

Children's Television Standards 2009

Explanatory statement

AUGUST 2009

LEGISLATIVE INSTRUMENTS ACT 2003

Section 26 - Explanatory Statement Children's Television Standards 2009 made under the *Broadcasting Services Act 1992*

On 24 August 2009, the Australian Communications and Media Authority (the ACMA) determined the *Children's Television Standards 2009* (the CTS 2009). The determination was made under subsection 122(1) of the *Broadcasting Services Act 1992* (the BSA), and the standards so determined are referred to in this explanatory paper as 'the CTS 2009'. Division 1 of Part 1 of the CTS 2009 commences on the day after the CTS 2009 are registered on the Federal Register of Legislative Instruments (FRLI). The remaining provisions commence on 1 January 2010.

The CTS 2009 include a clause revoking the *Children's Television Standards 2005* (the CTS 2005) made by the ACMA on 24 November 2005.

The Children's Television Standards

Section 122 of the BSA requires the ACMA to determine standards for commercial television broadcasting licensees that relate to programs for children. Compliance with standards determined under s.122 of the BSA is a licence condition for commercial television broadcasters. The objectives of the CTS 2009 are to ensure that children have access to a variety of quality television programs made specifically for them, including Australian drama and non-drama programs, and to provide for the protection of children from possible harmful effects of television.

Intended impact and effect of the CTS 2009

The CTS 2009 differ from the CTS 2005 in that they now separately group:

- > all provisions relating to children's (C) and preschool (P) programming; and
- > all other provisions relating to protection of children.

The intent is to make it easier for broadcasters to identify their responsibilities under the CTS 2009, and to assist the public to understand licensees' obligations and locate relevant provisions if they wish to make a complaint.

The CTS 2009 are not intended to change the obligations of commercial television broadcasting licensees from those in the CTS 2005 except as follows.

To facilitate access for children to programs made specifically for them, the CTS 2009:

- > have an extended morning C time band (CTS 5);
- > require licensees to publish information identifying their C and P programs in the main program guide on their website (CTS 9);
- > require licensees to broadcast two on-air promotions in cases of schedule variation and expected displacement of C and P programs (CTS 10 and CTS 11); and
- > provide licensees with the option to broadcast C periods in a block of a minimum of 60 minutes duration and on a minimum of two days per week (CTS 13).

In relation to the protection of children, the CTS 2009:

- > clarify requirements in relation to advertising containing premium offers (CTS 33); and
- > have broadened restrictions on the way in which popular characters and personalities may be used to promote commercial products and services (CTS 35).

The CTS 2009 have also been amended to provide scope for classification to be undertaken by a person or body appointed by the ACMA. It is intended that the most appropriate model for classification will be explored in bi-annual forums between the ACMA staff and industry.

Consultation

Before deciding to determine the CTS 2009 (and revoke the CTS 2005), the ACMA took the following steps by way of consultation:

- > On 21 December 2005, the ACMA issued a media release announcing its decision to undertake a full review of the CTS 2005.
- > The Terms of Reference for the review of the CTS 2005 were posted on the ACMA's website on 2 March 2007.
- > On 26 June 2007, the ACMA posted on its website the CTS 2005 review issues paper, which invited public comment by 17 August 2007. The submission period was extended to 31 August 2007 and the ACMA received 76 public submissions.
- > The ACMA posted on its website draft standards and its 'Report of the Review' on 27 August 2008 and sought public comment by 17 October 2008. The submission period was extended to 31 October 2008 and the ACMA received 53 submissions.
- > Notice of intent to revoke the CTS 2005 and determine new standards was published in the Commonwealth of Australia Gazette on 3 September 2008.
- > The ACMA also responded to requests to meet with interested organisations and industry bodies to discuss key issues in the review.

Research

The review process and decisions on the review made by the ACMA were also informed by the following body of research:

- > *Media and Communications in Australian Families 2007*—a major research project on the influence of media and communications on children. This comprised a literature review and a community survey of 751 families, including a parent questionnaire and time use diaries for 1003 children aged eight to 17 years.
- > *Television Advertising to Children*—an independent literature review undertaken for the ACMA by Dr Jeffrey Brand (2007) which looked at a number of issues, including the relationship between children's television advertising exposure and their food and beverage preferences.
- > The *Children's Television Production Project*—qualitative research commissioned by the ACMA which focused on the funding structure of children's television production in Australia. Interviews were conducted with producers, representatives of funding bodies and network executives to identify and explore key issues for children's television.
- > *Children's Viewing Patterns on Commercial, Free-to-air and Subscription Television*—an analysis of OzTAM ratings data undertaken by the ACMA. The analysis used data from 2001, 2005 and 2006 to provide information about children's television viewing trends, including the times when children are watching television and the type of programs they are watching.

- > *Economic Impact of Restrictions on Television Food and Beverage Advertising Directed at Children*—economic modelling of the likely impact of various restrictions on food and beverage advertising undertaken by the ACMA, using industry data from AC Nielsen.

Description of the provisions of the CTS 2009

Part 1—Preliminary

Division 1—Arrangements commencing on day after registration

CTS 1: Name of Standards

CTS 1 names the CTS 2009.

CTS 2: Commencement

CTS 2 provides that Division 1 of Part 1 of the CTS 2009 commences on the day after the CTS 2009 are registered on FRLI. The remaining provisions of the CTS 2009 commence on 1 January 2010.

CTS 3: Eligible material for 2010 to be notified in a schedule

CTS 3 is a transitional arrangement for the provision by licensees of an annual program schedule for 2010. Licensees must provide their C and P program schedules for the year 2010 to the ACMA, in a form approved by the ACMA, on or before 31 December 2009. CTS 3 also allows licensees to vary the schedule before 1 January 2010 in certain circumstances.

Licensees are otherwise required to notify annual schedules to the ACMA in accordance with CTS 9.

Division 2—Arrangements commencing on 1 January 2010

CTS 4: Revocation of the *Children's Television Standards 2005*

CTS 4 revokes the *Children's Television Standards 2005*.

CTS 5: Definitions

CTS 5 defines terms used throughout the CTS 2009 and clarifies the application of the CTS 2009.

The following definitions are in different terms to the corresponding definitions in the CTS 2005:

- > **C band**—The morning C band for weekdays has been extended and is now 7.00 am to 8.30 am (previously 7.00 am to 8.00 am). The extended morning C band is intended to provide additional flexibility to licensees to schedule C programs at times when children can access them.

- > **C program and P program**

- > A 'C program' must meet the criteria of suitability for children in CTS 6, and must also have been classified by the ACMA, or a person or body appointed by the ACMA, as a C program suitable for children (other than preschool children).
- > A 'P program' must meet the criteria of suitability for children in CTS 6 and must also have been classified by the ACMA, or a person or body appointed by the ACMA, as a P program suitable for preschool children.

The definitions for 'C program' and 'P program' provide scope and flexibility for the ACMA to explore classification options with industry and other stakeholders.

- > **'proprietary' and 'licensed' character** – These definitions apply in determining the types of characters which, with some exceptions, may not be used to promote commercial products or services in C or P periods.

The definitions are otherwise the same as those in CTS 1 of the CTS 2005.

Part 2—Requirements to provide C programs and P programs

CTS 6: Criteria of suitability for children

CTS 6 sets out the characteristics of programs made specifically for children and provides threshold criteria for programs which may be broadcast during children's viewing times. A program must comply with all criteria in CTS 6 in order to be considered for classification as a C or P program.

The criteria are intended to ensure that children have access to a variety of quality programs that are made specifically for them.

It is in the same terms as CTS 2 in the CTS 2005.

CTS 7: Obligation of a licensee to broadcast C programs and P programs

CTS 7 sets out the basic obligation of licensees to comply with the requirements of the CTS 2009 each year and describes where obligations specific to C and P material may be found in the CTS 2009. In its effect it is the same as provisions in CTS 3 in the CTS 2005.

CTS 8: Requirements that apply to both C material and P material

CTS 8 sets out the number of hours of C and P material licensees are required to broadcast each year and describes how that material is able to be counted towards that obligation. It sets out certain other matters including restrictions on what programs may be broadcast in C and P periods and matters relating to repetition of C or P programs within any period of 5 years.

The intent of this provision is to ensure a minimum amount of children's programming on commercial free-to-air television, including Australian drama and non-drama programs.

In its effect it is the same as CTS 3 in the CTS 2005.

CTS 9: Eligible material to be notified in a schedule

CTS 9 sets out the obligations of a licensee to notify to the ACMA its annual schedule for C and P material in a form approved by the ACMA. The schedule must be received by the ACMA on or before 31 December in the year preceding the year for which the schedule applies. CTS 9 also requires the licensee to publish the schedule on its website.

Except as otherwise provided (see, for example, CTS 10, CTS 11 and CTS 12) only material notified in accordance with CTS 9 may be counted towards a licensee's obligation to broadcast the required number of hours of C and P material. The requirement for licensees to publish their C and P material schedules on their website should also assist to increase parents' and children's awareness of C and P programming.

The objective of the standardised form is to provide consistency in reporting for licensees, and to enhance the ACMA's capacity to monitor licensees' compliance with these provisions.

Under CTS 3 of the CTS 2005, a licensee was required to notify the ACMA in writing of its scheduling of C and P material, however, this provision did not require the licensee to notify the ACMA of its annual schedule, nor did it stipulate how the notification should be formatted.

CTS 10: Variations to a schedule

CTS 10 provides for allowable variations to a schedule notified to the ACMA under CTS 9. It lists requirements in terms of how the notification is to be made to the ACMA and the manner in which the child audience is to be notified of variations.

As in CTS 3 in the CTS 2005, CTS 10(1) and 10(2) in the CTS 2009 allow licensees to vary the schedule for C and P programs, provided that 14 days written notice is given to the ACMA. Licensees are required to submit a notice of variation to the ACMA in a form approved by the ACMA.

CTS 10(3) requires, in all cases of variations to a schedule, that the licensee broadcast not less than two on-air promotions to notify the child audience of the variation and when the C or P program will be broadcast. On the basis of research findings, which indicate that 79 per cent of parents have rules in place about their children's television viewing, the CTS 2009 require one of these notifications to occur at a time when both children and their parents or adult carers (the rule-makers) are likely to be watching television together¹. The other notification of a variation to a schedule must occur immediately before, during or immediately after the time the program was originally scheduled to be broadcast.

The intent of this provision is to ensure that licensees provide the child audience and their parents, or other adult carers, with notification of schedule changes for C and P programs to assist children to access the programs made specifically for them.

CTS 11: Material taken to be broadcast in accordance with schedule – expected events

CTS 11 allows a licensee to displace a C or P period, in certain circumstances, for expected events. CTS 11 allows for P periods to be displaced in line with the rules regarding displacement of C periods for expected events.

CTS 11(2) extends the circumstances in which the displacement of C and P periods is permitted. C and P periods may be displaced to allow for live coverage of an event of State or Territory importance as well as of national importance, or a major sports event.

CTS 11(3) provides that where it is reasonably expected that a scheduled live sporting event will run over time, a licensee may displace a C or P period. This allows a licensee to balance the needs of the child audience with those of the broader viewing audience. It also enables the licensee to plan in advance for displacements, and appropriately notify the child audience, while providing uninterrupted broadcast of major sporting events.

In an instance of a C or P period being displaced by an expected event, a licensee must ensure that the program/s scheduled to be broadcast during the displaced C or P period will be broadcast within 14 days of the date of the broadcast of the live coverage.

CTS 11 requires that the ACMA be notified of displacements of C and P periods for expected events in a form approved by the ACMA.

CTS 11(5) sets out the promotional requirements of a licensee when a C or P period has been displaced. As with variations to a schedule under CTS 10, a licensee must broadcast not less than two on-air promotions containing the details of when the program/s scheduled to be broadcast during the displaced C or P period will be broadcast. This provision enhances previous notification requirements in CTS 3 of the CTS 2005 to ensure that children continue to have access to predictable programming, particularly in light of the additional scheduling flexibility that licensees have under this provision.

Under CTS 11(6), where a C or P program is displaced a licensee may broadcast two episodes of a C or P program series back to back when the program is rescheduled.

CTS 12: Material taken to be broadcast in accordance with schedule – unexpected events

CTS 12 allows a licensee, in certain circumstances, to displace a C or P period for unexpected events.

CTS 12(2) extends the circumstances in which the displacement of C and P periods is permitted. C and P periods may be displaced to allow for live coverage of an event of State or Territory importance as well as of national importance, or a major sports event.

In an instance of a C or P period being displaced by an unexpected event, a licensee must ensure that the program/s scheduled to be broadcast during the displaced C or P period will be broadcast within 14 days of the date of the broadcast of the live coverage.

¹ The ACMA. (2007). *Media and Communications in Australian Families – Report of the Media and Society Research Project 2007*.

CTS 12 requires that the ACMA be notified of displacements of C and P periods for unexpected events in a form approved by the ACMA.

Licensees must also broadcast details of when the C or P program will be broadcast immediately before, during or immediately after the time of the scheduled C or P period.

Under CTS 12(4), where a C or P program is displaced a licensee may broadcast two episodes of a C or P program series back to back when the program is rescheduled.

CTS 13: Requirements that apply only to C material

CTS 13 sets out the quota and scheduling requirements that apply to the broadcast of C material in each year.

CTS 13(3) introduces a new option for scheduling C periods. A licensee can choose to continue to broadcast C material on not less than 30 minutes each weekday within the mandated timeframes, or broadcast C material in periods of not less than 60 minutes on at least two days per week within the C band (weekdays and weekends).

The option to broadcast in blocks of 60 minutes is intended to provide licensees with flexibility to determine the placement of C programs with a view to increasing access to C programs for the child audience.

As per CTS 3 of the CTS 2005, a licensee is still required to meet the yearly quota of 260 hours of C programming.

CTS 14: Requirements that apply only to P material

CTS 14 sets out the obligation of licensees to broadcast at least 30 minutes of P material every weekday. This ensures that preschool children have access to at least 30 minutes of P material every weekday, as research establishes that routine plays an important role in the lives of preschool aged children.²

It is in the same terms as CTS 3 of the CTS 2005.

CTS 15: Duration of classifications

CTS 15 covers the duration of classification for C and P programs; provides for the renewal of classifications for C and P programs; and sets out the terms under which a classification may be revoked.

The difference between the terms of CTS 15 of the CTS 2009 and CTS 7 of the CTS 2005 is the specification that, in CTS 15, the ACMA includes a person or body appointed by the ACMA. This change provides scope for the ACMA to explore classification options with industry and other stakeholders.

The terms of this provision are otherwise the same as CTS 7 of the CTS 2005.

CTS 16: Provisional classification

CTS 16 provides for the provisional classification of C or P programs in some circumstances.

As with CTS 15, CTS 16 allows provisional classification decisions to be made by a person or body appointed by the ACMA.

CTS 16(1) provides additional flexibility in relation to the format in which a pilot episode is submitted, taking into account developments in technologies and formats.

The terms of this provision are otherwise the same as those in CTS 8 of the CTS 2005.

² Brand, Jeffrey. (2007). *Television Advertising to Children*. Independent literature review undertaken for the ACMA.

CTS 17: Australian C Drama

CTS 17 sets out the requirements for an Australian C Drama. As with the other classification provisions in CTS 2009 (CTS 15 and CTS 16), the classification of a proposed Australian C Drama may be undertaken by a person or body appointed by the ACMA.

CTS 17(3) has been updated to remove the reference to 'VHS format' to reflect actual and potential changes in audio-visual technologies. The terms of CTS 17 are otherwise the same as those in CTS 11 of the CTS 2005.

CTS 18: Obligation of a licensee to broadcast Australian C Drama

CTS 18 sets out a licensee's obligation to broadcast Australian C Drama in accordance with relevant sections of the Australian Content Standard.

It is in the same terms as CTS 12 of the CTS 2005.

CTS 19: Australia's international obligations

CTS 19 sets out Australia's international obligations in relation to the broadcasting of Australia/New Zealand programs, New Zealand programs and Australian official co-productions.

The note after CTS 19 has been updated to refer to Screen Australia, the Commonwealth Government agency that now administers the official international co-production program. The terms of this provision are otherwise the same as those in CTS 24 of the CTS 2005.

Part 3 – Requirements relating to protection of children

CTS 20: Program promotions and station identifications

CTS 20 limits program promotions and station identifications in each 30 minutes of a period.

It is in the same terms as CTS 4 of the CTS 2005.

CTS 21: Non-program material other than news

CTS 21 limits the amount of advertising, program promotions, station identifications, and community service announcements which may be broadcast during C periods.

Limits imposed in terms of the amount of non-program material permitted under this provision are the same as those imposed in CTS 4A of the CTS 2005.

However, CTS 4A of the CTS 2005 specified that advertisements that count towards the limit include advertisements broadcast in accordance with the maximum advertising time permitted for a C period. CTS 21 broadens this and stipulates that advertisements must be broadcast in accordance with other restrictions on the content and presentation of advertisements, including premium offers, and promotion and endorsements by popular characters (CTS 26 to CTS 36).

CTS 22: News flashes and announcements

CTS 22 explains the circumstances under which C and P periods may be interrupted for the broadcast of news flashes and announcements.

It is in the same terms as CTS 5 of the CTS 2005.

CTS 23: Actual times falling short

CTS 23 allows a licensee to make up the last 30 minutes of a C period in some circumstances with a G program (or part of a G program) which meets the criteria of suitability for children in CTS 6 of the CTS 2009.

It is in the same terms as CTS 6 of the CTS 2005.

CTS 24: Prizes

CTS 24 prohibits the offering of prizes during P programs and limits the circumstances where prizes may be offered during C programs. This provision aims to guard against the potential for prize-giving segments to become surrogate advertising or promotional activities.

Unlike CTS 9 of the CTS 2005, CTS 24(2)(b) permits the disclosure of a prize value, where the prize being offered in a C program is a cash prize. However, if the prize is not a cash prize, the price or value of the prize may not be mentioned.

It is considered that the disclosure of the value of a cash prize is reasonable, and does not create an undue risk that the prize-giving segment will become embedded advertising material. Rather, being able to disclose the value of a cash prize is important for the flow of some C programs, particularly quiz shows in which children compete for a cash prize for their school or where the only prize being offered is a cash prize. The provision is otherwise unchanged from CTS 9 of the CTS 2005.

CTS 25: Unsuitable material

CTS 25 prohibits the broadcast of certain material during C and P periods.

It is in the same terms as CTS 10 of the CTS 2005.

CTS 26: Advertisements

CTS 26 prohibits the broadcast of advertisements during P periods and permits only advertising that is classified G and which also complies with CTS 25, and CTS 30 to CTS 36 (inclusive) during C periods.

It is in the same terms as CTS 13 of the CTS 2005.

CTS 27: Maximum advertising time

CTS 27 sets out the maximum period of time for which advertisements may be broadcast during a C period.

The provision is to the same effect as CTS 14 of the CTS 2005.

CTS 28: Separation of advertisements and sponsorship announcements

CTS 28 provides that advertisements and sponsorship announcements broadcast during C periods must be able to be clearly distinguishable by the child viewer as such material.

It is in the same terms as CTS 15 of the CTS 2005.

CTS 29: Repetition of advertisements

CTS 29 limits the number of times an advertisement may be broadcast during any 30 minutes of a C period.

It is in the same terms as CTS 16 of the CTS 2005.

CTS 30: Content of advertisements

CTS 30 stipulates that no advertisement may mislead or deceive children.

CTS 30 has been reformatted into two sub-clauses. In substance, the terms of CTS 30 are the same as CTS 17 of the CTS 2005.

CTS 31: Pressure in advertisements

CTS 31 prohibits 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 is in the same terms as CTS 18 of the CTS 2005.

CTS 32: Clear presentation

CTS 32 sets out the requirements for advertisements to clearly and accurately represent the advertised product or service. It includes obligations in relation to the depiction of accessories, presentation or pricing and information regarding nutritional value (for advertisements relating to food).

It is in the same terms as CTS 19 of the CTS 2005.

CTS 33: Disclaimers and premium offers

CTS 33 sets out requirements in relation to disclaimers and advertisements that contain premium offers. Disclaimers must be presented conspicuously. This aspect of CTS 33 is unchanged from CTS 20 of the CTS 2005.

In regard to premium offers, the terms of this provision have been amended to provide greater clarity about the operation of this provision for industry and the public.

The intent of CTS 33(2) is to ensure that advertisements which contain premium offers are presented to children in a way that they can understand and do not put undue emphasis on the premium offer. This is commensurate with evidence that shows that younger children are often only able to process a single dimension of a product at a time. Thus, a premium offer may be the only aspect of an advertisement or a product that these children are able to process. The aim of the provision therefore is to minimise in the minds of children any unreasonable expectations about the advertised product that the premium offer may suggest.

This provision now specifies that a reference to a premium offer in an advertisement can only be **merely** incidental to the reference to the product or service being advertised. Noting that the issue of premium offers is particularly prevalent in food advertising to children, an example is provided under CTS 33(2) which states that in an advertisement for a product which has both food and non-food components, the reference to the non-food component must be merely incidental to the reference to the food product.

CTS 33(3) expands on CTS 20 of the CTS 2005 by setting out a list of factors that are relevant in the consideration of whether a premium offer is **merely** incidental.

CTS 34: Competitions

CTS 34 provides that any competition referred to in programs or advertisements must be accompanied by a summary of the relevant basic rules. It also requires that any statement made about the chance of winning, be clear, fair and accurate.

CTS 21 in the CTS 2005 has been reformatted into two sub-clauses in CTS 34. In substance, the terms of CTS 34 are the same as CTS 21 in the CTS 2005.

CTS 35: Promotions and endorsements by popular characters

The intent of CTS 35 is to restrict the capacity of advertisements to unduly influence children's product choices by using popular characters or personalities to endorse, recommend or promote products during times children are specifically catered for in television programming.

An independent literature review on television advertising to children³ found that the persuasive content of advertisements is enhanced by popular characters and personalities because they create positive associations between the product and character. The use of popular characters and personalities in advertisements was also found to have the potential to confuse children about the distinction between advertising and programming content.

CTS 35 prohibits the endorsement, recommendation or promotion of a commercial product or service by the popular characters and personalities listed in CTS 35(1). The prohibition has been expanded from CTS 22 of the CTS 2005 to now include a range of popular characters and personalities, not just those featured in C or P programs shown in the licence area within the past year.

There are some exceptions specifically provided for.

CTS 35(2)(a) provides that the general prohibition in CTS 35(1) does not apply to advertisements for a commercial product or service where the product or service depicted is

³ Ibid.

in the form in which it is usually offered for sale, and no endorsement, recommendation or promotion is provided by a character or personality by way of voice-over, animation or any other means.

CTS 35(2)(b) provides a further exception. The prohibition in CTS 35(1) does not apply to an advertisement containing an endorsement, recommendation or promotion of a commercial toy or game by a character which is represented in that toy or game.

CTS 35(3) does allow for the characters listed under CTS 35(1) to be used in the advertising of non-commercial products and services during C periods if the advertising contains only generic statements about nutrition, safety, education or like matters.

CTS 36: Advertising of alcoholic drinks

CTS 36 prohibits the broadcast 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, during a C period, or in any C or P programs broadcast outside a C period.

It is in the same terms as CTS 23 of the CTS 2005.