



11 November 2024

Free TV Australia
Suite 1, Level 2
76 Berry Street
North Sydney NSW 2060
By email to: codereview@freetv.com.au

SUBMISSION ON REVIEW OF THE COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE

Thank you for the opportunity to provide input to this very important review.

CMA is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children. CMA membership includes the Alannah and Madeline Foundation, Collective Shout, Early Childhood Australia, the Australian Council of State Schools Organisations, the Australian Primary School Principals Association, the Association of Heads of Independent Schools Australia, the Australian Education Union, the Australian Children's Television Foundation, the Parenting Research Centre, the Council of Mothers' Union in Australia, Reset.Tech Australia, the South Australian Primary Principals Association, and other state-based organisations and individuals.

CMA's core activities include the collection and review of research and information about the impact of media use on children's development, and advocacy for the needs and rights of children in relation to media use.

In its work, CMA is always guided by child development research and by the rights of the child. While the *UN Convention on the Rights of the Child (CRC)* is not directly binding on Free TV Australia or its members, it is binding on the Commonwealth Government, and it includes an obligation to 'Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being' (article 17(e)). The CTICP should be seen as such a guideline, so it should be seen as matter of children's rights – a 'must do', not a 'nice to do'.

We draw attention also to the *Children's Rights and Business Principles*, which include an exhortation on businesses to 'Reinforce community and government efforts to protect and fulfil

Children and Media Australia

 PO Box 1240, Glenelg South SA 5045

 61 8 83762111  61 8 83762122

 info@childrenandmedia.org.au

 www.childrenandmedia.org.au

children's rights'. The co-regulatory scheme under the *Broadcasting Services Act* is (among other things) such an effort. Other Principles relevant to the CTICP are that businesses should:

1. Meet their responsibility to respect children's rights and commit to supporting the human rights of children;
5. Ensure that products and services are safe, and seek to support children's rights through them; and
6. Use marketing and advertising that respect and support children's rights.

Some of the rights that should be respected and supported in the above ways are:

- Respect for the rights, responsibilities and duties of parents (article 5)
- The right to seek, receive and impart information (article 13)
- The right to privacy (article 16)
- The right to 'access to information and material from a diversity of national and international [mass media] sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health' (article 17)
- The right of parents to assistance in the performance of their child-rearing responsibilities (article 18)
- The right to the attainment of the highest possible standard of health (article 24)
- The right to education (article 28)
- The right to rest, leisure, play and recreational activities (article 31)
- The right to protection from economic exploitation (article 32)

Many of our comments below are guided by one or more of these considerations.

We are also mindful of the ACMA's 2022 Research Paper, *What Audiences Want: Audience Expectations for Content Safeguards*, with its statement that in relation to '[c]lassification and content guidance – audiences expect clear and meaningful information to assist in making informed content choices for themselves and those in their care, including children'. The comments and suggestions in this submission are intended to be conducive to the fulfillment of that expectation.

Adequacy of consultation

CMA notes Free TV's process of drafting changes to the CTICP and releasing them for comment. We question the value of such a process and contrast it to other reviews and inquiries in which we participate, where there is an initial broad-ranging inquiry about how things are working and what issues stakeholders see; then there is an issues paper or discussion paper put out for comment; and only then are concrete provisions drafted, for further consultation. After such a long delay since the last review, and so many changes in the media landscape, the Australian public might have hoped for something more thorough here.

General comments on this review

CMA has long held serious reservations about the Commercial Television Industry Code of Practice (CTICP), and we note in particular the progressive watering-down of protections for children, and support for families, with each review. The current set of proposals continues this trend of making the content of free-to-air stations riskier for children, in spite of Licensees' privileged and protected position in the media landscape, and their consequent public service obligations. This at a time of financial hardship for many families and therefore lack of access to paid services.

We would also like to make the general comment that the Code is bewilderingly complex, being full of intricate rules, exceptions and cross-referencing between sections. This represents a significant defect for a set of rules that is enforced only in relation to complaints from the public. It is fanciful to imagine the average member of the public combing through this Code to determine whether a particular piece of content should have been broadcast at a particular time or in a particular context. Therefore complexity is a barrier to effective enforcement.

Moreover there is language throughout the Code which would give a member of the public no basis on which to decide whether a provision has been breached, for example 'will exercise care' in 2.3.2; 'which the Licensee reasonably believes' in 2.5.1; references to practicability in 2.5.2 and 2.5.3 (see below); 'as the Licensee may consider appropriate' proposed for addition in 3.2.1(b) (see below); and the 'exercise special care' standard in 3.5.2.

CMA submits that there would be a case for scrapping the whole Code and starting again, with some very basic principles relating to the interests of the Australian community, and especially of families and children. We believe it would look quite different if it were based on these.

In what follows we comment, in turn, on specific sections of the Code where we either see a need for change or have a reaction to a change that is proposed.

2.1 Classification – General rules

2.1.3 allows Licensees to rely on classifications by a qualified third party for Commercials and Community Service Announcements. In practice this means they rely on ClearAds. Yet there are instances where ClearAds ads has given a classification, for example PG to an ad for a scary movie, that has been the subject of a complaint to Ad Standards and/or to us. This indicates that something is not working with this system, and we submit it would be preferable for Licensees to take responsibility themselves for the classification of all the content they show.

2.2 Classification zones

The proposed changes to 2.2.2 and 2.2.3, involving the expansion of the M and MA15+ classification zones at the expense of the PG and M zones respectively, are a clear example of the watering-down referred to earlier. These proposals show a profound lack of concern for children and their lives, and a lack of interest in serving the family audience. They mean that in order to avoid watching unsuitable content, families will have to switch off at 7.30pm.

Another example of the lack of concern for children and their lives is the removal of any distinction between School Days and School Holidays. This means that, at weekends and in school holidays, school aged children are likely to encounter M content between 10am and 3pm, as well as from 7.30pm.

Perhaps even more troublingly, the new rules open up additional time slots for advertising of products that are inappropriate for children, for example alcohol and R18+ movies and games (see clauses 6.2.1(a) and 6.4.2 respectively). So even if a program is suitable for family viewing, the ads within that program may well not be – and unlike programming, advertisements are something that parents cannot screen in advance.

We see no justification for this move, which will have a significant impact on the capacity of families confidently to enjoy appropriate TV viewing at a time when members are available.

At the very least, ad restrictions should be aligned to the classification of the program, as well as the time of broadcast; and the savings for 7.30-8.30pm in 6.2.1(a) and 6.4.2 should be extended to 10am-3pm on weekends and during School Holidays.

2.3.2 Exemption of certain Programs from classification

There is significant discomfort in the Australian public about these exemptions. CMA accepts that news programming is different from other programming and may require a different approach, but a complete exemption from classification considerations is unjustified.

CMA further questions whether any differential treatment is justified for current affairs or sports programs (with the possible exception of live sports).

2.4. Non-Program material

2.4.2 provides certain protections in relation to G and PG films which start before 8.30pm and which may be highly suitable for family viewing. However 2.4.3 removes these protections in some situations, based entirely on the way that the film is promoted and the likely size of the child audience.

The review document does not propose any change to 2.4.3 but CMA submits that it should be changed or removed. Children's needs for protection, and for access to appropriate programs, are not contingent on the way programs are promoted, or how many other children might be watching. Moreover, this is another example of the kind of provision that requires an impossible judgment on the part of a member of the public who thinks it might have been breached. We don't necessarily know how a program has been promoted, and we cannot predict with any confidence the viewing habits of children in other homes.

Rather the protections should apply across the board based on classification and time of broadcast: families should be able to be confident that anything seen in the course of a G or PG film starting before 8.30 pm is suitable for children.

2.5 Viewer information

2.5.1(b) requires consumer advice to be given at the start of M-classified Programs that commence between 7.30 and 8.30 pm. If the M time zones are to be expanded into weekends and school holidays, it becomes necessary to add the extra time zones: 'or which commence between 10am and 3pm'.

2.5.2 relates to the display of classification symbols at the beginning of Programs. CMA submits that the words 'as soon as practicable after' in the former provision should be replaced by the word 'at', and that there should be a minimum time for the display, to ensure that viewers have the opportunity to notice and read the symbol. Further, the use of 'the' instead of 'a' in relation to the second-mentioned program would make it clearer that the second-mentioned Program is the same as the first-mentioned Program.

Therefore, 2.5.2 should read: 'Classification symbols for a classified Program must be clearly displayed by a Licensee ... for at least 5 seconds at the commencement of the Program'.

2.5.3 relates to the display of classification information in Program Promotions, and again contains a reference to practicability. CMA submits that the words 'where practicable' should be removed.

CMA favours removal of references to practicability because classification information is important enough that Licensees should be required to simply find a way. We note that commercial television stations seem to have no difficulty incorporating watermarks promoting their own programs and other matters, so there should be no difficulty in displaying classification information.

In 2.5.3 CMA recommends the addition of the following language: 'The symbol should be displayed clearly and conspicuously in a consistent position on screen, using a consistent format for the symbol, for at least 5 seconds at the end of the promotion'. The shift to the end of the promotion is recommended because when the symbol is displayed early in the trailer, viewer interest in the product has yet to be engaged. If the symbol is placed near the end, it is far more likely to be effective in providing valuable classification information where it is needed.

If this review is serious in its stated aim of providing clear and meaningful information to assist in making informed content choices, these changes are an obvious place to start.

2.5.4 requires the display of the classification or marking in Commercials for Films etc, and is slated for removal. CMA sees no justification for the removal of a clause which does no more than guarantee the provision of important information about a product being advertised on television. It may be true that the advertiser is bound, by other rules, to display classification information, but there is no harm in having a parallel duty on broadcasters.

3.2 Material which may cause distress

CMA opposes the removal of the word 'spoken' from paragraph (b) in this provision. Spoken warnings retain their salience in a variety of situations, including those where a parent is supervising a child's viewing but not able to watch the screen every single minute. Being able to

hear any warnings about distressing content would be highly valuable in such a situation, and the provision of such warnings would be a way of supporting parents in fulfilling their responsibilities towards their children.

The proposed additional words ‘and other warnings as the Licensee considers appropriate’ sit oddly in a provision about what Licensees ‘must’ do. They would mean, logically, that the test for a breach is to determine whether a Licensee considered a warning appropriate but did not include it. This part of the provision should, at the very least, be reframed to an objective standard, for example by changing ‘the Licensee considers’ to ‘a reasonable person would consider’. Better still would be clear and specific rules, that members of the public can understand and use to test whether Licensees have complied with their obligations under the Code.

3.3 Accuracy and fairness

CMA applauds the proposal to remove the words ‘make reasonable efforts to’ and would support the removal of similar language elsewhere in the CTICP.

3.5 Privacy

3.5.2 limits Licensees’ obligation regarding children’s privacy to one of ‘exercising special care’. CMA submits that this is an unjustifiably low standard, and that Licensees should take on the responsibility simply not to broadcast the material in question.

5.2 Exempt non-Program matter

5.2.1(a) extends the exemption to Program Promotions of 10 seconds or less, but even a 10-second promotion for a scary movie can have a significant impact on children. There should be no exemption based on the length of a piece of content.

5.7 Additional requirements

This provision is puzzling, because it purports to bind television advertisers, rather than television Licensees, to ensure that advertisements comply with various AANA Codes. We say ‘purports’ because advertisers are not subject to the powers of the ACMA under the *Broadcasting Services Act*. The CTICP cannot bind anybody but Licensees.

In that sense the provision has no place in the CTICP and we believe it could be misleading to consumers who, unless they read the provision carefully, would believe that the AANA Codes form part of broadcasting co-regulation. This is especially the case if they do not understand that an advertiser is not the same thing as a broadcaster.

That being said, the CTICP should contain at least some rules about the content of advertising. While the AANA Codes themselves are deeply flawed (not least because of their purely self-regulatory nature), they are better than nothing. Therefore in our submission the CTICP should at a minimum rephrase 5.7 to bind Licensees as to the AANA Codes (for example an obligation to ensure that advertisers meet the stated expectation).

Ideally, Free TV would include in the CTICP some stronger and better-targeted rules about the content of advertising, designed with the rights and developmental needs of the child audience (among other matters) in mind. CMA acknowledges that, realistically, this is not the time to attempt to complete the involved process of formulating such rules. However it is not too soon to start that process for a further review in the near future.

We reiterate the point made above that advertising is unpredictable from the viewer's point of view, and cannot be chosen (or avoided) in advance. Therefore it is all the more important that it be effectively regulated, including and especially to remove content that is injurious to children's interests and healthy development.

6.2 Alcoholic Drinks

6.2.1(b) provides that Commercials for Alcoholic Drinks may be broadcast during any Sport Program on a Weekend or Public Holiday – in other words, during prime family sport viewing time. CMA sees no justification for this, and submits that the paragraph should be removed.

6.5 Betting and gambling

CMA refrains from making any comment on these provisions, in light of the Government's current process of formulating new regulations which might well supersede them. Depending on what the outcome of that process is, we reserve the right to comment further on the coverage of this important social issue under the CTICP.

7.2 Code complaints

CMA applauds the addition of 7.2.5, requiring Licensees to have a link to the complaint form on their websites. However we would suggest the addition of the word 'prominently' after 'display'.

Appendix 1: Television Classification Guidelines

The Guidelines for each classification from PG up state that 'All elements must be justified by context'. This is in need of clarification for the purposes of television advertising.

Normally when a film or program is classified, the relevant 'context' is the rest of the film or program, but this makes no sense when considering a brief ad or trailer, where there can be no 'context' in the usual sense.

CMA submits that the Guidelines should specify that for the purpose of classifying ads and trailers, the relevant 'context' is the Program within which (or the Programs between which) the ad or trailer is broadcast.

CMA submits further that the Guidelines should be adjusted to address the question of scary content separately from violence. There is extensive evidence that scary content can be damaging to children's development, and it is not necessarily violent.

On the other hand, there is no evidence that content carries lower risks of harm for children when it is stylized and/or unrealistic. Therefore we would recommend the removal from the PG Guideline of the words indicating that more leeway is allowed for such content.

Appendix 2: Contacts for Code complaints

CMA has been surprised to see that the table in this Appendix does not include an email address for each Licensee listed.

Additional comment

The ACMA, in its 2022 Research Paper *What Audiences Want*, states:

Most current codes of practice do not apply to online content, even when that content appears on a broadcaster's live-streamed, catch-up, or on-demand platform. ... New rules need to be developed to cover live-streaming, catch-up and on-demand services to give certainty to audiences in their viewing choices.

Although this might be more a matter that requires change to the Act, CMA takes this opportunity to state that we would wholeheartedly welcome the extension of this Code to the services mentioned in the quotation above. One example we can point to, of how this would improve matters for the viewing public, is that Licensees currently promote content from those services, on their main channel, with no classification information. Presumably this is because those services are not covered by the CTICP, or indeed mentioned in it. The time has come for this to change, and given the ACMA's statement in its Research Paper, mentioned above, we are hopeful that such change will come about soon.

For further information please contact Professor Elizabeth Handsley, President, at president@childrenandmedia.org.au.

*******END OF SUBMISSION*******