

EMBARGOED: 10AM, THURSDAY 3 OCTOBER 2024

Annexure A:

ACMA views on Free TV code review

Under the co-regulatory arrangements established by the *Broadcasting Services Act 1992*, broadcasting industry groups are expected to develop their codes of practice in consultation with, and taking account of any relevant research conducted by, the ACMA.

Public consultation is a mandatory aspect of the code review process. This is intended to provide viewers and other interested parties an opportunity to comment on and help shape the rules about what content can be broadcast and what audience protections are in place. ACMA views around registration will be shaped by public submissions through this process.¹

Below is an outline of the ACMA's views on key issues raised with Free TV as part of the code review. These views 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.

The ACMA's views have not been fully addressed in the draft version of the code but form part of the consultation issues that Free TV has identified for stakeholder consideration.

The ACMA encourages television viewers to consider and potentially provide feedback to Free TV Australia on these and any other issues of concern.

News and current affairs

A key area of community concern relates to the provision of TV news and current affairs. According to the News and Media Research Centre ([N&MRC](#), 2024) the proportion of Australians who distrust the news has been rising steadily since 2016, and the proportion of TV news viewers who say they trust the news has fallen over the past twelve months to 49%(-5pp). These coincide with a comparable decline in trust in Australian democracy and public institutions.

The factors that most drive Australians to trust news are perceptions of high journalistic standards, and transparency around editorial processes ([N&MRC](#), 2024). The ACMA considers that television viewers would benefit from Free TV strengthening these aspects of the code, given the importance of TV news and current affairs.

Accuracy & Mis/Disinformation

The code currently contains a provision in relation to news programs for factual material to be distinguished from commentary, analysis or opinion. The ACMA agrees this should be retained but considers that viewers would benefit from the distinguishability requirements being extended to apply to both news *and* current affairs programs.

There is growing concern within the Australian community about online misinformation (rising from 64% in 2022 to 75% in 2024) ([N&MRC](#), 2024). In response, the Australian Government has introduced the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024* to help reduce the amplification of misinformation on digital

¹ Before it can register a code, the ACMA must be satisfied that the code provides appropriate community safeguards, is endorsed by the majority of providers, and that members of the public have been given adequate opportunity to comment on the code.

platforms. Australian TV news content shared online would be exempt from these new rules on the basis that professional media organisations are subject to existing codes of practice that regulate news content.

The existing Free TV code requires factual material in TV news and current affairs programming to be accurate, which remains a critical safeguard against the spread of misinformation. However, considering rapid advancements in generative AI tools and the ease through which bad actors can manipulate the online information environment, the ACMA is concerned that accuracy provisions alone may be insufficient to address the growing threat posed by online misinformation.

There are examples of where the mainstream Australian media has inadvertently amplified false online narratives. This includes an Australian TV news outlet misidentifying the perpetrator of the Bondi Junction stabbings in April 2024 in early news coverage of the event, based on social media posts.

The ACMA welcomes viewer feedback on whether the Free TV code should more explicitly commit broadcasters to take special care to confirm the legitimacy of non-authoritative sources to help prevent the amplification of mis- and disinformation – particularly when relying on material circulating on social media platforms.

Corrections

Given the dynamic and often live nature of news programming, including the need to report on stories where facts may still be in dispute, factual errors can occur from time to time. In these instances, it is important for viewers that news organisations correct the record in a timely manner and in a way that has the highest likelihood of being seen by the same (or similar) audience.

The existing Free TV code contains a corrections obligation and the ACMA supports the proposed removal of the ‘reasonable efforts’ qualifier in the draft code. This provision, however, still allows broadcasters to make corrections on an alternative platform (including a website) or at a time that means that the correction is not likely to be seen.

The ACMA understands that on-air corrections may be challenging in some circumstances and broadcasters prefer to retain the current flexibility. However, the ACMA considers that television audiences would benefit if the code required that corrections were proximate to the error and brought to the attention of the same audience.

Distressing material

As the ACMA highlighted in its investigation into coverage of the 2019 Christchurch terrorist attack ([ACMA, 2019](#)), there are challenges in striking a balance between informing the public and minimising exposure of audiences to highly distressing news and current affairs material, including depictions of high-impact violence.

While the existing Free TV code does prevent commercial TV broadcasters from airing content that is ‘likely to seriously distress...a substantial number of viewers’, it is permitted if there is a public interest reason to do so.

The ACMA appreciates the challenges in live news reporting and that broadcasters act responsibly when making decisions about reporting on distressing material. However, the ACMA considers that viewers would benefit from broadcasters committing to take special care when presenting high-impact news material, particularly if this involves the use of footage from alleged perpetrators, bystanders, other material posted on social media or content originally broadcast overseas which may be subject to different editorial standards.

Such an obligation might also mean that broadcasters avoid gratuitous emphasis, frequent repetition, limit the use of consecutive distressing images of an event or replays within the same segment, or reduce the length of distressing material included in a news report.

Warnings are an important mechanism to assist audiences to manage their own and others’ exposure to distressing material. The ACMA notes the changes made to the warning

provisions in the revised code, but considers that viewers would benefit from broadcasters committing to more consistent use of warnings before and during a program.

Commercial interests

ACMA research published in 2020 highlighted that commercial influence over news content was an area where existing regulatory protections may not be meeting audience expectations. It found 83% of Australians were concerned about 'news being influenced by large advertisers', including sponsorship of news segments such as weather and finance, commercial businesses paying to have their products or services feature in news, or offering goods and services for free during news ([ACMA 2020](#)).

The Free TV code already contains disclosure obligations for factual programs (which does not include news programs). However, the ACMA considers that viewers would benefit from the code being amended to ensure that all commercial arrangements that do, or could, impact or influence content or editorial decisions in both news programs and current affairs programs are disclosed in a clear and obvious manner.

Privacy

Broadcasting codes generally contain protections that prevent the broadcast of material that relates to a person's personal or private affairs without consent, or otherwise invades a person's privacy unless it is clearly in the public interest to do so.

The ACMA considers that these privacy protections can apply to personal or private information in the public domain. The ACMA is concerned that the note at clause 3.5.1 in the code (about the use of material that is publicly available), may be inconsistent with broader privacy protections. Recent ACMA investigations have highlighted changes in the contemporary context with respect to online information that broadcasters have considered to be in the public domain but has been sourced and broadcast without consent (see Investigations [BI-558](#) and [BI-649](#)).

The ACMA also recognises the importance of the code's existing special care provision applicable to children's privacy. The ACMA considers that viewers and program participants may benefit from broadcasters committing to take special care in relation to the personal or private affairs of vulnerable people.

Other safeguards

Classification

Classification consumer advice, in addition to the classification rating, provides TV audiences with more detailed information about the nature of a TV program, helping them make more informed viewing decisions for themselves and those in their care. At present, the Free TV code requires consumer advice for programming classified 'M' and above. The ACMA has raised whether viewers would benefit from this provision being expanded to apply to all programs classified 'PG' and above.

In line with changes made to the *Australian Content and Children's Television Standards 2020*, the ACMA has also raised whether the code should be amended to oblige licensees to undertake C & P classification functions. Broadcasters are well equipped to classify children's content and given the limited number of C & P applications made by broadcasters, this should not be overly burdensome for licensees.

The ACMA notes that in its draft code Free TV has simplified the M-zone classification times in 2.2.2. This change would permit M content over longer periods of the day (including weekends and school holidays) and will impact the times during which alcohol advertising is permitted (6.2.1). The ACMA considers that viewers may have concerns about any extension of time when alcohol advertising is permitted on television.

Transparency and complaints handling

Complaints are a core foundation of the co-regulatory framework and are the principal means by which the ACMA monitors compliance with the code. Strong transparency and accountability measures reinforce a content providers' integrity and generates trust amongst audiences and the broader community around broadcasting content. Across broadcasting sectors there is limited publicly available information about how complaints are assessed and investigated internally or the outcomes of those complaint processes.

The ACMA considers that television viewers would benefit from broadcasters committing to provide clear and prominent information about making a code complaint on their website(s), including access to simple and user-friendly complaint mechanisms, as well as reporting on complaint numbers and outcomes.

Safeguards for online services

The safeguards provided in the existing Free TV broadcasting code of practice apply only to TV content delivered 'over the air' by terrestrial broadcast. The same or similar TV programs delivered over the internet are not subject to the same safeguards and cannot be investigated by the ACMA. This is a legislative barrier as the ACMA's code registration powers and regulatory remit currently do not extend to online services.

Weekly free-to-air TV viewership is falling (from 71% in 2017 to 52% in 2023), while viewers of broadcasters' catch-up/on-demand services continues to grow (from 18% to 43% during the same period) ([ACMA](#), 2024). Viewers increasingly do not distinguish between broadcast and online TV content and may expect comparable safeguards irrespective of viewing platform.

The ACMA considers that viewers would benefit from broadcasters committing to voluntarily extend some or all of its broadcast television safeguards to all television content provided online. This approach has already been taken by the national broadcasters and would demonstrate the commercial TV industry's responsiveness to changing viewing behaviours and commitment to providing content safeguards for all of its audience ahead of broader government considerations on the regulation of 'like' content as part of its ongoing media reform program.