



Australian Government

Department of Communications and the Arts

Post Implementation Review

Ensuring Australian content on commercial free-to-air television broadcasters' primary and multichannels

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What was the purpose

In 2013, the Australian Parliament enacted changes to Australian content requirements under the *Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act* (the Convergence Review Act). The Convergence Review Act commenced on 30 March 2013.

The Act introduced a number of amendments to Australian content regulatory obligations which reflected the introduction of commercial free-to-air television multichannels¹ and gave effect to relevant recommendations of the previous government's Convergence Review of Media Regulation.²

Australian Government agencies are required to undertake a post-implementation review when regulation is introduced without a regulation impact statement. A post-implementation review is required to examine:

- the problem that the regulation was intended to address;
- the objective of government action;
- the impact and effectiveness of the regulation; and
- its ongoing relevance.

Consultation is also required as part of a post-implementation review and this post-implementation review takes into account a number of submissions received from government and industry stakeholders.

What was the regulatory problem

The rationale for Australian content regulation

The main legislation governing Australian content on television is the *Broadcasting Services Act 1992* (BSA). The regulatory objectives of the BSA are set out in section 3 and include an objective to “promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity”.³ Under the regulatory framework this objective is given effect by requiring targeted amounts of programmes to be produced under Australian ‘creative control’ which means that the producer and a range of other key creative roles be performed by Australians.⁴ The targeted amounts include an overall ‘transmission quota’ and a number of

¹ Multichannels are secondary television channels provided by the broadcasters in addition their main or ‘primary’ channel. For example, Network Ten’s primary channel is ‘Ten’ and its secondary or multichannels are One and Eleven.

² www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf

³ Section 3(1)(e), *Broadcasting Services Act 1992*.

⁴ Section 7, *Broadcasting Services (Australian Content) Standard 2016*.

specific 'genre quotas' designed to ensure the availability of specific types of programmes.

The quotas directly address successive government views that market forces alone will not ensure the availability of sufficient amounts of Australian programming.

Due to the smaller size of the Australian market, it can be difficult for Australian broadcasters to generate sufficient advertising revenue to offset production costs for some content. Television programming can be expensive to make, with the cost of Australian-produced drama estimated to range between an average of around \$360,000 to more than \$2 million per hour,⁵ and Australia's relatively small population places it at a disadvantage to larger international markets such as the United States and United Kingdom, where larger audiences better position broadcasters to recoup their investment costs from their domestic markets. In those markets where programme costs have been recouped, rights owners are in a position to derive additional profits by selling these programmes into international markets, such as Australia, at a lower cost.

From a broadcaster's point of view, acquiring international content as an alternative to commissioning Australian content can also be attractive not only because of its lower cost (on average) but because those programmes have already been tested in their markets of origin providing broadcasters with a better sense of whether they may be successful in Australia.

The relative attractiveness of international content versus Australian content varies between genres with high-cost, high risk genres such as drama at most risk of substitution. The risk is lower for news and current affairs, sport and light entertainment programmes which for practical reasons would largely be produced in Australia, or by Australians (for example local sports and news, and reality shows featuring Australian participants). The advent of multichannels further highlighted the proliferation of content not sourced from Australia.

Rationale for the Convergence Review amendments

In January 2009, legislation was introduced that allowed for digital multichannelling on Australian free-to-air television. The legislation has generated an increase in the number of commercial free-to-air television channels from three to eleven.

⁵ Screen Australia research, retrieved on 11 May 2015 from www.screenaustralia.gov.au/research/statistics/dramatvdramahoursxformat.aspx.

All commercial Australian television networks have introduced digital multichannels, detailed in the following table:

Network	Digital multichannels	On air date
Seven	7TWO 7Mate Racing Live	November 2009 September 2010 July 2015
Nine	GO! GEM 9LIFE	August 2009 December 2010 March 2016
Ten	ONE ELEVEN	April 2009 January 2011

Although digital multichannels are broadcast as commercial free-to-air channels, they are not subject to the same level of regulation as networks' primary channels.

The principal approach to achieving the cultural objectives set out in the BSA is to require commercial free-to-air broadcasters to broadcast minimum amounts of Australian programming overall, and to meet specific genre quotas in relation to adult and children's drama, documentaries and children's programming. Prior to the 2013 amendments these obligations were all set out in the Broadcasting Services (Australian Content) Standard 2005 (the Standard), an instrument authorised by the BSA and made by the Australian Communications and Media Authority (ACMA).

Consistent with approaches to other regulated outcomes under the BSA at the time, these obligations only applied to broadcasters' primary channels.

The Convergence Review Committee commenced its review into Australia's media and communications policy framework in 2011. The Convergence Review was initiated by the then Government to investigate and advise on whether and how Australia's content regulation framework should be reformed in light of the significant pace of change in the media sector, particularly via Internet platforms. In its final report, the review recognised the continued importance of the production and distribution of Australian content and discussed the need for Australian content measures to be broadened to a wider range of platforms. The review also recognised that the some media firms such as broadcasters stood to incur significant costs as a result of the increased Australian content requirements and therefore the new requirements were to be introduced over time.

The Convergence Review recommended that Australian content quotas and minimum expenditure obligations applying to the free-to-air and subscription television sectors should be repealed and replaced with a uniform content scheme and the government should

create and partly fund a new ‘converged content production’ fund to support the production of Australian content.⁶ Ultimately these recommendations were not adopted as they were predicated on the development of an entirely new content regulation framework which did not proceed.

However, in considering the recommendations in the Convergence Review, the then Government formed the view that the objective in section 3(1)(e) of the BSA required consideration of whether Australian content obligations should be extended beyond commercial television primary channels to multichannels.

In November 2012, the then Minister for Communications announced a package of measures designed to ensure quality Australian content would be available across the suite of commercial television channels including multichannels. The resulting Convergence Review Act received Royal Assent on 30 March 2013.

What was the objective

The objective of the amendments was to:

- require new free-to-air commercial television multichannels to broadcast Australian programming and thereby contribute to meeting the objectives in section 3(1)(e) of the BSA,
- provide incentives for new release content to be aired on multichannels; and
- provide greater flexibility for government to vary Australian content arrangements consistent with an evolving media landscape.

Prior to the 2013 amendments, the Standard required commercial television broadcasting licensees to meet the following obligations in respect of their primary channels:

- Australian programming - at least 55% between 6am and midnight each day;
- First-release Australian drama - at least 860 points over three years with a minimum of 250 points each year;⁷
- First-release Children’s drama - at least 96 hours over 3 years or a minimum of 25 hours each year; and
- First-release Documentaries - at least 20 hours each year.

⁶ Chapter 5, pp 59, Convergence Review Final Report, March 2012

⁷ Points are allocated depending on the length of the programme, and its format factor, for example whether it is a feature film, series or mini-series.

The Convergence Review Act made the following amendments:

- Introduced a 55 per cent transmission quota into the BSA requiring commercial free-to-air broadcasters to transmit at least 55 per cent Australian programmes on their primary channels between 6am and midnight. This replaced the equivalent provision in the Standard.
- Set out new quotas on commercial free-to-air television broadcasters' multichannels whereby broadcasters are required to transmit 1460 hours (in 2015) of Australian programmes on multichannels between 6am and midnight.
- Provided greater flexibility for broadcasters to acquit their Australian drama, documentary and children's content quota requirements in the Standard on their multichannels, in addition to their primary channels.
- Provided an incentive for first release drama programmes to be shown on broadcasters' multichannels by doubling the hours counted under the quota (for example one hour of first release drama would be counted as two hours for the purposes of fulfilling the 1460 hours quota).
- Enabled the ACMA to define, by legislative instrument, 'Australian programme', 'first release' and 'Australian drama programme', and enabled the Minister to direct the ACMA in relation to its use of these powers. For example, the Minister may direct the ACMA in relation to the **timing** of the exercise of its power to define the meaning of *Australian programme*, *first release* or *Australian drama programme* or in relation to the **content** of the definitions.⁸

What was the alternative

An alternative to these reforms would have been to do nothing i.e. maintain the status quo. However, without the imposition of Australian content quotas on the multichannels, there may have been less impetus for broadcasters to continue to invest in and/or broadcast Australian programmes and these multichannels may have been dominated by overseas programmes given that they cost considerably less to acquire compared to Australian content. This would leave the Government open to criticism that the objective in section 3(1)(e) of the BSA was not being satisfied by the requirements then in place.

Another alternative would have been to amend the legislation to impose the full Standard on each of the multichannels. However, such a move would have been cost prohibitive, making the broadcasters' multichannels commercially unviable. It may also have served to stifle innovation, for example by limiting the range of commercial strategies available to broadcasters to programme their multichannels.

⁸ Explanatory Memorandum, Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013

Consultation

The measures arose from recommendations produced by the Convergence Review Final Report which consulted extensively with key industry stakeholders and the Australian public over the course of the review. The Committee received over 340 written submissions along with 28 000 comments. A full list of those organisations that provided submissions is at Attachment A.

A key theme of the submissions was the need to continue to invest in and grow the Australian screen sector and Australians' desire to watch content reflecting their cultural identity. These were considered by the Department when drafting the legislative amendments.

In preparing the post-implementation review, the Department met with key stakeholders including:

- Free TV Australia – the peak body representing Australia's commercial free-to-air television broadcasters
- The Australian Subscription Television and Radio Association (ASTRA) – the peak body representing Australia's subscription television providers
- Screen Australia – the Commonwealth's screen agency which provides support to Australian film, television and documentary digital media makers
- Screen Producers Australia (SPA) – the industry body that represents Australian independent film and television producers; and
- The ACMA - the broadcasting regulator.

The Department also received a submission from the Australian Children's Television Foundation (ACTF).

As agreed with OBPR the Department did not consult with the Ministerial Advisory Council on Communications (MACC). The MACC includes senior figures from the telecommunications and broadcasting sectors. As the amendments are confined to broadcasting policy matters it was unnecessary to consult with telecommunications members, and broadcasting members were effectively consulted in the processes outlined above.

ASTRA, representing subscription broadcasters, commented in their submission that the 2013 amendments that permit each hour of Australian drama shown on the commercial free-to-air broadcasters multichannels to count as two had not resulted in an increase in co-commissioning of productions. ASTRA also stated that it is appropriate that the free-to-air broadcasters have public policy obligations given their access to spectrum.

Free TV Australia, representing the commercial free-to-air broadcasters, commented in their submission that the legislation is operating effectively and is meeting its objectives, noting that their members have experienced audience growth across their multichannels in all age groups, that all the networks have exceeded their quota obligations since the quota was introduced in 2013 and that Australian dramas shown on the multichannels have performed well. Free TV acknowledged that Australian content obligations for free-to-air broadcasters are 'onerous' given that the subscription television and national broadcasters do not face the same impost. Free TV also stated that any additional regulatory obligations, including increases in the 55 per cent Australian content quota, would 'disadvantage' broadcasters in a rapidly changing media environment where consumers access content from a variety of regulated and unregulated platforms.

Screen Australia's response was predominantly analysis of the ACMA's Australian Content Compliance Results, however it did note that there have been significant changes in children's content programming between 2012 and 2014 (pre and post the amendments). As broadcasters were provided with the flexibility to shift this content to their multichannels (and as they have experimented with channel, timeslot and day of the week) it has impacted programme performance with ratings falling compared to when these programmes were shown on their primary channels.

SPA, representing Australian film and television content makers, welcomed the amendments, however noted that they fail to offer an aspirational target for the broadcasters to screen locally-produced titles. SPA's greatest concern though was the treatment of New Zealand (NZ) programming, which in their view, is increasingly used to meet Australian content quotas as it is captured by the definition of first release Australian drama programme to Australian content makers' and the industry's detriment.

The Australian Children Television Foundation (ACTF) in their submission viewed the amendments positively, particularly with respect to creation of destination channels for child audiences with the broadcasters having flexibility to move this type of content to their multichannels. ACTF did however recommend an increase in the children's and preschool drama sub-quotas. A number of other issues canvassed in their submission were beyond the scope of the review.

Impact analysis

Transmission quota – primary channel

The 55 per cent transmission quota is set out in Section 121G (1) of the BSA and replaced the equivalent quota in section 9 of the Standard. Stakeholders have noted that elevating the 55 per cent quota to principal legislation has had a positive impact on the broadcasters, providing certainty in a highly competitive market that any changes to transmission quotas would need to be determined by Parliament.

The percentage of Australian content being broadcast has increased in recent reporting periods, however this is not necessarily attributable to regulatory changes but rather reflects audience preferences. This indicates that for most years the level of Australian programming is determined by audience preference rather than the 55 per cent quota. The following table shows that in 2014 each network achieved its highest figures since the introduction of the 2005 quotas.⁹

Percentage of Australian programmes between 6am and midnight on primary channels

Australian content transmission - core / primary channel by network - Year 2005 to Year 2014										
Minimum annual requirement	55 % of programs broadcast between 6am and midnight in a year									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	%	%	%	%	%	%	%	%	%	%
Seven										
Average % Claimed	55.53%	56.05%	58.09%	64.55%	65.32%	69.09%	66.88%	67.94%	69.13%	70.46%
Nine										
Average % Claimed	65.26%	66.60%	64.95%	61.07%	62.72%	64.79%	66.22%	67.86%	65.49%	70.59%
Ten										
Average % Claimed	59.25%	59.72%	57.60%	56.42%	57.60%	61.03%	62.21%	60.19%	59.45%	62.90%

Transmission quota - multichannels

Section 121G (2) of the BSA requires commercial free-to-air television broadcasters to show no less than 1460 hours of Australian programmes on their multichannels. This programming does not need to be new or specific to any genre. As the table below shows, the broadcasters were already transmitting a large number of hours of Australian content on their multichannels prior to 2013. The results for 2013 and 2014 indicate that the broadcasters have easily met the new quotas and the ACMA has advised that based on the 2015 monthly compliance reports, this will again be the case for 2015.

Hours of Australian content broadcast between 6am and midnight in a calendar year

Year	2011 ¹⁰	2012 ¹¹	2013 ¹²	2014 ¹³
Quota	n/a	n/a	730	1,095
Network				
Seven	1,478	2,152	2,393	3,091
Nine	2,388	2,615	1,935	1,662
Ten	3,256	2,318	2,366	3,490

⁹ 2005-2014 Comparison of Compliance Results Metropolitan Commercial Television Networks, ACMA

¹⁰ OZTam data, page 7 Screen Australia submission

¹¹ *ibid*

¹² 2005-2014 Comparison of Compliance Results, ACMA

¹³ *ibid*

The available data indicates that licensees are exceeding the quota obligations. However, Free TV has noted that this quota ‘sets an appropriate baseline obligation that must be met and ensures that Australian content on the multichannels is publicly reported’.

SPA, which represents the Australian screen production sector have noted in their submission that whilst they support the introduction of quotas, the quotas are not ‘aspirational’ and in 2013, the 730-hour quota only represented 12 per cent of the total annual broadcast hours. However the Department notes that this requirement has now increased to 1460 hours.

First release Australian drama incentive

Section 121G (3) provides an incentive for broadcasters to show first release Australian drama programmes on their multichannels by allowing one hour of content to count for two hours under the section 121G (2) quota.

Broadcasters have taken advantage of the new arrangement, however there does not appear to be a set pattern as to which new release dramas feature on a primary channel and which feature on a multichannel, as illustrated in the following table. This perhaps reflects broadcasters experimenting with scheduling as they attempt to build an audience on their multichannels or different commercial strategies for different multichannels. Free TV have noted in their submission that it is too soon to assess the impact of this provision.

Location of first release Australian drama shows – primary versus multichannel

Year	2013			2014		
	Primary channel	Multichannel	Total	Primary Channel	Multichannel	Total
Seven	8	1	9	6	4	10
Nine	4	13	17	6	9	15
Ten	5	4	9	5	5	10

Source: ACMA reports: 2013 and 2014 Compliance with Australian Content Standard and Children’s Television Standard

Has there been a marked increase in expenditure on Australian drama from 2013 onwards?

The amount commercial free-to-air television broadcasters spend each year on Australian drama programmes fluctuates, which may be a reflection of audience preferences. Based on the available data it is difficult to assess the impact of the changes to the BSA.

*Expenditure on Australian drama by Commercial Television licensees
2005 to 2014*

Origin of programming	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Australian Drama	125.3	96.2	116.3	132.1	126.9	137.2	116.7	129.4

Flexibility to acquit genre specific quota obligations on multichannels

Section 122 (10) of the Act provides broadcasters with the flexibility to acquit their genre specific quota obligations across their suite of multichannels. It was envisaged that this would result in innovative programming choices and enable the broadcasters to respond to competitive market pressures.¹⁴

Australian viewers have also benefited as they are able to access a greater variety of programmes on multichannels (or programmes that they missed). For example, Sydney *Weekender* (Network Seven) is initially shown in the Sydney market and is then repeated a week later in all markets.

First release Australian drama

Under the Standard, broadcasters were required to meet minimum drama scores¹⁵ for first-release Australian drama programmes each calendar year. The required score equates to 860 points over a three-year period with a minimum of 250 points in each year. Prior to the introduction of section 121G, all broadcasters met the requirement. All first release Australian drama programmes were shown on the broadcasters' primary channels with the exception of Network Ten which began showing *Neighbours* on Eleven in 2011 to coincide with the launch of the channel.

The impact of this change on the broadcasters has been positive. Free TV have welcomed the change as prior to the amendment, first release drama aired on the multichannels did not contribute towards meeting their quotas, for example *Neighbours*.

The increased flexibility has had a positive impact on scheduling arrangements and audience growth, as noted by Free TV in their submission¹⁶. Prior to the changes, an under-performing programme would have either been cancelled (to the detriment of all parties involved in production) or shifted from prime time to a later time on the primary channel. Following the amendment, the broadcasters can now not only continue to broadcast the

¹⁴ Second Reading Speech, House of Representatives 14 March 2013

¹⁵ The drama score is calculated by multiplying the duration of a program (in hours) by a format factor (whether it is a serial, miniseries, telemovie or movie for example). It is at the broadcasters' discretion as to how they meet the score.

¹⁶ According to Free TV, average audience numbers on the multichannels have increased across all age groups in 2014. Total audience growth for 2014 in metropolitan markets was 6.7 per cent and total growth in regional markets was 7.5 per cent.

show but show it in a more commercially viable timeslot on a multichannel. This was the case with two programmes shifted by Network Ten from their primary channel to Eleven (*Neighbours* and *Reef Doctors*). These shows may otherwise have been cancelled. Audiences also benefit from this change as they can continue to watch programmes that appeal to them but are not commercially viable on the primary channel.

Industry has seen some benefit arise from this change as broadcasters have on occasion commissioned niche programmes, for example *Kinne* was commissioned specifically for 7mate. Similarly, the broadcasters have experimented with niche programming on the multichannels as this does not pose a risk to advertising revenues generated by higher rating programmes shown on their primary channel.

Hours of first release Australian drama broadcast on primary and multichannels in a calendar year

	2013	2014
Quota (points)	250	250
Seven Network		
Primary channel	325.875	247.93
Multichannel	24.77	37.6
Total	350.65*	293.03*
Nine Network		
Primary channel	108	144
Multichannel	224.6	119.75
Total	332.60	263.75
Network Ten		
Primary channel	170.25	181
Multichannel	174	153
Total	344.25	334

Source: ACMA reports: 2013 and 2014 Compliance with Australian Content Standard and Children's Television Standard

*averaged across Seven's metropolitan markets reported on

First release Australian documentaries

Broadcasters are required to show 20 hours of first release documentaries annually. Since 2000 all metropolitan broadcasters have met this requirement¹⁷ and they have continued to do so post the amendments. In 2013, Network Seven screened the most hours at just under 60 with Network Nine showing 20. In 2014, Network Seven again screened the most hours at just over 70 for the year with Network Nine showing 20.25. Network Ten averaged just over 33 and 41 for the same period¹⁸. In 2013 and 2014 the broadcasters tended to broadcast the majority of documentaries on their primary channels as seen in the following

¹⁷ 2012 Australian content: results companion, ACMA

¹⁸ 2005 to 2014 Comparison of Compliance Results Metropolitan Commercial Television Networks, ACMA

table. This may be attributed to the expanded definition of ‘documentary’. For example, programmes such as *Border Security* and *Bondi Vet* fall into this category. These shows rate well with audiences and have the potential to generate more advertising revenue if shown on the broadcaster’s primary channel.

Hours of first release Australian documentary broadcast on primary and multichannels in a calendar year

	2013	2014
Quota (hours)	20	20
Seven Network		
Primary channel	52.45	54.26
Multichannel	7.43	16
Total	59.88	70.26
Nine Network		
Primary channel	12.5	16.5
Multichannel	7.5	3.75
Total	20	20.25
Network Ten		
Primary channel	34	32.5
Multichannel	0	9
Total	34	41.5

Source: ACMA reports: 2013 and 2014 Compliance with Australian Content Standard and Children’s Television Standard

Australian children’s programmes

Under the Children’s Television Standards 2009, commercial free-to-air television broadcasters are required to transmit 260 hours of C classified (children under 14 years of age) programmes and 130 hours of P classified (preschool aged children) programmes each year. Under section 12 of the Standard they are also required to broadcast at least 25 hours of first release Australian C Dramas each year (and at least 96 hours over 3 years).

As with other quotas, the broadcasters have continued to meet quota requirements pre and post the legislative amendment. The biggest change however has been in the creation of ‘destination viewing’ on the multichannels, where children’s programmes have begun to be scheduled in blocks. In 2013 Networks Nine and Seven shifted all their Australian children’s content to their multichannels (with the exception of one animated movie screened on Network Seven’s primary channel) and by 2014 Network Ten had followed suit. This includes both ‘P’ and ‘C’ programming as well as ‘G’ programmes directed to children. This has had a positive impact on broadcasters. Generally children’s programmes are not as profitable given the restrictions placed on advertising during children’s television slots and the availability of other services such as ABC2/3. Creating a home for children’s programmes on the multichannels provides the broadcasters with the opportunity to fill the vacant slots on

primary channels with more programmes that will attract greater audiences and advertising revenue.

SPA contends in their submission that the minimum levels have not increased since their introduction in 2005. This is supported by the ACMA’s compliance reports which show that whilst the broadcasters have almost always met the quota requirement of 25 hours, they have only ever marginally exceeded them (by an hour generally – first release children’s drama and all C programmes). This suggests that it is the quota that drives the amount of content and not commercial considerations.

The following table illustrates that broadcasters have shifted their children’s programmes to timeslots on their multichannels reflecting the economic circumstances of P and C programmes, and the development of destination viewing.

Hours of children’s programmes broadcast on primary and multichannels in a calendar year

	Preschool ('P') 2013	Preschool ('P') 2014	Children's ('C') 2013	Children's ('C') 2014
Quota (hours)	130	130	260	260
Seven Network				
Primary channel	0	0	0	0
Multichannel	130.50	131	261.50	261.50
Total	130.50	131	261.50	261.50
Nine Network				
Primary channel	0	0	0	0
Multichannel	130.50	130.50	258.50	262
Total	130.50	130.50	258.50	262
Network Ten				
Primary channel	109.50	0	220	0
Multichannel	21	130.50	40.50	260.50
Total	130.50	130.50	260.50	260.50

Source: ACMA reports: 2013 and 2014 Compliance with Australian Content Standard and Children’s Television Standard

ACMA powers

Section 121G (6) - (14) of the Act enables the ACMA to determine, by legislative instrument, the meaning of *Australian program*, *first release* and *Australian drama program* and enables the Minister to direct the ACMA in relation to its use of these powers. The current definitions are consistent with those contained in the Standard (as at 1 January 2013). The ministerial direction powers have not been exercised as of April 2016.

Broadcast of New Zealand Programmes

Under the Australia and New Zealand Closer Economic Trade Agreement, New Zealand television programmes may be claimed as Australian programmes for the purpose of

broadcasters meeting their Australian content quotas. All broadcasters use New Zealand content to some degree to fill their quotas. The extent to which they do varies according to the broadcaster and the genre however at a combined network level the percentage of NZ programmes has been increasing.¹⁹ This upward trend has continued post amendments.

Network Seven averaged just over 65 hours of NZ programmes in 2012, increasing to just over 233 hours in 2013 and just over 407 hours in 2014. Network Nine averaged just over 11 hours in 2012 to just over 103 hours in 2013 and just over 92 hours in 2014. Network Ten averaged just over 43 hours in 2012, just over 22 in 201 and just over 40 in 2014.²⁰

According to SPA, the impact of using NZ programmes to make up quotas could be addressed by tightening the definition of Australian programme. Both suggestions were outside the scope of this review. Similar suggestions were made to tighten the definition of ‘first release’.

Compliance costs

The amendments made five key changes (outlined above) of which only two have a potential regulatory impact within the scope of the Regulatory Burden Measurement framework:

Assessment of decisions against scope of the RBM

Option	Impact	RBM
Amendment 1: multichannel transmission quota	<p>This amendment set out new quotas on commercial free-to-air television broadcasters’ multichannels whereby broadcasters are required to transmit 1460 hours (in 2015) of Australian programmes on multichannels between 6am and midnight.</p> <p>a) This has potential to increase substantive compliance costs (through increased production/procurement of Australian programming).</p> <p>b) This also has potential to increase substantive administrative compliance costs for additional regulatory reporting to demonstrate compliance with the content quotas.</p>	<p>a) As noted in the PIR, broadcasters were already transmitting this level of Australian Content and have continued to exceed the content requirement since they came into effect. Therefore the regulatory obligation has not resulted in any change to business-as-usual practices and therefore imposes no substantive cost.</p> <p>b) This measure does broaden the scope of existing reporting requirements by virtue of expanding content regulations to multichannels. However the Department consulted on this matter specifically during 2013 and broadcasters indicated this would not impose any additional compliance costs over and above their existing aggregated annual reporting obligations (as the report generation occurs through content programming systems that are already in place and the monitoring across multi-channels already operated).</p>

¹⁹ 2012 Australian Content: results companion (www.acma.gov.au/Industry/Broadcast/Television/Australian-content/2012-australian-content-results-companion)

²⁰ 2005 to 2014 Comparison of Compliance Results Metropolitan Commercial Television Networks, ACMA

		Nonetheless, to be conservative, we have estimated the annual reports would require some additional manual quality assurance. We have estimated an additional 4 hours work for the three broadcasters who report (Seven, Nine, Ten) Compliance cost = 4 hours * 27.8 (wage) * 1.75 (on cost multiplier) * 3 broadcasters = \$583.80 per annum, which is negligible.
Amendment 2: Incentive for first release drama programming	This amendment provided an incentive for first release drama programmes to be shown on broadcasters' multichannels by doubling the hours counted under the quota (for example one hour of first release drama would be counted as two hours for the purposes of fulfilling the 1460 hours quota).	This is conceptually the equivalent of an opportunity cost incentive that in turn is a commercial judgement for broadcasters – i.e. the costs of production and the advertising revenue that certain content is expected to attract. This is what determines the profitability of programming choices but does not alter the regulatory cost. As such, it does not represent a direct compliance cost saving although it may increase profitability for broadcasters. \$0

Average Annual Regulatory Costs (from business as usual)

Change in costs (\$million)	Business	Community Organisations	Individuals	Total change in cost
Total by Sector	\$0.0	\$0	\$0	\$0.0

Conclusion

The Department has examined feedback provided in submissions received from affected stakeholders and other data obtained from the ACMA and on balance considers that the regulation has achieved the policy objective of ensuring a variety of Australian programming and minimum levels of Australian content are broadcast on multichannels.

Since 2005 all the broadcasters have fulfilled their Australian programming commitment.

This continued to be the case following the legislative amendments. Feedback from commercial free-to-air broadcasters in relation to section 121G was generally positive.

Elevating the 55% transmission quota in the Standard to primary legislation provided broadcasters with certainty in a rapidly evolving media landscape, by ensuring that Parliament would be the final decision-maker in any proposed changes to the quota.

The new multichannel transmission quota requiring broadcasters to transmit 1460 hours of Australian programmes on their multichannels during specified hours has only had a minor impact noting that broadcasters were already transmitting in excess of this requirement prior to the changes.

Granting the Minister the ability to direct the ACMA has also had no impact on the broadcasters to date, as the Minister has not exercised this power.

Providing the broadcasters with the flexibility to acquit their sub-quota obligations in the Standard across their multichannels has had a significant impact. In the case of children's programmes, it has enabled the broadcasters to free up time slots on their primary channel for more commercially attractive programming (traditionally children's programming is not highly profitable) and accordingly the vast majority of children's programming has been moved to broadcasters' multichannels. This has also assisted commercial free-to-air broadcasters to create more 'destination viewing' through blocks of children's programming which may in the medium term enable commercial broadcasters to better compete with other destination viewing offerings, for example ABC2 and 3, and subscription television.

The incentive to show first release drama programmes on broadcasters' multichannels, by doubling the hours counted under the quota has incentivised commercial broadcasters to broadcast more first release Australian drama on multichannels, for example *Neighbours* and *Reef Doctors* on Channel Eleven, including in circumstances where these programmes may otherwise have been cancelled.

Not all stakeholders have welcomed the impact of the changes. In particular SPA has noted that the ability to acquit drama and documentary sub-quotas on multichannels has resulted in an increase of lower cost New Zealand programming on multichannels to satisfy Australian content quotas. SPA contends this could be addressed by tightening the definition, however this is beyond the scope of this review.

In terms of regulatory costs, the Department has assessed these to be negligible as outlined above. Free TV Australia did not comment on costs in their submission.

The effectiveness and relevance of Australian programming requirements may again be considered by the Government as part of its regulatory reform agenda. As noted by one broadcaster, two years after the amendments is too short a period to be able to fully assess their impact.

Broadcasters were meeting their Australian content obligations prior to the changes and continue to do so following the amendments across all channels. Broadcasters have benefitted from the greater commercial flexibility available to acquit their programming obligations. Australian audiences have benefitted from the access to Australian programming on the multichannels that the measures have required.

Attachment A – Submissions received during the Convergence Review

The Convergence Review received submissions from the following organisations:

Media Access Australia	Australasia (NACO) - Joint Submission	ARC Centre for Excellence for Creative Industries and Innovation
Australian Communications Consumer Action (ACCAN)	Australia Council for the Arts	Australian Broadcasting Corporation
The Treasury	Australian Coalition for Cultural Diversity	Australian Information Industry Association
Australian Music Industry Network	Australian Copyright Council	Australian Recording Industry Association
Evolution Media Group	Australian Mobile Telecommunications Association	Australian Children's Television Foundation
Screenrights	Broadcast Australia	Australian Competition and Consumer Commission
Telecommunications Industry Ombudsman	Time Warner	DigEcon Research
Advertising Standards Bureau	Research In Motion	Motorola
Australian Federation Against Copyright Theft Limited (AFACT) - Joint Submission	Lesley Hitchens	Australian Major Performing Arts Group
Australian Home Entertainment Distributors Association (AHEDA) - Joint Submission	Telstra	Macquarie Telecom
Motion Picture Distributors of Australia (MPDA) - Joint Submission	Qualcomm	Cricket Australia
National Association of Cinema Operators	Western Australian Screen Industry	National Film and Sound Archives
	State and Territory Screen Agency Forum	APN News and Media
	Australian Content Industry Group	Australian Publishers Association
	Australian Subscription Television and Radio Association	Commercial Radio Australia
	Free TV Australia	iiNet

Screen Australia

Communications Alliance

Communications Alliance
Attachment (Regulation
in the Digital Economy by
IBES)

Australian Council on
Children and the Media

Australian Press Council

Screen Producers
Association of Australia

Australian Direct
Marketing Association
(Joint Submission)

Australian Interactive
Media Industry

Association (Joint
Submission)

Australian Library and
Information Association
(Joint Submission)

eBay (Joint Submission)

Google (Joint Submission)

Interactive Games and
Entertainment
Association (Joint
Submission)

nineMSN (Joint
Submission)

Yahoo!7 (Joint
Submission)

APRA AMCOS

Australian Writers Guild

Communications Law
Centre UTS

Community Broadcasters
Association of Australia

Media Classifiers
Association of Australia

Media Entertainment and
Arts Alliance

Music Council of Australia

Premium Movie
Partnership

Special Broadcasting
Service