



SUBMISSION TO FREE TV AUSTRALIA

REVIEW OF THE COMMERCIAL TELEVISION INDUSTRY CODE OF PRACTICE

APRIL 2015

The Australian Council on Children and the Media (ACCM) welcomes this opportunity to comment on the proposed changes to the Commercial Television Industry Code of Practice.

ACCM will provide further comment on matters raised in this submission if needed.

Please contact Prof Elizabeth Handsley (President) or Barbara Biggins OAM (Hon CEO)

Introduction:

The ACCM 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.

The ACCM has a national Board representing the states and territories of Australia, and a broad membership of organisations and individuals who support its mission.

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

Comment on the proposed changes

Process for seeking public comment

One of the criteria for registration of the revised Code of Practice is that, in accordance with s 123(4)(b)(iii) of the *Broadcasting Services Act 1992* (Cth), 'members of the public have been given an adequate opportunity to comment on the code'. ACCM does not believe that such an opportunity has been given in this case.

An adequate opportunity to comment would include the following:

1. Seeking feedback on current practice (based on provided documentation and/or the provision of resources for independent monitoring to produce such documentation)
2. Identifying (and justifying) areas and options for change
3. Setting out clearly the precise changes that are proposed

Ideally there would be a delay between 2 and 3, so that the precise proposals are informed by feedback on the first two. However the crucial point is enabling members of the public easily to see how the proposed Code differs from the current one.

In the last review of the CTICP, FreeTV released a marked-up version of the Code showing the changes. This time, while it has released “Detailed explanatory notes on the Code”, in many areas these still require members of the public to go through clause by clause and determine what changes are proposed unless they are willing to rely on FreeTV’s own assessment of what the important things are that we need to know (and for which they are willing to provide a justification). In ACCM’s view this places an undue burden on members of the public, and detracts from the adequacy of the opportunity to comment, especially in the 6-week window provided.

Furthermore, ACCM notes that the document inviting public comment instructs members of the public to bear in mind, among other things: ‘the purpose of the Code, and the statutory context in which it operates; the changes in the media landscape[; and] the way you consume content’.

ACCM submits that these are not matters with which the public need be concerned. They should be free to comment on the impact they can see the code as having on their interests, without regard to these matters. Mentioning them in this context can be expected to unduly restrict the public’s willingness to say what it really wants from the industry.

We also question whether the methods adopted for publicising the opportunity to comment were adequate, considering that even ACCM, as the peak body on children and the media, only learnt of it through our standard information-gathering practices. We believe that an adequate opportunity to respond would involve putting key stakeholders on notice, and bringing the matter directly to their attention.

Although the invitation for public comment also asks members of the public to bear in mind ‘the operation of the Code since it was last reviewed in 2009’, FreeTV has not provided the kind of information mentioned above, and nor has it explicitly sought feedback on current practice. We provide such feedback below in any case.

Current practice

Current practice in the commercial free-to-air television industry suggests that even the current code does not provide adequate community safeguards in accordance with s 123(4)(b)(i) of the *Broadcasting Services Act*.

In particular, G times have been heavily colonised by news reports (which are exempt from classification requirements), with a noticeable expansion in the number and length of news programs within the 4-6pm periods especially. We have always questioned the justification for their exemption from ratings, but surely that exemption is all the more reason to use them only sparingly during the G time zone.

There has also been an increase in the numbers of promotions for M-classified programs within the 4-6 pm slot. Although such promotions are permitted by 3.6.3.1 of the present Code the suitability of the content to the overall time zone is often questionable. We have observed the content of program promotions within G and PG viewing periods to contravene the requirements of 3.1.2 of present Code. In addition, program promotions during this time slot are inconsistent as to the display of the ratings of those programs - that is, inconsistent as to the prominence and duration of the display, and as to whether the rating is displayed at all.

We note further that an issue regarding MA-classified material that we identified in our submission to the previous review, arising from the provision in cl 3.14: ‘A promotion for an MA program may be broadcast at any time except during C and P programs, provided the promotion is suitable for the classification zone in which it is broadcast’. ACCM pointed out that this contradicts the requirements of 3.6 (MA15+ promotions should not be broadcast

before 8.30pm). ACCM received assurances from representatives of FreeTV that relevant changes would be made before the Code was finalised but this was not done. The problem may have been superseded by the new cl 2.1.1, but in ACCM's view this is not a solution (see below).

Proposed changes in this review

The proposed changes contain nothing for children and families. To the contrary, there are a number that work strongly against those interests.

General approach to protecting children

We note the inconsistency throughout the Code where some provisions apparently aiming to protect children apply only to material with a G classification (for example the restrictions on gambling ads, and cl 6.2.1), some refer to the proportion of children in the audience (for example the justification for freeing up alcohol advertising, and cl 2.3.5(c)) and some apply to broadcasts with a substantial child audience (in which we include those applying at certain times of day, as this seems to work as a proxy for measuring the child audience).

There is no apparent justification for this inconsistency, and ACCM submits that **any provision aiming to protect children should be based on the predicted size of the child audience** - that is, the number of children likely to be exposed to the material. Children watch a good deal of material rated higher than G (indeed there may not be any more such material broadcast under the new Code), and their needs are just as great in relation to that material; indeed they are possibly greater. Nor is there any justification for presuming the presence of adults in the audience has any impact on the potential of the material to harm the child. In fact the research evidence indicates that unless adults actively respond and comment on the material in question, their presence has the effect of making the material *more influential* over children. Not all adults have the willingness or ability to provide the kind of feedback that would avoid that effect.

ACCM also supports time-based cutoffs, at least to the extent that they are based on predictions about the size of the child audience. Time-based cutoffs make it easier for families to predict what they are going to encounter on the screen, and they also make it easier to determine whether a licensee has breached the Code, and therefore whether it is worth complaining when they see something they think is inappropriate.

There is a fourth concept used at least once in the proposed new Code, namely that of material 'directed at a predominantly adult audience' (cl 2.3.5). For reasons explained below, ACCM opposes reliance, in protecting children, on any concept of the audience to which material is directed. In any case, the wording here indicates that the material can be directed (partly) to children, just so long as adults are expected to predominate in the audience (as they do in most audiences).

Time zones

ACCM opposes most strenuously the proposed changes to time zones and in particular the abolition of the G zone and the earlier start-time for the M and MA zones. We note that none of the arguments in favour of those changes suggests that they will be in any way beneficial to children or families. We have rehearsed the reasons for our opposition to changes to time zones in our submission to the ACMA's Community Safeguards Inquiry. We said:

[T]here is a valid connection between protection of children and time zone interventions. There has been a long standing assumption held by parents that television programs shown at certain times of the day will be safe for children. There is a widespread family practice of viewing television programs together in the early

evening, and an assumption that programs will be suitable for children at this time of night.

Further, time zones have an educative function. They often speak louder than classifications do, and support parents in doing the right thing by their children.

It is true that many people time-shift their viewing but there is no evidence that families with young children would be willing, able and empowered to do so in such a way as to protect their children from inappropriate material in the event that time zones were dismantled. And of course, once they were dismantled it would be impossible to put them back in place.

An example is provided by the evening news. It is well known that this often involves footage that is highly disturbing to children; and we have given many media interviews recommending that parents simply not watch it, but rather record it to watch it later, or watch the 10 pm edition instead. Yet we continue to hear reports of children having been disturbed by something they saw on the news. ...

We simply do not see that there is any need to allow licensees to show (more) strongly violent or disturbing material during prime family viewing time. The idea that all or most or even some families would record such material to watch it after the children are in bed is, with respect, fanciful.

Time zones should continue to take the form of time zones set out in Table 4 of the inquiry document, which provides for children's viewing in the early morning, after school to early evening and during school holidays.

The main argument in favour of the changes appears to be to make the commercial free-to-air industry more competitive against other providers, such as subscription television. We note, then, the irony in FreeTV having recently published the document *TV Trends*, vaunting the industry's continued reach and influence in the lives of Australians, and in particular comparing these favourably with those of other platforms. According to that document, FreeTV's share of metropolitan and regional audiences is increasing; their audience size is increasing (while that of pay TV is decreasing); 92.9% of viewing is live, not playback; and commercial free-to-air television is 'must-watch' TV. Against the background of this level of success, it is very difficult to see the justification for any change to time zones or the risk to children's interests that it would represent.

The points made in the document also provide the answer to why commercial free-to-air TV should be more heavily regulated than other platforms.

News and current affairs

In our dealings with families, ACCM has found that distressing content on the news is one of the greatest risks to children's well-being from media use. For this reason, we are dismayed at the proliferation of news programs and updates and the time they occupy between 4pm and 6pm (a traditional and still popular time for children to watch on their own). It is well established that repeatedly seeing tragic news events increases the risks of increased fear in child viewers.

The traditional leeway in content (including ads and promos) offered to these programs increases our concerns. We call on FreeTV to at least include stronger language in cl 2.3.3 than 'exercise care', for example 'in news services broadcast before 7pm, to exercise special care and regard to the sensibilities of child audience, and to broadcast warnings if repeatedly showing disaster footage'.

Classification

In relation to cl 2.4.2, ACCM submits that classification symbols should be on the screen for the duration of the program. Licensees already have other watermarks on the screen for that length of time and there is no justification for treating this important consumer information differently. ACCM also submits that classification symbols should remain on the screen throughout program and movie promotions. This becomes more important than it already is, with the new provision at 2.1.1 that program promotions for any classification of program can be shown at any time, thus increasing the burden of parents in choosing age-appropriate viewing for their children.

As an aside, we note that the Code refers more than once to the concept of a classification of 'G or lower' (for example in the proposed cll 2.2.1, 6.2.1 and 6.3.1). We presume this intends to refer to the 'classifications' of C and P. We submit that it is misleading to frame those categories in that way because they are not part of the same system that produces G, PG etc. They are based on different criteria and they measure different things. It is especially misleading to imply that C is a 'lower' classification than G when, in fact, material that meets the PG criteria is sometimes classified as C.

The materials betray a deeper misunderstanding of the nature of classification when they state that 'the classification zones will continue to limit the availability of content that is not intended for children.' (p 4) Classifications are not based on the intent of the producer of material, rather they represent an objective assessment of the impact of certain elements in the material itself. Nor is the intent of the producer a predictor of whether the content is likely to be harmful to children. There are ample examples of material 'intended for children' that has been classified M; there is also G-classified content that is not intended for children.

In regard to Appendix 1 Television classification guidelines, we make the following comments: The Mature (M) classification:

- The **preamble** should include the requirement that the impact of material be moderate.
- **Violence:** "Frequency" should be included in the criteria, as impact can relate to the cumulative impact of many instances of violence, as well as the detail and length of individual acts of violence.
- **Suicide:** the previous wording of "must not be shown in realistic detail" offers greater protection than the new requirement "must not be instructional". Realistic depictions of suicide can be instructional without an intent to be so.

The Mature Audience (MA) classification:

- **Violence:** Again, "frequency" is an important element in cumulative impact, and should be included here.

ACCM also opposes the abolition of the AV classification as this means that higher-impact depictions of violence will be able to be shown earlier (all the more so if the proposed change to the MA criteria and time zone are adopted).

Program promotions

Program promotions require special care, because they are not announced in advance and no information is provided about what they contain. Therefore families have no power to exercise control over what their children see. Parents have a longstanding and deep concern about program promotions for this reason.

The proposed cl 2.1.1 provides that program promotions need only meet the classification criteria for the relevant time zone, even if the actual program being promoted is in a higher classification. ACCM notes in particular that this refers to the time zone, not to the classification of the program during which the promotion is broadcast. The result is that a child watching a G-rated program could encounter a promotion for an M or even MA15+ program.

ACCM submits that in place of the provisions referred to above, the Code should provide that:

- (a) Program promotions must contain only material suitable to the classification of the program during which they are broadcast; and
- (b) Licensees must broadcast only promotions for programs of the same classification as the program during which they are broadcast, or one higher.

Advertising

In the current version of the Code, certain of the advertising restrictions that the CTS applies to C periods are picked up and applied to all advertising directed to children, whenever it is shown (cl 6.20). ACCM has reservations about the 'directed to children' test because it is very easy to make an ad that will attract children's attention, and yet claim it is 'directed to' adults (and we are disappointed to note the replication of this language in the proposed new 6.4.7(a)). However the application of the CTS restrictions even to that limited category of ads provides some measure of protection.

No convincing justification is offered for removing that protection. The 'Summary of Key Elements' states that the CTS 'already provide strong community safeguards in this area' but this overlooks the fact that the CTS applies those safeguards only during C periods (which, given the relatively small audience for C programs, is not much of a community safeguard at all).

The provisions on gambling and alcohol advertising are too complex and have too many loopholes and exceptions to provide sufficient protection for children against these potentially harmful forms of advertising. As mentioned above, the reliance on the concept of 'directed to children' in cl 6.4.7(a), in particular, provides a large loophole for anybody who is interested in grooming the child audience.

A further difficulty associated with the complexity of these sections is that it will be very difficult for a consumer to determine whether there has been a breach. We submit that in a system that relies solely on consumer complaints for its enforcement, such complexity is a serious flaw.

ACCM also has a concern about the wording of cl 5.7.1, that is, the use of the phrase 'are expected to'. This contrasts markedly with the imperative language ('must') used elsewhere in the Code. We predict that this will be taken literally in practice, and compliance with the AANA and ABAC Codes will be treated as discretionary on the part of licensees. There is no justification offered for the difference in treatment.

Complaints

As noted above, ACCM is strongly of the view that a system that relies solely on consumer complaints for its enforcement should be easy for the average consumer to understand. It should also not put up unjustified roadblocks to complaints. The proposed Code is complex and difficult to understand, and we see no justification for limiting the means by which complaints can be made, as the proposed Code does.

While ACCM has sympathy for the desire to avoid replying to 'offensive or vulgar' complaints there is a flaw in cl 7.3.4, namely that a licensee is not required to communicate to the complainant that it has reached that view. Therefore there is no possible recourse for a

complainant in the event that the criteria in that clause are used to avoid responsibility for a breach. Licensees should be required to provide a written statement of any finding under cl 7.3.4, at least under paragraphs (a)-(c).

General comments

- It is potentially confusing to consumers to cross-reference legislation as in cl 2.3.2. Consumers cannot be expected to keep track of whether the legislation is still in force or not
- A similar issue arises in cl 5.7.2 where documents 'as amended from time to time' are cross-referenced.
- The concept of 'direct advertisement' in cl 6.2.3 is not defined, and is unlikely to have a clear meaning to a consumer
- ACCM sees no justification for treating films differently from other material in relation to timing, classification etc.

END