

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

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

Broadcasting Services Act 1992

Legislative authority

The Australian Communications and Media Authority (the **ACMA**) has determined the *Broadcasting Services (Australian Content and Children's Television) Standards 2020* (the **Standards**) under subsections 122(1) and (2) of the *Broadcasting Services Act 1992* (the **Act**) and in accordance with the *Broadcasting Services (Australian Content and Children's Television) Standards Direction 2020* (the **Direction**).

Subsections 122(1) and (2) of the Act require the ACMA to determine standards relating to the Australian content of programs, and to programs for children, that are to be observed by commercial television broadcasting licensees.

The Minister for Communications, Cyber Safety and the Arts (the **Minister**) has the power under subsection 122(7) of the Act to give directions to the ACMA in relation to the exercise of its powers under subsections 122(1) and (2) of the Act.

The Direction was given to the ACMA by the Minister under subsection 122(7) of the Act and commenced on 13 November 2020. The Direction requires that the Standards be implemented by 1 January 2021.

Subsection 122(8) of the Act provides that the ACMA must comply with a direction under subsection 122(7).

The Standards revoke and replace the *Broadcasting Services (Australian Content) Standard 2016* (the **2016 ACS**) and the *Children's Television Standards 2009* (the **2009 CTS**).

Purpose and operation of the Standards

Requirements of the Direction

The Explanatory Statement to the Direction states that the purpose of the Direction is to reduce and simplify the Australian content obligations that apply to commercial television broadcasting licensees under the 2016 ACS and 2009 CTS, while retaining important safeguards for the protection of children.

The Direction sets out detailed requirements for changing existing obligations set out in the 2016 ACS and 2009 CTS and includes a direction to the ACMA to make any other amendments to those standards that it considers necessary or convenient to give effect to the Direction. In summary, the Direction requires the ACMA to amend (which is defined to include revoke and remake) the 2016 ACS and 2009 CTS such that new standard(s) establish a modified quota on commercial television licensees, which allows them to flexibly provide any mix of first release Australian drama, documentary, and children's programs, or first release Australian films, to acquit their obligation; and maintain existing safeguards for child audiences of commercial television.

The Direction and its Explanatory Statement are available on the Federal Register of Legislation at www.legislation.gov.au.

Operation of the Standards

The Standards have been made in accordance with the requirements set out in the Direction.

The objects of the Standards are to promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programs produced under Australian creative control; and to provide children with certain protections from the possible harmful effects of television.

To achieve this, the Standards:

- > require minimum amounts of first release Australian programs across specific genres to be broadcast by commercial television broadcasting licensees
- > require licensees to comply with certain protections for child viewers.

The quota set out in the Standards complements the overall Australian content transmission quotas established in subsections 121G(1) and (2) of the Act (the **transmission quotas**). The transmission quotas require all commercial television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6 am and midnight on their primary channels, and 1460 hours of Australian programming annually across their other broadcast channels.

It is a condition of a commercial television broadcasting licence that the licensee will comply with the program standards applicable to the licence under Part 9 of the Act (see paragraph 7(1)(b) of Schedule 2 to the Act). The Standards are a program standard.

The Standards apply in addition to rules set out in the Commercial Television Industry Code of Practice (the **Free TV Code**) and other self-regulatory codes, such as the Australian Association of National Advertisers codes.

Documents incorporated in the Standards by reference

The Standards incorporate the 2016 ACS, the 2009 CTS and the Free TV Code as in force on 31 December 2020 by reference. The 2016 ACS and the 2009 CTS are available on the Federal Register of Legislation at www.legislation.gov.au. The Free TV Code is available on the Free TV Australia website (www.freetv.com.au) and the ACMA website (www.acma.gov.au).

The Standards also refer to the 'All Groups Consumer Price Index number' (**CPI number**). The CPI number is published on the Australian Bureau of Statistics' website.

Consultation

Between 15 April and 3 July 2020, the Department of Infrastructure, Transport, Regional Development and Communications (the **Department**) conducted a 7-week consultation process on the *Supporting Australian stories on our screens options paper* (co-authored by the ACMA and Screen Australia).

The operation of the 2016 ACS and the 2009 CTS, including their effectiveness and relevance in a contemporary content environment, were a focus of the options paper and specifically considered by stakeholders as part of the Department's consultation process. This process received some 300 written submissions and involved a series of roundtable discussions with industry that collectively covered an extensive range of views from the screen production sector, broadcasters, streaming services, industry peak bodies, children's advocacy groups, government agencies, academics and individuals.

The ACMA is required by section 126 of the Act to seek public comment on proposed changes to the Standards. This obligation applies in addition to consultation requirements under section 17 of the *Legislation Act 2003*.

Before determining the Standards, the ACMA published a consultation paper and draft Standards on 16 November 2020 for a 3-week consultation process, which concluded on 7 December 2020. Ten submissions were received, including from several peak industry bodies. The Department has also been consulted over the course of developing the Standards.

Regulatory impact

A Regulation Impact Statement (**RIS**) has been prepared by the Department in relation to the Australian Government's Screen Content Reforms, which include the quota for first release Australian programs (reference number 42957). The RIS is available on the website of the Office of Best Practice Regulation. Given that the Standards reflect the requirements of the Direction, no separate RIS was necessary in relation to the Standards.

Statement of Compatibility with Human Rights

The requirement to prepare a Statement of Compatibility with Human Rights only applies in respect of disallowable legislative instruments (see subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*).

The Standards are not subject to disallowance (see item 8(a) in the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, made under paragraph 44(2)(b) of the *Legislation Act 2003*).

Notes to the *Broadcasting Services (Australian Content and Children's Television) Standards 2020*

Part 1 — Preliminary

Section 1 Name

Section 1 provides for the Standards to be named the *Broadcasting Services (Australian Content and Children's Television) Standards 2020*.

Section 2 Commencement

Section 2 provides for the Standards to commence on 1 January 2021.

Section 3 Authority

Section 3 states that the Standards are made under subsection 122(1) of the *Broadcasting Services Act 1992*.

Section 4 Repeal of the *Broadcasting Services (Australian Content) Standard 2016* and the *Children's Television Standards 2009*

Section 4 provides that the *Broadcasting Services (Australian Content) Standard 2016* and the *Children's Television Standards 2009* are repealed.

Section 5 References to other instruments

Section 5 provides that in the Standards, unless the contrary intention appears, a reference to the 2016 ACS, the 2009 CTS or the Free TV Code is a reference to those instruments as in force on 31 December 2020.

Section 6 Objects of these standards

Section 6 sets out the objects of the Standards, which are to promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity, by supporting the community's continued access to television programs produced under Australian creative control, and to provide children with certain protections from the possible harmful effects of television.

Section 7 What these standards do

Section 7 summarises how the Standards meet the objects, by requiring that commercial television broadcasting licensees broadcast an annual quota of first release Australian programs across specific genres, and also comply with certain protections for child viewers.

Section 7 also acknowledges Australia's international agreement obligations.

Australia has international obligations under official co-production agreements and arrangements with other countries. Further information about these arrangements can be found on the Screen Australia website.

In 1983, the Australian Government and the Government of New Zealand entered into the Australia New Zealand Closer Economic Relations Trade Agreement (the **CER**). On 18 August 1988, the Government of Australia and the Government of New Zealand entered into a Protocol on Trade in Services to the CER, the scope of which covers the production of programs for television and the broadcasting of programs on television.

Section 16 of the *Australian Communications and Media Authority Act 2005* requires that the ACMA perform its broadcasting, content and datacasting functions in a manner consistent with Australia's obligations under the CER Trade in Services Protocol.

For the purpose of meeting Australia's obligations under these agreements, the Standards:

- (a) allow Australian official co-productions the full enjoyment of all the benefits accorded to Australian programs; and

- (b) allow New Zealanders, and services provided by New Zealanders, access to the Australian market for television programs no less favourable than that allowed to Australians and services provided by Australians; and
- (c) in like circumstances, treat New Zealanders and services provided by New Zealanders no less favourably than Australians and services provided by Australians.

See section 12 for further explanation of these arrangements.

Part 2 — Terms used in these standards

Section 8 Definitions

Section 8 defines terms used in the Standards, many of which replicate definitions in the Act, the 2016 ACS or the 2009 CTS. The following provides an explanation for those terms where the definition in these Standards has changed in more than a minor way from the 2016 ACS and 2009 CTS.

The definition of **acquired** differs from the definition in the 2016 ACS as it specifically excludes a program that is commissioned by a licensee. This change reflects the different points that may be claimed for commissioned programs, as distinct from acquired films, under the new quota established by section 13, and the table in Schedule 1.

A new definition of **Australian children's program (non-drama)** has been inserted to reflect the inclusion of commissioned first release Australian children's programs (non-drama) as a specific genre that accrues points towards the annual quota. The definition incorporates the requirement that the program is a C program or P program. This means that any first release Australian children's program (non-drama) counted towards the annual quota, must be classified as a C program or P program under Division 3 of Part 4. The definition explicitly excludes C or P programs that fall within the definition of Australian drama programs, as those programs attract a higher number of points in the application of the quota imposed by section 13 and the table in Schedule 1.

The definition of **Australian drama program** replicates the 2016 ACS definition except that it no longer excludes an Australian children's drama. Australian drama program now includes an Australian children's drama, including partially scripted programs. No separate claimable category of Australian children's drama will exist under the Standards.

Australian film is defined to mean an Australian program that is a feature film, or a film of a like nature, that is scripted and/or a documentary. Feature films are typically 60 minutes or longer in duration. This definition is intended to cover films released in cinemas as well as telemovies and films released online, on demand or on streaming video services. The definition excludes a program that is not stand-alone, or that forms part of a series, serial or mini-series, or that is a pilot.

The definition of **children** refers to people younger than 15 years of age (meaning anyone from 0 to 14 years of age inclusive). This change from the 2009 CTS makes the meaning of children consistent with the definition of children in the Free TV Code.

A new definition of **commissioned** has been inserted to facilitate the shift in the operation of the first release Australian program quota (set out at section 13) compared with the quotas under the 2016 ACS and 2009 CTS. 'Commissioned' is defined to mean 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.

The Standards do not specify a minimum contribution (either by way of equity or licence fee) that must be made by the licensee to the production budget. However, the contribution must be both material and meaningful. This construction is intended to ensure that the financial

contribution of the licensee or the program supplier is both significant and enables the program to be made. Establishing that the contribution amount is significant, as a proportion of the overall production budget, will be a primary focus. The financial contribution for a commissioned program, which would typically include an early commitment to pay a licence fee and/or equity, must be provided before the production is completed. A production is typically completed when it is first in a form in which it could be distributed, broadcast or exhibited to the general public.

The definition includes in-house productions and domestic co-productions, such as with national broadcasters, streaming video services or subscription broadcast channels.

The definitions of **C program** and **P program** are similar to the definitions in the 2009 CTS, but they now incorporate the criteria by which C programs and P programs are classified. These classification criteria have not changed from section 6 of the 2009 CTS, but are no longer set out as separate provisions in the Standards.

A new definition of **date of classification amendment** has been inserted to facilitate the eventual transfer of the children's program classification function from the ACMA to industry.

A new definition of **eligible classifier** has been inserted to support the ongoing operability of C and P classification-related provisions in the Standards, both before and after the classification function transfers to industry.

Definitions of **equivalent metropolitan channel** and **relevant regional channel** have been included to support the operation of section 16. These definitions rely on the definitions of metropolitan commercial television broadcasting licensee and regional/remote commercial television broadcasting licensee, as set out in subsection 121H(5) of the Act.

The definition of **first release** has been altered from the definition in the 2016 ACS to provide that an Australian program (including a program that has been previously broadcast by a subscription television broadcaster) can be used to acquit the new quota on its first broadcast in the licensee's licence area, provided that the first broadcast occurs within 2 years of completion of the program's production. The 2-year window for first broadcast is now tied to completion of the production of the program (typically when the program is first in a state in which it could be distributed, broadcast or exhibited to the general public) rather than acquisition date. This reflects the new focus on commissioned content. The first release broadcast window is also aligned across all formats, removing the previous distinction between telemovies, feature films and other programs. The note to the definition confirms that the definition does not prevent a program from being defined as first release if it has already been made available on a subscription or broadcast video on demand service. This is consistent with the treatment under the 2016 ACS of programs previously distributed on online subscription services, which were not subject to exclusions.

A new definition of **hour broadcast** has been inserted, that replicates and replaces the 2016 ACS definition of 'duration', which is a term that no longer appears in the Standards. The term 'hour broadcast' appears in the table in Schedule 1.

A new definition of **production budget** has been inserted because the Standards scale the points that may be claimed for drama programs, according to the per hour production budget. The definition refers to expenditure incurred in, or reasonably attributable to, the making of a program. Production expenditure relevant to the 'making of the program' is usually understood by industry to cover the items and/or activities necessary to advance the program to a state where it could be distributed, broadcast or exhibited to the general public. Typically, this includes development, pre-production and post-production activities, but does not include aspects of financing and pitching the program, or promotional activities. Production expenditure may be incurred over several years before the making of the program has been completed.

Section 9 Australian/New Zealand program – definition

Section 9 defines what an **Australian/New Zealand program** is, for the purposes of the Standards, by reference to the definitions of ‘Australian program’ and ‘New Zealand program’ in section 10 and section 11 respectively. The definition replicates the definition in the 2016 ACS, in essence, as a program where creative control is shared by Australians and New Zealanders.

Section 10 Australian program – definition

Section 10 defines **Australian program** in the same way as the 2016 ACS, as a program that is produced under the creative control of Australians. It explains what ‘creative control’ means for the purpose of the Standards by referring to minimum requirements for key creative roles including producers, directors, writers and cast. The definition of ‘Australian program’ is fundamental to determining whether a program may be claimed towards the licensee’s annual quota requirement.

Section 11 New Zealand program – definition

Section 11 defines a **New Zealand program**, in the same way as the 2016 ACS, as a program that is produced under the creative control of New Zealanders. It explains what ‘creative control’ means for the purpose of the Standards by referring to minimum requirements for key creative roles including producers, directors, writers and cast.

Section 12 Programs deemed to be Australian programs

Section 12 provides for certain programs other than Australian programs to be treated as Australian programs, for the purpose of compliance with the Standards. Under this provision an ‘Australian official co-production’, ‘Australian/New Zealand program’ and a ‘New Zealand program’ are deemed to be an ‘Australian program’ and therefore may be counted towards the annual quota if other applicable requirements of the standards are satisfied.

Part 3 — Australian content requirements

Section 13 Australian content points requirement

Section 13 provides that a minimum annual quota of 250 points of first release Australian programs from any of the genres mentioned in the table in Schedule 1 must be broadcast by each commercial television broadcasting licensee.

This provision does not impose minimum requirements for any genre, which means that a licensee may broadcast any mix of programs from the genres in Schedule 1 to comply with the quota requirement. However, it does provide that commissioned Australian documentary programs may only be claimed to a maximum of 50 points in each calendar year.

Section 13 also provides that a licensee may accrue points towards its quota obligation by broadcasting programs on any combination of its primary and other commercial television broadcasting services, authorised for provision under its broadcasting licence. Accordingly, a licensee cannot acquit its annual quota obligations by providing content on its video on demand services.

Section 13 explicitly prevents the accrual of points towards the annual quota if the relevant program has not been broadcast between 6am and midnight.

Section 13 also specifies that if a new licensee commences to provide a commercial television broadcasting service on or after 2 January in a calendar year, the points needed to satisfy its quota requirement in that year are to be worked out using a pro rata formula.

Section 14 Carry over of excess points

Section 14 provides that a licensee may ‘carry over’ points accrued in excess of the quota, up to a maximum of 50 points, from the year in which those points were accrued, to the following calendar year. The carry over mechanism cannot be used to increase the number of documentary points claimed in a calendar year as the 50-point cap on commissioned Australian documentary points applies annually.

Section 15 Indexation of production budget and licence fee figures

Section 15 provides for licence fee and production budget thresholds to increase in line with CPI increases. This section specifies the formula for calculating increases based on the CPI number and defines the terms relevant to the use of the formula: 'earlier CPI number', 'indexable amount', 'latest CPI number' and 'previous indexable amount'.

Licence fees and production budgets prescribed in Schedule 1 are relevant to the points awarded for different genres of first release Australian programs which may be used to acquit the annual quota obligation.

Under this provision, changes to licence fee and production budget thresholds may only increase where the CPI number increases. In the case of the CPI number decreasing or not changing, licence fees and production budgets will remain unchanged.

Section 15 clarifies that CPI increases calculated using the identified formula are to be rounded to the nearest thousand dollars, unless the amount is \$500, in which case it is rounded down. This means that \$1,500 would be rounded down to \$1,000 and \$1,501 would be rounded to \$2,000.

This section also provides that, if the Australian statistician publishes a CPI number for a quarter in substitution of a CPI number previously published by the Australian statistician for that quarter, the later index number must be disregarded. In other words, the first published CPI number for the quarter is the relevant reference. Further, if the Australian statistician changes the reference base for the Consumer Price Index, then for the purpose of subsection 15(2) after the change is made, only CPI numbers published using the new reference base are applicable.

Section 16 Regional/remote licensees may rely on metropolitan licensees

Section 16 provides for a regional/remote commercial television broadcasting licensee which operates under an affiliate agreement with a metropolitan licensee, to be deemed compliant with its annual quota obligations under the Standards, if the duration of first release Australian programs it broadcasts is the same as (or more than) the amount broadcast by its affiliate metropolitan commercial television broadcasting licensee on the latter's equivalent channels during the same year.

Given that regional/remote licensees generally exercise limited control over programming retransmitted under affiliate agreements with metropolitan commercial television licensees, the Direction requires the ACMA to include this provision to protect regional/remote licensees in the event that non-compliance arises from programming decisions made by the relevant metropolitan licensee with which it has an affiliate relationship.

Section 17 Reporting to the ACMA

Section 17 provides that each licensee must report annually to the ACMA on its compliance with the annual quota obligation. The ACMA publishes this information in annual compliance reports which may include information about any regional broadcaster that makes use of section 16 in order to be compliant with the quotas.

Section 17 provides that a licensee must report in writing to the ACMA, by 31 March 2022, and by 31 March thereafter for each calendar year, on first release Australian programs for each genre specified in Schedule 1.

The section also provides that the ACMA may specify a form to be used by each licensee for reporting the information required, and that it may specify in writing further information that is reasonably required to demonstrate a licensee's compliance with section 13—any such form or additional requirements must also be published on the ACMA's website.

Under this provision, a licensee is required to report on the licence fees and production budget per hour for programs claimed against the new quota, to demonstrate that they have accurately calculated the number of points accrued against each program they have claimed towards the annual quota.

The requirement that each licensee report its total expenditure against each genre of Australian programs specified in Schedule 1 broadcast that year supports increased

transparency about their Australian content spend, and will assist the ACMA with compliance monitoring, particularly as production budgets (unlike licence fees) do not necessarily reflect the broadcaster's actual financial contribution.

Part 4 — Protections for child viewers

Division 1 – General protections for child viewers

Section 18 Application of this Division

Section 18 describes the application of the Division (sections 19 to 25) to all C programs and P programs, and the breaks immediately before, during and immediately after C programs and P programs, broadcast at any time. This section makes a distinction between the child viewer protections that apply at any time, and those that apply only between 6 am and midnight (see discussion at section 26).

As the Standards do not include concepts of C or P periods as in the 2009 CTS, C programs and P programs may be broadcast at any time.

Section 19 Content of advertisements

Section 19 provides that no advertisement may mislead or deceive children.

This section has the same effect as CTS 30 of the 2009 CTS.

Section 20 Pressure in advertisements

Section 20 provides for a prohibition on the broadcast of advertisements designed to put undue pressure on children to ask a parent or another person to purchase an advertised product or service. It also provides that no advertisement may state or imply that products or services make children who own or enjoy them superior to their peers, or that someone who buys an advertised product or service is more generous than a person who does not.

This section has the same effect as CTS 31 of the 2009 CTS.

Section 21 Clear presentation

Section 21 provides that advertisements must accurately represent the advertised product or service and claims made in advertisements must not be ambiguous. It provides for obligations in relation to the depiction of the need for accessories, the size of products, fair representation of performance of a product, accurate presentation of pricing, and information regarding nutritional value (for advertisements relating to food products).

This section has the same effect as CTS 32 of the 2009 CTS.

Section 22 Disclaimers and premium offers

Section 22 provides for the conspicuous presentation of disclaimers. Generally, this means that any disclaimer should be easily seen by, or should readily attract the attention of, the child audience.

This section also provides for requirements that must be met in advertisements that contain premium offers, including that references to premiums are not made in a way that is more than merely incidental to references to the advertised products or services, that the advertisement must not stimulate unreasonable expectations of the offered product or service, and that any conditions that must be met in order to obtain the premium are clearly set out.

This section includes guidance on relevant considerations for determining whether a premium offer is 'merely incidental'. The intention is that any reference to the premium offer in an advertisement must occur as secondary to, or be given lesser importance than, the reference to the main product or service advertised, noting that the reference to the premium offer does not need to be verbal. Importantly, there are no specific quantitative measures listed against the factors for consideration. If a premium is presented in a way that makes it stand out from surrounding material, this could raise compliance concerns even if the premium offer only comprised a relatively insignificant amount of broadcast time.

This section has the same effect as CTS 33 of the 2009 CTS.

Section 23 Competitions

Section 23 provides that any competition for children referred to in programs or advertisements must be accompanied by a statement summarising the relevant basic rules. It also provides that any statement about the chance of winning be clear, fair and accurate.

Examples of competitions captured under this provision include televised game shows where children are the contestants/competitors, discrete competitions within children's magazine/variety-style programs, and competitions referred to within an advertisement. Competitions referred to within advertisements may also be premiums, in which case the advertisement must also comply with section 22.

While competitions for children are not expressly prohibited from broadcast immediately before, during or immediately after a P program, it is unlikely that a competition suitable for broadcast during a P program could be devised, having regard to section 30(1) which prohibits the offer of prizes during P programs, and section 24 which prohibits the broadcast of advertisements immediately before, during or immediately after a P program.

This section has the same effect as CTS 34 of the 2009 CTS.

Section 24 Prohibition on advertising during and adjacent to P programs

Section 24 provides for a prohibition on any advertising immediately before, during or immediately after a P program.

This is consistent with the prohibition in the 2009 CTS.

Section 25 Identification of C programs and P programs

Section 25 provides that C programs and P programs must be identified with the relevant symbol C or P, during broadcasts, and in broadcast schedules, electronic program guides and in program information on the licensee's website.

Division 2 – Other protections during C programs and P programs

Section 26 Application of this Division

Section 26 describes the application of the Division (sections 27 to 37) to all C programs and P programs, and the breaks immediately before, during and immediately after C programs and P programs, broadcast between 6 am and midnight. This section makes a distinction between the child viewer protections that apply at any time and those that apply only between 6 am and midnight.

Any C program or P program counted towards the annual quota must be broadcast between 6 am and midnight (see discussion of section 13).

Section 26 also describes the way in which the 30 minute time period is measured for the purpose of applying the limits on the broadcast of advertising and other non-program material provided for under sections 27, 28, 33 and 35. It explains that, for the purpose of these particular provisions, each 30 minutes during which a C program is broadcast is measured either from the start of the break immediately before the first C program broadcast or, when there is no break before the C program, from the start of that C program. The limitations apply during any program or non-program material broadcast in the next 30 minutes. Additionally, in circumstances where the broadcast of a C program, or consecutive C programs, exceeds 30 minutes, or an exact multiple of 30 minutes (that is, 60 minutes, 90 minutes and so forth), the limits on the broadcast of advertising and other non-program material apply during each successive 30-minute time period in which a C program, or part of a C program, is broadcast. This means, for example, that where a C program is 40 minutes in duration, and is followed by a G program, the limits apply for the balance of the second 30 minute time period in which part of a C program was broadcast.

Section 27 Program promotions and station identifications

Section 27 provides for a one-minute total time limit on program promotions and station identifications for each 30 minutes during which a C program is broadcast. It also provides that only program promotions for sports events suitable for viewing by children, and for programs classified G or lower, may be broadcast during and adjacent to C programs and P

programs. This section also allows, in addition to the permitted program promotions, voice over announcements promoting C programs during the end credits of C programs.

This provision operates in addition to subsection 33(1).

Section 27 is drafted in substantially the same terms as CTS 20 of the 2009 CTS, but ties limits to each 30-minute period during which a C program is broadcast, rather than to a designated 'C period'.

Section 28 Non-program material other than news

Section 28 provides for a seven-minute total time limit on advertising, program promotions, station identifications, and G classified community service announcements for each 30 minutes during which a C program is broadcast. It also stipulates that advertisements must be broadcast in accordance with all applicable requirements in the Standards, and program promotions and station identifications must be broadcast in accordance with subsection 27(1). This means that, of the seven minutes permitted, no more than five minutes may be comprised of advertisements (as set out in subsection 33(1)), or no more than six minutes and thirty seconds of advertisements for a C program that is also an Australian drama program (as set out in subsection 33(2)), and up to one minute may be comprised of program promotions and station identifications.

This provision operates in addition to section 33.

Section 28 is drafted in substantially the same terms as CTS 21 of the 2009 CTS, but ties limits to each 30-minute period in which a C program is broadcast, rather than to a designated 'C period'.

Section 29 News flashes and announcements

Section 29 describes the circumstances under which a C program or P program may be interrupted, which is limited to news flashes or announcements which cannot, in the public interest, be delayed until after the program has concluded.

Section 29 is drafted in substantially the same terms as CTS 22 of the 2009 CTS, but applies the rule to C programs or P programs rather than to 'C periods' or 'P periods'.

Section 30 Prizes

Section 30 provides for a prohibition on the offering of prizes during P programs, and limits the way that prizes offered during C programs may be presented or described, including not mentioning the prize price or value except where the prize is a cash prize. This provision aims to guard against the risk that prize-giving segments may become embedded advertising or promotional activities.

This section has the same effect as CTS 24 of the 2009 CTS.

Section 31 Unsuitable material

Section 31 provides for a prohibition on the broadcast of certain material (including program content or advertisements) during a C program or a P program, or in the break immediately before or after a C program or P program. This includes material that demeans people or groups of people on the basis of any of the identified characteristics, that is unduly frightening or distressing to children, that depicts unsafe uses of a product or unsafe situations that may encourage children to engage in activities that may be dangerous to them, or that advertises officially declared unsafe or dangerous products or services. Products or services that have been declared unsafe are usually published in the Commonwealth Gazette or a state government gazette, and the ban on their supply can be temporary or permanent. These goods may include food and toys.

Section 31 is drafted in substantially the same terms as CTS 25 of the 2009 CTS, but ties the rule to C programs or P programs, or breaks immediately before, during or immediately after a C program or P program, rather than to 'C periods' or 'P periods'.

Section 32 Advertisements

Section 32 provides that only advertising classified G and which also complies with sections 19 to 23, 31, 34, 36 and 37, may be broadcast during C programs.

Section 32 is drafted in substantially the same terms as CTS 26(1) of the 2009 CTS, but the rule is tied to C programs, rather than to 'C periods'.

The requirements of section 32 are in addition to the requirements of the Free TV Code.

Section 33 Maximum advertising time

Subsection 33(1) provides for a 5 minute maximum limit on the amount of time that advertisements may be broadcast for each 30 minutes during which a C program is broadcast. In relation to a C program that is also an Australian drama program, subsection 33(2) provides for a higher maximum limit on advertising, set at 6 minutes and 30 seconds.

Section 33 has changed slightly in both drafting and effect from CTS 27 of the 2009 CTS which, in the case of an Australian C drama, provided for the time limit of six minutes and 30 seconds to apply to advertising, program promotions, station IDs and community service announcements. This provision is now solely about maximum advertising limits. This small alteration is convenient to give effect to the Direction, in light of the removal of C periods, and is not expected to give rise to any substantive detriment for child viewers or substantial benefit for licensees. Section 33 operates in addition to section 28, which applies an overall limit of seven minutes in total of advertisements, program promotions, station IDs and community service announcements to all C programs.

This section now also ties advertising limits to each 30-minute period during which a C program is broadcast, rather than to a designated 'C period'.

Section 34 Separation of advertisements and sponsorship announcements

Section 34 provides that advertisements and sponsorship announcements broadcast during C programs, or in breaks immediately before, during or immediately after a C program, must be clearly distinguishable by the child viewer as material of that kind. This provision aims to protect children from confusion that may result from the mingling of program and commercial content in children's television programming. The provision addresses any advertising and sponsorship material that may be embedded within a program via the dialogue, plot and/or set of a program such that the product or service appears to be part of the program.

Section 34 is drafted in substantially the same terms as CTS 28 of the 2009 CTS, but ties the rule to C programs, or breaks immediately before, during or immediately after a C program, rather than to 'C periods'.

The requirements of section 34 are in addition to the requirements of the Free TV Code.

Section 35 Repetition of advertisements

Section 35 provides that the same advertisement must not be broadcast more than twice for each 30 minutes during which a C program is broadcast. This provision aims to protect children by preventing them from being exposed to repeated advertisements, which may have an unfairly persuasive affect.

Section 35 is drafted in substantially the same terms as section 29 in the 2009 CTS, but ties the rule to each 30-minute period during which a C program is broadcast, rather than to a designated 'C period'.

Section 36 Promotions and endorsements by popular characters

Section 36 prohibits the broadcast of material that contains endorsements, recommendations or promotions of commercial products and services by popular personalities, popular program and movie characters (including from C programs or P programs and animated characters), and licensed or proprietary characters.

In this context, 'popular' covers any character (created in Australia or internationally) or personality (Australian or international) who is well known and regarded with approval by the general public, or a section of the general public, such as the child audience.

The prohibition covers both direct and indirect endorsements, recommendations or promotions.

It also provides for a number of limited exceptions to the general prohibition.

The intention of this protection is to minimise the undue influence on children's product choices of popular characters that might be used in broadcast material with a commercial content.

Section 36 is drafted in substantially the same terms as CTS 35 of the 2009 CTS, but ties the rule to C programs or P programs, or breaks immediately before, during or immediately after a C program or a P program, rather than to 'C periods' or 'P periods'.

Section 37 Advertising of alcoholic drinks

Section 37 provides for a prohibition on the broadcast during a C program, or in a break immediately before, during or immediately after a C program, of advertisements for alcoholic drinks, or advertisements or sponsorship announcements for companies or people whose principal activity involves the sale, distribution or manufacture of alcoholic drinks.

Section 37 is drafted in substantially the same terms as CTS 36 of the 2009 CTS, but ties the rule to C programs, or breaks immediately before, during or immediately after a C program, rather than to C periods.

The requirements of section 37 are in addition to the requirements of the Free TV Code.

Division 3 – Classification of C programs and P programs

Division 3 provides for the classification arrangements for C programs and P programs.

C programs and P programs are different from material produced for a family audience. They are not simply 'suitable for' or even 'primarily designed for' children. Rather, a C or P classification is granted only to programs which, by the nature of their content and production approach, reflect that they have been designed specifically (as opposed to primarily) for children, or groups of children, or preschool children. They tell stories from a child's perspective, tell them in a way appropriate to the cultural framework and age groups of the children being targeted, and tell them in an entertaining way.

Given the benefit to child audiences and their parents and carers of identifying content of this nature, it is strongly recommended that any programs – including Australian drama programs, foreign produced programs, or acquired films – which potentially meet the criteria for C programs or P programs, are submitted for classification.

Section 38 Classification by an eligible classifier

Section 38 provides for the classification of a program where a program is submitted for classification to an eligible classifier, and it is submitted in a format, and accompanied by any supporting material, specified by the eligible classifier. The section further provides that an eligible classifier must classify a program as a C program or P program when satisfied that it meets all of the criteria in the relevant definition of C program or P program in section 8.

Section 39 Provisional classification

Section 39 provides for the provisional classification of a proposed C program or P program where a written request is made to an eligible classifier, and it is accompanied by a pilot episode, script or other supporting material, in a format, or of a kind, specified by the eligible classifier. The section further provides that an eligible classifier must classify a program as a provisional C program or provisional P program when satisfied that it is likely to be such a program. Section 39 also provides for the renewal of provisional C or P classifications, at any time, on written request to an eligible classifier.

Provisional C and provisional P classifications are intended for applicants who are in the early stages of production and have limited material to lodge for assessment. Provisional classification provides an early indication to an applicant that a proposed program is likely to meet the classification criteria, and could achieve full classification when sought.

Provisional classification is not a guarantee that a program will subsequently be classified as a C program or P program, and therefore such a program cannot be broadcast on the basis of provisional classification. However, section 39 provides for a pilot episode of a proposed program that is classified as provisional C or provisional P, to be deemed a C program or P program as the case may be, until the classification expires. Such a program could be broadcast and counted towards the annual quota requirement at section 13 if it satisfies all other requirements to be quota-eligible, noting that it would also need to comply with the children's program and advertising protections.

This section is drafted in substantially the same terms as CTS 16 of the 2009 CTS.

Section 40 Duration of classifications

Section 40 provides for the duration of classifications for C programs and P programs to be five years from the date of classification or most recent renewal under the Standards, though an eligible classifier may determine an alternative duration at the time of classification or renewal. It also provides for the renewal of classifications for C programs and P programs at any time on written application, and sets out the terms under which a classification may be revoked.

It is drafted in substantially the same terms as CTS 15 in the 2009 CTS.

Section 41 Transitional provision for classification

Section 41 provides for the ACMA to decide a classification application after the date of classification amendment (ie. the transfer of the function to industry), if it was received prior to the date of classification amendment, and for such a decision made by the ACMA to be valid for all purposes under the Standards.

Part 5 — Transitional provisions

Section 42 Reporting requirements under repealed standards

Section 42 provides that a licensee must report on its compliance with the 2016 ACS and 2009 CTS to the end of 2020 as if they had not been repealed. The note to the section confirms that reporting is required for the Australian C drama triennial quota which concluded in 2020, but that a licensee will not be required to report on the 2020-2022 triennial quota for Australian drama programs imposed by the 2016 ACS.

Section 43 Quota eligibility of first release Australian films and programs acquired or commissioned before 2021

Section 43 provides that an Australian program which was 'commissioned', or an Australian film that was 'acquired', before 1 January 2021, and broadcast on or after 1 January 2021, may be used by a licensee to acquit the new quota obligation, provided it also meets other applicable requirements of the Standards.

This section also provides that, with the exception of films, Australian programs 'acquired' (rather than commissioned), before 1 January 2021 cannot be used by a licensee to acquit the annual quota obligation in 2021 or subsequent years. It further confirms that such programs may be used to acquit a licensee's obligations in relation to their transmission quotas imposed by section 121G of the Act.

Section 43 also makes clear that a licensee may not carry forward any points or program hours accrued in excess of annual sub-quotas set out in the 2016 ACS, from 2020 to the 2021 compliance year.

Schedule 1 — Genre point allocation

Schedule 1 provides for the points allocated against each eligible category of first release Australian programs that may be counted towards the annual quota. Similar to arrangements under the 2016 ACS for calculating drama scores, total points are calculated by multiplying the number of hours broadcast of a program (specified in column 1) by the points awarded per hour broadcast (specified in column 2). Partial hours broadcast accrue partial points.

For example, a one hour Australian drama program with a production budget of less than \$450,000 per hour will accrue 1.5 points; a 30 minute commissioned first release Australian documentary program will accrue 0.5 points; and a 24 minute commissioned first release Australian children's program (non-drama) will accrue 0.6 points.

The points allocated against each category take into account whether content is commissioned or acquired, and production budget or licence fee, as relevant.