



**Submission to the Australian Law Reform Commission:
Review of the National Classification Scheme: Discussion Paper**

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INTRODUCTION

The Australian Subscription Television and Radio Association (**ASTRA**) welcomes the opportunity to comment on the Australian Law Reform Commission's (**ALRC**) *Review of the National Classification Scheme: Discussion Paper (the Paper)*.

About ASTRA

ASTRA is the peak industry body for subscription television (STV) in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major STV operators, as well as channels that provide programming to these platforms. A list of members is attached at Annexure A.

The STV industry is the undisputed leader of digital broadcasting in Australia. A dynamic sector that is constantly evolving and growing, it is received nationally by 34% of Australians through their homes and many more through hotels, clubs and other entertainment and business venues.

The STV sector contributes to the Australian economy in a variety of ways, both directly (in terms of the value it adds to national GDP and employment) and indirectly through providing greater product innovation and consumer choice. The direct economic contribution of STV to the Australian economy in 2009-10 is estimated at approximately \$700 million and over \$5 billion since its inception, employing 7,410 people (including platform outsourcing) in 2010.

In 2010, STV platforms and channels invested \$578.4 million into Australian content, an increase from \$541.4 million in 2009, contributing an estimated \$223 million to the Australian economy.

Overview of content regulation on subscription television in Australia

ASTRA supports consistency in the assessment and classification of content to be delivered on any platform, in line with the National Classification Code and Guidelines for the Classification of Films and Computer Games ('Classification Guidelines') established under the *Classification Act 1995*.

All licensed television broadcasting services (including commercial and national broadcasters and STV services) are responsible for establishing and maintaining practices for classifying programs in a way that reflects community standards. Classification requirements are contained in the codes of practice developed for particular sections of the industry, and registered with the Australian Communications and Media Authority (ACMA), under section 123 of the *Broadcasting Services Act 1992* (BSA).

STV providers are licensed to provide a number of subscription broadcast and narrowcast services. Requirements for classification of content broadcast by these services are in the Subscription Broadcast Television and Subscription Narrowcast Television Codes of Practice (the ASTRA Codes). Classification categories under the Codes reflect the National Classification Code and Classification Guidelines.

Under the BSA, STV licensees are subject to the same licence conditions as commercial and community broadcasters, and broadcasters operating under a class licence, in relation to the broadcast of political and controversial material, election advertisements, advertisements relating to medicines, tobacco

advertising, and material that has been classified RC (refused classification) or X18+ by the Classification Board.

Unlike commercial television broadcasting services, STV services do not have restrictions on the times at which material of a certain classification can be shown. This reflects that STV providers have a direct relationship with their subscribers. STV subscribers expect to be able to see the material they want through the service they pay for at the time they wish to see it, similar to the way in which a customer may rent a DVD or go to a cinema. It also recognises that STV providers have greater control over how content is delivered and accessed on their platforms.

Consumer advice

Under the ASTRA Codes, the classification symbol for programs classified PG or above must be clearly displayed at the commencement of the program and in the program guides. For material classified M and MA15+, consumer advice concerning the reasons for a classification must be given at the commencement of the program. The advice will be consistent with the relevant aspects of the Classification Guidelines. Material classified R 18+ can only be broadcast by a subscription narrowcasting service, and only where access to that material is restricted.

FOXTEL and AUSTAR provide content classification information in printed guides and as part of the on-screen electronic program guide. Viewers can also access information about classification at any time during a program by pressing the 'i' button on the remote control.

Complaints

Complaints regarding any matter under the Codes, including in relation to the classification of content, are first directed to the relevant STV broadcasting licensee. If unsatisfied with the outcome of the complaint to the broadcaster, the complainant may take the matter to the ACMA.

Parental lock functionality

STV platform operators including FOXTEL and AUSTAR have invested heavily in technology such as the parental lock system which provides subscribers with a greater degree of control over the programs they and their children watch via their set top unit.

The standardised parental lock system enables subscribers to block programs (based on their classification) utilising a PIN. Applying this viewing restriction enables viewers to select the classification categories they wish to restrict (from PG and above) and access to programming with that classification requires a PIN. FOXTEL's parental lock system also allows its subscribers to block entire channels and AUSTAR is currently working on the implementation of channel blocking as an additional feature of its parental lock system for its MyStar and MyStar HD set top boxes. FOXTEL and AUSTAR also have the technology to allow subscribers to block Adults Only program titles from being displayed in the electronic program guide.

In addition, FOXTEL has a remote control - the 'Mini Mote' - specifically designed for children. The 'Mini Mote' provides an additional tool for parents to manage their children's television viewing through restricted channel availability. The 'Mini Mote' features eight pre-programmed buttons that only link to

children's channels. Two extra buttons exist for parents to program other channels they may wish to enable their children to view.

Effectiveness of existing regulatory arrangements

ASTRA submits that the existing framework for regulating content on STV works effectively to maintain community standards and protect children from harm while enabling subscribers to view the content they want to see when they want to see it.

ASTRA supports primary reliance on co-regulatory measures to deliver public policy objectives for the media and communications sector. The SBTV and SNTV Codes are developed in consultation with the ACMA and involve extensive consultation with the public taking into account changing community views.

The STV industry has an interest in ensuring customers' complaints and queries are dealt with effectively and efficiently and that licensees remain the first point of contact for customer complaints.

ASTRA is opposed to the creation of a separate code, and code development processes (potentially involving different regulators) as it could possibly confuse the consumers and industry regarding the full extent of ASTRA Codes of Practice setting out different provisions in different instruments and likely require increased resources within the industry and government.

COMMENTS ON PROPOSALS AND QUESTIONS IN THE DISCUSSION PAPER

The Proposed Classification Scheme

ASTRA believes that a national classification scheme should provide consumers with adequate guidance to make informed choices about the content they want to view. In particular, content classification should empower parents to be confident when making decisions regarding content they allow their children to see.

Classification of Media Content Act

It is appropriate – as is proposed in the Paper – that the National Classification Scheme prescribes the types of media content that may, or must be classified; and who is responsible for classifying different types of media content.

ASTRA supports the general principle that *classification* of content should be platform neutral, that is, a film that, for example, is classified MA15+ for cinematic release should, if unedited, remain classified MA15+ for viewing on DVD, STV or other media platform. As such, the proposal for the Classification of Media Content Act to include platform-neutral definitions of 'media content' and 'media content provider'¹ is appropriate.

However, platform-neutral definitions should not preclude regulatory differentiation for other consumer safeguards on the basis of the way in which media content is delivered and received. That is, there may be different community expectations regarding how the *access or use* of content should be regulated depending on how that content is delivered. Consumers who are legally permitted to purchase content or subscribe to a content service would expect to be able to access and use that content when they want.

¹ Australian Law Reform Commission (ALRC), "National Classification Scheme Review: Discussion Paper", p9.

However, for a platform such as free to air television, which is universally accessible and has traditionally been subject to more stringent content requirements (eg. Classification time zones) to balance other regulatory privileges, there may be different community expectations as to how access and use of content provided by that platform is to be regulated.

What Content Should be Classified?

In relation to STV, ASTRA notes that the ALRC proposes the following:

“The ALRC then proposes that the following content (subject to some exemptions) must be classified before it is sold, hired, screened or distributed in Australia:

...

Television programs produced on a commercial basis.”²

Under the ASTRA Codes, STV broadcasters are required to classify films and drama programs applying the program classification system contained in the Guidelines for the Classification of Films and Computer Games and, where other programs are classified, use their best endeavours to ensure that those programs carry only classification symbols.

The ALRC proposal would increase the regulatory burden on STV channels and platforms by mandating classification of content other than films and drama (although we note the ALRC would preserve exemptions for categories such as news and current affairs programs, sporting events, and broadcasts or recordings of live performances). The current framework provides sufficient regulatory forbearance, particularly for smaller STV channel providers, while remaining highly effective in achieving desired public policy outcomes. ASTRA submits that there is no evidence that suggests a need for expanding the scope of program genres broadcast on STV that would be subject to mandatory classification obligations.

Exempt Content

ASTRA is pleased to note that traditional exempt categories will continue to be exempt from classification. The Paper states that:

“This exempt content would include, for example:

News and current affairs programs;

Sporting events;

Recordings of live performances; and

...”³

ASTRA submits that it is crucial that these programs continue to be exempted from any classification scheme.

Who Should Classify Content?

ASTRA supports an approach where general principles and a national framework for content classification are determined by the Government through Parliament, but where content providers are primarily responsible for ensuring compliance with classification and content regulations that may apply.

² ALRC, “National Classification Scheme Review: Discussion Paper”, p81.

³ ALRC, “National Classification Scheme Review: Discussion Paper”, p96.

Working within a framework that reflects prevailing community attitudes and standards, content providers are best placed to respond appropriately and in a timely manner to consumer concerns relating to content classification.

ASTRA notes that the ALRC proposes that industry continue to retain responsibility for television content classification:

“The ALRC also proposes that, apart from this media content that must be classified by the Board, all other media content may be classified by authorised industry classifiers, including:

- *Feature-length films not for cinema release and television programmes (for example, films and television programs on DVD, the internet and television);⁴”*

With respect to STV, ASTRA believes the current distribution of responsibilities between Government, regulators and industry, together with consumer and community engagement through code development and complaints processes, largely works well to achieve the desired public policy outcomes for reflecting community standards and protecting children from harm, while taking into account the different business models for content delivery.

Classifier training

ASTRA submits that training classifiers should be the responsibility of industry, and supports the establishment of a new training and accreditation framework.

ASTRA supports a revised training scheme that includes an appropriate period of ‘on the job training’ or practical experience as a precondition to accreditation under the tutelage of an experienced professional classifier. Where experienced professional classifiers seek accreditation, the scheme should allow for recognition of their experience (as is often the case with practical legal training courses which qualify lawyers for admission to court).

ASTRA supports that the decisions of accredited industry classifiers be made available on a national database accessible by all accredited classifiers. The scheme should require the classifier to enter into this database their reasons for the classification—including examples of key depictions or themes—as this will assist the subsequent classifier to note the elements that resulted in the classification.

Marketing, Advertising, Display and Restricting Access

The ASTRA Codes require classification information to be displayed at the commencement of certain programs, and in electronic and printed program guides. As noted above, ASTRA believes the current co-regulatory system for STV broadcasting, incorporating the National Classification Scheme and Classification Guidelines, works well for STV consumers.

ASTRA notes that content classified R 18+ is available only on STV narrowcasting services, and only where effective parental lock features are in place.

For material required to be classified under the ASTRA Codes, material classified M or MA15+ must include the provision of consumer advice concerning the reasons for a classification at the commencement of a program, in a style consistent with relevant aspects of the Classification Guidelines.

⁴ ALRC, ‘National Classification Scheme Review: Discussion Paper’, p28.

ASTRA also notes that STV offers additional access to classification information and consumer advice before, and during, the broadcast of a program through its electronic program guide.

The ALRC's proposal would involve an expansion of the current consumer advice requirements for STV, with programs currently classified PG (and which would fall within the PG8+ category under the proposed scheme) requiring consumer advice for the first time. ASTRA believes this is an unnecessary expansion and is inconsistent with the ALRC's reform principle 7—that classification regulation should be kept to the minimum needed to achieve a clear public policy purpose.

As identified by the ALRC, consumer advice should focus on content that has the most impact (for example, 'strong violence' or 'high level sex scenes'). Given that the PG category cannot contain content that is more than mild in impact, this category is unlikely to contain depictions, references or themes that are strong enough to warrant the requirement for advice.

ASTRA also recognises that the classification categories of G and PG are important guiding symbols for parents who will refer to content classification when making decisions regarding the content on STV that they will allow their children to see.

Time Zone Restrictions

Free-to-air television broadcasters, with near universal reach, continue to enjoy a higher degree of influence than any other media platform. In ASTRA's view, many consumers will continue to expect the broadcast environment to be a safe place for young people based on time zones and/or access controls.

Unlike commercial television broadcasting services, STV services do not have restrictions on the times at which material of a certain classification can be shown. This reflects the different model of content delivery for STV as opposed to free-to-air broadcasting – STV providers have a direct relationship with their subscribers, who expect to be able to see the material they want through the service they pay for at the time they wish to see it. This is similar to the way in which a consumer may rent a DVD or purchase a ticket to the cinema. In such circumstances, the consumer makes a choice regarding when the content is viewed.

STV platform operators including FOXTEL and AUSTAR have invested heavily over the years developing parental lock system which provide subscribers with a greater degree of control over the programs they and their children watch. The parental lock system enables subscribers to block programs (based on their classification) utilising a PIN. Applying this viewing restriction enables viewers to select the classification category they wish to restrict (for example, allowing viewers to block programs in the PG category and any higher classification category) and access to programming with that classification requires a PIN. FOXTEL's parental lock system also allows its subscribers to block entire channels and AUSTAR is currently working on the implementation of channel blocking as an additional feature of its parental lock system for its MyStar and MyStar HD set top boxes.

ASTRA notes that from February 2011, any new model terrestrial digital television receiver must include a parental lock function.⁵ While most digital television receivers available from retail outlets will now have parental lock functions, and many existing models have such features, there is likely to be a transition period over a number of years before all terrestrial digital receivers in all homes include a parental lock function.

⁵ Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010.

In ASTRA's view, continued regulatory privilege of commercial free to air broadcasters and community expectations regarding how content should be regulated on free to air television, together with the likely time lag before the Government could be confident of universal penetration of parental lock features on terrestrial digital television receivers, means that continued time zone-based classification on free to air broadcasters is essential.

Further, according to recent research conducted by the ACMA into the converging media environment, Australians continue to have an expectation regarding time zone restrictions on free-to-air television.

"Most participants saw an ongoing role for current policy mechanisms (time zoning, ratings, classifications, and consumer advice and content warnings) for protecting children from unsuitable content broadcast on free-to-air television."⁶

It is clear that there is a continuing expectation by Australians that these protections are kept in place for the foreseeable future.

Classification Categories and Criteria

As stated in previous submissions, and notwithstanding our support for consistent classifications across platforms, ASTRA does not see any need for the development of an entirely new framework for the classification of content. ASTRA believes the current classification framework is appropriate, including the evidence-based approach by the Classification Board to ensure classification decisions reflect community standards.

ASTRA believes that the existing classification categories are well recognised in the community and generally well understood, as reflected in research undertaken by regulators in 2004 and 2005.⁷ While this research did conclude some level of uncertainty in relation to some specific aspects of classification categories, ASTRA believes that recognition and understanding is likely to have increased since those studies were undertaken, and that this uncertainty can be adequately be addressed through community education on the existing categories.

ASTRA is pleased that, as with current regulations, the following exempt categories would be continue to be exempt from the classification requirements set out in the proposed Classification of Media Content Act⁸:

- news and current affairs;
- sport;
- recordings of live performances;^[14] and
- films for training, instruction or reference.

It appears that, without further clarification, the ALRC proposal would result is a significant expansion of the classification regulations—compared with the current requirements under the SBTV Codes and SNTV Codes that only films and drama must be classified.

⁶ ACMA, "Digital Australians – Expectations about media content in a converging media environment: qualitative and quantitative research report", October 2011, p4.

⁷ See OFLC, *Classification Study*, June 2005 and ABA/OFLC, *Community Attitudes Towards Media Classification and Consumer Advice*, March 2004.

⁸ ALRC, "National Classification Scheme Review: Discussion Paper", p96.

This outcome would arise because genres such as light entertainment, documentary and reality programming would, for the first time on STV, be required to be classified.

ASTRA believes the existing categories give consumers a firm base upon which to make viewing choices for themselves and their children. Additional categories, or the merging of categories, are likely to cause confusion. ASTRA submits there would need to be compelling evidence that the current categories are ineffective or inappropriate, and that a reconfiguration of categories would be more effective, before any substantial changes are contemplated.

Codes and Co-Regulation

Co-regulatory models already exist under the BSA for all sectors of the broadcasting industry, including subscription, commercial and community television and radio. As the ACMA has noted:

“Key to the co-regulatory approach embodied in the Broadcasting Services Act is that the various sectors of the broadcasting industry are responsible for developing their own code of practice, which are to be observed in the conduct of their broadcasting operations. The Broadcasting Services Act intends that codes of practice provide flexible, responsive and cost-effective means for regulation.”⁹

Industry-based regulatory frameworks are likely to provide more flexibility and be more responsive to changes in community expectations about the suitability of content.¹⁰ The codes of practice in place for broadcasting under the BSA are subject to regular review with extensive public consultation to ensure that these codes continue to reflect prevailing community attitudes applicable to the broadcasting operations of each sector of the broadcasting industry. The development of codes of practice by industry groups (such as ASTRA) representing particular sectors of the broadcasting industry must take into account any relevant research conducted by the ACMA.¹¹ The ACMA regularly undertakes research to assist in maintaining awareness of prevailing community attitudes.

ASTRA believes it is important that the principles for classification adopted under industry codes of practice are consistent with a national approach to content classification. As such, the ASTRA Codes directly refer to the National Classification Code and Classification Guidelines in codifying classification standards for STV. Moreover, the direct relationship with subscribers means that STV platform providers will always be responsive to consumer concerns. This is reflected in the very small number of written complaints made to STV broadcasting licensees in relation to classification and program content matters, and the even smaller number of complaints that are subsequently referred to the ACMA.

ASTRA notes the proposal in the Paper that:

“the new Classification of Media Content Act should provide for the development of industry classification codes of practice by sections of industry involved in the production and distribution of media content.

...

The Regulator should be empowered to approve an industry classification code of practice...”¹²

⁹ ACMA, “Reality Television Review Final Report”, 30 March 2007, p 18.

¹⁰ See *ibid* for examples of where codes of practice for broadcasting have been modified in response to changes in community attitudes or to better reflect community standards.

¹¹ BSA, s 123.

¹² ALRC, “National Classification Scheme Review: Discussion Paper, p14.

While ASTRA agrees that co-regulatory approaches are the most effective and appropriate means to regulate media content, we would be concerned if the effect of this proposal would be to require the same content to be classified at different stages of the content production and distribution process. ASTRA recommends that the proposal makes clear that content classification requirements need only apply once along the production and distribution chain.

The new Regulator

In ASTRA's view, industry is best placed to assess – and resolve – complaints in the first instance. The current industry-based regulatory framework provides flexibility and allows content providers to be more responsive to changes in community expectations about the suitability of content.

ASTRA is of the view that the handling and resolution of complaints is the responsibility of industry and is opposed to any unnecessary increase on the burden on Government dealing with vexatious complaints.

Furthermore, from an STV perspective it is an issue of customer relationship management. In this context, the content provider has an existing commercial relationship with its customer and, as in any commercial setting, it is imperative that the business is the first point of contact regarding customer concerns. This allows the business an opportunity to resolve complaints and, ultimately, retain its customers. In members' experience, the customer almost always responds positively to a meaningful response from the content provider.

The STV industry is currently regulated by the ACMA. The ACMA is responsible for registering codes developed by industry, which contain requirements relating to content classification. The existing National Classification Scheme and Classification Guidelines are incorporated into the ASTRA Codes and form the basis of content classification delivered by STV broadcasters.

In ASTRA's view, the current co-regulatory model for STV is an example of industry-based content classification regulation that works well both for consumers and broadcasters. Under the current model, where a consumer has a classification concern or believes content has been inappropriately classified, the consumer first directs those concerns to the relevant STV broadcasting licensee. If the consumer is unsatisfied with the response from the licensee, the consumer may make a complaint to the ACMA.

ASTRA would support the regulator being part of the ACMA. However ASTRA would be concerned if content on STV were subject to two regulatory regimes with two different regulators. This would likely cause confusion for consumers and additional and unnecessary regulatory burdens for STV broadcasters. Broadcaster-specific content regulation (for example in relation to news and current affairs reporting, program promotions, etc.) would remain under the jurisdiction of the ACMA, while content subject to the classification scheme would be subject to a new content regulator. Furthermore, consumers unsatisfied with a broadcaster's response to a content-related complaint would have to go to a different regulator depending on the type of content that is the subject of the complaint, and this is likely to create unnecessary confusion.

ASTRA notes the summary responses table included in FOXTEL's submission for further detail.

ANNEXURE A

Subscription Television Platforms

AUSTAR
FOXTEL
Optus Television
Telstra

Program Channel Providers

Aurora
Australian Christian Channel
Australian News Channel
BBC Worldwide Channels Australasia
Discovery Networks
E! Entertainment
ESPN
Eurosport
Expo Networks
KidsCo
Movie Network
MTV Networks
National Geographic
NBC Universal
Nickelodeon
SBS Subscription TV
Premier Media Group
Premium Movie Partnership
Setanta Sports Australia
Sky Racing
Turner International (Australia)
TV1
TVN
TVSN
Walt Disney Company (Australia) Pty Ltd
XYZnetworks Pty Ltd

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