

Contemporary community safeguards inquiry

Issues paper

JUNE 2013

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Contents

Overview	1
Invitation to participate in the inquiry	3
The inquiry process	3
Invitation to comment on the issues paper	3
Continuing the conversation	3
Invitation to make a submission to the inquiry	4
Guidance on making submissions to the inquiry	4
Introduction	6
The legislative framework	6
The ACMA's role in relation to the codes	7
Regulatory policy	8
Why now?	10
Contemporary communications issues	10
Broken concepts, enduring concepts	12
Rationale for the issues/concepts examined	14
Scope of the inquiry	14
Identification of issues and concepts explored in the issues paper	14
Rationale for selection	15
Methodology for asking questions	17
1. Community values—classification and decency	19
1.1 Public interest to be served or harm addressed	19
1.2 The current intervention/s	20
1.3 Contemporary communications issues	22
2. Protection of children—time zones	27
2.1 Public interest to be served or harm addressed	27
2.2 The current intervention/s	28
2.3 Contemporary communications issues	30
3A. Ethical standards—accuracy and fairness	33
3A.1 Public interest to be served or harm addressed	33
3A.2 The current intervention/s	35
3A.3 Contemporary communications issues	43
3A.4 Related matters	44

Contents (Continued)

3B.	Ethical standards—advertising	47
3B.1	Public interest to be served or harm addressed	47
3B.2	The current intervention/s	48
3B.3	Contemporary communications issues	50
3B.4	Related matters	51
4A.	Protection of the public—privacy	53
4A.1	Public interest to be served or harm addressed	53
4A.2	The current intervention/s	54
4A.3	Contemporary communications issues	57
4B.	Protection of the public—interventions designed to address matter that is likely to incite hatred against or vilify	61
4B.1	Public interest to be served or harm addressed	61
4B.2	The current intervention/s	62
4B.3	Contemporary communications issues	64
4C.	Protection of the public—emergency information	66
4C.1	Public interest to be served or harm addressed	66
4C.2	The current intervention/s	66
4C.3	Contemporary communications issues	67
5.	Access—captioning	69
5.1	Public interest to be served or harm addressed	69
5.2	The current intervention/s	70
5.3	Contemporary communications issues	71
6.	Australian identity—requirements for Australian music	72
6.1	Public interest to be served or harm addressed	72
6.2	The current intervention/s	73
6.3	Contemporary communications issues	74
7.	Redress—methods of handling and responding to complaints from members of the public	76
7.1	Public interest to be served or harm addressed	76
7.2	The current intervention/s	77
7.3	Contemporary communications issues	79

Contents (Continued)

Appendix 1—Complete list of questions	80
Appendix 2—Relevant extracts from the Act	87
Appendix 3—Summary of the ACMA’s 16 enduring concepts	93

Overview

Co-regulation, and codes of practice in particular, have been a key plank of broadcasting regulation in Australia since 1992. Regular reviews of the broadcasting codes have resulted in incremental changes and improvements to individual codes. However, no comprehensive review of the principles underpinning these codes has been undertaken.

Given the significant changes in the media landscape over the last twenty years, the Australian Communications and Media Authority (the ACMA) believes it is time to conduct an overarching and in-depth consideration of the core principles that should guide contemporary broadcasting codes of practice.

In keeping with this, the inquiry seeks to:

- > identify the core matters or concepts that are of enduring relevance and significance to contemporary broadcasting audiences and markets, notwithstanding the pressures of convergence
- > consider the fundamental justification for future code-based regulatory intervention in relation to those enduring matters or concepts
- > explore how these matters may be most appropriately addressed by broadcasting codes in a converged media and communications framework, where code-based regulation continues to be justified.

The ACMA has an open and consultative approach to the inquiry and is asking for citizen and industry views. The ACMA will draw on this information to issue guidance as to how matters may best be addressed in these contemporary codes of practice.

This issues paper:

- > identifies what are emerging as the core matters or concepts that have retained significance and the existing regulatory interventions in broadcasting codes associated with these concepts
- > examines the particular current communications issues that arise in relation to these broadcasting code interventions
- > seeks additional information/submissions from citizens and industry with a view to the ACMA issuing guidance as to how these matters may best be addressed in contemporary codes of practice.

As a starting point and to assist in framing the discussion, the ACMA distilled seven core 'enduring concepts'. In turn, existing code interventions were then mapped to these enduring concepts as follows:

1. Community values

- > Classification of content interventions
- > Decency interventions

2. Protection of children

- > Time zone interventions

3. Ethical standards

- > Accuracy interventions
- > Fairness interventions
- > Advertising interventions

4. Protection of the public

- > Privacy interventions
- > Interventions against Inciting Hatred/Vilification
- > Emergency information interventions

5. Access

- > Captioning interventions

6. Australian identity

- > Australian music requirements

7. Redress

- > Complaints-handling

Invitation to participate in the inquiry

The inquiry process

The ACMA commenced the inquiry in March 2013.

The ACMA has released this issues paper to commence a formal period of consultation about the core matters and community safeguards that should appropriately be addressed in codes of practice developed by Australian broadcasters.

This formal consultation will be supplemented by a series of public forums, the *Citizen conversations*. These conversations will be held in June 2013. The ACMA is also undertaking economic and community research throughout 2013, to form part of the evidence base for the inquiry.

The ACMA will then release a draft report that will analyse the information garnered from consultation to date.

The inquiry process will conclude with the release of a final report.

Invitation to comment on the issues paper

The ACMA invites submissions from interested parties on the issues and materials set out in this issues paper and any other issues relevant to contemporary community safeguards in Australia's broadcasting codes.

Specific questions are raised within each chapter. The complete list of questions is also provided at Appendix 1. These questions are intended to assist in framing possible submissions; however, submitters need not answer all or any of the questions. If submitters are responding to specific questions raised in this issues paper, please reference the question numbers when providing written responses.

By email: ccsinquiry@acma.gov.au

By facsimile: +61 2 6219 5353

By mail: Manager
Contemporary community safeguards inquiry
Australian Communications and Media Authority
PO Box Q500
Queen Victoria Building
NSW 1230

The closing date for submissions on this paper is Monday 15 July 2013.

Media enquiries should be directed to Emma Rossi on (02) 9334 7719 or by email to media@acma.gov.au.

Continuing the conversation

The ACMA encourages stakeholders with an interest in contemporary community safeguards in broadcasting to attend or participate in the ACMA's *Citizen conversations series* that will be held during **June 2013**.

Details for the *Citizen conversations* can be found on the [ACMA website](#).

Citizen conversations will be held at the ACMA's Sydney office:

Level 5 The Bay Centre,
65 Pirrama Road,
Pyrmont NSW

Find us in [Google maps](#).

For those who cannot attend the forums in person, the following opportunities for equal participation are also available:

- > view the conversations live at www.acma.gov.au/live
- > join the conversation via Twitter using #CCSi.

Invitation to make a submission to the inquiry

The ACMA encourages submissions on the issues raised throughout the inquiry. In addition to the formal submissions that will be invited for both the issues paper and the draft report, we also welcome short, ad hoc submissions on particular issues.

By email: ccsinquiry@acma.gov.au

By facsimile: +61 2 6219 5353

By mail: Manager
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NSW 1230

Submissions to the inquiry can be made at any time prior to the close of the consultation period on the draft report.

Guidance on making submissions to the inquiry

Effective consultation

Stakeholder consultation processes are an important source of evidence for the ACMA's regulatory development activities. To assist stakeholders in formulating submissions the ACMA has developed *Effective consultation: A guide to making a submission*.¹ This guide provides information about the ACMA's formal, written, public consultation processes and practical guidance on how to make a submission.

Publication of submissions

In general, the ACMA publishes all submissions it receives. However, the ACMA will not publish submissions that it considers contain defamatory or irrelevant material.

The ACMA prefers to receive submissions which are not claimed to be confidential. However, the ACMA accepts that a submitter may sometimes wish to provide information in confidence. In these circumstances, submitters are asked to identify the material over which confidentiality is claimed and provide a written explanation for confidentiality claims.

The ACMA will not automatically accept all claims of confidentiality. The ACMA will consider each claim for confidentiality on a case-by-case basis.

¹ www.acma.gov.au/theACMA/About/Corporate/Responsibilities/acma-evidenceinformed-regulation-and-effective-consultation

Release of submissions where authorised or required by law

Any submissions provided to the ACMA may be released under the *Freedom of Information Act 1982* (unless an exemption applies) or shared with other Commonwealth Government agencies or other parties under Part 7A of the *Australian Communications and Media Authority Act 2005*. The ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example, under a court subpoena). While the ACMA seeks to consult submitters of confidential information before that information is provided to another party, the ACMA cannot guarantee that confidential information will not be released through these or other legal means.

Status of this paper

This paper provides background information to assist people in making comments to the ACMA on the issues addressed in the paper. Information in this paper should not be taken to indicate the ACMA's commitment to a particular policy position or course of action.

Introduction

The ACMA is a statutory authority within the federal government portfolio of Broadband, Communications and the Digital Economy. The ACMA is responsible for the regulation of broadcasting, the internet, radiocommunications and telecommunications.

The focus of this inquiry is the ACMA's role in broadcasting. In particular, an examination of the core principles that should guide the content of broadcasting codes of practice (codes).

The legislative framework

The *Broadcasting Services Act 1992* (the Act) identifies the following distinct categories of broadcasting services. These are:

- > commercial broadcasting services
- > community broadcasting services
- > subscription broadcasting services
- > narrowcasting services
- > national broadcasting services, being the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS).

The Act sets out the overall objects, regulatory policy and intention of Parliament regarding the regulation of these broadcasting services.² The Explanatory Memorandum to the Broadcasting Services Bill 1992 shows that in legislating, Parliament sought to:

establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants; to introduce flexibility into the regime to enable responsiveness to changing circumstances; to monitor outcomes and trends against policy objectives; and to provide a range of redressive measures to the regulatory authority to deal with breaches or adverse trends.³

In achieving this aim, the Act establishes a framework for the regulation of broadcasting in Australia, which is a combination of:

- > direct regulation through legislation such as:
 - > specific requirements as set out in the Act
 - > licence conditions, either in the Act or imposed by the ACMA
 - > program standards as determined by the ACMA
- > co-regulation through the development and registration of industry codes.

Section 123 of the Act sets out the matters to which codes may relate.⁴ The Act does not specifically limit the matters to which the codes may relate, reflecting the intention that codes provide a flexible and responsive means of regulation.

² Key sections of the *Broadcasting Services Act 1992* are set out in *Appendix 2*.

³ Explanatory Memorandum to the *Broadcasting Services Bill 1992*, p. 2.

⁴ See *Appendix 2*.

The ACMA's role in relation to the codes

The co-regulatory approach embodied in the Act requires that various sectors of the broadcasting industry are responsible for developing their own codes. Although the codes are developed by industry, the Federal Court recently reiterated that:

Parliament intended the ACMA to play an important and prominent role in ensuring that regulations affecting broadcasting provide appropriate community safeguards in respect of the subject matter of such regulations.⁵

The ACMA has a key role in the development, registration and interpretation of broadcasting codes of practice.

Development and registration of codes

Broadcasting providers are required to develop codes of practice that are in accordance with community standards. As a result, codes are developed by industry in consultation with the ACMA and taking account of any relevant research conducted by the ACMA.⁶

Once a code of practice has been developed by community, commercial, subscription broadcasting, or narrowcast sectors, the ACMA must register the code if satisfied that:

- > the code provides **appropriate community safeguards** for the matters contained in the code
- > the code is endorsed by a majority of the providers of the broadcasting services in that section of the industry
- > members of the public have had an adequate opportunity to comment on the code.⁷

The Act therefore creates what might be described as conjoint roles for both industry groups and the ACMA in developing codes.⁸ However, it is ultimately a matter for the ACMA as to whether it considers a particular code provides appropriate community safeguards.

Codes developed by national broadcasting services (ABC and SBS) are notified to the ACMA, but are not required to be registered by the ACMA.

Investigations and interpretation of code provisions

Once registered, the ACMA maintains investigative powers relevant to the codes. Unresolved complaints made to the relevant broadcaster about compliance with the codes, including those relating to the ABC and SBS, must be investigated by the ACMA.⁹

Current codes

In relation to radio and television, the ACMA currently oversees eleven codes. These codes are listed in the table below.

⁵ *Harbour Radio Pty Ltd v ACMA* [2012] 202 FCR 525 at 552.

⁶ *Broadcasting Services Act 1992*, s. 123(1).

⁷ *Broadcasting Services Act 1992*, s. 123(4).

⁸ *Harbour Radio Pty Ltd v ACMA* [2012] 202 FCR 525 at 552.

⁹ *Broadcasting Services Act 1992*, Part 11 which in summary provides that the ACMA must investigate valid complaints made to it about relevant matters, unless the ACMA is satisfied that the complaint is frivolous or vexatious or not made in good faith.

Table 1 Table of industry codes of practice registered by or notified to the ACMA relevant to television and radio

Radio	Commercial Radio Codes of Practice and Guidelines, 2013
Radio	Community Radio Broadcasting Codes of Practice, 2008
Radio	Subscription Narrowcast Radio Code of Practice, 2007
Radio	Open Narrowcast Radio Code of Practice, 2011
Television	Commercial Television Industry Code of Practice, 2010
Television	Community Television Codes of Practice, 2010
Television	Subscription Broadcast Television Codes of Practice, 2007
Television	Subscription Narrowcast Television Codes of Practice, 2007
Television	Open Narrowcast Television Codes of Practice, 2009
Radio and television	ABC Code of Practice, 2011 (revised in 2013)
Radio and television	SBS Codes of Practice, 2006 (incorporating amendments as at 12 December 2012)

The ACMA maintains a register/index of all broadcasting codes made under the Act, available on the [ACMA website](#) (search for 'broadcasting codes and schemes index').

Regulatory policy

The Act evinces a regulatory policy that promotes regulation to enable public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasters and one that will readily accommodate technological change.¹⁰

Relevantly, the Act also intends that the level of regulatory control applied to broadcasting services will differ according to the degree of influence that different services are able to exert in shaping community views in Australia.¹¹ In this regard, the ACMA notes the conclusion of the Convergence Review that the 'potential to influence is still a critical consideration' and that 'influence remains a relevant criterion in the converged world'.¹²

The ACMA has previously expressed the view that regulatory design should be best-practice, proportionate and evidence-informed and this was documented in a public paper *Optimal conditions for effective self- and co-regulatory arrangements* released in 2010 (and updated in 2011).

Consistent with this view, the ACMA's disposition is to produce guidance which is based on strong evidence and supportive of the minimum level of regulatory intervention necessary to achieve the desired aim. That is, regulatory intervention that is appropriate and proportionate in all the circumstances.

As previously discussed, the ACMA notes this inquiry is occurring within a converged media and communications environment. In this context, certain principles have emerged as relevant to a contemporary assessment of regulatory interventions. These include underlying principles of flexibility, calibration, global engagement and shared

¹⁰ *Broadcasting Services Act 1992*, Part 1, s. 4.

¹¹ *Broadcasting Services Act 1992*, s. 4.

¹² Convergence Review Committee, *Convergence Review Final Report* (2012), p. 7.

responsibility.¹³ These principles are acknowledged here because they guide the framing of some of the questions explored in this issues paper.

<i>Flexibility</i>	The methods of intervention applied to the delivery of public interest outcomes in media and communications should be adaptable and sufficiently flexible to respond to the pace of technological innovation.
<i>Calibration</i>	Policy settings should be calibrated to suit particular circumstances—therefore while regulatory parity is desirable, the focus of regulation should be on coherence across media and communications markets (but not necessarily uniformity).
<i>Global engagement</i>	A key element of convergence is the globalisation of media and communications markets. This has a dynamic influence on the way that Australians source and engage with digital communications and media.
<i>Shared responsibility</i>	<p>The ACMA supports a shared responsibility approach to regulation. Users of converged media have been empowered by the open and participatory nature of the internet and technological changes which give them ever-growing control over what content they consume and how they consume it.</p> <p>These developments challenge industry-specific regulatory models that rely principally on industry obligations and national regulatory remedies. It is becoming increasingly evident that it is no longer possible, nor perhaps appropriate, for governments, industry regulators and industry-specific bodies to do everything.</p> <p>Responsibility for outcomes in media and communications must be shared between government, industry-specific regulators, multilateral institutions, suppliers and—importantly—users, be they citizens or consumers.</p>

¹³ ACMA, *Enduring concepts—communications and media in Australia*, 2011, pp. 7–8.

Why now?

There have been considerable technological shifts within the broadcasting sector and media environment in the two decades since broadcasting codes were first introduced. Community values and expectations also alter over time, as societal norms change. These developments have caused, and continue to cause; major paradigm shifts in the way Australians live their lives.

Industry codes are regularly, but separately, reviewed to ensure the matters covered by the codes remain relevant and that the community safeguards they contain continue to address community concerns. The review process is undertaken on an individual code-by-code basis and tends to be incremental.

For these reasons, the ACMA considers it is timely to undertake a more holistic and principles-based examination, taking into account more widely relevant considerations across codes.

Contemporary communications issues

The way that Australians communicate and receive information has significantly changed in the past two decades with the communications environment continuing to shift and evolve seemingly at an ever-increasing pace.

One clear manifestation is the way in which Australians now consume content. Twenty years ago, platforms for the delivery of content were separate and distinct. Australians generally watched television programs on television sets and listened to radio programs on their radios. Program content was accessed by audiences at times specified by broadcasters. As a result of changing technology, new devices have entered Australian homes and even traditional devices such as the television set have become multi-functional. The use of these devices and the convergence of previously distinct platforms mean Australians can now choose what, when and how they consume content.

This evolving, contemporary communications environment has largely been shaped by convergence. ‘Convergence’ is a term used in the communications context to refer to the merging of the previously distinct platforms by which information is communicated. Media convergence describes the phenomenon where digitisation of content, as well as standards and technologies for the carriage and display of digital content, are blurring the traditional distinctions between broadcasting and other media across all elements of the supply chain: content generation, aggregation, distribution and audiences.¹⁴

Technological developments

Many of the technological developments that have occurred in the past twenty years are now core to the contemporary communications landscape. These developments include:

- > Digitisation of broadcast signals: For example, the switch to digital television has resulted in the availability of digital multi-channels delivering traditional television programs as well as radio programs and niche content such as datacasting services. Radio has also been digitised, with metropolitan cities of Australia receiving DAB+ transmissions, also resulting in an increased number of channels.
- > Internet infrastructure delivering greater bandwidth to homes and business.

¹⁴ ACMA, *Digital Australians—expectations about media content in a converging media environment* (October 2011), p. 7.

- > Wireless mobile communication protocols (3G/4G) providing greater mobile data bandwidth.
- > Multi-functional, multi-platform consumer devices such as internet-enabled television sets and personal video recorders (PVRs).
- > Consumer devices with user access systems and controls that automatically restrict access based on user preferences; for example, parental lock features of PVRs and televisions.
- > Consumer devices with networking capability: For example, smartphones and tablets.

Convergence of distinct platforms

Many of the developments in technology have allowed the convergence of previously distinct platforms, for example:

- > Internet-enabled television sets are used to access the traditional 'over the air' content by broadcasters but also user-generated content accessed via the internet.
- > Consumer devices with networking capability have provided citizens with the opportunity to access content on the move. Australians can choose to bypass their television sets and watch programs on other devices such as their laptops, mobile phones or tablets.
- > The availability of radio services on digital television multi-channels, as well as the introduction of digital (DAB+) and internet radio blurs the line between traditional television and radio platforms.
- > Increased penetration of subscription broadcast television into homes: currently 32 per cent of Australian households are now subscribers.¹⁵
- > The development of content businesses operating solely online (such as YouTube), providing content that is device independent, allowing users to access the content on a myriad of devices.

Changing patterns of consumption

Australians' media use is changing in response to the wider array of content available and options for consuming it. For example:

- > Consumers are utilising PVRs to access content delivered by free-to-air and subscription television broadcasters, including time-shifting this content by pausing, rewinding and recording.¹⁶
- > One in five homes now have televisions capable of connecting to the internet,¹⁷ meaning Australians can also use these devices to view online content at any time of the day, at their choosing, or to play games.

At this stage, the use of traditional media, especially television, remains strong. For many Australians, viewing television programs is the most common media activity, with over 90 per cent of respondents of a 2012 Roy Morgan survey indicating they had watched commercial television in the preceding seven days.¹⁸ Commercial radio also remains popular with almost 60 per cent of respondents had listened in the preceding seven days.¹⁹

¹⁵ OzTAM, Universal Estimates Quarter 2 of 2013 – Individuals.

¹⁶ Nielsen's online survey *Australian Connected Consumers Report*, 2012–13 at p. 133 estimated that on average, respondents watched almost eight and a half hours of time-shifted television viewing per week (viewers also watched, on average, 15 hours of regular television programming). In comparison, the official television ratings body, OzTAM reported that audiences spent an average of 21 hours 42 minutes watching television per week (inclusive of time-shifted viewing).

¹⁷ Nielsen's *Australia's Multi Screen report (Q4, 2012)* p. 2.

¹⁸ Roy Morgan Single Source, June 2012.

¹⁹ Roy Morgan Single Source, June 2012.

Older Australians are more likely to be heavier users of broadcast media, while younger Australians generally use online media more. Importantly, for many, the use of online media is in addition to, rather than a substitute for, traditional media.

Consumption of television and video content analysed in the ACMA's October 2011 research report entitled, *Digital Australians—expectations about media content in a converging media environment*. This research illustrates these trends:

- > 75 per cent of those aged 18 to 29 accessed both television and other video content online in the preceding month
- > 54 per cent of respondents said they only watched broadcast television and hadn't used online services such as catch-up TV in the past month. This compared with 18 per cent who had used catch-up TV and IPTV services in the preceding month
- > 50 per cent of respondents said they had watched *some* video content from the internet in the preceding month, with 45 per cent specifying video content accessed online from social networking and media sites, as well as peer-to-peer networks
- > almost 40 per cent of those aged 45 and over used online sources for watching TV and other video content.²⁰

The different consumption methods available to consumers and the different expectations that may flow from the various access points present challenges when considering whether codes, which only apply to broadcasters, are providing appropriate community safeguards.

Business models

All of the above have created constantly shifting paradigms. In thinking about communications issues, the ACMA appreciates that convergence and technology developments have put significant strain on conventional broadcasting business models.

For example, a television broadcaster is now expected to deliver (terrestrially) quality programs on both its main channel and its various digital multi-channels as well as to have content-rich websites which provide viewers with the ability to 'catch-up' on missed television programs

Nielsen, *Australian Connected Consumers, 2013* indicates that traditional broadcasters have the highest level of take-up of 'on-demand' or 'catch-up TV' services over 2011 and 2012, with internet service providers also having a strong presence in the provision of official on-demand or catch-up TV services.²¹

Similarly, radio broadcasters are increasingly delivering analog radio channels, digital radio channels, streamed content and program pod-casts (similar to the television broadcaster's catch-up TV services).

Broken concepts, enduring concepts

Many of the traditional legislative mechanisms now struggle to respond to these technological developments and the merging of previously distinct platforms. The ACMA has developed and articulated its thinking about this in recent years. Two pieces of written work published by the ACMA in 2011 are particularly informative in this context and form an important part of the ongoing discussion about the impact of convergence on communications and regulation. Both papers are discussed below.

The notion of 'strained' concepts was explored in the ACMA's August 2011 paper, *Broken concepts—the Australian communications legislative landscape*. In *Broken*

²⁰ ACMA, *Digital Australians—expectations about media content in a converging media environment*, October 2011, Figures 1 and 2.

²¹ Nielsen, *Australian Connected Consumers, 2013*.

concepts, the ACMA identified several problematic consequences of the converged communications environment. Relevantly, these included:

- > misalignment of policy and legislative constructs with market, behavioural and technological realities
- > gaps in the existing framework's coverage of new forms of content and applications
- > misplaced emphasis in the legislative framework that skews regulatory activity towards traditional media or communications
- > blurring of boundaries between historically distinct devices, services and industry sectors leading to inconsistent treatment of like content, devices or services.²²

Some of these challenges and their impact on existing regulatory code interventions will be explored in this issues paper.

In addition to identifying concepts that are 'broken', the ACMA has also identified concepts that appear to have retained significance to markets, government, and society as a whole. In November 2011, the ACMA published a companion paper to *Broken concepts* entitled *Enduring concepts—communications and media in Australia*. In *Enduring concepts*, the ACMA looked at the conceptual underpinnings for regulatory responses in communications and media markets. It sought to identify the concepts that are of ongoing importance to media and communications in Australia notwithstanding the pressures of convergence—concepts which might therefore be characterised as enduring.²³

Changing community expectations

In *Digital Australians*, the ACMA examined the impact of the increasing use of digital media on community attitudes and expectations about media content and regulation across different media platforms.

Importantly, the research generated by *Digital Australians* revealed a nuanced view of the regulation of content in the new or converged media environment. In particular, the research suggested that content type was more significant than the delivery method. According to this view, content produced by traditional media organisations was seen as professional content produced for broad audiences irrespective of how it was accessed or delivered. Consumers brought their expectations of regulation from traditional, familiar media to similar content accessed online.

Where relevant, this issues paper will reference existing community research to inform questions about the relevance of existing code related issues or interventions.

²² ACMA, *Broken concepts—the Australian communications legislative landscape*, 2011, p. 7.

²³ ACMA, *Enduring concepts—communications and media in Australia*, 2011, p. 5.

Rationale for the issues/concepts examined

Scope of the inquiry

The inquiry:

1. Examines the matters and community safeguards that should be appropriately addressed in program-related codes developed by Australian broadcasters, having regard to:
 - a. community experiences and expectations
 - b. changes to broadcasting technologies and business modelswith a view to consolidating ACMA insights and developing guidance for broadcasters on such matters and community safeguards.
2. Where appropriate, considers any related issues that become apparent in the course of the inquiry.

Out of scope

There are several matters that are currently outside scope:

> **Non-code related matters**

The ACMA does not propose, as part of this inquiry, to examine matters that are safeguarded by legislation or licence conditions, such as the *Children's Television Standards* or the *Australian Content Standard*—save to the extent these matters interact with the ACMA's consideration of codes.

> **Matters that are currently under review**

The ACMA does not propose to replicate the work already being undertaken by inquiries or reviews that are currently underway. These matters include commercials and/or sponsorship relating to betting or gambling. The outcomes of these broader reviews may, however, inform the substance of the ACMA's guidance that emerges from the inquiry.

> **Matters more appropriately canvassed in individual code reviews**

As indicated above, this inquiry is being conducted independently of and in addition to individual code review processes. The inquiry is envisaged as a broader exercise focusing on core principles. In this context, the ACMA does not propose to traverse or cross-reference (other than tangentially and to the extent that they interact with the inquiry) individual drafting issues and/or particular esoteric elements evident in specific codes including industry specific matters.

Identification of issues and concepts explored in the issues paper

The ACMA used three sources as a starting point for identifying what issues and concepts to focus on in this issues paper. These sources were:

- > the Act
- > existing codes of practice
- > the ACMA's *Enduring concepts* paper.

The Act and the existing codes of practice

The Act establishes a co-regulatory scheme in relation to regulating content. This sets out, in some detail, the matters or issues to which codes of practice developed by

certain sectors of the industry ‘may’ relate.²⁴ In turn, the eleven existing codes provide a key reference point when examining what appropriate and proportionate codes should look like in the contemporary communications environment.

Enduring concepts—application to the issues paper

The ACMA’s work in *Enduring concepts* identified those concepts that are of ongoing importance to media and communications in Australia notwithstanding the changes wrought by convergence—concepts which are therefore characterised as ‘enduring’.

In *Enduring concepts*, the ACMA identified 16 such concepts, with application across the communications and media landscape (including broadcasting).²⁵ Identifying concepts that have endured in the current environment is a highly logical starting position for any consideration of what matters continue to be relevant for contemporary broadcasting codes.

Rationale for selection

The ACMA examined the 16 enduring concepts with a view to establishing which of these resonated with those matters identified in the Act and the existing codes.

Seven enduring concepts emerged as resonant and highly relevant to broadcasting regulatory interventions.²⁶ In making this selection, the ACMA had particular regard to its role in registering codes that ‘provide appropriate community safeguards’.²⁷

The seven concepts that emerged are:

1. **Community values**—Delivery of media and communications services and content should reflect community standards.
2. **Protection of children**—Children should be protected from content or communications that are age inappropriate or harmful to them.
3. **Ethical standards**—Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.
4. **Protection of the public**—Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services to protect the life, health and safety of individuals and communities.
5. **Access**—Australians should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy.
6. **Australian identity**—Australians should be able to experience Australian voices and stories when using or consuming media and communications services.
7. **Redress**—Australians are entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions. These safeguards should also provide users with effective and accessible avenues of complaint and redress if standards are not met.

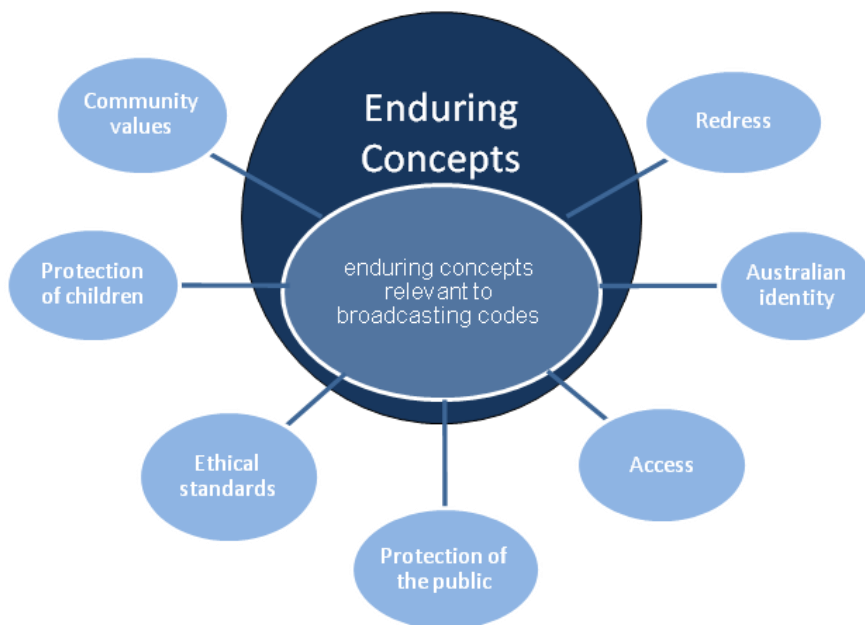
²⁴ *Broadcasting Services Act 1992*, ss. 123(2) and (3).

²⁵ Appendix 3 summarises these 16 concepts.

²⁶ The ACMA recognises that additional enduring concepts, such as ‘competition’, ‘efficiency’ and ‘digital citizenship’ will also influence the appropriate level of regulatory intervention or otherwise of the safeguards that are included in contemporary broadcasting codes. These additional concepts are taken up in each of the following chapters that discuss existing regulatory interventions.

²⁷ *Broadcasting Services Act 1992*, s. 123(4).

Figure 1 Enduring concepts relevant to broadcasting codes



Enduring concepts and related code interventions

Finally, the ACMA mapped existing code interventions to the seven enduring concepts. In conducting the mapping exercise the ACMA recognises that:

- > Each of the seven enduring concepts identified here could potentially be relevant to several code interventions. For example, the enduring concept of 'community values' could reasonably be aligned with most code related matters. The ACMA, for the purposes of this exercise, saw little value in mapping code related issues to multiple concepts. Rather, the attempt has been made to align code related matters with the most relevant enduring concept.
- > Some of the seven enduring concepts could also be aligned with several existing non-code related regulatory interventions. For example, the enduring concept of 'protection of the public' is associated with the provision of emergency call services, technical standards relating to electromagnetic radiation and the *Do Not Call Register Act 2006* and *Spam Act 2003*. The enduring concept of 'access' is associated with the Universal Service Obligation and the National Relay Service. For the purposes of this exercise, the focus is squarely the related regulatory interventions in existing broadcasting codes of practice.

The existing code interventions as mapped to the seven enduring concepts are:

1. **Community values**

- > Classification of content interventions
- > Decency interventions

2. **Protection of children**

- > Time zone interventions

3. **Ethical standards**

- > Accuracy interventions
- > Fairness interventions
- > Advertising interventions

4. **Protection of the public**

- > Privacy interventions
- > Interventions designed to address matter that is likely to incite hatred or vilify
- > Emergency information interventions

5. **Access**

- > Captioning interventions

6. **Australian identity**

- > Requirements for Australian music

7. **Redress**

- > Methods of handling and responding to complaints from members of the public about program content or compliance with codes.

Question 1: Are the seven key concepts identified above relevant and useful core concepts in the broadcasting code context?

Question 2: Does the list of code interventions, as it currently stands, omit matters which should be included or include things which should no longer be addressed in broadcasting codes?

Methodology for asking questions

What is under examination in this paper is:

- > whether the seven core concepts provide a framework to consider contemporary broadcasting codes
- > the need for, style, emphasis and flexibility of the particular regulatory code interventions that are discussed.

Accordingly, each of the chapters that follow in this issues paper:

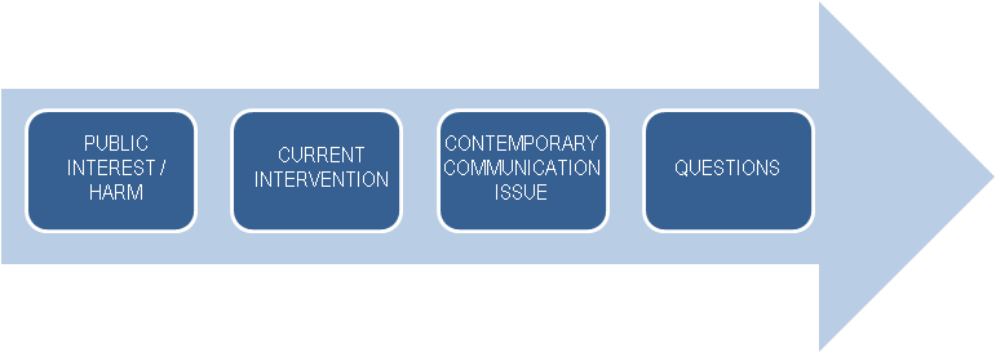
- > identifies the relevant enduring concept from the **seven key concepts**
- > examines how **the Act** deals with the relevant concept (for example whether the concept can be aligned with an object of the Act)
- > examines the most relevant current **code intervention/s** to the enduring concept
- > identifies some **contemporary communications issues** that impact on the current code interventions
- > asks **questions** of submitters to assist the ACMA's consideration of contemporary broadcasting codes.

While noting that there are broad, underlying values or principles that currently underpin broadcasting codes, and that there are other regulatory interventions that deal with the matters discussed in this paper, the ACMA has applied the following analysis in relation to each code intervention examined:

1. What is the public interest to be served or the harm addressed by the intervention?
2. What is the current regulatory code intervention for serving the public interest or addressing the harm?
3. What contemporary communications issues arise in relation to the public interest or harm and the current regulatory code intervention?
4. Questions raised by an examination of these issues including the need for the regulatory code intervention or what form it might take.

Specific questions are raised within each chapter. The complete list of questions is also provided at Appendix 1. These questions are intended to assist in framing possible submissions; however submitters need not answer all or any of the questions. If submitters are responding to specific questions raised in this issues paper, please reference the question numbers when providing written responses.

Figure 2 Question methodology used in this issues paper



1. Community values— classification and decency

1.1 Public interest to be served or harm addressed

The enduring concept of ‘community values’ is that:

Delivery of media and communications services and content should reflect community standards.²⁸

A relevant object of the Act is to encourage providers of broadcasting services to respect community standards in the provision of program material.²⁹

Certain licence conditions set out in the Act are interventions relevant to this matter. For instance, commercial, community and subscription broadcasting television licensees are not permitted to broadcast a program that has been classified RC or X 18+ by the Classification Board.³⁰ Similarly, some voluntary industry based codes also include community standards interventions. For example, the 2008 *Internet Industry Code of Practice Content Services Code* requires providers to respect community standards in relation to online content.

In this chapter, however, the ACMA focuses its discussion on interventions that are contained in or relevant to the current broadcasting codes of practice.

1.1.1 Relevant broadcasting code interventions

Under the Act, codes may relate to:

- > preventing the broadcasting of programs that, in accordance with community standards, are unsuitable to be broadcast³¹
- > methods of classifying material in accordance with community standards.³²

In this regard, the Act requires industry to take into account community attitudes to a range of matters such as the portrayal of violence, drug use and offensive language.³³

Therefore, broadcasting code interventions relevantly aligned to the concept of ‘community values’ are classification requirements and decency provisions. In considering these interventions, the ACMA acknowledges that it is critical to balance the freedom of Australian adults to access content of their choice with the need to appropriately safeguard access to material that may be harmful or offensive to others (including children).

Question 3: Should the concept of ‘community values’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 4: The ACMA has drawn a connection between ‘community values’ and the interventions of classification requirements and decency provisions. Do you agree with this connection? Are there other interventions or safeguards that should be included here as particularly relevant to ‘community values’?

²⁸ Appendix 3, concept number ten.

²⁹ *Broadcasting Services Act 1992*, s. 3(1)(h).

³⁰ Clause (7)(1)(g), (9)(1)(g) and 10(1)(f) of Schedule 2 to the *Broadcasting Services Act 1992*.

³¹ *Broadcasting Services Act 1992*, s.123(2)(a).

³² *Broadcasting Services Act 1992*, s.123(2)(c).

³³ *ibid.* s.123(3).

1.1.2 Background

Contemporary community expectations about the need for content safeguards (particularly the classification requirements across traditional media, such as film and broadcasting) have recently been considered in the Convergence Review, as well as the subject of the following:

- > Senate Standing Committee on Legal and Constitutional Affairs' Review of the National Classification Scheme
- > Australian Law Reform Commission's (the ALRC's) National Classification Scheme Review *Classification – Content Regulation and Convergent Media* (the Classification Review).

All these reviews examined contemporary community expectations in this context.

The Classification Review referred to the complexity of imposing standards on content that is accessed by Australians, noting this is:

an inherently contested space, characterised by strong views on the relative importance attached to particular principles—for example, individual rights and freedoms as compared to the protection of children from potentially harmful media content.³⁴

Noting these complexities, the Classification Review identified two concurrent themes:

- > a shift away from policies of censorship towards policies that facilitate Australians accessing content of their choice to the greatest possible extent³⁵
- > the principle that content accessed by Australians should reflect community standards is an emerging 'enduring concept'.³⁶

These views are consistent with the key findings of the ACMA's *Digital Australians* research which indicates that Australians have an expectation that professionally produced broadcasting content will reflect community values.³⁷ The *Digital Australians* research further demonstrated an acceptance, and even an expectation, that some restrictions or prohibitions will apply to material that is considered unacceptable for broadcast.³⁸

1.2 The current intervention/s

In the current landscape, television and radio have adopted different regulatory tools—television content is formally classified while radio content is not. Time zone restrictions are also relevant, but are discussed separately in the next chapter.

The table below summarises the classification and decency interventions in the current broadcasting codes.

³⁴ ALRC, *Classification – Content Regulation and Convergent Media*, ALRC Report 118 (2012) p. 78.

³⁵ *ibid.*, p. 283.

³⁶ *ibid.*, p. 82; Convergence Review Committee, *Convergence Review Final Report* (2012), p. viii.

³⁷ ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), p3.

³⁸ *ibid.* p. 53.

Table 2 Summary of classification and decency interventions in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Content must not offend generally accepted standards of decency, having regard to the demographic characteristics of the audience of the relevant program.	Clause 1.3
Community	Programming decisions will consider prevailing community standards and the social importance of the broadcast.	Clause 3.2
Open Narrowcasting	Content will be consistent with standards acceptable to the relevant specific audiences involved.	Clause 1.1
Subscription Narrowcast	Content will be consistent with standards acceptable to the relevant specific audiences involved.	Clause 1.1
Television		
Commercial	Content will be appropriately classified according to the provisions of the Classification Guidelines. Consumer advice at the commencement of program. News, current affairs and broadcasts of sporting events excluded from classification. Promotions for programs classified M, MA and AV can be broadcast in lower classification time zones, if the promotion is suitable for the lower classification. ³⁹	Code 2
Community	Content will be appropriately classified according to the provisions of the Classification Guidelines. Consumer advice at the commencement of program. News, current affairs, magazine, opinion programs, community information and sporting events excluded from classification.	Code 4
Open Narrowcast	Content will be appropriately classified according to the provisions of the Classification Guidelines. Consumer advice at the commencement of program and during promotion for program. Program promotions will be broadcast at same or lower classification level to the program's classification.	Code 3
Subscription Broadcast	Films and drama programs will be appropriately classified according to the provisions of the Classification Guidelines. Consumer advice at the commencement of program.	Code 3
Subscription Narrowcast	Content will be appropriately classified according to the provisions of the Classification Guidelines. Consumer advice at the commencement of program.	Code 3

³⁹ This allowance was provided in the Commercial Television Industry Code of Practice, 2010 during the last review of that code.

Radio and television		
ABC	<p>Content will be appropriately classified according to the provisions of the Classification Guidelines.</p> <p>Consumer advice at the commencement program.</p> <p>News, current affairs and sporting events are excluded from classification requirement.</p>	Clause 7.3
SBS	<p>Content will be appropriately classified according to the provisions of the Classification Guidelines.</p> <p>Consumer advice at the commencement program.</p> <p>News, current affairs, sport programs and general information excluded from classification requirement.</p>	Code 4

The Classification Review and the Convergence Review supported the current formal classification distinctions between television and radio. Each review endorsed the view that there is only value in mandating a classification-based regime to regulate visual-based content services, such as television. Other voluntary mechanisms can be employed to regulate the content of other media including radio.⁴⁰

As a result, television and radio are discussed, separately, below.

1.3 Contemporary communications issues

1.3.1 Television—classification of content

Convergence and the contemporary media environment are altering community expectations about media content in a way which is imposing a significant strain on the broader structure of Australia's classification regime.⁴¹

Australians increasingly consume 'like-content' from different platforms that are not subject to the same degree of regulation. For example, in the broadcasting context viewers now also watch 'television' content via websites of television broadcasters. Consumers may also access online video on-demand from internet-enabled televisions. In conjunction with these changing consumption practices, consumers appear to bring their own expectation that traditional media regulation will apply to this sort of 'like-content', especially where it is professionally produced.⁴²

The challenge of meeting community expectations in this environment was considered in detail by both the Classification and Convergence Reviews.⁴³ Both recommended a classification-based scheme should continue but stressed that this scheme should be revised to become platform neutral, applying the same classification categories and

⁴⁰ ALRC, *Classification – Content Regulation and Convergent Media*, ALRC Report 118 (2012), pp.42, 219. The ALRC recommended that radio program content providers should still be able to choose whether they classify their content and did not specifically recommend the development of voluntary codes for the classification of radio content.

⁴¹ *ibid.* p. 59. The ALRC recommended, based on the views of 'most stakeholders', that the National Classification Scheme requires fundamental reform in order to address the challenges of a convergent media environment. Also see Convergence Review Committee, *Convergence Review Final Report* (2012), pp. 37–38.

⁴² ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), pp. 52–53 and p. 3.

⁴³ For example, Convergence Review Committee, *Convergence Review Final Report* (2012), p. 37 and p. 38.

criteria to all media content, including television content, made and distributed on a commercial basis and likely to have a significant Australian audience.⁴⁴

The ACMA agrees that regulation constructed on the premise that content can be controlled based on its delivery method, is losing its force, both in logic and in practice and that this so-called 'broken concept' has particular relevance in the context of content classification.⁴⁵

In expressing this view, the ACMA notes that there is a clear community 'expectation that content users will have common protections from major media enterprises in relation to content standards on all platforms'.⁴⁶ The ACMA also notes that there has been strong industry and stakeholder support for greater regulatory parity across content platforms.⁴⁷ For example, Free TV Australia submitted to the Convergence Review that:

Current community standards protections are technology specific, resulting in inconsistent regulation of content across platforms and a lack of regulatory parity, which imposes costs and restricts competition.⁴⁸

The ABC and SBS have also indicated their support for the general principle that the programming content standards should be platform-neutral, as has ASTRA who stated that it supports the general principle of

consistency in the assessment and classification of content to be delivered on any platform.⁴⁹

However, there continues to be a range of 'differing views' regarding the best way to achieve regulatory parity as well as to develop appropriate, but platform-neutral, classification categories, the criteria to underpin these categories and the content that would be captured by the categories.⁵⁰

The ALRC has recommended that platform-neutral regulation is best achieved via a new legislative classification scheme which would incorporate all classification obligations currently applying to media content including television content, which is currently regulated under the Act.⁵¹

This recommendation was endorsed in the Convergence Review but it was noted there were significant steps which could be taken by industry prior to the implementation of such a scheme. Specifically, in the Convergence Review it was recommended that the development of any new classification scheme, while being based on the ALRC's recommendations, should also build on an industry-led comprehensive review of existing co-regulatory and self-regulatory codes which would

⁴⁴ ALRC, *Classification – Content Regulation and Convergent Media*, ALRC Report 118 (2012), p. 25 and 140.

⁴⁵ ACMA, *Broken concepts—the Australian communications legislative landscape* (2011), p. 6.

⁴⁶ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 41.

⁴⁷ For example the submissions to the ALRC National Classification Scheme Review: MLCS Management, Submission CI 1241; Free TV Australia, Submission CI 2519, Australian Federation Against Copyright Theft, Submission CI 2517, Motion Picture Distributors Association of Australia, Submission CI 2513; Family Voice Australia, Submission CI 2509; Uniting Church in Australia, Submission CI 2504; Foxtel, Submission CI 2497; Arts Law Centre of Australia, Submission CI 2490; Collective Shout, Submission CI 2477; Australian Competition and Consumer Commission, Submission CI 2463.

⁴⁸ FreeTV Australia, Submission to the Convergence Review in response to the open call for submissions, 10 June 2011, p. 39.

⁴⁹ SBS, Submission CI 1833 to the ALRC National Classification Scheme Review, July 2011, p. 4; ABC and SBS, Joint Submission CI 2521 to the ALRC National Classification Scheme Review, November 2011, p. 14; ASTRA, Submission CI 2492 to the ALRC National Classification Scheme Review, 18 November 2011, p. 2.

⁵⁰ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 40.

⁵¹ ALRC, *Classification – Content Regulation and Convergent Media*, ALRC Report 118 (2012), p. 26.

examine the potential harmonisation of codes and the development of common standards.⁵²

Classification
Question 5: Do submitters consider classification of material is a useful and relevant intervention in the current environment? If not, what sort of intervention or regulatory tool do submitters think would be more appropriate in a contemporary communications environment?
Question 6: Should broadcast content continue to be classified even if that content is not subject to classification requirements on other platforms?
Question 7: Does industry see value in code-based harmonisation ahead of any proposed legislative reform?
Question 8: Are there any residual community concerns about the proposal to harmonise classification categories and criteria across media?
Question 9: What, if any, material on television is appropriately exempt from classification?
Question 10: How should promotions for material with a 'higher' (e.g. M, MA and AV) classification be managed within material which has a 'lower' classification (e.g. a promotion for an M program in a PG or G time zone)?

1.3.2 Radio—decency

Radio content, including commercial and community radio, is not subject to a traditional classification scheme. Instead, the codes which apply to radio aim to ensure that broadcasters reflect 'community standards' in their programming through specific programming guidelines. Broadly, these provisions require broadcasters, as part of their programming decisions, to make an assessment about the appropriateness of the content they broadcast calibrating it against 'generally accepted standards of decency' and having regard to the demographic characteristics of the audience of the program.

Making the call on whether material is unsuitable for broadcast is not easy.⁵³ As was noted in the Convergence Review:

Different sections of the community will have different views about community standards; for example, about what content might be harmful or offensive. Arriving at such determinations is not easy and judgements have to be made, often in the absence of clear representative evidence about actual community views. There is limited recent research into what the Australian community finds offensive.⁵⁴

The ACMA, in the context of a recent commercial radio investigation, has expressed the following about accepted community standards.⁵⁵

⁵² Convergence Review Committee, *Convergence Review Final Report* (2012), p. 58.

⁵³ *Pell v Council of Trustees of the National Gallery of Victoria* [1997] VSC 52.

⁵⁴ Convergence Review Committee, *Convergence Review Discussion Paper: Community Standards* (2011), p. 5.

⁵⁵ ACMA Investigation Report Number 2848.

Figure 3 Accepted community standards test

The ACMA considers that the term 'generally accepted standards of decency' refers to the current consensus of recognised present day standards of propriety. Such standards are not hard and fast either over time or across all sections of the community. Determining the current consensus of recognised present day standards of propriety is not an easy task.

Previously, where the ACMA has found breaches of the decency provisions of the code it has had regard to a number of matters including:

- > the subject matter or themes dealt with: for example, care needs to be taken with material that is sexually explicit or extremely sensitive⁵⁶
- > the tenor or tone of the broadcast: for example, was it light-hearted or threatening; matter-of-fact or salacious⁵⁷
- > the language used in the broadcast: for example, was it abusive, profane, vulgar or lewd⁵⁸
- > the attitudes conveyed: for example contemptuous disregard for human life or suffering.⁵⁹

In its submission to the Convergence Review, Commercial Radio Australia stated that in assessing whether content reflects community values it favoured a standard which:

allows the market to better cater for the views and interests of listeners and target audience.⁶⁰

In this context, the ACMA believes that it is timely to test its own thinking and also to explore the expectations of the work that is done by the existing code interventions:

Decency
Question 11: Is there a continuing need to include code interventions pitched at moderating material that is deemed to offend decency?
Question 12: If the answer to the preceding question is 'yes', Is the 'accepted community standards' test effective, appropriate and meaningful? If not, why not? If not, what sort of intervention or regulatory tool do submitters think would be more appropriate in a contemporary communications environment?
Question 13: If the accepted community standards test is effective, appropriate and meaningful, how should the ACMA determine the current consensus of recognised present day propriety? And, is the ACMA's formulation (See Figure 3 above) in relation to assessing community standards (the matters to which it has regard) in line with community expectations? If not, what other criteria may be appropriate in this context?
Question 14: What purpose is served by the requirement to have 'regard to the demographic characteristics of the audience of a relevant program'? In particular, what does basic demographic information (geographic, gender, age etc) tell us, if anything, about attitudes to content?

⁵⁶ For example, ABA Investigation 1270, and ACMA Investigations 1628 and 2266.

⁵⁷ For example, ACMA Investigation 2751.

⁵⁸ For example, ACMA Investigations 1628 and 1717.

⁵⁹ For example, ABA Investigation 1270 and ACMA Investigation 2598.

⁶⁰ CRA's submission to the Convergence Review, October 2011, p. 4.

Question 15: In addition to any applicable content restrictions, should broadcasters provide listeners with consumer advice and information to assist them to make appropriate decisions about the material they listen to?

Question 16: If consumer information/advice is appropriate what information would assist listeners to make appropriate decisions about the material they listen to?

Question 17: If any consumer information were to be provided, how and when should it be provided?

2. Protection of children—time zones

2.1 Public interest to be served or harm addressed

The enduring concept of ‘protection of children’ is that:

Children in particular should be protected from content or communications that are age-inappropriate or harmful to them.⁶¹

One of the key objects of the Act is to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may harm or disturb them.⁶²

The Act specifically requires that the ACMA develop standards for children’s programming (relevant to commercial television broadcasting licensees).⁶³ The objective of these standards is to ensure that children have access to a variety of quality television programs made specifically for them and to allow for the protection of children from possible harmful content on television. This inquiry does not propose to review these standards, as the inquiry is focused on code-based interventions. However, the ACMA notes that the Children’s Television Standards have a tangential relationship to existing code interventions. The current standards, the Children Television Standards were determined by the ACMA on 24 August 2009 and set out certain periods of the day when children’s programming is most suitable.

In this regard, the Act seeks to encourage broadcasters to recognise that children are a distinct group of media consumers whose cognitive abilities and other sensitivities require special consideration in relation to the content that they view.

2.1.1 Relevant broadcasting code interventions

In the context of the codes, apart from classification itself, the key tool aligned to the concept of ‘protection of children’ is time zone restrictions. Section 123 of the Act states that codes, in addition to preventing the broadcast of programs that are not suitable to be broadcast, may relate to:

methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority.⁶⁴

Question 18: Should the concept of ‘protection of children’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 19: The ACMA has drawn a connection between ‘protection of children’ and time zone interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

2.1.2 Background

There continues to be a strong community expectation that children should be protected from harmful content. In the Convergence Review it was noted that the ongoing importance of protecting children is a ‘key message’ from stakeholders. Equally, the *Digital Australians* research highlights the continued relevance of

⁶¹ Appendix 3, concept number 14.

⁶² *Broadcasting Services Act 1992*, s. 3(1)(j).

⁶³ *Broadcasting Services Act 1992*, s. 122(1) and (2)(a).

⁶⁴ *Broadcasting Services Act 1992*, s.123(2)(b).

mechanisms which provide guidance about the suitability of television programming for children. Seventy-nine per cent of online respondents in the *Digital Australians* research said that they perceived consumer information as ‘very’ or ‘somewhat important’ in relation to making decisions about the suitability of free-to-air television programs for children.⁶⁵

2.2 The current intervention/s

The table below summarises the time zone interventions in the current broadcasting codes.

Table 3 Summary of time zone interventions in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Must not broadcast program with explicit sexual theme as its core component unless it is broadcast between 9.30 pm and 5.00 am.	Clause 1.5–Clause 1.6
Community	N/A	N/A
Open Narrowcasting	N/A	N/A
Subscription Narrowcast	N/A	N/A
Television		
Commercial	Time zone restrictions apply based on classification categories. Different time zone restrictions apply to digital multi-channels.	Clause 2.6–Clause 2.12
Community	Time zone restrictions apply based on classification categories.	Clause 4.4–Clause 4.7
Open Narrowcast	Programs will be scheduled with appropriate sensitivities to audience and likely composition of audience. M rated content only broadcast 8.30 pm – 5.00 am each day. MA 15+ rated content only broadcast 9.00 pm – 5.00 am each day. If rated MA 15+ due to violence only broadcast 9.30 pm – 5.00 am each day.	Clause 3.5
Subscription Broadcast	N/A	N/A
Subscription Narrowcast	N/A	N/A
Radio and television		
ABC	Time zone restrictions apply based on classification categories. Different time zone restrictions apply to digital multi-channels.	Clause 7.3.1–Clause 7.3.5
SBS	Time zone restrictions apply based on classification categories.	Clause 4.5 and 4.7

⁶⁵ ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), pp. 57–58.

	Different time zone restrictions apply to digital multi-channels.	
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Time zone restrictions do not apply to subscription television broadcasters because there is recognition that subscription audiences have different expectations about access to content. Further, these providers and their consumers have greater control over how content is delivered and accessed on these platforms.⁶⁶

The time zones are based on the most likely viewing audience for that time of day. They mandate, for example, that at times when children are most likely to be watching television without parental guidance, only material carrying a G classification may be shown.

How time zones apply to the main channels of commercial, community and national television broadcasters are set out in the table below.

Table 4 Classification categories and time zones for commercial, community and national television content broadcast on main channels

Classification	Time zone	Type of content
G ⁶⁷	<i>Week days:</i> 6.00 am – 8.30 am 4.00 pm – 7.00 pm <i>Weekends:</i> 6.00 am – 10.00 am	Not necessarily intended for children but it must be very mild in impact and must not contain any matter likely to be unsuitable for children to watch without supervision.
PG ⁶⁸	<i>School days:</i> 5.00 am – 6.00 am 8.30 am – 12.00 noon 3.00 pm – 4.00 pm 7.00 pm – 8.30 pm <i>School holidays:</i> 5.00 am – 6.00 am 8.30 am – 4.00 pm 7.00 pm – 8.30 pm <i>Weekends:</i> 5.00 am – 6.00 am 10.00 am – 8.30 pm	May contain careful presentation of adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision.
M	<i>School days:</i> 12.00 noon – 3.00 pm only 8.30 pm – 5.00 am only <i>Weekends and school holidays</i> 8.30 pm – 5.00 am only	Recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is presented.

⁶⁶ Foxtel, Submission CI 2497 to the ALRC National Classification Scheme Review, 18 November 2011, p. 10.

⁶⁷ In G zones, only material classified G, C and P may be broadcast (though note limited exemptions in Clauses 2.13.1 and 2.13.2 of the Commercial Television Industry Code of Practice, 2010).

⁶⁸ Commercial television licensees may broadcast PG classified program broadcast on a digital multi-channel at any time, but must provide consumer advice during certain time periods (see clause 3.6 of Appendix 5 to the Commercial Television Industry Code of Practice, 2010).

MA	9.00 pm – 5.00 am only	Suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of depictions of sex and nudity, or coarse language, adult themes or drug use.
AV	9.30 pm – 5.00 am only	Suitable for viewing only by persons aged 15 years or over. It is unsuitable for the MA classification because of the intensity and/or frequency of violence, or because violence is central to the theme.

In recent years, certain allowances regarding time zones for digital television multi-channels have been permitted, recognising the need for greater flexibility. For example, the commercial television code of practice permits PG programming to be broadcast at any time of day on the multi-channels. However, G classification time zones continue to apply to the main channels before and after school on weekdays and between 6.00 am and 10.00 am on weekends.

In registering the code allowing this classification difference between digital channels, the ACMA required broadcasters to undertake a 12 month community education campaign to comprehensively inform viewers of the relevant changes. In addition, for the life of the code, licensees are required to provide consumer advice with any PG-classified program broadcast on a multi-channel where material may be stronger than expected by parents and guardians of young viewers and the program corresponds with the main channel's G-programming time zones.

2.3 Contemporary communications issues

All digital television reception equipment sold in Australia, including televisions and set-top boxes is required to include parental lock capabilities.⁶⁹ Subscription broadcast television services, such as Foxtel, also have parental lock services which they offer to subscribers.⁷⁰ The parental lock allows controlled access to programs based on their classification, for example, G, PG, M or MA. To activate a parental lock, users select a program classification level above which they wish programs or channels to be blocked (e.g. 'PG and above') and a personal identification number (PIN).

The parental lock feature then prevents any program classified at or above the selected level from being shown on the equipment unless the PIN number is entered. The feature may be used by parents and guardians to protect their children from inappropriate or harmful content on television. However, a parental lock will not block programs that are not subject to classification such as news, current affairs and sports programs and the feature is 'opt-in', which allows members of the community who do not wish to restrict access to the content, to access content at all classifications. This also means that digital televisions are not sold with parental locks pre-activated and the lock must be enabled by consumers in order for the restrictions to take effect.

In addition to these technological developments, Australians also have increasing access to different ways to control how and when they consume 'television' content outside traditional broadcast 'zones'. The majority of Australians now have access to additional free-to-air digital multi-channels,⁷¹ including ABC3 which provides dedicated programming aimed at six to 15 year-olds between 6.00 am and 9.00 pm. While 'live' free-to-air programming is still the predominant way that Australians watch television, audiences are increasingly accessing 'time-shifting' technologies, such as 'catch-up'

⁶⁹ The Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010.

⁷⁰ Foxtel offers subscribers a 'Parental Control' system for its iQHD, iQ and digital set top boxes.

⁷¹ Nielsen's *Australia's Multi Screen report (Q4, 2012)* showed that 98 per cent of Australian homes can receive Digital terrestrial television and 81 per cent have converted every set in the home to digital.

services and personal video recorders, which allow for viewing of broadcasting content on-demand rather than at the time of broadcast or are accessing television content on platforms where time-zone restrictions do not apply or are more limited.⁷² For example, some parents who participated in the *Digital Australians* research reported finding their children watching 'television shows' on their tablets and computers that they had not been allowed to watch on television.⁷³

In this context, the Classification Review considered whether Australian content providers, particularly commercial broadcast television services, should continue to be subject to time zone restrictions.⁷⁴ A number of submissions to the review suggested that time zone restrictions may no longer be effective or efficient.⁷⁵ In making its final recommendations, the Classification Review found:

The restrictions are becoming anachronistic as media content is increasingly available online, such as on catch-up services, and on subscription television services at all times of the day. Parental locks also give parents greater control over the type of media content that may be watched on televisions and other devices in the home. Children's channels are also now available not only on subscription television, but on dedicated free-to-air television channels.⁷⁶

However, the Classification Review also acknowledged that, despite technological development and media convergence, many parents continue to rely on time zone restrictions as the primary means of identifying and accessing age-appropriate content for their children.⁷⁷ Some submitters to the Classification Review also questioned the appropriateness of the parental lock as a substitute for the safeguards offered by time zone restrictions.⁷⁸ There are also questions about the extent to which technology has actually changed the viewing habits of Australians and Australian children. Of particular relevance is:

- > the limited information about the extent to which parents use and understand parental lock technology
- > the extent to which Australians are actually time-shifting their viewing, as opposed to watching content 'live' during the relevant broadcast time period.⁷⁹

For these reasons, any discussions about the phasing out of time zones has been viewed as 'gradual' and preconditioned on an exploration of the level of awareness and take-up of existing technology. As the ABC and SBS noted in their joint submission to the Classification Review:

... while a phased transition away from time zones may be desirable, it is likely to require a significant public education campaign and robust technological solutions

⁷² According to Nielsen *Australia's Multi Screen report (Q4, 2012)*, 52 per cent of Australian households have a personal video recorder and 20 per cent of households had an internet connected television in the home. The data also showed that Australians watch an average 91 hours and 5 minutes (91:05) of TV per month, with playback viewing within seven days of broadcast accounting for 6:30 hours (or 7.1 per cent).

⁷³ ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), p55.

⁷⁴ Australian Law Reform Commission, *National Classification Scheme Review*, ALRC Discussion Paper 77 (2011), Question 8–1.

⁷⁵ Free TV Australia, Submission CL1214 to the National Classification Scheme Review, 15 July 2011, pp. 14, 15; Telstra, Submission CL 2469 to the National Classification Scheme Review, 15 July 2011, p. 8; ABC and SBS, Submission CL2521 the National Classification Scheme Review, November 2011, p. 14.

⁷⁶ Australian Law Reform Commission, *National Classification Scheme Review*, ALRC Report 118 (2012), p. 196.

⁷⁷ *Ibid.* pp. 195–6.

⁷⁸ For example Australian Christian Lobby, Submission to the Convergence Review open call for submissions, 27 October 2011, p. 4.; Family Voice Submission to the Convergence Review open call for submissions, October 2011, p. 16.; Movie Network Channels Submission to Convergence Review open call for submissions, October 2011 (unnumbered).

⁷⁹ For example, Joint Submission of ABC and SBS to the ALRC Classification Review, *Submission CI 2521*, p. 13.

which give parents confidence that they will be effective in protecting children from inappropriate content.⁸⁰

The ACMA accepts that the time zones mandated for broadcasting codes are under strain as a regulatory tool. However, the extent of this strain and the appropriate way to address it in regulation is less clear. In light of this, and the recent recommendations that a planned phasing out of mandatory time zones may become increasingly appropriate, the ACMA considers that it is timely to explore this area of regulation.

Time zones
Question 20: Are broadcast time zones still necessary as a community safeguard? If so, what form should they take?
Question 21: If the time zones set out in the broadcasting codes of practice were to be gradually phased out over coming years, what pre-conditions would need to be met before that is done?
Question 22: What is the community's current use of and understanding of the parental lock technologies available?
Question 23: What information would be useful and informative in assisting people to use the parental lock and/or similar technologies?
Question 24: Assuming that parental lock and other similar technologies will continue to improve and evolve, what form should associated instructional and educational material take to ensure that it remains flexible, adaptable and up to date?
Question 25: Do consumers have concerns about the fact that multi-channels are permitted to broadcast PG classified material at any time of day?

⁸⁰ Joint Submission of ABC and SBS to the ALRC Classification Review, *Submission CI 2521*, p. 14.

3A. Ethical standards— accuracy and fairness

3A.1 Public interest to be served or harm addressed

The enduring concept of ‘ethical standards’ is that:

Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.⁸¹

The ACMA notes relevantly that one of the objects of the Act is to:

... encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest ...⁸²

Ethical standards are not exclusive to broadcasting legislation and codes. There are also relevant professional ethics codes and guides. For example, the *Code of Ethics* for journalists issued by the Media, Entertainment and Arts Alliance, or discrete codes of conduct managed by individual media organisations. In this chapter, however, the ACMA focuses its discussion on interventions that are relevant to broadcasting codes of practice.

The ‘ethical standards’ concept is quite specific in its references to fairness, accuracy and transparency. The ACMA notes, however, that the areas where these interventions are to be applied are broadly described as ‘information-reporting’ or ‘matters of public interest’. These could cover a broad range of programs such as news and current affairs and documentaries.

3A.1.1 Relevant broadcasting code interventions

In the context of code development, the Act refers to a range of matters including:

promoting accuracy and fairness in news and current affairs programs ...⁸³

The broadcasting code interventions that are relevantly aligned to the concept of ‘ethical standards’ are the fairness and accuracy interventions (although see next chapter for advertising issues). The ACMA takes as a starting point the framing provided by the Act to ‘news and current affairs programs’. Accordingly, this chapter predominantly examines the application of fairness and accuracy interventions in relation to news and current affairs (which, in the context of commercial radio includes talkback programs). However, it also queries whether these parameters remain relevant and appropriate in contemporary broadcasting codes.

The ACMA also notes that interventions directed to the transparency of advertising are also relevant to ‘ethical standards’. Code interventions relevant to advertising are dealt with separately in the next chapter.

Question 26: Should the concept of ‘ethical standards’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

⁸¹ Appendix 3, concept number twelve.

⁸² *Broadcasting Services Act 1992*, s. 3(g).

⁸³ *ibid.* s. 123(d).

Question 27: The ACMA has drawn a connection between ‘ethical standards’ and fairness and accuracy interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

3A.1.2 Background

Both the *Independent Inquiry into the Media and Media Regulation* (the Independent Media Inquiry) and the Convergence Review argued there was a continuing need to uphold standards of accuracy and fairness in news media.⁸⁴ Both cited submissions to their respective reviews as evidence for this. For example, the Convergence Review referred to the Australian Press Council’s submission that stated these standards are of ‘fundamental importance to the general public interest, including the maintenance of democratic governance’.⁸⁵

Notably, there was a distinction between the two reviews about how ‘news media’ was referenced. Generally, the Convergence Review adopted the term ‘news and commentary’, while the Independent Media Inquiry used the term ‘news and current affairs’. The ACMA’s *Enduring concepts* referenced a third descriptor, ‘information-reporting’.

Research undertaken by the ACMA in 2008 regarding current affairs on commercial television, indicates the community may have differing expectations about news as opposed to current affairs programs or commentary. The *Community Attitudes to the presentation of factual material and viewpoints in commercial current affairs programs* research undertaken in 2008 by the ACMA, (the 2008 research), indicated that viewers saw differences in content, format and personal impact on individuals between news and current affairs. Current affairs television programs were identified as containing more entertaining segments than news.

The ACMA is interested in exploring views, generally, on the appropriate safeguards in relation to accuracy and fairness for broadcasting services in this contemporary and converged world. The ACMA is also seeking views on the distinctions, if any, that may exist between news and current affairs and if there are distinctions, what the appropriate calibration of regulatory interventions should be.

For the purposes of commercial radio, a current affairs program ‘means a program a substantial purpose of which is to provide interviews, analysis, commentary or discussion including open-line discussion with listeners, about current social, economic or political issues’.⁸⁶ In line with this definition, most talkback programs, including those featuring opinion-rich material are characterised as current affairs programs and attract the protections that apply to current affairs programming. Whether such programs that are rich in opinion should attract the same or similar protections afforded to traditional current affairs programs is a matter which the ACMA is interested to explore.

At the outset of this paper, the ACMA also noted the Act explicitly intends that the level of regulatory control applied to broadcasting services will differ according to the degree of influence that different services are able to exert in shaping community views in Australia. The ACMA is seeking specific views, on the concept of influence, in this context of requirements for accuracy and fairness.

⁸⁴ For example, Convergence Review Committee, *Convergence Review Final Report* (2012), p. 47; Hon R Finkelstein QC, *Report of the Independent Inquiry into the media and media regulation* (2012), p. 7.

⁸⁵ Australian Press Council, Submission to the Convergence Review Framing Paper, 10 June 2011, p. 1.

⁸⁶ Commercial Radio Codes of Practice and Guidelines, 2013.

3A.2 The current intervention/s

All of the codes currently on the ACMA's register make reference to the importance of accuracy and fairness in news and current affairs. The table below summarises the accuracy and fairness interventions in the current broadcasting codes.

Table 5 Summary of accuracy and fairness interventions in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	News and current affairs/talkback programs have accuracy and fairness requirements. There are different requirements depending on whether the program is news or current affairs/talkback.	Clause 2.1(a), Clause 2.1(c), Clause 2.3(a), Clause 2.3(b)
Community	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 3.6
Open Narrowcasting	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 1.2(a)
Subscription Narrowcast	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 1.2(a)
Television		
Commercial	News and current affairs programs have accuracy and fairness requirements. There are different requirements depending on whether the program is news or current affairs.	Clause 4.3.1 Clause 4.4
Community	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 3.11-3.12
Open Narrowcast	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 1.2(a)
Subscription Broadcast	News and current affairs programs have accuracy and fairness requirements. There are slight differences for news and current affairs.	Clause 2.2
Subscription Narrowcast	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 1.2(a)

Radio and television		
ABC	Fact-based content is subject to accuracy and fairness requirements. The requirements are the same for all fact-based content.	Clause 2.1
SBS	News and current affairs programs have accuracy and fairness requirements. The requirements are the same for both news and current affairs.	Clause 2.2

There are variations in how the concepts are implemented in various codes. Of particular interest is the contrast between commercial radio and television and subscription television in relation to accuracy and fairness, respectively, explored in the tables below.

3A.2.1 Accuracy

Table 6 Examples of how accuracy interventions are addressed in some codes

Program	How referenced in the Commercial Television Industry Code of Practice, 2010	How referenced in the Commercial Radio Codes of Practice and Guidelines, 2013	How referenced in the Subscription Broadcast Television Codes of Practice, 2007
News	Programs and factual material must be presented accurately	News programs must be presented accurately	News must be presented accurately
Current affairs	Programs and factual material must be presented accurately	Use reasonable efforts to ensure that factual material is reasonably supportable as being accurate.	Clearly distinguish the reporting of factual material from commentary or analysis.

Differences between news and current affairs and across television and radio?

1. In the commercial free-to-air television code, there are no differences in the requirements for accuracy regarding news and current affairs programs: both require that 'factual material is accurate'.
2. The subscription broadcast television code, has a requirement for accuracy in the reporting of news and to clearly distinguish the reporting of factual material from commentary or analysis.
3. In the commercial radio code, there *are* differences in the requirements for accuracy regarding news and current affairs: news 'must be presented accurately' whereas the requirement in current affairs is to 'use reasonable efforts' to ensure that factual material is 'reasonably supportable'.

The different tests

The above distinctions also highlight two different methods of testing accuracy. In the commercial television code the requirement can be described as absolute (factual material must be presented accurately) across both news and current affairs.

Within the commercial radio code (consistent with the differences described above) the requirement in news is absolute whereas the test for accuracy in current affairs

focuses on efforts made and brings in the concept of ‘reasonably supportable’ as being accurate.

In practice, it can be difficult to make determinations of ‘absolute’ accuracy of highly specialised, complex and contested factual scenarios.

3A.2.2 Accuracy—redress

In the event of the broadcast of a factual inaccuracy, the various codes provide different guidance for how to redress the inaccuracy, as demonstrated in the table below. While open and subscription narrowcast sectors have a general obligation to remedy code failures promptly where possible, these sectors do not have specific redress clauses for accuracy breaches.

Table 7 Examples of how redress provisions for accuracy breaches are addressed by some industry sectors

ABC	Commercial television	Commercial radio	Community television and radio	Subscription broadcast television
<p>Acknowledge and correct or clarify, in an appropriate manner as soon as reasonably practicable:</p> <p>a. Significant material errors that are readily apparent or have been demonstrated.</p> <p>b. Information that is likely to significantly and materially mislead.</p>	<p>Make reasonable efforts to correct significant errors of fact at the earliest opportunity.</p>	<p>Use reasonable efforts to ensure that substantial errors of fact are corrected at the earliest possible opportunity.</p>	<p>Make reasonable efforts to correct substantial errors of fact at the earliest opportunity.</p>	<p>Make reasonable efforts to correct significant errors of fact at earliest opportunity.</p>

The codes do not provide explicit guidance on timing and/or what may constitute an appropriate place or manner. It is the ACMA’s experience that most corrections or indeed statements of finding following an investigation tend to be made online.

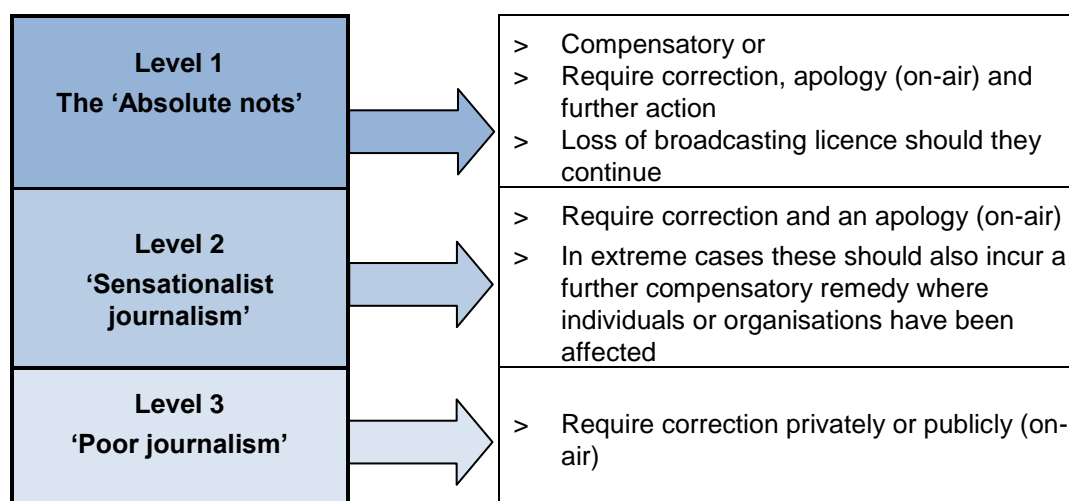
The ACMA’s 2008 research explored this issue, in relation to television, in some detail. In relation to the seriousness of errors and corresponding remedies, the research respondents identified three levels of seriousness:

- > **Level 1** errors were the ‘Absolute Nots’ and included those conscious omissions or distortions of key facts, as well as the fabrication of any fact. These were considered to be the most serious.
- > **Level 2** errors were those inaccuracies or unfair representations that were due to the reporting techniques of sensationalist journalism. Level 2 errors were seen to result from reporting techniques such as scripted footage, hidden cameras, file footage, re-enactments and interview techniques, as well as not using credible sources.
- > **Level 3** errors were considered to result from poor journalism, such as a lack of research, rather than an attempt to sensationalise or consciously distort a story.

These errors included incorrect names, mispronunciation, incorrect spelling or typographical errors or reliance on an authorised spokesperson without asking for clarification for ambiguous statements.

In terms of appropriate remedial measures, the remedies were selected according to the perceived severity of the action and the level of seriousness of the error. The figure below outlines remedies that respondents to the research considered appropriate.

Figure 4 Remedies



In relation to the purpose of remedies, a number were identified. Firstly, respondents felt that a remedy should make viewers aware that an error had been made, as this would identify inaccuracies that they may not be aware of. Respondents also felt this would improve the awareness among viewers that errors do occur in these programs, which may prompt viewers to change their expectations of these programs. Thirdly, viewers regarded the role of a remedy to rectify the potential harm, whether that is personal or financial, caused to individuals or to a company due to an inaccuracy.

Accuracy
Question 28: What type of programming material should be subject to requirements for accuracy? For example, news, current affairs or some broader category of factual programming?
Question 29: Should talkback programs that feature opinion-rich material be subject to the same requirements for accuracy as traditional current affairs programs? If so why? If not, why not?
Question 30: Should news and/or current affairs programs provided by a subscription broadcasting television licensee be subject to the same requirements for accuracy as news and current affairs on commercial television? If so, why? If not, why not?
Question 31: Should requirements for accuracy be treated equally across news and current affairs programs? That is, is there a good rationale for treating news differently to current affairs and, if so, what is that rationale?

Question 32: Should there be alignment between regulatory interventions across radio and television regarding accuracy? That is, is there rationale for treating radio and television differently in this context and, if so, what is that rationale?
Question 33: Should the concept of influence affect the calibration of regulatory interventions in relation to accuracy? If so, to what extent and how? If not, why not?
Question 34: Are all facts equal? If not, why not? What is the appropriate measurement in this context?
Question 35: What is the appropriate yardstick for measuring accuracy? That is, is it a question of absolute accuracy, a measure based on reasonable efforts or a combination of both concepts?
Question 36: What is the most appropriate way to remedy established errors of fact?
Question 37: Are all errors equal? Are some errors more serious than others? What is the appropriate measure of seriousness?
Question 38: Should the remedy, if any, be based on the seriousness of the error?
Question 39: What is the role, if any, of a correction in relation to a code of practice breach?
Questions 40: If it is appropriate to correct an error how and when should that correction be made?
Question 41: What is the role of online corrections?
Question 42: What is the role of an on-air correction?
Question 43: Should the codes include explicit guidance about the manner and timing of corrections?

3A.2.3 Fairness

Application across television and radio and in news and current affairs

The term 'fairness' is used by way of a general descriptor to reflect the requirements in codes that are variously described as:

- > 'impartiality'⁸⁷
- > the requirement to distinguish the reporting of factual material from commentary and analysis⁸⁸
- > the requirement to represent viewpoints fairly⁸⁹
- > the requirement to make reasonable efforts or give reasonable opportunities to present significant viewpoints when dealing with controversial issues of public importance.⁹⁰

The table below points to the fact there is a degree of disjuncture between the obligations for fairness as they apply between news and current affairs and again in

⁸⁷ Commercial Television Industry Code of Practice, 2010, clause 4.4.1; Australian Broadcasting Corporation Codes of Practice, 2011, clause 4.1.

⁸⁸ Commercial Television Industry Code of Practice, 2010, clause 4.4.2; Commercial Radio Codes of Practice and Guidelines, 2013, clauses 2.1 and 2.3(a).

⁸⁹ Commercial Television Industry Code of Practice, 2010, clause 4.3.1.

⁹⁰ Commercial Radio Codes of Practice and Guidelines, 2013, clause 2.3(b).

relation to their application to television versus radio, particularly in the commercial broadcasting sector.

Table 8 Examples of how fairness interventions are addressed in some codes

Program	How referenced in the Commercial Television Industry Code of Practice, 2010	How referenced in the Commercial Radio Codes of Practice and Guidelines, 2013	How referenced in the Subscription Broadcast Television Codes of Practice, 2007
News	<ul style="list-style-type: none"> > Represent viewpoints fairly > Present news fairly and impartially. > Clearly distinguish the reporting of factual material from commentary and analysis. 	<ul style="list-style-type: none"> > Distinguish news from comment. 	<ul style="list-style-type: none"> > Present news fairly and impartially. > Clearly distinguish the reporting of factual material from commentary and analysis
Current affairs	<ul style="list-style-type: none"> > Represent viewpoints fairly > Present current affairs programs fairly 	<ul style="list-style-type: none"> > Distinguish factual material from comment and analysis; and > Use reasonable efforts or give reasonable opportunities to present significant viewpoints when dealing with controversial issues of public importance > Viewpoints expressed to the licensee for broadcast are not misrepresented and material is not presented in a misleading manner by giving wrong or improper emphasis or by editing out of context. 	<ul style="list-style-type: none"> > Clearly distinguish the reporting of factual material from commentary and analysis

Differences between news and current affairs and across television and radio?

- > In the commercial and subscription television context, there are differences in the requirements for fairness between news and current affairs:
 - > News on free-to-air television requires that the program (per se) should be presented fairly and impartially, individual viewpoints are presented fairly, that there is a distinction between the reporting of factual material and commentary/analysis.
 - > News on subscription television is similar to above, but with no obligation to represent viewpoints fairly.
 - > Current affairs on free-to-air television requires only that programs and individual viewpoints are presented fairly.
 - > Current affairs on subscription television requires only that there is a distinction between the reporting of factual material and commentary/analysis.
- > In the commercial radio context—there are also differences in the requirements for fairness between news and current affairs:

- > News requires that news programs distinguish news from comment.
- > Current affairs requires that the reporting of factual analysis is clearly distinguishable from commentary and analysis, that reasonable efforts are made or reasonable opportunities given to present significant viewpoints when dealing with controversial issues of public importance, either with the same program or similar programs while the issue has immediate relevance to the community and that viewpoints expressed are not misrepresented and material is not presented in a misleading manner by giving wrong or improper emphasis or by editing out of context.

3A.2.4 What is a 'significant viewpoint'?

The requirement to make reasonable efforts or give reasonable opportunities to present 'significant viewpoints when dealing with controversial issues of public importance' features in the commercial radio code only. This requirement relates to current affairs programs (not news). In contrast, the commercial television code requires news to be presented 'fairly and impartially'.

In the context of a recent commercial radio investigation, the ACMA opined on what may amount to a significant viewpoint in the context of a talkback program. Talkback programs, including those featuring opinion-rich material, are regarded as current affairs programs for the purposes of the commercial radio code.⁹¹

Figure 5 Recent investigation by the ACMA considering significant viewpoints

The talk-back format frequently approaches matters from a strong viewpoint—indeed it might be said that is an important part of the appeal or value of such programs to their listeners and in the broader context of public discourse. It is important to note in this context that the ACMA acknowledges that the codes do not impose an obligation of balance.

Indeed, the ACMA notes that the clause, as it is currently drafted, permits a licensee to overwhelmingly, although not exclusively, emphasise one significant viewpoint in its broadcast schedule.

In part for these reasons, the ACMA regards (the relevant code provision) as a central safeguard in promoting the stated and important object of (the relevant code provision) namely, 'to promote accuracy and fairness in news and current affairs programs'.

Thus to the extent that a licensee broadcasts current affairs programs that largely or exclusively prosecute a single viewpoint on controversial issues of public importance, it is important that it finds appropriate ways of ensuring that the obligations expressed in (the relevant code provision) are met having regard to the object of the codes. To the extent the codes use the appropriately flexible benchmark of reasonableness, it must be applied having regard to the intended outcomes of the codes. It is for the licensee to find appropriate ways of ensuring that the obligation is met.

The ACMA considers that (compliance with this provision) requires that the licensee:

- > In the same or similar programs, either:
 - > makes reasonable efforts to present significant viewpoints; or
 - > gives reasonable opportunities for significant viewpoints to be presented by third parties.
- > It is not enough that relevant efforts and/or opportunities are made or given in respect of only one significant viewpoint;
- > Significant viewpoints mean that more than one significant viewpoints must be presented—it must be an alternative, and it need not be an opposing viewpoint; not all viewpoints must be presented, but the restatement of one viewpoint will not suffice;

⁹¹ ACMA Investigation Reports 2597, 2614 and 2636.

> This must occur while the issue has immediate relevance to the community.

It has been noted that (the relevant code provision) does not require balance. Nor does it contemplate that equal time or prominence must be given to each significant viewpoint presented. However, to satisfy the obligation the active steps need to be taken by the licensee. The obligation rests with the licensee and is not simply discharged by opening telephone lines to listeners or interest groups.

What amounts to a significant viewpoint must be assessed on a case-by-case basis. The ACMA considers that a 'significant viewpoint' is one capable of materially contributing to listener understanding of the controversial issue and views held about it.

3A.2.5 Fairness—remedies

In the commercial television and radio codes (see above) there are existing remedies for an established factual inaccuracy. There are no corresponding remedies in relation to fairness and impartiality or significant viewpoint requirements in the commercial television and radio codes. In the 2008 research there was almost unanimous agreement that when a person or company is presented in a bad light in a story they should be given the opportunity to respond on-air.⁹²

Fairness
Question 44: What type of programming material should be subject to requirements for fairness? For example, news, current affairs or some broader category of factual programming?
Question 45: Should requirements for fairness be treated equally across news and current affairs programs? That is, is there a good rationale for treating news differently to current affairs and, if so, what is that rationale?
Question 46: Should news and/or current affairs programs provided by a subscription broadcasting television licensee be subject to the requirements for fairness? If so, why? If not, why not?
Question 47: Given that there are so many sources of professionally produced content available to citizens, is it still necessary to require broadcasters to provide balance or 'significant viewpoints' on a particular topic?
Question 48: If the answer to the last question is 'yes' what should the requirements for fairness by broadcasters look like?
Question 49: Should the concept of influence affect calibration of regulatory interventions in relation to fairness? If so, to what extent and how? If not, why not?
Question 50: Should talkback programs that feature opinion-rich material be subject to the same requirements for fairness as traditional current affairs programs? If so, why? If not, why not?

⁹² ACMA, *Community attitudes to the presentation of factual material and viewpoints in commercial current affairs programs* Quantitative Research report (2008), p. 29.

Question 51: What are radio listeners' expectations of fairness and/or the opportunity to provide significant viewpoints on a topic in the context of talkback programs that feature opinion-rich material?
Question 52: Is the code obligation as currently included in the commercial radio code to make reasonable efforts or give reasonable opportunities to present 'significant viewpoints' an appropriate and proportionate concept or should multiple viewpoints be required or should this requirement be deleted given that there are so many sources of professionally produced content available to citizens?
Question 53: The ACMA has expressed its thinking, in relation to commercial radio, about the principles relevant to the obligation to make reasonable efforts or give reasonable opportunities to present 'significant viewpoints' (see Figure 5 above). Is the ACMA's thinking on these principles in line with expectations?
Question 54: What is an appropriate time frame in which to provide an alternative view (if any)? For example, should it be offered within the same program? On the same day? etc
Question 55: What would a proper and fair opportunity to comment generally look like? For example, should such an offer include a reasonable opportunity to consider the key questions (rather than a 'door-stop' style interview)?
Question 56: What, if anything, is an appropriate remedial measure for established findings of breach of the relevant 'fairness' provisions in a code of practice?

3A.3 Contemporary communications issues

The converged media environment has altered the way that people access information, including news, current affairs and commentary. It is now generally accepted that the same or similar news stories could appear simultaneously on television, in print and online. The Convergence Review acknowledged the blurring of these traditional content platforms and the effect this has had on current regulation:

Current industry and co-regulatory codes have been developed to address a range of content issues across specific platforms and for specific providers. The overall picture that emerges from the Review is that these content-specific, platform-specific and provider-specific rules are inconsistent, confusing and inflexible.⁹³

From an industry perspective, Free TV's submission to the Convergence Review also stated:

Current community standards protections are technology specific, resulting in inconsistent regulation of content across platforms and a lack of regulatory parity, which imposes costs and restricts competition.⁹⁴

The immediacy of this converged environment; for example, online news postings and blog updates or tweets, have also created a user expectation of immediate news updates 24 hours a day. This urgency places pressures on content producers to deliver quickly and constantly.

⁹³ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 40.

⁹⁴ *Ibid*, p. 40.

These pressures were explored in the ACMA's Digital Australian's research. Some participants thought the pressure to contribute to the 24 hour news cycle eroded accuracy.⁹⁵ The majority of respondents, however, claimed to be aware of this issue and worked around it by looking at multiple sources to 'check the veracity of a news story'.⁹⁶

One of the key findings of the *Digital Australians* research was that the community distinguished content type from delivery platform and that the differences in content type outweighed differences in platform. In the main:

Participants consistently distinguished between user-generated and professionally produced content.⁹⁷

As a result, survey respondents had an expectation that professionally produced content should have a high level of scrutiny, whether it appeared on television or online, whereas 'user-generated' content:

should reflect the principle of individual expression and consumption, meaning it did not necessarily have to conform to community standards.⁹⁸

3A.4 Related matters

The ACMA notes that existing broadcasting codes include a number of related matters that are referred to at section 123(2)(e) of the Act. Relevantly, these refer to programs that simulate news or events in an alarming or misleading way.

The ACMA notes that many codes refer to these matters as stand-alone issues. Some codes also embed the idea of causing alarm or public panic into specific clauses, for example news reporting. The table below summarises the interventions in the current broadcasting codes relevant to these matters.

Table 9 Summary of interventions relevant to simulating news or events in an alarming or misleading way in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Will not broadcast a program which will simulate news or events in such a way as to mislead or alarm viewers. ⁹⁹ Presentation of news should not create public panic or unnecessarily distress reasonable listeners.	Clause 1.1 (b) and 2.1(b)
Community	Will not broadcast material that mislead or alarm listeners by simulating news or events. Present news in such a way that it does not create public panic or unnecessary distress to listeners.	Code 3 clause 3.1(b) and clause 3.6 (d)

⁹⁵ ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), p. 40.

⁹⁶ *ibid.*

⁹⁷ ACMA, *Digital Australians—expectations about media content in a converging media environment* (2011), p. 20.

⁹⁸ *ibid.*, pp. 52–3.

⁹⁹ Noting that clause 1.2 provides that a licensee is not prevented from broadcasting a program of this kind if the program: is presented reasonably and in good faith for academic, artistic (including comedy or satire), religious instruction, scientific or research purposes or for any other purposes in the public interest, including discussion or debate about any act or matter.

Open Narrowcasting	News or events must not be simulated in a way that misleads or alarms the audience	Code 1— clause 1.2(b)
Subscription Narrowcast	News or events are not simulated in a way that misleads or alarms the audience.	Code 1— clause 1.2(b)
Television		
Commercial	Will not simulate news or events in such a way as to mislead or alarm viewers. Presentation of news should not create public panic.	Clause 1.9.1 and 4.3.2
Community	Prevent the broadcast of material that is likely to simulate news or events in a way that misleads or alarms the audience.	Code 3— clause 3.1 (a)
Open Narrowcast	News or events must not be simulated in a way that misleads or alarms the audience	Code 1— clause 1.2(b)
Subscription Broadcast	Simulation of news and events should not mislead or alarm. Presentation of news should not create public panic.	Clause 2.1 (b) and 2.2(a)(iii)
Subscription Narrowcast	News or events are not simulated in a way that misleads or alarms the audience.	Code 1— clause 1.2(b)
Radio and television		
ABC	N/A	N/A
SBS	News: Avoid sensationalised and exaggerated treatment of issues and event. Violence: Give consideration to propensity to alarm.	Clause 2.4 and 4.2

This table demonstrates that not all broadcasters refer to these related matters in their codes. The ACMA is seeking views from submitters about whether these related matters are relevant to contemporary broadcasting codes.

This table also demonstrates that there are related but distinct concepts around creating alarm within current codes. These refer to the:

- > simulation of news or events to mislead or cause alarm
- > presentation of news in a way that causes public panic
- > presentation of violence in a way that causes alarm.

The ACMA is interested in seeking views on the distinction between **simulating** events and **presenting** events in a way that causes alarm.

Simulating news or events in an alarming or misleading way

Question 57: Should this type of programming material be subject to regulatory intervention?

Question 58: If yes, are these matters most closely aligned to the concept of 'Ethical Standards'?

Question 59: If yes, is it appropriate to limit the intervention to news programming?

Question 60: Is the distinction between simulating and presenting news or events important?

3B. Ethical standards—advertising

3B.1 Public interest to be served or harm addressed

The enduring concept of ‘ethical standards’ is that:

Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.¹⁰⁰

A key public interest to be addressed by intervention in relation to the broadcast of advertising is to ensure that promotional material is adequately identified as advertising or sponsored content. This ensures that audiences are not misled as to its nature or provenance.

In relation to commercial broadcasting licensees, the Act also identifies the issue of broadcasting time devoted to advertising as an issue worthy of inclusion in the codes relevant to those industries.¹⁰¹

The ACMA, therefore, considers this concept broadly covers the two issues of transparency and what, if any, are the appropriate limits on advertising.

Advertising interventions are not only applied to broadcasting content by the ACMA or the Act but are also addressed by other agencies. For example, the content of advertisements broadcast is subject to the rules administered by the Advertising Standard Bureau. In this chapter, however, the ACMA focuses its discussion on the relevant advertising interventions that are relevant to broadcasting codes of practice.

3B.1.1 Relevant broadcasting code interventions

The broadcasting code interventions that are relevantly aligned to the concept of ‘ethical standards—advertising’ are provisions relevant to transparency and the limits on advertising material. The ACMA also notes that accuracy and fairness interventions may also be relevant to the concept of ‘ethical standards—advertising’. These have been dealt with separately in the previous chapter.

Question 61: Should the concept of ‘ethical standards—advertising’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 62: The ACMA has drawn a connection between ‘ethical standards—advertising’ and interventions around transparency and the limits on advertising. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

3B.1.2 Background

The concept of transparency in relation to paid material is a fundamental concept in broadcasting regulation.¹⁰² This recognises the influential role that broadcasting plays in providing Australians with information.¹⁰³

¹⁰⁰ See Appendix 3, concept number twelve.

¹⁰¹ *Broadcasting Services Act 1992*, s. 123(2)(f).

¹⁰² Convergence Review Committee, *Convergence Review Final Report* (2012), p. 56.

¹⁰³ Second Reading Speech, *Broadcasting Services Bill 1992*, p. 2.

As the ACMA noted during its *Review of the Commercial Radio Standards*:

Regulation requiring that advertising be distinguishable responds to the key challenge that unless [audiences] can discern whether certain broadcast material is in fact advertising, then they are not in a position to know who is seeking to persuade them.

It recognises that it may not be clear to [audiences] whether on-air promotion of organisations, their products, services or issues has been motivated by the existence of a commercial arrangement with the organisation concerned.

This challenge is different from other aspects of content regulation, where listeners are more readily able to identify potential concerns based on the content itself. In the case of vilification or factual accuracy, for example, [audiences] may be more readily able to identify potential breaches of regulation without being made aware of the nature of the program material.¹⁰⁴

The time limits for advertising are also a key concern for citizens and are acknowledged in the Act as a matter for consideration in broadcasting codes that cover commercial broadcasters.¹⁰⁵

3B.2 The current intervention/s

3B.2.1 Transparency

Each of the commercial broadcasting codes and the subscription television code contain provisions which require advertising and other paid material to be distinguished from other programming.¹⁰⁶ Similarly, narrowcast broadcasters are prevented from broadcasting advertising content which does not accord with community standards.

The table below summarises the interventions in the current broadcasting codes relevant to these matters.

Table 10 Summary of interventions relevant to transparency of advertising in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Advertisements must be presented in such a manner that the reasonable listener is able to distinguish them, at the time of broadcast, from other program content.	Clause 3.1
Community	Sponsorship announcements will be tagged to acknowledge the financial and/or in-kind support of the sponsor.	Clause 6.1
Open Narrowcasting	Advertisements will be consistent with the relevant industry codes applicable to advertising.	Clause 1.9
Subscription Narrowcast	Advertising content will be consistent with standards acceptable to the relevant specific audiences involved.	Clause 1.1

¹⁰⁴ ACMA, *Review of the Commercial Radio Standards*, issues paper (2010) p. 37.

¹⁰⁵ *Broadcasting Services Act 1992*, s. 123(f).

¹⁰⁶ Commercial radio is also subject to *the Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012* which requires the disclosure of commercial agreements and other arrangements that have the potential to affect the content of current affairs programs on commercial radio. Under this standard, a commercial radio licensee is required to disclose relevant commercial agreements on-air and/or in an online register.

Television		
Commercial	Advertising (including in-program material where licensee received payment) must be readily distinguishable from program material. During factual programs (current affairs, documentary or infotainment) commercial agreements must be disclosed where the agreements relate to endorsements for products or services.	Clause 1.16–1.18 and Clause 1.20
Community	Sponsorship announcements must be readily distinguishable from program material by viewers. Sponsorship announcements will be tagged to recognise financial and/or in-kind considerations received.	Clause 6.1–Clause 6.2
Open Narrowcast	Advertising content will be consistent with standards acceptable to the relevant specific audiences involved	Clause 1.1
Subscription Broadcast	Advertisements must be readily distinguishable from program material	Clause 2.3
Subscription Narrowcast	Advertising content will be consistent with standards acceptable to the relevant specific audiences involved	Clause 1.1
Radio and television		
ABC	N/A	N/A
SBS	Advertisements must not be presented as programming	Code 5

Although code 6 of the community radio and television codes include provisions relating to transparency in sponsorship announcements, the requirements on licensees are more relevantly imposed via a specific licence condition in Schedule 2 to the Act. Therefore, whether those provisions provide appropriate community safeguards is outside the scope of the inquiry.

3B.2.2 Time limits on advertising

Only the commercial television broadcasting code of practice and the SBS code set out requirements aimed at ensuring there is a reasonable balance between program and non-program material.¹⁰⁷ In this context non-program matter includes promotional and advertising material.

In summary, there are limits on the amount of commercial and promotional material scheduled during any clock hour, with several exemptions to the material that is counted towards non-program material. Exemptions include advertising devices such as overlays or visual matter superimposed over program content.

The current relevant code provisions for non-program material are complex and difficult to apply in practice.

The Act recognises that commercial broadcasting services are ‘usually funded by advertising revenue’ and are ‘operated for profit’.¹⁰⁸ The Act also envisages that the

¹⁰⁷ Commercial Television Industry Code of Practice, 2010, clause 5. SBS Codes of Practice, 2006, clause 5.

¹⁰⁸ *Broadcasting Services Act 1992*, s. 14.

amount of broadcasting time devoted to advertising is sufficiently important to be considered for inclusion in codes.¹⁰⁹ There is clearly a tension between these two obligations, described in the Explanatory Papers to the *Broadcasting Services Bill 1992* as:

a natural conflict between the public interest and the needs of service providers operating on a commercial basis.¹¹⁰

On the one hand are the needs of viewers to have access to programs and on the other hand the responsibility of commercial service providers to maximise profit opportunities. The intention of the co-regulatory framework established by the Act is to balance these conflicting requirements.

3B.3 Contemporary communications issues

With respect to advertising, the converged media landscape poses significant challenges. Broadcasters must offer value to advertisers in an increasingly fragmented, multi-screen, media marketplace which has seen a 'drift' of advertising dollars to the online arena as Australian's participation in the Internet increases and it plays a growing role in facilitating everyday social and economic activities.¹¹¹

In contrast, convergence media trends have not diminished the importance of advertising revenue as a key source of income for commercial broadcasters. For example, advertising revenue is estimated to account for 90 per cent of total revenue for the free-to-air television broadcasting sector.¹¹²

Within this context, consumers are utilising new technologies to make choices about how they access content. For example, the use of PVRs to access content delivered by free-to-air and subscription television broadcasters allows viewers to skip the advertisements provided in programming breaks. This ability to 'avoid' advertising is creating a pressure on broadcasters to sell space within the programming content that is actually watched by viewers.

Therefore, in response to convergence pressures, advertisers and broadcasters are exploring a range of different models and techniques to promote products and services, particularly drawing upon greater integration of program content and promotional material. As noted by the Convergence Review, in this context:

Sponsorship, product placement (where an advertiser negotiates for its product to be featured within a program) and the emergence of branded content (where a brand pays for content and is featured within it) all raise important questions relating to transparency.¹¹³

The ACMA's *Listener attitudes to advertising, sponsorship and influence on commercial radio research* provides an important insight into the ability of Australians to recognise and distinguish radio advertising from other program content, their attitudes to and concerns about various advertising and sponsorship practices, including embedded advertising. This research clearly identified that Australians value distinctions between advertising and other radio content and that this is particularly important in relation to current affairs programs.

However, there is currently no comparable evidence in relation to the expectations of the community more broadly in relation to other sectors.

¹⁰⁹ *Broadcasting Services Act 1992*, s. 123(f).

¹¹⁰ Draft Broadcasting Services Bill Explanatory Papers, 1991, p. 32.

¹¹¹ According to PriceWaterhouseCoopers, *Media and Entertainment Outlook 2010–2014* report Australian advertisers will spend more on online advertising than in print or TV by 2014, exceeding \$3.8 billion.

¹¹² IBISWorld, *P9123 Free To Air Television Services in Australia*, July 2012.

¹¹³ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 56.

Given the growing pressures on broadcasters, it is timely to explore relevant community expectations.

Transparency
Question 63: What is the extent of concern, if any, about branded content and embedded advertising being transparent?
Question 64: To the extent that there is any concern about branded content and embedded advertising failing to be transparent—does that level of concern differ according to the type of content being consumed? For example, are different concerns raised by this content appearing in current affairs programs as opposed to scripted dramas?
Question 65: To the extent that there is any concern about branded content and embedded advertising failing to be transparent, would that level of concern be assuaged by adequate identification/disclosure of advertising material?
Question 66: To what extent should licensees present advertisements in such a manner that viewers/listeners should be able to distinguish them from other program material?
Question 67: In the context of television, what sort of information would viewers find useful/intrusive in assisting them to identify embedded advertising? For example, OFCOM in the UK has introduced a mandatory 'P' symbol for product placement—would Australian television audiences see value in this or would they find it unnecessary or intrusive?
Time limits for advertising/non-program matter
Question 68: What are television viewers' practices around the traditional 'spot' advertising? To what extent are viewers prepared to 'sit through' the traditional 'spot' advertising breaks and to what extent do viewers record and play later, skip ads etc?
Question 69: Is it necessary to have a time limit on advertising and non-program material?
Question 70: If it is necessary to have a limit on the amount of advertising and non-program material what is an appropriate limit?
Question 71: If a limit on the amount of advertising and non-program material is required is there a simpler way to impose an appropriate 'safety net'.

3B.4 Related matters

The ACMA notes that existing broadcasting codes include a number of related matters that are referred to at section 123(2)(e) of the Act. Relevantly, these refer to programs that:

- > depict hypnosis or are designed to induce an hypnotic state
- > use or involve the process known as subliminal perception or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness.

The table below summarises the interventions in the current broadcasting codes relevant to these matters.

Table 11 Summary of interventions relevant to depicting hypnosis or subliminal perception in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	N/A	N/A
Community	N/A	N/A
Open Narrowcasting	Will not broadcast programs that induce hypnosis or use "subliminal perception".	Clause 1.4
Subscription Narrowcast	Will not broadcast programs that induce hypnosis or use "subliminal perception".	Clause 1.4 (a) and (b)
Television		
Commercial	Will not depict the actual process of hypnosis, induce hypnosis or transmit messages below or near the threshold of normal awareness.	Clause 1.9.2, 1.9.3 and 1.9.4
Community	Will not depict the actual process of hypnosis, induce hypnosis or use subliminal perception.	Clause 3.1 (b) (c) and (d)
Open Narrowcast	Will not depict the actual process of hypnosis, induce hypnosis or use subliminal perception.	Clause 1.4
Subscription Broadcast	Will not depict the actual process of hypnosis, induce hypnosis or use subliminal perception.	Clause 2.1 (b)
Subscription Narrowcast	Will not depict the actual process of hypnosis, induce hypnosis or use subliminal perception.	Clause 1.4
Radio and television		
ABC	N/A	N/A
SBS	N/A	N/A

The ACMA is seeking views from submitters about whether these 'related matters' are relevant to contemporary broadcasting codes.

Hypnosis and subliminal perception
Question 72: Should this type of programming material be subject to regulatory intervention?
Question 73: If so, are these matters most closely aligned to the concept of 'Ethical Standards'?

4A. Protection of the public—privacy

4A.1 Public interest to be served or harm addressed

The enduring concept of ‘protection of the public’ is that:

Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services to protect life, health and safety of individuals and communities.¹¹⁴

This concept covers a range of matters broadly aligned with ‘protection from harm’. One such relevant matter is privacy. Generally, the right to privacy is considered a fundamental human right and seen to be of ‘*key importance to the preservation of our free and democratic society*’.¹¹⁵

As outlined below, there are matters relevant to privacy that are contained in non-broadcast specific legislation, in particular, the *Privacy Act 1988* (the Privacy Act) and the National Privacy Principles. In this chapter, however, the ACMA focuses its discussion on interventions that are relevant to broadcasting codes of practice.

4A.1.1 Relevant broadcasting code interventions

Broadcasting code interventions that are relevantly aligned to the concept of ‘protection of the public’ are the privacy interventions. In the broadcasting context, privacy provisions seek to balance the media’s role in informing the public and an individual’s expectation that their privacy will be respected.

The ACMA notes that other code interventions are also relevant to ‘protection of the public’ including provisions relevant to emergency service information and provisions against inciting hatred and vilification. These interventions will be dealt with in the following chapters. Accordingly, this chapter will focus on privacy interventions.

Question 74: Should the concept of ‘protection of the public’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 75: The ACMA has drawn a connection between ‘protection of the public’ and privacy interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

4A.1.2 Background

In Australia an individual’s privacy is protected, to a certain extent by the Privacy Act and the National Privacy Principles.¹¹⁶ Radio and television broadcasters, like other businesses, individuals and government agencies, are subject to these laws.

However, some activities of media organisations carried out ‘in the course of journalism’ are exempt from the operation of the Privacy Act, provided that the relevant media organisation meets certain requirements, including being publicly

¹¹⁴ Appendix 3, concept number 13.

¹¹⁵ *Privacy law reform: challenges and opportunities*, Timothy Pilgrim, Australian Privacy Commissioner presentation to the Emerging Challenges in Privacy Law Conference, 23 February 2012.

¹¹⁶ Note the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* passed at the end of 2012 enacts reforms that replace the existing Information Privacy Principles and the National Privacy Principles with a single set of principles called the Australian Privacy Principles. These changes will take effect in March 2014.

committed to standards which address privacy.¹¹⁷ 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.¹¹⁸

As noted by the ALRC the majority of media organisations seek to satisfy the requirement of being publicly committed to observing standards that deal with privacy, in the following manner:

- > radio and television industry groups develop codes in accordance with the *Broadcasting Services Act*
- > national broadcasters (the ABC and SBS) develop codes in accordance with their establishing legislation
- > print or online media organisations that are members of the Australian Press Council are bound by its *Privacy Standards*
- > journalists who are members of the Media Entertainment and Arts Alliance (MEAA) are bound by the *Code of Ethics*.¹¹⁹

4A.2 The current intervention/s

Privacy protections specific to broadcasting are set out in the various broadcasting codes of practice. Generally, the codes protect against the broadcast of material that:

- > relates to a person’s personal or private affairs—for example, by disclosing personal information; or
- > invades a person’s privacy—for example, by intruding upon his or her seclusion.

The precise privacy obligations to which each broadcaster is subject will depend on the terms of the applicable code. The table below summarises the code interventions relevant to the disclosure of personal information.

Table 12 Summary of privacy interventions relevant to disclosing personal information in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	News and current affairs programs: Will not use material relating to a person’s personal or private affairs, or which invades an individual’s privacy, unless there is a public interest in broadcasting such information.	Clause 2.1(d), Clause 2.3(d)
Community	Respect people’s legitimate right to protection from unjustified use of material which is obtained without consent or through an invasion of privacy.	Clause 3.5
Open Narrowcasting	Must not broadcast information relating to a person’s personal or private affairs, or which invades a person’s privacy, unless there is a public interest in broadcasting such information.	Code 1—clause 1.8

¹¹⁷ *Privacy Act 1988*, s. 7B(4). In respect of their *non journalistic* activities, media organisations are subject to the National Privacy Principles and reference should be made to each media organisation’s privacy policy. Generally speaking this will provide information on how the organisation handles personal information outside of its journalistic activities.

¹¹⁸ *Privacy Act 1988*, s.6.

¹¹⁹ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report 108 (2008), vol 2, 1462 [42.57].

Subscription Narrowcast	N/A ¹²⁰	N/A
Television		
Commercial	News or current affairs: <ul style="list-style-type: none"> > Must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, without consent, other than where there is an identifiable public interest reason for the material to be broadcast. > Exercise special care before using material relating to a child's personal or private affairs. 	Clause 4.3.5
Community	<ul style="list-style-type: none"> > Will not use material relating to a person's personal or private affairs, or which invades an individual's privacy, without consent, other than where there is an identifiable public interest reason for the material to be broadcast. > Exercise special care before using material relating to a child's personal or private affairs. 	Clause 3.5—Clause 3.9
Open Narrowcast	N/A	N/A
Subscription Broadcast	News or current affairs: <ul style="list-style-type: none"> > Must not use material relating to a person's personal or private affairs, or which invades an individual's privacy, without consent, other than where there is an identifiable public interest reason for the material to be broadcast. 	Clause 2.2(c)
Subscription Narrowcast	N/A ¹²¹	N/A
Radio and television		
ABC	Intrusion into a person's private life without consent must be justified in the public interest and the extent of the intrusion must be limited to what is proportionate in the circumstances.	Clause 6.1
SBS	The rights of individuals to privacy should be respected in all programs. Intrusions upon privacy may, in some circumstances be justified in order to provide information to the public which relates to a person's performance of public duties or about other matters of public interest.	Clause 1.9

Other interventions broadly relevant to privacy are also evident in existing codes, see the table below.

¹²⁰ The National Privacy Principles are at Attachment A to the Subscription Narrowcast Television Codes of Practice, 2007.

¹²¹ The National Privacy Principles are at Attachment A to the Subscription Narrowcast Television Codes of Practice, 2007.

Table 13 Summary of interventions broadly related to privacy in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Interviews and talkback programs: Must not broadcast the words of an identifiable person unless that person has been informed in advance, or a reasonable person would be aware that the words may be broadcast or consent given prior to broadcast.	Clause 6.1
Community	Must not broadcast the words of an identifiable person unless that person has been informed in advance, or it was clearly indicated that it would be broadcast, or consent given prior to broadcast.	Clause 3.5
Open Narrowcasting	N/A	N/A
Subscription Narrowcast	Must not broadcast the words of an identifiable person unless that person has been informed in advance, or consent given prior to broadcast.	Clause 1.5
Television		
Commercial	News and current affairs: <ul style="list-style-type: none"> > When broadcasting images of dead or seriously injured persons, have appropriate regard to the relatives and viewers. Only display images that may seriously distress or seriously offend a substantial number of viewers when there is an identifiable public interest. > Exercise sensitivity in broadcasting images or interviews with bereaved relatives and survivors or witnesses of traumatic incidents. > Take all reasonable steps to ensure that murder and accident victims are not identified directly or indirectly before their immediate families have been notified by the authorities. 	Clause 4.3.3 Clause 4.3.6 Clause 4.3.8
Community	<ul style="list-style-type: none"> > When broadcasting images of dead or seriously wounded people, exercise special care including having appropriate regard to the feelings of relatives and viewers. > Exercise sensitivity in broadcasting images or interviews with bereaved relatives and survivors or witnesses of traumatic incidents. > Take all reasonable steps to ensure that murder and accident victims are not identified directly or indirectly before their immediate families have been notified by the authorities. 	Clause 3.5—Clause 3.9
Open Narrowcast	N/A	N/A

Subscription Broadcast	News and current affairs: <ul style="list-style-type: none"> > Only sparingly include material likely to cause distress to a substantial number of viewers. > Exercise sensitivity in broadcasting images or interviews with bereaved relatives and survivors or witnesses of traumatic incidents. 	Clause 2.2(b)
Subscription Narrowcast	N/A	N/A
Radio and television		
ABC	<ul style="list-style-type: none"> > Secret recording must not be used except where consent is obtained or it is justified in the public interest and the material cannot reasonably be obtained by other means. > Avoid causing undue distress to victims, witnesses or bereaved relatives. 	Clause 7.5, Clause 5.8
SBS	Exercise great sensitivity in covering certain matters, particularly when approaching, interviewing and portraying people who are distressed.	Clause 2.4

In 2011 the ACMA published revised *Privacy Guidelines for Broadcasters*. These guidelines provide an overview of the way the ACMA assesses alleged breaches of the privacy provisions in the codes and are intended to assist broadcasters and members of the public to better understand the operation of the privacy provisions across the various broadcasting codes. This includes understanding key terms such as ‘personal information’, ‘seclusion’, ‘consent’ and ‘public interest’.

4A.3 Contemporary communications issues

Research indicates widespread community support for rules about privacy and there is a broad consensus around standards expected of the news industry, which include the protection of people’s right to privacy.¹²² In the period May to September 2010, the ACMA commissioned qualitative and quantitative research into community attitudes to broadcasting and media privacy.¹²³ This research indicated the vast majority of Australian media users believe it is important for broadcasters to safeguard a person’s privacy in news and current affairs programs (93 per cent), with 68 per cent saying this was ‘very important’. The research also highlighted that the key areas of concern for the community in relation to privacy include obtaining consent before personal material is broadcast and protecting children and distressed victims from privacy intrusions by the media.

However, Australians are increasingly engaged online both in a transactional capacity but also socially uploading their own content such as via Facebook, Twitter and YouTube. In a speech in Australia in December 2012, The Rt. Hon. Lord Justice Leveson (talking about privacy and the Internet) made the following point in relation to the internet as opposed to the traditional media:

[The internet] ... simply publishes online, conveys it on Facebook, uploads it onto YouTube, tweets and re-tweets it. In this it not only competes with the media in the transmission of private information which would otherwise only be

¹²² Convergence Review Committee, *Convergence Review Final Report* (2012), p. 48.

¹²³ ACMA, *Australians’ view on privacy in news and current affairs—complementary survey report to community research into broadcasting and media privacy*, 2011.

on our front pages, but it has also provided a global megaphone for gossip about Mr and Mrs Smith. In respect of both it does so without, as yet, any general standards of behaviour, such as those to which the media is held.¹²⁴

ACMA research confirmed that at least seven in ten media users believe it is ‘very intrusive’ to broadcast personal material from online social networking sites where access has been restricted to online friends (76 per cent).¹²⁵

In 2008 the ALRC completed a 28-month long inquiry into privacy, which examined the extent to which the Privacy Act and related laws continue to provide an effective framework for the protection of privacy in Australia. As part of its final report, the ALRC indicated that during the course of the inquiry:

stakeholders raised particular concerns about the manner in which the media handles certain types of personal information, including:

- > the personal information of children and young people;
- > personal health information; and
- > personal information associated with judicial proceedings.¹²⁶

In making its final recommendations, the ALRC indicated that in order to qualify for the journalism exemption, organisations should be publicly committed to standards that deal ‘adequately’ with privacy in the context of the activities of a media organisation.¹²⁷

As part of ensuring this adequacy, the ALRC further recommended that the Office of the Privacy Commissioner, in consultation with the ACMA, and peak media representative bodies should, develop the criteria for adequate media privacy standards and template privacy standards, which amongst other things would consider:

- > issues regarding parental consent when handling the personal information of children and young people and consider the best interests of the child or young person even where parental consent is obtained
- > whether the personal information falls within the definition of ‘sensitive information’ for the purposes of the Privacy Act
- > whether reporting the personal information could result in any unfair prejudice to victims, people accused or convicted of crime, or relatives or friends of such persons.¹²⁸

The government will consider and respond to these ALRC recommendations in the second stage of its response to the ALRC’s report.¹²⁹

¹²⁴ The Rt. Hon. Lord Justice Leveson, ‘Privacy & The Internet’, (Speech delivered at the Privacy in the 21st Century Symposium, University of Technology Sydney, Sydney, 7 December 2012).

¹²⁵ ACMA, *Australians’ view on privacy in news and current affairs—complementary survey report to community research into broadcasting and media privacy*, 2011, p. 7.

¹²⁶ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008) vol 2, 1462 [42.90].

¹²⁷ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008) vol 2, 1462 [42.115].

¹²⁸ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008) vol 2, 1462 [42.122].

¹²⁹ The ALRC report was launched 11 August 2008. At this time, the government announced its response to the report would be addressed in two stages—see Hon John Faulkner, ‘Launch of the Privacy Report at the Australian Law Reform Commission’ (Speech delivered at the Australian Law Reform Commission, Sydney, 11 August 2008). The Privacy Amendment (Enhancing Privacy Protection) Act 2012 formed the first stage of the government’s response to the report and responds to 197 of the ALRC’s 295 recommendations.

In general, the ALRC's recommendations indicate there may be issues that need to be addressed in current broadcasting codes in relation to privacy standards.

The ACMA notes the current focus of privacy protections in the broadcasting codes is on news and current affairs. In part, this may be a result of how the media exemptions for journalistic activities have operated to date. However, as noted by the New Zealand Broadcasting Standards Authority, 'privacy is an area of law that is evolving' and 'its scope has been challenged in recent years by changes in both the means of conveying information to the public and the nature of the information being conveyed. In the broadcasting context, the trend towards 'reality TV' and broadcasting 'real-life' events is becoming more and more prevalent and some programs are pushing the boundaries of individuals' rights to privacy'.¹³⁰

The ACMA notes the increase of so-called 'observational style documentaries', which occasionally feature subjects in relatively vulnerable situations. In this context, there is an emerging question about whether it is appropriate for code-based privacy protections to be broadened beyond news and current affairs footage.

Relevantly, ACMA research has identified that at least seven in ten media users believe it is 'very intrusive' to show extensive close-up footage of a person grieving after an accident (74 per cent of media users) and/or to use a hidden camera to report on a person in a sensitive or embarrassing situation in a public place (70 per cent).¹³¹

Public figures such as politicians, celebrities and prominent sports and business people and those in public office do not forfeit their right to privacy in their personal lives¹³². However, it is accepted that public figures will be open to a greater level of scrutiny of any matter that may affect the conduct of their public activities and duties.

The ACMA believes it is timely and appropriate to explore issues relating to the adequacy of the privacy provision in the codes, with a view to providing industry with guidance on these issues. There is also clear value in exploring the broader contextual issues that are raised by the intersection of material sourced from the internet and the broadcasting media.

Privacy
Question 76: Given the extent of information sharing in the online context and the comparative lack of regulation in relation to online content, is it appropriate to continue to regulate the broadcast media in this regard? If not, why not?
Question 77: If the answer to the last question is 'yes', do the current code protections provide appropriate and proportionate safeguards? If not, why not and what changes should be made?
Question 78: If someone posts material featuring themselves onto YouTube or onto a social networking site, should broadcasters be limited in their re-broadcast of that material? If so, why, how and when?

¹³⁰ [Privacy Principles of the Broadcasting Standards Authority](#) (BSA)

¹³¹ ACMA, *Australians' view on privacy in news and current affairs—complementary survey report to community research into broadcasting and media privacy*, 2011, p. 7.

¹³² Public figures are entitled to a 'residual area of privacy' in relation to private information that they have not put in the public domain—*Campbell v MGN Ltd* [2004] UKHL22

Question 79: If a third party posts material onto YouTube or onto a social networking site unbeknown to the subject—should broadcasters seek the consent of the subject? Should broadcasters take extra care in the case of subjects that are children?
Question 80: While it may be regarded, in certain circumstances, as permissible to broadcast certain information (such as criminal behaviour) that is already in the public domain, can such information become private again through, for example, the passage of time?
Question 81: Should public figures be subject to different privacy protections? If so, why and what should these be? If not, why not?
Question 82: Are privacy protections appropriately confined to news and current affairs programs? If so, why? If not, why not?
Question 83: If the answer to the last question is ‘yes’ should codes of practice include privacy protections to people filmed in observational documentaries, and or the broadcasting of real-life events?
Question 84: What should be appropriate practices and procedures for obtaining consent from subjects, particularly when they are filmed in observational documentaries or other situations where they are ‘caught on camera’?

4B. Protection of the public— interventions designed to address matter that is likely to incite hatred against or vilify

4B.1 Public interest to be served or harm addressed

The enduring concept of ‘protection of the public’ is that:

Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services to protect life, health and safety of individuals and communities.¹³³

This concept covers a range of matters broadly aligned with ‘protection from harm’. One such relevant matter is protection of the community from material which incites hatred or vilifies people on particular grounds. Respect for human rights is a cornerstone of strong communities in which everyone can make a contribution and feel included.¹³⁴

As outlined below, there are matters relevant to the protection of the community from material which incites hatred or vilifies people that are contained in legislation. In particular, existing Commonwealth Acts deal with human rights and anti-discrimination laws. In this chapter, however, the ACMA focuses its discussion on matters that are relevant to broadcasting codes of practice.

4B.1.1 Relevant broadcasting code interventions

The Act contemplates the inclusion of provisions in codes aimed at preventing:

the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability.¹³⁵

Broadcasting code interventions that are relevantly aligned to the concept of ‘protection of the public’ are the interventions addressing material that incites hatred or vilifies people. The ACMA also notes that privacy interventions as well as emergency services interventions are also relevant to ‘protection of the public’. The privacy interventions were dealt with in the previous chapter and the emergency services interventions will be dealt with in the next chapter.

Accordingly, this chapter will focus on interventions that address material that incites hatred or vilifies people.

Question 85: Should the concept of ‘protection of the public’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

¹³³ See Appendix 3, concept number 13.

¹³⁴ See www.humanrights.gov.au/about/what-are-human-rights, accessed 17 May 2013.

¹³⁵ *Broadcasting Services Act 1992*, s. 123(3)(e).

Question 86: The ACMA has drawn a connection between ‘protection of the public’ and interventions designed to address matter that is likely to incite hatred against or vilify. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

4B.1.2 Background

Commonwealth laws

Australia has five existing Commonwealth Acts which deal with human rights and anti-discrimination laws.¹³⁶ The ACMA notes that a proposal to consolidate the commonwealth anti-discrimination acts into a single framework has been under discussion for some years. On 20 November 2012, the then Attorney-General, released the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Draft Bill). The Senate referred the Draft Bill to the Senate Legal and Constitutional Affairs Committee (committee) for inquiry and report. The ACMA understands that the Bill seeks to consolidate the existing Commonwealth anti-discrimination legislation but does not propose significant changes to existing laws. The major reforms proposed in the Bill include:

- > a single, simplified test for discrimination
- > introduction of additional protected attributes
- > coverage of discrimination and sexual harassment in any area of public life
- > a streamlined approach to exceptions
- > additional measures to assist and promote voluntary compliance with the Bill
- > improvements to the complaints process
- > rationalisation of some functions of the Australian Human Rights Commission.¹³⁷

The committee tabled its report for the inquiry on 21 February 2013.¹³⁸ The ACMA understands that the committee is now seeking written submissions.

State and territory laws

The Australian Human Rights Commission indicates that Commonwealth laws and state/territory laws generally cover the same grounds and areas of discrimination.

However, there are some ‘gaps’ in the protection that is offered between different states and territories and at a Commonwealth level. There are some circumstances where only the Commonwealth law would apply.¹³⁹

The current relevant state and territory laws are embodied in various pieces of legislation.¹⁴⁰

4B.2 The current intervention/s

All registered codes include provisions prohibiting material that incites hatred or vilifies on the basis of the following attributes; age, gender, ethnicity, nationality, race, disability, religion and sexual preference. Some codes also refer to other attributes

¹³⁶ The *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004* and the *Australian Human Rights Commission Act 1986*.

¹³⁷ www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/completed_inquiries/2010-13/anti_discrimination_2012/info.htm&print=1, viewed 17 May 2013.

¹³⁸ *ibid.*

¹³⁹ www.humanrights.gov.au/guide-australias-anti-discrimination-laws, viewed 17 May 2013.

¹⁴⁰ *Discrimination Act 1991 (ACT)*, *Anti-Discrimination Act 1977 (NSW)*, *Anti-Discrimination Act 1996 (NT)*, *Anti-Discrimination Act 1991 (Qld)*, *Equal Opportunity Act 1984 (SA)*, *Racial Vilification Act 1996 (SA)*, *Anti-Discrimination Act 1998 (Tas.)*, *Equal Opportunity Act 2010 (Vic.)*, *Racial and Religious Tolerance Act 2001 (Vic.)*, *Equal Opportunity Act 1984 (WA)*.

such as; transgender status, cultural belief, colour, language, occupation, political affiliation and HIV/AIDS status. The table below summarises how the code interventions differ in the expression of the prohibition.

Table 14 Summary of interventions relevant to inciting hatred and vilification in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Will not broadcast material that is likely to incite : > hatred against > serious contempt for > severe ridicule of any person or group because of listed attributes.	Clause 1.1 (e)
Community	Will not broadcast material that is likely to : > stereotype > incite > vilify > perpetuate hatred against > attempt to demean any person or group because of listed attributes.	Clause 3.3
Open	Will not broadcast content that is likely to : > incite > perpetuate hatred against > vilify any person or group because of listed attributes. Will not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivity of Aboriginal and Torres Strait Islander people or ethnic groups in the Australian community.	Clause 1.3
Subscription Narrowcast	Will not broadcast content that is likely to : > incite > perpetuate hatred against > vilify any person or group because of listed attributes. Will not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivity of Aboriginal and Torres Strait Islander people or ethnic groups in the Australian community.	Clause 1.3
Television		
Commercial	Will not broadcast content that is likely in all the circumstances to provoke or perpetuate : > intense dislike > serious contempt > severe ridicule against a person or group because of listed attributes.	Clause 1.9.6

Community	Will not broadcast content that is likely to provoke or perpetuate : <ul style="list-style-type: none"> > intense dislike > serious contempt > severe ridicule against a person or group because of listed attributes.	Clause 3.2
Open Narrowcast	Will not broadcast content that is likely to : <ul style="list-style-type: none"> > incite > perpetuate hatred against > gratuitously vilify any person or group because of listed attributes. Will not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivity of Aboriginal and Torres Strait Islander people or ethnic groups in the Australian community.	Clause 1.3
Subscription Broadcast	Will not knowingly broadcast any program which is likely to : <ul style="list-style-type: none"> > incite > perpetuate hatred against > vilify any person or group because of listed attributes.	Clause 2.1(a)
Subscription Narrowcast	Will not broadcast content that is likely to : <ul style="list-style-type: none"> > incite > perpetuate hatred against > gratuitously vilify any person or group because of listed attributes. Will not broadcast a program which is likely in all the circumstances to seriously offend the cultural sensitivity of Aboriginal and Torres Strait Islander people or ethnic groups in the Australian community.	Clause 1.3
Radio and television		
ABC	Avoid the unjustified use of stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice.	Clause 7.7
SBS	Ensure programs either counter or do not promote, endorse or reinforce inaccurate, demeaning or discriminatory stereotypes.	Clause 1.3

4B.3 Contemporary communications issues

There is a substantial existing body of law which applies in this area which makes consideration of these issues complex. This is exacerbated by the fact that the code provisions, while similar, express different tests for the relevant discriminatory behaviour. In this context, one of the issues that the ACMA wishes to consider is the role the code protections play. The ACMA is also keen to explore the not unrelated question of whether there is an expectation that there is an additional or greater obligation on providers of broadcasting services (than, for example, providers of online services) to include protections aimed at preventing the perpetuation of harmful material which contributes to social discord.

If there is an ongoing need for relevant protections to be included in contemporary codes of practice, the ACMA is interested in exploring views on the application of the concept of influence to these protections in particular.¹⁴¹

Incite hatred or vilify
Question 87: What is the role of protections in relation to the incitement/provocation of hatred etc on certain grounds in contemporary codes of practice?
Question 88: What should an appropriate and proportionate regulatory intervention look like?
Question 89: If it is necessary and appropriate for contemporary codes of practice to include these protections, should the test and the attributes be aligned across sectors? If not, why not?
Question 90: Is there an expectation that there is an additional or greater obligation on providers of broadcasting services (than for example, providers of online services) to include relevant protections aimed at preventing the perpetuation of harmful material with the potential to contribute to social discord?
Question 91: Is the obligation, if any, on providers of broadcasting services to include protections and the way in which these protections are framed affected by the degree of influence associated with a relevant broadcaster? If yes, how is it affected and how should associated regulatory interventions be calibrated? If not, why not?

¹⁴¹ See the *Introduction* chapter in this issues paper. The Act intends that the level of regulatory control applied to broadcasting services, will differ according to the degree of influence that different services are able to exert in shaping community views in Australia.

4C. Protection of the public— emergency information

4C.1 Public interest to be served or harm addressed

The enduring concept of ‘protection of the public’ is that:

Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services.¹⁴²

There is a community expectation that government plays a role in protecting citizens from risks to life, health and safety. A range of public interest objectives are specifically expressed in communications and media regulation generally, including in other legislation administered by the ACMA such as the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and in the *Radiocommunications Act 1992*.

In this inquiry the ACMA is exploring the regulatory response to the need for protection of the public in relation to broadcasting and, in particular, with respect to broadcasting codes of practice.

4C.1.1 Relevant broadcasting code interventions

The Act does not specifically nominate emergency information as an issue for specific inclusion in codes. However, the Act allows for the inclusion of ‘such other matters relating to program content as are of concern to the community.’¹⁴³

The relevant code-based interventions mapped to this enduring concept are enshrined in code provisions relating to requirements in relation to the broadcast of emergency information.

Question 92: Should the concept of ‘protection of the public’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 93: The ACMA has drawn a connection between ‘protection of the public’ and emergency information safeguards. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

4C.2 The current intervention/s

The commercial radio and television and community radio codes all currently include relevant provisions. Broadly, the existing code provisions go to ensuring that the relevant licensees have procedures in place to enable the broadcast of accurate and timely information in emergency situations. The provisions also require licensees to consult and liaise with appropriate emergency service organisations.

¹⁴² See Appendix 3, concept number 13.

¹⁴³ *Broadcasting Services Act 1992*, s. 123(2)(l).

Table 15 Summary of interventions relevant to emergency service information in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Will have procedures in place to enable the timely and accurate broadcast of warnings and information relating to an emergency.	Code 8
Community	Will have procedures in place to enable appropriate local emergency broadcasts. Will ensure the accuracy of emergency information.	Clause 3.7
Open Narrowcasting	N/A	N/A
Subscription Narrowcast	N/A	N/A
Television		
Commercial	Will have procedures in place to enable timely and accurate emergency broadcasts.	Clause 1.27–1.31
Community	N/A	N/A
Open Narrowcast	N/A	N/A
Subscription Broadcast	N/A	N/A
Subscription Narrowcast	N/A	N/A
Radio and television		
ABC	N/A	N/A
SBS	N/A	N/A

4C.3 Contemporary communications issues

Protections are expected to have continued relevance in a converged environment. However:

...convergence processes are challenging vertically integrated delivery models that have relied on telecommunications carriers and broadcasters having end-to-end control of their networks ...

... converged frameworks will also need to consider the role of the user. As intelligence moves from networks to devices, users have a greater responsibility for managing their devices and the information embedded in them ... the involvement of users will be a critical element for locating individuals during an emergency.¹⁴⁴

¹⁴⁴ ACMA, *Enduring concepts—communications and media in Australia* (2011), p. 55.

The ACMA notes that recent disaster events in Australia have demonstrated the importance of social media, particularly in delivering vital community information during emergency events. The ACMA notes the Attorney-General's Department's relevant comment that:

Around Australia, emergency management organisations, government and non-government, public and private, are developing project protocols, and working with a range of new media tools to engage, inform and support Australian communities' disaster resilience.¹⁴⁵

The ACMA is interested to explore views on whether there is an ongoing need for the inclusion in contemporary codes of relevant interventions and, if so, how this is best achieved in the current environment.

Emergency information
Question 94: What is the current level of reliance, if any, placed on the broadcast of emergency information?
Question 95: Is it still appropriate for contemporary codes of practice to include regulatory interventions about the broadcast of emergency information? If not, why not?
Question 96: If the answer to the last question is 'yes' what should these interventions look like and what is the role and responsibility of citizens and others in ensuring a co-ordinated and functional approach?

¹⁴⁵ www.em.gov.au/Emergency-Warnings/Pages/Socialmedia.aspx, accessed on 17 May 2013.

5. Access—captioning

5.1 Public interest to be served or harm addressed

The enduring concept of ‘access’ is that:

Australians should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy.¹⁴⁶

The chief delivery mechanism for access in the current broadcasting legislative framework is concerned with public access to broadcasting services of a defined quality.¹⁴⁷ This is supported by (amongst other things) closed captioning mechanisms. Captioning is the presentation of the audio component of audio-visual content as text on screen. It is generally intended to assist viewers with a hearing impairment.

The core captioning obligations enshrined in the Act require free-to-air television broadcasters to provide captioning services for programs transmitted from 6.00 pm to 10.30 pm (the ‘designated viewing hours’) as well as for news and current affairs programs transmitted outside of these hours.¹⁴⁸ From 1 July 2014, the designated viewing hours will be extended to the period from 6.00 am to midnight. An amendment to the Act which commenced on 28 June 2012 introduced new captioning targets for commercial and national television broadcasters and new obligations and targets for subscription television broadcasters and narrowcasters.¹⁴⁹ The ACMA has also developed a draft quality standard for captioning which sets rules for broadcasters and narrowcasters about the quality of captions in terms of readability, accuracy and comprehensibility.

However, this inquiry is focused on code-based interventions relevant to captioning.

5.1.1 Relevant broadcasting code interventions

The Act relevantly provides that codes of practice may relate to:

Captioning of programs for the hearing impaired.¹⁵⁰

While the issues paper is concerned with the captioning obligations that are included in broadcasting codes, the fact that the core obligations are incorporated in the Act suggests that Parliament sees this as an area requiring legitimate regulatory intervention. Therefore, to the extent the code interventions are a necessary adjunct to the core responsibilities, it is likely that they will continue to remain relevant and necessary in some form.

Question 97: Should the concept of ‘access’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 98: The ACMA has drawn a connection between ‘access’ and captioning interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

¹⁴⁶ Appendix 3, concept number five.

¹⁴⁷ ACMA, *Enduring concepts—communications and media in Australia* (2011), p. 35.

¹⁴⁸ *Broadcasting Services Act 1992*, Part 9D.

¹⁴⁹ *Broadcasting Services Amendment (Improved Access to Television Services) Act 2012*.

¹⁵⁰ *Broadcasting Services Act 1992*, s. 123(2)(i).

5.2 The current intervention/s

Captioning provisions enshrined in codes of practice are included in several television codes of practice.¹⁵¹ The code-related captioning provisions are primarily directed at obligations to provide adequate advice about the provision and transmission of captions in station program guides, in press advertising, in program promotions and at the start of the program. The commercial television code includes an obligation to ensure that there are adequate procedures in place for monitoring closed captioning transmissions and to provide adequate advice if there are technical problems affecting the transmission of captions.

The table below summarises the captioning interventions in the current television broadcasting codes.

Table 16 Summary of interventions relevant to captioning in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Television		
Commercial	Ensure that closed captioning is clearly indicated in program guides. Exercise due care in broadcasting closed captioning, and monitor closed captioning transmissions. Provide adequate advice to relevant viewers if scheduled closed captioning cannot be transmitted. When broadcasting emergency, disaster or safety announcements, provide essential information visually wherever practicable.	Clause 1.24
Community	N/A	N/A
Open Narrowcast	Where closed captioning programming is made available, it will be clearly identified in scheduling information.	Clause 1.8
Subscription Broadcast	Supports the provision of captioning where possible.	Clause 2.4
Subscription Narrowcast	Where closed captioning programming is made available, it will be clearly identified in scheduling information.	Clause 1.8
Radio and television		
ABC	N/A	N/A

¹⁵¹ SBS Codes of Practice, 2006, clause 1.10; Commercial Television Industry Code of Practice, 2010, clause 1.24; Subscription Broadcast Television Codes of Practice, 2007, clause 2.4; Subscription Narrowcast Television Codes of Practice, 2007, clause 1.8.

SBS	<p>Will provide a captioning service for :</p> <ul style="list-style-type: none"> > television programs (other than non-English language programs) broadcast between 6.00 pm and 10.30 pm > television news and current affairs program (other than non-English language programs), broadcast outside of these hours. <p>Closed captioned programs will be clearly marked in program information.</p>	Clause 1.10
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5.3 Contemporary communications issues

As indicated above, the main captioning requirements are included in legislation and the enduring concept of ‘access’ suggests that the impact of convergence and technology has not altered community expectations in this area. Nonetheless, the ACMA is interested to examine whether its assumption that there is an ongoing need for the inclusion of relevant interventions in contemporary codes to support the requirements in the Act is correct.

Captioning
Question 99: What is the current level of reliance, if any, placed on the existing code related interventions?
Question 100: Is it still appropriate for contemporary codes of practice to include regulatory interventions regarding captioning? If not, why not?
Question 101: If the answer to the last question is ‘yes’ what should these interventions look like?
Question 102: Should relevant regulatory interventions be consistent across relevant sectors?

6. Australian identity— requirements for Australian music

6.1 Public interest to be served or harm addressed

The enduring concept of ‘Australian identity’ is that:

Australians should be able to experience Australian voices and stories when using or consuming media and communications services.¹⁵²

One of the key objects of the Act is to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.¹⁵³ It is important that Australian citizens are able to experience Australian stories and hear Australian voices when viewing media and communications services.¹⁵⁴ This is also recognised under the *Australian Broadcasting Corporation Act 1983*, which requires the ABC to reflect Australian identity in its programming.¹⁵⁵

The Act imposes certain content requirements on commercial and subscription television broadcasters. For example, the ACMA must determine standards for commercial television broadcasting licensees that relate to the Australian content of programs.¹⁵⁶ Accordingly, the ACMA has made the Australian Content Standard (the ACS) which sets out the rules relating to Australian programs on commercial television. The ACS requires all commercial free-to-air television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6.00 am and midnight. In addition, there are specific minimum sub-quotas for Australian (adult) drama, documentary and children’s programs.

Under the Act, subscription broadcasting licensees are required to maintain a minimum 10 per cent expenditure on eligible drama. Eligible drama includes an Australian program, an Australian/New Zealand program, an Australian co-production or a New Zealand program.¹⁵⁷

As noted at the outset, this inquiry does not propose to review the requirement of the Act nor the ACS. The inquiry is focused on code-based interventions.

6.1.1 Relevant broadcasting code interventions

Relevantly, the Act provides that codes of practice developed by commercial radio licensees may relate to:

... the broadcasting of Australian music.¹⁵⁸

Accordingly, this paper addresses the code-based intervention that obliges radio broadcasters to broadcast a minimum amount of Australian music.

¹⁵² Appendix 3, concept number five.

¹⁵³ *Broadcasting Services Act 1992*, s. 3(e).

¹⁵⁴ ACMA, *Enduring concepts—communications and media in Australia* (2011) p. 44.

¹⁵⁵ *Australian Broadcasting Corporation Act 1983*, s. 6.

¹⁵⁶ *Broadcasting Services Act 1992*, s. 122(1) and (2)(b).

¹⁵⁷ *Broadcasting Services Act 1992*, Part 7.

¹⁵⁸ *Broadcasting Services Act 1992*, s. 123(2)(g).

Question 103: Should the concept of 'Australian identity' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 104: The ACMA has drawn a connection between 'Australian identity' and interventions about Australian music. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

6.2 The current intervention/s

Australian music interventions are only relevant to radio, therefore the table below only summarises the current radio broadcasting code interventions.

Table 17 Summary of interventions relevant to Australian music in current radio broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	<p>Minimum of 5% to a maximum of 25% depending on the format of the service.</p> <ul style="list-style-type: none"> > At least 5% for nostalgia, jazz and NAC (smooth jazz). > At least 25% if mainstream rock, album oriented rock, contemporary hits, top 40 and alternative. <p>Australian music requirements apply to analog and digital-simulcast services, but not digital-only services.</p>	Code 4
Community	<p>Minimum of 10% or 25% depending of format of the service:</p> <ul style="list-style-type: none"> > At least 10% for ethnic and classical music stations. > At least 25% for all other formats. <p>Australian music played is calculated as a percentage of all music played over a calendar month.</p>	Code 5
Open Narrowcasting	N/A	N/A
Subscription Narrowcast	N/A	N/A
Radio and television		
ABC	N/A	N/A
SBS	N/A	N/A

The current requirement to broadcast Australian content in the commercial radio codes applies to the broadcast on analog and digital-simulcast services, but does not apply to digital-only services.

6.3 Contemporary communications issues

The *Enduring concepts* paper, in relevant comments stated that:

Converged media environments give users more choice and a greater ability to select the device or platform over which they view content. The traditional market structure—whereby users passively consume content mandated by government and produced by defined industry players—is giving way to a more participatory environment, where Australians select and, in some instances, generate content for themselves.¹⁵⁹

However, whether this technological and market shift is sufficient in itself to ensure that Australians are able to experience Australian music when using or consuming media and communications services without regulatory intervention is a matter where views differ. Further, there is a question as to whether the same rules should apply to digital radio as apply to analog radio, if a code-based intervention is necessary.

The Convergence Review examined this issue indicating that during the consultation process it heard from many stakeholders about the continuing need for music quotas on Australian radio. As with other issues discussed, there were two distinct constituencies. Many submissions from radio broadcasters suggested that the existing rules are expensive and inflexible. However, music performers and industry interests stressed that quotas are important for ensuring that Australian content gets a share of airplay.¹⁶⁰

At the time of registering the commercial radio code permitting the exemption for digital-only services from the Australian music requirement, the ACMA said:

In these early days of digital radio, licensees should be afforded the opportunity to experiment with programming formats, including the programming of niche services such as ‘event channels’.¹⁶¹

The Convergence Review recommended that:

- > Australian music quotas should continue to apply to analog commercial radio services offered by content service enterprises and be extended to digital-only radio services offered by content service enterprises.¹⁶²
- > Music quotas should not be applied to occasional or temporary digital radio services.
- > Given the evolving state of internet-based music services, quotas should not be applied at this time.¹⁶³

The ACMA is interested to examine whether the requirements for minimum quotas of Australian music should continue to form part of contemporary codes of practice and, if so, what form they should take.

¹⁵⁹ ACMA, *Enduring concepts—communications and media in Australia* (2011), p. 545.

¹⁶⁰ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 76.

¹⁶¹ http://archive.acma.gov.au/WEB/STANDARD/pc=PC_312202, viewed 17 May 2013.

¹⁶² The Convergence Review noted that organisations would be defined as ‘content service enterprises’ if they have control over the professional content they deliver, have a large number of Australian users of that content and have a high level of revenue derived from supplying that professional content to Australians.

¹⁶³ Convergence Review Committee, *Convergence Review Final Report* (2012), p. 76.

Australian music

Question 105: Is it still appropriate for contemporary radio codes of practice to include regulatory interventions regarding minimum quotas of Australian music? If not, why not?

Question 106: If the answer to the last question is 'yes' what should these interventions look like? Should they apply to both analog and digital broadcasts?

7. Redress—methods of handling and responding to complaints from members of the public

7.1 Public interest to be served or harm addressed

The enduring concept of ‘redress’ is that:

Australians are entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions. These safeguards should also provide users with effective and accessible avenues of complaint and redress if standards are not met.¹⁶⁴

Under Part 11 of the Act, viewers and listeners may complain to the ACMA about program content. Complaints about compliance with the Act, licence conditions or program standards can be made directly to the ACMA. In the case of complaints about compliance with a code of practice the complaint must be made, in the first instance, to the provider of the service. If no response is received or a response is received but it is considered inadequate the complaint can be brought to the ACMA for investigation.¹⁶⁵ It is mandatory for both broadcasters and the ACMA to investigate validly made complaints.

The current framework for addressing code complaints referred above is a ‘co-regulatory’ arrangement that requires industry participants to assume front-line responsibility. The ACMA maintains a role in dealing with matters that are referred to it by complainants, if they are not satisfied with the broadcaster's response, or the broadcaster fails to respond.

7.1.1 Relevant broadcasting code interventions

Relevantly, the Act provides that 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.¹⁶⁶

This inquiry is focused on the code-based methods of handling complaints as enshrined in individual broadcasting codes of practice.

Question 107: Should the concept of ‘Redress’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?

Question 108: The ACMA has drawn a connection between ‘Redress’ and complaints-handling. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

¹⁶⁴ Appendix 3, concept number three.

¹⁶⁵ *Broadcasting Services Act 1992*, ss. 148–151.

¹⁶⁶ *Broadcasting Services Act 1992*, s. 123(2)(h)(i).

7.2 The current intervention/s

Industry sectors have developed discrete complaints-handling provisions within their codes, as summarised in the table below.

Table 18 Summary of interventions relevant to complaints-handling in current broadcasting codes

Broadcasting sector	Summary of intervention	Relevant code provision(s)
Radio		
Commercial	Complaint can be made via letter, fax or electronically where the licensee has the capacity. Complaint should be made within 30 days of the broadcast. Substantive response within 30 business days of receipt, or 45 days if need to seek professional advice.	Code 5
Community	Complaints can be made via letter, fax or email. Complaints will be acknowledged in writing. Substantive response within 60 days of receipt.	Code 7
Open Narrowcasting	Complaints can be made via telephone, post, email or electronically. Complaints will be acknowledged in writing, within 15 days of receipt. Substantive response within 30 days of receipt.	Code 2
Subscription Narrowcast	No specification on how a complaint is to be made. Will be acknowledged and answered in writing within 60 days.	Code 2
Television		
Commercial	Complaints can be made via post, fax or electronically through Free TV website only. Complaint must be made within 30 days of the broadcast. Substantive response within 30 days of receipt.	Code 7
Community	Complaints can be made via letter, fax or email. Response in writing within 60 days of receipt.	Code 7
Open Narrowcast	No specification on how a complaint is to be made. Will be acknowledged and answered in writing within 60 days.	Code 2
Subscription Broadcast	No specification on how a complaint is to be made. Complaint should be made within 30 days of the broadcast. Response within 60 days.	Code 5

Subscription Narrowcast	No specification on how a complaint is to be made. Will be acknowledged and answered in writing within 60 days.	Code 2
Radio and television		
ABC	Complaints can be made in writing, including by using electronic complaint form on ABC's website. Response within 60 days of receipt.	Unnumbered
SBS	Complaints can be made in writing, including by using electronic complaint form on SBS' website. Complaint should be made within 6 weeks of the broadcast. Response within 30 or 60 days of receipt.	Code 8

Complaints-handling provisions have some similarity across codes but also vary in relation to specific details. Generally, the complaints-handling provisions include obligations on the broadcaster, for example, to conscientiously consider complaints within specified periods of time. They also include obligations on the complainant, for example, to make complaints in writing, within a specified period of time and which include sufficient detail to enable the licensee to identify the material and the nature of the complaint. Some of the codes also include provisions obliging the broadcasters to publicise the existence of the codes.¹⁶⁷

The approaches of the national broadcasters are of interest. In the case of SBS, formal complaints are investigated by the SBS Ombudsman. The SBS Ombudsman reports directly to the Managing Director and is independent of all SBS programming departments.

The SBS Ombudsman is responsible for ensuring a proper and fair investigation, and determining whether the complaint is upheld or not. The Office of Audience Affairs, which is managed by the SBS Ombudsman, replies to complaints and manages enquiries and issues about the complaints-handling procedures.

In some cases, for example, where a complaint raises complex issues about a code, the complaint will be referred internally to SBS's Complaints Committee for further consideration.¹⁶⁸

In the case of the ABC, written complaints can be lodged with the ABC's Audience & Consumer Affairs (A&CA). The A&CA is independent of program making divisions within the ABC.¹⁶⁹ The ABC's website also notes that 'audience members wanting to share their views about ABC content or services can engage with ABC content makers and other audience members in the growing number of interactive forums available on the ABC's website as well as the spaces the ABC hosts on various social networking and other sites.'¹⁷⁰

¹⁶⁷ Commercial Radio Codes of Practice and Guidelines, 2013, Clause 7.2; Commercial Television Industry Code of Practice, 2010, clause 7.7.

¹⁶⁸ www.sbs.com.au/aboutus/contact/index/id/142/h/Feedback-Complaints, accessed on 28 May 2013.

¹⁶⁹ <http://about.abc.net.au/talk-to-the-abc/feedback-and-enquiries/complaints-process/>, accessed on 28 May 2013.

¹⁷⁰ *ibid.*

In both instances, if complainants consider the outcome of either the ABC or SBS process is inadequate; they may make a complaint to the ACMA.

7.3 Contemporary communications issues

The importance of having access to effective avenues of complaint continues to have resonance in the current environment. Technological changes over the past twenty years have meant that there is an increased expectation that the process of making and resolving a complaint should be relatively easy and quick. This expectation needs to be balanced with the time and resources impact on industry, especially where complaint resolution is a mandatory requirement.

In this regard, there are reasonable questions about how to balance the needs of industry with community expectations. For example, where should the lines be drawn around what constitutes a valid complaint (e.g. in terms of timeliness, detail of information, nature of complaint and so on).

In relation to obligations for broadcasters to publicise the existence of the codes should this be required 'on-air' or do citizens now routinely look for such information online, making the on-air messages unnecessary?

The ACMA is interested in generally exploring contemporary issues affecting the provision of effective complaints-handling on the part of industry including issues around the rationale for inconsistencies in the current codes; what should constitute a valid complaint; obligations for publicising the existence of the codes and the levels of awareness of avenues of complaint.

Complaints-handling
Question 109: What is the level of general awareness of the complaints-handling avenues?
Question 110: What is effective and accessible information about complaints-handling avenues?
Question 111: Is there a case for consistency across sectors in relation to core requirements on both the complainant and the respondent in terms of timing, form etc?
Question 112: What should constitute a valid complaint? For example, within what period of a program should complaints have to be made? How much information should the complaints have to contain? Should the complainant have to have seen or heard the broadcast they are complaining about?

Appendix 1— Complete list of questions

Specific questions are raised within each chapter. The complete list of questions is also provided here. These questions are intended to assist in framing possible submissions; however submitters need not answer all or any of the questions. If submitters are responding to specific questions raised in this issues paper, please reference the question numbers when providing written responses.

Rationale for the issues/concepts examined

- > **Question 1:** Are the seven key concepts identified above, relevant and useful core principles, in the broadcasting code context?
- > **Question 2:** Does the list of code interventions, as it currently stands, omit matters which should be included or include things which should no longer be addressed in broadcasting codes?

Chapter 1: Community values—classification and decency

- > **Question 3:** Should the concept of ‘community values’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 4:** The ACMA has drawn a connection between ‘community values’ and the interventions of classification requirements and decency provisions. Do you agree with this connection? Are there other interventions or safeguards that should be included here as particularly relevant to ‘community values’?

Classification

- > **Question 5:** Do submitters consider classification of material is a useful and relevant intervention in the current environment? If not, what sort of intervention or regulatory tool do submitters think would be more appropriate in a contemporary communications environment?
- > **Question 6:** Should broadcast content continue to be classified even if that content is not subject to classification requirements on other platforms?
- > **Question 7:** Does industry see value in code-based harmonisation ahead of any proposed legislative reform?
- > **Question 8:** Are there any residual community concerns about the proposal to harmonise classification categories and criteria across media?
- > **Question 9:** What, if any, material on television is appropriately exempt from classification?
- > **Question 10:** How should promotions for material with a ‘higher’ (e.g. M, MA and AV) classification be managed within material which has a ‘lower’ classification (e.g. a promotion for an M program in a PG or G time zone)?

Decency

- > **Question 11:** Is there a continuing need to include code interventions pitched at moderating material that is deemed to offend decency?
- > **Question 12:** If the answer to the preceding question is ‘yes’, Is the ‘accepted community standards’ test effective, appropriate and meaningful? If not, why not? If not, what sort of intervention or regulatory tool do submitters think would be more appropriate in a contemporary communications environment?
- > **Question 13:** If the accepted community standards test is effective, appropriate and meaningful, how should the ACMA determine the current consensus of recognised present day propriety? And, is the ACMA’s formulation (See Figure 3)

in relation to assessing community standards (the matters to which it has regard) in line with community expectations? If not, what other criteria may be appropriate in this context?

- > **Question 14:** What purpose is served by the requirement to have ‘regard to the demographic characteristics of the audience of a relevant program’? In particular, what does basic demographic information (geographic, gender, age etc) tell us, if anything, about attitudes to content?
- > **Question 15:** In addition to any applicable content restrictions, should broadcasters provide listeners with consumer advice and information to assist them to make appropriate decisions about the material they listen to?
- > **Question 16:** If consumer information/advice is appropriate what information would assist listeners to make appropriate decisions about the material they listen to?
- > **Question 17:** If any consumer information were to be provided how and when should it be provided?

Chapter 2: Protection of children—time zones

- > **Question 18:** Should the concept of ‘protection of children’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 19:** The ACMA has drawn a connection between ‘protection of children’ and time zone interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 20:** Are broadcast time zones still necessary as a community safeguard? If so, what form should they take?
- > **Question 21:** If the time zones set out in the broadcasting codes of practice were to be gradually phased out over coming years, what pre-conditions would need to be met before that is done?
- > **Question 22:** What is the community’s current use of and understanding of the parental lock technologies available?
- > **Question 23:** What information would be useful and informative in assisting people to use the parental lock and/or similar technologies?
- > **Question 24:** Assuming that parental lock and other similar technologies will continue to improve and evolve, what form should associated instructional and educational material take to ensure that it remains flexible, adaptable and up to date?
- > **Question 25:** Do consumers have concerns about the fact that multi-channels are permitted to broadcast PG classified material at any time of day?

Chapter 3A: Ethical standards—accuracy and fairness

- > **Question 26:** Should the concept of ‘ethical standards’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 27:** The ACMA has drawn a connection between ‘ethical standards’ and fairness and accuracy interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

Accuracy

- > **Question 28:** What type of programming material should be subject to requirements for accuracy? For example, news, current affairs or some broader category of factual programming?
- > **Question 29:** Should talkback programs that feature opinion-rich material be subject to the same requirements for accuracy as traditional current affairs programs? If so, why? If not, why not?
- > **Question 30:** Should news and/or current affairs programs provided by a subscription broadcasting television licensee be subject to the same requirements

for accuracy as news and current affairs on commercial television? If so, why? If not, why not?

- > **Question 31:** Should requirements for accuracy be treated equally across news and current affairs programs? That is, is there a good rationale for treating news differently to current affairs and, if so, what is that rationale?
- > **Question 32:** Should there be alignment between regulatory interventions across radio and television regarding accuracy? That is, is there rationale for treating radio and television differently in this context and, if so, what is that rationale?
- > **Question 33:** Should the concept of influence affect the calibration of regulatory interventions in relation to accuracy? If so, to what extent and how? If not, why not?
- > **Question 34:** Are all facts equal? If not, why not? What is the appropriate measurement in this context?
- > **Question 35:** What is the appropriate yardstick for measuring accuracy? That is, is it a question of absolute accuracy, a measure based on reasonable efforts or a combination of both concepts?
- > **Question 36:** What is the most appropriate way to remedy established errors of fact?
- > **Question 37:** Are all errors equal? Are some errors more serious than others? What is the appropriate measure of seriousness?
- > **Question 38:** Should the remedy, if any, be based on the seriousness of the error?
- > **Question 39:** What is the role, if any, of a correction in relation to a code of practice breach?
- > **Questions 40:** If it is appropriate to correct an error how and when should that correction be made?
- > **Question 41:** What is the role of online corrections?
- > **Question 42:** What is the role of an on-air correction?
- > **Question 43:** Should the codes include explicit guidance about the manner and timing of corrections?

Fairness

- > **Question 44:** What type of programming material should be subject to requirements for fairness? For example, news, current affairs or some broader category of factual programming?
- > **Question 45:** Should requirements for fairness be treated equally across news and current affairs programs? That is, is there a good rationale for treating news differently to current affairs and, if so, what is that rationale?
- > **Question 46:** Should news and/or current affairs programs provided by a subscription broadcasting television licensee be subject to the requirements for fairness? If so, why? If not, why not?
- > **Question 47:** Given that there are so many sources of professionally produced content available to citizens, is it still necessary to require broadcasters to provide balance or 'significant viewpoints' on a particular topic?
- > **Question 48:** If the answer to the last question is 'yes' what should the requirements for fairness by broadcasters look like?
- > **Question 49:** Should the concept of influence affect calibration of regulatory interventions in relation to fairness? If so, to what extent and how? If not, why not?
- > **Question 50:** Should talkback programs that feature opinion-rich material be subject to the same requirements for fairness as traditional current affairs programs? If so, why? If not, why not?

- > **Question 51:** What are radio listeners' expectations of fairness and/or the opportunity to provide significant viewpoints on a topic in the context of talkback programs that feature opinion-rich material?
- > **Question 52:** Is the code obligation as currently included in the commercial radio code to make reasonable efforts or give reasonable opportunities to present 'significant viewpoints' an appropriate and proportionate concept or should multiple viewpoints be required or should this requirement be deleted given that there are so many sources of professionally produced content available to citizens?
- > **Question 53:** The ACMA has expressed its thinking, in relation to commercial radio, about the principles relevant to the obligation to make reasonable efforts or give reasonable opportunities to present 'significant viewpoints' (see Figure 5). Is the ACMA's thinking on these principles in line with expectations?
- > **Question 54:** What is an appropriate time frame in which to provide an alternative view (if any)? For example, should it be offered within the same program? On the same day? etc
- > **Question 55:** What would a proper and fair opportunity to comment generally look like? For example, should such an offer include a reasonable opportunity to consider the key questions (rather than a 'door-stop' style interview)?
- > **Question 56:** What if anything is an appropriate remedial measure for established findings of breach of the relevant 'fairness' provisions in a code of practice?

Simulating news or events in an alarming or misleading way

- > **Question 57:** Should this type of programming material be subject to regulatory intervention?
- > **Question 58:** If yes, are these matters most closely aligned to the concept of 'Ethical Standards'?
- > **Question 59:** If yes, is it appropriate to limit the intervention to news programming?
- > **Question 60:** Is the distinction between simulating and presenting news or events important?

3B. Ethical standards—advertising

- > **Question 61:** Should the concept of 'ethical standards—advertising' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 62:** The ACMA has drawn a connection between 'ethical standards—advertising' and interventions around transparency and the limits on advertising. Do you agree with this connection? Are there other interventions or safeguards that should be included here?

Transparency

- > **Question 63:** What is the extent of concern, if any, about branded content and embedded advertising being transparent?
- > **Question 64:** To the extent that there is any concern about branded content and embedded advertising failing to be transparent—does that level of concern differ according to the type of content being consumed? For example, are different concerns raised by this content appearing in current affairs programs as opposed to scripted dramas?
- > **Question 65:** To the extent that there is any concern about branded content and embedded advertising failing to be transparent, would that level of concern be assuaged by adequate identification/disclosure of advertising material?
- > **Question 66:** To what extent should licensees present advertisements in such a manner that viewers/listeners should be able to distinguish them from other program material?

- > **Question 67:** In the context of television, what sort of information would viewers find useful/intrusive in assisting them to identify embedded advertising? For example, OFCOM in the UK has introduced a mandatory 'P' symbol for product placement—would Australian television audiences see value in this or would they find it unnecessary or intrusive?

Time limits for advertising/non-program matter

- > **Question 68:** What are television viewers' practices around the traditional 'spot' advertising? To what extent are viewers prepared to 'sit through' the traditional 'spot' advertising breaks and to what extent do viewers record and play later, skip ads etc?
- > **Question 69:** Is it necessary to have a time limit on advertising and non-program material?
- > **Question 70:** If it is necessary to have a limit on the amount of advertising and non-program material what is an appropriate limit?
- > **Question 71:** If a limit on the amount of advertising and non-program material is required is there a simpler way to impose an appropriate 'safety net'.

Hypnosis and subliminal perception

- > **Question 72:** Should this type of programming material be subject to regulatory intervention?
- > **Question 73:** If so, are these matters most closely aligned to the concept of 'Ethical Standards'?

4A. Protection of the public—privacy

- > **Question 74:** Should the concept of 'protection of the public' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 75:** The ACMA has drawn a connection between 'protection of the public' and privacy interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 76:** Given the extent of information sharing in the online context and the comparative lack of regulation in relation to online content, is it appropriate to continue to regulate the broadcast media in this regard? If not, why not?
- > **Question 77:** If the answer to the last question is 'yes', do the current code protections provide appropriate and proportionate and proportionate safeguards? If not, why not and what changes should be made?
- > **Question 78:** If someone posts material onto YouTube or onto a social networking site, should broadcasters be limited in their re-broadcast of that material? If so, why, how and when?
- > **Question 79:** If a third party posts material onto YouTube or onto a social networking site unbeknown to the subject—should broadcasters seek the consent of the subject? Should broadcasters take extra care in the case of subjects that are children?
- > **Question 80:** While it may be regarded, in certain circumstances, as permissible to broadcast certain information (such as criminal behaviour) that is already in the public domain, can such information become private again through, for example, the passage of time?
- > **Question 81:** Should public figures be subject to different privacy protections? If so, why and what should these be? If not, why not?
- > **Question 82:** Are privacy protections appropriately confined to news and current affairs programs? If so, why? If not, why not?

- > **Question 83:** If the answer to the last question is 'yes' should codes of practice include privacy protections to people filmed in observational documentaries, and or the broadcasting of real-life events?
- > **Question 84:** What should be appropriate practices and procedures for obtaining consent from subjects, particularly when they are filmed in observational documentaries or other situations where they are 'caught on camera'?

4B. Protection of the public—interventions designed to address matter that is likely to incite hatred against or vilify

- > **Question 85:** Should the concept of 'protection of the public' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 86:** The ACMA has drawn a connection between 'protection of the public' and interventions designed to address matter that is likely to incite hatred against or vilify. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 87:** Is it necessary and appropriate for contemporary codes of practice to include protections in relation to the incitement/provocation of hatred etc on certain grounds given the substantial body of existing legislative protections outside of the broadcasting codes?
- > **Question 88:** If the answer to the last question is 'yes' then what would an appropriate and proportionate regulatory intervention look like?
- > **Question 89:** If it is necessary and appropriate for contemporary codes of practice to include these protections, should the test and the attributes be aligned across sectors? If not, why not?
- > **Question 90:** Is there an expectation that there is an additional or greater obligation on providers of broadcasting services (than for example, providers of online services) to include relevant protections aimed at preventing the perpetuation of harmful material with the potential to contribute to social discord?
- > **Question 91:** Is the obligation, if any, on providers of broadcasting services to include protections and the way in which these protections are framed affected by the degree of influence associated with a relevant broadcaster? If yes, how is it affected and how should associated regulatory interventions be calibrated? If not, why not?

4C. Protection of the public—emergency information

- > **Question 92:** Should the concept of 'protection of the public' be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 93:** The ACMA has drawn a connection between 'protection of the public' and emergency information safeguards. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 94:** What is the current level of reliance, if any, placed on the broadcast of emergency information?
- > **Question 95:** Is it still appropriate for contemporary codes of practice to include regulatory interventions about the broadcast of emergency information? If not, why not?
- > **Question 96:** If the answer to the last question is 'yes' what should these interventions look like and what is the role and responsibility of citizens and others in ensuring a co-ordinated and functional approach?

5. Access—captioning

- > **Question 97:** Should the concept of ‘access’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 98:** The ACMA has drawn a connection between ‘access’ and captioning interventions. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 99:** What is the current level of reliance, if any, placed on the existing code related interventions?
- > **Question 100:** Is it still appropriate for contemporary codes of practice to include regulatory interventions regarding captioning? If not, why not?
- > **Question 101:** If the answer to the last question is ‘yes’ what should these interventions look like?
- > **Question 102:** Should relevant regulatory interventions be consistent across relevant sectors?

6. Australian identity—requirements for Australian music

- > **Question 103:** Should the concept of ‘Australian identity’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 104:** The ACMA has drawn a connection between ‘Australian identity’ and interventions about Australian music. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 105:** Is it still appropriate for contemporary radio codes of practice to include regulatory interventions regarding minimum quotas of Australian music? If not, why not?
- > **Question 106:** If the answer to the last question is ‘yes’ what should these interventions look like? Should they apply to both analog and digital broadcasts?

7. Redress—methods of handling and responding to complaints from members of the public

- > **Question 107:** Should the concept of ‘Redress’ be relevantly included as a guiding core principle in contemporary broadcasting codes of practice?
- > **Question 108:** The ACMA has drawn a connection between ‘Redress’ and complaints-handling. Do you agree with this connection? Are there other interventions or safeguards that should be included here?
- > **Question 109:** What is the level of general awareness of the complaints-handling avenues?
- > **Question 110:** What is effective and accessible information about complaints-handling avenues?
- > **Question 111:** Is there a case for consistency across sectors in relation to core requirements on both the complainant and the respondent in terms of timing, form etc?
- > **Question 112:** What should constitute a valid complaint? For example, within what period of a program should complaints have to be made? How much information should the complaints have to contain? Should the complainant have to have seen or heard the broadcast they are complaining about?

Appendix 2— Relevant extracts from the Act

Section 3 Objects of this Act

(1) The objects of this Act are:

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- (aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
- (ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and
- (c) to encourage diversity in control of the more influential broadcasting services; and
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and
- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- (fa) to promote the provision of high quality and innovative content by providers of datacasting services; and
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and
- (h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and
- (ha) to ensure designated content/hosting service providers respect community standards in relation to content; and
- (i) to encourage the provision of means for addressing complaints about broadcasting services; and
- (j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and
- (ja) to ensure that international broadcasting services are not provided contrary to Australia's national interest; and
- (k) to provide a means for addressing complaints about certain internet content; and
- (l) to restrict access to certain internet content that is likely to cause offence to a reasonable adult; and

- (m) to protect children from exposure to internet content that is unsuitable for children; and
- (n) to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.

Section 4 Regulatory policy

- (1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and internet services according to the degree of influence that different types of broadcasting services, datacasting services and internet services are able to exert in shaping community views in Australia.
- (2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of broadcasting technologies and datacasting technologies, and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.
- (3) The Parliament also intends that internet carriage services supplied to end- users in Australia, be regulated in a manner that:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on internet service providers; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of internet technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community; and
 - (iii) the supply of internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.
- (3AA) The Parliament also intends that designated content/hosting services be regulated in a manner that:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of communications technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.

(3A) This section does not apply to Part 8B (which deals with international broadcasting services).

(4) In this section:

designated content/hosting service has the same meaning as in Schedule 7.

internet carriage service has the same meaning as in Schedule 5.

internet content has the same meaning as in Schedule 5.

internet service provider has the same meaning as in Schedule 5.

Section 5 Role of the ACMA

(1) In order to achieve the objects of this Act in a way that is consistent with the regulatory policy referred to in section 4, the Parliament:

- (a) charges the ACMA with responsibility for monitoring the broadcasting industry, the datacasting industry, the internet industry and the commercial content service industry; and
- (b) confers on the ACMA a range of functions and powers that are to be used in a manner that, in the opinion of the ACMA, will:
 - (i) produce regulatory arrangements that are stable and predictable; and
 - (ii) deal effectively with breaches of the rules established by this Act.

(2) Where it is necessary for the ACMA to use any of the powers conferred on it by this Act to deal with a breach of this Act or the regulations, the Parliament intends that the ACMA use its powers, or a combination of its powers, in a manner that, in the opinion of the ACMA, is commensurate with the seriousness of the breach concerned.

(3) This section does not, by implication, limit the functions and powers of:

- (b) the Australian Competition and Consumer Commission; or
- (c) any other body or person who has regulatory responsibilities in relation to the internet industry.

(4) In this section:

commercial content service has the same meaning as in Schedule 7.

Section 123 Development of codes of practice

(1) It is the intention of the Parliament that radio and television industry groups representing:

- (a) commercial broadcasting licensees; and
- (b) community broadcasting licensees other than providers of services targeted, to a significant extent, to one or more remote Indigenous communities; and
- (ba) community broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities; and
- (c) providers of subscription broadcasting services; and
- (d) providers of subscription narrowcasting services; and
- (e) providers of open narrowcasting services;

develop, in consultation with the ACMA and taking account of any relevant research conducted by the ACMA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the industry.

- (2) Codes of practice developed for a section of the broadcasting industry may relate to:
- (a) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry; and
 - (b) methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority; and
 - (c) methods of classifying programs that reflect community standards; and
 - (d) promoting accuracy and fairness in news and current affairs programs; and
 - (e) preventing the broadcasting of programs that:
 - (i) simulate news or events in a way that misleads or alarms the audience; or
 - (ii) depict the actual process of putting a person into a hypnotic state; or
 - (iii) are designed to induce a hypnotic state in the audience; or
 - (iv) use or involve the process known as subliminal perception or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness; and
 - (f) in the case of codes of practice developed by commercial broadcasting licensees—broadcasting time devoted to advertising; and
 - (g) in the case of codes of practice developed by commercial radio broadcasting licensees—the broadcasting of Australian music; and
 - (h) methods of:
 - (i) handling complaints from the public about program content or compliance with codes of practice; and
 - (ii) reporting to the ACMA on complaints so made; and
 - (i) captioning of programs for the hearing impaired; and
 - (j) in the case of codes of practice developed by community broadcasting licensees:
 - (i) the kinds of sponsorship announcements that may be broadcast by those licensees; or
 - (ii) the kinds of sponsorship announcements that particular kinds of program may carry; and
 - (k) in the case of codes of practice developed by subscription broadcasting licensees—dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management;
 - (l) such other matters relating to program content as are of concern to the community.
- (3) In developing codes of practice relating to matters referred to in paragraphs (2)(a) and (c), community attitudes to the following matters are to be taken into account:
- (a) the portrayal in programs of physical and psychological violence;
 - (b) the portrayal in programs of sexual conduct and nudity;
 - (c) the use in programs of offensive language;
 - (d) the portrayal in programs of the use of drugs, including alcohol and tobacco;

- (e) the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
 - (f) such other matters relating to program content as are of concern to the community.
- (3A) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that:
- (a) for the purpose of classifying films—those codes apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (b) those codes provide for methods of modifying films having particular classifications under that system so that:
 - (i) the films are suitable to be broadcast; or
 - (ii) the films are suitable to be broadcast at particular times; and
 - (c) those codes require that films classified as “M” may be broadcast only:
 - (i) between the hours of 8:30 pm on a day and 5 am on the following day; or
 - (ii) between the hours of noon and 3 pm on any day that is a school day; and
 - (d) films classified as “MA 15+” may be broadcast only between the hours of 9 pm on a day and 5 am on the following day; and
 - (e) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification.
- (3B) In developing codes of practice referred to in paragraph (2)(a), (b), or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that films classified as “M” or “MA 15+” do not portray material that goes beyond the previous “AO” classification criteria.
- (3C) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing providers of open narrowcasting television services must ensure that:
- (a) for the purpose of classifying films—those codes apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (b) those codes provide for methods of modifying films having particular classifications under that system so that:
 - (i) the films are suitable to be broadcast; or
 - (ii) the films are suitable to be broadcast at particular times; and
 - (c) those codes require that films classified as “M” may be broadcast only:
 - (i) between the hours of 8.30 pm on a day and 5 am on the following day; or
 - (ii) between the hours of noon and 3 pm on any day that is a school day; and
 - (d) films classified as “MA 15+” may be broadcast only between the hours of 9 pm on a day and 5 am on the following day; and
 - (e) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification.
- (3D) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing providers of open narrowcasting television services must

ensure that films classified as “M” or “MA 15+” do not portray material that goes beyond the previous “AO” classification criteria.

(3E) A code of practice referred to in paragraph (2)(i) has no effect to the extent to which it is inconsistent with a standard determined under subsection 130ZZA(1).

(4) If:

- (a) a group representing a particular section of the broadcasting industry develops a code of practice to be observed in the conduct of the broadcasting operations of that section of the industry; and
- (b) the ACMA is satisfied that:
 - (i) the code of practice provides appropriate community safeguards for the matters covered by the code; and
 - (ii) the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and
 - (iii) members of the public have been given an adequate opportunity to comment on the code;

the ACMA must include that code in the Register of codes of practice.

(5) To avoid doubt, a reference in this section to **broadcasting operations** includes a reference to each commercial television broadcasting service provided by a commercial television broadcasting licensee.

(6) To avoid doubt, a reference in this section to **broadcasting operations** includes a reference to each commercial radio broadcasting service provided by a commercial radio broadcasting licensee.

(7) To avoid doubt, a reference in this section to **broadcasting operations** includes a reference to each community radio broadcasting service provided by a designated community radio broadcasting licensee.

123A Review by the ACMA

(1) The ACMA must periodically conduct a review of the operation of subsections 123(3A) and (3C) to see whether those subsections are in accordance with prevailing community standards.

(2) If, after conducting such a review, the ACMA concludes that subsection 123(3A) or (3C) is not in accordance with prevailing community standards, the ACMA must recommend to the Minister appropriate amendments to this Act that would ensure that subsection 123(3A) or (3C), as the case requires, is in accordance with prevailing community standards.

(3) If the Minister receives a recommendation under subsection (2), the Minister must cause a copy of the recommendation to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the recommendation.

Appendix 3—Summary of the ACMA's 16 enduring concepts

The ACMA has identified 16 concepts, which have been organised into the following broad groupings.

Market standards

1. **Competition.** Media and communications markets should be competitive so as to encourage innovation, excellent customer service and diversity of choice. Regulatory settings should reflect the desirability of competitive neutrality across platforms and among market participants.
2. **Quality.** Regulation should support access by Australians to a broad range of quality media and communications services that are commensurate in kind and quality with the demands of consumers. It should promote a range of quality choices, including the best available communications and media services.
3. **Redress.** The public is entitled to have confidence in media and communications safeguards that should appropriately reflect community standards and norms for consumer transactions. These safeguards should also provide users with effective and accessible avenues of complaint and redress if standards are not met.
4. **Efficiency.** Media and communications markets should be supported by policy settings and interventions which are coherent, appropriately calibrated and predictable so that services are provided—and public resources are used—efficiently over time.

Social and economic participation

5. **Access.** Citizens should enjoy reasonable and equitable access to the media and communications infrastructure, services and content necessary to promote their effective participation in society and the economy. Rights-holders should enjoy reasonable and equitable access to media and communications infrastructure to deliver communications services and content, and should be able to secure appropriate return on their intellectual property.
6. **Confidence.** Media and communications policy settings should be coherent, appropriately calibrated and predictable so that all parties are empowered to understand and exercise their rights and responsibilities. Responsibility for media and communications outcomes should be shared between government, industry participants and users.
7. **Digital citizenship.** Citizens and businesses should have the necessary technical proficiency and digital literacy to enable them to engage meaningfully and successfully with and through available communications and media services.

Cultural values

8. **Diversity of voices.** There should be a diversity of perspectives expressed in the public sphere to promote pluralism and sustain a vibrant and healthy democracy.
9. **Australian identity.** Australians should be able to experience Australian voices and stories when using or consuming media and communications services.
10. **Community values.** Delivery of media and communications services and content should reflect community standards.
11. **Localism.** Citizens should have access to media and communications services that are relevant to them and enable them to participate in their local community.

12. **Ethical standards.** Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.

Safeguards

13. **Protection of the public.** Australians should be appropriately protected from harm when using media and communications, and Australians should have access to emergency services to protect life, health and safety of individuals and communities.
14. **Protection of children.** Children in particular should be protected from content or communications that are age-inappropriate or harmful to them.
15. **Digital information management.** The treatment of data by media and communications network operators, service providers and other rights holders should respect user preferences, relevant privacy legislation and applicable community standards.
16. **National interest.** Media and communications settings should reflect the national interest. This includes protecting Australia's interests domestically and promoting Australia's interests internationally through multilateral processes.