

Chair and Agency Head

Ms Bridget Fair
Chief Executive Officer
Free TV Australia
Suite 1, 2/76 Berry Street
North Sydney NSW 2060
[REDACTED]

ACMA file reference: ACMA2023/115

Dear Ms ~~Fair~~ ^{Bridget}

ACMA expectations on Free TV code review

Further to correspondence with Free TV earlier this year, I would like to advise you of the ACMA's current expectations for the review of the Commercial Television Code of Practice.

I note the concerns you raised in your letter dated 12 February 2024 about the breadth of changes proposed in the ACMA's June 2023 feedback.

The Authority has recently met to discuss progress on code reviews, as well as the issues raised by Free TV and other industry groups concerning implementation of the ACMA's earlier, more detailed advice on code changes. Following this discussion, the Authority has reviewed its feedback with a focus on pragmatic changes that we consider would most help address community concerns whilst also having a higher likelihood of being workable for broadcasters.

To help facilitate the timely review of your code, I encourage their adoption ahead of public consultation on the draft code.

Context and expectations

There have been considerable changes in the production and consumption of media since a review of the commercial television code was last completed in 2015.

The ACMA's *What Audiences Want* paper provides an outline of the changing media landscape and audience expectations of professional content providers in this context. Our position on the code reflects our research findings and practical regulatory experience across matters such as accuracy and impartiality, commercial interests and distressing high impact content and other important matters outlined in the report.

We also recognise that the code review is progressing in parallel with significant reform activities which may have implications for specific parts of the code (e.g., gambling advertising), and that Free TV's preference had been to engage in a single public consultation process that covers the full range of proposed code changes.

Our advice remains that Free TV should continue to progress its code review, noting that the matters listed below do not include these areas of regulatory uncertainty, which will need to be addressed on a case-by-case basis once there is greater clarity. This is consistent with the advice we have provided to other industry groups. Within this context, the ACMA's core expectations for the Free TV code are that it:

- > Retain the application of obligations found in section 3 in the existing code to news and current affairs 'programs' instead of application to a broader range of 'news and journalistic content' as previously suggested
- > Retain the existing requirement to distinguish the reporting of factual material from opinion, analysis and commentary in news programs and also extend it to current affairs programs

- > Include specific provisions to deal with misinformation and disinformation to avoid further amplification of such content through broadcasting channels
- > Include obligations to correct or clarify significant material errors of fact as soon as possible and in a manner that is likely to be seen by the originally exposed audience
- > Include a 'special care' provision for high impact news material as identified in the ACMA's review of the coverage of the 2019 Christchurch terrorist attack
- > Require that all commercial arrangements that do or could impact or influence content in news and current affairs programs are disclosed in a clear and obvious manner
- > Confirm personal privacy protections in the broadcasting of content extend to material in the public domain (e.g., social media footage of a funeral) and extend the provisions applicable to children to vulnerable persons
- > Require that classification consumer advice applies to all programs (not just films) rated PG and above and assume responsibility for C & P content classification
- > Require broadcasters to provide prominent and accessible complaint mechanisms on their websites and that Free TV publish an annual complaints report and responses to issues of audience concern.

Finally, we consider that Free TV and its members should consider new self-regulatory instruments that voluntarily extend code provisions to all its online services, regardless of delivery mode.

Further context, rationale and detail of our expectations are included in [Attachment A](#).

Next steps

Our intention in providing this information is to assist Free TV to develop a draft code that contains appropriate community safeguards that will meet the expectations of the ACMA.

Noting that the ACMA has not seen a draft code and Free TV has not yet indicated what changes it proposes to make to the code, the ACMA would like to review a tracked change copy prior to public consultation.

As per previous reviews, it would also be appreciated if you could provide advance notice to the ACMA of when public consultation will commence and provide access to submissions when requested. We expect that Free TV should be in a position to commence consultations by September 2024. We note that we may consider making public submissions to the code review on any issues of concern.

Finally, when you provide a version of the code to the ACMA for registration, please also provide evidence to satisfy the tests identified in s.123 of the *Broadcasting Service Act 1992* in regard to consultation and that the code has been endorsed by a majority of providers in the subscription broadcast and narrowcast television industry.

If you require any clarification on the contents of this letter, or to provide a draft code, please contact [REDACTED]

Yours sincerely



Nerida O'Loughlin PSM

5 July 2024

Distinguishability, accuracy and corrections in news and current affairs

The ACMA acknowledges the practical difficulties in applying content safeguards to a broader range of 'news and journalistic content' and supports Free TV retaining the existing news and current affairs 'programs' framework, provided further consideration is given to the following matters.

The ACMA's view is that existing obligations about the distinguishability of factual reporting from commentary and analysis must be retained, and extended, so that distinguishability requirements apply to both news and current affairs programs.

The ACMA accepts that factual material can be contested and that, in some circumstances, new information can emerge over time that impacts factual accuracy of material. To better support the operation of accuracy obligations, it is important that corrections of material errors of fact are made in a manner that has a high likelihood of being seen by the same (or similar) audience who were originally exposed to the errors. That is, the corrections should be broadcast on a following day at a time that is the same or similar to the original broadcast. Obligations on licensees to correct or clarify significant and material errors of fact, as soon as possible, should not be qualified by reasonable efforts.

Broadcasters providing professional news content are currently exempted from the exposure draft *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* on the basis that treatment of misinformation and disinformation is dealt with in broadcasters Codes of Practice.

We have received feedback from broadcasters that existing code 'accuracy' provisions adequately deal with this subject. Noting the challenges that the proliferation of social media generally – and misinformation and disinformation specifically – are presenting to news organisations, the ACMA considers that this issue should be kept under review. Consistent with our previous feedback, our view remains that all broadcasters should exercise care to confirm the legitimacy of its sources to help prevent the amplification of mis- and disinformation – particularly when relying on material circulating on social media platforms. This should not impose onerous additional obligations for professional journalists.

Distressing material in news and current affairs

As you would be aware, and following recent violent incidents, distressing material in news content continues to be an area of significant community concern. As the ACMA highlighted in its investigation into coverage of the Christchurch terrorist attack, there are challenges in striking a balance between informing the public and minimising exposure of audiences to highly distressing material, including depictions of high-impact violence.

It continues to be the ACMA's expectation that 'special care' be required when broadcasting 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.

Special care is dependent on context but may include avoiding gratuitous emphasis, avoiding frequent repetition within short time frames, limiting the use of consecutive distressing images of an event or replays within the same segment, or reducing the length of distressing material included in a news report. A special care provision does not act as a prohibition but requires broadcasters to be mindful of the potential impact of distressing content and give greater consideration to the presentation of sensitive news topics.

However, at a minimum, the ACMA considers broadcasting codes should contain firm commitments to provide appropriate and meaningful warnings, be they spoken or written, before material is broadcast that is potentially distressing. The ACMA notes that warnings are very important in assisting audiences to manage their own and others' exposure to distressing material. This should translate to more consistent use of warnings both before and during the relevant broadcast, particularly when the relevant coverage is lengthy or continuous.

Commercial interests

The *Digital News Report: Australia 2024* from the University of Canberra's News and Media Research Centre shows that the proportion of Australians who distrust news has increased since 2016. The ACMA's own research suggests that commercial influence is of significant concern to audiences and to the community more broadly. While we appreciate that news programs are required to be impartial under existing code provisions, it is important that the revised code be transparent about commercial arrangements as they apply to news and current affairs programs.

Noting that the Free TV code already contains disclosure obligations for Factual Programs (defined to exclude news programs), the ACMA expects some further changes albeit more limited than previously advised. The intended outcome is that all commercial arrangements that do or could impact or influence content or editorial decisions in both news programs and current affairs programs must be disclosed in a clear and obvious manner. For instance, this disclosure could occur verbally at the time or on screen at the end of the relevant program. This includes where there is a perceived or real commercial conflict of interest, such as the cross-promotion of products, programs or services from entities within the broader corporate structure of the licensee.

Privacy

We note that 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 Authority continues to be of the view that the associated note pertaining to use of material that is publicly available should be deleted as it is inconsistent with the protections provided. As you are aware, recent ACMA investigations have highlighted changes in the contemporary context with respect to the broadcast of information sourced online that may be considered to be in the public domain, but without consent (see Investigations [BI-558](#) and [BI-649](#)). The note is not determinative and does not reflect the ACMA's case by case considerations relevant to material in the public domain.

To be clear, just as personal information that is publicly available remains personal information under data privacy laws, the ACMA considers that privacy protections under broadcasting codes can apply to personal or private information in the public domain. Each proposed broadcast of material relating to a person's personal or private affairs, or which invades an individual's privacy, must be considered on a case-by-case basis, having regard to the extent of the intrusion and also whether or not it is in the public interest to broadcast the information.

We note Free TV's existing special care provision applicable to children's privacy and consider that all content providers should exercise special care when dealing with the personal or private affairs of similarly vulnerable people. This is important because, like children, intrusions of privacy for vulnerable people will have different and potentially serious impacts relative to the general population, noting that these cohorts tend to have diminished capacity to advocate for themselves and may be unable to provide informed consent.

Classification

As we have noted in previous advice, classification consumer advice, in addition to the classification rating, is an important way to provide consumers with more detailed information

about the content they can expect in a program. Our view remains that consumer advice should apply to all programs classified PG and above.

We note that government is currently considering classification reforms, including harmonising classification requirements across platforms. In light of reform objectives, it would be appropriate for broadcasters to take the initiative to adopt measures that support better informed audiences.

Consistent with our June 2023 advice and in line with changes made to the *Australian Content and Children's Television Standards 2020*, the ACMA expects the code to be amended to oblige licensees to undertake C & P classification functions. Broadcasters are well equipped to classify children's content and given the limited amounts of potential C & P content this should not be overly burdensome for licensees.

Transparency and complaints handling

Strong transparency and accountability measures reinforce a content providers' integrity and generates trust amongst audiences and the broader community around broadcasting content. However, across broadcasters, there is limited publicly available information about how complaints are assessed and investigated internally or the outcomes of those complaint processes.

Licensees should provide clear and prominent information about making a code complaint on their website(s), including access to simple and user-friendly complaint mechanisms.

The ACMA also considers that there should be code obligations on Free TV to publish an annual complaints report that provides information on areas of concern and how the complaint information is being used to improve code compliance, with a summary of the number and substance of code complaints and complaints upheld as a minimum.

Safeguards for online services

The ACMA expects all free to air television services to be afforded comparable safeguards irrespective of viewing platform. Free TV should consider new self-regulatory instruments that voluntarily extend code provisions to all commercial television content provided online. This would help demonstrate the industry's responsiveness to changing viewing behaviours and its commitment to providing content safeguards across its audience ahead of broader government considerations on the regulation of 'like' content as part of its ongoing media reform program.