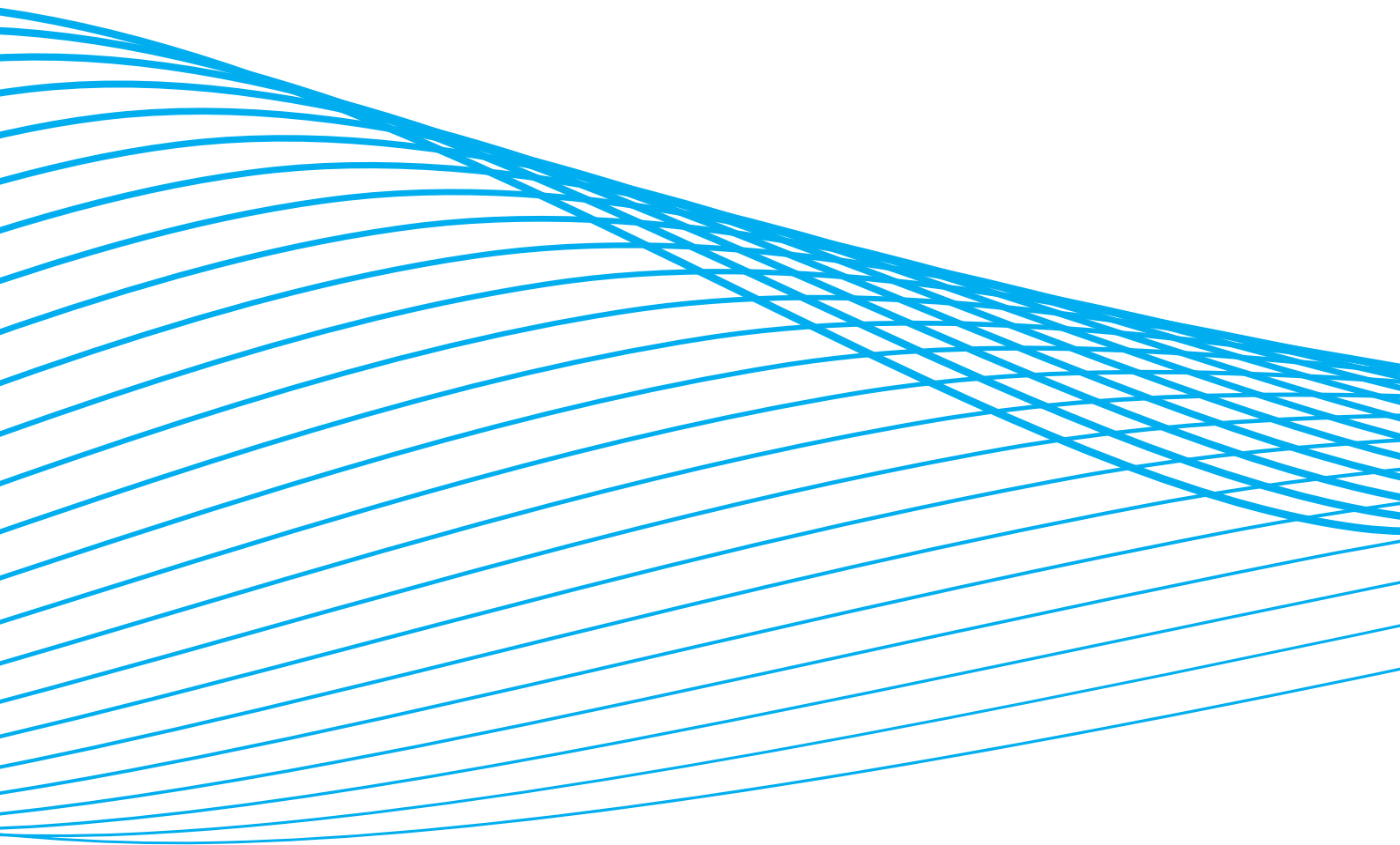


Contemporary community safeguards inquiry

Consolidated report

MARCH 2014



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Executive summary

The Australian Communications and Media Authority (the ACMA) established the *Contemporary community safeguards inquiry* to explore the matters that should be addressed in contemporary broadcasting industry codes of practice. The inquiry's aim is to ensure that codes of practice are fit for purpose in a converging media environment.

The ACMA's disposition in conducting the inquiry was to produce guidance which is evidence-based 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. In this regard, while commenced prior to the current government's deregulation agenda, the inquiry is wholly consistent with it.

At the outset, the inquiry was expected to culminate in specific guidelines for future codes of practice reviews. However, the ACMA has now decided to defer further work on the inquiry and to publish this report, so that the evidence it captures can immediately inform the broader conversation about the future of broadcasting regulation in Australia, as well as the industry code reviews due to be undertaken.

The inquiry engaged and consulted with industry and citizens about which matters needed to be addressed by broadcasters in their codes, in order to provide appropriate community safeguards. It also sought to establish which current protections may no longer be required. To inform its views about contemporary community safeguards, the ACMA relied on a broad base of contributions and evidence, including its experience from administering complaints under the current broadcasting codes.

This report summarises the consultation undertaken during the inquiry and provides a high-level overview of the directions emerging from that process. The inquiry's consultation included:

- > 'first principles' analysis of the enduring concepts, which could or should be reflected in contemporary broadcasting codes¹
- > consultation on the [*Contemporary community safeguards inquiry—Issues paper*](#), which examined the existing code requirements and the extent to which they aligned with the identified enduring concepts
- > seven *Citizen conversations* forums on relevant topics
- > economic research about the market for broadcasting content in Australia and the industry-identified costs of the code requirements
- > community research exploring contemporary citizens experiences of, and expectations about, broadcasting content
- > reviewing the existing information in this area, including the work of complementary reviews and inquiries.

Contributions to the inquiry suggest a high level of consensus about the enduring concepts and core matters that should be reflected in contemporary broadcasting codes. These concepts and matters are strongly correlated with those areas the

¹ ACMA, *Contemporary community safeguards inquiry—Issues paper*, 2013, p. 1.

Broadcasting Services Act 1992 states that broadcasting codes ‘may address’.² Further, contemporary broadcasting codes should:

- > continue to enable public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasting service providers³
- > be sufficiently flexible to accommodate new technology and a changing media environment.

Taking these and other applicable matters into account, the ACMA is of the view that there is strong support and a solid rationale for code-based contemporary community safeguards relevant to:

- > enabling adults to make informed decisions about accessing content based on their personal tastes and preferences
- > preventing the broadcast of certain content that prevailing community standards indicate should be prohibited
- > enabling parents and carers to protect children in their care from inappropriate or harmful content
- > accuracy, impartiality and transparency in certain factual material
- > the transparency of advertising and promotional practices
- > the appropriate balance between program material and advertising/promotional material
- > fair treatment and privacy
- > the provision of reliable consumer information about the mechanisms available for accessing content
- > emergency information
- > the provision of minimum requirements for Australian music
- > complaints-handling systems and information.

There is a lower level of consensus around how these matters should be ‘operationalised’ in codes. For example, it is easy to agree that codes should protect children, but harder to agree how that might most appropriately be done and whether different broadcasting platforms, models and genres logically suggest different (and tailored) methods. There is no doubt that there is scope and support for rationalisation, simplification and adaptation to changes in media markets and practices. As indicated above, further consideration will need to be given to such matters in the context of industry code reviews.

² Section 123 of the *Broadcasting Services Act 1992*.

³ Paragraph 4(2)(a) of the *Broadcasting Services Act 1992*.

The Contemporary community safeguards inquiry

Why an inquiry?

The *Broadcasting Services Act 1992* (the BSA) contemplates that groups representing radio and television broadcasting licensees will develop codes that apply to the broadcasting operations in each industry sector. Codes must be developed in consultation with the ACMA, taking into account any relevant research conducted by the ACMA. The ACMA can only register a code where it is satisfied, among other things, that the relevant code provides appropriate community safeguards.

Section 123 of the BSA lists the matters that may be addressed by broadcasting codes—current codes largely include safeguards relevant to those matters. This list has not been reviewed in 20 years, while the codes are regularly, but individually, reviewed by each industry group on a sector-by-sector basis. Typically, these code reviews result in incremental adjustments or changes in response to pressing concerns on discrete and sector-specific issues.

However, given the pace of social, technological and other changes relevant to the media landscape, the ACMA felt it was time to conduct a ‘first principles’ review of the matters or safeguards that should be reflected in contemporary broadcasting codes.

In March 2013, the ACMA commenced the inquiry with the stated aims of:

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

The inquiry does not replace the individual code reviews, but is a separate exercise, intended to inform these reviews as and when they take place. It should, for example, provide relevant research and assistance for industry in undertaking code reviews by identifying, upfront, areas where code provisions may no longer be required.

There are several matters outside of the inquiry’s scope:

- > non-code related matters or matters that are safeguarded by legislation or licence conditions⁴, save to the extent these matters interact with a consideration of codes
- > matters more appropriately canvassed in individual code reviews, such as individual drafting issues and/or unique or sector-specific elements of the codes.⁵

In addition, the ACMA does not intend for the inquiry to replicate the work being undertaken by other inquiries or reviews, or to consider issues that are outside the scope of the ACMA’s role relating to the development of the codes.⁶

⁴ For example, the Children’s Television Standards 2009 or the Broadcasting Services (Australian Content) Standard 2005.

⁵ For example, the codes for community radio and television include obligations on licensees to develop policy documents relating to volunteering. These obligations are only relevant to the community sector because of the not-for-profit nature of the sector.

⁶ For example, the Australian Law Reform Commission is currently conducting a ‘Serious Invasions of Privacy’ inquiry and a ‘Legal barriers for people with disability’ inquiry.

Overview of this report

The purpose of this report is to provide a high-level overview of the information garnered by the inquiry and give an indication of emerging directions for contemporary community safeguards.

Chapters of this report

- > **Chapter 1: The current environment** discusses the current co-regulatory framework, including the place of codes in that scheme. It offers a snapshot of the existing community safeguards reflected in the codes.
- > **Chapter 2: Overview of consultation, submissions and other input** draws out the key issues raised in submissions to the issues paper and during the *Citizen conversations*.
- > **Chapter 3: Overview of economic research** provides a summary of the key findings of the economic research conducted specifically for this inquiry. It gives a sense of the profound changes taking place in the broadcasting sector and identifies the cost implications reported by industry of existing code safeguards.
- > **Chapter 4: Overview of community research** provides an overview of community attitudinal research conducted for this inquiry and provides contextual information regarding complementary existing ACMA research.
- > **Chapter 5: Emerging directions** provides an indication of emerging directions—the ACMA's focus is on contemporary community safeguards that are more future-proof and target things that matter.

Chapter 1: The current environment

Broadcasting—the legislative framework

The BSA sets out Parliament's intention for broadcasting services in Australia, including that:

... different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia.

...

... broadcasting services ... in Australia be regulated in a manner that, in the opinion of the ACMA ... enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services ...⁷

Further, a key object of the BSA in the regulation of broadcasting services is:

... 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.⁸

Within this context, the BSA establishes a framework for the regulation of broadcasting which combines:

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

Examples of matters currently regulated directly by the BSA include licence conditions regarding the broadcasting of political material and election advertisements, advertisements relating to medicines and tobacco, and programs classified RC or X18+. Australian content and children's content are covered by program standards.

Co-regulation and codes of practice

The BSA's co-regulatory framework specifies that each broadcasting industry sector is responsible for developing its own code, which must be registered or notified to the ACMA.⁹ The BSA does not limit the matters to which the codes may relate, reflecting an intention that codes provide a flexible and responsive means of co-regulation. However, the BSA does set out matters that *may* be considered for inclusion. These are discussed below.

⁷ Section 4 of the *Broadcasting Services Act 1992*.

⁸ Paragraph 3(1)(b) of the *Broadcasting Services Act 1992*.

⁹ Section 11 of the *Broadcasting Services Act 1992* sets out the categories of broadcasting services, namely: national broadcasting services, commercial broadcasting services, community broadcasting services, subscription broadcasting services, subscription narrowcasting services, open narrowcasting services and international broadcasting services. Subsection 123(1) of the *Broadcasting Services Act 1992* contemplates that industry groups representing commercial broadcasting licensees, community broadcasting licensees, providers of subscription broadcasting services, providers of subscription narrowcasting services and providers of open narrowcasting services will develop codes of practice in consultation with the ACMA and taking into account any relevant research conducted by the ACMA.

Once a code of practice has been developed by the community, commercial, subscription broadcasting, subscription narrowcasting or open narrowcasting industry sector, the ACMA must register the code if it is satisfied that:

- > the code provides appropriate community safeguards for the matters covered by 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 been given an adequate opportunity to comment on the code.¹⁰

Codes developed by national broadcasting services—the Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS)—are notified to the ACMA, but are not required to be registered by the ACMA.

Parliament's express intention—matters that may be covered by codes

The introduction of the current co-regulatory broadcasting framework saw the majority of the regulation of program content move from direct regulation—licence conditions in legislation—to industry codes of practice.¹¹

A ministerial statement included in the *Draft Broadcasting Services Bill Explanatory Papers*, talks about the intention to retain direct regulation for some matters and move others into the co-regulatory sphere:

... the provisions of this Part require standards for children's programs and the level of Australian content of programs to be formally determined by the ABA¹² ... and applied to commercial TV broadcasting services. They must be complied with as conditions of licence by commercial television broadcasting licensees. In other areas of program content, and for other service types, the Bill moves from routine, first recourse, use of imposed standards to supervised codes of practice with the ABA having the reserve power to reintroduce standards if the codes should fail.

The rationale underpinning adoption of codes of practice is that inappropriate regulation can bring with it significant economic costs through loss of efficiency and productivity. There can also be social costs as formal regulation can deprive industry of the opportunity to devise a flexible and responsive approach to meeting the demands of the community. However, given the important role broadcasting plays in sustaining and developing Australian cultural life and its democratic, pluralist society, the Government also has a responsibility to the community to intervene to correct perceived market failures. This would include the industry's inability to reflect community standards ... Matters to which codes of practice may relate are not exhaustive ...¹³

Current code safeguards

Largely, the current codes—including those of the national broadcasters—cover the matters outlined in subsection 123(2) of the BSA that have general application to all sectors. For example, all broadcasting sector codes include provisions:

¹⁰ Subsection 123(4) of the *Broadcasting Services Act 1992*.

¹¹ In 1992, the *Broadcasting Services Act 1992* was introduced to replace the *Broadcasting Act 1942*.

¹² The Australian Broadcasting Authority, which merged with the Australian Communications Authority to become the Australian Communications and Media Authority in mid-2005.

¹³ Draft Broadcasting Services Bill explanatory papers: statement by the Minister for Transport and Communications, the Hon. Kim C. Beazley, on the exposure draft of the Broadcasting Services Bill, including a paper entitled *Explanation of the provisions [sic] and key principles of the Broadcasting Services Bill*, 7 November 1991, pp. 32–33.

- > preventing the broadcast of certain programs, including those that are not suitable in accordance with community standards and those that simulate news/events in a way that misleads, depict/induce a hypnotic state or involve subliminal perception
- > promoting accuracy and fairness in news and current affairs programs
- > about complaints-handling methods and reporting to the ACMA.

In these areas, the differences between sectors come from the drafting of the provisions, which can in practice present difficulties in applying the provisions (see the discussion below).

Applying the code provisions

The co-regulatory framework requires complaints about potential breaches of the codes to be made, in the first instance, to the relevant broadcaster. If the broadcaster does not respond within 60 days or the complainant considers the broadcaster's response is inadequate, they can refer the matter to the ACMA, which must investigate unless the complaint is frivolous, vexatious or not made in good faith.¹⁴ Through its investigations of these code complaints, the ACMA has a critical role in interpreting and applying individual code provisions.

As demonstrated in the issues paper, while all codes may cover a particular issue—such as accuracy and fairness of news and current affairs programs—in practice, the drafting across the codes is not consistent. This can present difficulties in interpretation and application.

Despite this challenge, there are considerations which can be applied across all sectors and inform the ACMA's assessment of broadcast content. These considerations, and their application to particular circumstances, are published in relevant investigation reports. In an attempt to increase the utility of these published decisions, the ACMA has recently embarked on a complementary exercise, making an assessment of key areas of ACMA decision-making in relation to broadcasting codes. This includes drawing out similarities and differences in codes and their application. In doing so, it provides a general insight into the principles underlying the ACMA's thinking. It is anticipated that this assessment will be published shortly.

Recent reviews and international perspectives

Media convergence and the rapidly changing contemporary communications environment are not phenomena unique to Australia, its citizens or the broadcasting industry.

Therefore, from the outset of the inquiry, wherever relevant, the ACMA sought to draw on:

- > work by other stakeholders and agencies relevant to understanding the impact of convergence and other developments
- > the regulatory approaches taken in comparable international jurisdictions.

Relevant work by other stakeholders and agencies

The Convergence Review Committee's *Convergence Review* examined the operation of media and communications regulation in Australia and assessed its effectiveness in achieving appropriate policy objectives for the convergent era.¹⁵

¹⁴ Sections 147–149 and 150–151 of the *Broadcasting Services Act 1992*.

¹⁵ Department of Broadband, Communications and the Digital Economy, *Convergence Review*, accessed 6 August 2013, www.archive.dbcde.gov.au/2013/august/convergence_review.

The *Independent Inquiry into the Media and Media Regulation*, among other things, focused on the effectiveness of the current media codes of practice in Australia, particularly in light of technological change that is leading to the migration of print media to digital and online platforms.¹⁶

Review of the National Classification Scheme by the Australian Law Reform Commission (the ALRC) assessed the appropriateness of the existing framework for the classification of media content in Australia for the converged media and communications landscape.¹⁷

International perspectives

An analysis of the approaches adopted in other jurisdictions can inform Australia's own approach to the challenges of convergence. For example, perspectives from New Zealand, United Kingdom, Canada and the United States of America highlight that the issues presented by a converged and digital media and communications environment are also presenting challenges for broadcasting services and citizens outside Australia. Many aspects of Australia's content regulation framework are similar to those of other jurisdictions and those frameworks are similarly faced with changing content delivery methods, new broadcaster business models and developments in how citizens use and access content.

¹⁶ Department of Broadband, Communications and the Digital Economy, *Independent Media Inquiry*, accessed 3 October 2013, www.dbcde.gov.au/digital_economy/independent_media_inquiry.

¹⁷ Australian Law Reform Commission, *National Classification Scheme Review*, accessed 3 October 2013, www.alrc.gov.au/inquiries/national-classification-review.

Chapter 2: Overview of consultation, submissions and other stakeholder input

Why undertake consultation?

Stakeholder consultation processes are an important part of the ACMA's activities. They are essential to ensure that the full range of impacts are taken into account when identifying and assessing how best to solve a problem. The ACMA concurs with the Office of Best Practice Regulation's view that:

Consultation ensures that both those affected by the regulation and the regulator have a good understanding of what the problem is, alternative options to solve the problem, possible administrative mechanisms, possible compliance mechanisms and associated benefits, costs and risks. Lack of consultation can lead to regulation that is inappropriate to the circumstances, costly to comply with and poorly adhered to.¹⁸

Consultation process

The consultation process the ACMA undertook during the inquiry drew input from relevant stakeholders including industry, the not-for-profit sector, the wider community and other regulators and government agencies. The ACMA encouraged interested stakeholders to participate in the inquiry through the following three strategies:

- > invitation to participate both 'live' and online in a series of *Citizen conversations*
- > encouraging informal stakeholder input via social media and email at anytime during the inquiry
- > invitation for formal submissions to the issues paper during the consultation period.

The *Citizen conversations*

Since 2011, the ACMA has hosted a series of conversation-based forums bringing together many voices on issues surrounding convergent media content. The [Citizen conversations series](#) has featured contributions from citizens and consumers, industry representatives and groups, academics, researchers and consumer groups. The series aimed to share information and perspectives from diverse groups about content and regulation in an increasingly converged media landscape, exploring scenarios and solutions that might meet people's needs.

To help inform the inquiry, during the consultation period for the issues paper the ACMA held seven *Citizen conversations* to get a sense of what industry and the public think about the future of the codes and some of the contemporary communications issues arising from existing code requirements.¹⁹ Members of the community joined a mix of industry professionals, academics and journalists at the sessions. Of the seven events, six were public and designed to encourage wide engagement, including by being streamed live.

¹⁸ Department of Finance, accessed 1 October 2013, www.finance.gov.au/obpr/consultation/.

¹⁹ ACMA, *Broadcasting codes inquiry: listening & learning*, accessed 27 June 2013, acma.gov.au/theACMA/engage-blogs/engage-blogs/Broadcast/Broadcasting-codes-inquiry-listening-and-learning.

Topics explored were:

- > classification and the time-shifting audience
- > decency
- > getting the facts right: accuracy
- > fairness, balance and significant viewpoints
- > advertising and the changing world
- > privacy.

A further industry-only workshop focused on complaints-handling.

The *Citizen conversations* attracted 367 registrations with a further 474 online views recorded through live streaming of the forums. Records of proceedings from each of the public conversations are available on the ACMA's website.²⁰

Encouraging input via social media and email at any time

Recognising that mobile communication and social media activity is revolutionising the way many of its stakeholders and the Australian public engage with, discuss and offer their opinions on issues, the ACMA's informal consultation for the inquiry included the facilitation of social media interactions and comments. In particular, throughout the inquiry, the ACMA has made use of social media by:

- > posting original content about the inquiry on its own social media platforms
- > sharing or re-tweeting content about the inquiry from online platforms operated by external organisations, including news outlets, other government agencies or not-for-profit organisations.

Through such informal consultation channels, the ACMA received:

- > 15 informal email submissions on issues relevant to the inquiry, especially the issue of the time zone restrictions which apply to free-to-air television
- > more than 500 external social media comments and posts relevant to the inquiry and topics covered in the issues paper.

The issues paper

To commence its formal consultation for the inquiry, the ACMA released the [*Contemporary community safeguards inquiry—Issues paper*](#) on 3 June 2013 for a six-week consultation period.

The ACMA invited submissions from interested parties on the issues and materials set out in the issues paper and any other issues submitters considered relevant to contemporary community safeguards in Australia's broadcasting codes. Submissions were accepted via email, facsimile and mail. The submission period closed on Monday 15 July 2013, with the ACMA granting some extensions to submitters on request.

The ACMA received 40 formal submissions from citizens, broadcasting industry members, public interest advocacy groups, advertising industry members and government bodies. A list of those who made submissions is in Appendix A. Copies of the submissions are available at www.acma.gov.au/Citizen/Take-action/Consultations/Completed/have-your-say-on-the-broadcasting-codes.

²⁰ ACMA, *Record of proceedings: Citizen conversations series*, accessed 8 November 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

As the starting point for the inquiry, the issues paper sought to:

- > identify core matters or concepts that may have retained significance for contemporary markets and audiences, and the requirements in existing broadcasting codes associated with these concepts
- > examine the particular issues that have arisen through the interaction of these broadcasting code requirements with current community experiences and expectations and changes to broadcasting technologies and business models
- > elicit additional information/submissions from citizens and industry with a view to the ACMA issuing guidance as to whether code provisions should continue to address these issues and, if so, how they may best be addressed in contemporary broadcasting codes.

The issues paper drew heavily on the ACMA's [Enduring concepts](#) work.²¹ *Enduring concepts* identified 16 concepts—across the communications and media landscape—that are of ongoing importance to media and communications in Australia, notwithstanding the changes wrought by convergence.²² Of these, seven concepts were identified by the ACMA in the issues paper as resonant with, and relevant to, broadcasting code requirements. These seven concepts were:

- > **Community values**—Delivery of media and communications services and content should reflect community standards.
- > **Protection of children**—Children should be protected from content or communications that are age inappropriate or harmful to them.
- > **Ethical standards**—Information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes.
- > **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.
- > **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.
- > **Australian identity**—Australians should be able to experience Australian voices and stories when using or consuming media and communications services.
- > **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.

These concepts were then mapped to existing code-based safeguards as set out in Figure 1 below.

²¹ ACMA, *Enduring concepts—Communications and media in Australia*, 2011.

²² The 16 enduring concepts identified in the *Enduring concepts* paper were: competition, quality, redress, efficiency, access, confidence, digital citizenship, diversity of voices, Australian identity, community values, localism, ethical standards, protection of the public, protection of children, digital information management and national interest.

Figure 1: Seven enduring concepts identified in the issues paper and relevant matters addressed by existing code-based safeguards

Enduring concept in issues paper	Relevant matters addressed by existing code-based safeguards
Community values	<ul style="list-style-type: none"> > classification of television content > decency
Protection of children	<ul style="list-style-type: none"> > time zone restrictions > classification of television content
Ethical standards	<ul style="list-style-type: none"> > accuracy > fairness and significant viewpoints > advertising
Protection of the public	<ul style="list-style-type: none"> > privacy and fair treatment > content that incites hatred or vilifies* > emergency information*
Access	<ul style="list-style-type: none"> > captioning
Australian identity	<ul style="list-style-type: none"> > requirements for Australian music
Redress	<ul style="list-style-type: none"> > methods of handling and responding to complaints from members of the public about program content or compliance with codes

*Indicates that these matters will be remapped to the enduring concepts of community values and access respectively—see Chapter 5, Figure 3.

The issues paper set up a framework for stakeholders to consider the core matters and community safeguards that should appropriately be addressed in the codes. In essence, the ACMA asked stakeholders to consider the following two key questions:

1. Should each of the seven core enduring concepts identified by the ACMA in the issues paper be included as part of the guiding framework for contemporary broadcasting codes going forward?
2. Is the style, emphasis and flexibility of particular existing code-based safeguards appropriate?

Stakeholder discussion, input and views on these two broad questions were then further teased out in the 112 individual questions posed by the issues paper and the other consultation processes undertaken during the inquiry.

Summary of stakeholder input to key question 1—core concepts to be included

Although not all submissions addressed every concept, the majority expressed broad agreement that the seven enduring concepts put forward in the issues paper should be included as part of the guiding framework for contemporary broadcasting codes (see below). This was a sentiment which echoed across industry, public interest advocacy groups and citizen input at both the *Citizen conversations* and in submissions.

However, there were some suggestions for inclusion of additional concepts. For example, in *Enduring concepts*, under the rubric of ‘cultural values’, the paper identified the concepts of ‘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) and ‘localism’ (citizens should have access to media and communications services that are relevant to them and enable them to participate in their local community). The Community Broadcasting Association of Australia (CBAA) argued for the inclusion of these two additional concepts in the core principles for the community broadcasting radio sector.²³

Community values

There was general support for contemporary broadcasting codes encouraging providers of broadcasting services to respect community standards and ensure that content aligns with broad community values.²⁴

However, there were some concerns expressed about the appropriate terminology which should be used to reflect this. Commercial Radio Australia (CRA) submitted that including ‘community standards’ in relevant code provisions might inhibit the ability of licensees to meet particular audience preferences for content, if ‘community standards’ were interpreted as representing a ‘single set of [standards] to which all such audiences subscribe’.²⁵

The Australian Council on Children and the Media (ACCM) noted that ‘there is a difficulty with the concept of community values in a community that is so diverse and has so many different sets of values’ and argued that it would be ‘preferable for the system to focus on what is actually harmful rather than what is offensive – so decisions would be based on scientific evidence, rather than values’.²⁶

Free TV Australia (Free TV) submitted that:

... it is important to recognise that the concept of community values includes benefits to be preserved, such as freedom of speech and reporting on matters in the public interest, as well as harms to be avoided.²⁷

Protection of children

There was strong endorsement of the relevance of this concept to contemporary broadcasting codes.²⁸ A number of submissions particularly highlighted the importance of the protection of children as being both appropriate and necessary in the codes because of the important role that broadcasting content plays in shaping children’s views and behaviour.²⁹

For time zone restrictions, stakeholder input to the inquiry indicated that despite technological developments and media convergence, Australians continue to expect that providers of professionally produced content, including broadcasting content, will play a role in protecting children from inappropriate content.³⁰

²³ Community Broadcasting Association of Australia, *Submission CCSI19*, p. 4.

²⁴ FamilyVoice Australia, *Submission CCSI25*; Real Media Real Change, *Submission CCSI46*; Women’s Health Victoria, *Submission CCSI52*.

²⁵ Commercial Radio Australia, *Submission CCSI17*, p. 8.

²⁶ Australian Council on Children and the Media, *Submission CCSI9*, p. 6.

²⁷ Free TV Australia, *Submission CCSI26*, p. 8.

²⁸ Australian Council on Children and the Media, *Submission CCSI9*; Australian Children’s Television Foundation, *Submission CCSI5*; FamilyVoice Australia, *Submission CCSI25*; National Alliance for Action on Alcohol, *Submission CCSI39*; Obesity Policy Coalition, *Submission CCSI40*; Special Broadcasting Service, *Submission CCSI49*.

²⁹ Australian Christian Lobby, *Submission CCSI6*; Adelle Elhosni and Sharley Mesbah Amin, *Submission CCSI22*; National Alliance for Action on Alcohol, *Submission CCSI39*; Obesity Policy Coalition, *Submission CCSI40*.

³⁰ Obesity Policy Coalition, *Submission CCSI40*; FamilyVoice Australia, *Submission CCSI25*.

A number of submissions advocated that the concept of protection of children should not only be directed at codes that focus on programming but should also extend to preventing potentially harmful advertising.³¹ In this regard, the Obesity Policy Coalition (OPC) argued for an enhanced role for protection of children under the codes:

... although presently much responsibility for the protection of children from harmful food advertising is delegated away from the ACMA to the Advertising Standards Board through a system of self regulatory industry codes, we consider there is great scope to realize the object of protection of children through incorporation of restrictions on unhealthy food advertising into broadcast codes developed in consultation with the ACMA.³²

Ethical standards

Submissions and stakeholder input agreed with the inclusion of this concept, where it is relevant to future codes directed at ensuring that the information provided by broadcasting services is fair, accurate and transparent. In particular, submissions noted that the concept of 'ethical standards' is particularly focused on ensuring that citizens may participate constructively in Australian democratic processes.³³ The Free TV submission stated:

Australian viewers want credible sources of news and information that they can trust. Consumers of news and current affairs seeking accuracy and integrity will seek out news providers who maintain and demonstrate high standards in accordance with these general principles.³⁴

However, a number of submissions did not agree with the inclusion of 'ethical standards' when looking at code-based safeguards relevant to advertising time limits. Submissions from the Australian Subscription Television and Radio Association (ASTRA) and ACCM questioned the appropriateness of the connection between advertising time limits and the principle that information-reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes. ASTRA said:

Code provisions relating to transparency have a different purpose to FTA³⁵ regulatory interventions relating to hourly limits on non-program matter, including advertising. Such limits have traditionally been described as meeting FTA viewers' interests in 'uncluttered program presentation'.³⁶

ACCM said:

ACCM accepts that transparency is related to ethical standards, but questions whether limits on advertising belong under this rubric. Rather limits on advertising are about ensuring that the viewing audience actually has substantial enjoyable programming to watch, and broadcast time is not totally swamped by advertising.

³¹ Obesity Policy Coalition, *Submission CCSI40*; Australian Christian Lobby, *Submission CCSI6*; Adelle Elhosni and Sharley Mesbah Amin, *Submission CCSI22*; National Alliance for Action on Alcohol, *Submission CCSI39*.

³² Obesity Policy Coalition, *Submission CCSI40*, pp. 5–6.

³³ Tiffany Lau, *Submission CCSI31*; Free TV Australia, *Submission CCSI26*; Special Broadcasting Service, *Submission CCSI49*; National Alliance for Action on Alcohol, *Submission CCSI39*; FamilyVoice Australia, *Submission CCSI25*; Australian Council On Children and the Media, *Submission CCSI9*; Australian Subscription Television and Radio Association, *Submission CCSI13*; Obesity Policy Coalition, *Submission CCSI40*; ACMA, *Citizen conversations series—Advertising and the changing world* record of proceedings, accessed 8 November 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

³⁴ Free TV Australia, *Submission CCSI26*, p. 14.

³⁵ Free-to-air.

³⁶ Australian Subscription Television and Radio Association, *Submission CCSI13*, p. 8.

It is more a matter of the relationship between the broadcaster and the audience than that between the advertiser and the audience.³⁷

Protection of the public

A number of submissions indicated support for the inclusion of this concept in contemporary broadcasting codes, although there were some differing views on the relevance for contemporary broadcasting codes of matters already addressed in legislation.³⁸ For example, ASTRA argued this for emergency information³⁹ and Free TV argued this for inciting hatred and vilification.⁴⁰

Other submissions suggested that the concept of protection of the public could include additional matters in contemporary broadcasting codes, such as mental health and suicide prevention.⁴¹

Access

On the question of whether 'access' should be included as a core concept, several submissions strongly advocated that contemporary broadcasting codes should be guided by a general principle aimed at ensuring that Australians should enjoy reasonable and equitable access to the broadcasting media.⁴² Other submissions questioned whether the current code-based safeguards were fit for purpose. This is discussed below.

Australian identity

The issues paper identified the increasing ability of Australians to select and generate content themselves and suggested that this raises questions about whether there is a diminishing need for safeguards relevant to ensuring that Australians are able to access Australian content.

Those submitters who addressed the principle of Australian identity felt it is largely relevant and useful to contemporary broadcasting codes.⁴³ However, some submissions identified concerns about the application of the concept, particularly across all sectors.⁴⁴ For example, ASTRA argued that it was not a concept which is relevant to subscription television because they do not use public spectrum.⁴⁵

Redress

In the issues paper, the ACMA explored the issue of access to effective avenues of complaint. The ACMA received two submissions, which requested that it consider replacing the characterisation of 'redress' in this context to 'accountability'.

³⁷ Australian Council on Children and the Media, *Submission CCSI9*, p. 8.

³⁸ Australian Subscription Television and Radio Association, *Submission CCSI13*; FamilyVoice Australia, *Submission CCSI25*; Community Broadcasting Association of Australia, *Submission CCSI19*; Australian Council on Children and the Media, *Submission CCSI9*; Australian Christian Lobby, *Submission CCSI6*; Real Media Real Change, *Submission CCSI46*.

³⁹ Australian Subscription Television and Radio Association, *Submission CCSI13*.

⁴⁰ Free TV Australia, *Submission CCSI26*.

⁴¹ Mindframe, *Submission CCSI36*.

⁴² Media Access Australia, *Submission CCSI34*; Australian Communications Consumer Action Network, *Submission CCSI7*; Susan Bates, *Submission CCSI14*.

⁴³ FamilyVoice Australia, *Submission CCSI25*; Community Broadcasting Association of Australia, *Submission CCSI19*.

⁴⁴ FamilyVoice Australia, *Submission CCSI25*; Free TV Australia, *Submission CCSI26*; Media, Entertainment & Arts Alliance, *Submission CCSI35*; Morgan Parkinson, *Submission CCSI41*.

⁴⁵ Australian Subscription Television and Radio Association, *Submission CCSI13*.

ACCM said:

Redress sounds like there has been some kind of personal wrong, and raises the spectre of arguments about standing to complain. The complaints-based system under the Broadcasting Services Act is more a matter of harnessing the public as lay law enforcers, in the name of some very public-spirited goals.⁴⁶

And Free TV said:

The concept of redress should not be included as a guiding core principle. Redress is defined as setting right of what is wrong, relief from wrong or injury. It implies that the viewer has suffered a particular wrong that needs correcting and presupposes the existence and materiality of that wrong. This is usually not the case in relation to complaints made about television programming where the vast majority of complaints under the Code are not upheld by the broadcaster or subsequently by the ACMA. It also implies a transactional relationship between the viewer and broadcaster involving personal injury or loss which is generally not applicable (although it may apply to certain matters which directly affect a particular individual such as privacy). Complaint-handling is broader than this concept. The key principles that underpin an effective complaints-handling system are accountability and transparency.⁴⁷

Irrespective of the title, however, the key element under discussion is the availability of effective and accessible avenues of complaint. In this regard, the enduring importance of such avenues is strongly supported by all industry sectors.⁴⁸ Free TV has previously noted:

Viewer complaints play an important role in the co-regulatory process. Stations regard complaints about their service as valuable feedback on their programming, and as an essential element of their responsiveness to the community.⁴⁹

Submissions to the ACMA's issues paper from public interest advocacy organisations highlighted a critical role for complaints-handling mechanisms in contemporary broadcasting codes.⁵⁰ As Real Media Real Change stated:

... there is an unequivocal need for consistent, transparent and uniform complaints-handling provisions within broadcasting codes.⁵¹

Summary of stakeholder input to key question 2—appropriateness of the style, emphasis and flexibility of particular code provisions

The issues paper asked a number of questions about how matters, where there was a justification for code-based safeguards, could most effectively be addressed. Some of these questions were also canvassed during the *Citizen conversations* and on social media. In response, most submissions tended to focus on practical improvements to the style, emphasis and flexibility of individual code provisions—as articulated below. However, some submissions addressed the overall operation of provisions more generally and the issue of the best approach to regulatory policy and design.

⁴⁶ Australian Council on Children and the Media, *Submission CCSI9*, p. 3.

⁴⁷ Free TV Australia, *Submission CCSI26*, p. 26.

⁴⁸ For example, Australian Subscription Television and Radio Association, *Submission CCSI13*; Community Broadcasting Association of Australia, *Submission CCSI19*.

⁴⁹ Free TV Australia, *Commercial Television Industry Code of Practice Annual Code Complaints Report 1 July 2010 to 30 June 2011*, p. 1, accessed 30 September 2013. www.freetv.com.au/content/common/pg-code-complaints-report.seo.

⁵⁰ Australian Council on Children and Media, *Submission CCSI9*; FamilyVoice Australia *Submission CCSI25*; Australian Christian Lobby, *Submission CCSI6*; Australian Privacy Foundation, *Submission CCSI12*; Obesity Policy Coalition, *Submission CCSI40*.

⁵¹ Real Media Real Change, *Submission CCSI46*.

Regulatory policy

In its issues paper, the ACMA identified the inquiry's aim to 'produce guidance which is based on strong evidence and supportive of the minimum level of regulatory intervention necessary to achieve the desired aim'. In this context, the ACMA identified the principles of influence, flexibility, calibration, global engagement and shared responsibility as being relevant. Several industry submitters supported the ACMA's stated approach to the inquiry.⁵²

A number of submissions specifically expressed views on the utility of the principle of influence. In its submission to the issues paper, ASTRA stated that it considers that the principle of influence 'remains relevant and should be kept in mind when comparing the codes of different sectors'.⁵³

Similarly, the Australian Narrowcast Radio Association (ANRA) submitted that it considers that the concept of influence is still relevant to the regulatory policy applied to contemporary broadcasting codes.⁵⁴ Other submitters urged caution on the application of the concept. Free TV submitted that the concept is not relevant to identify the core matters that should be addressed in contemporary broadcasting codes and noted that, if a matter emerges as worthy of protection, then the matter is important 'regardless of the level of perceived influence, or platform'.⁵⁵ The CBAA argued that the concept of influence, with its currently defined focus on reach and revenue, has limited relevance to the calibration of appropriate mechanisms for community broadcasting, because that sector is not-for-profit and is focused on particular communities.⁵⁶

CRA's submission underlined the importance of having regard to the changed industry dynamics and emphasised that concepts applied in a contemporary environment must be 'flexible enough to accommodate the dynamics of the future; when greater regulatory controls may be necessary for platforms with increasing levels of influence'.⁵⁷ In this regard, CRA stated that 'the concept itself is not the issue, but the manner in which that concept is applied in light of a converged environment'.⁵⁸

Consistency of provisions across sectors

In the issues paper, the ACMA summarised areas where existing code-based safeguards applied across all sectors and, conversely, where those safeguards apply only to some sectors. The ACMA sought submissions on whether, where multiple sectors' codes address a core matter, consistency is desirable across the sectors. Most submissions on consistency came from the broadcasting industry.

Free TV's submission advocated for consistency across the sectors for the core matters but flexibility relating to how individual sectors' apply the safeguards for those matters:

In as much as there are common community standards, they should apply regardless of the delivery mechanism that the consumer/citizen is using to access content. How the community safeguards are applied may, of course, be handled differently by each sector of the industry.⁵⁹

⁵² Free TV Australia, *Submission CCSI26*; Australian Subscription Television and Radio Association, *Submission CCSI13*.

⁵³ Australian Subscription Television and Radio Association, *Submission CCSI13*, pp. 3–4.

⁵⁴ Australian Narrowcast Radio Association, *Submission CCSI11*.

⁵⁵ Free TV Australia, *Submission CCSI26*, p. 5.

⁵⁶ Community Broadcasting Association of Australia, *Submission CCSI19*.

⁵⁷ Commercial Radio Australia, *Submission CCSI17*, p. 5.

⁵⁸ *Ibid.*

⁵⁹ Free TV Australia, *Submission CCSI26*, p. 5.

ASTRA submitted that ‘regulatory controls should be applied according to the degree of influence that different types of services exert in shaping community views in Australia’.⁶⁰

CRA said that in a regulated media environment it strongly supports the objective of regulatory parity across all sectors subject to the BSA and across different platforms within a particular sector.⁶¹ CRA stated that it accepts that it may not be possible to adopt a ‘one-size-fits-all’ approach but that there is significant scope to improve the degree of regulatory parity within the media and communications sector, particularly for the codes.⁶²

ANRA submitted that the open narrowcast radio sector ought not to be ‘saddled’ with rules that apply to other sectors merely for the sake of conformity.⁶³ ANRA was of the view that there is not ‘a one cap fits all answer to the issues raised by the ACMA in the issues paper’.⁶⁴

The Australian Community Television Alliance (ACTA) and CBAA noted that the specific resourcing of the community television and community radio sectors, respectively, impacts on a number of areas and justifies community broadcasting being treated differently to the other broadcasting industry sectors. For example, the volunteer nature of the sector impacts on licensees’ ability to respond to complaints within the same time frame as organisations with employed regulatory officers and legal advisers.⁶⁵

Suggestions from submitters for areas of emphasis in codes not identified in the issues paper

A number of submissions to the issues paper suggested new areas of emphasis for code-based provisions, for example:

- > Women’s Health Victoria proposed safeguards to specifically address the objectification of women as relevant to community values⁶⁶
- > the CBAA submitted that appropriate and respectful coverage of Indigenous issues should be regarded as a community safeguard, particularly as it relates to ethical standards and protection of the public⁶⁷
- > Media Access Australia (MAA) submitted that codes should include requirements relating to the provision of audio descriptions for television content⁶⁸
- > a citizen submitted that the codes should contain provisions to prohibit blasphemy on radio and television⁶⁹
- > Mindframe’s submission proposed that codes should better ensure that people who may be vulnerable—including people affected by suicide or those experiencing symptoms of mental illness—do not feel intimidated or marginalised by complaints procedures in any future codes designed to protect their rights.⁷⁰

⁶⁰ Australian Subscription Television and Radio Association, *Submission CCSI13*, p. 3.

⁶¹ Commercial Radio Australia, *Submission CCSI17*.

⁶² *ibid*.

⁶³ Australian Narrowcast Radio Association, *Submission CCSI11*, p. 4.

⁶⁴ Australian Narrowcast Radio Association, *Submission CCSI11*.

⁶⁵ Community Broadcasting Association of Australia, *Submission CCSI19*; Australian Community Television Alliance, *Submission CCSI8*.

⁶⁶ Women’s Health Victoria, *Submission CCSI52*.

⁶⁷ Community Broadcasting Association of Australia, *Submission CCSI19*.

⁶⁸ Media Access Australia, *Submission CCSI34*.

⁶⁹ Joshua Ebert, *Submission CCSI21*.

⁷⁰ Mindframe, *Submission CCSI36*.

Community values—classification of television content and decency on radio

A number of industry submissions supported a more consistent approach to classification. Harmonisation of the classification criteria and markings were seen as an appropriate way of achieving greater platform neutrality.

However, some public interest advocacy groups submitted that they had concerns about how realistic the goal of platform neutral harmonisation is. They were also concerned about whether it would lead to certain broadcast content no longer being classified in circumstances where that content (when available on other platforms) is not subject to classification requirements.⁷¹

More detailed consumer advice, particularly for M and MA classified content, was also suggested as an area where the effectiveness of code provisions could be improved.⁷² There was an argument put that:

Classification and content regulation requires more complex provisions beyond age-verification, and should include consideration of vulnerability and prevention of harm as standard industry practice.⁷³

Audio content is not currently subject to classification categories. Therefore, the term ‘decency’ tends to be used to explore comparable content issues on radio. It was clear from comments made at the *Citizen conversations* forum on decency, as well as from social media comments, that individuals are unlikely to agree on what content is ‘decent’, because it is a subjective concept.⁷⁴

Protection of children—time zone requirements

In the issues paper, the ACMA drew a specific connection between protection of children and the television code provisions—the time zone requirements—that specify the times of day when content with certain classifications can be broadcast. As discussed above, there were some submissions advocating for additional matters to be considered as core matters for future codes, under the concept of protection of children. On the continuing relevance of the time zone requirements there were polarised views. ASTRA submitted:

It is important, however, that the means by which protection is achieved is relevant and appropriate to community expectations regarding the nature of the service, and how content is accessed and used. Time zones have never been appropriate for STV, given its discretionary nature and subscription-based access, and the expectations of STV subscribers to (as adults) be able to watch what they want when they want, with the confidence to be able to manage children’s access to content on STV.

...

However, such regulatory interventions may continue to be relevant for universally and freely accessible broadcasting platforms such as FTA television.⁷⁵

The commercial television industry noted that ‘in recent years the proliferation of much more effective tools to protect children has rendered the concept of time zones irrelevant’.⁷⁶ In this regard, Free TV noted:

⁷¹ Australian Council on Children and the Media, *Submission CCS/9*; Real Media Real Change, *Submission CCS/46*.

⁷² FamilyVoice Australia, *Submission CCS/25*; Australian Council on Children and the Media, *Submission CCS/9*.

⁷³ Mindframe, *Submission CCS/36*, p. 2.

⁷⁴ Mark Newton, [Twitter](#), 6 June 2013, viewed 10 June 2013; ACMA, *Citizen conversations series—Decency* record of proceedings, accessed 3 October 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

⁷⁵ Australian Subscription Television and Radio Association, *Submission CCS/13*, p. 6.

Parents can now use parental locks, information contained in EPGs [electronic program guides] and on-screen i-plates available at the touch of a button, DVDs, on-demand content from providers such as iTunes, Foxtel Go and ABC iView as well as dedicated government funded and subscription children's channels to ensure their children do not see inappropriate content.⁷⁷

Free TV recommended the 'removal of time zone restrictions for commercial free-to-air television broadcasters, on a staged basis if necessary'.⁷⁸

ACTA submitted that once 'the final analogue transmissions cease in late 2013, parental lock functions based on program classifications will be available on the bulk of television receivers'.⁷⁹ ACTA submitted that this 'provides the opportunity to review the G classification time zones' with the 'widespread availability of receivers with parental lock' removing 'the rationale for broadcasters to be mandated to provide G classified content'.⁸⁰

ACCM was strongly opposed to the phasing out of the time zone requirements and noted that while:

... it is true that many people time-shift their viewing ... there is no evidence that families with young children would be willing, able and empowered to do so in a way as to protect their children from inappropriate material in the event that time zones were dismantled.⁸¹

The Australian Christian Lobby (ACL) argued for the ongoing necessity of time zone requirements, noting that 'it is essential to comply with the community expectation that daytime television will be safe for children, especially at times when children are likely to be viewing'.⁸² A number of informal submissions from citizens and citizen representatives also expressed support for the continued relevance of time zone requirements, particularly for M-classified content.⁸³

The National Alliance for Action on Alcohol (NAAA) submitted that 'time zones are an important component in reducing the exposure of children and young people to alcohol advertising on broadcast television'.⁸⁴ In this regard, NAAA said that:

... broadcast time zones remain an important indicator of times when a high number of children and young people are watching television. By prohibiting alcohol advertising in child-friendly viewing times, time zone based advertising restrictions are an objective measure for advertisers and broadcasters scheduling alcohol advertising.⁸⁵

The Australian Children's Television Foundation (ACTF) put the view that the Australian media landscape is in a 'transitional period' and, because of this, it expected that (in the future) time zones will be 'reviewed, possibly recalibrated or eventually done away with'.⁸⁶ However, it submitted that it supported the continuation

⁷⁶ Free TV Australia, *Submission CCSI26*, p. 11.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ Australian Community Television Alliance, *Submission CCSI8*, p. 1.

⁸⁰ *ibid.*

⁸¹ Australian Council on Children and the Media, *Submission CCSI9*, p. 7.

⁸² Australian Christian Lobby, *Submission CCSI6*, p. 10.

⁸³ R Cassidy, *Submission CCSI16*; Debra Ireland, *Submission CCSI27*; Leah Langdon, *Submission CCSI30*; Alex Pickens, *Submission CCSI42*; Trent Lewis, *Submission CCSI31*; Andy Vinnicombe, *Submission CCSI51*; Lea Saunderson, *Submission CCSI48*; Jane Tillett, *Submission CCSI50*; John Rau (Deputy Premier, Government of South Australia), *Submission CCSI44*; Kristen Read, *Submission CCSI45*.

⁸⁴ National Alliance for Action on Alcohol, *Submission CCSI39*, p. 6.

⁸⁵ *ibid.*, p. 7.

⁸⁶ Australian Children's Television Foundation, *Submission CCSI5*, p. 7.

of existing time zone requirements 'at the present time' and said that 'it is clear that parents continue to trust free-to-air broadcast television more than they trust the unregulated internet'.⁸⁷ ACTF made the point that time zone requirements will not, on their own, 'guarantee that children will not watch inappropriate material' but can 'work in concert with the discretion and choice of parents'.⁸⁸

Ethical standards—accuracy

The issues paper posed a number of questions about the scope of the existing accuracy provisions in the codes. In particular, it sought feedback about whether requirements for factual accuracy should extend beyond a news and current affairs context into other programming genres.⁸⁹ Some submitters felt that extending the obligations to all 'information' or 'fact' based content would take the accuracy obligations too far.⁹⁰ They suggested that this was because such a wide range of programs include factual or information content (such as lifestyle or renovation programs) and viewers are not likely to expect journalistic standards of accuracy to apply to the information being provided in all these different types of programs.⁹¹ CRA submitted that, while it accepted that a code for accuracy is appropriate for news programs, and possibly for current affairs, it considers that such a requirement is not appropriate for talkback programs.⁹² In a similar vein, FamilyVoice said that:

Programs that are 'opinion-rich' should be treated differently from 'factual programs'. The right to express an opinion is fundamental to freedom of expression and should be constrained only by protection of public order, health and morals, and the reputations of others.⁹³

Other submitters were broadly supportive of accuracy obligations being applied to all information claimed to be factual, which might extend beyond the current broadcasting code definitions of 'news programs' or 'current affairs programs'.⁹⁴

On the issue of materiality⁹⁵, those who made submissions largely expressed the view that while it may be 'desirable' that all facts are accurate, in practice not all facts are comparable. For example, Free TV said that it supported the basic proposition that factual material presented in news and current affairs should be accurate but in the 'regulatory context' the principle should apply to significant or material facts only.⁹⁶

An alternative view was expressed by Real Media Real Change:

... a fact is a fact and true by its very nature. It is not possible to have unequal facts, let alone unequal truth. Something is either true or it is false in the same way that it is either factual or inaccurate.⁹⁷

The question of how to measure or test compliance with accuracy obligations drew a variety of views. While it can be difficult to generalise, currently there are broadly two different approaches to accuracy provided for in existing codes. In the current

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ The accuracy provisions in the *Australian Broadcasting Corporation Codes of Practice*, 2011 apply to 'fact-based' content.

⁹⁰ Australian Subscription Television and Radio Association, *Submission CCSI13*; Free TV Australia, *Submission CCSI26*.

⁹¹ Ibid.

⁹² Commercial Radio Australia, *Submission CCSI17*.

⁹³ FamilyVoice Australia, *Submission CCSI25*, p. 8.

⁹⁴ Real Media Real Change, *Submission CCSI46*; FamilyVoice Australia, *Submission CCSI25*.

⁹⁵ By materiality, we mean whether all facts are necessarily material or equal. The ACMA asked submitters whether all facts are equal, see ACMA, *Contemporary community safeguards inquiry—Issues paper*, 2013, p. 39.

⁹⁶ Free TV Australia, *Submission CCSI26*.

⁹⁷ Real Media Real Change, *Submission CCSI46*, p. 18.

commercial television code, for example, the requirement can be described as absolute—factual material *must* be accurate—and it applies to news and current affairs programs.⁹⁸ The approach used in some other codes focuses on the level of effort made to ensure accuracy. For example, some codes focus on whether the broadcaster has used reasonable efforts, or all reasonable efforts to ensure that factual material is accurate. The current commercial radio code applies a hybrid approach. It requires news programs to be presented accurately and for licensee's broadcasting current affairs programs to use 'reasonable efforts' to ensure that factual material is reasonably supportable as accurate.

There was some support for absolute accuracy.⁹⁹ Free TV said that it was:

... not persuaded that an objective 'reasonable steps' formulation ... as appears in some other broadcasting codes is a more appropriate measure of accuracy. What is reasonable is open to speculation and subjective judgments about what the journalist should or should not have done and directs attention to the methods used in the collection of the report rather than the material that was actually communicated.¹⁰⁰

Others expressed more confidence in the 'reasonable efforts' test. At the *Citizen conversations—Getting the facts right: Accuracy*, Professor Julian Disney, Chair of the Australian Press Council, argued for reasonable steps in the context of press reporting.¹⁰¹ Ross Coulthart, Chief Investigations reporter for Channel Seven's *Sunday Night* program, commented that because all journalists try to ensure that all facts are accurate, the distinction is 'nonsensical'.¹⁰² A representative from the ABC noted that the reasonable efforts requirement gives journalists an opportunity to prove themselves and the system is very effective.¹⁰³

Some broadcasters made the point in their submissions that their particular operations merited a different test altogether. For example, ACTA noted that community television licensees tend not to produce their own content in-house. Consequently, they have a 'limited ability to determine whether a news or current affairs program presented for broadcast has actually complied with the code'.¹⁰⁴ For this reason, ACTA suggested that:

... the community interest is better served through regulatory measures which recognise that licensees are not necessarily directly responsible for creating the material they broadcast; but which nevertheless encourage accuracy and fairness in presenting factual material and provide remedial relief in cases where accuracy or fairness has been compromised. A breach would then only be found by the ACMA if erroneous material was broadcast, the error was brought to the

⁹⁸ Emphasis added.

⁹⁹ Real Media Real Change, *Submission CCSI46*; ACMA, *Citizen conversations series—Getting the facts right: Accuracy* record of proceedings, accessed 3 October 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

¹⁰⁰ Free TV Australia, *Submission CCSI26*, p. 16.

¹⁰¹ ACMA, *Citizen conversations series—Getting the facts right: Accuracy* record of proceedings, accessed 3 October 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

¹⁰² *ibid.*

¹⁰³ *ibid.* It should also be noted that while the *Australian Broadcasting Corporation Codes of Practice*, 2011 requires reasonable efforts, the Australian Broadcasting Corporation is subject to an overarching statutory duty under the *Australian Broadcasting Act 1983*, which requires the Australian Broadcasting Corporation Board to ensure that the gathering and presentation by the Australian Broadcasting Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism.

¹⁰⁴ Australian Community Television Alliance, *Submission CCSI8*, p. 2.

licensee's attention, and the licensee did not take action to broadcast a correction.¹⁰⁵

ASTRA argued that there should be no 'hard and fast' rules about accuracy; instead it should be determined on a 'case-by-case basis'.¹⁰⁶ ASTRA further submitted that in the contemporary media environment we should be looking to a 'new form of accuracy':

For a 24 hour breaking news channel like Sky News, for example, a situation may be very fluid and the accuracy of information reported may be hard to pinpoint as the story evolves during rolling coverage. The old days of verifying information through several sources before publishing are gone. This calls for a new form of accuracy, including transparency about the state of knowledge, the nature of any source being relied on, as well as the capacity to clarify information as a story develops.¹⁰⁷

Ethical standards—fairness

In the issues paper, the ACMA identified that the term 'fairness' is used by way of a general descriptor to reflect the requirements in the codes that are variously described as:

- > impartiality¹⁰⁸
- > the requirement to distinguish the reporting of factual material from commentary and analysis¹⁰⁹
- > the requirement to represent viewpoints fairly¹¹⁰
- > the requirement to make reasonable efforts or give reasonable opportunities to present significant viewpoints when dealing with controversial issues of public importance.¹¹¹

The relevant ABC code provision uses the terminology 'impartiality and diversity of perspectives'¹¹² and the SBS code states that 'reasonable effort should be made to ensure news and current affairs programs are balanced and impartial'.¹¹³ In this context, the ACMA sought to explore views on the appropriate safeguards for fairness in a contemporary and converged world. Specifically, the issues paper sought to elicit input on issues such as the distinctions, if any, that may exist for fairness requirements between news and current affairs. It also queried, if there are distinctions, what the appropriate calibration of regulatory safeguards should be and how redress might best be achieved where these fail.

It was put to the ACMA in submissions that a diversity of viewpoints in media is best promoted through regulatory settings that encourage competition and innovation, rather than through attempts to 'enforce' balance on each individual media entity.¹¹⁴ The need for specific 'fairness' provisions was questioned in light of the multitude of media platforms currently available to consumers and licensees' ability to exercise

¹⁰⁵ *ibid*, p. 3.

¹⁰⁶ Australian Subscription Television and Radio Association, *Submission CCSI13*, p. 7.

¹⁰⁷ *ibid*.

¹⁰⁸ Clause 4.4.1 of the *Commercial Television Industry Code of Practice*, January 2010 (incorporating amendments to July 2013); clause 4.1 of the *Australian Broadcasting Corporation Codes of Practice*, 2011.

¹⁰⁹ Clause 4.4.2 of the *Commercial Television Industry Code of Practice*, January 2010 (incorporating amendments to July 2013); codes 2.1 and 2.3(a) of the *Commercial Radio Australia Codes of Practice and Guidelines*, September 2013.

¹¹⁰ Clause 4.3.1 of the *Commercial Television Industry Code of Practice*, January 2010 (incorporating amendments to July 2013).

¹¹¹ Code 2.3(b) of the *Commercial Radio Australia Codes of Practice and Guidelines*, September 2013.

¹¹² Standard 4 of the *Australian Broadcasting Corporation Codes of Practice*, 2011.

¹¹³ Code 2.2 of the *SBS Codes of Practice 2006* (incorporating amendments as at December 2012).

¹¹⁴ Australian Subscription Television and Radio Association, *Submission CCSI13*.

editorial freedom to deliver content to cater to specific audiences who may purposely tune in to a particular service to hear a particular viewpoint.¹¹⁵

Social media comments received by the ACMA strongly supported the view that news reportage should be ‘just the facts’, impartial and free from bias.¹¹⁶ Frustration was expressed with journalists and reporters ‘giving an opinion piece masquerading as news’.¹¹⁷ The need for news to be impartial, as distinct from being ‘fair’, also seemed to be supported by industry.¹¹⁸ Industry submitters said that determining whether the presentation of news provides ‘appropriate balance of significant viewpoints’ or ‘represents viewpoints fairly’ inherently involves some subjective assessment, which can be difficult.¹¹⁹

For content other than news, Free TV submitted that traditionally it has been accepted that current affairs programs are of a different nature to news and may present a report from a particular perspective.¹²⁰

Corrections

Citizen submissions supported code requirements being explicit about the manner and timing of corrections and apologies.¹²¹ For example, it was suggested that the current code provisions that allow corrections ‘at the earliest opportunity’ are not sufficient and that necessary corrections should be in the next published episode of the relevant program.¹²²

Industry submissions supported a role for corrections in ensuring the accuracy of information. However, they advocated broadcasters having autonomy about when and how a correction should be made, rather than codes giving the regulator powers to compel corrections.¹²³ For example, ASTRA and CBAA submissions supported a proportionate approach to remedial requirements, but argued against explicit requirements for on-air corrections.¹²⁴

Ethical standards—advertising

There appears to be general understanding that advertising is critical to the commercial broadcasting industry because it funds production. Contemporary audiences are well aware that advertising is the ‘price’ they pay for otherwise accessing content for free.¹²⁵ Free TV agreed in its submission that ‘there are community expectations that an appropriate balance between program matter and advertising is maintained’.¹²⁶ However there is a tension about whether time limits are needed to ensure this balance or whether the market could deliver the balance. Some industry comments at the *Citizen conversations* recognised the power held by audiences—they will switch off if there are too many advertisements. Further,

¹¹⁵ Commercial Radio Australia, *Submission CCS17*.

¹¹⁶ Glenn Wright, [Facebook](#), 17 June 2013, viewed 24 June 2013; Angela Gallace, [Facebook](#), 18 June 2013, viewed 24 June 2013; Carleen Steele, [Facebook](#), 18 June 2013, viewed 24 June 2013.

¹¹⁷ Lynne Hadley, [Facebook](#), 17 June 2013, viewed 24 June 2013.

¹¹⁸ Free TV Australia, *Submission CCS26*.

¹¹⁹ Australian Subscription Television and Radio Association, *Submission CCS13*; Free TV Australia, *Submission CCS26*.

¹²⁰ Free TV Australia, *Submission CCS26*.

¹²¹ Saad Khan, *Submission CCS29*.

¹²² *ibid.*

¹²³ Australian Community Television Alliance, *Submission CCS8*; Commercial Radio Australia, *Submission CCS17*; Free TV Australia, *Submission CCS26*.

¹²⁴ Australian Subscription Television and Radio Association, *Submission CCS13*; Community Broadcasting Association of Australia, *Submission CCS19*.

¹²⁵ Mark Ellis, *Submission CCS23*; ACMA, *Citizen conversations series—Advertising and the changing world record of proceedings*, accessed 3 October 2013, www.acma.gov.au/theACMA/About/Events/Citizen-Conversations-Series/record-of-proceedings-citizen-conversation-series.

¹²⁶ Free TV Australia, *Submission CCS26*, p. 22.

particularly in commercial television, programs have a set duration meaning more advertisements could not be accommodated within that schedule.

Citizen submissions expressed concerns about the ability of broadcasters to appropriately balance promotional content and program content in the absence of specific safeguards.¹²⁷ One citizen submission stated:

The business model of a commercial broadcaster involves the delivery of an audience to advertisers, and maximum profitability is achieved when the income, mainly from advertising, exceeds the costs by the greatest amount. This does not necessarily correspond to achieving the highest number of viewers, nor providing the highest quality of programming. In the absence of regulation, audience needs will be responded to only to the extent that this happens to increase the difference between income and cost.¹²⁸

Another citizen submitted that 'there is a compelling reason to maintain a time limit on advertising and non-program material, namely equitable access to quality programming'.¹²⁹ This submission stressed that 'all citizens should have access to the best quality programming that can be economically provided'.¹³⁰

Citizen submissions canvassed the impact that advertising and promotional material can have on the ability to access and enjoy quality content. This was echoed in the broader social media commentary relevant to the inquiry where citizens expressed their views on advertising practices. Citizen submissions and comments indicated that:

- > program promotions during programs (such as pop-ups, overlays and banners) are getting excessive and adversely affect viewing experience of quality content
- > there is a difference between passive product placement within programs and product endorsements (that is, a call to action) within programs and how these can adversely affect viewing experience of quality content.¹³¹

Program promotions during programs

Several submissions from citizens called for action to stop the 'interference' of station (program) promotions during program content, noting that, in their view, program promotions clutter the program content and negatively impact on the artistic integrity of the programs.¹³² For example:

... increasingly seen are opaque banner program promotions (now frequently animated) that show for a short period on top of the program matter, and also translucent promotions that appear for longer periods - typically the entire time between two commercial breaks.¹³³

Product placement and product endorsements within programs

Social media comments included a diverse range of views about product placement style advertising. Some citizen submissions indicated that product placement 'assumes that marketers can influence consumer sentiment from behind the scenes without having to be up-front'.¹³⁴ While others felt that product placement is 'subtle enough not to get on the nerves of viewers who don't look for it'.¹³⁵

¹²⁷ Mark Ellis, *Submission CCSI23*; Morgan Parkinson, *Submission CCSI41*; Tiffany Lau, *Submission CCSI31*.

¹²⁸ Sylvia Else, *Submission CCSI24*, p. 1.

¹²⁹ Mark Ellis, *Submission CCSI23*, p. 1.

¹³⁰ *ibid*, p. 2.

¹³¹ Kozo Morimoto, *Submission CCSI37*; Sylvia Else, *Submission CCSI24*; Morgan Parkinson, *Submission CCSI41*.

¹³² Morgan Parkinson, *Submission CCSI41*; Kozo Morimoto, *Submission CCSI37*; Sylvia Else, *Submission CCSI24*.

¹³³ Sylvia Else, *Submission CCSI24*.

¹³⁴ Jim McIntosh, [Facebook](#), 24 June 2013, viewed 1 July 2013.

¹³⁵ Aaron Tyrrell, [Facebook](#), 24 June 2013, viewed 1 July 2013.

A number of comments drew the distinction between passive product placement and calls to action, for example:

There is a range of product placement from innocuous placement on set which helps fund the content to offensive endorsement that becomes the whole purpose of the production of content.¹³⁶

And:

Product placement is bearable when it is literally 'placement'. However the credibility of the program is reduced when it comes to lingering camera shots, over-mention of product names and inclusion of features and benefits.¹³⁷

Protection of the public—privacy

Submissions to the inquiry indicated widespread community and industry support for safeguards relating to the broadcast of material that discloses personal information or intrudes on a person's seclusion.¹³⁸ The CBAA said:

Community radio stations exist to meet their relevant community interest and, through the guiding principles, have committed to promote harmony and diversity. Based on this, and widespread public support for rules about privacy it is appropriate that the Codes continue to include privacy protections for the public.¹³⁹

However, submissions also stressed the fundamental importance of ensuring that there is an appropriate balance between respecting the privacy of individuals and the right of the public to be informed on matters of public importance, and the essential role which the 'public interest' test plays in this context.¹⁴⁰ Submissions suggested that the 'public interest' test used in the codes should be clearer and could be enhanced.¹⁴¹ The Australian Privacy Foundation submitted:

It is essential that the qualification [on the privacy protections provided by the codes] be upgraded to ensure that not only does a public interest exist, but also that it is of sufficient significance that it outweighs the individual's privacy interest. The operative words could be amended simply by appending those words to the expression 'unless there is a public interest'. However, alternative formulations could achieve the level of protection that is needed, provided that they implement the Proportionality Principle.¹⁴²

Industry submissions questioned the need for privacy requirements to be expanded to program genres beyond news and current affairs.¹⁴³ However, citizen and public interest advocacy groups supported expansion of the code provisions to ensure that an individual's right to privacy is safeguarded across all program genres.¹⁴⁴

¹³⁶ Pedro Fp, [Facebook](#), 24 June 2013, viewed 1 July 2013.

¹³⁷ Darren Williams, [Facebook](#), 25 June 2013, viewed 1 July 2013.

¹³⁸ Real Media Real Change, *Submission CCSI46*; Australian Human Rights Commission *Submission CCSI10*; FamilyVoice Australia, *Submission CCSI25*; Australian Subscription Television and Radio Association, *Submission CCSI13*; Free TV Australia, *Submission CCSI26*; Special Broadcasting Service, *Submission CCSI49*.

¹³⁹ Community Broadcasting Association of Australia, *Submission CCSI19*, p. 7.

¹⁴⁰ FamilyVoice Australia, *Submission CCSI25*.

¹⁴¹ Real Media Real Change, *Submission CCSI46*; Australian Privacy Foundation, *Submission CCSI12*.

¹⁴² Australian Privacy Foundation, *Submission CCSI12*, p. 1. The Australian Privacy Foundation's submission included a copy of its *Meta-Principles for Privacy Protection*, which includes the 'Proportionality Principle' which states that 'the benefits arising from all privacy-intrusive aspects must be demonstrated to be commensurate with their financial and other costs, and the risks that they give rise to'.

¹⁴³ Australian Subscription Television and Radio Association, *Submission CCSI13*; Free TV Australia, *Submission CCSI26*.

¹⁴⁴ Australian Privacy Foundation, *Submission CCSI12*; Real Media Real Change, *Submission CCSI46*; FamilyVoice Australia, *Submission CCSI25*.

There was support across submissions for public figures being afforded the same privacy protections as other citizens, although submissions acknowledged that some public roles may lead to a greater likelihood that the broadcast of private information would be in the public interest.¹⁴⁵

Protection of the public—content that incites hatred or vilifies

Free TV suggested that broadcasters already have to comply with relevant anti-discrimination laws.¹⁴⁶ Further, these legislative requirements serve as a sufficient method of protection of the public in this area, without the need to replicate those requirements in codes.¹⁴⁷ Some comments made at *Citizen conversations* expressed the view that the force of social media on these matters means that code-based safeguards are no longer necessary—because the public will protest via social media.

Conversely, arguments for retaining these provisions were also made.¹⁴⁸ The Australian Human Rights Commission (AHRC) noted the contribution that codes may play in this context stating that ‘codes are likely to constitute a major reference point for broadcasting organisations on what is and is not permissible’ regarding discrimination and therefore are likely to have a ‘significant impact’ on compliance with discrimination law.¹⁴⁹ The AHRC submission talked about the importance of balancing any associated safeguards with the rights to freedom of information and expression. It noted that this right imposes a ‘substantial burden’ on government agencies before any restriction can be accepted as permissible.¹⁵⁰

On the practical operation of the current code provisions, SBS said that ‘it is important to ensure that audiences understand that context is important in the presentation of material’.¹⁵¹ The CBAA observed that the community radio codes have a different requirement relevant to inciting hatred and vilification compared to code-based safeguards which apply to other sectors of the broadcasting industry.¹⁵²

Protection of the public—emergency information

Public interest advocacy groups and industry advocated for the continued importance of broadcasting services in protecting the public in emergency situations and the high value that the community still attributes to the broadcast of emergency information.¹⁵³ The degree of reliance which the community places on this information and, by extension, the importance of the accuracy of this information, was also underlined by submitters.¹⁵⁴ As Free TV stated:

... commercial free to air television broadcasters play a vital role in the dissemination of critical emergency information—a role they take very seriously

¹⁴⁵ FamilyVoice Australia, *Submission CCSI25*; Joe Public, *Submission CCSI43*; Australian Subscription Television and Radio Association, *Submission CCSI13*.

¹⁴⁶ Free TV Australia, *Submission CCSI26*.

¹⁴⁷ *ibid.*

¹⁴⁸ Real Media Real Change, *Submission CCSI46*; Community Broadcasting Association of Australia, *Submission CCSI19*; Special Broadcasting Service, *Submission CCSI49*.

¹⁴⁹ Australian Human Rights Commission, *Submission CCSI10*, pp. 4–5.

¹⁵⁰ *ibid.*

¹⁵¹ Special Broadcasting Service, *Submission CCSI49*, p. 4.

¹⁵² Community Broadcasting Association of Australia, *Submission CCSI19*.

¹⁵³ Australian Communications Consumer Action Network, *Submission CCSI7*; FamilyVoice Australia, *Submission CCSI25*; Media Access Australia, *Submission CCSI34*; Community Broadcasting Association of Australia, *Submission CCSI19*.

¹⁵⁴ Australian Communications Consumer Action Network, *Submission CCSI7*; FamilyVoice Australia, *Submission CCSI25*; Media Access Australia, *Submission CCSI34*; Community Broadcasting Association of Australia, *Submission CCSI19*; Real Media Real Change, *Submission CCSI46*.

which is highly valued by local communities and local emergency management services.¹⁵⁵

Access—captioning

A number of industry submissions suggested that the impact of legislative requirements has made specific code-based requirements for captioning irrelevant. For example, ASTRA and Free TV put forward that new and comprehensive legislative obligations mean there is no longer any need to include captioning matters in the broadcasting codes.¹⁵⁶ ASTRA submitted that it could, however, envisage a role for the codes in providing information to subscribers about captioning programming that is available, if there was evidence to demonstrate that such provisions are required.¹⁵⁷

SBS submitted that captioning requirements:

... relate more to services than standards ... and SBS does not consider it necessary to refer to these matters in its Codes of Practice. Captioning also has regulatory compliance obligations attached. For this reason, SBS will be removing the closed captioning provisions in its Codes of Practice following recent amendments to the BSA in respect of broadcasters' captioning obligations.¹⁵⁸

In contrast to these industry submissions, advocacy groups argued for a continued role for principles supporting access for all Australians in the codes. The Australian Communications Consumer Action Network (ACCAN) and MAA both indicated that the provisions in broadcasting codes are significant in reinforcing the essential role that captions play in many Australians' lives. MAA submitted that the current commercial television code addresses four elements, which it believes are not otherwise reflected in legislation and are 'fundamental for delivering access to Deaf and hearing impaired consumers'.¹⁵⁹ These are: consumer advice regarding the availability of captions, due care in provision and monitoring, adequate advice if captions cannot be provided and access to essential information during disaster or safety announcements.¹⁶⁰

Australian identity—Australian music on radio

Citizen and some industry submissions identified Australian identity as relevant and useful to contemporary broadcasting codes.¹⁶¹ The Media, Entertainment & Arts Alliance (MEAA) submitted that the production and distribution of Australian and local content was one of the three key areas the Convergence Review highlighted as justifying ongoing regulatory intervention and that without specific interventions Australian television drama, documentary and children's programming would not be produced at sufficient levels.¹⁶²

However, there was a range of industry submissions that questioned the appropriateness of contemporary radio codes continuing to contain specific mechanisms to encourage licensees to provide Australian music programming. Both ASTRA and CRA submitted that interventions regarding Australian music pose threats to the economic viability and competitiveness of the commercial and subscription

¹⁵⁵ Free TV Australia, *Submission CCSI26*, p. 26.

¹⁵⁶ Australian Subscription Television and Radio Association, *Submission CCSI13*; Free TV Australia, *Submission CCSI26*.

¹⁵⁷ Australian Subscription Television and Radio Association, *Submission CCSI13*.

¹⁵⁸ Special Broadcasting Service, *Submission CCSI49*, p. 2.

¹⁵⁹ Media Access Australia, *Submission CCSI34*, p. 2.

¹⁶⁰ *ibid*, p. 2.

¹⁶¹ Free TV Australia, *Submission CCSI26*; Media, Entertainment & Arts Alliance, *Submission CCSI35*; Morgan Parkinson, *Submission CCSI41*.

¹⁶² Media, Entertainment & Arts Alliance, *Submission CCSI35*.

narrowcast radio sectors, especially without comparable requirements on other platforms, such as online music services.¹⁶³

Redress—methods of handling and responding to complaints from members of the public about program content or compliance with codes

Submissions from public interest advocacy groups highlighted a critical role for complaints-handling mechanisms in contemporary broadcasting codes.¹⁶⁴ For example, Real Media Real Change stated:

There is an unequivocal need for consistent, transparent and uniform complaints-handling provisions within broadcasting codes.¹⁶⁵

Some submissions expressed the view that the current codes are not sufficiently clear and that complaining is seen as a futile exercise because it might not result in any response or action by the broadcaster.¹⁶⁶ In contrast, industry submissions posited that existing processes are well understood by the community and that there is a high level of awareness about the avenues open to the community to complain and their submissions largely focused on ways in which the complaints-handling provisions of the codes could be improved so they were less financially and administratively burdensome.¹⁶⁷ These submissions also suggested that licensees should be permitted to distinguish formal complaints from 'feedback' because there is an important distinction between the two and the role that they are intended to play.¹⁶⁸

As part of this, it was suggested that certain obligations should be applied to complainants before the complaint is recognised as formal. This is because difficulties would arise if broadcasters were required to address complaints that did not have to comply with obligations about form, content and timing. CRA said that there are practical reasons for limiting complaints to a certain time frame after a relevant broadcast. These included issues relating to it being 'unlikely to have any record of the broadcast' or the relevant 'corporate memory' no longer being available and the licensee therefore not being in a position to comprehensively respond.¹⁶⁹

Similarly non-industry submitters recommended that broadcasting codes should require complainants to provide written complaints, to lodge their complaints in a timely manner and to provide sufficient detail about the broadcast in order to make a valid complaint.¹⁷⁰ It was thought that greater specificity about the obligations on complainants would enhance the complaints process.¹⁷¹

CRA expressed a preference that a complainant be a listener of a relevant program and did not support the right of 'any person' to complain.¹⁷² Free TV stated that:

... it is reasonable to require a complainant to have seen the relevant content on television in their licence area in order to make a complaint. Campaign complaints that are initiated via social media, community groups or programs such as Media

¹⁶³ Commercial Radio Australia, *Submission CCSI17*; Australian Subscription Television and Radio Association, *Submission CCSI13*.

¹⁶⁴ Australian Council on Children and Media, *Submission CCSI19*; FamilyVoice Australia, *Submission CCSI25*; Australian Christian Lobby, *Submission CCSI6*; Australian Privacy Foundation, *Submission CCSI12*; Obesity Policy Coalition, *Submission CCSI40*.

¹⁶⁵ Real Media Real Change, *Submission CCSI46*.

¹⁶⁶ FamilyVoice Australia, *Submission CCSI25*.

¹⁶⁷ Community Broadcasting Association of Australia, *Submission CCSI19*.

¹⁶⁸ *ibid.*

¹⁶⁹ Commercial Radio Australia, *Submission CCSI17*, p. 19.

¹⁷⁰ FamilyVoice Australia, *Submission CCSI25*.

¹⁷¹ Real Media Real Change, *Submission CCSI46*.

¹⁷² Commercial Radio Australia, *Submission CCSI17*.

Watch should not be captured as part of the Code complaints process if the complainant has not seen the relevant broadcast.¹⁷³

Observations

Stakeholder input to the inquiry highlights a myriad of challenges for identifying the appropriate scope of contemporary community safeguards for broadcasting services. The directions emerging from this input and the broader information canvassed by the inquiry are set out in the final chapter of this report—Emerging directions.

¹⁷³ Free TV Australia, *Submission CCSI26*, p. 28.

Chapter 3: Overview of economic research

To inform the inquiry, economic analysis of the reported costs imposed by the current codes on broadcasters was undertaken. These reported costs fall into two categories:

1. Compliance costs—the direct costs incurred by broadcasters in complying with code requirements.
2. Opportunity costs—the costs incurred by broadcasters because they are unable to change their behaviour or business models due to the restrictions imposed on them by the code requirements.

The analysis covered the commercial television, commercial radio, subscription broadcast television, community television and community radio sectors. The ACMA commissioned PricewaterhouseCoopers (PwC) to undertake economic research into the market for content in Australia, and the financial performance and financial impact of the current codes on the two commercial sectors. The ACMA conducted its own economic research into the subscription broadcast television and community broadcasting sectors.

The ACMA has published all of this research at www.acma.gov.au. An overview of the key findings is set out below. These findings are primarily qualitative, with a focus on identifying which particular code requirements are considered to have the greatest impact on broadcasters, as identified by the broadcasters themselves, and the nature of these impacts. As noted in the PwC research, in relation to the impact analysis about the costs of the code requirements, the research was based on data provided by a sample of industry participants who chose to take part in the research.

Why consider costs to broadcasters?

The BSA expresses parliament's intention that broadcasting services be regulated 'in a manner ... that enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services'.¹⁷⁴ Consequently, a consideration of the cost imposed on providers of broadcasting services by the codes is directly relevant to an inquiry such as this one. Significant changes in the market and media landscape mean the current research is particularly timely. Other costs which may relate to the codes, such as costs incurred by the ACMA, other related industries and citizens, do not fall within the scope of this inquiry.

The economic research represents one element of the information base informing the inquiry and must be considered alongside other inputs to provide a balanced analysis.

Commercial television and radio broadcasting

The economic research project undertaken by PwC comprised three elements:

- > an analysis of the market for audio and audiovisual content in Australia
- > an analysis of the financial performance of commercial television and radio broadcasters
- > an analysis of the financial impacts of the current industry codes on commercial television and radio broadcasters.

¹⁷⁴ Paragraph 4(2)(a) of the *Broadcasting Services Act 1992*.

In defining the market for content in Australia, PwC's analysis focused on audio and audiovisual content and the segments of the broadcasting industry that are primarily responsible for delivering this content to Australian consumers—free-to-air television, subscription broadcast television and commercial radio. PwC also drew on the experiences of broader media content providers, such as cinema, music distributors and internet services, particularly in the context of convergence and its impact on the availability of audio and audiovisual content in Australia.

For the purposes of the research, PwC defined 'content' as 'information that is packaged as a product for the purposes of consumption'. In this context, PwC noted that content can be delivered and consumed through a range of mediums, including terrestrial television and radio signals, satellites, cables, the internet, optical discs, printed paper and live performances, and on the basis of many-to-many, one-to-many and one-to-one relationships.¹⁷⁵

PwC's analysis of the financial performance of the commercial television and radio broadcasting industries used self-reported data from *Broadcasting financial results*, which is published by the ACMA. This aspect of PwC's report also relied on other publicly available financial data, including data from PwC's *Australian Entertainment and Media Outlook*, and the annual reports of the major publicly listed broadcasters, to provide a more complete analysis of revenue, costs and profitability in the sector.

To explore the costs of the codes, PwC engaged with commercial television and radio broadcasters through:

- > online surveys
- > a series of targeted interviews.

Online surveys

Two online surveys were developed by PwC in consultation with the ACMA and broadcasters—one for commercial radio and one for commercial television. The purpose was to collect qualitative feedback from as many broadcasters as possible on the cost of the codes. Both surveys comprised three questions, each of which asked the participating entities to indicate (using a five-point scale) the extent to which each nominated code requirement imposed a compliance cost and an opportunity cost. They were also asked to what extent their organisation would be likely to achieve the objectives of each nominated code requirement, even if the codes did not exist.¹⁷⁶

The response rates to the survey were relatively low, which limits the ability to generalise the survey findings as representing the sectors as a whole. In addition, PwC did not seek to validate the responses to the survey through the analysis or comment on any similarities or differences between survey feedback and interview feedback. The surveys were designed to elicit broadcaster feedback about the relative cost of individual code requirements, not to measure the absolute cost of the codes.

Targeted interviews

PwC conducted a series of targeted interviews with representatives of commercial radio and television networks including, where relevant, their network affiliates—collectively described as 'network entities'. PwC interviewed nine network entities (five from commercial television and four from commercial radio) and one industry association. Interview subjects were selected to be broadly representative based on

¹⁷⁵ 'Many-to-many' refers to the distribution of content from numerous sources to numerous sources (for example, Twitter); 'one-to-many' refers to the distribution of content from a single source to many users (for example, television broadcast); 'one-to-one' refers to the distribution of content from one source to one user (for example, email).

¹⁷⁶ In the online surveys, PwC focused on broad requirements (for example, classification), rather than the individual requirements, for ease of respondent understanding.

market share, location (that is, metropolitan or regional) and, in the case of radio, format type (that is, music or talkback).

As with the survey results, caution should be exercised in interpreting the results of the targeted interviews. The views expressed by representatives of network entities during the interviews naturally only reflect the experience and opinions of that individual entity and should not be regarded as more generally representative of the sector. The number of participants in the interviews was relatively low, which limits the ability to generalise the findings as representative of a sector as a whole.

Market for content in Australia

PwC's analysis highlights an expansion and fragmentation of the market for audiovisual and audio content in Australia over the past decade. More broadly, it indicates that the past decade has witnessed the gradual shift from physical to digital consumption of audio and audiovisual content, and the growing popularity of over-the-top (OTT) delivery services.¹⁷⁷

In this environment, PwC notes that both the volume of content available (driven primarily by the growth in broadband penetration) and the number of platforms and providers has increased dramatically and continues to grow.

Television

While broadcast television remains a dominant source of audiovisual material, consumer engagement with this content is changing. For example, people are increasingly 'time-shifting' live programming—using personal video recorders (PVRs) to record scheduled programs and consume the program at a time that is more convenient for them)—multi-tasking while watching television, and consuming 'television' content over the internet through catch-up or internet protocol television services (IPTV).

PwC notes that time-shifting and 'ad-skipping' has the potential to reduce the effectiveness of traditional television advertising—blocks of advertisements interspersed during programming—as consumers have the ability to skip the advertisements of recorded programs. Outside of television, key sources of audiovisual content include cinema, video products, various OTT services (such as YouTube) and interactive games.

Trends data indicates that Australians have gradually shifted their consumption of audiovisual content from physical to digital, are increasingly embracing the internet as a source of content, and are consuming more and more audiovisual content from non-traditional services offered by Google, Apple, Netflix and VEVO.

Radio

Commercial radio remains a key source of audio content in Australia. PwC notes that data regularly released by CRA indicates that the weekly cumulative reach of commercial radio increased from 8.5 million in 2003 to 9.5 million in 2012—a compound annual growth rate (CAGR) of 1.3 per cent. This rate of growth is below that of Australia's population over the same period. Furthermore, the average length of time that Australians spent listening to commercial radio on average declined from 19 hours a week in 2003 to under 16 hours a week in 2012.

The growth in audio streaming—from sources other than commercial radio services—and trends such as the shift from physical to digital consumption of music and the

¹⁷⁷ Over-the-top services is a general term for voice, video and data services that are delivered over a network and provided by an entity other than the operator of the network. These services are delivered 'over the top' of existing infrastructure and do not require business or technology affiliations with the host ISP or network operator.

continuing popularity of pirated audio content, all contribute to an increasingly contested market for audio content.

Financial performance of commercial television broadcasters

PwC states that although revenue growth for commercial television broadcasters was positive in 2009–10 and 2010–11, the overall trend since 2005–06 has been negative. This reflects a structural shift in the market for advertising, driven by the emergence of the internet, and significant macroeconomic shocks, such as the global financial crisis and the European sovereign debt crisis.

The cost of acquiring content represents the single largest expenditure item for commercial television broadcasters, accounting for approximately one-third of their total costs. Programming costs increased over the past decade, largely driven by the rising cost of producing and acquiring Australian content.

Notwithstanding the above trends, the profitability of commercial television broadcasters has been steady over the past decade (with the exception of 2007–08 and 2008–09), reflecting the efforts of broadcasters to control their non-programming costs over this period.

PwC projects that, over the next five years, commercial television broadcasters will continue to contend with:

- > the shift of advertising revenue to the internet—noting that the television broadcasters will be in a position to exploit this shift (if only in part) through their catch-up television services
- > time-shifting and ad-skipping behaviour—requiring broadcasters to increase the attractiveness of ‘live’ program material (such as sport) and increased use of product placement.

Financial performance of commercial radio broadcasters

PwC’s analysis of the financial performance of commercial radio broadcasters found that both expenditure and revenue for commercial radio broadcasters increased steadily from 1994–95 to 2003–04, as the number of licences grew from 165 to 254. Expenditure has declined since 2008–09 as a result of cost controls applied across the industry, particularly by regional broadcasters. Revenue growth has slackened since the mid-2000s due to the impact of macroeconomic shocks and the structural shift of advertising moving to the internet—though commercial radio has enjoyed a more stable revenue stream than commercial television. PwC concludes that this is a reflection of commercial radio’s greater reliance on local advertising sales, which are more stable than global and national advertising buyers.

The profitability of commercial radio broadcasters increased from 1994–95 to 2007–08, before declining during the global financial crisis. Profits rebounded in 2009–10, due to expenditure reductions and an increase in revenue, before decreasing revenues reduced profits in 2010–11.

PwC predicts that the main financial trend for commercial radio over the next five years is expected to be a reduction in revenue as broadcasters continue to face a fragmented market, with competition coming from the internet and new music streaming services.

Financial impact of the current codes on commercial television broadcasters

Due to the timing of the research (interviews were conducted in June and July 2013), respondents were asked to comment on the relevant commercial television codes of practice that were registered with the ACMA in January 2010. These codes did not

include the limits on the promotion of betting odds and gambling advertisements in live sports coverage, which were included in revised codes registered in July 2013.

Below is a summary of the key compliance costs, as well as the key opportunity costs, that were reported by commercial television participants.

Key compliance costs

The compliance costs associated with the commercial television code of practice include both general costs (that is, costs that relate to the codes in their entirety) and costs that are attributable to individual code requirements.

Interview subjects reported the following two general compliance costs, which are not attributable to any one code requirement but are more broadly associated with complying with the codes of practice as a whole:

- > the need to provide staff with training on the commercial television code
- > 'churn' that occurs as network entities double-check (or triple-check) to ensure their activities are compliant with the television code.

For specific code requirements, respondents to the surveys and nearly all the interview subjects identified complaints-handling as the code requirement that imposes the greatest compliance burden on their organisations.

When asked to estimate the compliance costs associated with complaints-handling, the network entities interviewed indicated that the estimated cost for their organisations comprised staff costs (between four and five full-time staff equivalents) and external legal costs.

Key reasons nominated by the participating network entities as to why compliance with the complaints-handling requirement is seen to be costly are the:

- > number of complaints received—a rise in the number of complaints is attributed to the introduction of Free TV's electronic lodgement system in 2010¹⁷⁸ and the rise of social media
- > obligation to provide a substantive response to all eligible complaints, even when those complaints are frivolous, from serial complainants or members of the public who did not actually watch the broadcast material
- > level of effort required to respond to an investigation by the ACMA—given the threat of sanctions involved and that the ACMA can investigate complaints beyond the 30-day limit stipulated in the television code, which increases the level of effort required to compile supporting evidence.

The network entities interviewed indicated that, in their view, these compliance costs have increased over the past five years, driven not only by an increase in the number of complaints but also by an increase in investigations by the ACMA.

Network entities interviewed all maintained that if the television code did not exist they would still have some form of complaints-handling process but that in their view the process would be less costly because:

- > they would not have to respond to code-related investigations from the ACMA¹⁷⁹

¹⁷⁸ Free TV Australia provides an online form on its website, allowing electronic lodgement, where Free TV Australia forwards the complaint to the relevant licensee for direct response. The online complaint form is available at www.freetv.com.au/Content/Common/OnlineComplaintStep1.aspx, accessed 30 September 2013.

¹⁷⁹ In this context, it is noted that under the current regulatory regime established by the *Broadcasting Services Act 1992*, in the absence of the codes the ACMA would still be required to investigate validly made complaints about program content that relate to an offence against the *Broadcasting Services Act 1992* or the regulations, a breach of a civil penalty provision or a breach of a licence condition.

- > they would adopt a more discretionary approach to handling complaints, based on need and salience, rather than responding to all complaints in a similar manner.

After complaints-handling, survey and interview respondents identified the code requirements associated with classification of content and the scheduling of content as key compliance costs.¹⁸⁰ Key reasons nominated by the participating network entities were:

- > Dedicated staff classify program material in line with the Television Classification Guidelines contained in Appendix 4 to the current commercial television code. For example, interviewed metropolitan network entities indicated they employ approximately three to four full-time staff equivalents to meet their classification requirements under the code.
- > Dedicated teams and systems schedule broadcast material, including ensuring it is scheduled in line with the time zone requirements of the code. Participating interviewees indicated that:
 - > the scheduling capacity of their network entities is significant—involving up to 80 staff and expensive IT systems—reflecting the importance of scheduling to attracting and retaining audiences and maximising advertising revenue
 - > a small (but not insignificant) proportion of this scheduling capacity is attributable to the administration of the time zone requirements.

In the absence of the commercial television code, all participating network entities indicated that some form of classification would continue to exist. However, there was no universal view among participants about what an alternative classification scheme would look like and involve, or whether an alternative classification scheme would result in reduced costs for the network entities.

Key opportunity costs

The key opportunity costs identified by research participants for their network entities were:

- > Time limits on advertising—the average length of program material is 42 to 44 minutes, but the amount of advertisements permitted is 13 minutes per hour, leaving a gap of between three to five minutes every hour that the participating network entities are unable to monetise. PwC estimated that this could be up to 6.5 per cent of networks' hourly advertising revenue for the affected hours.
- > Time zone restrictions—different interview subjects raised different opportunity costs associated with these requirements. For instance, some interview subjects felt that the time zone restrictions are preventing the network entities from meeting latent demand for greater PG- and M-rated content on television.
- > The requirement to publicise the television code of practice and the complaints procedures through 360 on-air spots each calendar year.

Financial impact of the current codes on commercial radio broadcasters

Due to the timing of the research (radio interviews were conducted in June and July 2013), respondents were asked to comment on the commercial radio codes of practice that were in force in March 2013. At the time of the research, these codes did not include the limits on the promotion of betting odds and gambling advertisements in live sports coverage, which were included in revised codes registered in July 2013.

¹⁸⁰ Four code requirements of the current commercial television code impact on the scheduling of content—section 2 (classification), section 3 (program promotions), section 5 (time occupied by non-program matter) and section 6 (classification and placement of commercials and community service announcements). Interview respondents identified section 2 of the current code as the most costly code requirement after complaints-handling, while survey respondents nominated all four scheduling code requirements (equally) as being the most costly requirements after complaints-handling and captioning.

The economic analysis sought to identify the full range of potential costs attributable to the commercial radio code requirements, including both compliance costs and opportunity costs.

Key compliance costs

The compliance costs associated with the commercial radio codes of practice include both general costs (that is, costs that relate to the codes in their entirety) and costs that are attributable to individual code requirements.

Interview subjects highlighted the following two general compliance costs which are not attributable to any one code requirement but are more broadly associated with complying with the commercial radio codes:

- > the need to provide staff with training on the radio code
- > the activities undertaken by CRA on behalf of all broadcasters to ensure compliance with the radio code.

For specific code requirements, participating network entities identified complaints-handling obligations as imposing the highest compliance costs on their services. The key reasons they nominated included:

- > the number of complaints received—seen by participants as being facilitated by the electronic complaints system and the rise in social media¹⁸¹
- > the obligation to provide a substantive response to all complainants, even when these complaints are from members of the public who did not actually listen to the broadcast material
- > the level of effort required to respond to an investigation by the ACMA, given the threat of sanctions involved and the fact that the ACMA can investigate complaints beyond the 30-day limit stipulated by the radio code, which increases the level of effort required to compile supporting evidence.

Interviewed radio network entities also felt that these compliance costs have increased over the past five years, driven not only by an increase in the number of complaints but also an increase in investigations by the ACMA. Estimated costs provided by the participating network entities were between 0.5 to 3.4 full-time staff equivalents per network involved in complaints-handling. However, it should be noted that these estimates included staff costs associated with time spent responding to all investigations by the ACMA, and not just those relating to the codes. Furthermore, they only represent the costs incurred by interview subjects.

All network entities interviewed said that, if the radio code did not exist, they would still have some form of complaints-handling process but that process would be less costly for them because:

- > they would not have to respond to radio code-related investigations from the ACMA¹⁸²
- > they would be likely to prioritise their responses to complaints from listeners over non-listeners.

¹⁸¹ In 2010, the code of practice for commercial radio was amended to include a new code 5.1(a) that required licensees to accept 'an online electronic complaint form' where they had the technological capacity to do so. According to the Commercial Radio Australia website, radio stations in major metropolitan markets offer the option of an electronic complaints form (see www.commercialradio.com.au/index.cfm?page_id=1170, accessed 30 September 2013).

¹⁸² In this context, it is noted that under the current regulatory regime established by the *Broadcasting Services Act 1992*, in the absence of the codes, the ACMA would still be required to investigate validly made complaints about program content that relate to an offence against the act or the regulations, a breach of a civil penalty provision, or a breach of a licence condition.

After complaints-handling, there was little consensus about the compliance costs associated with other individual code requirements. Some participating network entities identified Australian music requirements. Others identified the costs associated with requirements preventing the broadcast of programs, which are unsuitable having regard to prevailing community standards and attitudes. The requirements relating to accuracy and fairness in news and current affairs programs, as well as obligations about publicising the existence of the codes, were also identified.

Key opportunity costs

The majority of survey and interview respondents identified code 3 as imposing the greatest opportunity cost on their operations as a broadcaster. This code requires advertisements to be presented in such a manner that the reasonable listener is able to distinguish them, at the time of the broadcast, from other program material. Participants believed that the requirement prevents them from meeting a latent demand for integrated advertising.

Some participating radio network entities identified the Australian music requirements, and the prohibition of programs unsuitable for broadcast, as also imposing opportunity costs on their organisations. They indicated that they identify both these code requirements as restricting the ability of radio broadcasters to deliver content that matches the demand for certain programming from their target audiences.

Subscription broadcasting television sector

The analysis of the subscription broadcasting television sector was conducted by the ACMA. The methodology employed to consider the costs of code requirements on the subscription broadcast television sector closely mirrored that used by PwC and described above. In considering the market for content, focus was placed on content provided on a subscription basis, which includes:

- > suppliers of content over cable and satellite (like Foxtel)
- > suppliers of OTT subscription services
- > suppliers to various devices including computers, smartphones and tablets (like Apple TV and Foxtel Go via Telstra mobile).

The ACMA's analysis of the financial performance of subscription television focused primarily on Foxtel, with some consideration of the burgeoning IPTV sector.¹⁸³ The analysis was informed by publicly available data from the Australian Bureau of Statistics, Foxtel, Global Media Analysis, and PwC.

To collect detailed information about the cost of the codes, the ACMA interviewed a representative from Foxtel.

Due to the timing of the research (interviews were conducted in June and July 2013), respondents were asked to comment on the subscription broadcast television codes of practice that were registered with the ACMA in 2007. These codes did not include the limits on the promotion of betting odds and gambling advertisements in live sports coverage, which were included in revised codes registered in July 2013 or changes reflected in revised codes which were registered by the ACMA in November 2013.¹⁸⁴

¹⁸³ IPTV is a television service that is delivered over an internet connection, rather than a dedicated cable or satellite connection. Foxtel provides both traditional subscription television over cable and satellite, as well as IPTV services.

¹⁸⁴ ACMA, *Improved community safeguards in Codes for subscription television and radio industry*, accessed 12 November 2013, www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/improved-community-safeguards-in-codes-for-subscription-television-and-radio-industry.

Market for content in Australia

In this context it is worth noting that, while subscription and free-to-air television broadcasters are competitors, the services are not perfect substitutes. IPTV (providers such as Apple TV and Foxtel over Telstra's T-BOX) is likely to be a closer substitute with the subscription television sector.

The 'traditional' subscription television market (provided over cable and satellite) has undergone significant expansion and consolidation over the past five years. In 2012, Foxtel¹⁸⁵ acquired Austar¹⁸⁶, bringing together the two industry players with scale. Foxtel is currently owned by Telstra Corporation (50 per cent) and News Corporation (50 per cent). In 2013, Foxtel is close to being the sole provider of traditional subscription broadcasting television in Australia.

On the other hand, the last five years has also seen the expansion of alternative subscription providers. The key development has been the growth of the IPTV market, as well as content delivered by OTT services. The IPTV market in Australia is still relatively immature, although it is expected to develop in coming years with the roll out of high-speed broadband networks that can support video quality content. These new providers, who are for the most part not subject to the ASTRA subscription broadcasting codes of practice, will place more market pressure on the traditional subscription broadcasting services.¹⁸⁷

Financial performance of the subscription broadcast television sector

The subscription broadcasting television sector has proven its resilience over the past five years and achieved strong growth since the global financial crisis. While industry analysts forecast strong growth over the coming five years, much of the growth is expected to occur in the IPTV sector. If this occurs, the proportion of subscription television providers covered by the ASTRA codes is likely to reduce over the forecast period.

Financial impact of the codes on subscription broadcast television

Key compliance costs

In order to inform an understanding of the costs of the ASTRA codes of practice, the ACMA interviewed Foxtel. Feedback indicates that the ASTRA codes impose three types of compliance costs associated with:

- > classification requirements
- > complaints-handling
- > training staff.

The classification requirements were reported to impose the largest category of compliance costs on subscription television broadcasters (estimated to be around 19 full-time staff equivalents). The key cost of adhering to the classification requirements are the staff costs, which include the costs of dedicated classification staff, as well as the costs associated with the proportion of the time of programmers, programming assistants, schedulers and editors. This includes work undertaken by the staff of the Foxtel owned and operated channels to produce, for example, classification boards¹⁸⁸,

¹⁸⁵ Foxtel had supplied services to the main metropolitan markets and the Gold Coast.

¹⁸⁶ Austar supplied regional markets as well as Darwin and Hobart.

¹⁸⁷ The then Minister for Communications, Information Technology and the Arts, on 27 September 2000, determined under section 6 of the BSA that 'a service that makes available television programs or radio programs using the internet, other than a service that delivers television programs or radio programs using the broadcasting service bands' was not a 'broadcasting service'. See www.comlaw.gov.au/Details/F2004B00501. However, some IPTV services may also hold a subscription broadcast licence (that is, a licence allocated under section 96(1) of the *Broadcasting Services Act 1992*) or, depending on a provider's individual circumstances, may not fall within the scope of the determination.

¹⁸⁸ Classification boards are the information slides that are broadcast prior to a given show and include the classification rating and the reasons for the classification.

edit programs, and ensure classification information in the electronic program guide (EPG) is accurate.

The costs associated with complaints-handling are around 0.5 full-time staff equivalents, comprising:

- > customer advocacy team and contact centre
- > legal costs.

Foxtel undertakes staff training to ensure adherence to the codes. The costs estimated as attributable to this training are broadly consistent with that of the free-to-air broadcasters.

Key opportunity costs

Foxtel interviewees reported no opportunity costs.

Community broadcasting sector

The analysis of the community broadcasting sector was conducted by the ACMA. The methodology employed to consider the costs of code requirements on the community television and community radio sectors closely mirrored that which was used by PwC. In considering the market for community broadcasting, the report draws out the unique characteristics of the sector, including applicable legislative restrictions.

The ACMA's analysis of the financial performance of the community broadcasting sector was informed by *Community Radio Broadcasting Station Census*, annual reports, and government funding for Indigenous broadcasting.

To collect detailed information about the cost of the codes, the ACMA interviewed representatives from community broadcasting industry bodies: ACTA and CBAA.

The community broadcasting market in Australia

The community broadcasting sector is diverse, with 450 community radio licences and 71 community television licences in use as of 30 June 2013. Community broadcasters are required to:

- > be not-for-profit
- > provide a voice for communities to address issues relevant to their local areas and their lives
- > provide for community participation at all levels of production.

Long-term community broadcasting licences are allocated by the ACMA according to statutory merit-based criteria. Key elements of these criteria include community broadcasters demonstrating:

- > that they have the capacity to provide the proposed service
- > that they will add to the diversity of services available in the relevant licence area, taking account of the broadcasting services already available.

As with other broadcasting sectors, it is likely that the rise of substitute services, driven by faster fixed internet connections and the continuing proliferation of smart devices, will present alternative distribution platforms for content and challenge the future of community broadcasters. The constrained financial capacity of community broadcasters may limit their ability to fund digital upgrades. However, it is worth noting that due to their more direct relationship with the community they represent, the audience may show a stronger loyalty.

Financial analysis

The diversity of revenue models used and the number of licensees in the community broadcasting sector makes any general observations about the financial performance of the sector limited.

While funding is crucial for the ongoing effectiveness of the sector, the chief resource for community broadcasters is its volunteer base. For example, over 23,000 volunteers contribute to the operations and programming of radio services, while the sector employs only about 1,000 people. According to the 2009–10 *Community Radio Broadcasting Station Census*, volunteers contribute \$2.3 million worth of work to the sector each week, significantly larger than the income of the sector.¹⁸⁹

The chief funding sources for the community radio sector are sponsorship (39 per cent), grants (29 per cent) and subscribers and donations (19 per cent). The community radio sector was substantially hit by the global financial crisis in 2007–08. For example, sponsorship income in 2009–10 was \$2.5 million less than it was in 2007–08, while subscriber income fell by \$0.5 million. The total income for the sector in 2009–10 was \$65,989,802.

The non-Indigenous community television sector is much smaller than its radio counterpart, with only three long-term community television services—Melbourne’s C31, Sydney’s TVS and Brisbane’s 31 Digital—and two temporary community television services (in Perth and Adelaide). The financial results of C31 suggest a general downward trend in earnings over the past five years.

The primary funding source for the Indigenous community broadcasting sector is government grants—from the Indigenous Broadcasting Program (IBP), administered by the Department of Prime Minister and Cabinet, and from the Community Broadcasting Foundation (CBF). The government allocated \$15.8 million under the IBP in 2013–14. Over the period 2008–09 to 2013–14, the growth in funding for the IBP has been less than the rate of inflation over the same period, suggesting a fall in funding in real terms.

Financial impact of the codes on community television

Key compliance costs

The ACTA representative stated that the main source of ongoing compliance costs for community television broadcasters is the classification requirements in code 4.

Another source of compliance costs identified was associated with the introduction of Community Television Broadcasting code 1: Governance Arrangements, in 2011. This code reflects governance requirements of the *Corporations Act 2001*, but its introduction in the community television broadcasting codes required implementation action from some community broadcasters, reflecting a one-off impact from implementation of the changed requirements.

Key opportunity costs

The community television sector reported that the codes do not impose any opportunity cost.

Financial impact of the codes on community radio

The CBAA representative stated that it undertakes a range of activities to assist community radio broadcasters adhere to the codes, including providing access to legal advice, which can be used for dealing with complaints. CBAA also highlighted one general compliance cost associated with the codes—the cost of reviewing the codes

¹⁸⁹ Community Broadcasting Association of Australia, *2011 Station Census*, p. 3, accessed 12 November 2013, cbaa.org.au/sites/default/files/2011_station_census.pdf.

and implementing any change in policies. The interviewee said that a material amount of staff time is expended in implementing changes resulting from code reviews. Where there is a material change in the codes, there is often additional work to be undertaken by community radio broadcasters.

Key compliance costs

The interviewee identified complaints-handling requirements as imposing a compliance cost on community radio broadcasters. This area is considered particularly challenging for community broadcasters, given that many of the people involved are volunteers who are in the office for a limited time each week. If an investigation by the ACMA follows, then the costs are likely to be even greater.

Key opportunity costs

The sector reported that the codes did not impose an opportunity cost on community radio broadcasters.

Observations

The economic research conducted by the ACMA and PwC offers useful insights. In particular, the research indicates areas where the nature of the safeguards may need to be adjusted to better balance the regulatory burden while maintaining appropriately calibrated community safeguards.

There have been significant developments in the market for audio and audiovisual content over the past ten years, primarily driven by increasing speed in broadband internet and the proliferation of smart devices. These developments have placed pressure on the commercial free-to-air business model, with commercial television and radio revenues trending downward since 2006–07. These trends are forecasted to continue over the next five years. They are also likely to provide challenges to traditional subscription broadcast television and community broadcasting in the future.

In this environment, broadcasters were asked about the relative costs of complying with broadcasting codes as compared to their other obligations, such as licence conditions in the BSA. Only commercial radio regarded the code as being a significant source of compliance cost relative to other regulatory requirements. Commercial television and subscription broadcast television characterised the code requirements as being costly but less so than other regulatory requirements. The community sector indicated that the costs of complying with codes was insignificant compared with other requirements. While the inquiry is primarily focused on code-related obligations it nonetheless contemplates this overall contextual picture.

The reported cost implications of the current complaints-handling mechanism—with all industry sectors interviewed identifying it as a significant code-related expense—indicate the need for further consideration for future broadcasting codes.

Chapter 4: Overview of community research

Why conduct community research?

The development of broadcasting codes is informed by community expectations about program content.¹⁹⁰ Community research assists both the ACMA and industry to understand contemporary community experiences and expectations, and identifies trends in media consumption.

For the inquiry, the ACMA commissioned GfK Australia (GfK) to conduct qualitative and quantitative community research with Australians aged 15 years and over—the *Community research informing the Contemporary community safeguards inquiry* (the CCSi community research).

The CCSi community research explored community attitudes, experiences and expectations of content broadcast on television and radio relating to a range of matters covered by the existing broadcasting codes of practice. Importantly, the CCSi community research was designed to complement and supplement existing data published by both the ACMA and others, which provides a solid body of related information.

Existing work, published by the ACMA includes:

- > [*Digital Australians—Expectations about media content in a converging media environment*](#) (October 2011)
- > [*Australians' views on privacy in broadcast news and current affairs*](#) (August 2011) and [*Community research into broadcasting and media privacy*](#) (August 2011)
- > [*Community attitudes to radio content*](#) (February 2010)
- > [*Listener attitudes to advertising, sponsorship and influence on commercial radio*](#) (February 2010)
- > [*Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs*](#) (May 2008).

Research undertaken by other organisations includes:

- > Screen Australia, [*Child's Play: Issues in Australian Children's Television 2013*](#) (May 2013)¹⁹¹
- > ABC, [*Community attitudes towards coarse language in the media*](#) (July 2011)¹⁹²
- > [*OzTAM*](#) audience ratings for Australian commercial and subscription television
- > [*Nielsen*](#) audience ratings for Australian radio
- > the [*Community Radio Listener Survey*](#).

¹⁹⁰ Under subsection 123(1) of the *Broadcasting Services Act 1992*, industry groups develop codes of practice in consultation with the ACMA and are to take into account any relevant research conducted by the ACMA. Further, subsection 123(2) of the *Broadcasting Services Act 1992* provides, among other things, that codes are intended to cover 'matters relating to program content as are of concern to the community' and, under subsection 123(3) of the *Broadcasting Services Act 1992*, the ACMA is required to consider whether codes of practice provide appropriate community safeguards before registering those codes. See also the regulatory objects set out in paragraphs 3(1)(h), (b), (e), (ea) and (g) of the *Broadcasting Services Act 1992*.

¹⁹¹ This research includes a report and three extended research papers. It explores children's viewing patterns; child audience attitudes and behaviours; broadcasters' programming strategies and program promotions; and analyses the production and financial data from Screen Australia's production databases. It also includes interviews with children's content producers about their experiences.

¹⁹² This research explored the attitudes of Australians towards the use of coarse language in the media, with particular emphasis on television, radio and the internet.

The CCSi community research

The qualitative component of the CCSi community research comprised 10 group discussions among participants aged 15 years and over. These were segmented by age and life stage, and metropolitan and regional areas across three states—New South Wales, Queensland and South Australia.

The quantitative component comprised a national telephone survey (1,700 people) of a representative sample of Australians aged 15 years and over, including 200 respondents from mobile-only households.

The topics which were explored in the CCSi community research are set out below in Figure 2. The topics relate to existing code protections but, significantly, they also represent areas where the ACMA wished to supplement elements of its existing data. Due to limits on survey length and the availability of other relevant research, not all topics were covered in both the qualitative and quantitative aspects of the research, with the latter focusing on five of the topics.

Figure 2: Topics explored by CCSi community research

Enduring concept in issues paper	Topics explored	Existing research	CCSi community research	
			Qualitative phase	Quantitative phase
Community values	Classification of television content	✓		
	Decency on radio	✓	✓	✓
Protection of children	Time zone requirements	✓	✓	✓
Ethical standards	Accuracy	✓ Current affairs on television only	✓	✓
	Fairness, impartiality and presentation of significant viewpoints	✓	✓	
	Advertising	✓ Radio only	✓	✓ TV only
Protection of the public	Privacy	✓	✓	
Redress	Complaints-handling	✓	✓	✓

The CCSi community research is published on the ACMA's website www.acma.gov.au.

When interpreting the attitudinal responses of community members, it is important to remember that participants and respondents may answer either from a personal perspective or a community perspective. The personal perspective is based on an individual's own choices and the likely impact on themselves as individuals, while the community perspective is based on concerns for the broader community.

A person's attitude to the same content may therefore differ, depending on whether they are answering from a personal perspective or a community perspective. For example, a respondent might feel that content rules are unnecessary from a personal perspective, because they can choose to stop accessing that content. When

answering from a community perspective, the same respondent may feel that content rules are necessary to protect others in the community or society as a whole.

Consolidated overview of community research

What follows is an overview of the findings of the CCSi community research in the context of the existing research and information.

Community values

Classification of television content

The *Digital Australians—Expectations about media content in a converging media environment* research (*Digital Australians*) found that citizens continue to expect that content that is professionally produced to be consumed on a mass scale by the broader community (such as television-like content) will reflect broad community standards, including collective views about desirable content and shared cultural and social values.¹⁹³ In particular, there was an expectation among the *Digital Australians* research participants that those providing content would be responsible for giving advice on standards and ratings.¹⁹⁴ Respondents' main issues of concern about what is shown on television were strongly linked to classification issues, such as violence, coarse language, sexual content and nudity. Themes including racism, suicide and euthanasia, and content featuring drug use, were identified as top-of-mind concerns by survey respondents.¹⁹⁵

Digital Australians also provided important insights into how citizens expect this alignment between community standards and broadcast content to be achieved. Overall, the classification system for television programs was seen by citizens to reflect broad community standards.¹⁹⁶ The high value that citizens continue to place on classification and associated consumer advice for television programs in the converged environment—whether on free-to-air or subscription television—was also evident. The majority of citizens surveyed indicated that they place importance on the information provided by classification and consumer advice in making decisions about the suitability of content for their personal consumption.¹⁹⁷

The qualitative component of the recent CCSi community research identified that classification provides a more detailed insight into the nature of specific content broadcast and allows the viewer to make informed decisions. Consumer advice around language, sexual content, violence, and drugs was particularly valued by focus group participants. Overall, participants indicated that they were satisfied with the current system, understood it, and could use it to regulate their viewing and that of their children. However, across the group discussions, a number of participants, including parents, also expressed some scepticism about the helpfulness of classification categories. They felt that the line between PG- and M-rated content has blurred in today's broadcast content, with some PG-rated content being questionably rated in their view.

Decency on radio

The commercial radio code contains a requirement that program content must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic characteristics of the audience of the relevant program.¹⁹⁸

¹⁹³ ACMA, *Digital Australians—Expectations about media content in a converging media environment: Qualitative and quantitative research report*, 2011, p. 52.

¹⁹⁴ *ibid.*, p. 54.

¹⁹⁵ *ibid.*, p. 50.

¹⁹⁶ *ibid.*, p. 53.

¹⁹⁷ *ibid.*, p. 57.

¹⁹⁸ Code 1.3 of the *Commercial Radio Australia Codes of Practice and Guidelines*, September 2013.

The *Community attitudes to radio content* research found that generally people feel that the subject matter of radio content and the language used is suitable for its audience and time of day.¹⁹⁹ However, this research indicated that citizens still value some form of ‘safeguarding’ for radio content, even where the content would not necessarily be considered ‘indecent’ by its target audience. Thirty per cent of radio listeners indicated that offensive content should never be broadcast on radio regardless of a station’s target audience. A greater proportion (49 per cent) felt that content that could offend non-target listeners was acceptable, but only in some circumstances or with restrictions.²⁰⁰ The research indicated that for some issues, like the broadcast of discriminatory content, there is community agreement about what it is inappropriate to broadcast.²⁰¹ However, it was clear that for most issues there was no strong community consensus on what constitutes decency on radio, including levels of sexual content and the acceptability of swearing and coarse language.

The qualitative phase of the CCSi community research confirmed that there was little community consensus on what is ‘decent’ and what is not. It seemed reasonably well accepted by discussion group participants that some material can be extreme or offensive, and thus unsuitable for broadcast on radio at any time. However, there was other material where participants felt decisions about the acceptability of material were not so clear. Group discussions indicated that this question is likely to be determined on a case-by-case basis.

Group participants indicated that they tend to assess the suitability of radio content for themselves based on the type of program or station and its reputation. They were largely confident about the appropriateness of radio content for themselves. Participants also indicated that they felt they had control of what they listen to and would choose not to listen to a program or station that they ‘disliked’ or ‘took offence to’. Similarly, most radio listeners surveyed during the quantitative stage (67 per cent) agreed they generally knew from the type of radio station or type of radio program whether content would be suitable for themselves. There was no strong call for more information to be provided.

Protection of children—time zone requirements

The *Digital Australians* research highlighted a strong community expectation that, in the converged media environment, children should be protected from harmful content. The protection of children remains a key area where citizens see regulation as continuing to provide important safeguards. In particular, *Digital Australians* indicated that the community accepts that children have special vulnerabilities and require additional protection from inappropriate television content, beyond general classification tools.²⁰² In the *Community attitudes to radio content* research, almost half of all radio listeners surveyed identified concerns about children being exposed to unsuitable content, with sexual references and offensive language being the main

¹⁹⁹ ACMA, *Community attitudes to radio content*, 2010, p. 4.

²⁰⁰ *ibid*, p. 32. Radio listeners who indicated they considered that such content is acceptable in some circumstances/with restrictions were asked to elaborate on the circumstances or restrictions they had in mind. This open-ended question was difficult for some respondents to answer. Many respondents were not able to elaborate on the nature of the circumstances or restrictions. Instead they chose to elaborate on the types of content they found objectionable. The main preference to emerge is that certain content should be broadcast at appropriate times (17.5 per cent), usually with a reference to avoiding ‘child-friendly times’.

²⁰¹ In the research, radio listeners were presented with 14 statements and asked to rank their level of agreement on a five-point scale. There was 61.8 per cent agreement that ‘language that stereotypes certain groups in the community is inappropriate for radio, regardless of how it is presented’.

²⁰² The ACMA’s *Digital Australians* research showed that Australians have an expectation that professionally produced broadcasting content will reflect collective views about desirable content and that these shared cultural and social values include making content ‘safe’, particularly for children. Similarly, the ABC’s research showed that there was strong agreement that children need to be protected from the use of coarse language in the media. A large majority of survey respondents agreed that broadcasters should take care during times when children are likely to be watching or listening, pp. 4, 12, 44.

types of content, followed by violence and crime.²⁰³ A substantial proportion of radio listeners surveyed (35 per cent) felt that there is ‘too much swearing and coarse language at times when children could be listening’.²⁰⁴

The CCSi community research confirmed a community expectation for protection of children from harmful broadcasting content. The research also provided insights into how individuals negotiate the suitability of broadcasting content for children in their care and the methods seen as appropriate for ensuring the protection of children. In the current regulatory landscape, television and radio have adopted different approaches to the protection of children. Television content is formally classified and television programs are subject to time zone requirements.²⁰⁵ While radio is not subject to a comparable classification system, the current commercial radio code prohibits the broadcast of content with an explicit sexual theme as its core component, unless it is broadcast between 9.30 pm and 5.00 am and an appropriate warning is made prior to the commencement of the broadcast and at hourly intervals during the broadcast of the program.²⁰⁶ In addition, commercial radio content must not offend generally accepted standards of decency, having regard to the demographic characteristics of the audience of the relevant program.²⁰⁷ The current community radio code includes a provision that broadcasters consider ‘our community interest’ (among other things) when making programming decisions.²⁰⁸

Television

The Classification Review considered the phasing out of time zone restrictions imposed on Australian content providers, particularly commercial broadcasting services, in the context of changes in technology and the viewing habits of Australians and Australian children. The review noted that a phased transition away from time zones might be appropriate but indicated that it was likely that a number of preconditions would need to exist before this transition. These included a significant public education campaign and the availability of technological solutions, which parents are confident will be effective to protect children from inappropriate content.²⁰⁹

The ACMA was keen to explore these issues in the CCSi community research. This research indicated that contemporary parents and carers combine a suite of methods to decide on the suitability of television content for children in their care and help manage their viewing.²¹⁰

In the quantitative phase of the CCSi community research, time zone restrictions were defined for survey respondents as ‘time restrictions that apply to free-to-air television broadcasters who can only show PG, M or MA classified programs at certain times of the day or night’. Survey findings suggest:

- > Parents/carers considered the top three methods (rated ‘very useful’) to be:
 - > direct supervision of children’s viewing by being in the room (71 per cent)
 - > classifications symbols and consumer advice (70 per cent)

²⁰³ ACMA, *Community attitudes to radio content*, 2010, p. 4.

²⁰⁴ In the *Community attitudes to radio content* research, radio listeners were asked to indicate their level of agreement with a range of attitudinal statements. Although the level of agreement with the statement ‘there is too much swearing and coarse language at times when children could be listening’ was lower than for other issues, the responses (35 per cent of radio listeners, 36 per cent of commercial radio listeners) still represent substantial proportions of radio listeners.

²⁰⁵ On commercial, community, open narrowcast and national television.

²⁰⁶ Code 1.5 of the *Commercial Radio Australia Codes of Practice and Guidelines*, September 2013.

²⁰⁷ Code 1.3 of the *Commercial Radio Australia Codes of Practice and Guidelines*, September 2013.

²⁰⁸ Code 3.2 of the *Community Radio Broadcasting Code of Practice*, 2008.

²⁰⁹ Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media: Final Report* (2012), p. 196.

²¹⁰ This was found in *Digital Australians* and confirmed in the GfK quantitative research, which showed that parents and carers use a combination of methods for managing what children in their care watch on television.

- > dedicated children's program slots or channels (69 per cent).
- > While still considered 'very useful' by over half of parents/carers (57 per cent), the 'time of day' when programs are shown was not considered as useful as the other 'top three' methods.
- > Nevertheless, time restrictions were seen by the majority of those surveyed, including people who were not parents or carers, as an essential tool for the protection of children from inappropriate television content. By and large, time restrictions are considered to have continuing relevance, despite access to time-shifting technologies and dedicated children's channels these days. These views were held more strongly by parents/carers of children under 15 years.
- > A substantial proportion (41 per cent) of parents and carers felt that if time restrictions were removed, other methods would not be able to replace them. However, three in 10 parents or carers (29 per cent) felt that they could rely more on other methods to manage children's viewing than they do currently, while other parents/carers would not be bothered either way (16 per cent) or agreed that other methods would provide enough guidance (11 per cent).

Similar attitudes were identified in the qualitative research, where parents and carers generally were resistant to losing time restrictions completely. Parents felt that if time restrictions were removed, classifications and consumer advice on their own would not be sufficient as these could sometimes be unreliable, lacking sufficient detail about the exact nature of program content to decide its suitability for children.

The quantitative component of CCSi community research indicated that use of parental locks is not as widespread as the other methods, with 43 per cent of parents or carers indicating they do not use them at all. Similarly, only a small number of parents in the discussion groups used parental locks to limit what their children watch and not all parents knew that they exist or how to use them. There was a perception among participants that parental locks blocked whole channels rather than only certain content based on classifications (for example, M-rated programs). This perception increased participants' resistance to the technology as they perceived it would become a 'hassle' to have to lock and unlock entire channels rather than being able to block specific types of content.

In the survey, parents and carers, who had indicated that they do not use parental lock technology to help manage their children's television viewing, were asked to identify the reasons why. In response, parents and carers identified the availability and preference for using other methods as a barrier to the use of parental locks. In particular, they indicated that they preferred supervising what their children watch (40 per cent), allowing their children to watch programs that they are familiar with (15 per cent), allowing their children to watch particular channels (15 per cent) or allowing their children to watch at certain times (10 per cent). Lack of awareness of the technology was also identified by 12 per cent of parents as a reason why they do not currently use the technology.

The *Child's Play Issues in Australian Children's Television 2013* report by Screen Australia provides the inquiry with a focused view of how children watch television, what influences their viewing behaviour and their attitudes towards various types of content. Of particular relevance to the time zone issue are children's viewing patterns. Before 7.00 pm on weekdays, ABC2 and ABC3 have the largest child audience numbers.²¹¹ The highest total numbers are for commercial free-to-air broadcasters between 7.30 pm and 8.30 pm.²¹² This research adds weight to the findings of the

²¹¹ Screen Australia, *Child's Play Issues in Australian Children's Television 2013: Focus on the Child Audience*, p. 6.

²¹² Screen Australia, *Child's Play Issues in Australian Children's Television 2013: Focus on the Child Audience*, p. 6.

CCSi community research around the importance of tools, which allow children's viewing to be restricted to certain channels, with almost a third of parents indicating that they only allow their children to watch 'certain channels'.²¹³

Radio

As part of the *Community attitudes to radio content* research, respondents who had indicated that they thought that some form of restriction on offensive content was appropriate for radio stations were asked to identify the types of restrictions they believed might be appropriate. The main preference to emerge was that certain content should be broadcast at appropriate times, usually with a reference to avoiding 'child-friendly times'.²¹⁴ In the ABC's research, *Community attitudes to coarse language in the media*, a majority of survey respondents agreed that radio broadcasters should take care during times when children are likely to be listening.²¹⁵

The CCSi community research tested whether people were confident in making decisions about the appropriateness of radio content based on a radio station or program, both for their own listening and when children could hear. When it came to their own listening choices, respondents indicated that they were largely confident about the appropriateness of radio programming content based on the type of radio station or program. In contrast, when it came to decisions about suitability for children, there was a notable drop in the proportion of people who agreed that the suitability of radio programming content was clear from the type of radio station or program (from 67 per cent down to 54 per cent).

In line with this, a higher proportion of parents and carers expressed a desire for more information to be provided about some radio content in the presence of children (46 per cent up to 56 per cent when children can hear). However, a substantial minority expressed neutral views on this issue, suggesting that the provision of more information was not an imperative for the majority of parents. Similarly, the qualitative research indicated that audiences, including parents, feel they are 'in control' when the radio is on in their child's presence, and they will ensure only age-appropriate programs are listened to.

Ethical standards—accuracy

The ACMA's *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs* was extensive research comprising both qualitative and quantitative components and a detailed exploration of community expectations and perceptions around current affairs programs, with less focus on news.²¹⁶ It was also focused on television as opposed to radio. As an overall genre, news and current affairs were seen as a means of informing people about what was happening in the world and keeping them abreast of topical news. However, there were clear differences in attitudes towards news and current affairs programs, arising from differences in format, content and personal impact on individuals.²¹⁷

Participants in the qualitative component of the *Digital Australians* research indicated that they understood that news organisations—both traditional and online—often had an agenda. This resulted in citizens sometimes perceiving conflicting opinions and views, with some indicating that they take some news stories 'with a grain of salt'.²¹⁸

²¹³ *ibid*, pp. 12, 15.

²¹⁴ ACMA, *Community attitudes to radio content*, 2010, p. 34.

²¹⁵ Australian Broadcasting Corporation, *Community attitudes towards coarse language in the media – research report*, 2011, p. 44.

²¹⁶ This research was undertaken in the context of a review of the Commercial Television Industry Code of Practice, 2004.

²¹⁷ ACMA, *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs*, 2008, p. 24.

²¹⁸ ACMA, *Digital Australians—Expectations about media content in a converging media environment: Qualitative and quantitative research report*, 2011, pp. 41.

Participants also indicated that the increasing diversity of news sources created by the availability of online content also meant that there was often more opinion to ‘wade’ through. When asked about their perceptions of the accuracy of news from various sources, a majority of respondents (60 per cent) indicated that they perceived commercial television news as always or usually being accurate.²¹⁹

In the CCSi community research, survey respondents were asked about the importance of ‘accuracy in news and current affairs on television and radio now that there are many different sources of news, information and current affairs available online’. The majority of participants (96 per cent) considered the accuracy of news and current affairs on television and radio is just as, or more important, now that there are many different sources of news, information and current affairs available online. Only three per cent indicated that it was less important.

In the focus group component, the CCSi community research sought to further examine whether people have differing views about the accuracy of news content compared to current affairs content, and expanded the focus to include both television and radio. Participants indicated they considered factual accuracy as ‘essential’ for news programs whether on television or radio. They expressed a strong preference for news programs on both commercial and national stations to report ‘just the facts’. For example, in situations where news programs are providing live coverage, focus group participants indicated that they wanted it to be made clear that details might include estimates rather than confirmed figures (such as casualties of an incident).

Participants in the qualitative CCSi community research perceived current affairs programs as often being biased and not reporting ‘just the facts’. In line with findings from the ACMA’s previous research, there was a perception that stories in current affairs programs would be sensationalised. Participants expressed frustration with this, especially when current affairs programs were promoted as ‘factual’ and similar to news. Views on talkback programs were similar to those on current affairs programs in general, with participants perceiving these programs as biased, inaccurate and sensationalised to create a ‘shock factor’ and increase ratings. Some participants said that inaccuracies in talkback radio programs were irritating to very irritating. While others considered accuracy in talkback programs was more a ‘nice to have’.

Corrections of factual inaccuracies

The *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs* research looked at perceptions around appropriate remedies when factual errors were established. A large majority of survey respondents (81 per cent) considered a correction on-air was required if a factual error was made in news or current affairs on television and radio, and that the correction should be made as soon as a broadcaster became aware of it.²²⁰ Similarly, the majority considered that an apology was required if a person or company had been affected by a factual inaccuracy, and that they should be given the opportunity to respond on-air.²²¹

The CCSi community research further explored community expectations around apologies and corrections. Both the qualitative and quantitative findings of the CCSi community research indicated that corrections were considered the minimum form of remedy for all factual errors in current affairs programs. The qualitative research found that when an error is made in a broadcast on radio or television, the community’s view was that a correction should be made and the individual to whom the incorrect information pertains should be given the opportunity to provide their side of the story.

²¹⁹ *ibid*, pp. 40–43.

²²⁰ ACMA, *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs*, 2008, p. 30.

²²¹ *ibid*, pp. 31–32.

Participants also indicated that these corrective measures should be given the same prominence, including placement, as the original story. These steps were seen to be more appropriate than an apology, as many participants perceived that once the information is out in the public domain, the 'damage' has been done and it is too late for an apology. Focus group participants also saw a requirement for on-air corrections as providing a good incentive for broadcasters to get the facts right in the first place.

In the quantitative research, a majority (81 per cent) felt that a correction on-air 'must happen' if a factual error is made in news or current affairs television or radio programs. To a lesser degree, it was felt that a correction on the broadcaster's website is required (68 per cent). Sixty per cent felt that the regulator (the ACMA) should also publish its findings online and in a media release. Only a small segment of the community (between three and eight per cent) felt that any of these steps were unnecessary.

Ethical standards—fairness, impartiality and presentation of significant viewpoints

Both the qualitative phase of the CCSi community research and the *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs* research show that citizens' expectations about the representation of viewpoints are very closely aligned with accuracy. The main difference in expectations is between news and current affairs programs, including talkback programs.

In *Digital Australians*, when respondents were asked about how they perceived the fairness of various news sources, the findings were similar to those for accuracy. For news stories on commercial television, 34 per cent of respondents believed they usually or always gave both sides of the story.²²²

The CCSi community research showed that impartiality and fairness are seen as essential for news programs. Participants in the focus groups indicated that they want and expect news programs to be unbiased and to allow for multiple points of view to be aired. These views were seen to be applicable for both commercial and national stations on both radio and television.

Participants in the discussion groups felt that broadcasters were largely fair and impartial in their coverage of the news. However, they felt at times the news did not represent all viewpoints on certain issues and that specific news outlets leaned politically in one direction or another. Participants indicated that this is largely accepted, but there was a general feeling among participants that news broadcasts are becoming more politically motivated than they have been in the past, in particular more so on commercial stations than the national broadcasters.

In contrast to news programs, ACMA's research about expectations relating to impartiality, fairness and viewpoints in current affairs and radio talkback programming suggests more of a 'grey area'.

The qualitative component of the *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs* research showed that current affairs programs are generally perceived by citizens to have a 'purpose or agenda' for their stories, which may result in those stories being one-sided or biased.²²³ Equally, the research showed that fewer than two in five respondents believed that commercial current affairs programs 'always represent viewpoints

²²² ACMA, *Digital Australians—Expectations about media content in a converging media environment: Qualitative and quantitative research report*, 2011, p. 43.

²²³ ACMA, *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs*, 2008, p. 28.

fairly'.²²⁴ However, findings suggest that citizens have different expectations about balance, depending on the nature of the story. The more a current affairs story was perceived as being of community or social interest, the greater the expectation it would be balanced.²²⁵

Similarly, the CCSi community research indicated that citizens have different expectations of impartiality, fairness and presentation of viewpoints in current affairs programs. While many participants indicated that 'ideally' current affairs and talkback programs should be impartial, fair, and present multiple viewpoints, they considered that, practically, these types of programs could not be held to these standards. In this context, participants expressed a view that current affairs programs 'sensationalise' stories. They considered that presenting unfair or misrepresentative content in a current affairs program can be as damaging to the reputation of the program as a factual inaccuracy. Bias was generally considered as a source of frustration for the majority of participants rather than something they felt was fundamentally inappropriate. There was also a general feeling among participants that most people know what they are getting when it comes to talkback radio programs and they should not expect unbiased, impartial and fair commentary.

Corrections relating to failures to present viewpoints

The *Community attitudes to the presentation of factual material and viewpoints in commercial television current affairs programs* research explored the role of corrections relating to failures to present significant viewpoints. It indicated that community expectations were similar to the expectations for corrections of factual inaccuracies. Eighty-eight per cent of respondents believed that an on-air correction is necessary. The audience is led to incorrect conclusions where a person or company is not given the opportunity to present their side of the story.²²⁶

Ethical standards—advertising requirements

The ACMA previously conducted research about community attitudes towards commercial influence and advertising on commercial radio—*Community attitudes to radio content* and *Listener attitudes to advertising, sponsorship and influence on commercial radio*. This research provided a useful starting point for the inquiry to frame its further examination of the value people place on transparency of commercial arrangements, especially where those agreements have the potential to influence or drive broadcast content. Because this research was about advertising on commercial radio, the ACMA did not have comparable attitudinal data for television. Consequently, the ACMA was keen to explore community attitudes towards advertising on television in the CCSi community research, including revisiting some of these issues for radio in the qualitative component.

Radio

In *Listener attitudes to advertising, sponsorship and influence on commercial radio*, 60 per cent of respondents said they accepted the realities involved in operating commercial broadcasting services. They agreed with the statement 'advertising on commercial radio doesn't bother me because it's a business that relies on advertising to operate'.²²⁷ Many also agreed that the integration of advertising with other program content on commercial radio is acceptable, as long as advertisers are identified at least once during a program.²²⁸ At the same time, both this research finding and the

²²⁴ *ibid*, p. 24.

²²⁵ *ibid*, p. 22.

²²⁶ *ibid*, p. 38.

²²⁷ ACMA, *Listener attitudes to advertising, sponsorship and influence on commercial radio*, 2010, p. 3.

²²⁸ Sixty-seven per cent of commercial AM talkback listeners agree that 'integrating advertising with other program content on commercial radio is acceptable so long as advertisers are identified at least once during the program'. Further, 55 per cent of commercial radio listeners agree that 'integrating advertising with other program content on commercial radio is acceptable so long as advertisers are identified at

Community attitudes to radio content indicated a strong preference for advertising content on radio to be clearly distinguishable from other radio content.²²⁹ Furthermore, the majority (81 per cent) of commercial radio listeners agreed that, regardless of the program format concerned, the on-air opinions of radio personalities should not be influenced by their personal sponsorship deals²³⁰ and it is extremely or very important to be informed by radio personalities about their sponsors (55 per cent of commercial radio listeners).²³¹

Similar attitudes were expressed by focus group participants in the CCSi community research. Although there were some differences in response by age and life stage, many participants did not see advertising on radio as particularly problematic. Participants specifically indicated that they did not have concerns about 'live read' style content where program presenters read advertising content. However, they expressed a view that advertising 'embedded in' program content, conversations and discussions should be clearly identified as it is more difficult to distinguish on radio than on television.

Television

In the CCSi community research discussion groups, advertising on television was discussed in terms of whether participants were concerned about the separation of advertisements from other content on television, and what they thought about 'product placement' in television programs. Focus group participants appeared to be 'used to' in-program advertising, and to some degree seem to expect it. On the whole, product placement was seen by participants as a necessary element of ensuring their favourite program is funded, and was an accepted form of advertising. Many participants felt that they were able to identify in-program advertising on television. Overall, participants did not feel that audiences need to be notified of this sort of product placement. A number felt that notifications would themselves be distracting and unnecessary.

In the quantitative component of the research, respondents were asked about the acceptability of in-program advertising, including in specific genres of program. Results indicate that generally the community is tolerant of in-program advertising. On the whole, respondents were more likely to agree than disagree with the acceptability of in-program advertising. Four in ten (42 per cent) respondents agreed that it is acceptable because it is a commercial reality of the free-to-air business model and over a third (37 per cent) were neutral on the issue. Forty-five per cent of respondents saw it as acceptable, as long as the audience was made aware of the inclusion of the advertising in a program.

The survey results also indicated that views on acceptability of in-program advertising vary by program type. While the majority of respondents agreed that in-program advertising or product use was 'acceptable' in reality competition programs (79 per cent) and drama programs (65 per cent), answers differed for factually based programs. More than half of respondents considered it 'unacceptable' to have in-program advertising or product use in news programs (60 per cent unacceptable), documentary programs (53 per cent), or current affairs programs (53 per cent).

Protection of the public—privacy and fair treatment

Previous ACMA community research on privacy included two complementary qualitative and quantitative research studies—*Australians' views on privacy in*

least once during the program'—ACMA, *Listener attitudes to advertising, sponsorship and influence on commercial radio*, 2010, p. 3.

²²⁹ ACMA, *Community attitudes to radio content*, 2010, p. 4; ACMA, *Listener attitudes to advertising, sponsorship and influence on commercial radio*, 2010, pp. 3–4.

²³⁰ ACMA, *Community attitudes to radio content*, 2010, p. 45.

²³¹ *ibid*, p. 52.

broadcast news and current affairs and *Community research into broadcasting and media privacy*. This research explored community perspectives about privacy issues that arise in broadcast news and current affairs programs and radio competitions. It found that citizens believe it is very important for broadcasters to safeguard a person's privacy, especially in the context of news and current affairs programs. Citizens identified certain situations as being very intrusive invasions of privacy.²³² However, the qualitative component also identified a spectrum of views about the balance to be struck between respecting individuals' privacy and informing the public about matters of public importance. Key criteria used by citizens included the relevance of the personal material to the story, whether consent is given, and the character of the person involved.²³³ It was apparent that individuals consider a range of circumstances and assess on a case-by-case basis the interplay of issues.

The qualitative CCSi community research showed that, for the most part, there is no strong community consensus on what constitutes an invasion of privacy by a broadcaster. However, regardless of age and overarching attitudes, the majority of participants felt that individuals, in theory, should have a right to privacy in the broadcasting context. This right to privacy was something which participants felt should be 'guaranteed', other than in specific circumstances. Participants largely assumed that broadcasters should, and do, seek consent to broadcast private information in most cases.

This right to privacy was assumed by participants to be guaranteed in general observational footage where a story might have a negative impact for those involved in the program, for example, obesity or gambling. Participants tended to assume that consent to broadcast footage used in observational documentaries had been sought by broadcasters. It was also expected that broadcasters would have sought consent from anyone who is directly involved in the program, for example, someone interviewed. Similarly, there was an expectation among group participants that social media photos (for example, profile pictures) should not be used by broadcasters in a way that might damage an individual's reputation. Participants assumed broadcasters had sought the individual's consent.

Focus group participants did not appear to have a broad framework within which to consider possible situations or scenarios that were discussed during the groups. They tended to assess each case individually without having clearly defined 'rules', but they highlighted some of the factors they would use to consider each instance. An example given by participants of content that they considered as invading privacy included stories about neighbour disputes (for example, chopping down a neighbour's tree), especially where the stories did not illuminate something which the public would benefit from knowing. Without a broader public purpose, these stories were felt by participants to be largely sensational and not in the public interest, with the potential to harm the reputations of those involved.

Redress—complaints-handling

The ACMA has previously explored citizen's expectations of the complaints process, as well as their knowledge of existing avenues of complaint and experiences with these. *Community attitudes to radio content* research found that very few commercial radio listeners had ever made a complaint in response to hearing inappropriate content on the radio; even though 27 per cent indicated they had thought about making a complaint but chose not to go through with it.²³⁴ The main reasons for not proceeding with a complaint were:

²³² A total 93 per cent of media users believe it is either 'very important' (68 per cent) or 'somewhat important' (25 per cent) for broadcasters to safeguard a person's privacy in news and current affairs programs.

²³³ ACMA, *Community research into broadcasting and media privacy*, 2011.

²³⁴ ACMA, *Community attitudes to radio content*, 2010, p. 29.

- > not worth the effort/couldn't be bothered (30 per cent of potential complainants)
- > lack of time (29 per cent)
- > didn't think that complaint would be taken seriously (13 per cent).²³⁵

The *Community attitudes to radio content* compared attitudes in 2009 to previous attitudes researched by the ACMA in 2003, finding that:

- > a lower proportion of commercial radio listeners said they would 'telephone the station directly' to complain about inappropriate content—53 per cent in 2009 compared to 63 per cent in 2003
- > 'emailing the station' increased—17 per cent in 2009 compared with six per cent in 2003
- > 'writing a letter to the station' declined—12 per cent in 2009 compared to 20 per cent in 2003.²³⁶

The CCSi community research (both quantitative and qualitative) explored knowledge and awareness of the process for making a complaint about television or radio content. The quantitative research showed that, overall, there is a low level of knowledge among respondents about how to lodge a complaint about television or radio content. The majority self-classified their knowledge in this area as 'low'. Confidence was also low that broadcasters would respond or take action in response to a complaint. Fifty-four per cent of respondents reported they had 'low' confidence that television broadcasters would respond or take action and 46 per cent felt radio broadcasters would respond or take action.

Participants in the qualitative phase of the CCSi community research reported having seen the television advertisements on how to report 'inappropriate' content. They appreciated being able to complain and felt empowered knowing there was a complaints process they could use.

A third of the survey respondents had heard or seen content in the last 12 months which they had wanted to complain about. However, very few (five per cent) had made a complaint about program content. Some of the descriptors provided by these respondents seem to be broadly relevant to content matters that could be complained about under broadcasting codes or other rules, for example, classification, content not suitable for children, inaccurate news content, or demeaning, derogatory, discriminating or racist content. Other descriptors provided did not appear to be relevant to matters covered by the codes or other broadcasting rules, for example, program quality and content of particular advertisements.

Observations

The perspectives provided by community research, both existing and commissioned, identify a number of challenges and opportunities for the role and development of contemporary broadcasting codes.

In most areas addressed by the current codes, the research indicates that some regulatory mechanism is seen as necessary to provide appropriate community safeguards. These protections continue to be considered important despite access to an increasing range of converged media sources. This seems to be linked to an expectation that content standards and 'rules' are appropriate for professional content produced for broad audiences, which, at least in part, appears to be driven by the ongoing importance of 'traditional' broadcasting services in Australians' lives.

²³⁵ *ibid.*

²³⁶ *ibid.*

The research provides important insights into areas where the protections provided by the codes may be usefully reframed to reflect contemporary views that responsibility for making broadcasting content 'safe' is shared between individuals, industry and government.

For example:

- > citizens' reliance on a broad suite of tools to manage access to content by their children, or children in their care
- > citizens' nuanced expectations relating to accuracy and impartiality in news and current affairs programs, including talkback radio.

These issues are explored in more detail in the context of the other information before the inquiry in Chapter 5—Emerging directions.

Chapter 5: Emerging directions

Introduction

In this report, the ACMA has sought to distil the key evidence and perspectives garnered by the inquiry.

This chapter sets out the emerging directions arising from that evidence by:

1. Verifying the enduring concepts and core matters that are of ongoing relevance and significance to contemporary broadcasting audiences and markets, notwithstanding the pressures of convergence.
2. Considering the fundamental justification for contemporary code-based regulatory safeguards that reflect those enduring concepts and core matters.
3. Where code-based regulation continues to be justified, beginning to explore how these safeguards may be most appropriately addressed by codes in a converged media and communications framework.

1. Verifying the enduring concepts and core matters

To provide a starting point for framing the discussion, the issues paper used seven ‘enduring concepts’ drawn from the ACMA’s *Enduring concepts* work, which examined the conceptual underpinnings for regulatory responses in communications and media markets.²³⁷ The concepts are characterised as ‘enduring’ as they are of ongoing importance to media markets, notwithstanding the pressures of convergence. Through *Enduring concepts*, the ACMA had identified 16 concepts that apply across the communications and media landscape,²³⁸ of which seven were apposite to codes and used in the issues paper, namely, community values, protection of children, ethical standards, protection of the public, access, Australian identity and redress.²³⁹ In turn, existing code-based safeguards were then mapped to these enduring concepts. These concepts and their relationship to existing code provisions were explored in both the issues paper and in Chapter 2 of this report—Overview of consultation, submissions and other stakeholder input.

As can be seen in Chapter 2 of this report, the enduring concepts identified in the issues paper resonated with stakeholders as having broad relevance to contemporary broadcasting codes of practice. However, in light of the submissions and feedback outlined in that chapter, the ACMA considers that the original framing should be adjusted in two ways.

The first adjustment the ACMA considers appropriate is adding the enduring concept of ‘quality’. The concept of ‘quality’ provides that:

... 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.²⁴⁰

²³⁷ ACMA, *Enduring concepts—Communications and media in Australia*, 2011.

²³⁸ The 16 enduring concepts identified in *Enduring concepts* were: competition, quality, redress, efficiency, access, confidence, digital citizenship, diversity of voices, Australian identity, community values, localism, ethical standards, protection of the public, protection of children, digital information management and national interest.

²³⁹ ACMA, *Contemporary community safeguards inquiry—Issues paper*, 2013, pp. 15–17.

²⁴⁰ ACMA, *Enduring concepts—Communications and media in Australia*, 2011, p. 14.

Having reflected on the matter, the ACMA is of the view that the concept of 'quality' better encompasses the issue of a balance between advertising and program content, previously included with the other advertising provisions under 'ethical standards'.

Secondly, the ACMA agrees with submitters that the description 'accountability' is better aligned with the role of complaints-handling than the term 'redress'. Therefore, the ACMA proposes reframing its discussion of methods of complaints-handling in the codes as relevant to accountability.

The ACMA also considers its previous mapping of existing code-based safeguards against certain concepts should be adjusted as follows:

- > safeguards designed to address matter that is likely to incite hatred or vilify were originally considered under the enduring concept of 'protection of the public', but the ACMA has identified that these are more closely linked to the concept of 'community values'
- > the emergency information code safeguards were originally considered under the enduring concept of 'protection of the public', but the ACMA has identified that these are more closely linked to the concept of 'access'.

In light of this proposed reframing, Figure 3 below sets out the eight enduring concepts and the remapped relevant matters addressed in existing codes.

Figure 3 Eight reframed enduring concepts and remapped existing code matters

Enduring concept in issues paper	Relevant matters addressed in existing codes
Community values	<ul style="list-style-type: none"> > classification of television content > decency > content that incites hatred or vilifies*
Protection of children	<ul style="list-style-type: none"> > time zone restrictions > classification of television content
Ethical standards	<ul style="list-style-type: none"> > accuracy > fairness and significant viewpoints > transparency of advertising/promotional material*
Quality*	<ul style="list-style-type: none"> > time devoted to advertising/promotional material*
Protection of the public	<ul style="list-style-type: none"> > privacy and fair treatment
Access	<ul style="list-style-type: none"> > captioning > emergency information*
Australian identity	<ul style="list-style-type: none"> > requirements for Australian music
Accountability*	<ul style="list-style-type: none"> > methods of handling and responding to complaints from members of the public about program content or compliance with codes

**Indicates reframed enduring concepts or remapped code matters.*

The ACMA is not currently persuaded that the enduring concepts of 'diversity of voices' and 'localism' are necessary for inclusion as core principles for all sectors'

contemporary broadcasting codes.²⁴¹ In the context of community broadcasting services in particular, localism and diversity appear to be captured in existing licence conditions, requiring licensees to represent the community of interest and encourage members of the community to participate in the service. Similarly, commercial television broadcasters in regional Queensland, regional Victoria, Tasmania and parts of regional New South Wales are required to broadcast minimum levels of local content under the BSA. Most regional commercial radio stations must also broadcast prescribed amounts of local content.

In verifying the enduring concepts and core matters, and taking into account the evidence as outlined in this report, it is notable, but perhaps not surprising, that there is a striking consistency between:

- > the matters identified at subsection 123(2) of the BSA as matters that the co-regulatory codes may address
- > the current code-based safeguards
- > those matters that the evidence and submitters suggest contemporary broadcasting codes should address.

This is demonstrated by Figure 4 below, which sets out the eight enduring concepts, the current code-based safeguards and the matters listed in subsection 123(2) of the BSA.

Figure 4: Mapping enduring concepts to the current code-based safeguards and matters listed in subsection 123(2) of the BSA

Enduring concept	Matters listed in s.123(2) of the BSA	Current code-based safeguards
Community values Delivery of media and communications services and content should reflect community standards	<ul style="list-style-type: none"> > Methods of classifying programs that reflect community standards > Preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry²⁴² 	<ul style="list-style-type: none"> > Classification of content > Placement of advertisements > Decency safeguards > Inciting hatred/vilification safeguards
Protection of children Children, in particular, should be protected from content or communications that are age-inappropriate or harmful to them	<ul style="list-style-type: none"> > Methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority 	<ul style="list-style-type: none"> > Time zone safeguards > Classification of content

²⁴¹ As discussed in chapter 2—Overview of consultation, submissions and other stakeholder input, the CBAA suggested that the concepts of localism and diversity should be included in any core principles that would impact on the codes or the ACMA's approach to regulating community radio.

²⁴² Section 6 of the *Broadcasting Services Act 1992*, defines 'program' in relation to a broadcasting service, as: (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or (b) advertising or sponsorship matter, whether or not of a commercial kind.

Ethical standards Information reporting should be fair, accurate and transparent so that citizens may participate constructively in Australian democratic processes	<ul style="list-style-type: none"> > Promoting accuracy and fairness in news and current affairs programs > Preventing the broadcasting of programs that simulate news, depict/induce hypnotic states/use or involve subliminal perception > Preventing the broadcast of programs that use or involve subliminal perception > In the case of codes of practice developed by community broadcasting licensees, the kinds of sponsorship announcements that may be broadcast by those licensees or the kinds of sponsorship announcements that particular kinds of program may carry 	<ul style="list-style-type: none"> > Accuracy safeguards > Fairness safeguards > Safeguards aimed at transparency in advertising and promotional practices > Safeguards preventing the broadcast of programs likely to simulate news, depict the actual process of putting a subject into a hypnotic state, use or involve technique which attempts to convey information below or at the threshold of normal awareness
Quality Regulation should support access by Australians to a broad range of quality choices, including the best available communications and media services	<ul style="list-style-type: none"> > In the case of codes of practice developed by commercial broadcasting licensees, broadcasting time devoted to advertising 	<ul style="list-style-type: none"> > Safeguards on advertising and promotional practices aimed at achieving a reasonable balance between program and non-program matter broadcast > Safeguards preventing the broadcast of commercials that are excessively noisy or strident
Protection of the public Australians should be appropriately protected from harm when using media and communications and should have access to emergency services to protect life, health and safety of individuals and communities	<ul style="list-style-type: none"> > Such other matters relating to program content as are of concern to the community 	<ul style="list-style-type: none"> > Privacy and fair treatment safeguards
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	<ul style="list-style-type: none"> > Captioning of programs for the hearing impaired 	<ul style="list-style-type: none"> > Captioning safeguards > Emergency information safeguards
Australian identity Australians should be able to experience Australian voices and stories when using or consuming media and communications services	<ul style="list-style-type: none"> > In the case of codes of practice developed by commercial radio broadcasting licensees, the broadcasting of Australian music 	<ul style="list-style-type: none"> > Australian music requirements

<p>Accountability</p> <p>The public is entitled to have confidence in media/communications safeguards—these safeguards should also provide users with effective/accessible avenues of complaint and redress if standards are not met</p>	<p>> Methods of handling complaints from the public about program content or compliance with codes of practice and reporting to the ACMA on complaints so made</p> <p>> 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</p>	<p>> Methods of handling complaints</p>
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2. Justification for contemporary code-based safeguards

The ACMA's disposition in conducting the inquiry was to produce guidance for industry which supports the minimum level of regulatory imposition, appropriate and proportionate in all the circumstances.²⁴³

Accordingly, where it identified a core matter that contemporary broadcasting codes of practice (broadcasting codes) *could* appropriately address, the ACMA also reflected on whether codes of practice *should* do so. That is, there might be some areas where there is no longer a need for code-based safeguards.

In this context, the ACMA has applied 'lenses' it believes are relevant to a contemporary assessment of the appropriateness of code-based safeguards in the converged media environment.²⁴⁴ These include:

- > the degree of influence that different services exert in shaping community views in Australia²⁴⁵
- > the extent to which these matters are, or could be, addressed by the market or other mechanisms.

Influence

The BSA currently contemplates that the level of regulatory control applied to broadcasting services should differ according to the degree of influence that services exert in shaping community views.²⁴⁶ For some time, commentators have suggested that this influence-informed approach has diminishing relevance 'as the internet grows in dominance, and convergent technologies facilitate the provision of more influential content'.²⁴⁷ There were several submissions to the issues paper on this point.²⁴⁸

It is the ACMA's view that the concept of influence, as outlined in the BSA, remains a relevant regulatory lens in the context of the inquiry. This is because broadcasting services remain highly influential in the current environment with some of these services more influential than others—as measured by criteria such as audience reach and ratings.

²⁴³ Paragraph 4(2)(a) of the *Broadcasting Services Act 1992*.

²⁴⁴ ACMA, *Contemporary community safeguards inquiry—Issues paper*, 2013, p. 9.

²⁴⁵ Subsection 4(1) of the *Broadcasting Services Act 1992*.

²⁴⁶ *ibid.*

²⁴⁷ H Brue, 'Degrees of Influence', *Communications Law Bulletin*, vol. 27, no. 1, 2008, p. 10.

²⁴⁸ Free TV Australia *Submission CCSI26*; Australian Subscription Television and Radio Association *Submission CCSI13*; Commercial Radio Australia *Submission CCSI17*.

This is not, however, to ignore the rapid and significant change that has taken and is taking place in the media environment. This includes both the extension of influence of ‘traditional’ media through non-traditional methods, such as websites and catch-up television, and the rapid growth of other forms of content (including television and radio-like services and user-generated content) and the multitude and growing number of platforms. These suggest that influence is a concept that may need to be reconsidered in the not too distant future by reference to a different and much wider pool of potential ‘influencers’. That is, not one broadcast sector relative to another broadcast sector but one broadcast sector relative to all potential sources of influence.

The extent to which the matters are, or could be, addressed by other mechanisms

Where there is a will to deliver benefits or counter harms in the public interest, whether in broadcasting or elsewhere, a range of approaches is available. These include market-based solutions, self- and co-regulation and direct government or statutory regulation. Historically, a combination of these approaches has been used to successfully address various types of policy problems, market issues and community concerns.²⁴⁹

Ultimately, the best regulatory arrangement must be decided on a case-by-case basis. However, it is fair to say that direct regulation may be more appropriate:

- > if an issue cannot be addressed by the market itself
- > where there are limited incentives for industry to work together effectively
- > where there is significant market power or asymmetry
- > where there is a relatively greater degree of consumer detriment such as serious risk to public health and safety.

Conversely, if environmental factors indicate that an issue can be addressed by the market or industry participants have the incentive and the ability to work together, a self- or co-regulatory approach may be appropriate.²⁵⁰

The issues paper sought stakeholders’ views on whether there was a justification for each of the enduring concepts to be included as core guiding principles for contemporary broadcasting codes. Both through the research and consultation, the inquiry has broadly considered whether the core matters are addressed by other mechanisms such as:

- > market pressures
- > existing ‘self-regulatory’ initiatives from industry or other industries
- > alternative regulatory options under the BSA, such as standards
- > other issue-specific legislation/agencies.

This necessarily requires the ACMA to have regard to the current ‘suite’ of mechanisms with a focus on potential gaps and overlaps. To identify gaps it is important to consider not only if the relevant matter is already addressed, but also whether that mechanism delivers community safeguards. The existing framework is directed at meeting the concerns of the broader community, rather than, for example, providing an individual with legal remedies. Therefore it is possible that codes might need to cover matters that are also covered by other mechanisms if those do not provide broad community safeguards.

Similarly, broadcasting codes and other mechanisms need not be mutually exclusive. Broadcasting codes can complement these other protections to assist licensees in

²⁴⁹ ACMA, *Optimal conditions for effective self- and co-regulatory arrangements*, 2011, p. 3.

²⁵⁰ *ibid.*

complying with relevant obligations and provide more direct accountability to the community.

Evidence before the inquiry suggests a high level of consensus about the enduring matters or concepts for which there is fundamental justification for contemporary code-based safeguards. The inquiry has seen little, if any, evidence to support significant extension of code-based safeguards beyond areas captured by the core concepts.²⁵¹ The evidence also indicates that there may be support for simplifying or completely removing some areas that codes currently cover. These are discussed below.

Community values

In this context, it is helpful to distinguish two types of content:

1. Content that, taking into account prevailing community standards, should be prohibited.
2. Content that may be unacceptable to individuals, depending on personal taste and preferences.

Content that, taking into account prevailing community standards, should be prohibited

In the issues paper, the ACMA queried whether provisions designed to address content that is likely to incite hatred against or vilify remained necessary and appropriate for contemporary broadcasting codes, given the existence of Commonwealth and state laws in this area, as well as the role of the AHRC. As outlined earlier, some submitters put views that either no intervention was necessary or there was a 'lessening' need for code-based safeguards in this area because of the other laws. Arguments supporting the continued value of these code provisions were also made.²⁵²

Under the various anti-discrimination laws, the power to complain is generally limited to 'victims' or persons/bodies authorised to make a complaint on behalf of a victim.²⁵³ The courts have also stated that in order to make a complaint under the *Australian Human Rights Commission Act 1986* where the right to complain is open to persons aggrieved by unlawful discrimination, 'the complainant must show that they have a grievance that is beyond that which will be suffered by an ordinary member of the public'.²⁵⁴ In contrast, existing broadcasting code provisions are directed to meeting the concerns of the wider community about program content on broadcasting services. Given this broader focus the ACMA's view is that it remains appropriate for contemporary broadcasting codes to continue to include such protections.

Content that may be unacceptable to individuals depending on personal taste and preferences

The BSA directly regulates the broadcast of high impact audiovisual material by providing that programs classified as X18+ or RC by the Classification Board are not to be broadcast by commercial, community, subscription broadcast and subscription

²⁵¹ As outlined earlier in this report, a number of submitters suggested matters they would like included or more comprehensively covered in broadcasting codes of practice. These were, however, more in the nature of specific matters to be included rather than broad areas or concepts to be covered.

²⁵² Real Media Real Change, *Submission CCSI46*; Community Broadcasting Association of Australia, *Submission CCSI19*; Special Broadcasting Service, *Submission CCSI49*.

²⁵³ See, for example, section 46P of the *Australian Human Rights Commission Act 1986* (Cth), sections 87A, 87B, 87C and 88 of the *Anti-Discrimination Act 1977* (NSW) and section 134 of the *Anti-Discrimination Act 1991* (Qld).

²⁵⁴ For example, *Access for All Alliance (Hervey Bay) Inc v Hervey Bay City Council* (2007) 162 FCR 313 where the Federal Court found that a disability rights organisation did not have standing to commence discrimination proceedings in relation to inaccessible bus stops as the organisation was not 'aggrieved' in its own right and did not have standing to make such a complaint in its own right under the (formerly named) *Human Rights and Equal Opportunity Commission Act 1986* for breaches of the *Disability Discrimination Act 1992*.

narrowcast or open narrowcast television licensees.²⁵⁵ Further, programs classified R18+ must not be broadcast unmodified by commercial, community or open narrowcast television licensees.²⁵⁶ Otherwise, it seems appropriate for contemporary broadcasting codes to deal with the classification of audiovisual broadcast content especially noting that the *Classification (Publications, Films and Computer Games) Act 1995* does not apply to broadcasting services.

Similarly, it would seem that contemporary broadcasting codes should also deal with the classification and placement of advertising, including the advertising of particular products, such as alcohol and gambling. This is because the relevant self-regulatory bodies funded by particular advertising industries have a different focus to the broadcasting codes. For example, the Advertising Standards Bureau (a self-regulatory, non-government body funded by an advertiser levy) deals with a range of issues relevant to advertising content, but does not deal with the classification or placement of advertising material.²⁵⁷ The ACMA received submissions querying the effectiveness of the current system, with particular reference to advertising food and alcohol, and advocating an enhanced role for community safeguards in this area.²⁵⁸ Other submissions received strongly supported the effectiveness of the current self-regulatory system for advertising content.²⁵⁹

There is still the question of how these matters of community values should be dealt with for audio content, noting that classification is clearly not appropriate and that the term 'decency' does not seem a logical or easy fit.

In relation to community values, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to:

- > **preventing the broadcast of certain content that prevailing community standards indicate should be prohibited**
- > **adults making informed decisions about accessing content based on their personal taste and preferences.**

Protection of children

In this context, two different types of content are discussed, program material and advertising material.

Program material

In the broadcasting context, a current protection for children from harmful program content is reflected in the Children's Television Standards 2009 (CTS) which apply to commercial television broadcasting licensees.²⁶⁰ Under the CTS, commercial television licensees must broadcast a certain quota of hours of children's programs that have been assessed by the ACMA. This assessment allows commercial television broadcasters to count these programs towards their CTS quota. However, if

²⁵⁵ Clauses 7(1)(g), 9(1)(g), 10(1)(f) and 11(3)(a) of Schedule 2 to the *Broadcasting Services Act 1992*.

²⁵⁶ Clauses 7(1)(ga), 9(1)(ga), 11(3)(b) of Schedule 2 to the *Broadcasting Services Act 1992* and paragraph 123(3A)(b) of the *Broadcasting Services Act 1992*. Note that under clause 10(1)(ga) of Schedule 2 to the *Broadcasting Services Act 1992* a subscription broadcasting television licensee may broadcast programs classified R18+ by the Classification Board only if the programs are restricted by disabling devices acceptable to the ACMA.

²⁵⁷ In a similar vein, the ACMA recently registered new codes which limit betting odds promotions and gambling during live sports broadcasts.

²⁵⁸ Obesity Policy Coalition, *Submission CCSI40*; National Alliance for Action on Alcohol, *Submission CCSI39*. The ACMA also notes that, in 2013, the Australian National Preventative Health Agency released an issues paper about the effectiveness of the current regulatory environment (including the broadcasting codes and the advertising self-regulatory codes) in addressing community concerns about alcohol advertising.

²⁵⁹ Brewers Association, *Submission CCSI15*; Australian Association of National Advertisers, *Submission CCSI39*.

²⁶⁰ Subsection 122(1) and paragraph 122(2)(a) of the *Broadcasting Services Act 1992*.

commercial television broadcasters do not wish to count a program towards the quota, the program does not need to be assessed by the ACMA. Therefore, there may be programs broadcast on commercial television that are made for, directed at, or viewed by children, which have not been assessed by the ACMA.

These ACMA assessed programs are referred to as C and P programs.²⁶¹ The CTS requires licensees to broadcast C and P programs during certain time zones.²⁶² Licensees must also nominate designated C and P program periods within those time zones. Within the designated C and P program periods, licensees must not broadcast programs other than C programs or P programs respectively. The CTS does not require consumer advice (such as a 'C' or 'P' symbol) to be displayed at the start of relevant programs to inform the audience that the program has been assessed by the ACMA or to advise of the content. However, licensees are required to include a schedule of C and P programs on their websites on the main program schedule.²⁶³

Another mechanism in the BSA directed at protecting children is the prohibition of content classified X18+, RC and R18+ (discussed above). Further, the BSA requires commercial television and community television sectors (among other things) to ensure their codes of practice provide that:

- > films classified as MA15+ may be broadcast only between the hours of 9.00 pm on a day and 5.00 am the following day
- > films classified as M may only be broadcast between the hours of 8.30 pm on a day and 5.00 am on the following day and between the hours of noon and 3.00 pm on any day that is a school day.²⁶⁴

In its classification review final report, the ALRC recommended that, rather than prescribe the precise time zone restrictions as the BSA does, any proposed new legislation should provide that time zone restrictions be set out in industry codes. The ALRC was of the view that 'this provides for a level of flexibility and will enable the restrictions to be adapted, or gradually phased out, in response to a changing media environment'.²⁶⁵ Whether or not these aspects should be directly regulated, in the future, is a matter for government.

As noted above, the *Classification (Publications, Films and Computer Games) Act 1995* does not apply to broadcasting services and there is no legislative requirement on broadcasters under this regime.²⁶⁶ Therefore, in the absence of relevant code provisions, parents would not be in a position to make informed decisions about the suitability of broadcasting content for their children.

The emerging direction on the future of particular tools for the protection of children regarding program content (including classification and time zones) is discussed below in 'How these matters may be most appropriately addressed in the contemporary environment'.

²⁶¹ C programs are directed at children younger than 14 years of age who are not preschool children and P programs are directed to preschool children.

²⁶² The time zones set out in the Children's Television Standards 2009 for P programs (the 'P band') are: 7.00 am to 4.30 pm Monday to Friday. The time zones set out in the Children's Television Standards 2009 for C programs (the 'C band') are: 7.00 am to 8.30 am Monday to Friday, 4.00 pm to 8.30 pm Monday to Friday, and 7.00 am to 8.30 pm Saturday, Sunday and school holidays.

²⁶³ CTS 9(3) of the Children's Television Standards 2009.

²⁶⁴ Paragraphs 123(3A)(d) and (c) of the *Broadcasting Services Act 1992* respectively.

²⁶⁵ Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media: Final report*, p. 196.

²⁶⁶ However, note that subsections 123(3A) and (3C) of the *Broadcasting Services Act 1992* provide that in developing codes, commercial television, community television and open narrowcasting television licensees must ensure that, for the purpose of classifying films, those codes must apply the classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*.

Advertising material

In the context of advertising to children, there is currently a combination of approaches, for example:

- > direct regulation through the prohibition in the CTS of advertising during P program periods as well as certain advertising techniques during C programs²⁶⁷
- > co-regulation with the commercial television code extending the application of parts of the CTS to advertisements shown outside of C and P program periods and including certain requirements about food and beverage advertisements directed to children²⁶⁸
- > self-regulation including a voluntary agreement of participating companies to comply with the Australian Association of National Advertisers codes, administered by the Advertising Standards Bureau; the Australian Food and Grocery Council's Responsible Children's Marketing Initiative; and the Quick Service Restaurant industry's initiative for responsible advertising and marketing to children.

As noted earlier in this report, the ACMA has received submissions about the adequacy of current safeguards, particularly those that deal with children's exposure to food advertising and alcohol advertising.²⁶⁹

In relation to protection of children, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to enabling parents and carers to protect children in their care from inappropriate or harmful content.

Ethical standards

Accuracy, impartiality and fairness

There is a range of professional ethics codes and guides relevant to this area, for example, the *Journalists' Code of Ethics* issued by the MEAA²⁷⁰, or discrete codes of conduct managed by individual media organisations. While these offer safeguards, they do not necessarily provide the same broad community safeguards which apply to broadcasting services under broadcasting codes. Different codes of conduct across media organisations are not necessarily consistent and only some have provision for community redress. Further, the MEAA code does not aim to ensure accuracy, impartiality and/or fairness in content that features 'entertainers', rather than journalists, covering matters of public importance.

Legal action for defamation is also relevant to inaccurate, impartial or unfair broadcast content, allowing people who feel that their reputation has been harmed to bring legal action against those they deem responsible. To the extent that defences to claims of defamation include justification (proof that a defamatory statement is substantially true), and contextual truth and honest opinion (involving assessments of whether material is comment rather than a statement of fact)²⁷¹, there are some similarities between current code provisions and assessments of accuracy and fairness of particular broadcasts. However, the codes are directed at meeting the concerns of the wider community—as anyone can complain under codes, rather than just the affected person. Given the broad focus of broadcasting code protections, the ACMA believes

²⁶⁷ Part 3 of the Children's Television Standards 2009.

²⁶⁸ Clause 6.23 of the *Commercial Television Industry Code of Practice*, January 2010 (incorporating amendments to July 2013).

²⁶⁹ For example, Obesity Policy Coalition, *Submission CCSI40*; National Alliance for Action on Alcohol, *Submission CCSI39*.

²⁷⁰ Media Entertainment & Arts Alliance, *Journalists' Code of Ethics*, accessed 8 November 2013, www.alliance.org.au/code-of-ethics.html.

²⁷¹ These defences are set out in the various defamation legislation across the states and territories. For further information see the Communications Law Centre, *Defamation Fact Sheet*, accessed 3 November 2013, www.law.uts.edu.au/comslaw/factsheets/defamation.html.

that it is necessary and appropriate for contemporary broadcasting codes to continue to include such protections.

There are, however, currently some matters that may no longer need to be addressed in contemporary broadcasting codes. For example, although nominated by the BSA as matters which codes 'may relate to', provisions requiring the prevention of programs that simulate news or events in an alarming or misleading way; depict the actual process of putting a person into a hypnotic state or are designed to induce a hypnotic state in the audience; and that use or involve the process known as subliminal perception, may no longer be required.²⁷²

Transparency of advertising and promotional material

Existing provisions of the BSA relevant to this area are limited to political advertising requirements. Further, a program standard applicable to commercial radio licensees requires licensees to be transparent about certain commercial agreements that could affect the content of current affairs programs, including talkback programs.²⁷³

As indicated above, research indicates that the community places high importance on being able to distinguish program content from advertising and promotional content. In this respect, the ACMA's recent work in reviewing the commercial radio standards supports the transparency of advertising being addressed in contemporary broadcasting codes, until or unless it is identified that another approach is more appropriate.

Some simplification of the current broadcasting code provisions relevant to ethical standards is possible, for example, a focus on accuracy in news and transparency of fact rather than being concerned with opinion in current affairs.

In relation to ethical standards, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to ensuring accuracy, impartiality and transparency in certain factual content and transparency of advertising and promotional practices.

Quality

Time devoted to advertising

Only community broadcasting sectors are subject to existing legislation that restricts the time devoted to advertising/promotional content.²⁷⁴ In other areas there is an argument to be made that broadcasting time and space devoted to advertising and promotional material should be 'left to the market'. That is, if advertising time was unregulated it might be argued that the needs and expectations of the audience might ensure broadcasters did not 'overstep the mark' on the amount of broadcasting and promotional material, because in the current media environment people could access other platforms for their content.

On the other hand, some submitters have expressed the view that including provisions in contemporary broadcasting codes provides a valuable safety net in what is still evidently the most ubiquitous form of family entertainment in the home.

Simplification of the current broadcasting code provisions relevant to the time devoted to advertising is possible and desirable.

²⁷² Paragraph 123(2)(e) of the *Broadcasting Services Act 1992*.

²⁷³ Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012.

²⁷⁴ Although paragraph 123(2)(f) of the *Broadcasting Services Act 1992* contemplates that commercial broadcasting codes of practice will deal with time devoted to advertising.

In relation to quality, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to the appropriate balance between program material and advertising/promotional material.

Protection of the public

A core matter emerging here appears to be that individuals should be treated and dealt with fairly and their right to privacy respected.

Privacy

As demonstrated earlier in this report, there seems to be widespread community and industry support for privacy safeguards specific to broadcasting—despite the existence of other laws and agencies across the Australian regulatory landscape. There is clearly some scope for such safeguards because some activities of media organisations carried out ‘in the course of journalism’ are exempt from the operation of the *Privacy Act 1988*, provided that relevant media organisation meets certain requirements, including being publicly committed to standards which address privacy.²⁷⁵ Television and radio industry groups have sought to satisfy the requirement of being publicly committed to observing standards that deal with privacy through their broadcasting codes.²⁷⁶ In this area it therefore appears that broadcasting code provisions both complement an existing scheme and provide a stand-alone safety net.

Submitters suggest some enhancements to the current broadcasting code provisions relevant to privacy, for example, around proportionality and the public interest test.

Fair treatment

There is currently a range of existing code provisions which are focused on sensitive, fair and appropriate treatment of people in a range of situations, particularly where those persons may be vulnerable to exploitation, for example, participants in live-hosted radio programs or reality television programs. While the ACMA did not receive any submissions directly on these matters, its current view is that these protections remain relevant in contemporary broadcasting codes. There do not seem to be particular protections in the BSA relevant to these matters that would suggest contemporary broadcasting codes should not deal with them.

Some submissions have raised for consideration the need for explicit protection and intervention relating to other vulnerable members of society. This will be discussed below in ‘How these matters may be most appropriately addressed in the contemporary environment’.

In relation to protection of the public, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to fair treatment and privacy.

Access

Captioning

Captioning requirements are now included in legislation. However, on balance, the submissions seem to support retaining some complementary elements in contemporary broadcasting codes.

This is an example of where code provisions may be helpful in complementing legislative obligations for as long as the information is of value, does not duplicate existing provisions and allows for technological and other developments.

²⁷⁵ Subsection 7B(4) of the *Privacy Act 1988*.

²⁷⁶ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and practice*, Report 108 (2008), vol. 2, 1462 [42.57].

Emergency information

A range of public interest objectives relevant to emergency information is expressed in various areas of communications and media regulation, 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*.

Recent disasters in Australia have demonstrated the importance of social media, particularly in delivering vital community information during emergency events. However, at the same time, there appears to be continuing community expectation that broadcasters will play a role. Further, there is the argument that there might be times that social media and online devices are not accessible due to fire or flooding, for example.

Code-based safeguards in this context can complement and supplement existing mechanisms.

In relation to access, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to emergency information and the provision of reliable consumer information about the mechanisms available for accessing content.

Australian identity

The BSA imposes certain Australian content requirements on commercial and subscription television broadcasters. For example, the ACMA must determine standards for commercial television licensees that relate to the Australian content of programs. Accordingly, the ACMA made the Broadcasting Services (Australian Content) Standard 2005 which sets out the rules relating to Australian programs on commercial television. Under the BSA, subscription broadcasting television licensees are required to maintain a minimum 10 per cent of total program expenditure on eligible drama. Eligible drama includes an Australian program, an Australian/New Zealand program, an Australian co-production or a New Zealand program.

There are no equivalent Australian content requirements covered by legislation relating to radio and no suggestion that there should be any duplication for television. Accordingly, code-based safeguards relevant to commercial and community radio, around minimum Australian music requirements, would appear to be complementary to legislative schemes operating in the television context.

In relation to Australian identity, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to the provision of minimum requirements for Australian music.

Accountability

The co-regulatory framework for broadcaster accountability is set out in the BSA. It makes it clear that codes are central to enabling and ensuring broadcasters take primary responsibility for the content they broadcast to citizens. Complaints-handling provisions in the BSA highlight that core to this is the availability of effective complaints-handling systems between broadcasters and citizens.

In relation to accountability, the ACMA concludes that there is justification for safeguards in contemporary broadcasting codes relevant to complaints-handling systems and information.

Observations

Evidence before the inquiry suggests a high level of consensus about the key matters that should be addressed in contemporary and future codes. This remains the case after consideration is given to the justification. Below, the ACMA indicates the emerging directions and how these matters might be addressed in the contemporary environment.

3. How these matters may be most appropriately addressed in the contemporary environment

There is consistency, outlined above, between the matters earmarked in the BSA for codes to address, the current code-based safeguards and the community safeguards that citizens evidently want contemporary broadcasting codes to address. This suggests that the key issue is not which matters should be addressed but *how* they should be addressed. This section of the report begins to explore this issue.

To a large extent, considering how these safeguards should be addressed involves a recalibration of existing code provisions to align them with contemporary views and expectations and other environmental/technological changes. The evidence and submissions paint a picture of contemporary broadcasting audiences and markets which are increasingly converging but where 'traditional' behaviours, practices and expectations are still widespread. The economic research shows that broadcast television, particularly free-to-air, currently remains a dominant source of audiovisual content for Australians and that commercial radio remains a key source of audio content. However, consumer behaviours are changing as people access more and more content online. All this suggests that the current broadcasting environment is appropriately characterised as transformational or evolutionary, and will continue to be so for some time yet. Any safeguards adopted will need to be sufficiently flexible to accommodate this evolution.

In this regard, it is worth reflecting on those regulatory principles which were nominated, in the issues paper, as applying particularly to a converged environment. These included flexibility, calibration, global engagement and shared responsibility.²⁷⁷

Shared responsibility has emerged as particularly pertinent in this context. This is because it is evident that a future media and communications framework will confront the likely reality that national governments, industry regulators and industry-specific bodies can no longer *do* everything. As a consequence, responsibility for media and communications must be shared between government, economy-wide and industry-specific regulators, multilateral institutions, suppliers and, importantly, citizens.²⁷⁸

The focus of recalibration efforts, including the application of shared responsibility, and some further ideas for consideration when assessing how the key community safeguards might appropriately be addressed in contemporary broadcasting codes, are canvassed below.

Safeguards relevant to enabling adults to make informed decisions about accessing content based on their personal taste and preferences

The enduring utility of classifying audiovisual content is clear and agreed, with some support for harmonisation of classification criteria and markings. There is also some support for measures to improve citizens' understanding of the type of content they are accessing so that expectations are well aligned with their content experience. However, the latter could come at a high cost to industry. Therefore, careful

²⁷⁷ ACMA, *Contemporary community safeguards inquiry—Issues paper*, 2013, p. 9.

²⁷⁸ ACMA, *Enduring concepts—Communications and media in Australia*, 2011, p. 8.

consideration should be given to any need for additional information relative to industry compliance costs.

For audio content, while some form of ‘safeguarding’ is still valued, in general people feel reasonably confident about their ability to discern what may or may not be to their personal tastes. This assumes a level of pre-existing awareness of the program genre, format and presentation style. It is less clear whether there is a need for measures that equip people in relation to content that may be relatively unexpected. Any recalibration in this context will need to reflect the element of shared responsibility, in the sense that providers should equip consumers to make informed decisions and encourage consumers to avail themselves of that information.

Questions have been posed around whether existing interventions meet community standards for certain advertising, such as for alcohol. Any particular safeguards in this area must necessarily be informed by research and other evidence, and addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasting service providers.

Safeguards relevant to preventing the broadcast of certain content that prevailing community standards indicate should be prohibited

As identified above, audiovisual content is generally covered by classification requirements. Material classified as X18+ or RC is prohibited from being broadcast by licence conditions on commercial, community, subscription broadcast, subscription narrowcast and open narrowcast television licensees.

Beyond this, a recalibration around the terminology and structure of current code provisions on ‘decency’ and prohibited content might be appropriate. A possible approach could prohibit the dissemination (across all sectors) of certain very harmful or high impact content (for example, material capable of inciting hatred or violence). The proviso would be that the prohibitions set out clear criteria and guidance to industry and audiences, do not inappropriately restrict freedom of expression, and are standardised.

Safeguards relevant to enabling parents and carers to protect children in their care from inappropriate or harmful content

There is high-level consensus about the critical importance of this issue in the contemporary environment. The notion of shared responsibility is clearly relevant here and might be addressed in contemporary broadcasting codes via a combination of:

- > the classification of audiovisual material
- > meaningful and consistent consumer advice (audiovisual and audio material)
- > tools that enable parents and carers of children to make informed decisions about content.

However, beyond that there is some lack of clarity about the relative ‘shares’ of responsibility and that is where the focus of the recalibration efforts will be.

Program content

Some of the tools and mechanisms currently provided by television broadcasters are under strain. Nonetheless, at this time, parents rely on these tools, including time zone restrictions. Evidence about content consumption behaviours demonstrates that families continue to enjoy watching live television content, with an increasing amount of catch-up television. Further, television content is still delivered in a linear way. In this context, the ACMA has been presented with a range of views on the utility and value of time zones for audiovisual material in the future. On the one hand, there is conspicuous community support for maintenance of some time zone restrictions on free-to-air television and, on the other, well-reasoned arguments about their

diminishing value. This suggests that any contemplated reduction of time zone restrictions might best be staged, taking into account children's viewing habits, the availability and acceptance of other viewing management tools and the provision of educational programs for parents and carers.

For audio content, the community research indicated that a proportion of parents expressed a desire for more information to be provided about radio content broadcast during times when children would be likely to be listening (56 per cent). However, a large minority also expressed neutral views on this issue. This suggests that consideration of any change in this area might usefully be focused on evidence of actual child listening and education programs for parents and carers, as well as relative costs to industry.

Advertising content

For advertising to children and associated protections, as noted above, there is currently a combination of regulatory, co-regulatory and self-regulatory approaches in play. In response to the issues paper, the ACMA received submissions about the adequacy of the existing schemes. The OPC submitted that the 'controls on advertising to children that presently exist in broadcasting codes provide such a low level of protection as to be effectively meaningless' and that the industry-based codes²⁷⁹ 'provide a very poor level of protection that is not consistent with the object of protecting children from harmful material under the Act'.²⁸⁰ The OPC advocated an enhanced role for broadcasting codes.²⁸¹

The NAAA submitted that there are 'systemic issues with the broadcasting codes of practice, which fail to fully address the exposure of children and young people to alcohol advertising' and advocated an enhanced and improved role for the co-regulatory provisions.²⁸²

As with related issues around advertising generally (discussed above), safeguards particular to children must necessarily be informed by research and other evidence. They must also be addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasting service providers.

Safeguards relevant to ensuring accuracy, impartiality and transparency in certain factual content

There is evident support, from both citizens and industry, for including safeguards directed at accuracy, impartiality and transparency, noting that:

- > irrespective of whether news is broadcast by a national, commercial, community or subscription service, citizens expect it to be accurate and impartial
- > accuracy remains important in the current environment, despite the availability of multiple sources of content
- > it is expected that material or significant errors of fact should be corrected promptly and prominently
- > for current affairs-type content, citizens seem to be more accepting of opinion-rich coverage, as long as the commentary/analysis is not presented as being 'news' and they are not misled that opinion is fact.

There is support for future engagement with a safety net approach focused on materiality, simplification and clarification—that is, use regulatory mechanisms,

²⁷⁹ 'Industry-based codes' is used in the Obesity Policy Coalition submission to refer to the Quick Service Restaurant Industry Code and the Responsible Children's Marketing Initiative—the two voluntary self-regulatory codes developed by food industry bodies.

²⁸⁰ Obesity Policy Coalition, *Submission CCSI40*, pp. 2–3.

²⁸¹ *ibid.*

²⁸² National Alliance for Action on Alcohol, *Submission CCSI39*, p. 2.

including contemporary broadcasting codes to protect and correct only what is important, while relying on professional standards and market forces to encourage accuracy and transparency in other content.

Accordingly, the emerging direction seems to be a simplification of existing provisions. Contemporary community safeguards should deliver news content that is accurate and impartial. For other factual content not in news (for example, in current affairs type content and talkback) appropriate community safeguards should deliver accurate material facts in the coverage of matters of public importance and allow audiences to distinguish fact from opinion.

Safeguards relevant to the transparency of advertising and promotional practices

The economic research highlights the expansion and fragmentation of the market for audiovisual and audio content, and the consequent pressures on television and radio businesses. For audiovisual content, the flow-on is a reduction of the effectiveness of traditional block-style advertising. In this environment, broadcasters are necessarily looking to alternative advertising models, including branded content and increased use of product placement.

There is currently a relatively high degree of acceptance of the realities of product placement in certain types of programming (reality-type programming and lifestyle, for example). However, there were concerns about this type of practice in other program types, for example, news and current affairs programs or programs attracting child audiences or audiences otherwise vulnerable for some other reason.

While audiences do not want to be misled about the nature or provenance of promotional or advertising material, there is minimal support for express notification being provided as and when product placement occurs, such as the 'P' which appears on-screen in the UK. In this regard, it was unclear what would be a meaningful and non-intrusive mechanism for advising audiences of the existence of product placement in a particular program or format.

The emerging direction would seem to be maintenance of provisions that require the transparency of advertising and promotional practices that are effective but not intrusive.

Safeguards relevant to the appropriate balance between program material and advertising/promotional material

Audiences value mechanisms that deliver a balance of program material and promotional/advertising material and express concern when the proportion of the latter intrudes on their enjoyment of content.

The commercial television sector nominated time restrictions on advertising as their greatest opportunity cost. However, it acknowledged that the community expects that an appropriate balance between program matter and advertising will be maintained.²⁸³ In this context, Free TV submitted that the existing requirements are 'over complicated' and noted that 'simplified and more streamlined advertising time limits have been rolled out successfully for the multi-channels with no significant community concern'.²⁸⁴

In the ACMA's experience, the current code provisions are complex and difficult to understand. For example, time limits are not consistent for prime time and other times and the list of non-program matter exempted from the time limits is lengthy and

²⁸³ Free TV Australia, *Submission CCS126*.

²⁸⁴ *ibid*, p. 22.

confusing. Recalibration could appropriately be focused on simplification in a way that reasonably addresses the requirements of both broadcasters and audiences.

The evidence and perspectives received indicate that there is community concern about program promotions that intrude on content and lead to cluttered program presentation. This is promotional material that advertises the content of a particular program on that network—as distinct from paid advertising content.

Consideration should be given to whether there are better ways of addressing promotional material that intrudes on the audience's program viewing experience.

Safeguards relevant to fair treatment and privacy

Submissions to the inquiry demonstrated widespread citizen and industry support for safeguards about privacy. Some submitters suggested that existing privacy provisions could be enhanced by being more explicit in some of the requirements, for example, around the public interest test and proportionality.²⁸⁵ The ACMA does not see any changes to the public interest test as particularly difficult to achieve, were they to be accommodated, noting that such considerations are inherent in the application of the current privacy provisions. However, if a proportionality requirement were to be explicitly included this would represent a substantive change. There was no consensus on the issue of whether or not privacy provisions should be expanded in application beyond news and current affairs genres of programming. Industry submissions questioned the need, while citizen and advocacy groups supported its expansion.

For fair treatment, the core matter emerging appears to be that individuals should be treated fairly and respectfully. There is value placed on the fair treatment of people as individuals (as distinct from fairness of the program as a whole or in general) across a range of programs. The question arose as to whether explicit protections for vulnerable members of our society are required. In this regard, for example, Mindframe has submitted (among other things) that the concept of consent:

... requires further clarification by means of an explanation that some vulnerable interviewees might appear to be giving consent but in reality might be in shock, might simply be responding to the authority of the reporter or might have a mental illness or intellectual disability which is not immediately apparent to the journalist.²⁸⁶

However, the broadcasting codes act as a safety net and the ACMA queries the scope for particular safeguards for fair treatment regarding particular classes of vulnerable persons.

Safeguards relevant to the provision of reliable consumer information about the mechanisms available for accessing content

As indicated above, despite legislation in this area requiring the provision of access to captioning services, code provisions can provide additional and complementary safeguards not covered by legislation. The emerging direction is for contemporary broadcasting codes to provide for information about the availability of captioning services, how to access them and advising when these services may not, for some reason, be available. Recalibration in this area should be focused on efforts to prevent overlap of code-based safeguards and legislative provisions and to ensure that what is retained in codes has clear value.

While audio description was raised by some submitters as a matter for inclusion in contemporary broadcasting codes, the ACMA does not see the need for new access obligations via codes. However, contemporary broadcasting codes in this area should

²⁸⁵ Australian Privacy Foundation, *Submission CCS112*; Real Media Real Change, *Submission CCS146*.

²⁸⁶ Mindframe, *Submission CCS136*, pp. 1–2.

be sufficiently flexible to accommodate developments in technology from time to time for either closed captioning or audio description.

Safeguards relevant to emergency information

The evidence and perspectives received indicate that the provision of emergency information continues to be valued by citizens and some members of the industry. Submissions highlighted the degree of reliance that the community attributes to this form of communication.²⁸⁷

At this time, the ACMA can see only minor changes that might be justified in this area. These would revolve around ensuring that emergency information broadcast is accessible. For example, if an AUSLAN translator is translating emergency information, that translator should be shown on screen. Recalibration may usefully be focused on updating current provisions to reflect the range of information now available online and via mobile technology, the complementary roles of these technologies with broadcasting technology, and ensuring consistency and reliability of the information.

Safeguards relevant to the provision of minimum requirements for Australian music

While many sectors must comply with legislative Australian identity requirements, the codes do provide particular value in the area of Australian music.

Some commercial radio network entities identified the requirement to meet minimum Australian music content quotas as imposing an opportunity cost on their organisation because it restricts their ability to deliver content to target audiences. Despite this, there was limited evidence within the submissions overall to support the need for any significant change in this area. Any recalibration might usefully focus on sustaining the economic viability and competitiveness of relevant sectors while safeguarding what is evidently generally supported as a key public good worth maintaining in the current environment.

Safeguards relevant to complaints-handling systems and information

It is important that contemporary broadcasting codes ensure that accountability measures provide meaningful and efficient complaints systems. Complaints-handling was nominated as the largest code-compliance-related expense for commercial television, commercial radio and community radio broadcasters. On the other hand, there continues to be a high value placed on a code-based complaints system, including within these sectors.

Recalibration efforts may be appropriately focused on where these costs might reasonably be reduced without unjustifiably diminishing the public's right to complain. An emerging direction in this regard is for code obligations to recognise that such processes necessarily impose obligations on complainants as well as respondents, and to accommodate vulnerable complainants by ensuring the accessibility of the complaints mechanism.

Harmonisation

It seems that despite the increasing impact of convergence, a 'one-size-fits-all' approach is not an appropriate, or indeed possible, approach to regulatory design for broadcasting. While harmonisation is a desirable high-level goal, differences between broadcasting sectors will often justify different code provisions.

²⁸⁷ Community Broadcasting Association of Australia, *Submission CCSI19*; Free TV Australia, *Submission CCSI26*; Real Media Real Change, *Submission CCSI46*.

This report does not extend to consider whether:

- > these matters should apply across sectors where there does not appear to be logical reasons for different drafting in each code
- > these matters should apply across sectors but where there may be logical and principled reasons for different drafting in each code
- > there may be logical and principled reasons for different application.

By way of general comment, the ACMA observes that the current application of some matters to only some sectors is logical. For example, time devoted to advertising is limited to commercial broadcasting sectors because:

- > the BSA imposes a licence condition on all community broadcasting licensees not to broadcast advertising, although they are permitted to broadcast limited amounts of sponsorship announcements
- > subscription broadcasting television licensees have a licence condition requiring that subscription fees (not advertising) must be the predominant source of revenue for the service.

Similarly, codes requiring the broadcast of Australian music are limited to the commercial radio sector and the community radio sector because:

- > commercial television broadcasting licensees are required to broadcast Australian content in line with the requirements imposed by the Broadcasting Services (Australian Content) Standard 2005
- > the BSA requires subscription broadcasting television licensees to maintain minimum levels of expenditure on new eligible drama—Australian or Australian/New Zealand productions or Australian co-productions.

While enabling people to make informed decisions about their own and their children's consumption of content might apply across all sectors, there may be logical reasons for different drafting or different provisions depending on whether the content is audiovisual or audio only.

Conclusion

This section of the report has started to explore how key contemporary community safeguards may be most appropriately provided by broadcasting codes by considering a recalibration of existing code-based safeguards. This exploration has considered the submissions received, community research, and economic research, as well as the ACMA's observations from its experience in dealing with code complaints and registering codes of practice. As such, it provides a solid foundation for future code development.

Appendix 1

Contemporary community safeguards inquiry— List of submissions

Submission reference	Submitter name
CCSI1	Advertising Standards Bureau
CCSI2	Keith Anderson
CCSI3	Australian Association of National Advertisers
CCSI4	Australian Broadcasting Corporation
CCSI5	Australian Children's Television Foundation
CCSI6	Australian Christian Lobby
CCSI7	Australian Communications Consumer Action Network
CCSI8	Australian Community Television Alliance
CCSI9	Australian Council on Children and the Media
CCSI10	Australian Human Rights Commission
CCSI11	Australian Narrowcast Radio Association
CCSI12	Australian Privacy Foundation
CCSI13	Australian Subscription Television and Radio Association
CCSI14	Susan Bates
CCSI15	Brewers Association
CCSI16	R Cassidy
CCSI17	Commercial Radio Australia
CCSI18	Commissioner for Children and Young People, Western Australia
CCSI19	Community Broadcasting Association of Australia
CCSI20	Bruce Connery
CCSI21	Joshua Ebert
CCSI22	Adelle Elhosni and Sharley Mesbah Amin
CCSI23	Mark Ellis
CCSI24	Sylvia Else
CCSI25	FamilyVoice Australia
CCSI26	Free TV Australia
CCSI27	Debra Ireland

CCSI28	Paul Kamaras
CCSI29	Saad Khan
CCSI30	Leah Langdon
CCSI31	Tiffany Lau
CCSI32	Trent Lewis
CCSI33	Kankana McPherson
CCSI34	Media Access Australia
CCSI35	Media, Entertainment & Arts Alliance
CCSI36	Mindframe
CCSI37	Kozo Morimoto
CCSI38	Kozo Morimoto
CCSI39	National Alliance for Action on Alcohol
CCSI40	Obesity Policy Coalition
CCSI41	Morgan Parkinson
CCSI42	Alex Pickens
CCSI43	Joe Public
CCSI44	The Hon John Rau MP (Deputy Premier and Attorney-General, Government of South Australia)
CCSI45	Kirsten Read
CCSI46	Real Media Real Change
CCSI47	Stuart Ryan
CCSI48	Lea Saunderson
CCSI49	Special Broadcasting Service
CCSI50	Jane Tillett
CCSI51	Andy Vinnicombe
CCSI52	Women's Health Victoria
CCSI53	Meta Forward
CCSI54	Bruce Jay
CCSI55	Jaki Scovell

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