

# **What audiences want – Audience expectations for content safeguards**

A position paper for professional content  
providers

JUNE 2022

**Canberra**

Red Building  
Benjamin Offices  
Chan Street  
Belconnen ACT

PO Box 78  
Belconnen ACT 2616

T +61 2 6219 5555  
F +61 2 6219 5353

**Melbourne**

Level 32  
Melbourne Central Tower  
360 Elizabeth Street  
Melbourne VIC

PO Box 13112  
Law Courts  
Melbourne VIC 8010

T +61 3 9963 6800  
F +61 3 9963 6899

**Sydney**

Level 5  
The Bay Centre  
65 Pirrama Road  
Pyrmont NSW

PO Box Q500  
Queen Victoria Building  
NSW 1230

T +61 2 9334 7700  
F +61 2 9334 7799

**Copyright notice**

<https://creativecommons.org/licenses/by/4.0/>

With the exception of coats of arms, logos, emblems, images, other third-party material or devices protected by a trademark, this content is made available under the terms of the Creative Commons Attribution 4.0 International (CC BY 4.0) licence.

We request attribution as © Commonwealth of Australia (Australian Communications and Media Authority) 2022.

All other rights are reserved.

The Australian Communications and Media Authority has undertaken reasonable enquiries to identify material owned by third parties and secure permission for its reproduction. Permission may need to be obtained from third parties to re-use their material.

Written enquiries may be sent to:

Manager, Editorial Services  
PO Box 13112  
Law Courts  
Melbourne VIC 8010  
Email: [info@acma.gov.au](mailto:info@acma.gov.au)

# Contents

<b>Executive summary</b>	<b>1</b>
<b>Introduction</b>	<b>5</b>
Context	5
Structure and scope	6
<b>Core audience expectations</b>	<b>8</b>
News and journalistic content	10
General content	20
<b>Principles of effective content rules and safeguards</b>	<b>35</b>
<b>Next steps</b>	<b>46</b>
<b>Appendix 1: Definitions</b>	<b>47</b>
<b>Appendix 2: Relevant industry codes, standards and guidance</b>	<b>48</b>
<b>Appendix 3: Relevant ACMA breach decisions since 2017</b>	<b>49</b>



# Executive summary

## ***Australia's content landscape has changed***

Australians currently enjoy an unprecedented level of access to media content. From our longstanding terrestrial free-to-air commercial, national and community TV and radio services, to pay TV, print newspapers and online news services, and the vast marketplace of online subscription, catch-up and other streaming platforms that have emerged over the past decade, Australian audiences have considerable choice over what, when and how they consume content.

Research undertaken by the Australian Communications and Media Authority highlights that Australians are consuming more content than ever before. On average, we watched 26.6 hours of TV and online video content per week in 2021, up from 21.4 in 2019. There is widespread adoption of online services across all age groups, with household take-up and use of both subscription and advertising-supported on-demand services rapidly accelerating since the beginning of the COVID-19 pandemic. And in 2021, for the first time, more Australians watched video content online than via traditional broadcast TV, with 58% viewing content provided by online subscription services in a given week, as compared to 54% who had watched live or recorded free-to-air television.

## ***Audiences have new ways to navigate their way to content***

Smart TVs are fast becoming the dominant way in which consumers access audio-visual content at home. At June 2021, 70% of Australian adults had a smart TV connected to the internet, up from 64% in 2020. Smart TVs increasingly provide a ubiquitous entry point for audio-visual content, allowing viewers to shift between traditional TV and a variety of live, catch-up, pay-per-view and subscription streaming services in a relatively seamless manner. However, while households with adequate broadband may increasingly choose to access TV services over the internet, few would realise that content viewed across these different platforms may be subject to different regulatory rules.

Music, podcasts and other audio content is similarly delivered over a variety of platforms, including AM, FM and digital radios, mobile apps, digital TV, and, increasingly, smart home speakers. Listeners of radio-like services across these platforms may not know if they are accessing a commercial, community or even a narrowcasting service, which are again subject to different regulatory rules.

Traditional print products delivering news, information and entertainment are also increasingly available online, alongside content from both local and international digital native news and media organisations.

## ***Co-regulation currently sits at the heart of the regulation of audio-visual content***

Under the current co-regulatory arrangements established by the Broadcasting Services Act 1992 (BSA), Australian broadcasters are required to develop industry codes of practice that establish content safeguards for their TV and radio audiences.

The BSA requires commercial, community and subscription broadcasters to take account of ACMA research, such as this paper, and to undertake adequate public consultation prior to submitting a code of practice to the ACMA for registration. We

may register the code if we consider that that it provides appropriate consumer safeguards for the matters that it covers. Once registered, the ACMA can investigate complaints from the public about matters covered by the code.

The ACMA's role is somewhat different for the national broadcasters – ABC and SBS – that develop and settle their own codes without any registration by the regulator.

Australia's co-regulatory regime for broadcasting shares many features with content regulation in other western democracies, such as the UK and Canada. These regimes require broadcasters to be responsive to audience concerns, often underpinned by industry-developed codes of practice that establish rules for content that can be enforced by regulators.

It is incumbent on the Australian broadcasting industry to effectively deliver on co-regulation to maintain the confidence of audiences and the broader community. Failure of co-regulatory approaches – where audience expectations are not met by appropriate safeguards – may result in direct intervention by the regulator or further consideration of the efficacy of co-regulatory arrangements by government.

***Current codes of practice are out of date and do not cover all content available to Australian audiences***

There are currently 9 industry codes of practice registered by the ACMA, covering and developed by associations representing different segments of the broadcasting sector. The safeguards provided under these codes vary considerably reflecting, in part, concepts in the BSA regarding the 'influence' of particular services. These concepts anticipate stronger safeguards for more influential services, such as commercial broadcasting versus localised narrowcasting services.

Many of these codes have not been updated for some years. For example, the commercial television code of practice was last reviewed and updated in 2015, and the subscription broadcast television code in 2013. With the changing nature of audiences over these periods, we consider it timely for all broadcasters to consider the applicability of their current codes in the contemporary environment.

We also have some concern that industry associations representing some segments of the industry are no longer fully operational or may not be adequately resourced to undertake code development processes. Under these circumstances, there is a question as to whether some codes are currently extant, and whether an industry standard should instead be introduced.

Finally, 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. Online content provided by streaming platforms such as Netflix, Stan and Disney+ are currently not subject to regulation applied to broadcasters in Australia.

***It is timely to review codes of practice and the scope of self- and co-regulation***

In light of the rapidly expanding content landscape, the ACMA considers it timely to explore contemporary audience expectations for content safeguards, and for all broadcasters to consider whether:

- > current codes of practice adequately address these expectations for services covered by those codes
- > 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.

We also suggest streaming services and other online-only providers of professional content should take note of the expectations of audiences identified in this paper as they review and update their own (currently self-regulatory) practices and processes, such as community guidelines and terms of service.

Reflecting this, our guidance has been deliberately expressed in a platform-neutral manner, on the basis that all providers of professional content targeting Australian audiences should aim to adopt a common set of content safeguards, regardless of the distribution platform.

To that end, a number of new concepts are introduced in this paper to better define potential future coverage of codes ('content providers' and 'professional content') and expectations for different types of content ('news and journalistic content' and 'general content').

### ***We have identified a range of consistent, contemporary audience expectations***

Informed by our regulatory monitoring, compliance and research activities, existing industry safeguards, the findings of previous government reviews, and broader public discourse on community standards, we have considerable insights into the kinds of protections or safeguards that contemporary Australian audiences may expect when consuming professional content.

Bringing these insights together, this paper articulates our current views on contemporary audiences' expectations across 9 distinct areas of focus:

- > *Accuracy and impartiality* – audiences expect facts and information in news and journalistic content to be accurate and presented in a fair and impartial manner, supported by available evidence
- > *Commercial interests* – audiences expect a separation between the editorial and business activities of content providers, and to be made aware of any relevant commercial arrangements, or other commercial interests, when consuming news and journalistic content
- > *Distressing high-impact content* – audiences expect content producers to treat distressing high-impact news and journalistic content with care, and provide appropriate warnings
- > *Emergency information* – audiences expect that emergency news and information, when provided by content providers, will be timely, accurate and accessible
- > *Classification 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
- > *Advertising restrictions* – audiences expect content providers to exercise judgement, in line with community standards, about restricting advertisements for certain products and services
- > *Highly offensive and discriminatory material* – audiences expect that highly offensive or discriminatory material that is unsuitable for general dissemination will not be made available by content providers, except in limited circumstances where it is justified by the context and appropriate warning measures are in place
- > *Fair portrayal* – audiences expect that ordinary individuals participating in content, and depictions of underrepresented or vulnerable groups, are portrayed fairly and accurately
- > *Privacy* – audiences expect that private information will not be disclosed in the course of disseminating content, unless justified in the public interest.

For each of these expectations, we examine:

- > the application and operation of current content safeguards
- > contemporary and emerging issues that raise concerns for audiences
- > 'best practice' approaches that could be adopted across industry to meet audience expectations.

We acknowledge that identifying prevailing community standards is not easy and a diversity of views will naturally exist. As such, this paper seeks to give content providers insights into what, in our view, are the core expectations of contemporary audiences.

### ***Meaningful regulatory design incorporates key accountability principles***

Successful self- or co-regulation arrangements are predicated on industry's ability to demonstrate that it is accountable for its activities. This paper also provides guidance on developing effective self- and co-regulatory content rules and safeguards, based on the following interrelated principles of accountability:

- > transparency – the process of making information about an organisation's activities available and accessible to the public and key stakeholders
- > participation – the processes by which an organisation or an industry enables other parties to play an active role in activities that are of interest or affect them
- > evaluation – the process by which an organisation monitors and reviews their performance against stated goals or objectives
- > complaints handling – the mechanisms and tools made available to the public to raise concerns about an organisation's decisions and actions and processes for acceptance and resolution.

We believe consideration of these accountability principles is essential for developing, reviewing and maintaining robust and effective content safeguards that continue to be responsive to audience expectations and engender audience trust.

### ***The ACMA will engage with content providers on how these contemporary audience expectations can be addressed***

The guidance in this paper is not prescriptive. Rather than specify what specific rules or measures must be set out in content policies, codes or instruments, the ACMA seeks to provide industry with our knowledge and views on what audiences expect when consuming content and best practice approaches to deliver these desired outcomes.

Following publication of this paper, we will engage with regulated television and radio broadcasters and their representative bodies about their existing broadcasting codes. In particular, we expect to discuss specific current or emerging pressure points, with a view to progressing code reviews already underway and seeking commitments about timing of industry code reviews that are due.

We also welcome opportunities to engage more broadly with content providers across industry about the approaches outlined in this paper and other ideas for strengthening and harmonising content safeguards to align with Australian audience expectations.



# Introduction

This paper articulates the Australian Communications and Media Authority's views on:

- > contemporary Australian audiences' expectations for and of professional content<sup>1</sup>, irrespective of the content provider or platform
- > the principles underpinning the development of effective, audience-centric content rules for self- and co-regulation.

In addition to assisting broadcasters, we also intend for this paper to inform public debate as well as be a resource for a broader range of content providers not directly regulated by the ACMA, including print and online news media publishers, podcast publishers, subscription video-on-demand platforms and other audio or video streaming services.

Our intent is that all providers of professional content find this paper relevant and useful when considering, developing and reviewing their own industry codes, terms of service, content policies and other mechanisms that set out acceptable practices and content protections for Australian audiences. As such, industry guidance has been expressed in platform-neutral language, where appropriate.

## Context

This paper comes at a time of ongoing structural transformation within the Australian broadcasting and media sector, including shifting audience behaviours, which have been amplified in recent years with the COVID-19 pandemic.

Australian audiences are increasingly turning online for media content, consuming more hours of video via on-demand platforms than via 'terrestrial' broadcast TV in 2021.<sup>2</sup> This increased demand, coupled with low barriers to entry, provides opportunities for local and international online content providers to compete with Australian free-to-air broadcasters – increasing content availability and choice for Australian audiences.

However, broadcasters and other content providers in Australia are currently subject to a complex mix of direct regulation, co-regulation and self-regulation, depending on the nature of their content and their transmission method. This can result in gaps and discrepancies when it comes to content safeguards, with content providers often subject to different rules for the same piece of content when distributed on- and offline.

These are not new trends or unique to Australia. The need for fundamental reform of the media landscape has been a matter of considerable discussion over the past decade<sup>3</sup> and was brought into sharper focus by the Australian Competition and Consumer Commission's (ACCC) 2019 [Digital Platforms Inquiry](#) (DPI). A key recommendation of the DPI was for a broad review of the regulatory frameworks for media and content in Australia, with a view to designing a new platform-neutral

---

<sup>1</sup> The ACMA is conscious that the concept of 'professional content' and determining the scope of particular content regulatory arrangements is being considered elsewhere, including in relation to proposals to legislate an Australian content investment obligation scheme for subscription video on demand services. Our use of the term 'professional content' is specifically for the purpose of setting out our views on audience expectations for content safeguards across platforms, in the context of this paper.

<sup>2</sup> ACMA (2022), [Communications and Media in Australia: How we watch and listen to content](#), June, interactive report.

<sup>3</sup> For example, the Convergence Review (2012), the Australian Law Reform Commission's National Classification Scheme Review (2011) and the Review of Australian Classification Regulation (2021), the UK Government's Online Harms White Paper (2019) and Broadcasting White Paper (2022).

framework that effectively and consistently regulates the conduct of all entities with comparable functions operating in the marketplace. The former government accepted this [recommendation](#) in December 2019, commencing a staged process to reform media regulation towards a platform-neutral or ‘harmonised’ regulatory framework.

Outside of longer-term legislative and policy reform, we consider that content providers should be responsive to increasing harmonisation across the industry and proactively addressing existing inconsistencies where possible. Noting that [industry is primarily responsible](#) for establishing the rules and safeguards that apply to content under various forms of self- and co-regulation, this paper seeks to assist content providers in navigating harmonisation and changing audience expectations.

The positions taken in this paper have been informed by our regulatory compliance activities, including monitoring and observations of complaints and findings in recent content investigations, as well as research into contemporary content consumption habits, current market trends and developments, international best practice, recent environmental influences and regulatory responses. A [research report into viewing and listening habits](#) has recently been published by the ACMA and should be read alongside this paper.

This paper also builds on the ACMA’s 2021 [research into reality TV](#) and continues the discussion started during the ACMA’s 2020 project examining [impartiality and commercial influence in broadcast news](#). Findings from this research and the supporting public consultation process informed our considerations regarding core audience expectations for news content.

## Structure and scope

This paper is split into 2 parts. The first section of this paper identifies 9 key areas of focus from which we derive ‘core’ audience expectations, based on the ACMA’s analysis and research into contemporary content issues that cut across platforms. For each of these expectations, we examine:

- > the application and operation of current content safeguards
- > contemporary and emerging issues that raise concern for audiences
- > ACMA views on best practice approaches that could be adopted across industry to meet audience expectations.

The second part of the paper comprises a discussion about the key principles that underpin the delivery of effective, contemporary, audience-centric content safeguards. This includes an overview of the importance of transparency, participation, evaluation and complaint mechanisms, with reference to their applicability to the existing broadcasting codes and the co-regulatory framework.

While the paper identifies a common set of audience expectations and key principles for developing and delivering effective content safeguards, we acknowledge that the contemporary content environment features many different business and operating models. As a result, flexibility to develop more tailored approaches to audience expectations may be appropriate for different industries or providers. For this reason, the paper does not contain recommendations for specific changes to existing codes, instruments, user guidelines or policies, or define precisely how individual protections should be expressed. We have also used terms that have been specifically defined for the purposes of this paper, which are contained in Appendix 1.

It is also important that the paper not be read as an exhaustive examination of the range of different content safeguards and protections that should or could be applied in various contexts. In particular, we recognise that there will be sector- and provider-specific matters that warrant targeted safeguards or direct regulatory intervention, which are not covered in this paper. This includes existing prohibitions on hate speech under anti-discrimination legislation, abhorrent violent material under the online content scheme, and remedies for those who have been defamed under defamation legislation.

## Content providers and professional content

In light of the broadening content landscape and changes in audiences' appetites and viewing habits, streaming services have become a common way to access and consume 'TV content' in Australian households. This raises questions about the extent to which audiences now expect that existing broadcasting content safeguards should also apply to streaming content.

In this paper, we have defined 'audience expectations' by reference to 'content providers' and 'professional content'. Under this approach, content providers that make professional content available should meet the audience expectations set out in this paper, regardless of the platform or service on which the content is delivered.

- > **Content providers** refers to entities that have a role in selecting, acquiring or commissioning content or otherwise deciding what content is provided on the service. Editorial control would generally indicate that an entity is a content provider, however, this is not always the case, and its relevance should be considered on a case-by-case basis.
- > **Professional content** refers to any professionally produced content, including audio, audio-visual or print content that is produced in-house, commissioned or acquired for a fee, and is made available to audiences in Australia. Accordingly, it does not include user-generated content.

This framing acknowledges that 'like-for-like' content should be treated equally. It also recognises that audiences will have different expectations for professional content compared with content produced by amateurs or user-generated content, noting that some platforms may provide both types of content. In practice, this means that if a social media service that currently provides user-generated content decides to start commissioning or streaming professional 'TV-like' content, its audiences are likely to have similar expectations for that content as they do when the content is provided by a streaming service, broadcaster or other online content service.

This position is broadly in line with the model of content regulation that has applied in Australia since the *Broadcasting Services Act 1992* (BSA) came into force, whereby obligations apply to 'broadcasting services' that are defined in relation to their provision of television or radio 'programs' to Australians.<sup>4</sup>

---

<sup>4</sup> There are some exceptions to this. A ministerial direction, originating in 2000, states that television or radio programs provided over the internet do not fall within the legislative definition of a broadcasting service, and are therefore exempt from mandatory broadcasting obligations including media ownership rules, content regulation and quotas, and licensing requirements. The BSA also specifically excludes services that are provided 'on-demand' on a point-to-point basis from the definition of broadcasting services.

# Core audience expectations

Australian audiences expect that the professional content they consume will comply with key safeguards and align with contemporary community standards.

We have identified 2 broad categories, which each have a set of 'core' audience expectations:



We selected these core audience expectations based on:

- > matters that the Parliament considered were important content protections and are therefore included in section 123 of the BSA as matters to which broadcasting codes of practice may relate
- > their identification as concepts of enduring relevance and significance to contemporary broadcasting audiences and markets in reviews conducted by the ACMA and other government agencies
- > matters currently addressed in broadcasting codes of practice, other industry self-regulatory codes, online platform user safety policies, and comparable jurisdictions' content codes
- > their utility in addressing contemporary community concerns and emerging issues.

## Role of audience expectations in content regulation

It is a long-held principle of Australian media policy and regulation that broadcasters should respect *community standards* in the provision of program material.<sup>5</sup> The 2013 Convergence Review<sup>6</sup> first articulated the ongoing importance of community standards in a converged world, acknowledging that all types of media content made available to Australians should meet the changing views and the expectations of the Australian public.<sup>7</sup>

In our experience in the broadcasting co-regulatory space, complaints, investigations and breach findings tend to reflect failures of a broadcaster to meet community expectations. In general, the more responsive an industry is to the changing needs and expectations of the community, the less likelihood of regulatory intervention.

We acknowledge that the process of identifying prevailing community standards is ‘a difficult and complicated one involving the careful assessment of complex facts and the formation of opinions and value judgments on a wide range of matters’.<sup>8</sup> There can also be significant diversity in views across audiences, which may change over time or vary within different contexts. As such, this paper seeks to provide content providers with additional insights into what, in our view, are the core expectations of a contemporary ‘ordinary and reasonable’ audience member.<sup>9</sup>

The following guidance is not prescriptive and does not specify what specific rules or measures must be set out in content policies, codes or instruments. Instead, it seeks to provide industry with our views on what audiences expect when consuming content, and best practice approaches to deliver these desired outcomes.

---

<sup>5</sup> See, for example, s.18(1), *Australian Broadcasting Act 1942*, s.3(1)(h), *Broadcasting Services Act 1992*.

<sup>6</sup> See, Convergence Review: Final Report.

<sup>7</sup> see Convergence Review: Final Report – Chapter 4.

<sup>8</sup> *Harbour Radio Pty Limited v Australian Communications and Media Authority* [2012] FCA 614 (14 June 2012) per Griffiths J.

<sup>9</sup> Australian courts have considered an ‘ordinary reasonable’ audience member to be: ‘a person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs’, *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.

## News and journalistic content

Professional news and journalistic content play an essential role in democratic societies, supporting a well-informed and engaged citizenry through the dissemination of knowledge and critical information. This type of content also provides a public forum for the exchange of ideas, serves to maintain a journal of record, and helps to hold governments and other decision-makers to account.

For this reason, journalistic content is widely regarded as a public good, with its own distinct content requirements. This has long been reflected in both regulatory frameworks and editorial standards, with news content typically subject to a higher degree of regulatory scrutiny through targeted content safeguards that aim to ensure Australian audiences have access to accurate, fair and reliable reporting.

### Defining 'journalistic content'

In this paper, journalistic content refers to informative content that provides audiences with a deeper understanding of topical issues or events and matters in the public interest. It is content that is often (but not always) produced and presented by journalists, and may contain a mix of factual reporting, additional contextual information and analysis. Journalistic content is broader than just 'the news' and can appear within a range of differing content formats, from long-form investigative reporting pieces and documentaries, to 'lighter' infotainment pieces and panel programming. Audiences expect journalistic content to adhere to principles of journalistic objectivity, making it distinguishable from opinion and commentary.

In the broadcasting context, industry codes have largely sought to distinguish between fact-based 'news' and opinion-driven 'current affairs' programming, with different obligations based on the program type. Increasingly, however, the presentation of news is incorporating more elements of analysis and opinion, with hybrid infotainment and panel-based formats further blurring these lines. According to [ACMA research](#), 4-in-5 Australians now report difficulty in telling when a journalist is expressing an opinion rather than reporting the facts. Additionally, a majority of Australians are concerned about news being made more dramatic or sensationalist for ratings (88%), having a particular point of view rather than being balanced or impartial (85%), and being influenced by large advertisers (83%).

Australians access news from a variety of traditional and online sources, including social media.<sup>10</sup> Given the breadth of news and information sources now available to Australians, standalone content safeguards for fact-based reporting and professional journalism continue to play a critical role in providing access to reliable news content. However, the distinction between news and current affairs programs is becoming an increasingly outdated concept for determining what safeguards should apply.

Instead, audiences expect content that presents as news, or otherwise appears to be the result of genuine journalistic endeavour, to be held to the higher standards and accepted principles of objective journalism, as outlined below. These principles should apply to all forms of journalistic content, irrespective of platform or program type, including content that might not currently meet the narrower definitions of news and current affairs adopted by industry. In addition to traditional news bulletins and reporting, content safeguards should apply to other forms of professional journalistic content, including investigative journalism and other types of analysis provided by journalists and similarly credentialed media professionals.

<sup>10</sup> In 2022, 44% of Australians used social media as a general source of news, and 19% used social media as their primary news source; Park, S., McGuinness, K., Fisher, C., Lee, J. Y., McCallum, K. & Nolan, D. (2022), [Digital News Report: Australia 2022](#). Canberra: News & Media Research Centre, University of Canberra.



## Accuracy and impartiality

Audiences expect facts and information in news and journalistic content to be accurate and presented in an impartial manner, supported by available evidence.

### Overview

In a well-functioning democracy, audiences must be able to trust news and other factual reporting on matters of public interest. This requires, at a minimum, that professional news and journalistic content be accurate, any errors of fact be corrected, and factual reporting to be clearly distinguishable from opinion.

Impartiality is a separate but related expectation that news and journalistic content should be presented in an appropriately fair and balanced manner. Opinion or commentary does not need to be impartial, however, content providers should ensure it is evident to audiences that it is opinion.

### Current safeguards

All registered broadcasting codes include provisions that require factual content in news and current affairs programs to be accurate. The ABC and SBS extend accuracy safeguards to all 'factual material' and 'fact-based content'.

Many of the broadcasting codes also contain impartiality provisions. These vary between codes, but usually require broadcasters to present factual content in a way that is distinguishable from comment and analysis, to make reasonable efforts to ensure balance or coverage of diverse viewpoints, and to not present facts out of context or in a way that will mislead the audience.

Some codes recognise that the basis for factual material can be contested and, that in some circumstances, new information can emerge over time and that this can impact the factual accuracy of material. Accordingly, some broadcasting codes allow broadcasters to take 'reasonable efforts' to ensure the factual accuracy of the material before it is broadcast. Other codes deal with this issue by focusing on the ability of broadcasters to make corrections if they have broadcast inaccurate material.

Comparable safeguards are also provided for certain print and online outlets through the Australian Press Council's Standards of Practice (APC Standards), which also uniquely include a requirement that writers' expressions of opinion are not to be based on significantly inaccurate factual material or omission of key facts. The MEAA Journalist Code of Ethics (MEAA Code) similarly requires journalists to report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. It further requires that journalists not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine their accuracy, fairness or independence.

The voluntary Australian Code of Practice on Disinformation and Misinformation commits digital platform signatories to implement safeguards that protect Australians against harm from online disinformation and misinformation, including through the adoption of a range of scalable measures that reduce its spread and visibility. However, professional news content posted or shared on these platforms is outside of the scope of the Code, on the basis that this content is usually already subject to codes and other professional standards.<sup>11</sup>

<sup>11</sup> Paragraph 4.4(D), [Australian Code of Practice on Disinformation and Misinformation](#).

## Contemporary and emerging issues

- > Accuracy and impartiality concerns in broadcasting are a key focus of public complaints made to the ACMA, including for matters where facts may be contested or not settled. Subsequent investigations have resulted in several breach findings over the past 2 years.<sup>12</sup>
- > News and current affairs are no longer always distinct program formats. This shift has been accompanied by changes to the way news and related content is produced and delivered, including the use of presenters and participants who may not be professional journalists.
- > The COVID-19 pandemic and Russian invasion of Ukraine have highlighted the critical role played by the media in disseminating accurate and authoritative information. Conversely, there is significant potential harm that can be caused by the news media through the unintentional amplification of misinformation.<sup>13</sup>
- > Traditional approaches and consumer expectations to impartiality do not necessarily translate well into an online environment, due in part to the proliferation of content sources and the story-by-story model of distribution and consumption.
- > Many of these issues have been amplified by financial pressures facing the news media industry in Australia, resulting in a decline in newsrooms – particularly in regional Australia – and a greater focus on opinion and hybrid ‘infotainment’ content that is cheaper to produce and more easily able to compete in the ‘attention economy’.<sup>14</sup>

## Best practice approaches

- > News and journalistic content should be accurate, with all factual reporting reasonably able to be independently verified.
- > News and journalistic content should be presented with due impartiality, capturing a diversity of viewpoints and following the weight of evidence.
- > News and journalistic content should be clearly distinguishable from opinion or commentary.
- > Facts are not taken out of context or presented in a misleading or sensationalist manner.
- > Content providers should publicly correct material errors of fact in a timely manner where it is most likely to be seen by the same audience who were originally exposed to the error.
- > Content providers should prevent the amplification or spread of misinformation and disinformation.
- > Particular care should be taken when reporting on contentious or controversial matters where facts may be contested and not settled. Reporting in these instances should follow the evidence available at that point in time, including principal relevant perspectives.

---

<sup>12</sup> See, for example [BI-587 Investigation report](#) July 2021 and [BI-579 Investigation report](#) April 2021.

<sup>13</sup> See, for example, Evanega, S. et al., ‘[Coronavirus misinformation: quantifying sources and themes in the COVID-19 ‘infodemic’](#)’, the Cornell Alliance for Science, 2020.

<sup>14</sup> Centre for Media Transition, [News in Australia: Impartiality and commercial influence: Review of literature and research](#). Commissioned by the ACMA. January 2020.





## Commercial interests

Audiences expect separation between the editorial and business activities of content providers, and to be made aware of any relevant commercial arrangements or other commercial interests when consuming news and journalistic content.

### Overview

In order to maintain the integrity of journalistic content, content providers should not allow any commercial interests or arrangements that could influence or be perceived to influence editorial decisions in news and journalistic content.

Content providers should also signpost advertising or sponsored content and, where relevant, disclose any other commercial interests or conflicts that could be perceived by audiences to influence editorial decisions or undermine impartiality.

### Current safeguards

Treatment of commercial interests, including disclosure requirements, vary across broadcasters and content types. For example, the commercial television code places obligations on licensees to disclose commercial arrangements for current affairs programs but not for news programs. The commercial radio disclosure standard requires disclosures to be made on air and a register of arrangements to be made available online. The SBS codes require advertisements and sponsorship announcements to be readily distinguishable from programming and places limits on the total broadcast time for advertising and sponsorships, while the ABC is prohibited from advertising on ABC's broadcasting or digital media services and does not allow product placement and other forms of embedded or surreptitious advertising.

For commercial television and radio broadcasters, the BSA also requires that cross-media relationships must be disclosed when broadcasting or publishing material about the business affairs of a cross-controlled media operation within the same geographic area. The BSA also regulates the ownership and control of licensed broadcasting services in the context of mergers and acquisitions.

The MEAA Code requires journalists to disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of their journalism, as well as to do their utmost to ensure disclosure of direct or indirect payments made for interviews, pictures, information or stories.

Advertisers on all media (traditional and digital) are required to adhere to the distinguishability requirement in the Australian Association of National Advertisers (AANA) Code of Ethics.

## Contemporary and emerging issues

- > A monitoring program undertaken as part of our 2020 news project observed instances of news and current affairs segments on broadcast television containing commercial arrangements that were not disclosed or adequately distinguishable from regular programming.<sup>15</sup> [ACMA research](#) shows that 89% of adult Australians have reported noticing commercial influence in television news, and recent ACMA investigations have also found some commercial broadcasters in breach of their code and standards' obligations for disclosure of commercial arrangements.<sup>16</sup>
- > High-value or ongoing advertising arrangements are perceived to have potential to influence the selection of stories in news and current affairs content, or the way in which these stories are framed. Over 4-in-5 adult Australians are concerned that news content is influenced by large advertisers.
- > Modern advertising techniques, including product placement, promotions, advertorials, or cross-promotion, can closely resemble journalistic content. Conversely, growing reliance on pre-packaged public relations materials in factual reporting may lead to the impression of a commercial arrangement, even where no arrangements exists.
- > Safeguards should account for ongoing audience concerns about commercial influence in news and journalistic content across platforms. However, the appropriate mechanisms to achieve this are likely to be different depending on whether content is print, audio-only or audio-visual.

## Best practice approaches

- > Editorial and business decisions should be kept separate, preventing any commercial interests from influencing news and journalistic content.
- > Any relevant commercial interests that could have a real or perceived influence on news and journalistic content should be disclosed to audiences, in a clear and obvious manner, at the time of reporting.
- > Paid content should be readily distinguishable from non-paid content.
- > Content providers should make audiences aware of any payments made for interviews, pictures, information or stories.

---

<sup>15</sup> This included interviews with spokespersons for commercial businesses, where the nature of any commercial arrangement or the interest of the spokesperson was not made clear, and reporters going on trips to report on the release of new products, where it was not made clear whether the trip had been paid for by the business; ACMA (2020), [Impartiality and commercial influence in broadcast news: Discussion paper](#), January.

<sup>16</sup> See, for example, [BI-559 Investigation Report](#), October 2020, [BI-549 Investigation report](#), May 2021, [BI-583 investigation report](#), July 2021.



## Distressing high-impact content

Audiences expect content providers to treat distressing, high-impact news and journalistic content with care, and provide appropriate warnings.

### Overview

Distressing, high-impact news and journalistic content is content that carries a high likelihood of causing serious distress among a substantial portion of the audience. This could include graphic depictions of physical or sexual violence, footage of death, dead bodies or severely injured people, or reporting on sensitive issues like suicide, drug use, sexual conduct or traumatic events.

While there is an evident public interest in reporting on events that may be distressing to a general audience, particularly when involving acts of terrorism, mass violence or death, it is not in the public interest to cover a distressing story in a manner that could be considered gratuitous or exploitative, such as using frequent repetition.

There is a general expectation within the community that content providers make careful and context-appropriate editorial decisions so that the use of any distressing, high-impact content is proportionate to the public interest. Audiences also expect to be given adequate prior warning about distressing, high-impact news content, where it is reasonable and appropriate to do so.

### Current safeguards

Each of the national, commercial and community broadcasting codes have provisions addressing the broadcast of highly distressing news content, which all allow for broadcasters to air such content on public interest grounds. Most codes also stipulate that highly distressing news content must be accompanied by appropriate viewer warnings and call for heightened care when dealing with sensitive topics. News content is generally not subject to classification in Australia.

In response to the media coverage of the terror attack that occurred in Christchurch, New Zealand in 2019, where the perpetrator [live-streamed the attack](#), the ABC produced additional editorial guidance on 'Hate Speech, Terrorism and Mass Killing'.

In its revised 2021 code, SBS has included additional obligations that require content containing violent or distressing images or audio to be preceded by timely and appropriate warnings where appropriate, and has extended the application of these obligations to unclassified content – that is, beyond just news and current affairs.

The *Criminal Code Act 1995* prohibits the sharing of abhorrent violent material (including depictions of terrorist acts, rape, torture, kidnapping and murder) on online services. The *Online Safety Act 2021* provides further online protections for Australians against illegal and restricted content, including child sexual exploitation material, pro-terrorist material, and material that promotes or incites crime.

The eSafety Commissioner also has powers to direct ISPs to block online terrorist and extreme violent material during crisis events.

## Contemporary and emerging issues

- > While the [ACMA's investigation report](#) into broadcasters' coverage of the 2019 Christchurch terror attack found that overall broadcasters erred on the side of caution and acted responsibly in the circumstances, it also highlighted some material and its treatment that raised questions about compliance with existing safeguards. This included inconsistent, inadequate and ad-hoc provision of viewer warnings, as well as frequent repetition within short timeframes of high-impact vision, and a high reliance on excerpts from perpetrator- and victim-generated content. To date, commercial broadcasters have not taken any substantive steps to address the concerns outlined by the ACMA in that report.
- > Ongoing financial and competitive pressures on Australian news media outlets provide an incentive to produce more extreme, emotive or sensationalist reporting to attract and retain audiences.<sup>17</sup>
- > The ubiquity of smartphones and increased reliance on social media as a news source has resulted in the widespread availability of user-generated content, commentary and 'eyewitness media'.<sup>18</sup> This content is of increasing importance to mainstream media, particularly for large, breaking news stories.<sup>19</sup>

## Best practice approaches

- > Content providers should take particular care when reporting on impactful material with a high likelihood of causing distress to a large segment of its audience.
- > Any use of high-impact news and journalistic content should be for an identifiable public interest reason and justified by the editorial context.
- > Content providers should carefully consider the presentation of high-impact distressing news and journalistic content, and avoid actions that are likely to heighten distress, such as excessive or gratuitous repetition.
- > Content providers should carefully consider the appropriateness of broadcasting live streams from third parties or using excerpts from user-generated content, and also the motivations of citizen publishers. Editorial decisions to use content generated by perpetrators of criminal activity should be subject to intense scrutiny.
- > Appropriate actions should be taken to mitigate potential harms of distressing high-impact news and journalistic content, including using meaningful warnings and referral to public resources.
- > Content providers should exercise special care for each of the above measures when there is likely to be a significant child audience.

---

<sup>17</sup> Vetteham, P and Kleemans, M. (2017), [Proving the Obvious? What sensationalism contributes to the time spent on news video](#), *Electronic News*, 12(2), November.

<sup>18</sup> Bruns, A (2018), [Gatewatching and news curation: Journalism, social media, and the public sphere](#), *Digital Formations*, Volume 113.

<sup>19</sup> Bruns, A (2018), [Gatewatching and news curation: Journalism, social media, and the public sphere](#), *Digital Formations*, Volume 113.



## Emergency information

Audiences expect that emergency news and information, when provided by content providers, will be timely, accurate and accessible.

### Overview

There is an expectation that Australians have access to both general and localised information on unfolding emergencies, including from emergency services, to protect the life, health and safety of individuals and communities in times of crisis.

This expectation is heightened due to the range of extreme weather events and natural disasters that often affect Australian communities. In these events, Australians rely on a diverse range of content providers, including local and community radio, for emergency information that can help them to appropriately react and prepare.

Not all content providers provide emergency information, noting that some content providers would not be well-suited or capable of delivering this type of critical information. In Australia, content providers that do make emergency information available to their audiences, are not necessarily obliged to do so.

### Current safeguards

Existing safeguards for the delivery of emergency information are articulated in explicit provisions within the BSA<sup>20</sup>, as well as advisory notes to broadcasting codes of practice.

Only 3 broadcasting codes refer to requirements for emergency information: the commercial and community radio codes and the commercial television code.<sup>21</sup> The focus of these obligations is to ensure that relevant licensees have procedures in place to broadcast accurate and timely information in emergency situations, including requiring licensees to consult and liaise with appropriate emergency service organisations. None of the codes specifically require licensees to broadcast emergency information.

Similarly, the national broadcasters do not have explicit provisions in their codes or enabling legislation for emergency information, although the ABC's editorial [guidance note on accuracy](#) points out that audience expectations for accuracy in time-critical information during a state of emergency is high. In addition to code requirements, the BSA places some obligations on broadcasters when providing emergency information. Trigger-event-affected regional commercial radio broadcasters must broadcast emergency warnings when they are asked to do so by emergency service agencies.<sup>22</sup>

<sup>20</sup> See, for example, Schedule 2 (Standard Conditions) and Section 61CD, *Broadcasting Services Act 1992*.

<sup>21</sup> The commercial television and radio codes include provisions that require the creation of guidance and policies to allow services to appropriately broadcast emergency information.

<sup>22</sup> Section 61CD, *Broadcasting Services Act 1992*.

It is also a standard licence condition for commercial, subscription and community television and commercial and community radio that:

*the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities.*<sup>23</sup>

Commercial, subscription and national television broadcasters must, if they transmit an emergency warning at the request of an emergency service agency:

(a) transmit the whole of the emergency warning in:

(i) the form of text; and

(ii) the form of speech; and

(b) if it is reasonably practicable to do so—provide a captioning service for the emergency warning.<sup>24</sup>

In addition to the emergency warning accessibility rules in the BSA that include reference to captioning, the ASTRA website and the ABC's editorial [guidance note on accessibility](#) include requirements for Auslan interpreters. The requirements oblige broadcasters to have Auslan interpreters at televised emergency briefings and ensure they are shown in frame. The [ASTRA website](#) qualifies this by saying that the obligation only applies where it is practicable to do so.

There are no specific rules relating to emergency information that apply to digital platforms or other content providers in Australia.

### Contemporary and emerging issues

- > Not all content providers deliver emergency information, though the prevalence of natural disasters and crisis events is increasing.<sup>25</sup> As a consequence, there is a greater need for, and reliance upon, emergency information that is reliable and reaches affected communities.<sup>26</sup> For example, during the 2019–20 Australian bushfires, media commentary identified the ABC and, in particular, ABC local radio, as a key source of accurate and timely information for affected communities. Broadcasting services were similarly an important source of information during the 2022 floods.
- > Sources of emergency information have expanded in recent years, including increasingly using telecommunications services to send information directly to affected individuals (for example, SMS alerts). Access to multiple sources of emergency information, including broadcasting information (particularly on radio), is critical during crisis events in case certain services experience failures or disruptions. For example, the loss of power or the destruction of telecommunications towers.
- > Digital platforms are also playing an increasingly proactive role in providing localised community information during emergency events. For instance, Facebook expanded its Local Alerts product to Australian state and territory health, police and central government pages in June 2021 as part of its response to the COVID-19 pandemic. Such efforts may also act to fight against false and misleading information about emergency events.

---

<sup>23</sup> Schedule 2 to the *Broadcasting Services Act 1992* (for example paragraph 7(1)(e) which imposes these conditions on commercial television broadcasting licences).

<sup>24</sup> Section 130ZZB, *Broadcasting Services Act 1992*.

<sup>25</sup> See, for discussion, CSIRO (2018), [State of the Climate 2018 report](#), December.

<sup>26</sup> Royal Commission into National Natural Disaster Arrangements (2020), [Report of the Royal Commission into National Natural Disaster Arrangements Report](#), October.

**Best practice approaches**

- > Content providers should consider whether their service should provide emergency information based on their capacity to do so, and their audience reach, demographics, location and need.
- > Content providers should ensure that any emergency information they provide is as timely and accurate as possible, sourcing information directly from emergency service organisations, and taking into account the nature of the emergency.
- > Content providers should respond, as appropriate, to the heightened need for accessible content for emergency information, such as using reputable captioning and Auslan services.
- > Emergency information should be prioritised for communities that are most likely to need it.

## General content

Outside the narrower context of news and journalistic content, there are a range of 'general' protections that Australian audiences expect will apply across all professional content. In this paper, professional 'general' content means content using actors portraying characters, unscripted content depicting ordinary people and their experiences, and a range of other genres such as documentary, lifestyle, sport, talk-back and infotainment.

Some content providers currently limit the scope of these 'general' safeguards to certain types of programs. However, given the variety of content available and the ongoing evolution of program material and formats, audiences expect that content providers address potential content harms where those harms might arise.

The audience expectations discussed below reflect both the diversity of contemporary Australian audiences and the evolution of content, including wide-ranging subject matter, the on-screen involvement of non-professionals and greater representation of groups within Australian society.

General content expectations span safeguards for audiences, the broader community (even where they have not been part of the audience) and individuals who are likely to be directly affected by content, including when appearing or participating in content. Apart from safeguards that assist audiences to select appropriate content and limit their exposure to certain content, these safeguards:

- > protect individuals' privacy
- > focus on the appropriate treatment of participants in content – including the safety and well-being of child participants
- > oblige content providers to engage appropriately, observe cultural protocols and consider relevant sensitivities in portrayals of under-represented and vulnerable groups.

Some of the following general content expectations are closely related and may operate together to address the range of potential harms in a piece of content and account for nuances in substance and presentation. For example, classification and content guidance expectations may operate in tandem with restrictions on highly offensive and discriminatory material, with both serving as guidance for audiences.





## Classification 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.

### Overview

Providing guidance about content is fundamentally about informing audience choice without impinging on adults' broad rights to have access to a range of content. This approach recognises that the volume and diversity of content available to audiences will include content that some sections of the adult community may find offensive, distressing or otherwise problematic.

While content guidance benefits everyone (including adults who may prefer to avoid certain types of content), it is particularly important for minimising children's exposure to potentially harmful content. Protecting children is an enduring principle that continues to resonate with the broader community, particularly among parents and caregivers. Given their ongoing physical, intellectual and emotional development, it is important that children be protected from premature exposure to adult experiences and behaviours, as well as content that they may find distressing, frightening, confusing or difficult to understand.

Classification ratings and accompanying consumer advice are the primary means through which audiences access content guidance. Classification systems are also important for establishing parameters around what content is and isn't acceptable for consumption by audiences, including when certain content may be shown (for example, at particular times on broadcast television).

In Australia, the National Classification Scheme (NCS) provides the overarching framework for classification requirements and standards, including setting the boundaries for permissible content. The strength of the NCS is that it provides classification information in a succinct, accessible and recognisable format that strikes an appropriate balance between providing sufficient guidance to inform audience choice while avoiding potentially harmful or upsetting content.

In addition to standardised guidance provided under classification systems, there will be circumstances where other information may also be necessary, for example warnings about content that may be triggering for certain segments of the audience and/or the inclusion of referral details for support services.<sup>27</sup>

### Current safeguards

Under the longstanding NCS, films, computer games and certain publications (offline and online) must be classified. Content may be classified by the Classification Board or by industry using automated tools approved by the Minister that generate decisions based on Australian classification criteria (for example, the International Age Rating Coalition tool for computer games and the Netflix Classification Tool for content on its Australian streaming platform). The NCS also provides for content to be Refused Classification, which means it cannot be distributed or shown in Australia.

Broadcasting television codes contain requirements to formally classify content before it is broadcast, applying classification criteria specified in their respective

<sup>27</sup> Note that warnings for news content, which is not usually classified, are discussed separately under the 'distressing high-impact content' section.

codes. Classification rules typically include requirements to display classification symbols and provide additional consumer advice. What content must be classified<sup>28</sup> and where/how classification information and consumer advice are provided, varies between the codes. Broadcasting classification rules and criteria are broadly consistent with the NCS and broadcasters use the NCS classification symbols. In Australia, television broadcasters are not permitted to broadcast content that is classified higher than MA15+.

Radio codes contain provisions that achieve similar objectives to classification. Provisions tend to refer to community standards, for example, material must not offend generally accepted standards of decency, taking into consideration the demographic characteristics of the audience of the relevant program. Other measures require programming practices that protect children from harmful material and restrict programming with explicit sexual themes to evenings.

The new *Online Safety Act 2021* retains the Online Content Scheme, which is a complaint-based scheme under which certain classes of material (whether classified or not) are not permitted or must be access-restricted.<sup>29</sup> Some online content providers maintain their own in-house content classification systems that provide content information for audiences, for example, Apple's app store age ratings. Device and software manufacturers often include parental locks and similar user controls to limit children's access to content, often dependent on classification ratings.

### Contemporary and emerging issues

- > The popularity and growth of on-demand viewing, audiences' time-shifting practices and changed content consumption behaviours means that time-based content rules are playing a less important role in the contemporary content landscape. This places a stronger emphasis on the need for content guidance for audiences and associated access control measures across platforms, particularly for vulnerable audiences.
- > The movement of content across platforms means the same content may appear on multiple platforms, especially with the proliferation of digital, on-demand content. There is consensus borne out by reviews and inquiries that a single, harmonised Australian classification regulatory framework should apply to content irrespective of the delivery platform, in part to address audience expectations for consistent information for 'like content' across platforms and to support parental lock mechanisms on smart devices.<sup>30</sup>
- > Self-regulatory and other jurisdictions' classification systems may not be transparent to Australian audiences on matters such as decision-making, applicable standards, reviewing decisions and how complaints may be raised.

---

<sup>28</sup> News, current affairs and sport are generally exempt from classification however some broadcasting codes do not require classification of a broader range of program genres.

<sup>29</sup> The Online Content Scheme applies to a range of defined services such as providers of social media services, relevant electronic services and designated internet services in relation to Class 1 and Class 2 material. Class 1 material covers films, computer games, publications and other online content that is classified RC by the Classification Board or would be likely to be classified RC. Class 2 material covers films, computer games, publications and other online content that is classified X18+ or R18+ by the Classification Board or would be likely to be classified X18+ or R18+.

<sup>30</sup> In 2019, the former government committed to develop a uniform classification framework and commenced a review into Australia's classification regulation; Department of Infrastructure, Transport, Regional Development and Communications (2020), [Review of Australian classification regulation – discussion paper](#), January.

- > Existing guidance for audiences may not be adequately nuanced, particularly around the age-appropriateness of material, and advice may not be sufficiently descriptive about potentially harmful/problematic content.<sup>31</sup>
- > Classification frameworks may not be well suited for the range of matters that may raise serious concerns for audiences, including new and emerging issues such as content that may trigger responses in individuals that have experienced trauma.

### **Best practice approaches**

- > Content distributed to Australians (with some general exceptions)<sup>32</sup> should be accompanied by information about the age-appropriateness of content and key elements of potential concern to audiences.
- > Content guidance should be developed under a classification process with transparent criteria for assessing content, clear thresholds for classification categories and principles for developing consumer advice.
- > Content guidance should be provided in a standardised format across the same types of media (for example, audio-visual content, audio-only content, interactive content) using a uniform set of symbols and appropriately tailored consumer advice. The NCS provides for this under an established classification framework and agreed classification principles.
- > Content guidance should be clear and accessible to everyone accessing content.
- > Content guidance should be readily available before, or at the point of accessing content, as appropriate to the platform.
- > Content guidance should enable the use of parental controls and other user-based mechanisms for restricting access to content.
- > Content providers should consider the need for further warnings and other information for audiences, such as details for accessing support services, as appropriate (for example, around content that may be triggering for people who have experienced traumatic events). This may be relevant for content that is not classified or in addition to audience guidance that accompanies classified content.

---

<sup>31</sup> [Classification ratings: Research with the general public 2015](#) (Attorney General's Department); [Community Standards and Media Content: Research with the general public – final report 2017](#) (Department of Communications and the Arts).

<sup>32</sup> Some categories of content need not be accompanied by content information such as sports coverage, educational and training content, business or trade related content.



## Advertising restrictions

Audiences expect content providers to exercise judgement, in line with community standards, about restricting advertisements for certain products and services

### Overview

Advertising restrictions (or bans) are important for minimising children's exposure to products and services that may be harmful to them. This may include products and services that are legally restricted to adults such as alcohol, tobacco and smoking products, and gambling.

Restricting advertising for certain products and services is also beneficial for the broader population, recognising that some products and services though legally and widely available, may be harmful if consumed in excess or misused by an individual. This group of products and services is varied and likely to change over time to reflect evolving community standards and greater understanding of health and other impacts of particular products and services.

### Current safeguards

The Australian Association of National Advertisers (AANA) has primary responsibility for developing advertising codes of practice, including a process for complaints to be investigated by Ad Standards (the body that manages the complaint resolution process) under a long-standing system of industry self-regulation. The AANA requirements apply across all platforms, with rules set out in multiple industry codes of practice that cover both the content of advertising and its placement (noting that the codes are platform neutral and therefore express placement requirements in broad terms that may be applicable across platforms). The AANA codes include codes that address advertising to children and codes for products and services of broader concern, such as wagering activities and alcohol.

In addition to industry codes, there are legislated obligations concerning advertising of certain products, for example, bans under the *Tobacco Advertising Prohibition Act 1992* and restrictions under the therapeutic goods advertising regulatory framework.

Outside of the prohibitions for specific content, such as advertising for tobacco and smoking products, advertising restrictions in the context of potentially harmful products and services can take different forms. This includes scheduling and placement constraints, confining the content and treatment of content in advertisements and limiting the quantity and concentration of advertisements.

Broadcasting codes generally focus on rules concerning the placement and scheduling of advertising rather than the content of advertising (although gambling advertising rules, particularly during live sport, cover placement, scheduling and content).<sup>33</sup> Some codes also impose hourly time limits on the amount of permitted advertising.

Television broadcasters usually classify advertising for the purpose of scheduling in accordance with relevant time zones.<sup>34</sup> This may be supplemented with specific restrictions on the advertising of alcoholic drinks, intimate products and services,

<sup>33</sup> Some older codes continue to have rules about the content of advertisements that often replicate or are very similar to the newer AANA codes and also the ACCTS.

<sup>34</sup> Note that subscription television broadcasters do not use time-zones, though their code requires classification of advertising which assists them to schedule advertising in line with other code rules.

films and computer games classified for adults, and gambling products and services (including promotion of betting odds). These additional restrictions generally operate to limit children's exposure to advertising for products and services that may be harmful to them and/or are usually legally restricted to adults. Except for gambling advertising, which is covered in line with television, radio codes tend to refer to the need to comply with rules set out under applicable advertising codes.

### Contemporary and emerging issues

- > There are ongoing concerns that existing alcohol, gambling and junk food advertising restrictions do not go far enough<sup>35</sup>, noting the nature of harms associated with gambling, alcohol and junk food consumption involve complex health and social issues.
- > Audiences, especially younger audiences, are preferencing online, on-demand content<sup>36</sup> where different regulations apply and where measures traditionally used by broadcasters, such as time zone-based restrictions, are largely redundant or less effective. Self-regulatory regimes tend not to be concerned with the volume or amount of advertising delivered to audiences.
- > Unlike traditional broadcast marketing, online advertising distribution methods use consumer data and algorithms to tailor and target advertising to individuals. This significantly reduces public transparency over the actions of advertisers and creates challenges for developing effective restrictions online. There are also new and innovative forms of advertising, such as the use of influencers, which need to be considered in scoping useful rules, as was recently reflected in updates to the [Therapeutic Goods Administration's Advertising Code](#).
- > In the context of broadcast television, children's advocates and health professionals continue to call for bans on junk food advertising before 8:30 pm and to remove exceptions that permit alcohol advertising in conjunction with sports programs at certain times.
- > While the latest broadcast and online gambling advertising restrictions are achieving their intended objectives around live sport, the high number of complaints received by the ACMA indicates that concerns remain that children are exposed to too much gambling advertising.

---

<sup>35</sup> See for example: [Aussie kids at risk as harmful digital marketing grows](#), VicHealth, 19 November 2020; [Food marketing codes fail to protect children from junk food ads](#), Cancer Council NSW, 15 October 2021, [Tabcorp calls for fresh crackdown on TV gambling advertising](#), Sydney Morning Herald, 9 September 2021.

<sup>36</sup> Social Research Centre (2022), [Media Content Consumption Survey: Analytical Report](#), January, prepared for the Department of Infrastructure, Transport, Regional Development and Communications.

### **Best practice approaches**

- > Content providers should seek to minimise children's exposure to advertising for products and services that are legally restricted to adults, such as alcohol, tobacco and gambling services, as well as other goods and services that may be harmful to children's health, such as unhealthy food and beverages.
- > When developing advertising restrictions, content providers should be cognisant of contemporary evidence, including public health advice, around the potential harms that may be caused by advertising certain products and services to vulnerable groups or communities.
- > Content providers should target restrictions around the quantity, repetition and concentration of advertising specific products and services, including for sponsored, in-content or other innovative forms of advertising.
- > Content providers should consider platform-specific scheduling and placement measures when developing advertising restrictions, for example, time-based, content-based and/or location-based limits. This should take into account audience expectations for certain measures on particular platforms, for example, time-zone restrictions on broadcast television.



General content

## Highly offensive and discriminatory material

Audiences expect that highly offensive or discriminatory material that is unsuitable for general dissemination will not be made available by content providers, except in limited circumstances where it is justified by the context and has appropriate warning measures in place.

### Overview

It is generally accepted that there is some content that, in accordance with community standards, is not suitable for dissemination (outside the remit of the NCS). Safeguards in this area tend to be directed to serious harms and often reflect human rights' protections that address matters such as discrimination and inciting hatred. Typically, the type of content that would fall into the category of discriminatory content not suitable for general dissemination includes portrayals of physical and psychological violence, and matter that is likely to incite or perpetuate hatred against or vilify any person or group on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or disability. There are also separate concerns about highly offensive behaviour, such as aggressive attacks of a personal nature that may not be discriminatory, but do not reflect contemporary community standards for decency and are considered unacceptable in the public domain.

Content that is not suitable for general dissemination may result in potentially serious harms to individuals, groups and the community (whether or not they were exposed to the material as audiences) without safeguards or adequately calibrated protections. While some of this content may be addressed by the NCS (and related classification systems), the scheme is not generally directed at highly offensive or discriminatory content. Specific content-related protections in this area continue to be necessary, particularly in an environment where there is rapid movement of content between content providers and platforms, including those with a very wide reach.

### Current safeguards

At a minimum, all the broadcasting codes contain prohibitions on content that is variously discriminatory or prejudiced, vilifies or incites hatred/contempt/ridicule against individuals and groups on specified grounds (broadly referred to here as discriminatory material).

Safeguards generally incorporate exceptions to reasonably allow discussion or debate for academic, artistic, religious instruction, scientific or research purposes about matters in the public interest. Similarly, some codes require that where material is likely to cause harm and offence, it must be justified by context.

Some broadcasting codes contain additional safeguards that capture a range of 'offensive' material, often expressing protections in terms of harmful and/offensive content or content that 'offends generally accepted standards of decency' (or similar). Operating by reference to community standards, these rules are somewhat future-proof because material that previously may not have been considered problematic but is now no longer acceptable, can be assessed in-line with contemporary attitudes. The effectiveness of this future-proofing rests on the success of ongoing efforts to understand and respond in timely ways to evolutions in community standards.

Outside broadcasting codes, the APC Standards require that media content avoid causing or contributing to substantial offence, distress or prejudice, unless doing so is sufficiently in the public interest. The APC also has guidelines on sensitive matters such as reporting on race and on people with diverse sexual orientation, gender identity and sex characteristics and religious terms in headlines. The MEAA Code advises journalists not to place unnecessary emphasis on personal characteristics including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief or physical or intellectual disability. It has also published Guidelines on Reporting Hate Speech and Extremism. Further, the AANA Code of Ethics has rules designed to avoid harmful and offensive advertising including not employing sexual appeal in relation to minors or in an exploitative or degrading manner, and not portraying violence unless it is justifiable in the context of the advertised product/service.

Digital platforms also offer guidance to users via community standards' policies and safety rules that restrict or prohibit certain content including hate speech and objectionable, abusive and sensitive media content.

Content-related safeguards for discriminatory and highly offensive material co-exist with laws established under Commonwealth, state and territory legislation that deal with discrimination issues including harassment and vilification; and the *Online Safety Act 2021*, which deals with illegal, seriously harmful and highly offensive content online.

### **Contemporary and emerging issues**

- > Many broadcasting codes set a threshold of '*intense* dislike, *serious* contempt or *severe* ridicule' for material to be considered in breach, including tests that turn on whether the relevant material, is likely in all the circumstances, to 'incite' (or 'provoke' or 'perpetuate') the identified reactions.
- > Based on complaints and investigations of these code provisions, there are some indications that existing rules may not match community expectations for content. For example, existing rules may not adequately recognise or account for the cumulative effect of discriminatory or highly offensive content that, over time, may increase harms to targeted individuals/groups as well as the broader community.
- > Some codes only have safeguards that prevent the broadcast of material that meets the test of incite/provoke/perpetuate in relation to individuals/groups with specified attributes. This potentially limits the material that audiences expect should not be available and against which a complaint may be made.
- > Contemporary audiences are increasingly aware of and concerned about a range of sensitive matters such as hate speech, gender identity/diversity/fluidity, family violence, sexual assault and violence against women, which may give rise to highly offensive content. While we recognise that highly offensive content may be difficult to define precisely, and community standards in this area can change relatively quickly, audiences nevertheless expect that safeguards capture the gamut of unacceptable content and are sufficiently flexible to account for shifting attitudes.



### Best practice approaches

- > Content providers should prohibit discriminatory material except in limited circumstances where it is justified by context<sup>37</sup>
- > Discriminatory material captures content that is likely to incite, provoke or perpetuate hatred against, or vilifies, any person or group on the basis of legally protected attributes<sup>38</sup>
- > Content providers should have a duty of care to also prevent the dissemination of highly offensive content that is not necessarily discriminatory but does not reflect contemporary community standards for decency
- > Content providers should take measures to inform audiences about the use of discriminatory or highly offensive material, for example, in instances where it may be permitted but unexpected.

---

<sup>37</sup> Material may be justified by context in certain circumstances including, for example, where it is provided in the context of academic or artistic purposes and debate about matters in the public interest. Anti-discrimination legislation such as the *Anti-Discrimination Act 1977* (NSW) and the *Racial Discrimination Act 1975* (Cth) may be a useful guide for appropriate exemptions.

<sup>38</sup> Legislation on matters such as vilification tends to set high thresholds for vilification, for example, by referring to 'hatred' 'revulsion', 'serious contempt', 'severe ridicule'. Some content codes also adopt similar thresholds. The best practice approach cited above does not specify such thresholds because determining appropriate thresholds for content safeguards (whether higher, the same or lower than existing rules) is a complex matter that may warrant further consideration and debate.



General content

## Fair portrayal

Audiences expect that ordinary individuals participating in content, and depictions of underrepresented or vulnerable groups, are portrayed fairly and accurately.

### Overview

Audiences are increasingly mindful of the harmful consequences of negative portrayals in content.

‘Ordinary individuals’ refers to individuals who are not actors, presenters or employed media professionals, including interviewees and reality TV participants. Audiences have different expectations for portraying these individuals depending on their profile, the nature of the content and the degree to which they perceive that the participants have been treated unfairly. For reality TV, audiences recognise that it is heavily produced and may be edited in certain ways, nevertheless they expect content providers will not exploit, demean or otherwise portray participants in an unfair manner.<sup>39</sup>

Fair and accurate portrayal is also particularly important for underrepresented or other vulnerable groups in society, including older Australians, rural or regional groups, and people of different racial and cultural backgrounds, abilities and sexual orientations/gender identities. These groups tend to be under-represented in content generally, and inaccuracies, poor judgement or lack of sensitivity by content providers when depicting these groups may create or reinforce negative stereotypes or views within the broader community.

### Current safeguards

The ABC code currently provides the most comprehensive safeguards for participants under its ‘fair and honest dealing’ standards, including requiring that content participants are informed of the general nature of their participation and undertakings are given in relation to agreed conditions of participation, confidentiality or anonymity. There are also specific protections for children and young people involved in making, participating in and presenting content produced or commissioned by the ABC, including taking due care of their dignity and physical/emotional welfare.

The SBS code deals with the treatment of participants to some extent, by requiring content producers to refer to its production protocols that specifically concern Aboriginal and Torres Strait Islander communities. For commercial broadcasters, the commercial radio code includes safeguards for participants in ‘live hosted’ programs.

Some online platforms also have specific policies to address issues in this space. For example, YouTube’s policy for ‘[Creator Responsibility](#)’ emphasises that creators remain responsible both on and off the platform and that behaviours that harm its users, community, employees or ecosystem may attract enforcement actions.

---

<sup>39</sup> ACMA (2021), [Report: Viewer response to reality television in Australia](#), October.

Outside of the content legislative framework, state and territory workplace health and safety laws, contract laws, defamation laws and protections under online safety, regulations may also be relevant to the treatment of program participants.

Most broadcasters have advisory notes and editorial guidelines that provide guidance on the portrayal of certain groups in Australian society. These cover a variety of issues related to diversity and representation, for example, the [commercial television advisory notes](#) provide guidance about the portrayal of women, gender, people with disabilities and cultural diversity.

Most codes do not oblige broadcasters to employ particular measures that recognise cultural protocols, consider relevant sensitivities or involve relevant groups in the production process (the key exception being SBS).

The APC standards and MEAA codes and guidelines cover sensitive matters relevant to minority and under-represented groups, primarily around authentic portrayals and appropriate treatment of related issues.

### **Contemporary and emerging issues**

- > In Australia and overseas, there is an increased level of public concern about the welfare and wellbeing of people who take part in the creation of content, particularly reality TV programs.<sup>40</sup> Many related issues, for example, around informed consent and occupational health and safety is managed as part of contractual negotiations with content providers.
- > The [ACMA's consumer research](#) highlights that Australians are broadly concerned about societal harms stemming from relationship-based reality TV programs. Concerns include that these programs promote unhealthy relationships (48% of the surveyed Australians agreed), encourage people to treat each other badly in real life (37%), and portray women in a demeaning way (38%). However, these concerns are lessened because viewers aren't always sure that participant distress is real and the assumption that producers are providing participants with appropriate supports, mitigating the impacts.
- > [Screen agencies](#) are increasingly developing programs and partnerships that support practitioners from under-represented groups and provide opportunities for a greater diversity of material, as well as reporting on diversity and representation in the screen sector.
- > As the development and availability of culturally diverse content increases and expands into the mainstream, there is a stronger understanding and heightened expectation to recognise important cultural protocols and practices, including but not limited to, First Nations Australians.
- > There is also growing awareness about the importance of rural and regional voices being reflected in content, especially news content. For example, the [Public Interest Journalism Initiative](#) (PIJI) has highlighted the need for greater media plurality and diversity across Australia, particularly in relation to local news for regional and rural communities.

---

<sup>40</sup> See [MAFS 2021: Married At First Sight investigated by Australian TV watchdog after complaints](#), Kidspot, 7 June 2021, [Ofcom issues new rules to protect welfare of people on TV and radio](#), The Guardian, 18 December 2020.

### **Best practice approaches**

- > Content providers should exercise good judgement and sensitivity in portraying ordinary individuals participating in content and under-represented or vulnerable groups depicted in content, and be mindful of the potential for individual and societal harms from demeaning or other negative portrayals.
- > Content providers should employ measures to ensure that ordinary individuals who participate in content are fully informed about the implications of their involvement before they agree to participate.
- > Content providers should exercise particular care when portraying under-represented or vulnerable groups, including consulting with relevant groups and observing cultural and other protocols, as necessary.



Audiences expect that private information will not be disclosed in the course of disseminating content, unless justified in the public interest.

### Overview

Some activities of Australian media organisations<sup>41</sup> carried out 'in the course of journalism' are exempt from the operation of the *Privacy Act 1988* (Privacy Act), providing that the relevant media organisation meets certain requirements, including being publicly committed to standards that address privacy. Most content providers seek to satisfy the requirement of being publicly committed to observing standards that deal with privacy in their user agreements, industry codes or establishing legislation. In this context, these provisions both complement the Privacy Act and provide a stand-alone safety net of safeguards related to privacy.

### Current safeguards

Generally, broadcasting codes protect against the broadcast of material that relates to a person's personal or private affairs – for example, by disclosing personal information; or that invades a person's privacy – for example, by intruding upon their seclusion.

The commercial and open narrowcast radio codes also require that broadcasting the words of an identifiable person must not occur unless a reasonable person would be aware that the words may be broadcast, or specific consent has been sought.

The precise privacy obligations to which each broadcaster is subject will depend on the terms of the applicable code. Some broadcasting codes offer express privacy protections only for news and current affairs broadcasts; others offer privacy protections for all broadcast content. Some codes also provide that a complaint about privacy matters can only be made by the person (or a representative of the person) who considers their privacy was intruded upon.<sup>42</sup> The narrowcasting television codes do not include any specific obligations that prevent the broadcast of personal information.

For broadcasting matters, the ACMA publishes [guidance](#) on the application of privacy provisions. These explore how the ACMA has applied code rules about privacy in compliance investigations, including in relation to key terms such as 'personal information', 'seclusion', 'consent' and 'public interest'.

The Privacy Act covers all organisations that operate in Australia with an annual turnover of more than \$3 million. As a result, most print and online platforms are captured by the Privacy Act.

Similar to broadcasters, other platforms that include activities 'in the course of journalism', have taken steps to publicly commit to standards that address privacy. For example, print or online media organisations that are members of the APC are bound by its *Privacy Standards* and journalists who are members of the MEAA are bound by the MEAA Code. Online platforms such as Facebook, Instagram, Twitter, Snapchat and LinkedIn have their own privacy policies and standards, both in response to user expectations and, in some cases, legislative requirements of particular jurisdictions.<sup>43</sup>

## Contemporary and emerging issues

- > Recent ACMA investigations have highlighted challenges with the interpretation of existing broadcasting code provisions relating to information sourced online, including CCTV footage and user-generated material distributed via social media.<sup>44</sup> Issues of concern include the use of material that may be ‘in the public domain’ despite a person not having consented to the release of the information in the first place. According to the [Office of the Australian Information Commissioner](#) (OAIC), privacy is a major concern for 70% of Australians, while 87% want more control and choice over the collection and use of their personal information.
- > There are some programs that fall outside the news and current affairs context, for example, documentary programs and hybrid programs that blur the distinctions between genres, where privacy concerns may also arise. Consideration may need to be given to extending privacy safeguards to other types of programs.
- > Following recommendations from the ACCC’s Digital Platforms Inquiry, the former government [consulted on legislation](#) which would require the OAIC to develop a privacy code for social media and other online platforms that trade in personal information. The Attorney-General’s Department is also conducting a broad ranging [review of the Privacy Act](#).

## Best practice approaches

- > Content that relates to a person’s personal or private affairs or invades a person’s privacy – for example, by intruding upon a person’s seclusion – should, generally, not be disseminated unless it is clearly in the public interest to do so and/or appropriate consent has been provided.
- > Content providers should exercise particular care when making decisions about content that relates to a child’s (other vulnerable person’s) personal or private affairs.

---

<sup>41</sup> Under the Privacy Act, a ‘media organisation’ is an organisation whose activities consist of the collection, preparation and dissemination of news, current affairs, information or documentaries and therefore includes many of the activities of radio and television broadcasters.

<sup>42</sup> Commercial Television Industry Code of Practice 2015; SBS Code of Practice 2021. The Commercial Radio Code of Practice 2017 provides that complaints about privacy may only be made by the person (or an *authorised* representative of the person) who considers their privacy was intruded upon. The ABC Code of Practice 2019 limits complaints in relation to privacy provisions to people who have ‘sufficient interest in the subject matter of the complaint’.

<sup>43</sup> For example, the EU’s [General Data Protection Regulation](#) (GDPR).

<sup>44</sup> See [BI-434 Investigation report](#) March 2019 and [BI-555 Investigation report](#) March 2021.

# Principles of effective content rules and safeguards

A successful self- or co-regulation scheme is predicated on industry's ability to demonstrate that it is accountable for its activities. Accountability is a fundamental norm in both public administration and corporate governance, and reflects an organisation's various legal, political, social and ethical responsibilities to its stakeholders. Accordingly, accountability and the related principles articulated below, are relevant to all forms of regulatory models and content providers of professional content, irrespective of platform.

Under the current co-regulatory framework, Australian broadcasters are primarily responsible for developing and implementing their own content rules and safeguards. This is often underpinned by legislative obligations, which may provide the regulator with powers to intervene if industry has not adequately responded – for example, if industry does not comply with their own rules or address issues of significant community concern.

## Co-regulation in the BSA

In addressing various types of policy problems, market issues or community concerns, a range of different regulatory approaches are available. These [approaches](#) can be thought of as points along a continuum, ranging from self-regulation and other lighter-touch industry-driven initiatives or solutions through to direct, explicit government regulation.

Co-regulation occurs at the mid-point of this regulatory continuum, involving collaboration between industry and government on solutions to public policy issues. Under a co-regulation model, an industry or professional body is typically responsible for developing and administering regulatory arrangements for that industry (or segment of industry), such as a code of practice. Any code development or review includes broad public consultation and is underpinned by legislation to enable the arrangements to be enforced by a regulator and escalated to direct regulation if the co-regulatory settings fail.

The BSA establishes a longstanding co-regulatory model, requiring each sector of the broadcasting industry to develop its own code of practice to provide appropriate community safeguards for broadcast content. Under this model, broadcasters are responsible for the content they broadcast and for resolving complaints, while the ACMA provides broad regulatory oversight and is empowered to enforce compliance where a broadcaster breaches its obligations. The ACMA has a suite of graduated sanctions that may be applied to broadcasters as a consequence of failing to meet their regulatory obligations, including accepting informal undertakings, imposing additional licence conditions, and accepting court-enforceable undertakings.

The BSA also provides the ACMA with powers to make program standards if there is convincing evidence that codes of practice have failed to provide appropriate community safeguards or where no code of practice is developed. These standards are applicable to an entire industry sector.

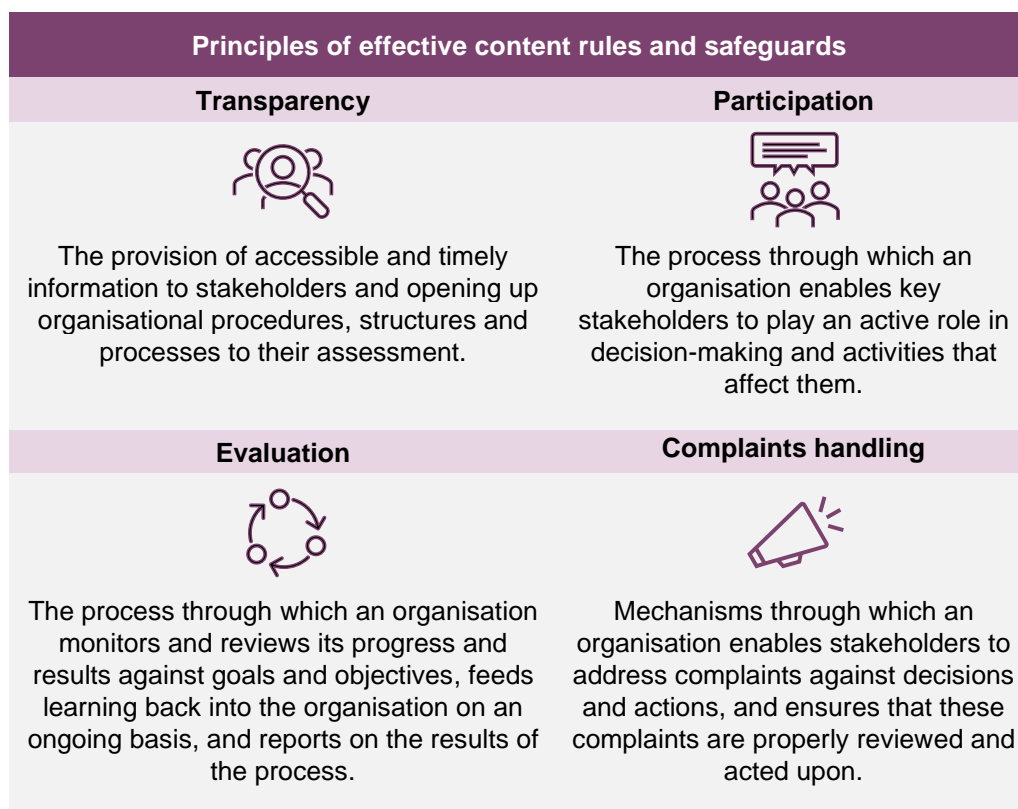
Accountability is not solely concerned with enforcement mechanisms and sanctions. Instead, it includes all of the ‘processes through which an organisation makes a commitment to respond to and balance the needs of stakeholders in its decision-making processes and activities and delivers against this commitment’.<sup>45</sup>

Common features of an accountable organisation may include:

- > recording and openly communicating its objectives and commitments
- > engaging with its stakeholders in decision-making
- > welcoming public scrutiny of its operations
- > evaluating its performance and facing tangible consequences for the results of its actions or decisions.

These types of features are often informed by models for corporate, institutional and public sector good governance that describe key principles such as transparency, responsibility, answerability, stakeholder engagement, responsiveness, and inclusion.<sup>46</sup>

We have referenced One World Trust’s highly regarded Global Accountability Project (GAP) framework to discuss the key expectations and considerations for content providers around the design of respective content rules and safeguards. The GAP framework consists of 4 key and interrelated aspects of accountability:



Based on Blagescu, M. et al, *Pathways to Accountability: The GAP Framework*, One World Trust, 2005.

<sup>45</sup> One World Trust 2005, [Pathways to Accountability: A short guide to the GAP Framework](#).

<sup>46</sup> For example, see [Carnegie Endowment for International Peace](#), [Australian Institute of Company Directors](#), [United Nations Human Rights Office of the High Commissioner](#).



To help illustrate how each of these 4 principles work in practice in the context of content safeguards, the following discussion includes examples from the broadcasting industry. However, as noted above, these principles are applicable to and should underpin the development and maintenance of content safeguards by all content providers of professional content.



## Transparency

### Overview

Transparency refers to the process of making information about an organisation's activities available and accessible to the public and other key stakeholders.

In the context of content safeguards, transparency is primarily about informing audiences and the broader community, in a clear, open and honest manner, about what they can expect from the content that they access, how content rules and requirements operate in practice (including when stated expectations have not been met and what has been done about it), and what action can be taken if identified expectations are not met.

Strong transparency measures reinforce a content provider's integrity and generates trust among its audience and the broader community. Audiences that are better informed and better understand how content protections operate are also better placed to benefit from those protections, including by accessing avenues of redress when applicable standards or rules are not upheld or are not perceived to be upheld. Alternatively, armed with information, audiences can better exercise their choice to access content from elsewhere or take additional measures themselves to deal with weaknesses or gaps in available content protections.

### Broadcasting examples

- > Broadcasting codes of practice, established under the co-regulatory framework, act as key vehicles for transparency by setting out the various protections that audiences can expect from content providers. These codes also often have explicit provisions designed to improve transparency over administration processes, including reporting requirements, code review periods, and complaints-handling processes.
- > Most broadcasters maintain a range of informative material on their websites that supplement specific rules in codes, such as advisory notes that explain in more detail how the broadcaster will treat particular matters like privacy or portrayals of cultural diversity. Some broadcasters, such as the ABC, also publish detailed editorial guidelines that guide content practitioners when producing content and deciding what is appropriate within applicable rules. Although not enforceable, this guidance material facilitates compliance and is a useful resource for the ACMA and the community.

### Contemporary and emerging issues

- > Across content providers, there is limited publicly available information about how complaints are assessed and investigated internally or how the outcomes of those processes feed into internal decisions in the future.
- > There is increased interest around internal complaints processes. More regular public reporting of complaints data (and related information about performance against code requirements) would provide greater transparency, including in areas where current protections have not been violated but there is some level of community concern about the content
- > Information that may be helpful to audiences and other stakeholders is sometimes made available but is difficult to locate and/or is drafted in an overly complex or technical manner that makes it inaccessible to the general population.

## **Best practice approaches**

Content providers should:

- > Publish the protections (for example, rules and requirements) that audiences can expect from a provider. This might take the form of codes of practice, user terms and conditions, community standards commitments and/or content policies.
- > Articulate the expectations and how they are intended to operate and apply in practice in clear and simple terms that are appropriate to the target audience.
- > Take reasonable steps to inform audiences ahead of any major changes to the rules or safeguards.
- > Provide clear information about how to complain about possible violations of those protections and how unresolved complaints may be escalated and to whom.
- > Promote to audiences that protections exist and what they can do if they think there is a problem
- > Publish complaints-handling and investigation procedures and outcomes, including what factors internal decision-makers consider when assessing potential breaches of rules or safeguards.
- > Publish regular complaint and investigations data that is appropriately detailed to allow audiences and the community to understand the volume of complaints, what material has generated the most concern, and how often and which safeguards have been breached.
- > Provide regular performance reports to key stakeholders, including government agencies and regulators.



## Participation

### Overview

Participation refers to the processes by which an organisation or an industry enables other parties (including the broader community and, in this context, audiences) to play an active role in the development of rules, guidance and decision-making activities that are of interest to or affects them. Active and meaningful external engagement supports the development of robust, responsive and relevant content safeguards as it enables understanding of changing attitudes, preferences and concerns of audiences. Strong participation and engagement practices are likely to result in content safeguards that better meet audience expectations and generate greater trust that content providers are operating in the interests of audiences.

Participation processes should facilitate a diversity of perspectives, knowledge and expertise that genuinely influences and shapes content providers' decisions about content rules and safeguards. Best practice participation and engagement measures involve more regular and continuous opportunities to directly engage with interested parties, for example, beyond formal consultation processes that tend to be limited to major reviews of content rules and safeguards.

We appreciate that participation is closely linked to the principles of evaluation and to complaint and response mechanisms – both of which involve various forms of external engagement. However, in this discussion, participation focuses on measures that involve content providers consulting and collaborating with interested parties on content safeguard issues, options and solutions.

### Broadcasting examples

- > Broadcasters whose codes of practice are registered by the ACMA are required to consult widely on code reviews and any significant changes to code provisions that may be made between formal reviews (via representative industry bodies as set out in the BSA). Other broadcasters may undertake consultation in the process of amending and/or reviewing codes of practice, though it may be more targeted.
- > The ACMA, as the regulator, participates in code reviews by assessing the adequacy of new and amended provisions for codes that it is responsible for registering. Other organisations, such as the AANA, conduct code reviews and manage participation processes and initiatives, including running consultations and commissioning research.
- > Content providers engage with stakeholders through industry forums, roundtables, debates and conferences
- > Some content providers, such as the national broadcasters, have community advisory committees/councils that, among other things, support community engagement activities and consultations, and provide an avenue for canvassing the community views on programming and related matters.

### Contemporary and emerging issues

- > There are content providers that do not have representative industry bodies with responsibility for ensuring that strong participation processes exist and are used appropriately. In some cases, this is because former industry bodies have dissolved, resulting in some broadcasting codes not being reviewed for many

years. In other cases, there is no evidence relevant industry players have sought to establish an industry body.

- > Not all content providers actively seek the participation of all relevant key stakeholders when considering issues and solutions for content rules and safeguards. As a consequence, content rules and safeguards may be changed without a comprehensive understanding of the issues, the benefit of expertise in assessing the operation of rules, and a diversity of insights into audience expectations. This can lead to sub-optimal outcomes for audiences.
- > There are varying degrees of responsiveness to stakeholders providing feedback and input through formal and informal participation mechanisms. Some content providers have demonstrated a reluctance to respond to concerns, and incorporate solutions for improved safeguards, even where it has been made clear that audience expectations are not being met.

### **Best practice approaches**

Content providers should:

- > identify and engage parties that are most likely to be directly impacted by, or have a relevant interest in, content rules and safeguards (including the broader community, regulatory bodies, relevant advocacy groups and other content providers)
- > develop collaborative arrangements to lead, coordinate, advocate and organise participation and engagement initiatives, for example, establish industry groups that work on behalf of individual content providers across industry sectors, platforms or other relevant categories
- > promote participation and engagement mechanisms including directly informing interested parties about specific consultation processes
- > establish participation and engagement mechanisms outside of formal consultation processes that may occur in conjunction with periodic/major reviews of content rules and safeguards. This may involve mechanisms such as conducting research, strategic review of feedback or complaints received, and/or seeking audience views on particular issues.
- > expand mechanisms for direct participation, for example:
  - > 'content advisory groups' comprising representatives of key interested parties that meet quarterly to provide advice/recommendations on content issues
  - > audience-based focus groups that consider concerns in response to high volumes of complaints about a particular issue or a high-profile incident, and 'test' community standards.



## Evaluation

### Overview

Evaluation is the process by which an organisation monitors and reviews their performance against stated goals or objectives. Evaluation helps an organisation to assess whether an activity or policy has been successful and informs future decision-making and strategic direction.

In the context of content rules and safeguards, evaluation primarily refers to the processes and mechanisms by which content providers monitor changes in the environment and assess whether their existing rules and safeguards continue to be effective in addressing harms and meeting audience expectations.

In line with changing consumption preferences, patterns and behaviours, contemporary audience expectations for content are continually evolving, at an increasingly rapidly pace. An effective evaluation framework should involve reviews and other processes to regularly gather information and identify gaps or emerging areas of concern, while also providing an appropriate level of flexibility to enable and encourage content providers to be responsive to broader societal trends or issues as they arise.

### Broadcasting examples

- > Broadcasters currently use a range of mechanisms to understand and test audience expectations. Ratings data is used by free-to-air television broadcasters and radio licensees as an almost instantaneous indication of the success of individual program formats and content. Peak industry bodies also commission research about audience expectations from time to time.
- > As noted above, licensees collect information internally about complaints, feedback and complaint assessment and investigative processes. Industry does not publicly indicate how it evaluates this information internally, however there is clearly the capacity for this information to reveal trends in audience expectations.
- > As part of the legislated processes in the BSA for the registration of broadcasting industry codes, industry must publicly consult on those codes (including in the context of any code reviews).

### Contemporary and emerging issues

- > Some broadcasting codes do not specify regular code reviews. Others stipulate timeframes for periodic code reviews, but code administrators frequently miss these deadlines.
- > Content providers generally do not publish or publicise what, if any, research they have undertaken to inform their understanding of audience expectations.

## **Best practice approaches**

Content providers should:

- > identify the types and sources of information and implement relevant measures, specific to the content or platform, necessary to better understand the expectations of audiences over time. This could include consumer surveys, commissioned research, analysis of complaint and feedback trends, and stakeholder feedback.
- > undertake or commission periodic reviews into the effectiveness of existing content rules and safeguards
- > publish reviews and, where appropriate, make changes to content rules and safeguards in line with review findings



## Complaints handling

### Overview

Complaints handling refers to the mechanisms and tools made available to the public to raise concerns about an organisation's decisions and actions, as well as the processes that compel an organisation to accept, properly review and act upon complaints.

Complaints-handling regimes play a particularly important role in promoting public accountability and trust in industry-driven codes of practice, both in terms of redress for those negatively impacted by an organisation's actions or decisions, and as an avenue to raise concerns or highlight non-compliance with code commitments. Accountability in regulatory arrangements may be further strengthened through the inclusion of an independent appeal or external dispute resolution process.

### Broadcasting examples

- > Paragraph 123(2)(h) of the BSA provides that broadcasting codes of practice developed by industry sectors may relate to 'methods of handling complaints from the public about program content or compliance with codes of practice and reporting to the ACMA on complaints made'. All broadcasting codes of practice allow for the making of complaints under their respective code.
- > Complaints-handling provisions have some similarities across codes but also vary in specific details. Some codes include obligations on the complainant, for example, to make complaints in writing and with sufficient detail to enable the licensee to identify the material and the nature of the complaint. There are also differing time limits for complainants to lodge a complaint, and for broadcasters to consider a complaint.
- > The current framework for addressing code complaints is a co-regulatory system that requires industry participants to assume front-line responsibility. All broadcasting codes of practice require the complaint to be made directly to the provider of the service in the first instance. If no response is received, or a response is considered inadequate, the complaint can be brought to the ACMA as an avenue of last resort. The ACMA has a variety of enforcement options for breaches of commercial broadcasting codes, ranging from formal warnings to imposing licence conditions or accepting a court enforceable undertaking.

### Contemporary and emerging issues

- > While the co-regulatory model provides broadcasters with an incentive to resolve disputes in-house, complainants are often required to navigate complex complaint-handling arrangements that can vary by broadcaster and involve long timeframes for the consideration and resolution of complaints. It is usually not possible to distinguish between complaints that have been resolved satisfactorily by the broadcaster, and complaints that have been abandoned due to the complexity or frustration of navigating the scheme.
- > Content providers rarely publish detailed information about the volume and nature of complaints they receive. This lack of transparency can make it difficult to identify broader issues of community concern and inform changes to content rules and safeguards.
- > It is not clear what action some content providers, such as online content providers, take to address breaches of content rules borne out by complaints including the consequences of repeated and/or systemic breaches or safeguards.



- > As co-regulatory and direct regulatory approaches are used for different types of content providers and activities, it may be necessary to consider whether existing regulator sanctions continue to be appropriate and adequate.
- > There is an increasing focus on whether the current complaints-handling processes of public broadcasters meet audience expectations. We note that an independent [review of the ABC's complaints-handling processes](#), commissioned by the ABC Board was released on 17 May 2022 and the Board accepted all of its recommendations.

### **Best practice approaches**

Content providers should:

- > have clear and easily accessible processes for audiences to complain about content that may be in breach of rules or safeguards
- > be transparent about internal processes for categorising and investigating complaints, and report publicly on the quantity and themes of complaints
- > be transparent about decisions to accept or reject a complaint, and clearly communicate their decisions and reasons to the complainant
- > operate their complaint processes in good faith and not create unnecessary obstacles or hurdles, such as rejecting otherwise legitimate complaints on technicalities or incorrect lodgement
- > have processes in place for escalated complaint resolution and appropriate sanctions for breaches identified through complaint mechanisms (where they are not co-regulated), including measures for addressing breaches to mitigate future breaches
- > have processes in place for assessing complaints, identifying causes and systemic issues, drawing lessons from these, and feeding this back into the appropriate part of the organisation.

# Next steps

The ACMA is commencing a broader program of work to examine whether existing regulatory settings provide appropriate community safeguards. This paper represents the starting point for a renewed dialogue with broadcasters and other content providers about audience expectations and how we might build upon this work collaboratively to realise improved audience experiences, no matter where or how they may access content.

In light of the changing content landscape and media reform initiatives, this is an opportune time to work together towards increasing harmonisation and enhancing audience safeguards that better reflect where, and how, audiences are consuming content.

We are conscious that many of the broadcasting codes of practice are at least 5 years old and, in some cases, have not been comprehensively reviewed since 2008. Given the extent and speed of changes in this area in recent years, we expect industry will begin reviewing their codes to accurately reflect the current environment and address contemporary harms and audience expectations.

We know that some sections of the broadcasting industry have code reviews already underway, and some of this work has been impacted or stalled as a result of COVID-19 pressures. However, in the coming months, we will be liaising with the various broadcast sectors about initiating or progressing code reviews, and how they will take the ACMA's research into account as required under section 123(1) of the BSA.

The views presented in this paper will also continue to inform our input to content-related regulatory reviews and the implementation of regulatory reforms. We will continue to consider opportunities for greater harmonisation through closer engagement with the wider content industry, and as part of our participation in broader review and reform processes, including removing duplicative rules/requirements, addressing inconsistencies, and pursuing deregulatory approaches where appropriate.

# Appendix 1: Definitions

These definitions are only intended to be used for this paper.

## **audience expectations**

The expectations of all Australian audiences who consume professional content, irrespective of the platform on which the content is delivered. The idea of what constitutes an ‘audience’ is informed by the ACMA’s long-held practice of referring to an ‘ordinary reasonable’ viewer. Australian courts have considered an ‘ordinary reasonable’ viewer to be:

*A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.<sup>47</sup>*

## **editorial control**

A range of functions from producing or commissioning content, including being able to make edits and changes, to acquiring content where it may not be possible to alter the content (but the ability to make related decisions about matters including warnings, scheduling, advertising restrictions, classification and removal remains).

## **harmonisation**

When audience outcomes achieved by content providers’ safeguards are broadly the same (where relevant to the content), regardless of the platform/distribution method used to provide the content. It does not mean that content providers must use identical measures to achieve those outcomes or that there should not be variations from a singular common approach where it is clearly explicable and warranted.

## **opinion and commentary**

Subjective, often personal viewpoints that are distinct from facts and factual analysis. It generally includes advocating a particular perspective or position on a matter that is intended to persuade or influence others to adopt a similar stance.

---

<sup>47</sup> *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.

# Appendix 2: Relevant industry codes, standards and guidance

## **Broadcasting – TV**

[Commercial Television Industry Code of Practice 2015](#) (Free TV)

[Community Television Codes of Practice 2011](#) (ACTA)

[Subscription Broadcast Television Codes of Practice 2013](#) (ASTRA)

[Subscription Narrowcast Television Code of Practice 2013](#) (ASTRA)

[Open Narrowcast Television Codes of Practice 2009](#) (ANRA)

## **Broadcasting – radio**

[Commercial Radio Code of Practice March 2017](#) (CRA)

[Subscription Narrowcast Radio Codes of Practice 2013](#) (ASTRA)

[Community Radio Broadcasting Codes of Practice 2008](#) (CBAA)

[Codes of Practice Open Narrowcast Radio 2016](#) (ANRA)

[Broadcasting Services \(Commercial Radio Current Affairs Disclosure\) Standard 2022](#)

## **Broadcasting – nationals (TV, radio and online)**

[ABC Codes of Practice 2019](#)

[ABC Editorial Guidance Note on Hate Speech, Terrorism and Mass Killing 2019](#)

[ABC Editorial Guidance Note on Harm and Offence 2014](#)

[SBS Code of Practice 2021](#)

## **Other**

[Media, Entertainment & Arts Alliance \(MEAA\) Journalist Code of Ethics](#)

[Australian Press Council \(APC\) Standards of Practice](#)

[Australian Association of National Advertisers \(AANA\) Code of Ethics 2021](#)

[AANA Food and Beverages Advertising Code 2021](#)

[AANA Children's Advertising Code](#)

[Australian Code of Practice for Disinformation and Misinformation 2021](#) (DIGI)

# Appendix 3: Relevant ACMA breach decisions since 2017

Investigation report	Date published	Sector
<b>Accuracy and impartiality</b>		
<a href="#">BI-579</a>	8 June 2021	Commercial TV
<a href="#">BI-529</a>	21 May 2020	Commercial radio
<a href="#">BI-541</a>	15 December 2020	National TV
<a href="#">BI-535</a>	5 June 2020	Commercial TV
<a href="#">BI-525</a>	16 March 2020	Commercial TV
<a href="#">BI-521</a>	5 March 2020	Commercial TV
<a href="#">BI-484</a>	20 December 2019	Commercial TV
<a href="#">BI-442</a>	5 April 2019	National TV
<a href="#">BI-363</a>	8 August 2018	Commercial TV
<a href="#">BI-347</a>	5 April 2018	National TV
BI-325	16 October 2017	Commercial TV
BI-305	30 August 2017	National TV
BI-227	14 February 2017	Commercial TV
<b>Commercial interests</b>		
<a href="#">BI-583</a>	21 July 2021	Commercial TV
<a href="#">BI-559</a>	20 October 2020	Commercial TV
<a href="#">BI-549</a>	26 May 2021	Commercial radio
<b>Distressing high-impact content</b>		
<a href="#">BI-433</a>	6 February 2019	Commercial TV
<b>Advertising restrictions</b>		
BI-265	14 March 2017	Commercial TV
<b>Classification and content guidance</b>		
<a href="#">BI-605</a>	12 April 2022	National TV
<a href="#">BI-526</a>	25 March 2020	Commercial TV
<b>Highly offensive and discriminatory material</b>		
<a href="#">BI-561</a>	5 March 2021	Commercial radio
<a href="#">BI-537</a>	8 September 2020	Commercial radio

Investigation report	Date published	Sector
<a href="#">BI-539</a>	16 June 2020	Commercial radio
<a href="#">BI-441</a>	15 March 2019	Commercial radio
<a href="#">BI-363</a>	8 August 2018	Commercial TV
<b>Privacy</b>		
<a href="#">BI-555</a>	30 April 2021	Commercial TV
<a href="#">BI-558</a>	30 April 2021	Commercial TV
<a href="#">BI-552</a>	19 November 2020	Commercial TV
<a href="#">BI-535</a>	5 June 2020	Commercial TV
<a href="#">BI-484</a>	20 December 2019	Commercial TV
<a href="#">BI-434</a>	1 March 2019	Commercial TV