

REVIEW OF THE SUBSCRIPTION TELEVISION BROADCASTING CODE OF PRACTICE AND THE SUBSCRIPTION TELEVISION NARROWCASTING CODE OF PRACTICE

INVITATION FOR PUBLIC COMMENT

3 DECEMBER 2018

OVERVIEW

ASTRA is conducting a review of the Subscription Television Broadcasting Codes of Practice (the 'SBT Code') and the Subscription television Narrowcasting Codes of Practice (the 'SNT Code'), and invites comments from members of the public regarding the proposed changes.

WHAT THIS CONSULTATION PACKAGE CONTAINS

This consultation package contains two documents:

1. an Explanatory Note which contains details about how to make written submissions on the review of the Codes and an overview of the main proposed changes to the Codes; and
2. the draft proposed new combined code (the 'new Code').

REQUEST FOR PUBLIC COMMENTS BY 4 FEBRUARY 2019

All public comments should contain your name and address and must be received by 5pm on 4 February 2019.

You may submit your comments to ASTRA by either:

- Post: addressed to ASTRA Code Review, 5 Thomas Holt Drive, North Ryde, NSW, 2113; or
- Email to admin@astra.org.au

PUBLICATION OF SUBMISSIONS

Please note that submissions may be published. If you do not wish your submission to be published, you should mark it clearly 'Confidential – not for publication' and note the reason for a claim of confidentiality.

GUIDELINES FOR COMMENTS

In making comments on the proposed new Code, you should have regard to:

- the objectives of the new Code and the statutory context in which it operates; and
- the operation of the new Code alongside other regulatory instruments.

Comments received will be considered by ASTRA in the preparation of the final draft of the Code. The new Code will then be submitted to the Australian Communications and Media Authority (ACMA), along with all public comments received.

Before registering the proposed new Code, the ACMA must be satisfied that the new Code:

- adequately deals with the subject matter covered and provides appropriate community safeguards;
- is endorsed by the majority of subscription television licensees; and
- members of the public have been given adequate opportunity to comment on the new Code.

1. EXPLANATORY NOTES ON THE PROPOSED NEW CODE OF PRACTICE

ASTRA has reviewed the Subscription Television Broadcasting Codes of Practice (the 'outgoing SBT Code'), and the Subscription Television Narrowcasting Codes of Practice (the 'outgoing SNT Code') (last registered by the ACMA in 2013) (together, the 'outgoing Codes'). It is a requirement of the SBT Code and the SNT Code that they be periodically reviewed.

This document sets out the background to this review and outlines the major changes which are proposed in the draft new combined ASTRA Codes of Practice (the 'new Code').

2. REDRAFTING THE CODES

ASTRA is proposing a rewritten new Code, rather than an iterative amendment to the outgoing Codes.

This allows for:

- the adoption of clearer and more concise language;
- the removal of non-operative commentary and restatements of law; and
- greater alignment with the Codes of Practice for commercial free-to-air television and commercial radio

3. COMBINING CODES

The existence of separate codes for subscription television broadcasting and narrowcasting is an historical relic and ASTRA considers there is merit in replacing them with a single new Code which applies to both categories of service. Currently, there are minor differences between the SBT Code and the SNT Code in relation to otherwise similar provisions and there is little justification for these inconsistencies to continue.

A combined new Code also reduces regulatory red-tape for licensees and makes compliance easier. A consistent approach across categories is also beneficial for consumers in understanding what they can expect from their subscription television services.

4. CONTEXT

This review of the SBT Code and SNT Code takes place in a very different context to the 2013 review. The most obvious are the changes which have taken place in the media industry. The widespread popularity of subscription video on demand services has changed consumer expectations of entertainment services. Consumers appear willing to accept a more light-touch regulatory approach to services such as Netflix, which despite offering largely the same kinds of content as subscription and free-to-air television, does not face comparable levels of regulation. This has been a consideration during ASTRA's review of the outgoing Codes.

Also of contextual importance are the recent reviews of the Commercial Television Industry Code of Practice (2015) (the 'Free TV Code') and the Commercial Radio Code of Practice (2016), which featured notable instances of deregulation. It would not be appropriate for subscription television to remain more heavily regulated than commercial free-to-air television or commercial radio, given the degree of influence principal in the regulatory policy set down in section 4 of the *Broadcasting Services Act 1992*.

Also of note, is the ongoing very low levels of complaint regarding content on subscription television services, which supports ASTRA's approach to drafting and which suggests no substantive basis to increase levels of regulation.

5. OVERVIEW OF DRAFTING

In redrafting the new Code, ASTRA has adopted the following principles:

- maintain key community safeguards, but make rules clearer for licensees and easier for consumers to read and understand;
- drafting should be clear and succinct;
- codes should only contain substantive obligations, not general information or restatements of other law;
- consistency with other industry sectors, where appropriate; and
- obligations should be no more than is necessary to address risk/harm, but should be as flexible as possible.

6. KEY SAFEGUARDS REMAIN

Whilst the SBT Code and SNT Code have been rewritten into a single new Code, it is important to emphasise that the key community safeguards of the outgoing Codes have been retained in the new Code. Specifically:

- vilification protections;
- privacy protections;
- classification requirements;
- consumer advice requirements;
- news and current affairs protections;
- program promotions requirements;
- complaints handling; and
- gambling advertising appendix (unchanged from version registered in 2018).

7. COMMENTARY ON NEW CODE PROVISIONS

7.1. Index of the new Code

In line with our principles of simplicity and transparency, the new Code has been restructured. The new Code is structured as follows:

- | | |
|---------|---|
| Code 1: | Commencement, Application and Compliance (previously Code 1 Introduction) |
| Code 2: | Programs Not Suitable for Broadcast (previously Code 2.1 General Programs) |
| Code 3: | Classification (previously Code 3 Program Classification) |
| Code 4: | News Programs and Current Affairs (previously Code 2.2 News and Current Affairs Programs) |
| Code 5: | Disabling Feature (previously Code 2.5 Disabling Device) |
| Code 6: | Promotions (previously Code 2.3 Program Promotions and News updates) |

Code 7: Advertising (previously Code 6 Advertising)

Code 8: Feedback and Code Complaints (previously Code 5 Complaints).

7.2. Comparison of New Code Provisions with the SBT and SNT Codes.

We attach a comparison table at Appendix A which shows the differences between the new Code provisions and the equivalent provisions of the outgoing Codes. We have provided further context and commentary on why certain principles have changed or been removed in this section 7. Our commentary refers to the principles by reference to the outgoing SBT Code provision.

7.3. Capitalised Terms not Defined

All capitalised terms used and not defined have the meanings ascribed to them in the new Codes.

7.4. New Code Provisions

1 Commencement, Application and Compliance

ASTRA has removed the preamble to simplify the new Code and clarify the obligations on licensees. As noted under Code 1, ASTRA will from time to time issue industry guidance notes in relation to the new Codes and will, where appropriate, provide context to the new Code.

A slight adjustment to the defences available to Licensees for non-compliance with the new Code has been made at section 1.3(c) and 1.3(d) to align with the Free TV Code. This provides for consistency across platforms in relation to how compliance is assessed by the ACMA.

A requirement for a 3-yearly review has been omitted (outgoing SBT Code section 1.3). Given the fluctuations in the media and entertainment industries, it is more appropriate for review to be undertaken as conditions necessitate.

2 Programs Not Suitable for Broadcast

Section 2.1(a) is substantially the same as the existing prohibitions in the outgoing Codes on content which provokes or perpetuates intense dislike, serious contempt or severe ridicule against a person on a range of grounds. The key change is the addition of a reasonableness test, which matches the comparable part of the Free TV Code (2.6.2). The reasonableness test does not detract from the level of community protection provided by this important clause. Rather, it is a measured and appropriate means of ensuring the section operates in line with broad community standards on these issues.

Section 2.1(b) of the outgoing SBT Code has been omitted in the new Code to align with the approach taken, and to be consistent with, the Free TV Code. It is considered these issues are adequately dealt with in section 2.1 of the proposed new Code.

Provisions in the outgoing SBT Code relating to simulating news or events in a way that misleads or alarms the audience, depicting or inducing hypnosis and subliminal messaging have been removed (outgoing SBT Code sections 2.1(c) and 2.1(d)). ASTRA's understanding

is that these provisions were first introduced many years ago in response to particular controversies. Concerns regarding these issues are no longer widespread and the practices described in the provisions are not prevalent in subscription television.

Section 2.2 is largely aligned with section 2.1(e) of the outgoing SBT Codes, but with some adjustments to drafting to slightly elevate the importance of considering whether a broadcast is in the public interest.

3 Classification

The drafting of provisions relating to classification have been streamlined and brought into line with the Free TV Code. The outdated information on the staged introduction of classification requirements (outgoing SBT Code section 3) has been omitted however, the key requirements of the new classification code remain the same as those in the classification code of the outgoing SBT Codes, albeit with updated drafting:

- films, drama programs, documentary programs and reality programs must be classified (section 3.1 of the new Code);
- for programs classified PG and above, classification information must clearly be displayed at the commencement of a Classifiable Program and included in Program Guides. In addition, the section now allows the classification information to be displayed 'as soon as practicable after' the commencement of the program, in line with the Free TV Code (section 3.2 of the new Code)
- Consumer Advice for Classifiable Programs classified M and above will be given at the commencement of the Classifiable Program, in line with the Free TV Code (section 3.3 of the new Code); and
- a best endeavours requirement in relation to Classification Exempt Programs and classification information (section 3.4 of the new Code).

The 2012 Guidelines for the Classification of Films have been moved to an attachment, to ensure the new Code is focussed on the substantive classification requirements. The restatements of law regarding R18+ content not being broadcast unless permitted by Parliament (outgoing SBT Code section 3.2) and X18+ content not being broadcast (outgoing SBT Code section 3.6) have been removed (these are licence conditions and do not need to be replicated in the new Code).

4 News Programs and Current Affairs Programs

The drafting of provisions relating to News Programs and Current Affairs Programs has been streamlined and brought into line with the Free TV Code. This alignment is of particular importance in relation to this genre of programming, given the increasing levels of cross over between subscription and free-to-air platforms. It is beneficial to consumers and broadcasters to have a consistent set of protections.

The new provisions in the new Code include the following:

- clarification that the rules apply only to News Programs and Current Affairs Programs, as defined in the Code (section 4.1 of the new Code);
- overarching factors to be taken into account when assessing compliance with the rules – these are new and have been adopted from the Free TV Code and the Commercial

Radio Code (in relation to audience expectations of Current Affairs Programs) (section 4.2 of the new Code). They provide an appropriate reflection of the operational constraints of preparing and broadcasting news in the modern media environment;

- accuracy and fairness requirements (sections 4.3 and 4.4 of the new Code):
 - this redrafted provision makes reference to a 'reasonable efforts' requirement regarding accuracy, which reflects a similar provision in the ABC Editorial Policies;
 - the accuracy requirement has also been limited to factual material, reflecting the Free TV Code;
 - there is a new requirement against misrepresenting viewpoints, which picks up Free TV drafting; and
 - the accuracy and fairness provision is only operative in relation to material factual inaccuracies and material misrepresentations of viewpoints. These concepts match those used in the Free TV Code and are a reasonable precaution against complaints regarding minor or trivial inaccuracies which do not impact on a viewers' understanding of factual matter;
- a requirement to correct errors of fact has been retained, although with different drafting (section 4.5 of the new Code):
 - there is now a 'reasonable efforts' qualification and the obligation is limited to significant and material errors of fact. The errors must be readily apparent or have been demonstrated to the Licensee in a timely manner. This is consistent with the requirement in the Free TV Code; and
 - acceptable formats for a correction are set out, and if an appropriate correction is made within a specified timeframe, this will excuse a licensee from breach of accuracy requirements (section 4.6 of the new Code).
- impartiality requirements (section 4.8 of the new Code) are now confined to News Programs, as they are not compatible with the style of programming provided (and expected by audiences) on Current Affairs programs. The drafting of these provisions matches that in the Free TV Code;
- core privacy safeguards are provided, with protections mirroring those in the Free TV Code (section 4.11 and 4.12 of the new Code). The provisions carefully balance the need to protect a person's personal and private affairs and the public interest in reporting on matters of public significance;
- the requirements regarding distressing material in the outgoing Codes has been retained, together with requirements regarding bereaved relatives or witnesses of traumatic incidents (section 4.13 of the new Code);
- the provisions relating to warnings before distressing and offensive material include a reasonable efforts qualification (section 4.13(c) of the new Code), which differs from the Free TV Code:
 - this qualification is appropriate in the subscription television context due to the live, 24 hour nature of news services on the platform;
 - in relation to unfolding events, for example an armed siege, it is likely that subscription television news services will provide live, rolling coverage, making a strict liability requirement for a spoken warning impractical, given the news channel is not able to predict what its cameras will capture; and
 - this is distinct from the kinds of pre-prepared bulletins which dominate news coverage on free-to-air television; and

- appropriate restrictions surrounding the reporting of suicide have been maintained (section 4.13(d) of the new Code).

5 Disabling feature

The Disabling Feature is a key part of the subscription television offering, and allows viewers to automatically filter content based on classification categories.

The provision from the outgoing SBT Code relating to restricting access to free to air channels through domestic reception equipment supplied by a licensee via a digital tuner in the domestic reception equipment has been omitted from the new Code as it is covered by separate technical standards.

The new Code retains a requirement to make information on the use of the Disabling Feature or other similar technology available where appropriate (section 5.3 of the new Code); which is consistent with one of the requirements set out in section 2.5 of the outgoing SBT Code. However, the requirement to provide the information at the time of installation has been omitted, to provide the licensee with greater flexibility to ensure the information is provided at the most appropriate time.

The new Code retains a requirement to restrict access to R18+ content broadcast on narrowcast services (section 5.2 of the new Code).

6 Promotions

The safeguards in relation to Promotions have been remodelled, whilst retaining an appropriate level of protection for children and other viewers. In the outgoing Codes, there is a requirement to have particular regard to the protection of children, and to match the content of program promotions with the classification of the programs during which they appear (outgoing SBT Code section 2.3).

This has been replaced with a simplified two-step requirement, which now ensures protections are provided regardless of whether the Program during which a Promotion appears has been classified (sections 6.1 and 6.2 of the new Code).

A licensee will be required to ensure that the content of a Promotion broadcast during a Classifiable Program does not exceed the classification of the Classifiable Program in which the Promotion is broadcast (section 6.1 of the new Code).

New will be a requirement that applies to promotions in Classification Exempt Programs, which is currently only addressed in the outgoing Codes by virtue of the overarching requirement to protect children from unsuitable material in promotions (outgoing SBT Code section 2.3). The new provision applying to Promotions broadcast during Classification Exempt Programs requires the licensee to have particular regard to the likely audience of the Program the Promotion is broadcast within.

Implicit in both sections 6.1 and 6.2 of the new Code is consideration of the needs of children. In regards to a Classifiable Program, children are protected through the requirement that the content of a Promotion does not exceed the Program's classification (classification categories are age-based). In regards to Classification Exempt Programs, the requirement to have regard

to the likely audience of the Program will by its nature require a consideration of whether children will be in the audience, and whether the Promotion will be suitable for them to view.

Hence, whilst the provisions in the new Code may look different to those in the outgoing Codes, the level of protection is the same, if not higher (given the new requirement for care to be taken in relation to all audiences when scheduling Promotions during Classification Exempt Programs).

The Code also includes an existing requirement that a Promotion be readily distinguishable from Program material.

However, the provisions relating to the scheduling of Promotions and making them distinguishable from Program material no longer extends to news updates. News on subscription television is provided on a 24-hour basis and regular programming on non-news channels is not interrupted for news updates. The outgoing requirements to take care in relation to scheduling news updates (outgoing SBT Code section 2.3) primarily relate to concerns that children's viewing time could be interrupted by news updates containing content unsuitable for children. As this is unlikely to arise on the subscription TV platform where children most typically watch dedicated children's channels which are not interrupted by news updates), these provisions have not been carried over.

Note: the definition of Promotion in the Codes includes News Program promotions.

7 Advertising

There are two distinct issues to be addressed when considering the appropriate regulation of advertisements – content and scheduling. Scheduling of advertising is within the control of licensees and for that reason, it is very appropriate that the obligation of ensuring appropriate placement of advertising falls on the licensee. Conversely, content of advertising is not within the direct control of licensees, and for this reason, it is proposed not to replicate any provisions of the outgoing Codes which relate to the content of advertising where a licensee is responsible for the content of the advertisement. Accordingly, with the exception of the referral to the Advertising Standards Bureau which is now dealt with under section 8 of the new Codes (Feedback and Complaints), section 6.1 of the outgoing SBT Code has been omitted from the Code as it relates to the content of advertising rather than scheduling of advertising.

This does not mean the content of advertising will not be controlled – there are extensive content restrictions applicable to advertisements contained in the Australian Association of National Advertisers (AANA) Codes of Ethics. These comprehensive restrictions will continue to apply to the content of advertisements to ensure community standards are met. The obligation to comply with these standards properly fall on the advertiser.

In relation to scheduling, a new, broad requirement to schedule with regard to the likely audience of the program is proposed (section 7.1 of the new Code). This would replace the current requirement to have regard to the intellectual and emotional maturity of the intended audience for only a select few categories of advertising (outgoing SBT Code section 6.5). The new requirement would apply to all categories of advertising and will require consideration of the *likely* audience, which is a degree stronger than the current requirement to have regard to the *intended* audience.

The requirement for children's channels to develop separate Codes of Practice (outgoing SBT Code section 6.3(c)) has also been omitted from the new Code. Children's interests are already adequately dealt with in the new Code and the AANA Code for Marketing and Advertising Communications to Children and this requirement imposes unnecessary red tape.

Section 6.4 of the outgoing SBT Code relating to advertisements produced by the licensee has also been omitted as any advertisement where the licensee is responsible for the content is already governed by the relevant codes adopted by the AANA.

Section 6.2 of the outgoing SBT Code required advertisements to be classified. This is not carried forward to the new Code. Instead, extensive content and scheduling restrictions will apply to advertisements:

- AANA Code of Ethics
- AANA Code for Marketing and Advertising Communications to Children
- AANA Food and Beverages: Advertising and Marketing Communications Code
- Environmental Claims in Advertising and Marketing Code
- AANA Wagering Advertising and Marketing Communications Code
- Proposed clause 7.1 of the new Code, which requires consideration of the likely audience when scheduling advertisements

Part 7 of the new Code also includes the substantive provision requiring compliance with the betting advertising provisions which appear in Appendix 2 (no changes have been made to this Appendix since its commencement in March 2018).

8 Feedback and Code Complaints

Feedback and accountability are a feature of the co-regulatory scheme for broadcast content and the ability for viewers to make complaints which can then be escalated to a government regulator does not exist for other, more popular platforms. For example, 15 million Australians have Facebook accounts, yet there are no enforceable accountability mechanisms for social platforms.

Despite this regulatory disparity, the proposed new Code maintains robust and extensive accountability mechanisms, in line with community expectations.

The new Code includes a distinction between feedback and formal code complaints which attract the substantive complaints-handling and response requirements of the Code (section 8.1). Subscription television licensees welcome all feedback from viewers, but it is important to be able to accurately distinguish between forms of feedback that trigger assessment under the new Code and those that don't.

The new Code also includes a set of minimum requirements for Code Complaints, including acceptable methods of making a complaint and requirements for the content of the complaint (section 8.3). These are included to ensure that licensees receive all the information that is required to enable them to properly understand and respond to complaints. If a complaint does not include all relevant information, it can be extremely difficult for a licensee to respond in the required timeframe or with a response that appropriately addresses the issues of concern.

In line with the outgoing SBT Code, there are requirements placed on licensees to respond to Code Complaints within 60 days of receipt (section 8.4) and, in written responses to Code Complaints, for the licensee to refer complainants to the ACMA if they are not satisfied with the licensee's response (section 8.5). A response period of 60 days remains necessary for subscription TV licensees given the requirement for licensees to liaise with third party channels to look into the issues raised and liaise on a response. These kinds of relationships are unique to subscription television.

Sections 8.6 and 8.7 of the new Code set out the scenarios where the licensee is not required to provide a written response to a Code Complaint or to treat the matter as a Code Complaint which largely align with the exceptions set out in the Free TV Code (sections 7.3.5 and 7.3.6).

There is a new section that addresses privacy complaints made about matters under section 4.11 of the new Code that also mirrors that which is included in the Free TV Code (section 7.2.4).

A licensee's response to advertising complaints is now dealt with in this section of the new Code (at sections 8.8 and 8.9) where the distinction is made between a complaint about the scheduling of Advertising and the content of Advertising. Where a Code Complaint relates predominantly to the scheduling of Advertising or the scheduling of Betting Advertising in a Live Sporting Event, the licensee will refer the complaint to the ACMA in a written response if they are not satisfied with the response. Alternatively, if the complaint predominantly relates to the content of Advertising the licensee will use its best efforts to refer the complainant to the Advertising Standards Bureau.

Section 8.10 of the new Code also clarifies that complaints regarding the subscriber relationship between a licensee and a subscriber are not covered by the Code and are governed by general law, such as consumer law and privacy.

In the interests of transparency, section 8.11 of the new Code retains the requirement for licensees to publicise the availability of the Code at regular intervals, and to advise subscribers at the time of subscription that the Code and complaint procedures are available (outgoing SBT Code section 5.3).

Two additional provisions that haven't been carried over from the complaints section of the outgoing SBT Code are:

- the requirement to accept telephone complaints (SBT Code section 5.2) – other broadcasters are not required to accept telephone complaints, likely due to the fact that it is far more likely that licensees will be able to collect all relevant and necessary information through written complaints. Complainants will have sufficient opportunity to complain through post, electronic form or email. Complainants who raise their concerns via telephone will be invited to submit a complaint by these methods; and
- the requirement to maintain a record of written complaints and make a summary available to the ACMA annually (SBT Code section 5.1(d)) – given the very low level of complaint, ASTRA submits it is appropriate that it provide summaries available only upon request from the ACMA.

Definitions

The Code contains a definitions section, the effect of definitions has been described in the commentary on substantive provisions provided above.

Appendices

Appendices included with the Code are the Guidelines for the Classification of Films 2012 (required to be applied under section 3 of the proposed new Code, and the Appendix dealing with gambling advertising during live sport (no changes are proposed to these appendices).

Additional Items no longer covered by the ASTRA Code

In addition to those provisions already mentioned, in line with the drafting principles outlined above, there are a few additional items in the outgoing Codes which have not been carried over into the proposed new Code.

The outgoing Codes contain large amounts of commentary and information-only statements which are not replicated in the new Code, for example in relation to the ACMA's enforcement powers, the importance of customer service, classification principles and contextual materials.

The subscriber code in section 4 of the outgoing SBT Code has not been replicated in the new Code. Matters covered in the subscriber code are fully dealt with in consumer law, and have been removed in accordance with the drafting principle of avoiding the duplication of existing law. The removal of the provisions does not result in any loss of protection for consumers, who will continue to be protected under consumer law in relation to matters such as fault repair, credit management and billing. ASTRA also notes that any complaints in this area are best dealt with by state and territory fair trading organisations, rather than the ACMA, which is not the specialist regulator for consumer law matters. Accordingly, the attachment containing the relevant Consumer Affairs bodies in the outgoing SBT Code (SBT Attachment A) has been removed.

The requirement for closed captioning to be provided in program guides (section 2.4 of the outgoing SBT Code) has also not been replicated in the Code. Captioning requirements are primarily dealt with in the *Broadcasting Services Act 1992*, and licensees are naturally incentivised to promote the availability of the captions they have invested in; this is borne out in practice.

TABLE OF EQUIVALENT PROVISIONS

New Code provision	SBT equivalent	SNT equivalent
1.1	N/A	N/A
1.2	1.1	N/A
1.3	1.2	1.9
2.1	2.1(a)	1.4
2.2	2.1(e)	1.8
3.1	3	3.1
3.2	3.3	3.3
3.3	3.4	3.2
3.4	3	3.5
4.1	N/A	N/A
4.2	N/A	N/A
4.3	2.2(a)	1.2
4.4	N/A	N/A
4.5	2.2(b)(vi)	N/A
4.6	N/A	N/A
4.7	N/A	N/A
4.8	2.2(a)(i) and (ii)	1.2
4.9	N/A	N/A
4.10	N/A	N/A
4.11	2.2(c)	1.3
4.12	N/A	N/A
4.13	2.2(b)	N/A
5.1	2.5	N/A
5.2	3.2	3.7
5.3	2.5	N/A
6.1	2.3	3.4 and 3.8
6.2	2.3	3.4
6.3	2.3	3.4
7.1	6.5	3.8
7.2	6.6	3.13
8.1	N/A	N/A
8.2	N/A	N/A
8.3	N/A	N/A
8.4	5.1(b)	2.4
8.5	5.1(b)	2.4
8.6	5.1(c)	2.2
8.7	N/A	N/A
8.8	N/A	N/A
8.9	6.1(a)	N/A
8.10	N/A	N/A
8.11	5.3	Introduction (D)
8.12	5.3	Introduction (D)

DRAFT SUBSCRIPTION TELEVISION CODE OF PRACTICE
December 2018

DRAFT

1. Commencement, Application and Compliance

- 1.1. This Code commences on [DATE].
- 1.2. This Code applies to Subscription Television Services.
- 1.3. A Licensee will undertake to comply fully with the Code but a Licensee will not be in breach of the Code if the non-compliance was in respect of a minor, peripheral, incidental or trivial matter, or was due to:
 - a. a reasonable mistake;
 - b. reasonable reliance by the Licensee on information supplied by another person;
 - c. the broadcast of material which was accidental, provided that the Licensee took reasonable precautions and exercised due diligence; or
 - d. an act or failure to act of another person which was outside of the Licensee's control, or an accident, technical/engineering issue, or some other cause which was outside the Licensee's control.

[Note: ASTRA will from time to time issue industry guidance notes on the Code which will be published on the ASTRA website.]

2. Programs Not Suitable for Broadcast

- 2.1. A Licensee must not broadcast any Program which is likely, in all the circumstances, to provoke or perpetuate in a reasonable person intense dislike, serious contempt or severe ridicule against a person or group of people because of age, colour, gender, national or ethnic origin, disability, race, religion or sexual orientation.
- 2.2. A Licensee will not be in breach of clause 2.1 if the relevant conduct is said or done reasonably and in good faith:
 - a. in broadcasting an artistic work (including comedy and satire);
 - b. in the course of any broadcast with a public interest purpose (including a statement, discussion or debate concerning academic, artistic or scientific matters); or
 - c. in the course of a broadcast of a fair report of, or a fair comment on, a matter of public interest.

3. Classification

- 3.1. A Licensee will classify Classifiable Programs applying the classification system contained in the 2012 Guidelines for the Classification of Films, a copy of which is set out at Appendix [1].

- 3.2. For Classifiable Programs classified “PG” and above, the classification information will be:
 - a. clearly shown at the commencement of the Classifiable Program, or as soon as practicable after; and
 - b. included in Program Guides.
- 3.3. For Classifiable Programs classified “M” and above, the Consumer Advice will be given at the commencement of the Classifiable Program.
- 3.4. A Licensee will use best endeavours to ensure that, where Classification Exempt Programs are classified they will carry classification information consistent with the 2012 Guidelines for the Classification of Films.

4. News Programs and Current Affairs Programs

- 4.1. This clause 4 applies only to News Programs and Current Affairs Programs.
- 4.2. Compliance with this clause 4 must be assessed taking into account all of the circumstances at the time of preparing and broadcasting the material, including:
 - a. the facts known, or readily ascertainable, at that time;
 - b. the context of the material within the News Program or Current Affairs Program in its entirety;
 - c. the time pressures associated with the preparation and broadcast of such programming; and
 - d. in relation to a Current Affairs Program, the format of the Current Affairs Program, and likely audience expectations of the Current Affairs Program.

Accuracy and fairness

- 4.3. In broadcasting a News Program or Current Affairs Program, a Licensee must make reasonable efforts to present factual material accurately and ensure viewpoints included in the Program are not misrepresented.
- 4.4. Clause [4.3] applies to material factual inaccuracies and material misrepresentations of viewpoints only.
- 4.5. A Licensee must make reasonable efforts to correct or clarify significant and material errors of fact that are readily apparent or have been demonstrated to the Licensee’s reasonable satisfaction in a timely manner.
- 4.6. If a Licensee makes a correction in an appropriate manner within 30 days of a Code Complaint relating to clause [4.3] above being received or referred to the ACMA (whichever is later), then the Licensee will not be in breach of clause [4.3] in relation to that matter.
- 4.7. A correction under clause [4.6] may be made in one or more of the following ways:
 - a. during a later episode of the relevant Program;

- b. on the Licensee's or a Channel Provider's website;
- c. on the official website of the relevant Program; or
- d. any other way that is appropriate in the circumstances.

Impartiality

- 4.8. In broadcasting a News Program, a Licensee must:
- a. present news fairly and impartially; and
 - b. clearly distinguish the reporting of factual material from commentary and analysis.
- 4.9. Nothing in this clause [4] requires a Licensee to allocate equal time to different points of view, or to include every aspect of a person's viewpoint, nor does it preclude a critical examination of, or comment on, a controversial issue as part of a fair report on a matter of public interest.
- 4.10. Current Affairs Programs are not required to be impartial and may take a particular stance on issues.

Privacy

- 4.11. In broadcasting a News Program or Current Affairs Program, a Licensee must not broadcast material relating to a person's personal or private affairs or which invades a person's privacy, unless:
- a. there is a public interest reason for the material to be broadcast; or
 - b. the person has provided implicit or explicit consent for the material to be broadcast (or in the case of a person under 16, a parent or guardian has given implicit or explicit consent subject to applicable laws).
- 4.12. For the purpose of clause 4.11 the broadcast of material that is publicly available or recorded in a public place will generally not be material relating to a person's personal or private affairs or an invasion of privacy.

Material which may cause distress

- 4.13. In broadcasting a News Program or Current Affairs Program, a Licensee must, to the extent practicable:
- a. only include sparingly material likely to cause distress to a substantial number of viewers, unless there is a public interest reason to include such material;
 - b. exercise sensitivity in broadcasting images of, or interviews with, bereaved relatives or people who have witnessed or survived a traumatic incident;

- c. take all reasonable efforts to provide a spoken warning before a segment that contains material which, in the reasonable opinion of the Licensee, is likely to seriously distress or seriously offend a substantial number of viewers having regard to the likely audience of the Program and Channel; and

Note: Due to the nature of particular broadcasts, a spoken warning may not always be possible, for example, when a News Program or Current Affairs Program is broadcast live.

- d. not broadcast reports of suicide or attempted suicide unless there is a public interest reason to do so, and exclude any detailed description of the method used, and exclude graphic details or images.

5. Disabling Feature

- 5.1. The Disabling Feature enables subscribers to block certain levels of classified material or in some instances entirely block out the channel.
- 5.2. A Licensee will ensure that access to a Classifiable Program classified "R18+" that is broadcast on a Subscription Narrowcasting Service, will be restricted by an appropriate Disabling Feature.
- 5.3. Where appropriate a Licensee who provides a Disabling Feature, will make information available on the use of a Disabling Feature or other similar technology.

6. Promotions

Promotions Broadcast during Classifiable Programs

- 6.1. A Licensee will ensure that the content of a Promotion broadcast during a Classifiable Program does not exceed the classification of the Classifiable Program in which the Promotion is broadcast.

Promotions Broadcast during Classification Exempt Programs

- 6.2. A Licensee will have particular regard to the likely audience of the Program when scheduling a Promotion during a Classification Exempt Program.

Classification Information in Promotions

- 6.3. Where practicable, a Licensee will include in a Promotion for a Classifiable Program, the classification information about the Classifiable Program being promoted.

Note: Where required under clause 6.3, a Licensee will make every reasonable effort to include accurate classification information in a Promotion however this may not always be available, for example, if a Classifiable Program is fast-tracked or has not yet been made available to the Licensee in full for classification.

- 6.4. A Promotion must be readily distinguishable from Program material.

7. Advertising

- 7.1. A Licensee will have particular regard to the likely audience of the Program when scheduling Advertising.

Note: For the avoidance of doubt, the content of Advertising is not dealt with under this Code and is subject to the relevant codes adopted by the Australian Association of National Advertisers.

Betting Advertising in a Live Sporting Event

- 7.2. A Licensee must comply with the provisions relating to Betting Advertising in a Live Sporting Event including the promotion of Betting Odds in Appendix [2].

8. Feedback and Code Complaints

Feedback

- 8.1. Licensees welcome feedback from customers at all times. Feedback is an informal way for viewers to communicate their views to a Licensee and can be provided in any way a viewer chooses.
- 8.2. Feedback is distinguished from a Code Complaint, which is a formal complaint made about a matter covered by this Code, and which satisfies the criteria set out at clause [8.3].

Code Complaint requirements

- 8.3. For a complaint to be a Code Complaint it must meet the following criteria:

Method of making a complaint

- a. the complaint must be made in one of the following ways:
- i. in writing, posted to the Licensee; or
 - ii. by lodging an electronic form via a Licensee's website; or
 - iii. by sending an email to the Licensee at an email address provided by the Licensee on its website for the purpose of complaints; and

Note: Where, by reason of a disability, a complainant cannot lodge a complaint that satisfies the requirements of clause [8.3(a)], a telephone complaint or a complaint in another audio format accessible by the Licensee will be a Code Complaint, provided in each case that it otherwise satisfies the criteria in clause [8.3]

Content and receipt of the complaint

- b. the complaint must contain the following information:
- i. sufficient detail about the material broadcast (such as the approximate date, time and Channel, and name or brief description of the material);
 - ii. the nature of the complaint;

- iii. the identity of the complainant;
 - iv. accurate contact details for the complainant; and
- c. the complaint must be:
- i. about a matter covered by the Code;
 - ii. about a matter broadcast by the Licensee in Australia;
 - iii. about a matter seen by the complainant; and
 - iv. received within 30 days of the relevant broadcast; and

Note: For example, material that appears on an internet site (whether operated by the Licensee or another person), in social media, or on a social media app is not covered by the Code.

If a person has recorded the broadcast on a personal video recorder and viewed it at a later time, then a complaint may still be made, so long as it is within 30 days of the broadcast, as required by clause [8.3(c)(iv)].

Privacy complaints under clause 4.11

- d. a complaint about a matter under clause [4.11]:
 - i. is subject to the requirements set out above in clauses 8.3(a)-(c) except for clause [8.3(c)(iii)]; and
 - ii. can only be made by the person (or a representative of the person) who considers their privacy intruded upon.

Responding to Code Complaints

- 8.4. A Licensee must use best endeavours to send a written response to a Code Complaint within 60 days of receipt of the Code Complaint, unless clause [8.6] or clause [8.9] applies.
- 8.5. A written response to a Code Complaint provided by a Licensee under clause [8.4] will inform the complainant that they may refer the complaint to the ACMA if they are not satisfied with the response.
- 8.6. A Licensee is not required to provide a written response to a Code Complaint that (in the Licensee's reasonable opinion):
- a. is frivolous, vexatious, or an abuse of the Code process;
 - b. is offensive or vulgar;
 - c. is the second or later complaint in a series of complaints from a single person about the same matter and does not raise new and distinct issues; or
 - d. indicates a response is not required based on the nature of the complaint.
- 8.7. If a Code Complaint is about a broadcast that the Licensee is aware is the subject of threatened or formal proceedings in any court or tribunal, where the

Licensee or a Channel Provider, or any of their agents or employees is a party or intended party, then the Licensee may choose not to treat the matter as a Code Complaint, provided that the Licensee acknowledges receipt of the complaint in writing and indicates the reason the matter will not be dealt with under the Code.

Advertising Complaints

- 8.8. A written response to a Code Complaint that (in the Licensee's reasonable opinion) predominantly relates to the scheduling of Advertising or the scheduling of Betting Advertising in a Live Sporting Event under clause [7], will (in accordance with clause 8.5) inform the complainant that they may refer their complaint to the ACMA if they are not satisfied with the response.
- 8.9. Where a Licensee receives a complaint that (in the Licensee's reasonable opinion) predominantly relates to the content of Advertising (which for the avoidance of doubt is not a Code Complaint), the Licensees will use its best efforts to refer the complainant to Ad Standards.

Other Complaints

- 8.10. Complaints regarding the subscriber relationship between a Licensee and a Subscriber are not covered by the Code and are governed by general law, such as consumer law and privacy law.

Transparency

- 8.11. A Licensee will publicise the availability of the Code at regular intervals, and will advise Subscribers at the time of subscription via the subscription agreement or other alternative means that the Code (including complaints procedures) are available.
- 8.12. Copies of the Code will be provided to the public on request.

Definitions and Interpretation

Definitions

ACMA means the Australian Communications and Media Authority.

Advertising means any material which is broadcast by a Licensee for which the Licensee receives payment or other valuable consideration for broadcast in breaks within or between the programs or by visual and/or oral superimposition on a program which is undertaken by, or on behalf of, an advertiser and over which the advertiser has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct. For the avoidance of doubt Advertising includes infomercials but does not include Promotions, Community Service Announcements or advertisements on behalf of election authorities.

ASTRA means the Australian Subscription Television and Radio Association.

Betting Advertising is defined in Appendix [2].

Channel means a continuous stream of programs transmitted by a Licensee on a Subscription Television Service.

Channel Provider means a person who:

- a. packages a Channel (which may include programs produced by the person); and
- b. supplies the Licensee with the Channel;

where, apart from any breaks for the purpose of the transmission of incidental matter, the Channel is transmitted by the Licensee on a Subscription Television Service.

Classifiable Program means a film, a drama Program, a documentary Program or a reality Program.

Classification Exempt Program means any Program which is not a Classifiable Program.

Code means this Subscription Television Code of Practice.

Code Complaint	means a complaint that meets the requirements set out in clause [8.3] of this Code.
Community Service Announcement	means an announcement or other material broadcast by a Licensee, which promotes a charitable cause or activity which constitutes a service to the community, and for which the Licensee does not receive payment or other valuable consideration.
Consumer Advice	means information regarding the key elements that contributed to a classification of a Program.
Current Affairs Program	means a Program focusing on social, economic or political issues of current relevance to the community.
Disabling Feature	means a product feature which allows consumers to disable reception of a particular Program or Channel.
Licensee	means: <ul style="list-style-type: none"> c. a holder of a subscription television broadcasting licence allocated by the ACMA under the <i>Broadcasting Services Act 1992</i>; or d. a holder of a subscription television narrowcasting licence pursuant to the <i>Broadcasting Services Act 1992</i>.
Live Sporting Event	is defined in Appendix [2].
News Program	means a Program the predominant purpose of which is to present factual new information on current events and which is typically prepared by journalists and includes news updates but does not include news Promotions.
Platform ID	means material broadcast by a Licensee which is designed to promote or draw attention to a Licensee's package of Subscription Television Services or other services.
Program	means material the primary purpose of which is to entertain, educate or inform an audience but excludes Advertising, Promotions and Community Service Announcements.
Program Guide	unless otherwise specified refers to a Licensee's printed or electronic Program guides.

Promotion	means material which is designed to promote or draw attention to a Program or Channel and includes News Program promotions, Program promotions, Channel promotions and Platform IDs but excludes Community Service Announcements and Advertising.
Related Body Corporate	has the meaning given to it in the <i>Corporations Act 2001 (Cth)</i> .
Subscriber	means a person that enters into an agreement with a Licensee to receive a Subscription Television Service.
Subscription Broadcasting Service	has the same meaning given in section 16 of the <i>Broadcasting Services Act 1992</i> .
Subscription Narrowcasting Service	has the same meaning given in section 17 of the <i>Broadcasting Services Act 1992</i> .
Subscription Television Service	means a Subscription Broadcasting Service or a Subscription Narrowcasting Service.

Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (c) mentioning anything after includes, including, for example, or similar expressions does not limit what else might be included;
- (d) a reference to a person includes a body corporate and unincorporated body or other entity and conversely;
- (e) a reference to a clause or schedule is to a clause or schedule to this Code;
- (f) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation as the case may be, jointly and severally.

APPENDIX 1



Guidelines for the Classification of Films 2012¹

Classification (Publications, Films and Computer Games) Act 1995

I, Jason Clare, Minister for Justice, with the agreement of each participating Minister mentioned in subsection 12 (1) of the *Classification (Publications, Films and Computer Games) Act 1995*, determine the following guidelines under that subsection.

Dated 10 December 2012

Jason Clare

Minister for Justice

- **Part 1 Preliminary**

- 1 Name of instrument**

This instrument is the *Guidelines for the Classification of Films 2012*.

- 2 Commencement**

This instrument commences on 1 January 2013.

- 3 Repeal**

The following instruments are repealed:

- (a) Guidelines for the Classification of Films and Computer Games;
- (b) *Guidelines for the Classification of Films and Computer Games Amendment 2008 (No. 1)*.

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• **Part 2 Guidelines for the Classification of Films**

Introduction to the Guidelines

Background

The *Guidelines for the Classification of Films* (the Guidelines) are a tool for classifying films. They help explain the different classification categories, and the scope and limits of material suitable for each category. They are revised from time to time, with extensive community input.

The legal context

The national classification scheme is based on:

- the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (the Act), and
- a cooperative agreement between Commonwealth, State and Territory governments.

Under the scheme, the Commonwealth makes the classification decisions, and the States and Territories enforce them.

The Act contains a National Classification Code (the Code). It also allows Guidelines to be made. By agreement, the Commonwealth, State and Territory Ministers can vary the Code and the Guidelines.

The Act requires films and computer games to be classified, using the Code and the Guidelines, before they are released or advertised.

Classification decisions are made by the Classification Board. Its decisions can be reviewed by the Classification Review Board. Administrative support for both Boards is provided by the Australian Government Attorney-General's Department.

Classification categories

The Act names the classification categories for films, and the Code describes them. The categories are:

- G
- PG
- M
- MA 15+
- R 18+
- X 18+

- RC

Classification criteria

The Act

Under the Act, each of the following matters must be taken into account in classifying films:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults;
- (b) the literary, artistic or educational merit (if any) of the publication, film or computer game;
- (c) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character;
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

The Code

Under the Code, classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear, see and play what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:
 - (i) depictions that condone or incite violence, particularly sexual violence; and
 - (ii) the portrayal of persons in a demeaning manner.

Consumer advice

Except for G classifications, the Act requires the Classification Board to provide consumer advice about the content of films it classifies. (For G classifications, the Act gives the Board the option whether to provide consumer information.) This information helps consumers make informed choices.

The Guidelines

Using the Guidelines: Essential principles

Three essential principles underlie the use of the Guidelines:

- the importance of context
- assessing impact
- the six classifiable elements

Except for the X 18+ category, each classification category takes a similar form. It begins with an “impact test” that determines the threshold for the category. It then lists the six classifiable elements, with a statement limiting the content of each element.

Importance of context

Context is crucial in determining whether a classifiable element is justified by the story-line or themes. In particular, the way in which important social issues are dealt with may require a mature or adult perspective. This means that material that falls into a particular classification category in one context may fall outside it in another.

Assessing impact

The Guidelines use the following hierarchy of impact:

- very mild - G
- mild - PG
- moderate - M
- strong - MA 15+
- high - R 18+
- very high - RC

Assessing the impact of material requires considering not only the treatment of individual classifiable elements but also their cumulative effect. It also requires considering the purpose and tone of a sequence.

Impact may be higher where a scene:

- contains greater detail, including the use of close-ups and slow motion
- uses accentuation techniques, such as lighting, perspective and resolution
- uses special effects, such as lighting and sound, resolution, colour, size of image, characterisation and tone
- is prolonged

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- is repeated frequently
- is realistic, rather than stylised
- encourages interactivity

Interactivity includes the use of incentives and rewards, technical features and competitive intensity. As a general rule:

- except in material restricted to adults, nudity and sexual activity must not be related to incentives or rewards
- material that contains drug use and sexual violence related to incentives or rewards is Refused Classification

Impact may be lessened where reference to a classifiable element is verbal rather than visual. For example, a verbal reference to sexual violence is generally of less impact than a visual depiction. Also, some visual impacts have less impact than others: for example, an incidental depiction may have less impact than a direct one.

The classifiable elements

The six classifiable elements in a film are:

- themes
- violence
- sex
- language
- drug use
- nudity

The classification takes account of the context and impact of each of these elements, including their frequency and intensity, and their cumulative effect. It also takes account of the purpose and tone of a sequence, and how material is treated.

The Categories

G – GENERAL

Impact test

The impact of the classifiable elements for material classified G should be very mild only.

Note: The G classification is for a general audience. However, it does not necessarily indicate that children will enjoy the film. Some G films contain themes or story-lines that do not interest children.

Classifiable elements

THEMES

The treatment of themes should have a very low sense of threat or menace, and be justified by context.

VIOLENCE

Violence should have only a low sense of threat or menace, and be justified by context.

Sexual violence is not permitted.

SEX

Sexual activity should be very mild and very discreetly implied, and be justified by context.

LANGUAGE

Coarse language should be very mild and infrequent, and be justified by context.

DRUG USE

Drug use should be implied only very discreetly, and be justified by context.

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NUDITY

Nudity should be justified by context.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

PG – PARENTAL GUIDANCE

Impact test

The impact of the classifiable elements for material classified PG should be no higher than mild.

Note: Material classified PG may contain material which some children find confusing or upsetting, and may require the guidance of parents or guardians. It is not recommended for viewing by persons under 15 without guidance from parents or guardians.

Classifiable elements

THEMES

The treatment of themes should generally have a low sense of threat or menace and be justified by context.

VIOLENCE

Violence should be mild and infrequent, and be justified by context.

Sexual violence is not permitted.

SEX

Sexual activity should be mild and discreetly implied, and be justified by context.

LANGUAGE

Coarse language should be mild and infrequent, and be justified by context.

DRUG USE

Drug use should be justified by context.

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NUDITY

Nudity should be justified by context.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

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M – MATURE

Impact test

The impact of the classifiable elements for material classified M should be no higher than moderate.

Note: Material classified M is not recommended for persons under 15 years of age. There are no legal restrictions on access.

Classifiable elements

THEMES

The treatment of themes may have a moderate sense of threat or menace, if justified by context.

VIOLENCE

Moderate violence is permitted, if justified by context.

Sexual violence should be very limited and justified by context.

SEX

Sexual activity should be discreetly implied, if justified by context.

LANGUAGE

Coarse language may be used.

Aggressive or strong coarse language should be infrequent and justified by context.

DRUG USE

Drug use should be justified by context.

PRIVILEGED

NUDITY

Nudity should be justified by context.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

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MA 15+ – MATURE ACCOMPANIED

Impact test

The impact of material classified MA 15+ should be no higher than strong.

Note: Material classified MA 15+ is considered unsuitable for persons under 15 years of age. It is a legally restricted category.

Classifiable elements

THEMES

The treatment of strong themes should be justified by context.

VIOLENCE

Violence should be justified by context.

Sexual violence may be implied, if justified by context.

SEX

Sexual activity may be implied.

LANGUAGE

Strong coarse language may be used.

Aggressive or very strong coarse language should be infrequent.

DRUG USE

Drug use should be justified by context.

PRIVILEGED

NUDITY

Nudity should be justified by context.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

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R 18+ – RESTRICTED

Impact test

The impact of material classified R 18+ should not exceed high.

Note: Material classified R 18+ is legally restricted to adults. Some material classified R 18+ may be offensive to sections of the adult community.

Classifiable elements

THEMES

There are virtually no restrictions on the treatment of themes.

VIOLENCE

Violence is permitted.

Sexual violence may be implied, if justified by context.

SEX

Sexual activity may be realistically simulated. The general rule is “simulation, yes – the real thing, no”.

LANGUAGE

There are virtually no restrictions on language.

DRUG USE

Drug use is permitted.

PRIVILEGED

NUDITY

Nudity is permitted.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

X 18+ – RESTRICTED

CONTAINS CONSENSUAL SEXUALLY EXPLICIT ACTIVITY

(Restricted to adults 18 years and over*)

**Available only for sale or hire in the ACT and Northern Territory.*

Note: This classification is a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.

No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers.

Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting are not permitted.

As the category is restricted to activity between consenting adults, it does not permit any depictions of non-adult persons, including those aged 16 or 17, nor of adult persons who look like they are under 18 years. Nor does it permit persons 18 years of age or over to be portrayed as minors.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

RC – REFUSED CLASSIFICATION

Note: Films that exceed the R 18+ and X 18+classification categories will be Refused Classification.

Films will be refused classification if they include or contain any of the following:

CRIME OR VIOLENCE

Detailed instruction or promotion in matters of crime or violence.

The promotion or provision of instruction in paedophile activity.

Descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years.

Gratuitous, exploitative or offensive depictions of:

- (i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed;
- (ii) cruelty or real violence which are very detailed or which have a high impact;
- (iii) sexual violence.

SEX

Depictions of practices such as bestiality.

Gratuitous, exploitative or offensive depictions of:

- (i) activity accompanied by fetishes or practices which are offensive or abhorrent;
- (ii) incest fantasies or other fantasies which are offensive or abhorrent.

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DRUG USE

Detailed instruction in the use of proscribed drugs.

Material promoting or encouraging proscribed drug use.

Note: Some of the terms used in this category are defined in the List of Terms at the end of these Guidelines.

LIST OF TERMS

Note: Words which are used in the Guidelines but which are not contained in this List of Terms take their usual dictionary meaning. Refer to the latest edition of The Macquarie Dictionary.

Coercion:	The use of threat or power to force agreement to sexual activity.
Demean:	A depiction or description, directly or indirectly sexual in nature, which debases or appears to debase the person or the character depicted.
Elements:	Themes, violence, sex, coarse language, drug use and nudity.
Exploitative:	Appearing to purposefully debase or abuse for the enjoyment of others, and lacking moral, artistic or other values.
Fetish:	An object, an action or a non-sexual part of the body which gives sexual gratification.
Intensity:	Strength of the treatment or subject matter; strength of engagement or involvement.
Offensive:	Material which causes outrage or extreme disgust.
Sexual Activity:	Matters pertaining to sexual acts, but not limited to sexual intercourse.
Sexual Violence:	Sexual assault or aggression, in which the victim does not consent.
Sexualised Violence:	Where sex and violence are connected in the story, although sexual violence may not necessarily occur.

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Themes: Social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism.

Treatment: The way in which material is handled or presented.

Violence: Acts of violence; the threat or effects of violence.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.

APPENDIX 2

BETTING ADVERTISING IN A LIVE SPORTING EVENT

Betting Advertising during a Live Sporting Event

- (1) From 5:00am to 8:30pm, a Licensee must not broadcast Betting Advertising during a Live Sporting Event:
 - a) from 5 minutes before the Scheduled Start of Play, where live-to-air coverage of Play commences no earlier than the Scheduled Start of Play;
 - b) in all other cases, five minutes before the broadcast of the first Program that includes the Live Sporting Event,
until 5 minutes after the conclusion of live-to-air coverage of Play.
- (2) From 8.30pm to 5:00am, a Licensee must not broadcast Betting Advertising during Play in a Live Sporting Event but may broadcast Betting Advertising:
 - a) before Play has commenced;
 - b) during Scheduled Breaks in Play;
 - c) during Unscheduled Postponements in Play; and
 - d) after Play has concluded.

Promotions of Betting Odds during a Live Sporting Event

- (3) From 5:00am to 8.30pm, a Licensee must not broadcast a Promotion of Betting Odds during a Live Sporting Event:
 - a) from 5 minutes before the Scheduled Start of Play, where live-to-air coverage of Play commences no earlier than the Scheduled Start of Play;
 - b) in all other cases, five minutes before the broadcast of the first Program that includes the Live Sporting Event,
until 5 minutes after the conclusion of live-to-air coverage of Play.
- (4) From 8.30pm to 5:00am, a Licensee must not broadcast a Promotion of Betting Odds during Play in a Live Sporting Event but may broadcast a Promotion of Betting Odds other than by a Commentator:
 - a) before Play has commenced or after Play has concluded; and

- b) during Play in a Long Form Live Sporting Event, as part of a distinct break of at least 90 seconds, and in the Permitted Frequency, provided that the Promotion of Betting Odds is not for a race, match or game that has already commenced.

Promotion of Betting Odds by a Commentator

- (5) A Licensee must not broadcast a Promotion of Betting Odds by a Commentator of a Live Sporting Event any time:
 - a) from 30 minutes before the commencement of Play; and
 - b) until 30 minutes after the conclusion of Play.

Representatives of gambling or betting organisations

- (6) During a Live Sporting Event, representatives of gambling or betting organisations must be clearly identifiable as such and must not appear as part, or as a guest, of the commentary team at any time.
- (7) During a Live Sporting Event representatives of gambling or betting organisations:
 - a) undertaking a Promotion of Betting Odds; or
 - b) appearing in Betting Advertising,must not be at or around, or appear to be at or around, the sports venue where the event which is the subject of the Live Sporting Event is taking place.

Content Safeguards

- (8) Promotions of Betting Odds and Betting Advertising during a Live Sporting Event must be:
 - a) socially responsible; and
 - b) accompanied by a responsible gambling message.
- (9) Promotions of Betting Odds and Betting Advertising during a Live Sporting Event must not:
 - a) mislead or deceive the audience;
 - b) be directed at children;
 - c) portray children as participating in betting or gambling;
 - d) portray betting or gambling as a family activity;
 - e) make exaggerated claims;
 - f) promote betting or gambling as a way to success or achievement; or
 - g) associate betting or gambling with alcohol.

Restrictions on Low Audience Share Channels

- (10) Subject to clause (12), the restrictions in clauses (1) and (3) do not apply to the broadcast of a Live Sporting Event on a Low Audience Share Channel except in a broadcast of a Listed Event.
- (11) Subject to clause (12), clauses (2) and (4) apply to a Licensee in relation to the broadcast of a Live Sporting Event on a Low Audience Share Channel without any time of day restriction, except in the broadcast of a Listed Event.

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- (12) Where a Licensee broadcasts a Listed Event on a Low Audience Share Channel, the Licensee must comply with the restrictions in clauses (1), (2), (3) and (4), as applicable to the time of day of the broadcast.
- (13) The Licensee must draw to the reasonable attention of prospective viewers of any Low Audience Share Channel that the restrictions in clauses (1) and (3) do not apply to that channel, including through notification:
- a) on its website; and
 - b) in any promotional material that includes the Licensee's pricing and packaging for any Low Audience Share Channel(s). For the avoidance of doubt, above the line advertising campaigns are not subject to this requirement.

Exemptions from this Appendix

- (14) This Appendix does not apply to a Live Sporting Event of horse racing, harness racing or greyhound racing.
- (15) The restrictions in clauses (1) and (3) do not apply to Exempt Programs broadcast during a Live Sporting Event from 5 minutes after the broadcast of the Live Sporting Event has been suspended until 5 minutes prior to the resumption of the broadcast of the Live Sporting Event.
- (16) This Appendix does not apply to a service that is delivered by a Licensee:
- a) on a pay-per-view basis;
 - b) as an alternative subsidiary service associated with a Live Sporting Event that is accessed through an active choice by the viewer (for example, by using a button on a remote control to select data relating to Betting Odds on a particular event); or
 - c) as a Subscription Narrowcasting Service provided only to:
 - i. limited locations where children are not ordinarily present, including mining or military sites or commercial outlets connected with the racing or wagering industry and that is not available for private or domestic use;
 - ii. channels intended for adults-only audiences with technical age-gating access restrictions; or
 - iii. commercial premises that are licensed to serve alcohol or offer gambling (including wagering or gaming services) and that is not available for private or domestic use.
- (17) It will not be a breach of this Appendix if:
- a) a failure to comply arises from a Live Sporting Event originating from outside Australia; and
 - b) the Licensee has not added the Promotion of Betting Odds or Betting Advertising; and
 - c) the Licensee does not receive any direct or indirect benefit for the Promotion of Betting Odds or the broadcast of the Betting Advertising in addition to any direct or indirect benefit received from broadcasting the Live Sporting Event; and

- d) it is not reasonably practicable for the Licensee to remove the Promotion of Betting Odds or Betting Advertising.

(18) Clauses (1)(b) and 3(b) of this Appendix will not be contravened in respect of any Promotion of Betting Odds or Betting Advertising broadcast during a Live Sporting Event in circumstances where:

- a) the Live Sporting Event has a Scheduled Start of Play; and
- b) Play commences at a different time to the Scheduled Start of Play; and
- c) the Licensee was only made aware less than one hour prior to the broadcast of the first Program that includes the Live Sporting Event, that the commencement of Play would be different to the scheduled start time for that event; and
- d) there would have been no contravention had Play commenced at or after the Scheduled Start of Play.

Definitions and interpretation

(19) In this Appendix, a reference to a time of day means AEST or AEDT (as applicable), unless:

- a) a Sports Channel or any Related Channel delivers addressable advertising, in which case the time zone that applies to that Sports Channel and any Related Channels is the time zone in which the viewer is located; or
- b) a Sports Channel or any Related Channel which is a Subscription Broadcasting Service or Subscription Narrowcasting Service broadcasts concurrently, or has broadcast concurrently, different content on that Subscription Broadcasting Service or Subscription Narrowcasting Service in different geographical areas, in which case the time zone that applies to that Sports Channel and any Related Channels is the time of the relevant geographical area. Where such an area observes different time zones, the time zone observed by the largest proportion of the population of the area will apply.

(20) The audience share of a Sports Channel for the purpose of classification as a Low Audience Share Channel will be determined as follows:

- a) by reference to 28 day consolidated OzTAM ratings information for full day averages in metropolitan areas (total individuals, total TV share for 5 city metro, consolidated 28 days, 02:00-25:59). For periods prior to April 2016, reference will be made to 7 day consolidated OzTAM ratings information for full day averages in metropolitan areas (total individuals, total TV share for 5 city metro, consolidated 7 days, 02:00-25:59);
- b) if OzTAM data is not available for a Sports Channel, to qualify as a Low Audience Share Channel the Licensee must provide other evidence that reasonably demonstrates the average viewership of the channel(s) is at or below a 0.5% share of the metropolitan broadcast television audience over the applicable period; and
- c) where the Sports Channel has a Related Channel, its audience share is taken to be the aggregated audience share for all Related Channels.

(21) In this Appendix:

“Accidental” means an unscripted and unplanned reference (including remarks by a Commentator) for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event).

“AEST” means Australian Eastern Standard Time (UTC+10:00).

“AEDT” means Australian Eastern Daylight Time (UTC+11:00).

“Betting Advertising” includes any writing, still or moving pictures, signs, symbols or other visual images or any audible message(s) (or any combination of those things) that comprises a distinct promotional reference to:

- a) a gambling or betting service; or
- b) a gambling or betting organisation (including generic information about a gambling or betting organisation’s brand, business or services).

Betting Advertising does not include an advertisement or a reference:

- a) relating to such things as Government lotteries, lotto, keno or contests;
- b) relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use;
- c) that is Accidental; or
- d) that is an Incidental Accompaniment.

“Betting Odds” means comparative, generally monetary, odds offered in respect of a game or event for a bet on the chance of any occurrence or outcome within that particular game or event, or the overall outcome of the game or event. For the avoidance of doubt, **Betting Odds** includes comparative odds for horse, harness and greyhound racing.

“Channel Provider” means a person who:

- a) packages a channel (which may include programs produced by the person); and
- b) supplies the Licensee with the channel,

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the Licensee.

“Commentator” means a person who is a host, guest or otherwise participating in a Live Sporting Event and includes a person calling, or providing analysis on the sporting event or game, but does not include discrete or distinguishable contributors, including clearly identified representatives of gambling or betting organisations.

“Exempt Program” means:

- a) a program that is not a Related Program of at least 30 minutes duration that is broadcast within a Scheduled Break in Play during a Live Sporting Event or planned suspension of coverage of a Live Sporting Event and is either:

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- i. listed in the Licensee's EPG at least 24 hours prior to the broadcast of the Program;
or
 - ii. published on the Licensee's website at least 24 hours prior to broadcast of the Program and notified to providers of electronic program guides at least 24 hours prior to the broadcast of the Program; or
- b) a program that is not a Related Program of at least 30 minutes duration that is replacement programming within an Unscheduled Postponement in Play during a Live Sporting Event or due to changes in the broadcast schedule and is accompanied by an advice (e.g. a pull through or announcement) that alerts the viewer or listener that the Live Sporting Event will be suspended.

"Incidental Accompaniment" means a reference or other material which occurs or is included in the normal course of broadcasting a Live Sporting Event for which the Licensee does not receive any direct or indirect benefit (whether financial or not, and in addition to any direct or indirect benefit that the Licensee receives for broadcasting the Live Sporting Event) and includes:

- a) the name of a sporting venue;
- b) branding on a player's or official's uniform; or
- c) advertising or signage which is at the venue of the event which is the subject of the Live Sporting Event, for example, on a field barrier, big screen or scoreboard.

"Listed Event" means a Live Sporting Event that is included on the *Broadcasting Services (Events) Notice (No. 1) 2010* (as amended or replaced from time to time).

"Live Sporting Event" means a live-to-air broadcast of a sporting event that includes Play. A Live Sporting Event includes a Long Form Live Sporting Event.

Live-to-air includes:

- a) a delay of less than 90 minutes where broadcast as plausible live without reformatting; and
- b) replay material during Play and any Unscheduled Postponements in Play.

A Live Sporting Event does not include one or more live crosses to a Live Sporting Event from within a program that is not a Related Program, provided that:

- a) the live crosses collectively represent no more than an insubstantial part of the program;
and
- b) the licensee does not promote, prior to the commencement of the program, that the program will or may contain live crosses; and
- c) the licensee does not promote any individual live cross more than 15 minutes before that live cross.

For the avoidance of doubt, a live cross as contemplated in this definition will not make the program a Related Program.

"Long Form Live Sporting Events" include:

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- a) sporting events of extended duration, such as golf, cricket (excluding 20/20 cricket) and motor sports events;
- b) tournaments for single sports that involve concurrent games or matches, such as tennis championships; and
- c) multi-sport events, such as the Olympic and Commonwealth Games.

“**Low Audience Share Channel**” means a television Sports Channel that has an average share of the metropolitan broadcast television (free-to-air television and subscription television) audience of 0.5% or smaller over a period of the three previous consecutive financial years or, if a channel has operated for less than three financial years, over all full financial years of its operation.

Where a Low Audience Share Channel exceeds an average metropolitan broadcast television audience share of 0.5% over a period of the three previous consecutive financial years or over all full financial years of its operation (as applicable), the channel will cease to be a Low Audience Share Channel from 1 January of the following year.

Subject to the above, where, at the time of its commencement, a new channel:

- a) does not have any Related Channel, the new channel will be considered a Low Audience Share Channel for the period from its commencement until the end of the channel’s first full financial year of operation;
- b) has Related Channels and each Related Channel is a Low Audience Share Channel, the new channel will be considered a Low Audience Share Channel for the period from its commencement until the end of the channel’s first full financial year of operation; or
- c) has any Related Channel that is not a Low Audience Share Channel, the new channel will not be considered a Low Audience Share Channel for the period from its commencement until the end of the channel’s first full financial year of operation.

“**Permitted Frequency**” means, in respect of the following Long Form Live Sporting Events:

Tennis	Not more than once per Session. To be placed between matches where the broadcast moves from one match to another.
Golf	Not more than once on each day of competition.
Formula 1, Moto GP and Supercars	Not more than once on each day of competition. To be placed no later than the end of the warm-up lap for Supercars Championship Series Race, or the relevant feature race.
Cricket	Not more than once on each day of competition.

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	To be placed between Sessions.
Olympic and Commonwealth Games	Not more than once every 3 hours on each day of competition.
Rugby Union Sevens, Rugby Union Tens and Rugby League Nines Tournaments (or other similar tournaments)	Between matches and not more than 4 times on each day of competition.
Other	Not more than once on each day of competition.

“Play” means the period of the actual run of play or active progress of the sporting event or game which is the subject of the Live Sporting Event. It commences at the formal commencement of the relevant match, game, race or similar (e.g. first siren, whistle or at the commencement of active play as applicable) and concludes at the formal conclusion or abandonment of active play (e.g. final whistle, siren, or at the conclusion of active play) for the relevant match, game, race or similar. In respect of Long Form Live Sporting Events over multiple days and/or involving multiple concurrent events or games, Play commences at the commencement of the first match, game or race of each day and concludes at the conclusion of active play of each day.

Play includes *ad hoc* unscheduled breaks such as:

- a) stoppages for injuries;
- b) stoppages for adjudication by third or TV umpires/referees;
- c) time outs and substitutions in games such as basketball.

“Promotion of Betting Odds” means a distinct promotional reference that provides Betting Odds and includes any writing, still or moving pictures, signs, symbols or other visual images, or any audible message(s) (or any combination of those things). A Promotion of Betting Odds includes superimposed text and graphics such as banner advertisements and sponsorship logos, spot commercials and paid, clearly identified sponsorship segments presented by person(s) but does not include a reference or material that is:

- a) Accidental; or
- b) An Incidental Accompaniment.

“Related Channels” means two or more Sports Channels that are:

- a) co-branded; or
- b) provided to the Licensee by the same Channel Provider; or
- c) provided by the Licensee itself.

“Related Program” means a program that:

- a) is hosted or takes place at the venue of the Live Sporting Event; or
- b) contains commentary or analysis on the Live Sporting Event; or

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- c) contains highlights or replay coverage of the Live Sporting Event; or
- d) involves or profiles participants in the Live Sporting Event.

A news or current affairs Program will not be a Related Program where the items in b), c) and/or d) form no more than an insubstantial part of the program as a whole.

“**Scheduled Break in Play**” means a stoppage in a sporting event or game that is the subject of a Live Sporting Event. A Scheduled Break in Play will differ depending on the sporting event or game that is the subject of the broadcast, for example:

Sport	Scheduled Break
Test Cricket	<ul style="list-style-type: none"> • Between each Session (ie., lunch break and tea break) • Drinks break • Change of innings
One Day International Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Drinks break
T20 Cricket	<ul style="list-style-type: none"> • Between each Session / Change of innings • Between the conclusion of second innings and Super Overs • Between Super Overs
Rugby League	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of extra time
Rugby Union	<ul style="list-style-type: none"> • Half-time • Between full time and commencement of extra time
Football (Soccer)	<ul style="list-style-type: none"> • Half-time • Between full time and extra time • Between extra time and the commencement of a penalty shoot-out

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Sport	Scheduled Break
AFL	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and extra time
Tennis	<ul style="list-style-type: none"> • Between each set • A distinct break of at least 90 seconds (including when during a Session the broadcast switches from one match still in Play to another match in Play at the same time), such break to occur not more than once every hour
Basketball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Netball	<ul style="list-style-type: none"> • Quarter time • Half-time • Three-quarter time • Between full time and overtime
Golf / Supercars endurance races / Swimming Championships	<ul style="list-style-type: none"> • A distinct break of at least 90 seconds, such break to occur not more than once every hour
Formula 1 / MotoGP / Supercars non-endurance races	<ul style="list-style-type: none"> • Between each Session
Olympic Games & Commonwealth Games	<ul style="list-style-type: none"> • Between each day, twilight and night session • A distinct break of at least 90 seconds (including when during a session the broadcast switches from one event still in Play to

Sport	Scheduled Break
	another event in Play at the same time), such break to occur not more than every 2 hours
Rugby Union Sevens, Rugby Union Tens and Rugby League Nines Tournaments (or other similar tournaments)	<ul style="list-style-type: none"> • Half-time • Full time • Between each morning, afternoon and evening session

This is not an exhaustive list and other sporting events or games may also contain a Scheduled Break in Play, as determined by the rules and regulations of that sport.

“**Scheduled Start of Play**” means the scheduled commencement time of live-to-air coverage of Play as:

- a) listed in the Licensee’s EPG at least 24 hours prior to the broadcast of the Program; or
- b) published on the Licensee’s website at least 24 hours prior to broadcast of the Program and notified to providers of electronic program guides at least 24 hours prior to the broadcast of the Program.

“**Session**” means:

- a) in relation to tennis, the day, twilight, or evening session of matches as scheduled by the organisers of the relevant tournament or competition;
- b) in relation to test cricket, any of the three distinct sessions of a match that are divided by lunch and the tea break;
- c) in relation to one-day cricket, an innings; and
- d) in relation to motorsport, an individual race or practice session or qualifying session.

“**Sports Channel**” means a channel that broadcasts predominantly sports content or is marketed as a sports channel.

“**Subscription Broadcasting Service**” has the same meaning given in section 16 of the *Broadcasting Services Act 1992*.

“**Subscription Narrowcasting Service**” has the same meaning given in section 17 of the *Broadcasting Services Act 1992*.

“**Unscheduled Postponement in Play**” means the period when Play is postponed, suspended or delayed due to rain or other unforeseen event and the participants have left or are yet to enter the area of play.

Commencement

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(22) The commencement date of this Appendix is 30 March 2018.