

EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Broadcasting Services Act 1992

Children's Television Standards Variation 2014 (No. 1)

Purpose

The *Broadcasting Services Act 1992* (the BSA) requires the Australian Communication and Media Authority (ACMA) to determine standards for commercial television broadcasting licensees (licensees) that relate to programs for children. As required by section 122 of the BSA, the ACMA determined the *Children's Television Standards 2009* (the CTS). The objects of the CTS are to ensure that children have access to a variety of quality television programs made specifically for them, and to provide for the protection of children from possible harmful effects of television.

The purpose of the *Children's Television Standards Variation 2014 (No. 1)* (the CTS variation) is to reduce some administrative burdens on licensees by:

- removing the obligation on licensees to submit annual schedules of C and P periods to the ACMA; and
- removing the related 'variation' and 'displacement' reporting provisions, along with reducing the requirement to make on-air notifications following schedule changes for C and P periods.

Previously, the CTS required licensees to provide an annual schedule to the ACMA, before the commencement of each year, containing the intended timeslots for broadcast of children's (C) and preschool children's (P) programming. The licensees were able to amend these schedules by giving 14 days' notice to the ACMA, and broadcasting on-air notifications of the changes, but with late changes also permitted for an unexpected need to provide live coverage of a major event.

In 2013, a legislative amendment to the BSA permitted licensees to discharge CTS programming obligations on non-core/non-primary services (multichannels). Consequently, by the end of 2013, all metropolitan licensees were broadcasting C and P programs on their multichannel services. The move to multichannels has resulted in significantly greater stability and reliability of licensees' C and P programming.

The ACMA does not consider that the removal of the requirement to lodge annual schedules with the ACMA will have any impact on licensees meeting their annual quota requirements, with compliance and reporting obligations still maintained through the *Broadcasting Services (Australian Content) Standard 2005*, and the potential use of investigation powers under the BSA.

Following consultation, the ACMA has also amended the CTS to make clearer the distinctions between the suitability criteria for C programs (for children of school age) and for P programs (for preschool children). By specifying separate criteria for C and P programs, the requirements should be clearer for industry and the public.

In making these variations to the CTS, the ACMA has taken into account the current circumstances of C and P program scheduling, and considered ways in which the standards can be clearer, while reducing some administrative burdens on licensees.

Legislative Basis

Section 122 of the BSA requires the ACMA to determine standards for commercial television broadcasting licensees that relate to programs for children.

Section 126 of the BSA requires that, before determining, varying or revoking a standard, the ACMA must seek public comment on the proposed standard, or variation or revocation.

Consultation

Before deciding to vary the CTS, the ACMA took the following steps by way of consultation:

- On 25 March 2014, the ACMA wrote to the commercial television industry body, Free TV Australia (Free TV), outlining its high level proposal for reduction of some administrative burdens, and inviting comment.
- Following consideration of Free TV's initial response, on 16 June 2014, the ACMA wrote to key stakeholders (including Free TV, recent applicants for C and P classifications, child-media advocacy groups and television funding bodies), and placed a notice on the ACMA's Issues for Comment webpage, seeking comments on the proposed variations set out in a draft legislative instrument. Submissions were accepted until 23 July 2014.

Submissions were received from Free TV, the Australian Council on Children and the Media, Screen Producers Australia, the Australian Children's Television Foundation and the Australian Writers' Guild. The issues raised by submitters were considered by the ACMA and were used to inform the final CTS Variation.

Operation

Previously, CTS 9 set out the obligation for each licensee to provide the ACMA with an annual schedule of the periods for broadcast of C and P programs in the following year. The former CTS 10, 11 and 12 stipulated requirements for varying the annual schedules, and for when eligible material might be broadcast outside of the notified schedule. The CTS variation omits CTS 10, 11 and 12, and amends CTS 9 so that:

- A licensee must communicate to the public notice of the dates, times and channels for the broadcast of C and P programs, in program schedules on the licensee's website, and at least 6 days in advance of broadcast (new CTS 9(1));
- A licensee may subsequently vary the intended broadcast by communicating the change in program schedules on the licensee's website, or by updating the licensee's electronic program guide, or by some other suitable means of communicating the rescheduled broadcast time, date and channel (CTS 9(2)). It is intended that this communication should occur as soon as possible after the change is made and before the program is broadcast (or not broadcast). However, in the event of late program changes, it is permissible for communication to be made after the initially indicated (or subsequently varied) broadcast time.

A C or P program broadcast in accordance with the new CTS 9(2) will be taken, for the purposes of compliance with CTS 13 and CTS 14, to have been broadcast at the time communicated under the new CTS 9(1). The new CTS 9(2) and (3) simplify the previous variation and displacement practices, having regard to the significantly increased programming stability offered by C and P programs now being scheduled by licensees on their non-core/non-primary channels.

CTS 6 has been amended to provide more clarity in the suitability criteria for C programs (for children of school age) and P programs (for preschool children).

CTS 8 has been amended to simplify programming provisions for licensees, given that they will no longer be required to lodge annual program schedules with the ACMA. Licensees must continue to broadcast 260 hours of C material in the C band, and 130 hours of P material in the P band, each year. These quotas must be fulfilled by the broadcast of C and P programs at the times and dates, and on the channels communicated under CTS 9 (subject to possible variation, as described above), so that the public can be aware of broadcast times and channels.

There are consequential changes to key definitions in CTS 5, and to CTS 13, CTS 18, CTS 19 and CTS 36, following the variation to CTS 9 and the revocation of CTS 10, 11 and 12. These changes are minor and in keeping with the current application of the CTS.

Regulation Impact Statement

A preliminary assessment of regulation impact was prepared by the ACMA outlining the proposed reporting reduction. The Office of Best Practice Regulation (the OBPR) reviewed the regulation impact statement and assessed that it had less than a minor impact on business, community organisations or individuals, and consequently a Regulation Impact Statement was not required - OBPR reference number 16669.

As required under the *Human Rights (Parliamentary Scrutiny) Act 2011*, a human rights compatibility statement has been prepared by the ACMA and is attached.

Documents incorporated by reference

None.

NOTES ON THE LEGISLATIVE INSTRUMENT

Section 1 Name of Instrument

Section 1 provides that the name of the instrument is the *Children's Television Standards Variation 2014 (No. 1)*.

Section 2 Commencement

Section 2 provides that the instrument commences on 24 December 2014. Licensees will be obliged from that date to communicate to the public, at least 6 days in advance, in program schedules published on their websites, the broadcast times for C and P programs on and after 1 January 2015.

Section 3 Variation of the *Children's Television Standards 2009*

Section 3 provides that the *Children's Television Standards 2009* are varied in accordance with Schedule 1.

Schedule 1 Variations

Item [1] CTS 2 Commencement

This item omits a reference in CTS 2 to the early commencement date of some one-off preparatory provisions for the commencement of the CTS, which have since been omitted from the CTS. The new CTS 2 refers just to the commencement date of the remaining operative provisions of the CTS.

Items [2] – [8] CTS 5 Definitions

Items [3] and [7] provide for new definitions of C period and P period, which are consistent with the new system of communicating to the public the broadcast times for C and P programs by publication in program schedules on a licensee's website.

Items [4] and [8] provide for new definitions of C program and P program which have been altered to be consistent with the changes to CTS 6 setting out separate criteria of suitability for C and P programs, and to specify that they are programs broadcast in a C period or P period, respectively.

Item [2] makes a minor consequential change to paragraph (b) of the definition of C material.

Items [5] and [6] omit definitions made redundant by the removal of the requirement for licensees to provide the ACMA with annual schedules containing the broadcast times for C and P programs, and by the omission of CTS 10, 11 and 12 which provided for variations to the annual schedule, and notification of variations.

Item [9] CTS 6 Criteria of suitability for C and P programs

Item [9] provides for an amended CTS 6 which sets out the criteria of suitability for C and P programs in separate subsections.

Item [10] CTS 8 Requirements that apply to both C material and P material

Item [10] provides for an amended CTS 8, omitting provisions made redundant by the removal of the requirement for licensees to provide the ACMA with annual schedules containing the broadcast times for C and P programs. The minimum annual quota obligations remain unchanged, requiring licensees to broadcast at least 260 hours of C material in the C band, and at least 130 hours of P material in the P band, each year.

Item [11] CTS 9 Licensee to give public notice of broadcast times of C and P programs

Item [11] substitutes a new CTS 9 which no longer contains the requirement in the previous CTS 9 for licensees to provide the ACMA, before the commencement of the compliance year, with annual program schedules containing broadcast times for C and P programs. The new CTS 9(1) requires licensees to communicate to the public the broadcast times, dates and channels for C and P programs at least 6 days in advance, in program schedules on the licensee's website. The new CTS 9(2) and (3) also make provision for communication of late variations to broadcast details published under CTS 9(1).

Item [12] CTS 10 Variations to a schedule

Item [12] omits CTS 10, which made provision for variations to annual program schedules.

Item [13] CTS 11 Material taken to be broadcast in accordance with schedule – expected events

Item [13] omits CTS 11, which related to variations to annual program schedules.

Item [14] CTS 12 Material taken to be broadcast in accordance with schedule – unexpected events

Item [14] omits CTS 12, which related to variations to annual program schedules.

Items [15] - [17] CTS 13 Requirements that apply only to C material

CTS 13 gives licensees 2 options, set out in CTS 13(2) and (3) respectively, for programming the broadcast of C material. Since all licensees have elected to comply with CTS 13(2), item [15] amends CTS 13(1) to make that the default position, but also to give licensees an option to comply with CTS 13(3) after giving the ACMA written notice of their intention to do so.

Item [17] omits CTS 13(2)(c)(iii) which has been made redundant by the omission of CTS 11 and CTS 12.

Item [16] makes consequential changes to the punctuation at the end of CTS 13(2)(c)(ii).

Item [18] CTS 18 Obligation of a licensee to broadcast Australian C Drama

Item [18] makes minor changes to subsection references in CTS 18(2), which are consequential on the amendments to CTS 8.

Item [19] CTS 19 Australian international obligations

Item [19] makes minor changes to subsection references in CTS 19(3), which are consequential on the amendments to CTS 8.

Item [20] CTS 36 Advertising of alcoholic drinks

CTS 36 specifies the restrictions on advertising of alcoholic drinks during children's programming. Item [20] makes minor changes to CTS 36(3) and (4) to preserve the regulatory effect of those provisions, following the amendments to the definitions of C period and P period.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Children's Television Standards Variation 2014 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument varies the *Children's Television Standards 2009* (the CTS).

Section 122 of the *Broadcasting Services Act 1992* requires the ACMA to make standards that relate to programs for children which must be observed by each commercial television broadcasting licensee as a condition of its licence.

This Legislative Instrument retains the objects of the CTS, to ensure that children have access to a variety of quality television programs made specifically for them and to provide for the protection of children from possible harmful effects of television. The CTS facilitates this by determining criteria of suitability for children's programming, times of the day this content should be broadcast and minimum programming quota requirements.

The Legislative Instrument seeks to reduce administrative reporting requirements on licensees. The ACMA can still monitor compliance with CTS obligations by monitoring programming schedules communicated to the public, rather than to the ACMA, under a requirement imposed by the new CTS 9.

Human rights implications

Australia is a party to a number of international human rights treaties.

In developing this Legislative Instrument and in varying the CTS, the human rights implications have been considered in the context of **the Convention on the Rights of the Child (CRC)**.

This Legislative Instrument and the CTS do not limit any of the applicable rights or freedoms.

The CTS engages and promotes the rights of the child, including those of Article 17, by requiring mass media (television) to broadcast programming of social and cultural benefit to the child and in accordance with the spirit of article 29 (regarding the education of a child).

By requiring free to air television broadcasters to broadcast minimum levels of children's programming that meets specific criteria (including that the program is specifically made for children and that it enhances a child's understanding and experience), the CTS continues to promote the availability of information specifically for children and provide for the protection of children from possible harmful effects of television.

Conclusion

This Legislative Instrument is compatible with human rights as it continues to ensure children have access to information and material on free to air broadcast television that is specifically made for them and aims to enhance their understanding and experience.