



Broadcasting Services (Australian Content) Standard 2016

made under subsection 122(1) of the

Broadcasting Services Act 1992

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this
Standard under subsection 122(1) of the *Broadcasting Services Act 1992*.

Dated *23 March 2016*

Richard Bean
[signed]
Member

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[signed]
Member/General Manager

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Section 1

Part 1 Introductory**1 Name of standard**

This standard is the *Broadcasting Services (Australian Content) Standard 2016*.

2 Commencement

This standard commences on 31 March 2016.

Note All legislative instruments are registered on the Federal Register of Legislation kept under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.

3 Revocation of the *Broadcasting Services (Australian Content) Standard 2005*

The *Broadcasting Services (Australian Content) Standard 2005* [F2005L03716] is revoked.

4 Object of standard

The object of this standard is to promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programs produced under Australian creative control.

5 What this standard does

- (1) This standard:
 - (a) requires minimum amounts of first release Australian drama programs, documentary programs and children's programs (including children's drama, but excluding preschool programs) to be broadcast by commercial television broadcasting licensees; and
 - (b) requires preschool programs broadcast by commercial television broadcasting licensees to be Australian programs.
- (2) In order to be consistent with Australia's international co-production obligations, this standard recognises Australian official co-productions equally with Australian programs for the purposes of compliance with this standard.
- (3) While Australian culture and New Zealand culture are different from each other, in order to be consistent with the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement, this standard recognises New Zealand programs and Australia/New Zealand programs equally with Australian programs for the purposes of compliance with this standard.

Note It is a condition of a commercial television broadcasting licence that the licensee will comply with program standards applicable to the licence under Part 9 of the *Broadcasting Services Act 1992* — see Schedule 2, Part 3, paragraph 7(1)(b) of the *Broadcasting Services Act 1992*. This standard is a program standard.

Part 2 Terms used in this standard

6 Definitions

In this standard, unless the contrary intention appears:

acquired means acquired by a licensee, or its program supplier, under a legally binding agreement.

Australian, in relation to a person, means a citizen or permanent resident of Australia.

Australian C Drama has the same meaning as in CTS 5.

Australian drama program:

- (a) means an Australian program that:
 - (i) has a fully scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; or
 - (ii) has a partially scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure and has actors delivering improvised dialogue that is based on a script outline or outlines developed by a writer or writers; or
 - (iii) has actors delivering improvised dialogue that is based on a script outline or outlines, developed by a writer or writers, in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; and
- (b) includes a fully scripted sketch comedy program, animated drama or dramatised documentary; but
- (c) does not include:
 - (i) a program, or a segment of a program, that involves the incidental use of actors; or
 - (ii) an Australian children's drama.

Australian/New Zealand program has the meaning given by section 20.

Australian official co-production means a program made under an agreement or arrangement between the Government of Australia, or an authority of the Government of Australia, and the Government of another country or an authority of the Government of another country.

Australian program has the meaning given by section 7.

C band has the same meaning as in CTS 5.

commences to provide a commercial television broadcasting service has the meaning given by section 6B.

C program has the same meaning as in CTS 5.

CTS followed by a number (for example, CTS 2) means the Standard so numbered in the *Children's Television Standards 2009*.

Section 6

documentary program means a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program.

drama score has the meaning given by section 11.

duration, for a program, includes any time when an advertisement, community service announcement, station promotion or other material is broadcast during the program.

first release, for a program, has the meaning given by section 8.

independent producer has the meaning given by section 6A.

licence fee means the cash component of a fee paid by a licensee to acquire the right to broadcast a program, and does not include the value of services or facilities or other in kind components.

licensee means a commercial television broadcasting licensee.

narrative comedy program means a comedy program that meets paragraph (a) of the definition of **Australian drama program**.

New Zealander means a citizen or permanent resident of New Zealand.

New Zealand program has the meaning given by section 19.

P program has the same meaning as in CTS 5.

pilot means a single program prepared to introduce a story and characters for the purpose of securing sponsorship, or an agreement, to make more episodes of a serial or series.

prime time means the period on a day between 5 pm and 11 pm.

producer means the person who has overall creative responsibility for a program.

program supplier means a commercial television network that supplies a licensee with programs.

pro rata formula has the meaning given by section 6C.

set of episodes means a set of episodes of a serial or series produced in a single continuous period.

sketch comedy program:

- (a) means a comedy program produced for television comprising sketches that are short, self-contained stories or plots; but
- (b) does not include a stand-up comedy program or an incidental sketch that is a component in a program of another kind.

television production fund means the Australian Commercial Television Production Fund administered by the former Australian Film Commission.

Note The television production fund operated in the financial years from 1995-1996 to 1998-1999.

writer means a person who writes:

- (a) the script for a program; or
 - (b) the script outline or outlines for a program that has actors delivering improvised dialogue based on that script outline or those outlines;
- (except a person who adapts the screenplay or teleplay of an existing program).

Section 6A

Note Certain words and expressions used in this Standard are defined in subsection 6(1) of the *Broadcasting Services Act 1992*, including *ACMA* (the Australian Communications and Media Authority), *commercial television broadcasting licence*, *licence area*, *program* and *subscription television broadcasting licence*.

6A Independent producer

A body corporate that is the producer of an Australian drama program or a first release Australian C Drama acquired by another body corporate (*the customer*) is an *independent producer* of the program, in respect of that acquisition, if:

- (a) the producer:
 - (i) is not a licensee; and
 - (ii) is not a program supplier; and
 - (iii) is not a holder of a subscription television broadcasting licence; and
- (b) the customer:
 - (i) is not a licensee to which the producer is related (within the meaning of the *Corporations Act 2001*); and
 - (ii) is not a program supplier to which the producer is related (within the meaning of the *Corporations Act 2001*); and
 - (iii) is not a holder of a subscription television broadcasting licence to which the producer is related (within the meaning of the *Corporations Act 2001*).

6B Commencement of commercial television broadcasting service

A licensee *commences to provide a commercial television broadcasting service* on the earlier of the following days:

- (a) the day the licensee commences broadcasting;
- (b) the day the licensee is required to commence providing a commercial television broadcasting service under the licensee's licence conditions.

6C Meaning of *pro rata formula*

- (1) *Pro rata formula* means:

$$\frac{X}{Y} \times Z$$

where:

X is the number of days remaining in a quota period on the day a licensee commences to provide a commercial television broadcasting service.

Y is the number of days in a quota period.

Z is the content quota.

- (2) In subsection (1):

content quota means the drama scores or hours of broadcast that a licensee is required to meet under this standard.

quota period means the 3 year period or year to which a content quota applies.

Section 7

Part 3 Australian programs

7 What is an Australian program

- (1) Subject to subsections (3) and (4), a program is an *Australian program* if:
 - (a) it is produced under the creative control of Australians; and
 - (b) it was made without financial assistance from the television production fund.
- (2) For paragraph (1)(a), a program is produced under the creative control of Australians if:
 - (a) the producer of the program is, or the producers of the program are, Australian (whether or not the program is produced in conjunction with a co-producer, or an executive producer, who is not an Australian); and
 - (b) either:
 - (i) the director of the program is, or the directors of the program are, Australian; or
 - (ii) the writer of the program is, or the writers of the program are, Australian; and
 - (c) at least 50% of the leading actors, including voice actors, or on-screen presenters appearing in the program are Australians; and
 - (d) in the case of a drama program — at least 75% of the major supporting cast appearing in the program are Australians; and
 - (e) the program is produced and post-produced in Australia (whether or not it is filmed in Australia); and
 - (f) in the case of an animated program — the program satisfies at least 3 of the following requirements:
 - (i) the production designer is Australian;
 - (ii) the character designer is Australian;
 - (iii) the supervising layout artist is Australian;
 - (iv) the supervising storyboard artist is Australian;
 - (v) the key background artist is Australian.
- (3) If a program includes segments that, if they were individual programs, would not comply with subsection (2), only a segment that, if it were an individual program, would comply with subsection (2) is taken to be an Australian program.

Example:

A sketch comedy program including Australian skits and a documentary program including Australian segments.

- (4) A documentary program that complies with subsection (2) is not an Australian program if it is a reversioning of one or more existing documentary programs that are not Australian programs, Australian official co-productions, New Zealand programs or Australian/New Zealand programs.

Part 4 First release programs

8 What is a first release program

- (1) A program (except a telemovie or feature film) is a first release program when it is first broadcast in the licence area if it has been acquired within 2 years of the completion of production of the program.
- (2) A program that is a telemovie is a *first release* program when it is first broadcast by a licensee in the licence area (whether or not the program has already been broadcast in the licence area by a subscription television broadcasting service) if it has been acquired within 2 years of the completion of production of the program.
- (3) A program that is a feature film is a *first release* program when it is first broadcast by a licensee in the licence area (whether or not the program has already been broadcast in the licence area by a subscription television broadcasting service) if it has been acquired within 5 years of the completion of production of the program.

Section 8A

Part 4A Application

8A Application of this standard

- (1) This section applies to a commercial television broadcasting licence allocated after 30 December 2005.
- (2) Parts 6 to 9 only apply to a licensee on and after the day the licensee commences to provide a commercial television broadcasting service.

Part 6 Drama

10 Australian drama programs requirement

- (1) Subject to subsections (1A), (3), (4), (5) and (7), the drama scores for all first release Australian drama programs broadcast by a licensee in prime time must total at least
 - (a) in the 3 year period commencing 1 January 2002 — 830;
 - (b) in each succeeding period of 3 years — 860.
- (1A) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in the first year of a 3 year period, the drama scores for that 3 year period are worked out using the pro rata formula.
- (2) Subject to subsections (2A), (3), (4), (5) and (7), the drama scores for all first release Australian drama programs broadcast by a licensee in prime time in any year must total at least 250.
- (2A) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in a year, the drama scores for that year are worked out using the pro rata formula.
- (3) If a first release Australian drama program that is a feature film begins to be broadcast before or at 11 pm on a day, the part of the program broadcast between 11 pm and midnight on that day is taken to have been broadcast in prime time.
- (4) If a first release Australian drama program of at least 60 minutes' duration that is not a feature film is scheduled to begin before or at 10.30 pm on a day, the part of the program broadcast between 11 pm and 11.30 pm on that day is taken to have been broadcast in prime time.
- (5) Subject to subsection (6), up to 17 hours of a set of episodes of a serial or series produced at the rate of 1 hour or less per week, or a mini-series, broadcast by a licensee between 11 pm and midnight, are taken to have been broadcast in prime time on the day of broadcast, if:
 - (a) the serial, series or mini-series is comprised of first release Australian drama programs; and
 - (b) at least 5 of the episodes or one-third of the episodes, whichever is the lesser, were previously broadcast by the licensee wholly between 5 pm and 11.30 pm in the same or a previous year.
- (6) Subsection (5) applies only to one set of episodes of a particular serial or series.
- (7) A pilot of a first release narrative comedy program broadcast by a licensee between 11 pm and midnight on a day is taken to be broadcast in prime time on the day of broadcast.

Note Narrative comedy program, pilot, prime time and set of episodes are defined in section 6.

Section 11

11 What is the drama score for an Australian drama program

- (1) The *drama score* for an Australian drama program is calculated using the following formula:

$$\text{drama score} = \text{format factor} \times \text{duration (in hours)}$$

- (2) For subsection (1), the *format factor* is:
- (a) for an Australian drama program that is a serial or series produced at the rate of more than 1 hour per week — **1**; and
 - (b) for an Australian drama program that is a serial or series produced at the rate of 1 hour or less per week;
 - (i) if it has been acquired from an independent producer for a licence fee of at least \$421,000 per hour — **3**;
 - (ii) in any other case — **2.5**; and
 - (c) for an Australian drama program that is a feature film:
 - (i) if it has been acquired for a licence fee of at least \$211,000 — **4**;
 - (ii) in any other case — **2.5**; and
 - (d) for an Australian drama program that is a telemovie, mini-series, or self-contained drama of less than 90 minutes' duration — **4**.
- (3) For subsection (2), if an Australian drama program is described in more than one subparagraph and different format factors are specified in those subparagraphs, the highest format factor applies.

Note 1 The terms *acquired*, *duration*, for a program, *independent producer* and *licence fee* are defined in section 6.

Note 2 The amounts of the licence fees specified in subsection (2) are subject to increase under section 17.

Part 7 Children's drama

12 Australian C drama — first release programs

- (1) Subject to subsections (1A), (3) and (4) and section 12A, a licensee must broadcast, in each succeeding period of 3 years, in the C band, first release Australian C Dramas of at least 96 hours in duration.
- (1A) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in the first year of a 3 year period, the hours of broadcast for that 3 year period are worked out using the pro rata formula.
- (2) Subject to subsections (2A), (3) and (4) and section 12A, a licensee must broadcast, in each year, in the C band, first release Australian C Dramas of at least 25 hours in duration.
- (2A) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in a year, the hours of broadcast for that year are worked out using the pro rata formula.
- (3) The duration of a first release Australian C Drama that is:
 - (a) a feature film or telemovie of at least 80 minutes in length (excluding advertising or sponsorship matter); and
 - (b) broadcast in prime time;

is taken to be three times its actual duration.
- (4) If:
 - (a) a licensee broadcasts more than the required minimum number of hours of first release Australian C Dramas in a period of 3 years in accordance with subsection (1); and
 - (b) in the third year of the period of 3 years:
 - (i) the licensee broadcasts one or more first release Australian C Drama series; and
 - (ii) in relation to the last set of episodes of a first release Australian C Drama series to commence in that year, the licensee broadcasts in that year every episode in that set of episodes;

the number of hours broadcast by the licensee exceeding the required minimum number of hours, up to a maximum actual duration of 7 hours, will be taken to have been broadcast in the first year of the succeeding period of 3 years.

Note The terms *duration*, for a program, *prime time* and *set of episodes* are defined in section 6.

12A Australian C Drama — deferment of quota hours

- (1) This section applies if:

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- (a) a licensee or a program supplier has a legally binding agreement with an independent producer for the provision of first release Australian C Dramas; and
 - (b) the independent producer fails to provide one or more of the Australian C Dramas in accordance with the agreement in the third year of a 3 year period under subsection 12(1) (the current 3-year quota period).
- (2) The minimum number of hours of first release Australian C Dramas that a licensee must broadcast in the current 3-year quota period under subsection 12(1) is reduced by:
 - (a) if the number of make-up hours is less than 7 hours — the number of make-up hours; or
 - (b) if the number of make-up hours is 7 hours or greater — 7 hours.
- (3) The minimum number of hours of first release Australian C Dramas that a licensee must broadcast in the C band in the third year of the current 3-year quota period under subsection 12(2) is reduced by:
 - (a) if the number of make-up hours is less than 7 hours — the number of make-up hours; or
 - (b) if the number of make-up hours is 7 hours or greater — 7 hours.
- (4) In the 3 year period following the current 3-year quota period (the *subsequent 3-year quota period*), the minimum number of hours of first release Australian C Dramas that a licensee must broadcast in the subsequent 3-year quota period under subsection 12(1) is increased by:
 - (a) if the number of make-up hours is less than 7 hours — the number of make-up hours; or
 - (b) if the number of make-up hours is 7 hours or greater — 7 hours.
- (5) The minimum number of hours of first release Australian C Dramas that a licensee must broadcast in the first year of the subsequent 3-year quota period under subsection 12(2) is increased by:
 - (a) if the number of make-up hours is less than 7 hours — the number of make-up hours; or
 - (b) if the number of make-up hours is 7 hours or greater — 7 hours.
- (6) For the avoidance of doubt, if this section applies in the third year of the subsequent 3-year quota period the minimum number of hours of first release Australian C Dramas that a licensee must broadcast referred to in subsection (2) is the minimum number of hours calculated in accordance with subsection (4).
- (7) For subsections (2), (3), (4) and (5), the number of make-up hours is the total duration of Australian C Dramas that the independent producer has failed to provide had that program or those programs been broadcast by the licensee.

Section 13

13 Australian children's drama — repeat programs

- (1) Subject to subsection (2), a licensee must broadcast each year in the C band Australian C Dramas, that are not first release programs, of at least 8 hours in duration.
- (2) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in a year, the hours of broadcast for that year are worked out using the pro rata formula.

Section 14

Part 8 C programs and P programs**14 C programs (Australian children's programs)**

- (1) For each licensee in each year, the C programs contained in at least 50% of the total time occupied by C periods must be first release Australian C programs.
- (2) For subsection (1), the time occupied by a first release Australian C Drama that is:
 - (a) a feature film or telemovie of at least 80 minutes in length (excluding advertising or sponsorship matter); and
 - (b) broadcast in prime time;is taken to be three times its actual duration.
- (3) For subsection (1), any make up hours broadcast by a licensee in the first year of a 3-year quota period mentioned in section 12A will be taken to have been broadcast in the third year of the preceding 3-year quota period.

Note 1 At least 260 hours of C material must be broadcast each year in accordance with CTS 8.

Note 2 **C period** is defined in CTS 5.

15 P programs (Australian preschool programs)

All P programs broadcast by a licensee in accordance with CTS 8 must be Australian programs.

Note 1 At least 130 hours of P material must be broadcast each year in accordance with CTS 8.

Note 2 A P program must not be broadcast more than 3 times in a period of 5 years.

Part 9 Documentaries

16 Australian documentaries requirement

- (1) Subject to subsection (2), in each year, a licensee must broadcast, between 6 am and midnight, at least 20 hours of first release Australian programs that are:
 - (a) documentary programs; and
 - (b) each of at least 30 minutes' duration.

Note The term *duration*, for a program, is defined in section 6.
- (2) If a licensee commences to provide a commercial television broadcasting service on or after 2 January in a year, the hours of broadcast for that year are worked out using the pro rata formula.

Section 17

Part 10 Amounts of licence fees

17 Licence fees — CPI increases for 2017 and later years

- (1) In this section:

CPI number means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

indexable amount means:

- (a) subject to paragraph (b), the amount of a licence fee set out in subsection 11(2); or
- (b) if an amount of a licence fee set out in subsection 11(2) has previously been taken to be altered by substituting another amount — the last substituted amount.
- (2) On 1 January 2017, and on 1 January of each subsequent year, if the latest CPI number is greater than the earlier CPI number, the indexable amount for that year (the relevant year) is taken to be altered by substituting an amount worked out using the formula:

$$\frac{\text{previous indexable amount} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

where:

earlier CPI number is the CPI number for the quarter ending on 30 September two years before the relevant year; and

latest CPI number is the CPI number for the quarter ending on 30 September before the relevant year; and

previous indexable amount means the indexable amount in force immediately before 1 January of the relevant year.

- (3) The amount worked out under subsection (2) is to be rounded to the nearest thousand dollars and, if the amount to be rounded is \$500, rounded down.
- (4) For subsection (2):
- (a) if the Australian Statistician publishes a CPI number for a quarter in substitution for a CPI number previously published by the Australian Statistician for that quarter, the publication of the later index number must be disregarded; and
- (b) if the Australian Statistician changes the reference base for the Consumer Price Index, then, for this section after the change is made, regard must be had only to the CPI numbers published using the new reference base.

Part 11 Australia's international obligations

Note For information about Australia's international obligations, see the note following section 20.

18 Programs other than Australian programs recognised by this standard in fulfilment of Australia's international obligations

- (1) Subject to subsection (2), a licensee's obligations under this standard may be reduced by the extent to which the licensee broadcasts Australian official co-productions, New Zealand programs or Australian/New Zealand programs.
- (2) To reduce a licensee's obligation under subsection (1), an Australian official co-production, New Zealand program or Australian/New Zealand program must satisfy the same requirements that an Australian program must satisfy under the relevant section of this standard (except the requirement to be Australian).

19 What is a New Zealand program

- (1) Subject to subsections (3) and (4), a program is a *New Zealand program* if it is produced under the creative control of New Zealanders.
- (2) For subsection (1), a program is produced under the creative control of New Zealanders if:
 - (a) the producer of the program is a New Zealander, or the producers of the program are New Zealanders (whether or not the program is produced in conjunction with a co-producer, or an executive producer, who is not a New Zealander); and
 - (b) either:
 - (i) the director of the program is a New Zealander, or the directors of the program are New Zealanders; or
 - (ii) the writer of the program is a New Zealander, or the writers of the program are New Zealanders; and
 - (c) at least 50% of the leading actors, including voice actors, or on-screen presenters appearing in the program are New Zealanders; and
 - (d) in the case of a drama program — at least 75% of the major supporting cast appearing in the program are New Zealanders; and
 - (e) the program is produced and post-produced in New Zealand (whether or not it is filmed in New Zealand); and
 - (f) in the case of an animated program — the program satisfies at least 3 of the following requirements:
 - (i) the production designer is a New Zealander;
 - (ii) the character designer is a New Zealander;
 - (iii) the supervising layout artist is a New Zealander;
 - (iv) the supervising storyboard artist is a New Zealander;
 - (v) the key background artist is a New Zealander.

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- (3) If a program includes segments that, if they were individual programs, would not comply with subsection (2), only a segment that, if it were an individual program, would comply with subsection (2) is taken to be a New Zealand program.

Example

A sketch comedy program including New Zealand skits and a documentary program including New Zealand segments.

- (4) A documentary program that complies with subsection (2) is not a New Zealand program if it is a reversioning of one or more existing documentary programs that are not Australian programs, Australian official co-productions, New Zealand programs or Australian/New Zealand programs.

20 What is an Australian/New Zealand program

A program is an *Australian/New Zealand program* if:

- (a) it meets the requirements of section 7 (except that New Zealanders rather than Australians undertake one or more, but not all, of the specified creative roles); or
- (b) it meets the requirements of section 19 (except that Australians rather than New Zealanders undertake one or more, but not all, of the specified creative roles).

Note for Part 11 In 1983, the Government of Australia and the Government of New Zealand entered into the Australia New Zealand Closer Economic Relations Trade Agreement (the CER). On 18 August 1988, the Government of Australia and the Government of New Zealand entered into a Protocol on Trade in Services to the CER, the scope of which covers the production of programs for television and the broadcasting of programs on television.

Section 16 of the *Australian Communications and Media Authority Act 2005* requires that the Australian Communications and Media Authority perform its broadcasting, content and datacasting functions in a manner consistent with Australia's obligations under the CER Trade in Services Protocol.

Australia has international obligations under Official Film Co-production Agreements with Canada, China, Germany, Ireland, Israel, Italy, Korea, Singapore, South Africa, and the United Kingdom and Northern Ireland. In addition to these agreements, Official Film Co-production Memoranda of Understanding exist between Screen Australia and relevant government agencies in New Zealand and France.

For the purpose of meeting Australia's obligations under these agreements, this standard:

- (a) allows Australian official co-productions the full enjoyment of all the benefits accorded to Australian programs; and
- (b) allows New Zealanders and services provided by New Zealanders access to the Australian market for television programs no less favourable than that allowed to Australians and services provided by Australians; and
- (c) in like circumstances, treats New Zealanders and services provided by New Zealanders no less favourably than Australians and services provided by Australians.

Part 12 Reports on compliance

21 Licensee reports on compliance

A licensee must provide information to the ACMA that demonstrates the licensee's compliance with this standard:

- (a) in the form, if any, specified in writing by the ACMA; and
- (b) at the times, if any, specified in writing by the ACMA.

Note 1 The ACMA will consult with representatives of the commercial television industry before specifying any matters for the purposes of this section.

Note 2 The ACMA will notify licensees in writing of any matters specified for the purposes of this section, and may also place details of the requirements on its website.