



AUSTRALIA

Submission by Free TV Australia

Modernising Australia's Classification Scheme – Stage 2 Reforms

**Submission to Department of
Infrastructure, Transport,
Regional Development,
Communications and the Arts
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1. Executive summary

- Commercial free-to-air broadcasters provide trusted, predictable classification information and consumer advice for the professionally produced content they provide across platforms. These arrangements have been operating effectively for many years.
- Stage 1 of the Government's reforms to modernise the National Classification Scheme (the **Scheme**) recognised this by introducing deeming provisions to remove the need to re-classify content that has already been classified by broadcasters and has not been modified.
- Wholesale stage 2 reforms should reinforce the effectiveness and efficiency of classification arrangements used by broadcasters and should not impose additional financial or administrative burdens.
- To support this approach, the Classification Scheme should incorporate the principle set out in the *Broadcasting Services Act 1992 (BSA)* that regulation should enable public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasters.
- Other principles that currently underpin the Scheme remain fit-for-purpose and should be carried forward. In particular, Free TV Australia (**Free TV**) endorses the enduring principles that: adults should be able to read, hear, see and play what they want; children should be protected from material likely to harm or disturb them; and, everyone should be protected from exposure to unsolicited material that they find offensive.
- The classification guidelines used by broadcasters are based on the Scheme Guidelines. The TV Guidelines are highly consistent with the Scheme Guidelines and provide more detail on specific subject matter and program genres shown on television. The value of this additional detail was recognised in the most recent Government review of the classification system. The co-regulatory process to include the TV Guidelines in codes of practice registered under the BSA should continue.
- The process for updating the Scheme Guidelines is relevant to broadcasters because of the relationship between the Scheme Guidelines and the TV Guidelines. Any new process to update the Scheme Guidelines should be evidence-based and include safeguards to avoid knee-jerk amendments based on time-limited controversies or matters of concern.
- Any Classification Advisory Panel that is established to ensure that the Scheme Guidelines respond to evolving community standards should draw on robust evidence of community standards. The Panel should include a mix of skills and experiences, including positions for current industry classification practitioners. Such a body should be advisory only.
- Stage 2 reforms to the Scheme, which is focusing on professionally produced content, should be carefully coordinated with the review of the *Online Safety Act 2021 (Online Safety Act)*, which is focused on user-generated and higher-impact content. This coordination will remove current ambiguity and potential duplication between the two schemes.
- The Australian Communications and Media Authority (**ACMA**) is already the regulator of professionally produced media content, whereas the eSafety Commissioner focuses on harms arising from user-generated content and higher-impact material. On this basis, should responsibility for oversight of the Scheme change, it makes sense in principle for the ACMA to be the regulator that oversees classification of professionally produced content.

2. Introduction

Free TV welcomes the opportunity to provide a submission in response to the *Modernising Australia's Classification Scheme – Stage 2 Reforms* public consultation paper (the **Consultation Paper**).

Free TV was an active participant in consultations on stage 1 reforms to the Scheme and earlier review processes such as the 2012 National Classification Scheme Review conducted by the Australian Law Reform Commission, and the more recent 2020 Review of Australian Classification Regulation undertaken by Mr Neville Stevens AO (the **Stevens Review**).

Free TV has made the overarching point that in the context of unregulated or minimally regulated content services on the internet, Free TV's members provide trusted, predictable classification and consumer information for professionally produced content. They do so across the platforms they operate.

It is noted that this consultation is being conducted at the same time as the Government's Statutory Review of the Online Safety Act. The two processes should be carefully coordinated to ensure a cohesive regulatory outcome given that previous reviews have observed that some classification-related provisions in the online safety framework overlap with the frameworks set out in the Scheme and the BSA.¹

2.1 About Free TV Australia

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

Free TV members are vital to telling Australian stories to Australians, across news, information and entertainment. Free-to-air television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television, and Australians prefer local stories. In FY23, commercial television networks spend \$1.67 billion on Australian content, dedicating 87% of their content expenditure to local programming.

¹ Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media – Final Report (ALRC Report)*, 2012, pages 58–59 – available at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_118_for_web.pdf.

3. Purpose and scope of the National Classification Scheme

3.1 The Scheme should continue to enable informed content choices

The Consultation Paper notes that the purpose of classification has changed over time from censorship to assisting Australians to make informed choices about the content they consume.² This purpose remains appropriate.

The guiding principles of the Scheme also remain relevant and appropriate. That is:

- adults should be able to read, hear, see and play what they want;
- children should be protected from material likely to harm or disturb them; and
- everyone should be protected from exposure to unsolicited material that they find offensive.

Free TV agrees that Australians should continue to have confidence in the classification scheme as a trusted source of information to guide media choices, regardless of platform. Indeed, the Stevens Review recognised the importance of focusing on this outcome, while acknowledging that the process for achieving it may vary according to industry context. Mr Stevens noted:

*Classification decisions need to be consistent, accurate, accessible and easily understood by consumers. The community must have confidence that the right classification outcome is reached, regardless of the process that is used to achieve that classification.*³

In considering how classification outcomes are achieved, any revised Scheme should seek to avoid undue financial and administrative burdens on industry. In practice, this includes placing a focus on a complaints-based regime to deal with community concerns about classifications, as opposed to costly audit-based compliance regimes or resource-intensive reporting requirements.

To underpin an administratively efficient revised Scheme, the *Classification (Publications, Films and Computer Games) Act 1995* (the **Classification Act**) should incorporate the principle set out in the BSA that regulation should enable public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on broadcasters.

4 Regulatory policy

(1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and online content services according to the degree of influence that different types of broadcasting services, datacasting services and online content services are able to exert in shaping community views in Australia.

(2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA:

(a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services; and

(b) will readily accommodate technological change; and

(c) encourages:

- (i) the development of broadcasting technologies and datacasting technologies, and their application; and
- (ii) the provision of services made practicable by those technologies to the Australian community.

The BSA balances public interest considerations with financial and administrative burden

² *Modernising Australia's Classification Scheme – Stage 2 Reforms* public consultation paper (the **Consultation Paper**), page 8 – available at <https://www.infrastructure.gov.au/departments/media/publications/public-consultation-paper-modernising-australias-national-classification-scheme-stage-2-reforms>.

³ Neville Stevens AO, *Review of Australian classification regulation Report* (the **Stevens Report**), May 2020, page 10 – available at <https://www.infrastructure.gov.au/sites/default/files/documents/review-of-australian-classification-regulation--may2020.pdf>.

3.1 Classifiable content genres and categories are well settled

Free TV is comfortable with the criteria set out in the Consultation Paper for defining classifiable content, namely that content is:

- professionally produced;
- distributed on a commercial basis (that is, as part of a business, even though in the case of commercial free-to-air broadcasters it is distributed free to audiences across platforms); and
- is directed at Australian audiences.⁴

In addition, it is accepted that classification is the responsibility of the service provider who makes the professionally produced content available in Australia. This is already the case under the Commercial Television Industry Code of Practice (the **Free TV Code**). User-generated content should not be included in the definition of classifiable content and is instead better dealt with under the Online Safety Act.

It is well settled that there are certain exempt content genres, being news, current affairs and sports.⁵ These genres should continue to be exempt under any reforms. It is also settled that the current classification categories for television (G, PG, M, MA15+) remain fit for purpose.⁶ Unnecessary changes to these categories should be avoided given audience familiarity with them, and the significant cost and administrative burden for broadcasters if they were to change (such as changing systems and processes, amending consumer information, and re-classifying extensive libraries of existing content).

3.2 The Scheme should continue to enable industry classification

As noted in the Consultation Paper:

Broadcast television is not classified by the Classification Board, but is instead classified by in-house, industry classifiers using guidelines that are broadly consistent with the classification guidelines and regulated by the Australian Communications and Media Authority (the ACMA).⁷

The TV Guidelines used by commercial broadcasters to classify content are set out in Appendix 1 of the Free TV Code. The Free TV Code is developed by Free TV and registered and enforced by the ACMA. The ACMA can only register the Free TV Code if it is, among other things, satisfied that the Code provides appropriate community safeguards for the matters it covers, including classification.

The TV Guidelines are highly consistent with the Scheme Guidelines and provide more detail on specific subject matter and program genres shown on television. The value of this additional detail was recognised in the Stevens Review:

The Films Guidelines [referred to in this submission as the Scheme Guidelines] use an impact hierarchy for classification, which is inherently subjective and relies heavily on the capacity of the Board to interpret in a consistent manner. The guidelines used by television broadcasters, by comparison, are more detailed in their description of what is allowable in each category. As classification increasingly becomes the responsibility of industry, there is a need for guidelines

⁴ Consultation Paper, page 9.

⁵ Most recently recognised in the Stevens Report, Recommendation 5-7, page 44.

⁶ Recommendation 7-1 of the Stevens Review was that there be no change to current classification categories at this time (while recommending some work on the suitability of certain film and computer game content for children), page 67.

⁷ Consultation Paper, page 8.

*to be as detailed and as specific as possible to enable the provision of consistent classification decisions and information.*⁸

The classification provisions in the Free TV Code have provided effective community safeguards for decades under the co-regulatory model. Any further reform to the Scheme should recognise the stability of this approach and provide for its continuation in relation to content provided by broadcasters across platforms.

Free TV acknowledges that this was recognised through Stage 1 of the Government’s reforms to modernise the Scheme, which commenced in March 2024. The relevant provisions are set out in section 6HA of the Classification Act.

6HA Certain films classified under certain other Acts are taken to be classified under this Act

- (1) A film is taken to have been classified by the Board under this Act if:
- (a) the film has been classified under the *Broadcasting Services Act 1992*, the *Australian Broadcasting Corporation Act 1983* or the *Special Broadcasting Service Act 1991* at R18+ or a lower classification; and
 - (b) the film has not previously been classified under this Act; and
 - (c) after the film has been classified under the *Broadcasting Services Act 1992*, the *Australian Broadcasting Corporation Act 1983* or the *Special Broadcasting Service Act 1991*, a person (the *post-classification publisher*) proposes to publish the film.

Note 1: This Act does not apply to the broadcasting of the film: see section 92.

Note 2: The deemed classification by the Board is reviewable under Part 5. The post-classification publisher may also seek to have the film reclassified under Part 2: see section 6HB.

Extract from section 6HA

The Revised Explanatory Memorandum (EM) to the amending legislation noted that:

...new section 6HA, [provides] that certain films already classified under the BSA, ABC Act or SBS Act are taken to be classified under the Act provided: the film [a terms with a broad meaning beyond just movies in this Act] has a classification rating of R18+ or lower, has not been previously classified under the Act and is not modified post-classification.

...

The intent of this provision is to support a ‘classify once’ principle where content that has been classified using similar classification guidelines does not need to be classified again. It also addresses an anomaly in the BSA, as per the Broadcasting Services (“Broadcasting Service” Definition—Exclusion) Determination 2022, whereby on-demand services including ‘catch-up’ services operated by broadcasters (for example Nine Now or ABC I-view) are not covered by the definition of a broadcasting service under the BSA, but are instead regulated under the Classification Act.

The EM noted that the principal aim of this amendment was to provide for efficient classification of content provided on broadcasters’ online services:

The circumstances for the deeming to take effect are differentiated between broadcast services (under the BSA, ABC Act and SBS Act) and others, to enable classifications of on-

⁸ Stevens Review, page 12.

*demand services associated with television broadcasters to legally carry over a classification with no additional administrative burden or vice versa.*⁹

Importantly, the EM provides that:

*‘[f]or the avoidance of doubt, ‘proposes to publish’ refers to an intention to publish film content on any platform, for example broadcast, video on-demand or physical formats such as DVD. It is also intended that for post-classification publishers that fall under paragraphs 6HA(3)(a) or 6HA(3)(aa), deeming will apply to a film that has been classified regardless of the format of publishing, for example whether the film is first transmitted via broadcast or on-demand service.’*¹⁰

This means that under section 6HA if a broadcaster classifies a program using the TV Guidelines set out in the Free TV Code, being a code registered under the BSA, the program is deemed to have been classified under the Classification Act whether it is shown on the broadcaster’s terrestrial television broadcasting services or internet-delivered services.

Any revised Scheme should re-confirm this deeming provision and confirm that it applies to all types of internet-delivered services provided by broadcasters, including:

- terrestrial channels retransmitted via live stream on a broadcaster video on demand (**BVOD**) service;
- video-on-demand assets delivered via a BVOD service; and
- free ad-supported streaming television channels delivered online (**FAST channels**).

4. A framework for evidence-based guidelines

The Consultation Paper reinforces the importance of aligning classification decisions with community standards.¹¹ Broadcasters are highly aware of community standards, and their evolution over time. Receiving and responding to feedback and complaints received under the co-regulatory scheme is a very effective way of keeping in direct touch with the community standards of audiences.

The Free TV Code is subject to periodic review conducted by Free TV in consultation with the ACMA, and the public. By contrast, the Consultation Paper notes that there is no requirement for regular review of the Scheme Guidelines.¹²

Free TV does not object to the Stevens Review recommendation that a Classification Advisory Panel (**CAP**) be established, noting that this would be an advisory body, and not a decision-making body. Such a body should not disturb the role of Free TV in developing the Free TV Code, and the ACMA in registering it.

In addition to experts from academic fields such as psychology, child development and media studies, and representatives of community organisations, it is proposed that the CAP include members with industry experience. It is important that the CAP include positions for current industry classification

⁹ Revised Explanatory Memorandum, Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Bill 2023 (**EM**), pages 24–25 – available at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7049.

¹⁰ EM, page 25.

¹¹ Consultation Paper, page 11.

¹² Consultation Paper, page 11.

practitioners, not just members with previous industry experience, so that current industry trends and community standards can be considered.

Any new process to update the Scheme Guidelines should be evidence-based and include safeguards to avoid knee-jerk amendments based on time-limited controversies or matters of concern. As proposed in the Consultation Paper, a good way to avoid this is to require the CAP to base its advice on robust empirical evidence, community research and international best practice.¹³ Industry members of the CAP would play an important role in commissioning this research, and a review process to interrogate and challenge findings is recommended.

There is precedent for similar advisory groups in telecommunications sector which may inform development of the CAP model.¹⁴

5. Governance arrangements for classification

The Consultation Paper concludes that the current regulatory arrangements for classification are ‘inefficient, fragmented and create an unequal regulatory regime’.¹⁵

It is proposed that a single national regulator would have responsibility for training and accreditation, quality assurance of decisions, enforcement of compliance and maintaining a classification database. As noted above, Free TV supports continuation of a complaints-based regime to deal with community concerns about classifications, as opposed to costly audit-based compliance regimes or resource-intensive reporting requirements.

However, to the extent that a single regulator is preferred for relevant functions, for professionally produced content there is logic in that regulator being the ACMA given that it already oversees broadcast services that provide such content. The eSafety Commissioner would then retain its responsibility for addressing harms arising from user-generated content and higher-impact material online.

¹³ Consultation Paper, page 11.

¹⁴ The Consumer Consultative Forum (CCF) is the ACMA’s key advisory group which brings together consumer organisations, the telecommunications industry and government to examine issues that affect people who use mobiles, the internet and fixed-line telephones. It is convened under section 59 of the *Australian Communications and Media Authority Act 2005*. Its role is to assist the ACMA to perform its functions in relation to matters affecting consumers. The CCF terms of reference are available at https://www.acma.gov.au/sites/default/files/2021-09/CCF_Terms%20of%20reference.pdf.

¹⁵ Consultation Paper, page 13.