



Broadcasting Services (Australian Content and Children's Television Standards) Direction 2020

I, PAUL FLETCHER, Minister for Communications, Cyber Safety and the Arts, give the following Direction under subsection 122(7) of the *Broadcasting Services Act 1992*.

Dated 2 November 2020

PAUL FLETCHER

Minister for Communications, Cyber Safety and the Arts

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Part 1—Introduction

1 Name

This Direction is the *Broadcasting Services (Australian and Children's Television Standards) Direction 2020*.

2 Commencement

This Direction commences on the day after it is registered.

3 Repeal of this Direction

This Direction is repealed on 1 July 2021.

4 Authority

This Direction is made under subsection 122(7) of the Act.

5 Definitions

In this Direction:

ACMA means the Australian Communications and Media Authority.

acquired, in relation to a program, means acquired by a commercial television broadcasting licensee or its program supplier under a legally binding agreement, but does not include a program commissioned by the licensee.

ACS means the *Broadcasting Services (Australian Content) Standard 2016* as in force on the date of this Direction.

Act means the *Broadcasting Services Act 1992*.

amend includes revoke and remake.

Australian drama program has the meaning given by section 6 of the ACS but as if subparagraph 6(c)(ii) of the definition were removed.

Note: Subparagraph 6(c)(ii) of the definition states that an Australian drama program does not include an Australian children's drama.

Australian/New Zealand program has the meaning given by section 6 of the ACS.

Australian official co-production has the meaning given by section 6 of the ACS.

Australian program has the meaning given by section 7 of the ACS.

C band has the meaning given by CTS 5(1) of the CTS.

C material has the meaning given by CTS 5(1) of the CTS.

C period has the meaning given by CTS 5(1) of the CTS.

C program means a program which meets the criteria in CTS 6(1) of the CTS.

children means people younger than 15 years of age.

children's program (non-drama) means a C program or P program that is not an Australian drama program.

commercial television broadcasting licensee has the meaning given by the Act.

commissioned, in relation to a program, means that a commercial television broadcasting licensee or its program supplier has made a material and meaningful financial contribution to the production of a program before the production has been completed (and includes in-house production).

CTS means the *Children's Television Standards 2009* as in force on the date of this Direction.

documentary program has the meaning given by section 6 of the ACS.

equivalent metropolitan channel, in relation to a relevant regional channel, means a channel which:

- (a) is broadcast by a metropolitan commercial television broadcasting licensee;
- (b) is the subject of a content affiliation agreement between the metropolitan commercial television broadcasting licensee and a regional/remote commercial television broadcasting licensee; and
- (c) by reason of that content affiliation agreement, contains program content which is the same, or substantially the same, as the relevant regional channel.

film means a program that is a feature film, or a film of like nature, that:

- (a) is scripted and/or a documentary;
- (b) is standalone;
- (c) does not form part of a serial, series or mini-series; and
- (d) is not a pilot.

first release means a program that is first broadcast in a licence area (whether or not the program has already been broadcast in the licence area by a subscription television broadcasting service) within 2 years of the completion of production of the program.

Note: A program may be considered a first release program even if it has already been made available on a subscription or broadcast video on demand service.

licence fee has the meaning given by section 6 of the ACS.

metropolitan commercial television broadcasting licensee means a commercial television broadcasting licensee whose licence area is a metropolitan licence area.

metropolitan licence area means a licence area in which is situated the General Post Office of the capital city of:

- (a) New South Wales; or

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- (b) Victoria; or
 - (c) Queensland; or
 - (d) Western Australia; or
 - (e) South Australia.

New Zealand program has the meaning given by section 6 of the ACS.

P material has the meaning given by CTS 5(1) of the CTS.

P period has the meaning given by CTS 5(1) of the CTS.

P program means a program which meets the criteria in CTS 6(2) of the CTS.

prime time has the meaning given by section 6 of the ACS.

production budget, in relation to a program, means expenditure that is incurred in, or that is reasonably attributable to, the making of the program.

regional/remote commercial television broadcasting licensee means a commercial television broadcasting licensee whose licence area is a regional/remote licence area.

regional/remote licence area means any of the following licence areas:

- (a) Northern New South Wales TV1;
- (b) Southern New South Wales TV1;
- (c) Regional Victoria TV1;
- (d) Eastern Victoria TV1;
- (e) Western Victoria TV1;
- (f) Regional Queensland TV1;
- (g) Tasmania TV1;
- (h) Broken Hill TV1;
- (i) Darwin TV1;
- (j) Geraldton TV1;
- (k) Griffith and MIA TV1;
- (l) Kalgoorlie TV1;
- (m) Mildura/Sunraysia TV1;
- (n) Mount Gambier/South East TV1;
- (o) Mt Isa TV1;
- (p) Riverland TV1;
- (q) South West and Great Southern TV1;
- (r) Spencer Gulf TV1;
- (s) Remote and Regional WA TV1;
- (t) Remote Central and Eastern Australia TV1;
- (u) Western Zone TV1;
- (v) South Eastern Australia TV3;
- (w) Northern Australia TV3;
- (x) Western Australia TV3;
- (y) Remote and Central Eastern Australia TV2.

relevant regional channel means a channel which is broadcast by a regional/remote commercial television broadcasting licensee.

Standard means a standard determined by the ACMA under subsection 122(1) of the Act that is to be observed by commercial television broadcasting licensees, but does not include the *Broadcasting Services (Australian Content in Advertising) Standard 2018*.

Part 2—Direction to the ACMA

6 Modifications to quota arrangements for Australian and children’s programs

- (1) I direct the ACMA, in the exercise of its powers under subsection 122(1) of the Act, to amend one or more Standard(s) to:
- (a) remove the requirements for commercial television broadcasting licensees to broadcast minimum amounts of:
 - i. C material (including C programs);
 - ii. P material (including P programs);
 - iii. Australian drama programs; and
 - iv. documentary programs;
 - (b) remove the associated requirements related to the broadcast of repeat programs, 3 year quotas, minimum duration for Australian documentary programs, limits on the repetition of C programs or P programs, limits on the broadcast of multiple episodes of C programs or P programs within certain timeframes, and requirements for notifying the public about the scheduling of C programs and P programs (except those listed at paragraph 8(1)(b) below); and
 - (c) remove the concepts of the C band; P band; C material; P material; C period; P period; and prime time.
- (2) I direct the ACMA, in the exercise of its powers under subsection 122(1) of the Act, to amend one or more Standard(s) to:
- (a) introduce a new points-based Australian program quota (**‘new quota’**) requiring each commercial television broadcasting licensee to provide at least 250 points of first release Australian programs in each calendar year (inclusive of any carry over points applied under paragraph (i)) across their primary and/or multi-channelled commercial television broadcasting services;
 - (b) provide that the new quota commence from 1 January 2021;
 - (c) provide that the new quota may be acquitted through any combination of the program genres listed in column 1 of the table at Schedule 1 to this Direction, and for the points allocated to each genre to be those listed in column 2 of the table at Schedule 1 to this Direction;

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- (d) provide for the production budget and licence fee figures listed at Schedule 1 to increase, but not decrease, annually in accordance with the All Groups Consumer Price Index;
 - (e) provide that first release Australian programs may only be counted towards the new quota the first time that they are broadcast by the licensee;
 - (f) provide that only first release Australian programs broadcast between 6:00am and midnight each day may be used to acquit the new quota;
 - (g) not prescribe a minimum amount of points to be accrued from any one program genre, listed in the first column of the table in Schedule 1 to this Direction;
 - (h) provide that a maximum of 50 points per year may be acquitted on commissioned documentary programs;
 - (i) enable commercial television broadcasting licensees to carry over points accrued in excess of the new quota from the year in which the points were accrued to the following calendar year, up to a maximum of 50 points;
 - (j) recognise Australian official co-productions, New Zealand programs and Australian/New Zealand programs equally with Australian programs for the purposes of compliance with the new quota;
 - (k) provide for the new quota to be deemed to have been complied with by a regional/remote commercial television broadcasting licensee in respect of a relevant regional channel if the amount of first release Australian programs broadcast by the licensee in a given calendar year on the relevant regional channel is not less than the amount broadcast by a metropolitan commercial television broadcasting licensee on the equivalent metropolitan channel; and
 - (l) require commercial television broadcasting licensees to provide information to the ACMA (at the times and in the format prescribed by the ACMA) demonstrating the licensee's compliance with the new quota, including:
 - i. the number of hours of programming of each genre that is broadcast;
 - ii. the licence fees and/or production budget cost per hour for each program claimed against the quota; and
 - iii. the licensee's total expenditure on first release Australian programs of each genre that are broadcast in compliance with the new quota.

7 Transitional arrangements for quota

- (1) I direct the ACMA, in removing existing requirements and giving effect to the new quota, to amend one or more Standard(s), to:
 - (a) remove the quota obligations and associated matters listed in subsection 6(1) above from 1 January 2021;
 - (b) provide for:

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- i. any annual reporting obligations for the 2020 compliance year to continue to apply;
 - ii. for a C program, any reporting obligations related to the 3-year quota period for 2018-19-20 to continue to apply; and
 - iii. for any other program, any reporting obligations related to a 3 year period to cease from 1 January 2021;
 - (c) provide that any first release Australian film that was acquired before 1 January 2021, and any other first release Australian program that was commissioned before 1 January 2021, and broadcast on or after 1 January 2021, may be used to acquit the new quota for the 2021 compliance year where it meets all other applicable requirements;
 - (d) provide that other Australian first release programs acquired before 1 January 2021 may not be used to acquit the new quota, but may still be used to acquit the overall Australian content transmission quota in section 121G of the Act;
 - (e) provide that licensees may not carry forward any Australian drama program points, or Australian documentary, C program or P program hours accrued in excess of current annual sub-quotas from 2020 to the 2021 compliance year.

8 Protection of children from possible harmful effects of television

- (1) I direct the ACMA, in the exercise of its powers under subsection 122(1) of the Act, to amend one or more Standard(s) to:
 - (a) subject to paragraphs (b) to (f) below:
 - i. retain requirements relating to the protection of children that are equivalent to those set out in CTS 30 – CTS 34 (inclusive);
 - ii. retain requirements relating to the protection of children that are equivalent to those set out in Part 3 of the CTS (excluding CTS 30 – CTS 34), but specify that these protections apply to any C program or P programs broadcast between 6:00am and midnight (including any breaks during or immediately adjacent to the broadcast);
 - (b) require commercial television broadcasting licensees to identify any C program or P program that they broadcast using the applicable C or P symbol, and to include C and P symbols in broadcast schedules, electronic program guides and on licensee websites;
 - (c) provide for the ACMA (or a person or body appointed by the ACMA) to retain its role in the classification of C programs and P programs until such time as amendments are made to the *Commercial Television Industry Code of Practice* to enable commercial television broadcasting licensees to classify children's content;
 - (d) provide that a P program cannot include any advertising immediately before, during or immediately after the broadcast of the program;

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- (e) provide that a C program can include advertising and other non-program material in line with requirements relating to advertising and other non-program material contained in Part 3 of the CTS; and
 - (f) remove the requirement for P programs broadcast by commercial television broadcasting licensees to be Australian programs.

9 Consequential amendments

- (1) I direct the ACMA, in the exercise of its powers under subsection 122(1) of the Act, to make any other amendments to one or more Standard(s) that it considers necessary or convenient to give effect to this Direction.

Schedule 1—Genre point allocation

Column 1	Column 2
Genre	Points per hour broadcast
Commissioned first release Australian documentary program (capped at a maximum 50 points per calendar year)	1
Commissioned first release Australian children's program (non-drama)	1.5
Commissioned first release Australian drama program (\leq \$450,000 production budget per hour)	1.5
Commissioned first release Australian drama program ($>$ \$450,000 to \leq \$700,000 production budget per hour)	4
Commissioned first release Australian drama program ($>$ \$700,000 to \leq \$1,000,000 production budget per hour)	5
Commissioned first release Australian drama program ($>$ \$1,000,000 to \leq \$1,400,000 production budget per hour)	6
Commissioned first release Australian drama program ($>$ \$1,400,000 production budget per hour)	7
Acquired first release Australian film (licence fee per film $<$ \$50,000)	1
Acquired first release Australian film (licence fee per film \geq \$50,000)	2