

**ABC Submission to the  
Review of Australian  
classification regulation**



# ABC submission to the Review of Australian Classification Regulation

## Executive Summary

- The introduction of any new classification regime must take account of the independent editorial decision-making processes of the ABC. The ABC operates within a wider accountability framework and is not subject to the National Classification Scheme. A harmonised approach can still be achieved by requiring the ABC, in developing its own classification standards, to have regard to the standards set for other content providers.
- The ABC assesses the impact of classifiable elements and does not do so on the basis of a generic 'impact test'. Instead, the detailed provisions for each classifiable element (themes, violence, sex, language, drug use and nudity) of the ABC Classification Standard provide a level of accuracy and consistency that is not achieved through the Classification Board's impact test.
- ABC iview should be removed from the list of 'classifiable film content' (page 13 of the discussion paper) and the current practice of classifying individual episodes should continue rather than adopting a 'box set' or whole-of-series approach.
- There is an unintended consequence of the emergence of automated approaches, like the Netflix tool, which have a tendency to classify more conservatively rather than with strict accuracy.
- Further consultation is required before any revision of the National Classification Code and Guidelines to clarify what platforms are included; i.e. would it apply to broadcaster accounts on Facebook, YouTube and other social platforms? How would any new regime engage the Australian Communications and Media Authority (ACMA), which currently investigates ABC classification decisions when there is a complaint?

## Introduction

The ABC welcomes the opportunity to offer comments on the Review of Australian Classification Regulation and the issues flagged in the accompanying Discussion Paper. As a public broadcaster the ABC recognises that its content helps inform and reflect community standards. The ABC acknowledges that classification is an important tool for assisting audiences to make informed choices about what they hear, see, or participate in—on broadcast and across an expanding number of digital services.

Any changes to the classification regime must take account of the ABC's unique role as a public broadcaster and established public policy which is designed to minimise the potential of government interference with its editorial decision-making processes.

The ABC believes any dilution of its independence, however subtle, may have a chilling effect on its ability to fulfil its core functions, including delivering diverse, innovative and sometimes controversial content to audiences.

## ABC Independence

In meeting its Charter obligations, the ABC is required to meet the standards set out in the *Australian Broadcasting Corporation 1983* ('ABC Act'). Oversight of programming rests with the ABC Board which is required to 'maintain the independence and integrity' of the Corporation.<sup>1</sup> The Corporation is accountable to Parliament through regular appearances at Senate Estimates hearings, questions on notice, detailed reporting in its annual report and appearances before Parliamentary committees. ABC financial and governance arrangements are subject to audit by the Australian National Audit Office.

---

<sup>1</sup> *Australian Broadcasting Corporation Act 1983*, s 8(1)(b).

The ABC Act empowers the Minister to direct the ABC to broadcast matters deemed to be in the national interest, subject to Parliament being informed of the particulars and reason for such a direction.<sup>2</sup> Otherwise the Corporation is 'not subject to direction by or on behalf of the Government of the Commonwealth' unless the power to give direction is 'expressly provided by the provision of another Act'.

The ABC's Charter requires it to take account of 'the standards from time to time determined by the Australian Communications and Media Authority in respect of broadcasting services'.<sup>3</sup> The ACMA has no role in the development of the ABC Code of Practice, which is the responsibility of the ABC Board.<sup>4</sup> This preserves editorial independence by ensuring that an external body that may be open to Government direction (like the ACMA) can't influence the editorial processes that shape ABC programming activities.

The Corporation recognises that it has a privileged place in the media landscape, with access to spectrum and public funding. It is required, among other things, to broadcast programs that contribute to a sense of national identity, inform and entertain, while reflecting the cultural diversity of the Australian community.<sup>5</sup> To meet its responsibilities, the ABC's editorial independence and autonomy must be maintained.

The Corporation maintains a rigorous Editorial Policies framework to ensure that high standards are met and the ABC is accountable to audiences through the co-regulatory regime with the ACMA. The ABC Editorial Policies state that the Corporation's broadcast and publication of comprehensive and innovative content requires a willingness to take risks, invent and experiment with new ideas, while taking care not to gratuitously cause harm or offence.

## **ABC Classification**

As it has stated in submissions to previous inquiries and reviews, the ABC supports a classification framework based on principles; one that is platform-neutral and ensures the editorial independence and autonomy of the ABC are maintained.

The *Broadcasting Services Act 1992* requires media groups to develop industry codes of practice and methods for classifying programs that reflect community standards. Those codes are approved and registered by the ACMA. The ABC's enabling legislation, by comparison, requires it to develop its own code and to notify it to the ACMA.<sup>6</sup> As noted above, this separation from the ACMA serves to safeguard of the Corporation's editorial independence.

The ABC Code of Practice incorporates the Corporation's Associated Standard on TV Program Classification.<sup>7</sup> Programs on ABC television platforms are classified and scheduled to comply with that Standard. The Corporation employs staff classifiers.

The ABC has classification time zones for each channel. The time zones reflect the multi-channel nature of ABC services and the differences that exist between them, such as the distinction between ABC KIDS (aimed at preschool children) and ABC ME (aimed at school-aged children). The time zone charts are published online.<sup>8</sup>

The guiding principle in the application of ABC classifications is context. What is inappropriate and unacceptable in one context may be appropriate and acceptable in another. For example, brief nudity may be appropriate in an arts documentary, but would likely be inappropriate in a program intended for young children. Factors to be taken into account include the artistic or educational merit of the production, the purpose of a sequence, the tone, the camera

---

<sup>2</sup> *Australian Broadcasting Corporation Act 1983*, s 78.

<sup>3</sup> *Australian Broadcasting Corporation Act 1983*, s 6(2)(a)(ii).

<sup>4</sup> *Australian Broadcasting Corporation Act 1983*, s 8(1)(e).

<sup>5</sup> *Australian Broadcasting Corporation Act 1983*, s 6(1)(a)(i).

<sup>6</sup> *Australian Broadcasting Corporation Act 1983*, s 8(1)(e).

<sup>7</sup> ABC. 'Associated Standard on TV Program Classification', <https://edpols.abc.net.au/associated-standard-on-tv-program-classification/>.

<sup>8</sup> ABC. 'Associated Standard on TV Program Classification', s 7.3.6.

work, the intensity and relevance of the material, the treatment, and the intended audience. Classifiable elements considered in programs are themes, violence, sex, language, drug use and nudity.

Programs on ABC iview contain embedded classification information.

This dynamic framework for classification allows the ABC to take chances with programs that commercial media cannot or will not support. Public broadcasters nurture new talent and support cutting-edge program-making. This distinction between public broadcasters and other media should remain clear.

The ABC is not subject to the requirement imposed on commercial and community television broadcasters under the BSA that their codes 'apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*'.<sup>9</sup> This ensures that the classification of content, an aspect of programming, is not subject to standards determined by an external entity—in this case the Classification Board.

## The Impact Test

ABC classification is broadly consistent with the National Classification Scheme, including the categories from the National Classification Code. However, there are some important distinctions between the Guidelines for the Classification of Films and the ABC's classification standard. The most notable of these is the absence from the ABC's classification standard of an overarching 'impact test'.

The Guidelines for the Classification of Films establish an impact test as the primary determinant of the classification of each film. The description of what is permissible within each classifiable element at each classification level is brief and imprecise. For example, at each classification level from G to MA15+, the description of what is permitted under the classifiable element of nudity is simply 'Nudity should be justified by context'. The only distinction made between the manner or amount of nudity permissible at each level is through the impact test, ranging from very mild impact at G through to strong impact at MA15+. In contrast, under the ABC's classification standard, there is a detailed description of precisely what sort of nudity—in sexual and non-sexual contexts—is permissible at each level:

At G, 'Artistic or cultural depictions of nudity in a sexual context may be permitted if the treatment is discreet, justified by context, and very mild in impact' and 'Nudity outside of a sexual context should be: • infrequent, and • not detailed, and • not gratuitous'.

At PG, '[N]udity in a sexual context may be suggested, but should: • be discreet, and • be infrequent, and • not be gratuitous' and 'Nudity outside of a sexual context should not be detailed or gratuitous'.

At M, 'Nudity in a sexual context should not contain a lot of detail or be prolonged' and 'Nudity outside of a sexual context may be shown but depictions that contain any detail should not be gratuitous'.

Finally, at MA15+, 'Nudity should be justified by context' and 'Depictions of nudity in a sexual context which contain detail should not be exploitative'.

These detailed descriptions, in place of a subjective impact test, have allowed the ABC to apply its classifications in a consistent, accurate and objective manner. With reference to the Corporation's Code of Practice, ABC audiences can understand precisely what to expect at each classification level and can rest assured that the decisions made by ABC classifiers have been made as objectively as possible.

The ABC strongly recommends that, in any revision to the Guidelines for the Classification of Films, consideration is given to removing, or significantly reworking, the impact test concept. The Guidelines would, in the ABC's view, be greatly improved by adding more descriptive detail as to what is permissible within each element at each

---

<sup>9</sup> *Broadcasting Services Act 1992*, s 123(3A).

classification level. Should the Guidelines be revised in this way, it is more likely that the ABC would adopt them within its Code of Practice.

## **ABC iview and the Converged Media Environment**

The ABC currently classifies most iview content voluntarily in accordance with its editorial standards and as a service to the iview audience. If films and episodic series carried on iview were to be included in the list of 'classifiable film content', as proposed on p.13 of the Discussion Paper, there is a risk that the ABC will be forced to apply separate sets of guidelines for broadcast and the on-demand iview service.

While the ABC's Associated Standard on Television Program Classification is designed for public television content, it is applicable to and used for classification of content on online platforms. ABC classifiers are already working in a converged media environment. This includes classifying a considerable volume of content produced and published for children.

The ABC's classification approach reflects the converged environment in which it now operates. Content classified for broadcast on the ABC main channel carries that classification—including any bespoke consumer advice—to other broadcast platforms, like the ABC News Channel. All content classified as PG, M and MA15+ for broadcast is presented on iview as it would be if it were broadcast, while G content carries the corresponding classification symbol, which it would not do when broadcast. This recognises that iview is not subject to time zones. Unique iview content is also classified.

Content available for streaming from other ABC online sites is classified on a referral basis. Editorial managers will refer specific content to classifiers that is likely to be at the M or MA15+ classification level. This includes any non-broadcast behind-the-scenes material or deleted scenes.

The ABC also applies its moderation process for user-generated content, which is subject to guidelines that assess the content against a risk-assessment framework. High-risk content and all content aimed at children or young people is reviewed before posting. Video content is generally subject to pre-moderation. Inappropriate content is either not approved for publication, edited or removed from publication. The ABC takes this approach on third-party platforms, such as Facebook, to the extent permitted by the third-party site and in line with the expectations and conventions of the users of the site.

The existing approach works well, although it would be helpful if publishers like the ABC had more tools to better manage third-party accounts on platforms like Facebook, where it is not possible to turn off comments on posts.

In Australia's converged media environment, any changes to the classification regime should be approached with great caution.

The ABC supports an approach that would allow it to continue to self-classify content across all platforms, under the ABC Code of Practice. The Discussion Paper proposes that the new proposed regulator 'would be responsible for robust monitoring practices so that classification decisions accurately reflect the classification guidelines and are consistent across platforms' (pages 15–16). Under the established co-regulatory regime with the ACMA, ABC classification decisions can be investigated by the ACMA in the event of a complaint (provided the complainant has first complained directly to the ABC and is dissatisfied with the response, or has not received a response within 60 days). This arrangement is efficient and effective. The ABC seeks clarification on how the design of a new framework will take account of the respective roles of the regulator and the ACMA.

## **Classification Standards Across Formats and Automated Tools**

The Discussion Paper also raises the possibility of Government-approved classification tools. Aside from the implications for the editorial independence of the ABC already discussed, it is the Corporation's position that the

advent of automated tools, like the Netflix tool, leads to rigid and inevitably more conservative classification decision-making that is less accurate or mindful of audiences.

The Netflix tool relies on an algorithm developed by Netflix using ‘tagging’ technology. The Netflix model is based on a recommendation engine surfacing content for subscribers informed by their previous choices.

The speed and ease of decision-making by algorithm isn’t in itself an argument for the adoption of automated tools. Broadcasters like the ABC, with staff classifiers working to program schedules and a well-established time zone system, can make more accurate decisions based on the merit, tone, and context of individual pieces of content.

The Department of Communications and the Arts recently undertook a monitoring program to assess decisions made by the Netflix tool, auditing a random selection of decisions made in 2018. According to the Department’s report, only 74% of the randomly selected titles were given the same rating by the tool that the Classification Board would have given them; 20% were given a rating one level *higher* than what the Classification Board would have given; and 6% were given a rating one level *lower* than what the Classification Board would have given.<sup>10</sup> It is particularly notable that the bulk (76%) of the incorrect decisions involved the tool taking a more conservative approach than the Classification Board would have done. This is understandable, since it makes little difference to Netflix which classification a program receives, so a tool that results in decisions which are mostly either accurate or more conservative than the Classification Board is ideal.

This tendency is likely to have unintended consequences in the event that similar tools are used more widely across the industry. The public’s perception of what each classification level represents will gradually change. For example, consumers who view M content on Netflix (and other services using automated tools), and then view M content on the ABC, may be shocked by what is permitted at the M level on the ABC, because they have become accustomed to Netflix’s more conservative version of M. Over time, it is likely that broadcasters such as the ABC—using human classifiers who make more accurate decisions—will become outliers. This would be a bad outcome for the broadcasters and, more importantly, for consumers.

There are, in the ABC’s view, other drawbacks to automated tools. Such tools would be naturally inflexible and unable to adjust to changes in the audience over time; they would be unable to make decisions either to reflect increased sensitivities or ‘test the waters’ where there is a perceived relaxation of community standards. This static approach would be in contrast to the dynamism of conscious classification.

Tools cannot tailor consumer advice in the way human classifiers can. The ABC’s classifiers regularly create new consumer advisories, tailored to the specific elements of the content and the specific sensitivities of the target audience. In addition, the ABC often provides information about support services after programs which may leave vulnerable viewers in need of support, such as programs dealing with suicide or child abuse.

Existing automated tools also fail to recognise the unique role of public broadcasters, including their independence from vested interests, services catering for diverse interests and minorities, a commitment to quality and innovative programming, and their special relationship with the nations and communities they serve.

The Corporation notes that it is sometimes suggested there is a need to simplify classification processes to eliminate situations where there can be ‘double handling’, such as where a DVD distributor goes to the Board to get content classified, even though it has already been classified by a broadcaster. This overlooks the fact that there are often different versions of the same program (bonus features/box sets) and different viewing contexts. It should be noted that ABC classifiers classify individual episodes, rather than taking a cumulative whole-of-series approach.

---

<sup>10</sup> Department of Communications and the Arts. ‘Monitoring program for the Netflix Classification Tool 2018–19’, Report, September 2019, [https://www.classification.gov.au/sites/default/files/2019-11/monitoring-program-for-the-netflix-classification-tool-2018-19\\_o.pdf](https://www.classification.gov.au/sites/default/files/2019-11/monitoring-program-for-the-netflix-classification-tool-2018-19_o.pdf).

## Conclusion

The ABC supports redesigning current classification laws to ensure they better align with the modern content market and provide accurate classification information for consumers. The introduction of industry classification tools is not a complete answer.

The Corporation is keen to explore further what will and won't be captured in a new regulatory model. The ABC broadcasts and publishes content on many different platforms. Would the regulator have jurisdiction over content on Facebook and YouTube and other emerging social media platforms?

The existing approach is effective, audience centred, responsible and responsive. The ABC has a dedicated audience response unit that receives feedback via telephone, email and online. Responses are consolidated and delivered daily to programming staff and decision-makers. ABC content-makers engage with audiences on social media and message boards. The ABC receives immediate and comprehensive feedback on program and classification issues. The ABC also has a complaint-handling team that is independent of any content-making division.

Audience feedback has consistently shown that ABC viewers are familiar and comfortable with the Corporation's classification system, and use it to inform their viewing choices. Complaints data suggests that the independent classification decisions made by ABC classifiers are not only trusted, but also extremely accurate. The fact that the ACMA has not found a single classification breach against the ABC since 2011 is a testament to a system working well. Caution should be exercised to ensure any changes arising from the review do not have an adverse impact on this system.

The ABC supports efforts to consolidate and harmonise Australia's classification laws, providing any changes safeguard the public broadcaster's editorial independence. Any blurring of regulatory obligations between commercial and non-commercial media providers through the imposition of an automated, risk-averse approach would impair the ABC's ability to deliver on its Charter obligations, ultimately to the detriment of all Australians.