



Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013

No. 29, 2013

**An Act to amend legislation relating to
broadcasting, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013

No. 29, 2013

An Act to amend legislation relating to broadcasting, and for other purposes

[Assented to 30 March 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Legislation Amendment
(Convergence Review and Other Measures) Act 2013*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 March 2013
2. Schedule 1	The day after this Act receives the Royal Assent.	31 March 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—General amendments

Broadcasting Services Act 1992

1 Subsections 26(3), (4), (5) and (6)

Repeal the subsections.

2 Sections 35A and 35B

Repeal the sections.

3 After section 37

Insert:

37A Limitation on number of commercial television broadcasting licences

The ACMA must ensure that the number of commercial television broadcasting licences that:

- (a) have the same licence area; and
 - (b) are broadcasting services bands licences;
- does not exceed 3.

4 Part 9 (heading)

Repeal the heading, substitute:

Part 9—Content rules, program standards and codes of practice

5 Before section 122

Insert:

121G Australian content—transmission quota

Programs transmitted on core/primary commercial television broadcasting service

- (1) A commercial television broadcasting licensee must ensure that, for:
- (a) the calendar year that began on 1 January 2013; and
 - (b) each later calendar year;
- the percentage worked out using the following formula is not less than 55%:

$$\frac{\text{Total hours of Australian programs transmitted during the year}}{\text{Total hours of programs transmitted during the year}} \times 100$$

where:

total hours of Australian programs transmitted during the year means the total number of hours of Australian programs that were transmitted:

- (a) during targeted viewing hours in the year; and
- (b) on the core/primary commercial television broadcasting service provided by the licensee.

total hours of programs transmitted during the year means the total number of hours of television programs transmitted:

- (a) during targeted viewing hours in the year; and
- (b) on the core/primary commercial television broadcasting service provided by the licensee.

Programs transmitted otherwise than on core/primary commercial television broadcasting service

- (2) A commercial television broadcasting licensee must ensure that:
- (a) for the calendar year that began on 1 January 2013, the total number of hours of Australian programs that were transmitted by the licensee:
 - (i) during targeted viewing hours in the year; and

- (ii) otherwise than on the core/primary commercial television broadcasting service provided by the licensee; is not less than 730; and
 - (b) for the calendar year beginning on 1 January 2014, the total number of hours of Australian programs that were transmitted:
 - (i) during targeted viewing hours in the year; and
 - (ii) otherwise than on the core/primary commercial television broadcasting service provided by the licensee; is not less than 1,095; and
 - (c) for each calendar year beginning on or after 1 January 2015, the total number of hours of Australian programs that were transmitted:
 - (i) during targeted viewing hours in the year; and
 - (ii) otherwise than on the core/primary commercial television broadcasting service provided by the licensee; is not less than 1,460.
- (3) For the purposes of the application of subsection (2) to a commercial television broadcasting licensee, if a first release Australian drama program was transmitted by the licensee:
- (a) during targeted viewing hours in a calendar year; and
 - (b) otherwise than on the core/primary commercial television broadcasting service provided by the licensee;
- assume that the duration of the program was twice as long as the actual duration of the program.

Targeted viewing hours

- (4) For the purposes of this section, **targeted viewing hours** are the hours:
 - (a) beginning at 6 am each day; and
 - (b) ending at midnight on the same day.
- (5) For the purposes of this section, if:
 - (a) a television program consists of coverage of a sporting event; and
 - (b) the program:
 - (i) begins before midnight on a particular day (the **first day**); and

(ii) ends on the next day;
the part of the program transmitted between midnight on the first day and 2 am on the next day is taken to have been transmitted during targeted viewing hours on the first day.

Australian programs

- (6) For the purposes of this section, **Australian program** means:
- (a) if an instrument is in force under subsection (7)—an Australian program as defined by that instrument; or
 - (b) otherwise:
 - (i) an Australian program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
 - (ii) an Australian official co-production (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
 - (iii) a New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
 - (iv) an Australian/New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013).
- (7) The ACMA may, by legislative instrument, define the meaning of the expression **Australian program** for the purposes of this section.

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

First release Australian drama program

- (8) For the purposes of this section, **first release** means:
- (a) if an instrument is in force under subsection (9)—first release as defined by that instrument; or
 - (b) otherwise—first release (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013).
- (9) The ACMA may, by legislative instrument, define the meaning of the expression **first release** for the purposes of this section.

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

- (10) For the purposes of this section, ***Australian drama program*** means:
- (a) if an instrument is in force under subsection (12)—an Australian drama program as defined by that instrument; or
 - (b) otherwise:
 - (i) an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013); or
 - (ii) an Australian official co-production (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program; or
 - (iii) a New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program; or
 - (iv) an Australian/New Zealand program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) that is a drama program.
- (11) For the purposes of subparagraphs (10)(b)(ii), (iii) and (iv), ***drama program*** means a program that would be an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005* as in force on 1 January 2013) if the expression “Australian” were omitted from paragraphs (a) and (c) of the definition of ***Australian drama program*** in that standard as in force on 1 January 2013.
- (12) The ACMA may, by legislative instrument, define the meaning of the expression ***Australian drama program*** for the purposes of this section.

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

Licence allocated under subsection 40(1) on or after 1 January 2007

- (13) If a commercial television broadcasting licence is or was allocated under subsection 40(1) on or after 1 January 2007, subsections (1) and (2) of this section do not apply to the licensee for:
- (a) the calendar year in which the licence is or was allocated; and
 - (b) any of the next 4 calendar years.

Ministerial direction

- (14) The Minister may, by legislative instrument, give directions to the ACMA in relation to the exercise of its powers under this section.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (15) The ACMA must comply with a direction under subsection (14).

6 Subsection 122(1)

Omit “notice in writing”, substitute “legislative instrument”.

7 At the end of subsection 122(1)

Add:

Note: See also section 16 of the *Australian Communications and Media Authority Act 2005* (consistency with CER Trade in Services Protocol).

8 Subsection 122(5)

Repeal the subsection.

9 Subsections 122(7) and (9)

Repeal the subsections, substitute:

- (7) The Minister may, by legislative instrument, give directions to the ACMA in relation to the exercise of its powers under this section.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (8) The ACMA must comply with a direction under subsection (7).

(9) The ACMA must not determine a standard under subsection (1) that has the effect of quantitatively extending the requirements imposed by subsection 121G(1) or (2).

(10) If:

- (a) a standard under subsection (1) imposes a quantitative requirement in relation to a particular kind of program transmitted by a commercial television broadcasting licensee; and
- (b) the requirement does not substantially correspond to subsection 121G(1) or (2); and
- (c) a program of that kind is transmitted on a commercial television broadcasting service provided by the licensee;

the transmission of the program counts for the purposes of meeting the requirement.

Note: The following are examples of a kind of program:

- (a) an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005*);
- (b) a C program (within the meaning of the *Children's Television Standards 2009*);
- (c) a P program (within the meaning of the *Children's Television Standards 2009*).

(11) If a commercial television broadcasting licence is or was allocated under subsection 40(1) on or after 1 January 2007, standards under subsection (1) of this section do not apply to the licensee during:

- (a) the calendar year in which the licence is or was allocated; and
- (b) any of the next 4 calendar years.

(12) For the purposes of this section, in determining whether a requirement substantially corresponds to subsection 121G(1) or (2), disregard any differences as to:

- (a) percentage; or
- (b) viewing hours.

10 After paragraph 7(1)(a) of Schedule 2

Insert:

- (aa) the licensee will comply with section 121G (which deals with Australian content);

11 Clause 60D of Schedule 4

Repeal the clause.

12 Transitional—*Broadcasting Services (Australian Content) Standard 2005*

Section 9 of the *Broadcasting Services (Australian Content) Standard 2005* does not apply in relation to programs transmitted in:

- (a) the calendar year beginning on 1 January 2013; or
- (b) a later calendar year.

Note: Section 9 of the *Broadcasting Services (Australian Content) Standard 2005* deals with transmission quotas for Australian programs.

13 Transitional—section 122 of the *Broadcasting Services Act 1992*

Standards under subsection 122(1) of the *Broadcasting Services Act 1992* do not apply to programs transmitted before 1 January 2013 on a commercial television broadcasting service provided by a commercial television broadcasting licensee, unless that service is the core/primary commercial television broadcasting service provided by the licensee.

14 Transitional—standards under section 122 of the *Broadcasting Services Act 1992*

- (1) For the purposes of this item, *interim period* means the period:
 - (a) beginning at the start of 1 January 2013; and
 - (b) ending immediately before the commencement of this item.
- (2) If, during the interim period:
 - (a) a standard under subsection 122(1) of the *Broadcasting Services Act 1992* imposed a quantitative requirement in relation to a particular kind of program transmitted by a commercial television broadcasting licensee; and
 - (b) the requirement did not substantially correspond to subsection 121G(1) or (2) of the *Broadcasting Services Act 1992* (as amended by this Schedule); and
 - (c) a program of that kind was transmitted on a commercial television broadcasting service provided by the licensee;the transmission of the program counts for the purposes of meeting the requirement.

Note: The following are examples of a kind of program:

- (a) an Australian drama program (within the meaning of the *Broadcasting Services (Australian Content) Standard 2005*);
 - (b) a C program (within the meaning of the *Children's Television Standards 2009*);
 - (c) a P program (within the meaning of the *Children's Television Standards 2009*).
- (3) For the purposes of this item, in determining whether a requirement substantially corresponds to subsection 121G(1) or (2) of the *Broadcasting Services Act 1992* (as amended by this Schedule):
- (a) disregard any differences as to:
 - (i) percentage; or
 - (ii) viewing hours; and
 - (b) assume that section 121G of the *Broadcasting Services Act 1992* (as amended by this Schedule) had been in force during the interim period.

Special Broadcasting Service Act 1991

15 Section 3

Insert:

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

16 At the end of subsection 17(2)

Add:

; and (d) that at least one of the Directors is an Indigenous person.

17 Application provision

The amendment of subsection 17(2) of the *Special Broadcasting Service Act 1991* made by this Schedule applies in relation to the appointment of non-executive Directors after the commencement of this item.

Part 2—Charters of the ABC and SBS etc.

Australian Broadcasting Corporation Act 1983

18 Subsection 3(1)

Insert:

digital electronic communications means communications that:

- (a) are carried by means of guided and/or unguided electromagnetic energy; and
- (b) involve the use of digital technology.

19 Subsection 3(1)

Insert:

digital media service has the meaning given by section 3A.

20 After section 3

Insert:

3A Digital media service

- (1) For the purposes of this Act, *digital media service* means:
 - (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of digital electronic communications;
or
 - (b) a service that allows end-users to access content using digital electronic communications;but does not include:
 - (c) a broadcasting service; or
 - (d) a datacasting service.
- (2) For the purposes of this section, *content* means content:
 - (a) whether in the form of text; or
 - (b) whether in the form of data; or
 - (c) whether in the form of speech, music or other sounds; or

- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

21 After paragraph 6(1)(b)

Insert:

- (ba) to provide digital media services; and

22 At the end of subsection 6(1)

Add:

Note: See also section 31AA (Corporation or prescribed companies to be the only providers of Commonwealth-funded international broadcasting services).

23 Subsection 8(2)

After “broadcasting”, insert “or digital media services”.

24 Before subsection 31(1)

Insert:

Broadcasting services

25 At the end of subsection 31(1)

Add “on any of the Corporation’s broadcasting services”.

26 At the end of section 31

Add:

Digital media services

- (4) The Corporation must not have advertisements in any of the Corporation’s digital media services.
- (5) Subsection (4) does not prevent the Corporation, if the Board thinks fit, from having in a digital media service:
 - (a) content relating to an activity or proposed activity of the Corporation; or
 - (b) content supplied by an organisation or person engaged in:
 - (i) artistic, literary, musical or theatrical production; or

Schedule 1 Amendments

Part 2 Charters of the ABC and SBS etc.

- (ii) educational pursuits; or
 - (c) content that is supplied by an organisation or person other than content that is, in the opinion of the Corporation, being used as an advertisement; or
 - (d) content the provision of which is directed by the Minister under subsection 78(3A).
- (6) Subsection (4) does not apply to a digital media service that relates to the Corporation's international television service and its associated audio channels.
- (7) Subsection (4) does not apply to an eligible electronic publication.
- (8) For the purposes of this section, if:
- (a) content consists of:
 - (i) an electronic edition of a book, magazine or newspaper; or
 - (ii) an audio recording of the text, or abridged text, of a book, magazine or newspaper; and
 - (b) a print edition of the book, magazine or newspaper is or was available to the public (whether by way of purchase or otherwise) in Australia;
- the content is an *eligible electronic publication*.

27 At the end of Part IV

Add:

31AA Corporation or prescribed companies to be the only providers of Commonwealth-funded international broadcasting services

The Commonwealth must not enter into a contract or other arrangement with a person or body other than:

- (a) the Corporation; or
 - (b) a prescribed company (within the meaning of section 25A);
- if the contract or arrangement:
- (c) is for the provision of international broadcasting services; and
 - (d) provides for the Commonwealth to make payments to the person or body.

28 After subsection 78(3)

Insert:

- (3A) If the Minister is of the opinion that the provision of particular content by the Corporation would be in the national interest, the Minister may direct the Corporation to provide that content on all of its digital media services or on such of them as are specified in the direction. If such a direction is given, the Corporation must provide that content, free of charge, in accordance with the direction.

29 At the end of paragraph 80(a)

Add “and”.

30 After paragraph 80(a)

Insert:

- (b) particulars of each provision of content by the Corporation on a digital media service during the year to which the report relates in accordance with a direction by the Minister under subsection 78(3A); and

31 At the end of paragraph 80(c)

Add “and”.

32 After paragraph 80(c)

Insert:

- (ca) particulars of any provision of content by the Corporation on a digital media service during that year in accordance with a direction by the Minister otherwise than under this Act; and

33 At the end of paragraph 80(d)

Add “and”.

34 After paragraph 80(d)

Insert:

- (daa) particulars of any direction not to provide content on a digital media service that was given to the Corporation during that year by the Minister otherwise than under this Act; and

35 At the end of paragraphs 80(da), (e) and (g)

Add “and”.

Special Broadcasting Service Act 1991

36 Section 3

Insert:

digital electronic communications means communications that:

- (a) are carried by means of guided and/or unguided electromagnetic energy; and
- (b) involve the use of digital technology.

37 Section 3

Insert:

digital media service has the meaning given by section 3A.

38 After section 3

Insert:

3A Digital media service

(1) For the purposes of this Act, ***digital media service*** means:

- (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of digital electronic communications;
or
- (b) a service that allows end-users to access content using digital electronic communications;

but does not include:

- (c) a radio or television service; or
- (d) a datacasting service.

(2) For the purposes of this section, ***content*** means content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or

- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

39 Subsection 6(1)

Omit “radio and television services”, substitute “radio, television and digital media services”.

40 Paragraphs 6(2)(g) and (h)

Before “contribute”, insert “to the extent to which the function relates to radio and television services—”.

41 Subsection 11(2)

Omit “subsection (3)”, substitute “subsections (3) and (3A)”.

42 After subsection 11(3)

Insert:

- (3A) The Minister must not give a direction in relation to the content to be provided on a digital media service.

43 After subsection 12(4)

Insert:

- (4A) If the Minister is of the opinion that the provision of particular content by the SBS would be in the national interest, the Minister may direct the SBS to provide that content on all of its digital media services or on such of them as are specified in the direction. If such a direction is given, the SBS must provide that content, free of charge, in accordance with the direction.

44 Subsections 12(5) and (6)

After “direction”, insert “under this section”.

45 Section 45 (heading)

Repeal the heading, substitute:

45 Advertising and sponsorship—broadcasting services

46 At the end of subsection 45(1)

Add “on any of its broadcasting services”.

47 After section 45

Insert:

45A Advertising and sponsorship—digital media services

- (1) The SBS may have advertisements and sponsorship announcements on any of its digital media services.
- (2) The Board:
 - (a) must develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to have on its digital media services; and
 - (b) may develop guidelines on other matters relating to advertisements and sponsorship announcements on its digital media services.
- (3) The Board must, from time to time, revise any guidelines developed by it and must ensure that the guidelines as so developed, or as so developed and revised, are included in the corporate plan, within the statement of strategies and policies to be followed by the SBS to achieve its objectives.
- (4) Without limiting the generality of subsection (2), the reference to kinds of advertisements and sponsorship announcements in that subsection includes a reference to such kinds of advertisements and sponsorship announcements identified by reference to products and services.
- (5) For the purposes of this section, *announcement* includes an announcement in the form of text.

48 After paragraph 73(a)

Insert:

- (aa) particulars of any content provided by the SBS on a digital media service during the year because of a direction by the Minister under subsection 12(4A); and

49 After paragraph 73(b)

Insert:

- (ba) particulars of any content provided by the SBS on a digital media service during the year because of a direction by the Minister otherwise than under this Act; and

*[Minister's second reading speech made in—
House of Representatives on 14 March 2013
Senate on 20 March 2013]*

(56/13)

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