



REVIEW OF THE AUSTRALIAN CONTENT STANDARD

SUBMISSION TO

**THE AUSTRALIAN BROADCASTING
AUTHORITY**

**AMENDMENTS TO THE STANDARD PROPOSED BY THE
AUSTRALIAN BROADCASTING AUTHORITY**

SEPTEMBER 2002

1. Introduction

The Australian Film Commission (AFC) welcomes the proposals that the Australian Broadcasting Authority (ABA) has put out for discussion and commends the ABA for the work it has done in engaging with the issues and concerns of all the submitters and stakeholders. Overall the ABA is proposing amendments to the standard that effectively balance the commercial interests of the broadcasters with the public interest they are mandated to serve.

In the view of the AFC, the proposals represent a measured and responsible intervention in the market place to ensure that the standard continues to be effective. Where the AFC makes suggestions for changes, it is to improve upon the proposals of the ABA and to remedy what it believes are unintended consequences or interpretations of the amendments proposed.

2. The Objectives of the Standard

The AFC strongly supports the ABA in its recognition that the cultural objectives of the Broadcasting Services Act (BSA) have a close relationship with the development of a vibrant production industry in Australia. As the ABA has emphasised, the standard has always had industry development outcomes, and there has always been a close relationship between cultural and industry development outcomes.

The ABA states the objective of the standard is primarily cultural; to ensure Australian audiences have available to them a range of programs that reflect the identity, character and cultural diversity of Australia. The Government also supports direct investment in the development and production of Australian film and television to ensure that Australians have available to them a rich and diverse audiovisual culture.

For the AFC, the outcomes of its activities are both cultural and directed towards the development of the production industry. In that sense they are two faces of the one coin. The same is true for the ABA.

Industry development strategies aim to capitalise upon the skill and creativity present in Australia and support a creative, competitive and efficient production industry. This maintains and enhances a creative infrastructure of people and resources that deliver both cultural and economic outcomes for the nation. The ABA is well aware of the necessity of regulatory intervention to ensure not only that Australians see themselves reflected on television, but that creative Australians in all their diversity are enriching the culture for their fellow citizens.

The AFC also welcomes the recognition of independent production by way of the small incentives for independently produced drama series and documentaries. It considers this to be an important recognition of the contribution being made by the independent sector to the diversity of programming on Australian television. We consider the proposals to be a reasonable measure that do not discriminate against in-house production. If effective, the measures will meet the need, identified by at least one network, to stimulate more risky, innovative and high quality production.

The ABA data shows a trend towards broadcasters bringing increasing levels of production in-house. The ABA proposals offer a very modest incentive to broadcasters to commission programs from independent producers in response to this trend. The incentive is not an industry assistance measure but is designed to achieve diversity through a broader range of program suppliers. Moreover, the ABA is acting within the legislated aims, objectives and scope of the Act. The AFC believe broadcasters do have a responsibility to the production sector as specified in the Explanatory Memorandum of the Act.

3. Proposals for the adult drama sub-quota

The AFC supports the general approach of the ABA in proposing a new points system. In our initial submission we recommended a points scoring system based on the broadcasters share of the production budget. We still hold the view that this represents a better indicator of quality than does the licence fee approach favoured by the ABA.

The proposals show that the ABA has attempted to meet the concerns about differentiating between series. The ABA seems to have rejected the idea of using budgets to differentiate series because there are an increasing number of series with budgets over \$400,000 an hour, the threshold proposed by the AFC. However, it does not think this is an argument to reject budget differentiation, rather it a question of the appropriate level at which to set the threshold.

The AFC also makes the point that if production budgets have been increasing for series, but licence fees have remained static or only marginally increased, then bonus points for higher licence fees may not lead to more higher budget, higher quality series.

The AFC also appreciates the concerns of the ABA about administrative simplicity and that a production budget approach would require some form of assessment or auditing of budgets. In relation to assessment, the AFC is already tracking television drama budgets for the National Production Survey. So the ABA would not need to duplicate this work to obtain information about budgets.

The AFC does not think the need to occasionally make detailed assessments of budgets is an insurmountable objection. Funding agencies at Commonwealth and State levels regularly employ consultants to undertake budget assessments. We note that the Department of Communications, Information and the Arts (DCITA) is establishing a register of consultants to undertake budget assessments in relation to the Refundable Film Tax Offset scheme it is administering. The point being that other agencies have found a way to undertake a similar exercise in an efficient and cost effective manner, which the ABA could also utilise. In any case the AFC believes such assessments would not be regular and only required in circumstances where there was doubt about a claim.

3.1 Revised relativity of the drama format factors

The foundation of the drama sub-quota is the points awarded to the drama formats. The ABA presents data and analysis that the relative values of the drama formats have changed since the ABT formulated the standard, as we argued in our original submission.

The Australian Broadcasting Tribunal (ABT) established the original points system based on a survey of licence fees being paid by the networks for drama in 1989-90, on the assumption that licence fees represented a measure of the production value and quality of the format. The survey arrived at the following averages:

Serial Drama	\$110,000 per hour
Series Drama	\$220,000 per hour
Telemovies/Mini-series	\$350,000 per hour

This led to the original scoring system of 1.1 for serial drama, 2.2 for series drama and 3.5 for telemovies, mini-series and for feature films. (*Oz Content: An Inquiry into Australian Content on Commercial Television*, ABT1991)

In 1996 when it reviewed the standard the ABA decided, rather than conduct another survey of licence fees, to simplify the scoring system by keeping the relativities between the drama formats (e.g. \$350,000 is 3.2 times \$110,000 giving mini-series a score of 3.2). Hence the currently applicable scores for drama.

The ABA has examined, with AFC assistance, current licence fees and determined that these relativities no longer apply, as measured by licence fees given to each format. The result is that the licence fee for a series in 1999/01 was 2.6 times that of a serial, and a mini-series licence fee 3.6 times that of a serial (Table D11). This has led the ABA to propose the following basic score:

Serials	1.0
Series	2.5
Miniseries / telemovies	3.5

To provide further incentive, bonus points are added to recognise quality and the level of risk involved for broadcasters. The additional points go to new series, series produced by independent producers with a licence fee above \$300,000 per hour, mini-series, telemovies and feature films with higher licence fees or presale commitments. All these categories will receive a bonus of half a point, except for the feature film categories, which will receive a bonus of 1.5 points.

The standard has always given considerable flexibility to the licensees in how they meet the standard allowing them to establish distinctly different program profiles. The AFC understands the objective of the ABA in providing bonus points to selected genres is to reward risk and innovation when the broadcasters choose to commit to these genres.

In general, the AFC considers that the basic set of relativities is a reasonable means of arriving at the format factor, however we do have some concerns about the application of the bonus points to series drama and features.

3.2 Series Drama

The AFC notes there appears to be an anomaly in the draft standard. It seems clear from the explanatory material that the intention of the ABA is to provide a bonus for new series drama, but not new serial drama. However, Section 11(2)(a) of the draft standard has the effect of awarding two additional bonus points to a new serial

drama and for a serial drama, independently produced, with a licence fee in excess of \$300,000.

3.3 Feature Films

The AFC welcomes the attempt to revise the treatment of feature films, but does not believe the proposed incentive will work in its current form. The problem the ABA is trying to address is that feature films are currently assumed to have the highest format factor, but do not always attract licence fees equivalent to their quality or to those paid for telemovies and mini-series.

We support the principle of giving higher points for higher licence fees, but the proposed licence fee levels and the points awarded to films that do not attract these licence fees, will not act as an incentive.

The ABA proposes that feature films attracting a licence fee of \$200,000 an hour should be awarded 4 points, and those that do not, will receive 2.5 points. Assuming that a feature film runs for approximately two hours then a total licence fee of \$400,000 is needed to attract the bonus points. This licence fee is in the order of those paid for films that have performed very well at the Australian box office and are likely to be purchased for this reason alone.

Many feature films are purchased at much lower licence fees than \$200,000 an hour. It is the AFC's understanding that a broadcaster could purchase three or four Australian features at current licence fees for a total cost of \$200,000. If that were the case they would easily earn between 15 and 20 points as against spending \$400,000 on one feature to earn eight points.

In order to provide an incentive to purchase more features at a reasonable licence fee the AFC supports the proposal of the FFC that:

- a) feature films that are purchased at a licence fee of \$150,000 or more (\$75,000 per hour) receive a format factor of 4;
- b) all other features receive a format factor of 1

3.4. Quantity/quality tradeoffs

The ABA argues that despite the fall in both the number of hours broadcast and the total expenditure on drama since 1993, the cost per hour of drama to the networks has been increasing. This is attributed to a shift away from cheaper serial drama to more expensive telemovies and mini-series and to increasing costs for series drama. There has been a trade off between more hours at cheaper prices and less, but more expensive, hours. In other words, there has been a trend towards quality over quantity.

Looking at the data published by the ABA on the last two triennial compliance periods (1996-1998 and 1999-2001) there was a two per cent decline in the number of hours broadcast in 1999-2001, but an increase of five per cent in the points earned. The hours of serial drama declined between the two periods by 14 per cent overall, while the hours of mini-series increased by 142 per cent, up from 32 hours in 1996-1998 to 75 hours in 1999-2001. Series drama hours also increased by 61 hours, or 10 per cent. between the two periods. The points lost from fewer hours of serial drama

were more than made up by the points earned from the increase in mini-series, telemovies and series drama hours.

The main reasons for these changes appear to be an 80 per cent decrease in serial drama hours, a 35 per cent increase in series drama hours broadcast by the Nine Network and an increase in the broadcast of telemovies and mini-series by the Seven (183%) and Ten Networks (100%). Nevertheless telemovies and miniseries still only constituted five per cent of the total drama hours broadcast in 99-01 by all three networks (Table D4).

The performance of the Nine Network demonstrates that it is possible to earn enough points to comply with the standard without having a serial drama in the Australian drama profile.

Nevertheless the AFC remains concerned that there has been a long-term trend towards lower levels of drama broadcast. After an increase in production in the early nineties, hours broadcast are now close to what they were in the eighties.

Since the ABT first introduced the points score system there have been twelve years, or four triennial compliance periods. The performance of the broadcasters is set out below:

3 Year Compliance Period	Total Drama Hours	Annual Average Hours	3 Year Points Total
1990-92	2107	702	9135
1993-95	1612	537	8141
1996-98	1630	543	2481
1999-01	1600	533	2606

As this table demonstrates the total amount of drama broadcast has declined over the last 12 years, reaching its lowest level in the last triennium.

3.5. Drama sub-quota levels

The ABA says that it does not wish to increase the minimum level of drama required under the current drama sub-quota, but to maintain it at the level of the safety net. The AFC does not disagree with this approach providing there are also incentives for quality and diversity of formats within the system.

It is unfortunate that the ABA's explanatory material does not adequately set out the methodology used to arrive at the new points score system. The AFC believes this failure has led to some erroneous misunderstanding that the ABA has increased the amount of drama required under the proposed standard.

The ABA has used a different methodology from that used by the ABT to set the original safety net in the standard. In determining the drama score to be achieved by the commercial networks the ABT looked at the performance of the three Sydney stations during the 1980's and took their performance in the year 1987/88 as the benchmark. In that year a total of 533 hours of drama was broadcast, which was slightly above the annual average for the preceding decade of 523 hours.

Coincidentally 533 hours is the average annual performance of the three networks in the last triennial compliance period. The ABT applied its new scoring system to 1987/88 and determined that was the minimum level of drama required.

When the ABA varied the standard in the 1996 review it removed the Australian Factor points score, adjusted the format factors to their current level and set a new annual and triennial points score. The new scores were intended to reflect the new format factors, but without changing the level of the safety net. Whether this was achieved, has never been assessed.

Neither the ABA nor the ABT have ever really tried to assess the minimum level of drama required to meet the minimum points score. This is largely because the relationship between points and hours is complex. The mix of programming and variations in actual performance mean that a simple calculation of the hours required if a licensee only broadcasts one genre of drama are not useful predictors of compliance.

However, until now that has been the only predictor of what the points requirement might mean in hours. As recently as the Discussion Paper at the start of this inquiry, the ABA was describing the relationship between hours and points as follows:

“This converts to between 80 and 258 hours annually, depending on the type of drama, i.e. serial, series, miniseries, telemovies, and must be broadcast between 5.00 p.m. and 11.00 p.m.”

We understand that the broadcasters propose that the serial drama format score should be increased to 1.15. This would have the effect that if one network chose to do only serial drama the hours required on average would remain at 258 hours. The intention appears to be to retain the current notional maximum hours required under the standard.

We believe this proposal to be based upon a misconception of what the standard requires and would simply mean that the Seven and Ten Networks could meet the new point score target more easily with less incentive to commission higher quality drama.

The reality is that no broadcaster has ever broadcast only in one genre and one cannot talk about a simple arithmetical relationship between points and hours.

Examining the actual relationship between points and hours based on performance, as the ABA has done, produces a result that supports the proposed format factors and the point score outcome.

3.5.1 Points and hours

As far as we can understand the ABA has embarked on the task of describing the relationship between points and hours by asking the question: How many hours does it take earn one point? This is the first step towards determining what is the minimum number of hours needed to earn the minimum number of points to comply with the standard. Once established this then becomes the benchmark upon which the new points target can be calibrated to take account of the changes in the format factors.

The ABA looked at actual performance in the last three-year compliance period (1999-01). The ratio of total points scored to hours broadcast provides a measure of the number of hours required to earn each point. There were 1600 hours broadcast in the period and 2606 points earned. The ABA calculated that the licensees broadcast 0.6139 hours (approximately 37 minutes) of drama for every point earned.

Each licensee was required to score a minimum of 775 points in the period. By multiplying the points target by the ratio of hours to points (0.6139) the ABA calculated that the minimum average number of hours each licensee had to broadcast to achieve the target. This figure was 476 hours over three years or an average of 158 hours a year. To earn the 225 annual minimum points the average hours to be broadcast would be 138.

The ABA then applied the new drama format scoring system to the programs broadcast in the same period and calculated what the licensees would have achieved. It calculated that a total of 3047 points would be achieved (Table D18). Using the same methodology above, it has calculated that if the current drama score minimum (i.e. 775 points) continued to apply then the minimum average hours required to achieve that score would fall from 476 hours to 407 hours (Table D19).

Table D20 sets out an analysis of the average minimum hours for each of the networks in the last triennial compliance period:

Seven	501 hours out of 639 actually broadcast
Nine	353 hours out of 380 actually broadcast
Ten	574 hours out of 581 actually broadcast
Average	476 hours out of the average of 533 broadcast

There are variations between networks because the relationship between hours and points is different for each network according to their programming mix. The Nine Network hours are less than the other two networks because they were able to earn 2.2 points on average for every hour they broadcast, compared to an average 1.3 points for every hour broadcast by the Ten Network.

3.5.2 Network specific calculations

The ABA proposes to use the performance of the Seven Network in meeting the standard in the last triennial compliance period as the benchmark for calculating the points to be achieved in the proposed system. The reasons for this choice are not clear from the discussion paper. Having established a benchmark based on the average performance across all networks it does not assist the ABA's methodology to divert from that benchmark, even if Seven was closest to that in its minimum average hours.

The method used to calculate the new minimum annual points score is to divide the triennial drama hours performance of Seven (i.e. 639 hours) by the notional score achieved applying the new format factors (i.e. 1136 points) to give a ratio of 0.5625. Seven's actual minimum average hours for the last triennium of 145 hours is then divided by this ratio to give a score of 259 rounded to 260. The same methodology is applied using Seven's three year average minimum hours to calculate the three-year target of 890 points.

If the ABA had used the averages for the triennium of 138 hours annual minimum score to achieve 225 points and 476 hours over the three years to achieve 775 points, then the points target would have been 262 points and 906 points respectively.

The ABA's methodology predicts that with a points target of 890 and maintenance of the same programming mix as in the last triennium, Seven would need a minimum of 501 hours. No less and no more than its average minimum hours in the last triennium. Applying the same calculations to the Nine and Ten networks it suggests they could achieve the target by broadcasting less drama than they were – 337 hours for Nine and 572 hours for Ten.

The new three-year target of 890 points is an increase of 15 per cent over the current standard, but is not an increase in hours required of broadcasters to meet that minimum score. It is clear to the AFC that the proposed standard does not require any broadcaster to show more hours of drama, unless they make a decision to alter their current mix of programming in favour of programming with lower format factor scores. They also have the flexibility to lower the output of drama and achieve more points with higher scoring format factors.

The data in Tables D4 and D20 show that there were differences between the annual minimum hours of each of the three networks in the last triennium. As shown above, the average annual minimum is determined by the ratio of points to hours. If a network broadcasts fewer hours with higher value points scores, then the ratio will be different from one that broadcasts more hours with lower value points scores. In the last triennium the Nine Network broadcast 200 hours less of drama than the Ten Network, but Nine still scored 49 more points than Ten precisely for this reason. Consequently the points/hours ratio for the Nine Network is lower than that for Ten.

Therefore it is erroneous to assume a higher points score designed to provide a safety net benchmark, will automatically lead to a corresponding increase in hours broadcast. Nevertheless this erroneous assumption appears to exist in the minds of some of the broadcasters. There would be value in the ABA providing a better explanation of how the new target score was calculated and how it could be met.

Conclusion

The proposed point score system:

- Introduces new incentives for quality and diversity, making the necessary link between budget and quality;
- More appropriately recognises and rewards more expensive drama genres;
- Does not require any network to increase the number of hours being broadcast;
- Does not disadvantage any network; and
- Provides no future incremental increases in the drama sub-quota.

The AFC supports the new scoring system, but suggests that a clearer explanation is required for stakeholders.

4. Proposals for the C-Drama sub-quota

The future regulation of children's television, in particular children's drama, has been the most contentious aspect of the current review. The proposals put forward by the ABA in relation to C-Drama effectively meet the criticisms of the broadcasters, while endorsing the continued importance of C-drama for the child audience.

The ABA correctly recognises that without the standard, the quality and diversity of children's programming on commercial television would be impoverished. The AFC believes strongly that commercial broadcasters have a continuing social responsibility to provide Australian children with drama and other forms of programming that is relevant to their developmental and cultural needs.

The AFC also agrees with the ABA, that despite the protests of the broadcasters, the current requirements for C-Drama do not constitute an unreasonable regulatory burden. The cost of producing drama is greatly assisted by government investment and by the ability of producers to source funding from outside Australia. As the AFC argued in our original submission, the cost of C-Drama to the broadcasters is small in the context of their overall broadcasting activities.

In 1999/2000 expenditure on children's drama cost the broadcasters only \$11.9 million, representing 0.3 per cent of total revenue and 1.4 per cent of total expenditure on Australian programming. It should be noted that this amount covers the purchase of programs for at least three runs, over five years in all markets – metropolitan, regional and rural – across Australia.

This is a small cost, even if the revenue to cost ratio appears unattractive, as the broadcasters have contended. Reportedly, the ABA '...was not provided with data to demonstrate that the revenues earned by commercial broadcasters from advertising during C-drama programs are too low to achieve a reasonable commercial return.' (Appendix, p.54)

Despite this the ABA has listened to the arguments of the broadcasters and is proposing actions that introduce a greater degree of flexibility and, if anything, could lighten the regulatory burden. These are:

- No increase in the minimum hours of C-drama required under the standard;
- The minimum licence fee requirement has been removed, which will give greater flexibility to licensees and may benefit some producers;
- The proposed introduction of a three year points target and an annual minimum of 25 hours meets the concern of broadcasters about ratings failure and the ability to produce and broadcast material within the compliance cycle;
- Increasing the amount of advertising in C-Drama, allowing the potential for the broadcasters to earn increased revenue;

- Incentives for C classified features and telemovies introduce more flexibility in the types of drama formats that can meet the standard; and
- The recognition of older children as a specific group within the standard, thereby allowing for programming targeted specifically to 10-13 year olds, has the potential to widen the audience for some C-Drama.

The AFC supports these initiatives, which are designed to improve the efficiency of the standard so that it continues to deliver high quality programming to Australian children.

The AFC also welcomes the attention the ABA proposes to give to the scheduling and promotional strategies of the networks. The AFC regards the proposed amendment to the standard to ensure that C-Drama is broadcast in a consistent timeslot and consecutively as being an important step to ensure that children can better access programs designed for them.

The requirement to report on promotional and publicity strategies is an important step to an increased focus on reaching the child audience. The AFC accepts the reluctance of the ABA to be too prescriptive in directing the broadcasters in this area. The commissioning of the report from Zenith Media represents a useful initiative that can provide assistance to broadcasters in improving what is widely recognised as a weakness in their performance.

The AFC would support a flexible reporting system, possibly requiring the networks to report on promotional strategies less often than suggested by the current proposal.

The AFC welcomes the review of C classification assessment procedures.

7. Proposals for the Documentary sub-quota

The AFC welcomes the proposals from the ABA to increase the amount and the diversity of Australian documentary. In its original submission, the AFC stressed the importance of documentary and raised concerns about the absence of higher budget documentary and the implications that had for diversity.

The introduction of the bonus points for programs with a pre-sale commitment of \$75,000 or more should act as a stimulus to diversity, when combined with the increase of the sub-quota to 26 hours. Without the increase to the sub-quota, the AFC would have been concerned that the bonus points may not have acted as a sufficient incentive for diversity. The AFC favours the proposed modest reward for higher budget documentaries as an attempt to address the sharp decline in expenditure on Australian documentaries.

The ABA's analysis notes that the increase in the sub-quota is in line with current performance, so the ABA is following the same principle as in adult and children's drama of setting benchmarks at the level of current performance. The increase in points reflects current levels of documentary broadcast and should be considered an appropriate 'safety-net'.

The AFC commissioned further research from Audience Data Australia using their Q-score methodology. This research confirms that Australian documentaries achieve generally high Q-scores, but their reach to audiences is generally not high. This relates to the location of most documentary on the public broadcasters and the level of promotion that documentaries receive on commercial channels. The latest research again confirms that some documentaries can succeed on commercial television with more strategic promotion and scheduling.

The commercial networks sometimes suggest that the presence of Australian documentaries on Australian screens is more the province of the public broadcasters. However the SPAA/ASDA Documentary Council recently released an analysis of documentary screenings on ABC-TV that demonstrated a significant fall in the number of Australian documentaries shown during primetime. Between 1998 and 1999 it appears there was a drop in Australian documentaries screened during primetime of 17 hours or 22.7 per cent. The commercial broadcasters have a vital role in screening quality Australian documentaries as part of their programming mix.

The AFC welcomes the decision of the ABA to review its monitoring systems for compliance with the documentary sub-quota to meet the concerns raised during the review about certainty and transparency.