



Review of Australian classification regulation

Submission to the Department of
Communications and the Arts

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1 Executive Summary

- Commercial free-to-air broadcasters support the application of clear and consistent classification standards in Australia.
- The Television Classification Guidelines under the Commercial Television Industry Code of Practice (“Free TV Code”) and the Guidelines for the Classification of Films (“the Film Classification Guidelines”) are highly consistent and use identical classification categories.
- These classification categories are long-standing, well understood and have a high level of consumer awareness. They should be retained.
- PG should not be split into two categories. This would be inconsistent with our descriptive rather than prescriptive approach to classification which empowers parents to make decisions for their children based on the maturity of their child. It would also be confusing and disruptive to viewers, and very costly for industry.
- The key issue with consistent classification of content arises from the enormous amount of digital content available to consumers and the fact that existing classification processes are not equipped to keep up with the significant amounts of online content that is being created and consumed.
- Changes to the existing processes are required to deal with the huge amount of online content being created in the modern media landscape. In particular, the *Classification (Publications, Films and Computer Games) Act 1995* (“the Act”) should make clear that where content has been classified under the Television Classification Guidelines by trained television industry classifiers, the requirements to classify that content have been met for the purposes of the Act (in the same way as for government approved automated tools).
- There should also be greater harmonisation of the type of content that must be classified across platforms. In particular, the Act should make clear that News, Current Affairs and Sports Programs should not be required to be classified regardless of the method of delivery.
- In order to avoid greater inconsistency being introduced by Government approved automated classification tools, the regulatory framework should allow for the re-classification of content by broadcasters where trained classifiers assess content to have been incorrectly classified or where content requires re-classification to ensure suitability for broadcast.
- Free TV does not support amendment of the Ad Standards Codes as proposed by the ALRC. The placement of advertisements on commercial free-to-air television is subject to complaints and enforcement processes by the ACMA. It would not be appropriate for Ad Standards to be empowered to pre-determine whether regulatory processes of the ACMA have been complied with.

2 Introduction

Free TV thanks the Department of Communications and the Arts (the Department) for the opportunity to comment on the consultation paper on the Review of Australian Classification Regulation (“Consultation Paper”).

Free TV supports the existing classification system in Australia – it is generally working well, with a high level of consumer awareness and an overall low level of complaint. There is no case for widespread changes to the current classification categories, this would be highly disruptive to viewers, would have a significant cost impact on broadcasters, and is not warranted.

However, in Free TV’s view changes to existing classification processes are required to deal with the huge amount of online content being created in the modern media landscape and to ensure a higher level of consistency across platforms.

This submission addresses both:

- The existing strengths of our classification system including the classification categories and why they should be retained; and
- The areas where greater harmonisation should be achieved, particularly in relation to classification processes online.

3 Achieving greater consistency of classification standards

Free TV is pleased that the Consultation Paper recognises the importance of consistency of classification standards across platforms and delivery formats.

In our view, the key issue with consistent classification of content arises from the enormous increase in digital content available to consumers and the fact that existing classification processes are not equipped to keep up with the significant amounts of online content that is being created and consumed.

As noted by the ALRC in its Final Report back in 2012, ‘it would be impossible for the Board to classify all content available to Australian consumers’.¹ Since that time, significantly more content has become available online via streaming services, online storefronts and a range of other content platforms.

Consistent with the ACCC’s Digital Platforms Inquiry final report, Free TV agrees with the Consultation Paper that:

- there is an opportunity for industry to self-classify content across all platforms, overseen by an Australian Government regulator;
- that Free TV should continue to self-classify under the Free TV Code; and
- that other industry sectors could either use trained staff classifiers or approved classification tools.

¹ ALRC, Final Report, 6.6.

In Free TV's view, the best approach to achieving greater consistency of classification standards in Australia is to:

- maintain the existing classification categories with no changes. They are long-standing, well-understood and there is no evidence which supports changes to these categories at this time;
- ensure the existing rules are applied consistently to online platforms; and
- ensure there are regulatory mechanisms in place to enable broadcasters to address errors introduced by approved Government tools.

4 Existing high level of consistency between film and television classification

Free TV supports the consistent application of classification rules across media platforms. Harmonisation and common classification markings across all media is important for consumer awareness and supports consumers making informed choices about what they watch. Harmonised markings across all media platforms was recommended by both the ALRC in its report "Classification-Content Regulation and Convergent Media", and the Convergence Review's Final Report.²

For broadcasters, the existing scheme established under the BSA (with the oversight of the ACMA) is working well and is consistent with (although more detailed than) the scheme for films. Free TV is concerned that there is a misconception that the schemes for film and television are not consistent. For example, the Final Report of that Convergence Review noted that:

*"The overall picture that emerges is that the 'content-specific, platform-specific and provider-specific rules are inconsistent, confusing and inflexible'."*³

This is not the case. While there are different processes for classifying films and television programs (films broadcast on television are classified under the guidelines provided by the Classification Board, and programs and other content (including advertising) are classified under Television Classification Guidelines), the classification categories and classifiable elements are highly consistent.

The Television Classification Guidelines provide more detailed guidance on specific subject matter to suit the range of content shown on television (drama, documentary, sport, news and current affairs, light entertainment and variety) and to enable a wide range of program genres to be classified consistently against one set of guidelines.

However, the classification categories and guidelines that apply to television are in fact derived from the scheme that applies to films. As can be seen from the table below, the same markings are applied. The key differences relate to the fact that:

- no material beyond the Classification Board's MA15+ standard is broadcast on commercial free-to-air television; and

² ALRC, Classification-Content Regulation and Convergent Media, ALRC Report 118, Recommendations.

³ Department of Broadband, Communications and the Digital Economy, *Convergence Review Final Report* (2012), p 40.

- Television Classification Guidelines have specific classifications to advise viewers that content is suitable for children.

Films	Television
	P
	C
G	G
PG	PG
M	M
MA15+	MA15+
R18+	
X18+	

The majority of Free TV Classifiers have spent time training with the classification board and include former Classification Board Members as well as people with certificates of training from the Board. Free TV classifiers also undergo a range of in-house classification training.

The Consultation Paper suggests that the Television Guidelines share only ‘some similarities’⁴ with the Film Guidelines. In Free TV’s view, the only differences relate to the drafting approach rather than the classification outcomes. The Free TV Guidelines are drafted with a view to being advisory. That is, they provide more detail than the Film Guidelines in order to facilitate Free TV’s function in advising viewers about how classification decisions are made and what they are based on, as well as advising producers and production companies in relation to what is needed to achieve a required classification. By contrast, the Film Guidelines are much less detailed.

The Consultation Paper cites two specific examples of inconsistencies between the two sets of Guidelines relating to the classifiable elements ‘suicide’ and ‘dangerous imitable activity’ in the Television Guidelines, which do not exist in the Film Guidelines. The Consultation Paper notes that:

‘The guidelines are not identical – for example, ‘suicide’ and ‘dangerous imitable activity’ are separate classifiable elements in Free TV’s code of practice.’

In Free TV’s experience however, while these are not separate classifiable elements under the Film Classification Guidelines, they are each considered under the element of Themes to achieve a classification marking consistent with the approach under the Television Guidelines.

In our view, the fact that the two sets of Guidelines are consistent in impact and outcome is critical. The fact that there are minor differences to account for the different way in which the Guidelines are used or that the rules are contained in separate regulatory documents is not material and does not create any substantial inconsistency.

⁴ Consultation Paper, 7.

5 Classification categories

5.1 Existing classifications long-standing and well understood

The Consultation Paper raises the issue of whether the classification categories for films are still appropriate and useful and if not, how they should change.⁵ We have also been asked to consider whether the existing PG category should be split into two categories, as it is in some other jurisdictions such as the US.

Free TV's view is that the existing categories are appropriate, well-understood by consumers and for that reason, working well. We are not in favour of changing the existing categories. We also do not support splitting PG into two separate categories.

The case for changes to the current system has not been made. The existing classification categories and classifiable elements are well understood and working well and do not require amendment. Any changes to classification categories have the potential to be highly disruptive to viewers and would have a significant cost impact on broadcasters.

The ALRC's extensive review of the classification system did not endorse reform of the classification categories precisely for this reason. The ALRC was not persuaded by arguments regarding the cost-benefit of changing long standing classification categories with a high level of public awareness that are generally supported. It considered that the case for change needed to be balanced against insufficient evidence that the existing categories are ineffective; the need for research and consultation on the value of age references and the appropriateness of particular age thresholds; and the absence of evidence that the reconfigured names and markings would be significantly more effective than the existing categories.⁶

As noted in the ALRC's Final Report:

Financial costs (for industry and/or government) might include: reclassifying the back catalogue of content that is still aired; retraining classifiers; changing marketing information, voice-overs and billboards; redesigning mainframe systems; and providing comprehensive and sustained education campaigns for audiences. Social costs might include consumer confusion, varied community expectations where content is reclassified into different classification categories and consumer uncertainty that may lead to an increase in complaints as people adjust to the changes.⁷

We would also note that it would not be practicable to limit such costs by only applying any new rules prospectively. This would effectively mean that two different sets of markings would be in effect at the same time and therefore only create further consumer confusion.

5.2 Proposal to split PG

The existing PG category is long-standing and allows parents to determine appropriate viewing within the category, in accordance with their child's maturity. In our view, the PG

⁵ Consultation Paper, Question 1, 11.

⁶ ALRC Final Report, 9.24.

⁷ Ibid, 9.26.

category is particularly useful because it is descriptive rather than being prescriptive – parents are encouraged to consider whether content within this category is suitable for their children based on the particular maturity levels of the child.

Splitting PG into age-based categories would disempower parents and could mislead viewers into believing that content with a certain rating will be suitable for persons of that age to watch unsupervised or that is suitable only for those within that specific age group. It could also give rise to an expectation amongst children that they should be able to move from one category to another at a specific age rather than at their parent’s discretion.

In addition, the introduction of PG age markings may reduce the significance of the accompanying consumer advice, which arguably provides audiences (and parents) with a more accurate and informative description of the content.

One argument put forward for splitting PG into two categories is that it would better align with other jurisdictions such as the US. Free TV does not agree with this argument. As shown in the table below, film classification categories in the US are slightly different in that they do not have an “M” category. “PG-13” in the US is essentially the equivalent of “M” in Australia however it has a slightly different application. It is not an ‘additional’ category as such and so the introduction of a PG-13 category would not operate to harmonise our markings with those in the US.

Australian markings	US markings
G - General	G – General Audiences
PG – Parental Guidance Recommended	PG – Parental Guidance
M – Recommended for Mature Audiences	PG-13 – Parents Strongly Cautioned
MA15+ - Not suitable for people under 15. Under 15s must be accompanied by a parent or adult guardian.	R - Restricted
R18+ - Restricted to 18 and over	NC – 17 – No One under 17 admitted

6 Online content

6.1 BVOD

As noted in the Consultation Paper, the Classification Act currently requires all content online apart from online games and online advertisements to be classified.⁸

However, while broadcasters' BVOD services are captured by the Act and broadcasters' BVOD content is being classified under existing processes, the Act technically provides that this content must be separately classified by the Board, regardless of whether or not the content has already been classified under the Free TV Code.⁹

In Free TV's view, the Act should make clear that where content has been classified under the Television Classification Guidelines by trained television industry classifiers, that the requirements to classify content have been met for the purposes of the Act (in the same way as they are for Government approved automated tools).

6.2 Clarification of the definition of 'film'

Free TV agrees that there is a need to clarify the definition of 'film' as proposed in the Consultation Paper, so that industry has clearer obligations about what must be classified and so that classification requirements are harmonised across platforms.

Importantly, the Free TV Code makes clear that News Programs, Current Affairs Programs and Sports Programs are not required to be classified (and therefore may be shown at any time on television). In Free TV's view, these programs should be treated consistently online and the Classification Act should be amended to make this clear.

⁸ Consultation Paper, 13.

⁹ Classification (Publications, Films and Computer Games) Act 1995, s 9.

7 Status of approved automated classification tools

7.1 Current process for television – Content is classified by highly trained classifiers

All content broadcast by commercial broadcasters undergoes a comprehensive classification and review system before it is put to air. An experienced in-house classifier reviews all material to determine its classification and whether it is appropriate for the time one in which the programs is scheduled.

The classification (and corresponding time zone) given to a program is determined by the in-house classifiers according to the impact (frequency and intensity) of the classifiable elements including violence, sexual behaviour, nudity and coarse language. Close consideration is given to the context of the material and its likely audience, and additional guidelines are provided with respect to content that may warrant particular attention.

For example, when classifying reality television programs, the network classifiers take into account the fact that the programs feature real people in unscripted situations, and the impact may be higher when compared to a fictitious drama program.

7.2 Achieving consistency of classification markings between automated tools and television

7.2.1 Free TV classifiers should be empowered to re-classify content that has been incorrectly classified by an automated tool

Free TV agrees with the view expressed in the Consultation Paper that industry sectors could make use of either trained classifiers or approved classification tools.

However, the regulatory framework should allow for re-classification of content by broadcasters in the event of incorrect classifications having been applied to content by government approved classification tools.

This is important given the use of automated tools and industry self-classification processes introduces a greater the risk of errors, ‘up-classifying’ and consumer confusion as a result.

The *Report on the Pilot of the Netflix Classification Tool* found that it ‘generated classifications decisions that were ‘broadly consistent’ with decisions of the Board in 93% of instances.¹⁰ However, this included ratings that were given one rating higher than a rating decision of the Board where the decision was considered to be a ‘borderline’ decision.¹¹ The *Monitoring program for the Netflix Classification Tool 2018-19* Report also noted that based on a random assessment of 68 of 2027 decisions by the Tool, 80% of the Tool’s decisions were revoked by the Board. Of those, 20% were revoked because they were one rating level higher than the Board rating and 6% were revoked because they were one level lower than the Board rating.¹²

¹⁰ See https://www.classification.gov.au/sites/default/files/2019-11/report-on-pilot-of-netflix-classification-tool_0.pdf , 4.

¹¹ Ibid, 8.

¹² See https://www.classification.gov.au/sites/default/files/2019-11/monitoring-program-for-the-netflix-classification-tool-2018-19_0.pdf, 8.

This is problematic because consistent up-classifying of content effectively means that different standards are applied online to those being applied on the broadcast platform, which undermines the meaning of the existing classification categories over time. It also has significant implications for broadcasters as the classifications of programming impacts when programs can be shown (due to time-zone restrictions under the Code), whether advertisements can be shown during a program or not, and also increases the likelihood of viewers making complaints under the Free TV Code for which broadcasters can be investigated by the ACMA.

For these reasons, it is critical that a regulatory mechanism be introduced to allow broadcasters to re-classify content that network classifiers determine to be incorrectly classified by an automated tool, to increase consistency of application of the classification categories and avoid consumer confusion. Currently, broadcasters can only re-classify content where the content is modified to ensure it is suitable for broadcast or for broadcast at particular times.¹³

In the absence of such a mechanism, inconsistent markings could be provided depending on whether the content is a film, classified by an automated classification tool or other program material classified under the Free TV Code.

7.2.2 Free TV classifiers should be able to re-classify content to ensure suitability for broadcast

The existing ability of broadcasters to modify and re-classify content to ensure it is suitable for broadcast or for broadcast at particular times, must be retained and should apply equally to classification decisions of automated tools. It should apply regardless of whether the content has been modified or not.

In addition to being susceptible to errors, classification decisions of automated tools do not account for the fact that programs on television are shown in a different format (for example, they can be cut differently (in which case that footage might not be modified), or the high impact parts of the footage can be removed and/or films can be shown over a number of nights or weeks or across more than one time zone).

One example to illustrate this is the series 'The Crown'. The fact that season 1 contained one-time use of the c*** word meant that the entire series was classified MA15+ however with that one expletive removed, the content would likely have been able to be classified PG.

This is particularly important for films broadcast on television because unlike other platforms, television classifications are linked to time zones – that is, restrictions on when content can be shown depending on the classification of that content.

The existence of time zones means that broadcasters will be significantly negatively impacted if they cannot re-classify content (regardless of whether that content has been modified or not) to ensure that, subject to appropriate edits, content can be shown when viewers are likely to want to watch that content.

¹³ See Classification (Publications, Films and Computer Games) Act, s 22CF; Free TV Code, clause 2.3.

8 Classification governance

The Consultation Paper notes the ALRC's recommendation that advertising codes administered by Ad Standards should be amended to provide that, in addressing the suitability of an advertisement of media content, the following matters should be considered:

- the likely audience of the advertisement;
- the impact of the content in the advertisement and
- the classification or likely classification of the advertised content.

Free TV does not support this proposal.

Advertisements broadcast on commercial free-to-air television must comply with both:

- The Free TV Code – which is subject to a complaints and enforcement process by the ACMA; and
- the AANA Codes – which are subject to a complaints and enforcement process by Ad Standards.

The two complaints and enforcement processes currently sit side by side and work well because they do not overlap or purport to comment on or determine the outcome of the other process. Ad Standards codes are a national system of advertising self-regulation intended to consider whether **the content** of TVCs on all platforms comply with prevailing community standards. They do not cover issues of *placement*. Placement is an issue which on commercial free-to-air television (an appointment viewing platform) is governed specifically by the Free TV Code in accordance with the Television Classification Guidelines and time-zone restrictions. Placement of TVCs on the broadcast platform should not be subject to duplicate and potentially conflicting obligations with oversight from two different regulatory bodies.

Placement of advertisements on commercial free-to-air television are subject to the complaints and enforcement process by the ACMA and the Ad Standards Codes should not be amended in any way which would confuse the two processes or enable Ad Standards to pre-determine whether the regulatory processes of the ACMA have been complied with.