling - broadcasters

Whilst broadcasters are obligated to reply in writing to Code complaints within 30 working days, in practice, broadcasters often respond in a far shorter period.

The precise length of time depends on the complexity of the complaint. For some particularly sensitive programs, broadcasters prioritise the provision of timely responses.

However in some instances, particularly for complaints relating to fairness and accuracy in news, the preparation of a response can involve more lengthy investigation and detailed inquiry. Staff involved in the production of the material in question may be overseas or otherwise unavailable. In relation to state specific news or current affairs issues, networks must liaise with interstate licensees. It can also take some time to review records associated with the material.

Broadcasters are mindful of the need to ensure the complaints process continues to be accessible and to this end, the complaints process has been streamlined over the past five years 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 complaint 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 1400 copies have been mailed out in response to requests.

4.3.2 Timeliness of complaints handling – ACMA

For all Code complaint responses prepared by broadcasters, the complainant must be advised that if they are not satisfied with the response they can take their complaint to ACMA.

ACMA then conducts its own complaint review and determines independently whether or not there has been a breach of the Code.

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 number 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. Given the seriousness of the sanctions ACMA is empowered to impose in response to regulatory breaches, any dilution of procedural fairness requirements would be of serious concern.

In the report of its *Reality Television Review*, ACMA provided useful detail regarding the manner in which it reviews unresolved complaints:

- When a complaint is received and is to be investigated, the relevant licensee is provided with an opportunity to comment on compliance with the relevant Code matter raised by the complainant. Where appropriate, a copy of the material broadcast is requested. When the licensee's comments and the recording are received, the complaint is assessed against the relevant clause of the Code.
- ACMA must provide procedural fairness to an affected licensee in broadcasting investigations. Affected licensees are provided an opportunity to provide comments about any proposed breach finding at the preliminary report stage. Under section 180 of the Broadcasting Services Act, ACMA is obliged to allow a person whose interests may be adversely affected by the publication of matter in a report to make representations in relation to the matter. ACMA must provide a 'reasonable period, not exceeding 30 days,' for representations prior to the publication of that report. After comments are received, these are taken into account in deciding whether to publish the full report or parts of the report.
- ACMA may make a finding that a licensee has breached a code or a licensee may admit a breach of a code. Breaches of the codes are not breaches of the Broadcasting Services Act, although ACMA may make compliance with a code a condition of a licence. Any action taken by ACMA as a result of a breach will depend on the seriousness of the breach. ACMA seeks to ensure licensees

take action to remedy breaches or put in place procedures to ensure they not recur.²³

Free TV is committed to working cooperatively with ACMA to streamline the investigations process as far as possible and discussions are currently underway to this effect.

4.3.3 No widespread community concern

ACMA has recently found that there is no evidence of widespread community concern regarding the current complaints mechanism. ACMA's *Reality Television Review*, which relied on extensive consumer survey and research, concluded that "the complaints handling mechanism is generally working effectively and in a timely manner."²⁴

ACMA's review also noted that viewers do not see the complaints mechanism as the only means of responding to content on television which causes concern. ACMA's report found that:

- The relatively small percentage of viewers (22 per cent) who had seen content on commercial free-to-air television during the last 12 months that caused them offence or concern tended to take actions other than making a complaint.
- For example, 28.4 per cent (of the 22 per cent of respondents with concerns) chose to turn off the television, 23.6 per cent took no action and 3.6 per cent made a complaint to the broadcaster in question.²⁵

Whilst some respondents expressed concerns regarding the length of time taken to process a complaint, as set out above the timeframes built in to the complaints process reflect the need to allow broadcasters and ACMA sufficient time to investigate and respond to complaints within the constraints of the business environment and administrative law respectively.

When discussing the adequacy of the complaints processes, it is important to note that viewers are happy to take action other than lodging a complaint in response to television content that concerns or offends them. In research undertaken for its *Reality Television Review*, ACMA found that when respondents were asked what action they took in response to concerning content:

- 24.8 % nominated turning off the television;
- 22.6% changed channels;
- 12.2% refused to watch the program in question; and

²³ ACMA report Reality Television Review p 23

²⁴ ACMA report Reality Television Review p 94

²⁵ ACMA report Reality Television Review p 94

- 23.6% took no action at all.²⁶

This demonstrates that viewers are satisfied to take personal responsibility for what they watch and reinforces ACMA's other findings regarding consumer attitudes to the regulation of content.

4.3.4 Should broadcasters be required to accept complaints by email or phone?

Free TV is aware of suggestions that broadcasters should be required to accept complaints made by email or phone.

However, broadcasters are already required by the Codes of Practice to keep a record of all phone complaints and to advise complainants at the time of their call about the official Code complaint process. Further, the Free TV website provides extensive guidance for viewers seeking to progress a complaint.

The current requirement for written complaints serves two key purposes.

Firstly, it ensures that sufficient information is provided to broadcasters (such as program title, broadcast time and date and issues of concern) to enable them to properly respond to the complaint. Given the significant resources broadcasters commit to the resolution of formal complaints, it is appropriate that minimum requirements apply. A formal complaint can eventually give rise to ACMA investigation down the line. In light of the significant natural justice requirements that apply to such investigations, the requirement for a 'paper trail' and written records of complaints helps to streamline any future investigation and reduces potential delays.

Secondly, the requirement for a written complaint helps to distinguish between a formal complaint and an informal complaint. In many instances, viewers who contact broadcasters with a 'complaint' do not wish to go through a formal process or to have their concerns formally investigated. They instead prefer to provide immediate feedback and to speak to a broadcaster informally. The immediate nature of email may mean viewers elect to process their informal complaints by this means. The requirement for broadcasters to investigate all email complaints, including informal feedback, would significantly slow the process for responding to those viewers who are seeking a formal resolution and would lead to slower response times overall.

Given the extensive requirements already in place which are designed to make the complaints process accessible to viewers, ACMA's findings regarding the adequacy of the process and the generally low levels of community concern regarding television content, such a proposal is unwarranted.

²⁶ ACMA report Reality Television Review p 84

4.3.5 Should complaints be able to be made directly to ACMA?

The co-regulatory approach to broadcasting was specifically adopted to ensure that complaints were addressed quickly and effectively by providing for complaints to be handled in the first instance by the body who has primary responsibility for the content in question. This was a deliberate departure from the approach taken in the previous legislative framework (*The Broadcasting Act 1942*), in which complaints were to be made direct to the regulator.

The co-regulatory approach, emphasising broadcaster responsibility and referral to the regulator as an escalated complaints mechanism, is intended to promote streamlined, cost effective complaints resolution, with a mechanism for review by ACMA as a safety net.

This approach recognises that broadcasters are in the best position to take prompt action to address the complaint. It also ensures that broadcasters are continually in touch with community attitudes to programming on their services and get immediate feedback on the content of their programs.

If complaints about 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. Broadcasters would be removed from immediate feedback about their programming and viewers would be deprived of the chance for a speedy resolution to their complaint.

4.3.6 Suspension or cancellation of a program pending investigation

Free TV is aware of suggestions that a television program should be suspended or cancelled pending the resolution of any complaints made. Such a proposal would represent a particularly draconian form of censorship and is entirely unwarranted given the current low levels of community concern regarding free to air television content and the widespread support for individual choice.

Such a proposal would give rise to the potential for millions of viewers to be deprived of popular programming on the basis of a single person's dissatisfaction. Viewers are provided with extensive opportunities to make their own choices informed by their own taste and standards regarding the television programming they wish to watch.

Such a proposal would impose unprecedented uncertainty for broadcasters, as it would be impossible to predict whether a program would be allowed to air for its entire scheduled run.

Given the already extensive requirements for classification of content, the provision of warnings and advice, restrictive scheduling and promotion, such a proposal is entirely unwarranted.