Australian Government

Australian
Communications
and Media Authority

ACMA submission

Senate Environment and Communications References Committee—Inquiry into Australian content on broadcast, radio and streaming services

JANUARY 2018

communicating | facilitating | regulating

Canberra
Red Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne
Level 32
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney
Level 5
The Bay Centre
65 Pirrama Road
Pyrmont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700 or 1800 226 667
F +61 2 9334 7799

Copyright notice

http://creativecommons.org/licenses/by/3.0/au/

With the exception of coats of arms, logos, emblems, images, other third-party material or devices protected by a trademark, this content is licensed under the Creative Commons Australia Attribution 3.0 Licence.

We request attribution as: © Commonwealth of Australia (Australian Communications and Media Authority) 2018.

All other rights are reserved.

The Australian Communications and Media Authority has undertaken reasonable enquiries to identify material owned by third parties and secure permission for its reproduction. Permission may need to be obtained from third parties to re-use their material.

Written enquiries may be sent to:

Manager, Editorial and Design
PO Box 13112
Law Courts
Melbourne VIC 8010
Tel: 03 9963 6968
Email: info@acma.gov.au

Contents

Introduction

Focus of the ACMA's submission

The Australian Communications and Media Authority (the ACMA) is an independent statutory authority. It was established in 2005 to be a converged regulator responsible for broadcasting, radiocommunications, telecommunications and online content. It has a complex regulatory remit spanning some 26 Acts, including the *Broadcasting Services Act 1992* (BSA).

Under the BSA, the ACMA's broadcasting functions cover licensing, media control rules, registration of industry codes and standards, and complaints and investigations functions.

The Senate Environment and Communications References Committee is conducting an Inquiry into Australian content on broadcast, radio and streaming services.

This submission focuses on the ACMA's broadcasting functions; in particular, its role in administering the regulatory interventions aimed at the broadcast of, and investment in, Australian and children's content on television and Australian music on radio.

The BSA's definition of a 'broadcasting service' excludes services that deliver programs 'using the internet' or that make programs available 'on demand' or on a point-to-point basis.[1] This means that the ACMA's role in relation to the broadcast of and investment in Australian and children's content is currently limited to traditional broadcasting services and does not extend to newer streaming services.

The ACMA would be happy to engage further with the Committee or to provide supplementary information on request.

Overview of the Australian and children's content obligations for television and radio

The ACMA's broadcasting services functions include the development and administration of industry codes and standards.

The BSA itself, and various industry codes and standards, contain specific rules about the broadcast of, and expenditure on, Australian and children's content. These rules apply to commercial television and radio broadcasters, and to subscription television broadcasters.

The rules include requirements on commercial television broadcasters for:

> minimum transmission quotas of Australian programming for commercial television

> minimum sub-quotas for Australian drama, documentary and children's programs.

The BSA requires subscription television broadcasters and channel suppliers that provide drama channels to invest in new Australian drama.

The Commercial radio code of practice 2017 includes quotas for minimum levels of music performed by Australians that must be broadcast.

---

[1] Section 6 of the BSA and Ministerial Determination made in 2000.

Structure of this submission

Chapters one to four of this submission provide additional information about the Australian and children's content schemes administered by the ACMA.

Chapter five includes observations about the contemporary media environment and, in this context, highlights some of the findings of the ACMA *Communications report 2016–17*, ACMA research into children's television and multi-screen behaviour (2017) and the Australian content conversation (May 2017).

1. Australian content requirements—commercial free-to-air television

Rules

The BSA

Section 121G of the BSA sets out a core requirement that commercial television broadcasters provide Australian programs for no less than 55 per cent of all programming broadcast on their primary television service in a calendar year between 6 am and midnight.

It also requires commercial television broadcasters to provide a total of 1,460 hours of Australian programming between 6 am and midnight across their non-primary television services (multichannels). The BSA encourages the broadcast of first-release Australian drama on multichannels by 'weighting' (in effect, double-counting) the amount of hours that such first-release programs contribute to the 1,460-hour requirement.

Australian Content Standard, Children's Television Standards and Television Program Standard 23

The Australian Content Standard (ACS) and Children's Television Standards (CTS) are program standards developed by the ACMA that apply to commercial television broadcasters. They set out minimum annual sub-quotas for Australian drama, Australian documentary and children's programs. The ACS defines an Australian program as one produced under the creative control of Australians (see section 7 of the ACS).

Australian drama

An Australian drama program is defined in the ACS as a program that incorporates scripted elements of character, theme and plot as part of a narrative structure. This may include actors delivering improvised dialogue based on a written outline. Sketch comedy and dramatised documentary are included.

Drama programs from New Zealand can also be counted towards the Australian drama quota—in accordance with section 16 of the *Australian Communications and Media Authority Act 2005*, which requires the ACMA to perform its functions in a manner that is consistent with the Australia–New Zealand Closer Economic Trade Agreement (CER). The CER states that New Zealand persons (and services provided by them) must be treated no less favourably than Australian persons (and services provided by them).[2]

The ACS requires that each commercial television broadcaster must achieve a score of at least 250 points for first-release Australian drama each year and a score of 860 points for each triennium period.

---

[2] In 1998, the High Court found that a previous version of the ACS made by the Australian Broadcasting Authority was in breach of Australia's obligations under the CER because, under that version, New Zealand programs had less favourable access rights to the Australian market for television programs than Australian programs. As a result, the ACS was remade in 1999 to include the current provisions that allow New Zealand television programs to be claimed as Australian television programs for the purposes of the ACS.

The drama score is calculated by multiplying the program duration in hours by its format factor. The points scored by a particular program are calculated based on the program's format and/or the licence fee paid. This is set out in more detail in Table 1.

Table 1: Calculation of format factor

Program type	Format factor
Australian drama series or serial produced at the rate of more than one hour per week	1
Australian drama series or serial produced at a rate of one hour or less per week	2.5
Australian drama series or serial produced at a rate of one hour or less per week and acquired from an independent producer for a licence fee of at least $421,000 per hour (adjusted for CPI)	3
Australian feature film	2.5
Australian feature film that has been acquired for a licence fee of at least $211,000	4
Australian telemovie, mini-series or self-contained drama of less than 90 minutes duration	4

Australian documentary

A documentary program is defined as a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light-entertainment program. Observational 'real-life'-style programs can be acquitted against the documentary quota.

The ACS requires each commercial television broadcaster to broadcast at least 20 hours of first-release Australian documentary programs annually, with each of at least 30 minutes duration, between 6 am and midnight.

Children's programs

Each commercial television broadcaster is required to broadcast 260 hours of children's (C) programs each year (CTS 8(1)(b)). This must include at least 25 hours of first-release Australian C drama[3] and eight hours of Australian C drama that is not first-release.[4] Overall, 50 per cent of the 260 hours must be first-release Australian C programs.[5]

Each commercial television broadcaster is also required to broadcast 130 hours of material classified as preschool (P) each year (CTS 8(1)(a)). All P programs must be Australian.[6]

Australian content in advertising standard

The ACMA is also responsible for the Television Program Standard 23 – Australian Content in Advertising, which requires that at least 80 per cent of advertising time broadcast each year by commercial television broadcasters between the hours of 6 am and midnight be used for Australian-produced advertisements.

[3] Which must total 96 hours over each three-year period.

[4] Subsection 13(1) of the ACS

[5] Subsection 14(1) of the ACS

[6] Section 15 of the ACS

Compliance

BSA requirements

Compliance with the BSA transmission quotas is high, with commercial television broadcasters generally comfortably exceeding their transmission quotas.

Table 2: Australian content transmission—annual percentage on primary service by network, 2008–16

	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)	2016 (%)
Seven	64.55	65.32	69.09	66.88	67.94	69.13	70.46	69.77	72.55
Nine	61.07	62.72	64.79	66.22	67.86	65.49	70.59	71.63	71.98
Ten	56.42	57.60	61.03	62.21	60.19	59.45	62.90	63.28	64.99

**The transmission quota is 55 per cent.*

Table 3: Australian content transmission—annual hours on non-primary services by network, 2013–16

	2013*	2014**	2015	2016
Seven	2,393.28	3,092.21	2,959.96	4,162.95
Nine	1,935.73	1,662.32	1,604.04	2,364.53
Ten	2,365.92	3,490.59	4,077.94	2,707.29

**The transmission quota in 2013 was 730 hours.*

***The transmission quota in 2014 was 1,095 hours.*

****The transmission quota for 2015 onwards is 1460 hours.*

The ACS and CTS

Australian drama

Commercial broadcasters have been providing sufficient first-release Australian drama to meet their annual and triennial sub-quota requirements.

Table 4: First-release Australian drama—annual hours and scores by network, 2014–16

	2014		2015		2016		2014–16
	Hours	Score	Hours	Score	Hours	Score	Triennial score
Seven	172.43	292.3	165.88	311.1	156.81	279.98	883.38
Nine	73.1	263.75	77.5	268.75	104.25	337.88	870.38
Ten	177.25	334	160.05	250.7	166.75	289.87	874.57

**The first-release Australian drama sub-quota is a minimum of 250 drama points each year and a minimum of 860 drama points each three-year period.*

Documentary

Commercial broadcasters are regularly exceeding their first-release documentary quotas but performance across broadcasters is varied. As noted above, observational 'real-life'-style programs can be acquitted against the documentary quota.

Table 5: First-release Australian documentary—annual hours by network, 2008–16

Licensee	2008	2009	2010	2011	2012	2013	2014	2015	2016
Seven	82.69	113.07	107.68	60.22	54.10	59.59	70.85	62.58	79.62
Nine	43.88	47.67	45.67	54.00	21.50	20.00	20.25	21.83	34.25
Ten	24.50	38.00	36.00	25.50	21.00	33.40	41.70	30.00	29.00

**The first-release Australian documentary sub-quota is 20 hours.*

Broadcasters generally meet the sub-quota requirements for the broadcast of first-release C drama and first-release Australian C programs as illustrated in tables 6 and 7.

Table 6: First-release Australian C drama—annual hours by network, 2012–16

Licensee	2012	2013	2014	Triennial total	2015	2016
Seven	32.50	27.00	37.00	96.50	26.50	33.50
Nine	32.00	27.50	32.00	91.50[7]	32.00	32.00
Ten	25.00	34.00	37.50	96.50	26.50	26.50

**The first-release Australian C drama sub-quota is a minimum of 25 hours each year and a minimum of 96 hours each three-year period.*

Table 7: First-release Australian C programs—annual hours by network, 2008–16

Licensee	2008	2009	2010	2011	2012	2013	2014	2015	2016
Seven	131.00	130.00	130.40	130.40	130.00	130.00	130.00	130.00	130.00
Nine	131.00	130.83	130.67	131.00	130.50	124.00[8]	130.00	130.50	130.50
Ten	130.00	131.50	137.00	139.50	131.20	130.00	130.50	130.50	133.00

**The first-release Australian C program sub-quota is 130 hours.*

Australian content in advertising standard

Noting high compliance levels—comfortably above the minimum requirements for more than a decade—the ACMA removed the reporting obligation on commercial television licensees in 2013. The last three years of reported compliance results are in Table 8.

[7] The ACMA found the Nine Network breached ACS 12(1) in the 2012–14 triennium.
[8] The ACMA found the Nine Network breached ACS 14(1) in 2013.

Table 8: Australian content in advertising—annual percentage by network, 2010–12

Licensee	2010	2011	2012
Seven	87.28	86.48	88.52
Nine	90.83	90.17	89.67
Ten	85.16	84.73	83.33

**The Australian advertising quota is 80 per cent.*

2. Australian content requirements—subscription television

Rules

Division 2A of Part 7 of the BSA sets out the New Eligible Drama Expenditure Scheme (NEDE), which requires subscription television licensees that broadcast drama channels, and drama channel package providers, to invest at least 10 per cent of their total program expenditure on new Australian drama.

This requirement is focused solely on expenditure—there is no requirement for the drama to be broadcast. This accommodates specialist channels that are a feature of subscription television services.

The NEDE scheme is acquitted under an accrual expenditure model over a rolling three-year cycle, with previous-year expenditure shortfalls or surpluses accounted for in the current year, and current-year shortfalls and surpluses able to be carried across to the next year. The minimum expenditure requirement for a compliance period is to fully acquit the previous period's shortfall. For example, where a scheme participant's expenditure for a given year is under 10 per cent, the participant must spend an amount equal to the shortfall in the next financial year on new Australian drama, at a minimum. Where a participant's expenditure is over 10 per cent (and any existing shortfall expenditure) the excess may be nominated as 'carry-forward expenditure' and used in the following financial year.

Compliance

Subscription television licensees and channel providers have increased expenditure on eligible Australian drama programs every year since 2013–14, reaching close to $52 million in 2016–17. As excess or shortfall expenditure can be carried over to the next financial year, scheme participants are required to spend $1.48 million on eligible programs to meet their minimum requirements in 2017-18.

Table 9: NEDE results 2012–13 to 2016–17

	2012–13 ($m)	2013–14 ($m)	2014–15 ($m)	2015–16 ($m)	2016-17 ($m)
New eligible drama expenditure requirement	$33.41	$28.57	$31.28	$32.79	$34.61
Expenditure on new eligible drama	$13.70	$36.81	$36.43	$51.23	$51.95
Expenditure nominated to make up previous year's shortfall	$6.41	$25.76	$18.06	$15.44	$2.44
Expenditure nominated towards current year's 10 per cent requirement	$6.42	$10.14	$12.47	$27.21	$33.12
Remaining obligation to be acquitted in the next financial year	$25.76	$18.06	$15.44	$2.44	$1.48

3. Australian music requirements—commercial radio

Rules

The Commercial Radio Code of Practice requires the broadcast of a minimum proportion of music performed by Australians each day between 6.00 am and midnight.[9]

The amount of Australian music required is dependent on the type of service being provided (see Table 10). For category A, B and C services, there is also a requirement that of the total Australian music, 25 per cent, 20 per cent and 15 per cent, respectively, must be new Australian music. Digital-only radio services are currently exempt from these requirements.[10]

Table 10: Australian music requirements

Category	Type of service	Minimum proportion Australian music (%)
A	Mainstream rock Album-oriented rock Contemporary hits Top 40 Alternative	25
B	Hot/mainstream adult contemporary Country Classic rock	20
C	Soft adult contemporary Hits and memories Gold—encompassing classic hits Hip hop	15
D	Oldies Easy listening Easy gold Country gold	10
E	Nostalgia Jazz NAC (smooth jazz)	5
F	All other types of service (including open-line, news, talk and sports)	N/A

[9] Section 5 of the commercial radio code.
[10] Digital-only services are those that broadcast only using DAB+ technology and are not also transmitted in analog form.

Compliance

The commercial radio code requires Commercial Radio Australia (CRA—the national industry body representing Australia's commercial radio industry) to provide regular yearly reports to the Australian Recording Industry Association (ARIA) on the performance of commercial radio broadcasters against the Australian music requirements. These reports are available on ARIA's website.

A commercial radio broadcaster is required (within seven days of any change occurring) to provide CRA with written notice of any material change to the format of their service.

If a complaint is made about a commercial radio broadcaster's compliance with the code, and the complainant is not satisfied with the licensee's response, the complaint can be escalated to the ACMA, who may choose to investigate. In the last five years, the ACMA has not received any code complaints about compliance with the Australian music requirements. However, in 2013 a petition was started to urge the government to increase the quotas for Australian music, and the ACMA received 184 emails as a result of that petition.

4. Australian content expenditure—commercial radio and television

The ACMA publishes Broadcasting Financial Results (BFR), which provide a snapshot of the aggregated expenditure, revenue, profitability, assets, liability and net assets of the commercial radio and television and broadcasting sectors. It is produced using information provided by commercial broadcasters.

The 2015–16 results for both commercial radio and television are available on the ACMA website.

5. The contemporary media environment

Communications report

The ACMA *Communications report 2016–17* shows that the majority of Australian adults are frequent internet users and go online multiple times a day. In the six months to June 2017, 89 per cent accessed the internet, with more than three-quarters of those having viewed video content online during that period.

The report also highlighted that while there has been a gradual decline in free-to-air viewing over the last six years, it still holds the largest share of viewing across all categories. Free-to-air programs at the time of broadcast accounted for 50 per cent of total viewing hours in June 2017 (captured for a seven-day period), compared to 15 per cent for viewing subscription video online and 13 per cent for watching Foxtel at the time of broadcast.

Consumer enthusiasm for subscription video on demand (SVOD) continued to increase. At June 2017, Netflix Australia had an estimated 2.02 million subscribers (paid and non-paid), with a 55 per cent share of the SVOD market. Stan had the second-largest share with 24 per cent, and other services the remaining 21 per cent.

In the four months to August 2017, there was a 25 per cent increase in streaming television, as more Australians turned to online catch-up and live viewing services to watch broadcast television.

Online and television media continued to attract the major share of advertising expenditure. In the 2016 calendar year, total advertising expenditure across the main media categories—print, television, radio, online, outdoor and cinema—increased to $15.3 billion, a rise of 7.8 per cent. The share of expenditure devoted to online advertising increased substantially by 23 per cent to reach $7.4 billion over the 2016 calendar year.

Children’s television viewing and multi-screen behaviour

The ACMA report *Children’s television viewing and multi-screen behaviour* (August 2017) presents key findings from an analysis of television audience and ratings data, as well as results from a survey of parents, carers and guardians. The purpose of the research was to explore children’s television viewing habits in the context of a multi-screen environment.

Television audience and ratings data

The analysis of television audience and ratings data showed that viewing of broadcast television remains an important part of the way Australian children and families access children’s programming. While there has been a slow decline in the amount of total time children spend watching television over the past 12 years (30 minutes less viewing in 2016 compared with 2005 for children 0–14 years old), they are still watching programs specifically made for them. In 2016, dedicated children’s programming made up more than half of the top 30 programs watched by children aged 0–14, compared to 2005 where one third of the top programs watched by children were children’s programs.

Since the introduction of multichannels in 2005, and with the availability of children's programs on dedicated channels, there has been a shift in children's destination viewing. This shift was most noticeable on the ABC, with most pre-school children (aged 0–4) watching children's programs on ABC2. Children aged 13–17 were more attracted to programming of broader family appeal, provided on commercial television.

Quota-required C and P classified programs for commercial broadcasters are now all shown on the networks' multichannels (7TWO, 9GO! and Eleven). The analysis shows that there are now fewer viewers for these programs. In 2016, the most popular C or P program averaged 41,000 children age 0-14 year old. This compares with the most popular C or P program in 2005 attracting 185,000 children.

Survey of parents, carers and guardians

The survey findings showed that watching television and other screen content is a regular part of daily life for most children. Almost all children aged 0–14 years (96 per cent) watched television programs, movies, videos or DVDs at least daily.

Programming made specifically for children forms a large part of their viewing, with 64 per cent of the total average viewing time spent watching children's television programs, movies, videos or DVDs. However, the way children watch television and other screen content has changed, with use of multiple devices and platforms becoming the norm. On average, a child uses 3.2 devices and 2.9 different platforms to watch children's programs. While the television set was the most frequently used device to view children's programs, online services make up three of the four top platforms most frequently used by children aged 0–14 years.

Australian content conversation

In May 2017, in conjunction with the Department of Communications and the Arts and Screen Australia, the ACMA held the two-day Australian content conversation. The conference explored such themes as the importance of Australian content, local stories, and the regulatory challenges and opportunities in a world where citizens expect access to the content they want, when and where they want it.

A resounding message emerging from the conference was that Australian content, including Australian children's content, is highly valued and the abundance of content and viewing platforms was identified as presenting both challenges and opportunities.

Australia was identified as a high-cost country for quality content production and it was generally agreed that without some kind of government intervention, the quantity and/or quality of Australian content would likely diminish.

The current suite of regulation and support measures was acknowledged as having been a key contributor to the success, to date, of the Australian production industry and the availability of quality Australian content. However, it was agreed the regulatory framework and ecosystem should be revisited to ensure it continues to operate effectively in the context of the changing media environment. A written conference outcomes provides additional summary details of themes and issues canvassed over the two days.

Australian and Children's Screen Content Review

The Australian Government is currently undertaking the Australian and Children's Screen Content Review to develop policy settings that will ensure Australian screen content continues to be available at home and overseas, regardless of platform.

The ACMA has worked closely the Department of Communications and the Art and Screen Australia to contribute to the review—submissions are available.