



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Communications**

Australian Content Multi-Channel Obligations for Regional Broadcasters Regulation Impact Statement

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Contents

Context	3
The regulatory framework	3
The problem	10
The need for government action	10
Policy Options	11
Option One: Status quo	11
Description.....	11
Assessment.....	11
Option Two: Deemed compliance with the multi-channel obligation.....	12
Description.....	12
Assessment.....	12
Risks 13	
Option Three: Exemption from the multi-channel obligation.....	14
Description.....	14
Assessment.....	14
Risks 15	
Preferred option	16
Consultation	16
Implementation and Evaluation	18

Context

In 2017, 12 regional or remote commercial television broadcasting licensees failed to comply with the Australian content multi-channel transmission quota as they had not broadcast the required amount of Australian content across their suite of multi-channels during the 2017 calendar year.

The number and type of multi-channels provided by regional and remote commercial television broadcasting licensees is determined by affiliation agreements between the licensees in regional and remote geographic areas and the metropolitan networks (who, under these agreements, provide regional and non-aggregated remote commercial television broadcasting licensees with content).

The 2017 non-compliance was a result of scheduling changes implemented by the metropolitan network that provides the relevant regional or remote licensees with content, changes that the non-compliant licensees had limited control over. The 2017 non-compliance, therefore, demonstrated the lack of market power held by regional and remote commercial television broadcasting licensees to influence scheduling changes undertaken by their metropolitan affiliates. It also raised concerns that the legislative framework had failed to keep pace with the market realities of providing commercial television broadcast content in regional and remote geographic areas of Australia. This RIS reviews the factors that led to the 2017 non-compliance, and provides options to amend the legislative framework to provide some surety to regional and remote commercial television broadcasting licensees that in the future they will not fail to comply with the Australian content multi-channel transmission quota solely due to metropolitan network scheduling changes that are beyond their control.

The regulatory framework

The *Broadcasting Services Act 1992* (BSA) establishes the Australian content regulatory framework. One object of the BSA is to:

promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity...¹

This role is promoted via programming quotas that require minimum amounts of content produced under the creative control of Australians to be broadcast. Relevantly, the BSA sets transmission quotas, requiring a commercial television broadcasting licensee to transmit minimum amounts of Australian content on both its primary channel and its suite of multi-channels. In relation to multi-channels, section 121G of the BSA requires commercial television broadcasting licensees to transmit at least 1,460 hours of Australian content between 6am and midnight on multi-channels each year.

Content production, in particular Australian content, has very high fixed costs. Therefore, quotas ensure that there is a sufficient amount of Australian cultural content provided on broadcasting services. Australian content transmission quotas, such as the multi-channel quota, do not target specific or at-risk genres of cultural content, requiring only that the transmitted content is produced under the creative control of Australians. Licensees tend to meet the Australian content transmission quotas by broadcasting sports, news and reality programming content, which is, in comparison to some scripted drama, relatively cheap to produce and appeals to a wide audience.

On 12 December 2019, the Government released its response and implementation roadmap to the Australian Competition and Consumer Commission (ACCC) Digital Platforms Inquiry. In its response,

¹ Section 3(1)(e), BSA.

the Government committed to a staged process to reform media regulation towards to a platform-neutral regulatory framework covering both online and offline delivery of media.

The Government identified Australian content obligations as one of the first issues it would focus on and that it would release an options paper co-authored by the Australian Communications and Media Authority (ACMA) and Screen Australia to look at how best to support Australian stories on our screens in a modern, multi-platform environment. The paper was released on 15 April 2020 for a two month consultation period. The Government expects to continue working with industry to further explore the issues facing the media and screen production sectors, including the impact of COVID-19.

The regional television broadcasting market

Based on the Department's interactions with industry, it is the Department's view that regional and remote commercial television broadcasters are experiencing a period of significant disruption due to declining advertising revenue as advertisers follow audiences who have migrated online to access news and entertainment content. The ACCC analysed the trends in different types of advertising showing an overall decline in radio advertising since 2004, and a significant increase in online advertising from that point.²

In particular, broadcast television audiences in regional and remote Australia have declined by an average compound annual growth rate of 6.3 per cent over the last four years, which the Department considers indicates an industry-wide reduction in advertising revenue. For an industry that derives the majority of its revenue from advertising, the reduction in revenue is likely to impact the profitability of regional and remote broadcasters. This trend is expected to continue with the growing popularity and availability of streaming services.

Terrestrial broadcasting involves a high level of fixed costs to establish and maintain broadcast towers and other required equipment across a vast geographical area. On top of this, regional and remote audiences are able to access the metropolitan broadcasters' content directly via broadcast video-on-demand (BVOD) platforms, effectively diverting advertising revenue from regional and remote broadcasters to metropolitan broadcasters.

It is the Department's view that regional and remote broadcasters have limited capability to create their own BVOD services to compete, as their affiliation agreements with metropolitan broadcasters often do not include the digital rights to the provided content.

The Australian Government places high value on ensuring that regional audiences have ready access to broadcasting content, including equivalent content (in terms of both quality and quantity) to metropolitan areas. In addition to this measure, the Government is looking at a range of ways to provide for the continued sustainability of regional broadcasters. The Government is also reviewing the Australian content quotas with a view of working towards an end state of a platform-neutral regulatory framework covering both online and offline delivery of media content to Australian consumers.

This RIS does not address wider Government consideration of regional broadcasting or content quotas. Rather, it focusses on a critical issue that is currently affecting regional and remote television broadcasters and the introduction of a measure to provide surety for those broadcasters in meeting their Australian content obligations before broader reforms can be undertaken.

² Australian Competition and Consumer Commission, Digital Platforms Inquiry report, p121.

Delivery of television services in regional and remote licence areas

As indicated above, regional and remote commercial television broadcasting licensees rely on affiliation agreements with metropolitan networks to source content for their terrestrial broadcasting services. These affiliation agreements are negotiated between a regional or remote commercial television broadcasting licensee and a metropolitan network, and the Government is not involved in such transactions. They are generally negotiated as a package, such that a regional or remote commercial television broadcasting licensee will be broadcasting content from one of the metropolitan networks, Channel 7, Channel 9 or Channel 10. As Government policy restricts the number of metropolitan television networks to three, the amount of content available to regional and remote licensees is limited. The number of multi-channels a regional or remote licensee carries is ultimately a commercial decision for the licensee. While affiliation agreements provide some scope for regional or remote licensees to slightly alter the viewing schedule their metropolitan affiliate sets for a channel – for example, to broadcast a regional news bulletin instead of a metropolitan-focused current affairs program – the scope for amendment to metropolitan schedules is not clear.

As a result of the costs of developing content specifically for regional and remote licence areas, regional and remote commercial television broadcasting licensees are highly dependent on content provided by metropolitan licensees to comply with the Australian content obligations (including the multi-channel transmission quota). For instance, if a metropolitan network did not commission and broadcast enough Australian drama content to meet its first release drama quota obligations not only would it breach its obligation to comply with the requirement, its actions would also likely result in its regional and remote affiliate partners also failing to comply with the obligation.

The creation of multi-channels by commercial television licensees initially created an opportunity for additional advertising slots to be sold to local businesses. However, since the introduction of multi-channels in Australia, advertising market revenue has been absorbed by digital platforms (eg Google, social media) and audiences have decreased due to the popularity of alternative forms of entertainment such as streaming services, social media, and gaming. The Department is aware of anecdotal evidence that some regional and remote broadcasters may not be able to fill their advertising slots on some multi-channels. This anecdotal evidence is supported by the lack of advertising present on the multi-channels that are not universally carried by regional and remote broadcasters. As a result, regional broadcasters are less able to sell all the advertising slots available, and advertising slots sold are attracting less revenue. This increasing difficulty in selling advertising means that it may not be commercially viable for some regional and remote commercial television broadcasting licensees to carry all of the multi-channels offered, because the drop in advertising revenue in regional and remote markets no longer allows some licensees to generate sufficient revenue to recover their transmission costs.

While it is the Department's view that regional and remote broadcasters are suffering poor profitability, it should be noted that evidence illustrating the profitability of regional and remote broadcasters is commercially sensitive, and was not available at the time of this analysis. However, data from television broadcaster industry group Think TV indicates that for the 12 months to December 2019, the total TV market recorded \$3.86 billion in advertising revenue, down 4.8 per cent compared to the 12 months to December 2018.

Table 1 – advertising revenue performance by sector

Performance by sector				
	6 months to Dec 19	% change	12 months to Dec 19	% change
Total TV (excl SBS)	\$1,952,579,234	-5.9%	\$3,862,357,185	-4.8%
Metropolitan FTA	\$1,324,109,900	-7.0%	\$2,615,664,731	-6.1%
BVOD	\$87,347,296	42.8%	\$154,458,021	38.9%
Regional FTA	\$343,788,749	-7.4%	\$697,909,655	-4.9%

Source: ThinkTV

More recently, the advertising market has been further effected by COVID-19, with the related shutdown of many production facilities, and cancellation or suspension of major sporting events meaning that commercial television advertising revenue is likely to further decrease. There is no current publicly available data on advertising revenue post COVID-19. Market analysts have forecast revenue declines of up to 11 per cent in the period up to 30 June 2020.³

On 15 April 2020, the Government announced a package of measures to help Australian media businesses during the COVID-19 pandemic, which include:

- tax relief – a 12-month waiver of spectrum tax for commercial television and radio broadcasters;
- investing in regional journalism – a \$50 million Public Interest News Gathering program for commercial television and radio broadcasters and newspapers in regional Australia;
- short-term red tape relief – Emergency suspension of content quotas in 2020;
- harmonising regulation to support Australian content – Release of an options paper developed by Screen Australia and ACMA, commencing a fast-tracked consultation process on how best to support Australian stories on our screens; and
- bringing forward the release of \$5 million from the Regional and Small Publishers Innovation Fund.

The measure considered in this RIS is not affected by the Government's announcement.

In comparison, operating expenses for regional commercial television licensees have not reduced. The table below shows the operating expenses for two regional broadcasters as detailed in financial reports.⁴ Despite some variation, these figures demonstrate that operational costs have not decreased in line with advertising revenues, but have increased over time. The majority of operating expenses comprises transmission costs. For example, Prime's broadcasting and transmission costs (including in aggregated and non-aggregated licence areas) between the 2016 and 2019 financial years ranged from 73.5 to 80 per cent of total operating expenses.⁵

³ Analysis: Free-to-air television advertising in the time of the coronavirus, Ad News, 23 March 2020, <https://www.adnews.com.au/news/analysis-free-to-air-television-advertising-in-the-time-of-the-coronavirus>

⁴ Note that Southern Cross Media reports on its commercial radio services as part of these financial reports as well as its regional commercial television services.

⁵ Prime Media Group Limited and Southern Cross Media Group Limited Financial Statements FY16-FY19.

Table 2 – broadcasting and transmission costs for Prime and Southern Cross Media Groups

Operating expenses – Prime Media Group Limited and Southern Cross Media Group Limited				
	FY16	FY17	FY18	FY19
Prime Media Group Limited	\$50,967,000	\$50,047,000	\$54,978,000	\$51,944,000
Southern Cross Media Group Limited	\$474,853,000	\$513,920,000	\$500,566,000	\$514,471,000

Source: Prime Media Group Limited and Southern Cross Media Group Limited Financial Statements FY16-FY19

The situation for remote licensees is even more stark. These licensees are facing increasingly difficult advertising markets, and continuously increasing transmission costs. Further, because of the vast geographic areas covered by the typical licences of remote commercial television broadcasters, there are very few population centres from which to derive advertising revenue. This revenue from more populated areas could normally be used by licensees to subsidise transmission costs to cover the remainder of the licence area.

This ongoing drop in advertising revenue is the most significant factor in considering the commercial viability of broadcasting additional multi-channels. Already, a number of regional and remote broadcasters currently carry only two of the three multi-channels from the channel 7 and channel 9 metropolitan networks due to high transmission costs and lower revenue. However, the Department does not have publicly available evidence on commercial viability to show the profitability of broadcasting multi-channels.

Conversely, metropolitan networks have experimented with increasing the number of multi-channels they carry, subsequently spreading the amount of Australian content used to meet the multi-channel quota across their increasing number of channels. In April 2020, the Nine Network added an additional multi-channel, 9Rush, which is not currently carried by regional affiliates. If Nine Network was to acquit any of its Australian content obligations on this new channel, it may place other regional and remote broadcasters in breach of their licence condition.

2017 Non-compliance by regional broadcasters

In 2017, 12 regional or remote commercial television broadcasting licensees failed to comply with the Australian content multi-channel transmission quota as they had not broadcast the required amount of Australian content across their suite of multi-channels during the 2017 calendar year. This represented 60 per cent of regional and remote broadcasters affiliated with the Nine Network and 19 per cent of all regional and remote broadcasters. Non-compliance occurred where regional and remote broadcasters that had affiliation agreements with the Nine Network did not broadcast the 9Life multi-channel. The compliance with the primary and multi-channel quotas for each of the 12 licence holders is listed below.

Table 3 – compliance with primary and multi-channel quotas by licence holder

Company Name	Regional Network	Licence Area	Primary Channel Transmission Quota (%)	Non-primary Channel Transmission Quota (Hours)
Broken Hill Television Pty Limited	Southern Cross Broadcasting	BROKEN HILL TV1	74.03	1377
Spencer Gulf Telecasters Pty Limited	Southern Cross Broadcasting	SPENCER GULF TV1	74.03	1377
West Digital Television No.2 Pty Ltd	WIN Television	GERALDTON TV1	71.97	1368.32
Imparja Television Pty Ltd	Other	REMOTE CENTRAL & EASTERN AUSTRALIA TV1	70.4	1188.33
WIN Television SA Pty Ltd	WIN Television	RIVERLAND TV1	73.82	1379.15
WIN Television Griffith Pty Ltd	WIN Television	GRIFFITH AND MIA TV1	75.07	1084.95
Mildura Digital Television Pty Ltd	WIN Television	MILDURA/SUNRAYSIA TV1	73.65	1360.8
WIN Television SA Pty Ltd	WIN Television	MOUNT GAMBIER/SOUTH EAST TV1	73.82	1379.15
West Digital Television Pty Ltd	WIN Television	SOUTH WEST AND GREAT SOUTHERN TV1	71.97	1368.32
Tasmanian Digital Television Pty Ltd	Southern Cross Broadcasting	TASMANIA TV1	73.64	1317
West Digital Television No.3 Pty Ltd	WIN Television	KALGOORLIE TV1	71.97	1368.32
West Digital Television No.4 Pty Ltd	WIN Television	WESTERN ZONE TV1	71.97	1368.32
Minimum annual requirement			55.00	1460.00

Source: The ACMA Australian Content Regional Compliance Standards Report, 2017

<https://www.acma.gov.au/sites/default/files/2019-09/Regional-compliance-results-for-2017.pdf>

ACMA's compliance report shows that despite the 12 licensees not complying with their multi-channel obligations, they significantly exceeded their Australian content obligations on their primary channels. The ACMA decided to exercise regulatory forbearance in relation to the 2017 non-compliance with the Australian content multi-channel quota obligations, noting that this would be the last time that non-compliance would be overlooked. Each commercial television broadcasting licence is subject to the condition that the licensee will comply with the Australian content multi-channel quota obligation.

Non-compliance with the multi-channel quota could result in a breach of a licence condition. Remedies available to the ACMA for a breach of this licence condition, assuming regulatory forbearance is no longer an option, include accepting measures by licensees to improve compliance, accepting enforceable undertakings, issuing remedial directions, suspending or cancellation a licence. These would be significant consequences for a regional or remote commercial television broadcasting licensee to face for actions that it may have limited control over.

Australian content programming on multi-channels

The amount and type of Australian programming on multi-channels varies between channels and changes throughout the year. Depending on the target audience, some multi-channels will contain significant amounts of new Australian content, while others repeat older Australian programming.

Table 4 sets out a current weekly schedule of 9Life Australian programming. Over 2017 and 2018, a regional or remote licensee that did not carry 9Life was more at risk of breach of its Australian content obligations. Of the 17.5 hours of Australian programs, one hour of new Australian content is available. Three hours of Australian programming had premiered in the last two years.

Table 4 - Sample of 9Life Australian Content Programming – March 2020

Day	Program length (minutes)	Program title	Year first premiered	New programming
Wednesday	30	The Garden Gurus	2013	Repeat
	60	The Block	2016	Repeat
	30	Postcards	2013	Repeat, new to channel
	30	Getaway	2019	Repeat
	60	The Block	2016	Repeat
Thursday	30	The Garden Gurus	2013	Repeat
	60	The Block	2016	Repeat
	60	The Block	2016	Repeat
Friday	30	The Garden Gurus	2013	Repeat
	60	The Block	2016	Repeat
Saturday	60	The Block	2016	Repeat
	30	Postcards	2013	Repeat
	30	Getaway	2019	Repeat
	60	Your Domain	2020	New
Sunday	30	Getaway	2019	Repeat
	30	Explore TV-Viking	2019	Repeat
	60	Your Domain	2020	Repeat
Monday	30	Explore TV-Viking	2019	Repeat
	30	Postcards	2013	Repeat
	60	Your Domain	2020	Repeat
Tuesday	30	The Garden Gurus	2013	Repeat
	60	The Block	2016	Repeat
	30	Explore TV-Viking	2019	Repeat
	60	The Block	2016	Repeat

The problem

The Department has formed the view that the regulatory framework for the delivery of Australian content in regional Australia does not account for the realities of delivering television services in these areas. Broadcasting additional multi-channels imposes a cost on broadcasters, and, while the Department does not have evidence of the commercial viability of broadcasters showing profitability, there may be insufficient advertisers in regional and remote areas to justify the cost of additional multi-channels. A number of regional and remote broadcasters have chosen to limit the number of multi-channels they provide, usually those affiliated with the Seven and Nine networks. Some regional licensees are finding it difficult to meet the Australian content multi-channel transmission quota obligation, particularly where a metropolitan affiliate partner has not taken steps to ensure that it programs Australian content across its multi-channels in a way that there is sufficient Australian content broadcast on the channels most often carried by regional and remote affiliates.

The Department is aware that programming decisions by metropolitan licensees are leaving their regional affiliate partners at risk of not complying with the Australian content multi-channel transmission quota obligation. In 2017, 12 of the 20 licensees in regional and remote licence areas affiliated with the Nine Network failed to comply with this obligation. While these same licensees complied with the obligation in 2018, industry has made it clear that compliance was 'fortuitous', rather than an indication that the underlying issues which contributed to the 2017 compliance have been resolved. In that year, licensees achieved technical compliance with the multi-channel obligation by simulcasting content from its primary channel onto one of its multi-channels. While this approach complied with the obligation, it did not contribute to any additional Australian content being available to regional and remote audiences. Going forward, regional and remote licensee compliance with Australian content obligations will continue to be in the hands of metropolitan partners who may choose to continue to diversify content across their suite of multi-channels, or add additional multi-channels.

The need for government action

The current legislative framework, combined with the commercial arrangements under which regional and remote commercial television broadcasting licensees source television content, leaves most regional and remote commercial television broadcasting licensees vulnerable to program scheduling changes implemented by their metropolitan affiliate partners. With these current market realities unlikely to change in the near future, the Department considers that regional and remote licensees are likely to continue to face greater difficulty complying the Australian content multi-channel transmission quota obligation than their metropolitan counterparts.

The Department is of the view that broadcasters' difficulties in meeting content requirements can be taken to be an early warning sign of market failure. In order to fulfil the intention of its policy, the Government will need to take action before market failure occurs, as this would limit regional audience's access to Australian content rather than promoting it.

ACMA, who operate at arms-length from Government, are expected to uphold current obligations as required by the BSA. It would be unusual that, as a regulator, it would continue to exercise forbearance over future breaches. Continued inaction is therefore highly likely to leave regional and remote commercial television broadcasting licensees open to future licence condition breaches. This is clearly not an equitable regulatory arrangement compared to metropolitan broadcasters who have a greater ability to avoid licence condition breaches.

The Department has formed the view that the Australian content multi-channel transmission quota obligation requires amendment to ensure that regional commercial television licensees are able to comply with the obligation, regardless of the programming decisions of their metropolitan affiliate partners. There are other options available other than regulatory change, including expecting regional and remote broadcasters to carry all channels carried by metropolitan broadcasters regardless of the profitability of those channels. However, the Department does not have publicly available evidence on commercial viability to show the profitability of broadcasting multi-channels. Alternatively, regional and remote broadcasters could abandon affiliation agreements and directly source Australian content. The Department considers that both of these options are likely to impose significant costs on regional and remote broadcasters above the existing costs of the current affiliation agreements. Based on publicly available figures, it is not clear to the Government that regional and remote broadcasters would have access to sufficient revenue to offset these costs.

Policy Options

Option One: Status quo

Description

Retain the current Australian content multi-channel transmission quota obligation for all commercial television broadcasting licensees.

Assessment

Regional and remote television licensees: The risk of a 'do-nothing' option would be that regional and remote commercial television broadcasting licensees would continue to be at risk of non-compliance due to scheduling decisions made by their metropolitan affiliate partners. These decisions, which a regional or remote affiliate would have minimal control over, could lead to future licence condition breaches. If ACMA did not continue to exercise forbearance, licence holders would be subject to a range of penalties. Such a regulatory approach, where a regulated entity is susceptible to breaching its regulatory obligations due to behaviour undertaken by a third party that the entity has little control over, is irregular.

In light of the difficult operating environment for regional and remote broadcast licence holders, the status quo may place further financial pressure on regional and remote broadcasters, which may result in vulnerable broadcasters choosing not to offer multi-channels to viewers in its licence areas in order to avoid the risk of inadvertent breaches. Due to shrinking advertising markets and ongoing rises in transmission costs, the Department is of the view that it is unlikely that a change in business practice would generate sufficient additional revenue to increase the amount of multi-channels a licensee can offer.

Screen production industry: For the Australian screen production sector, a do-nothing option is likely to minimise any costs to industry. This option provides the most impetus to a regional broadcaster to carry the full suite of multi-channels to avoid the risk of non-compliance, or to commission new Australian content.

Metropolitan television licensees: Option one has a small impact on metropolitan television licensees, who may be under pressure from regional and remote television licensees to either adjust the scheduling of their Australian content across channels, or provide access to other Australian programming to enable regional and remote broadcasters to meet their quota.

Regional and remote audiences: For regional and remote audiences, this option maximises the possibility of unique Australian content being available to them.

In practice, the most likely action for a broadcaster at risk of breach, is to seek the agreement of their metropolitan affiliate to simulcast Australian content from either the primary channel or another multi-channel. This action negates the benefit that would otherwise flow to the Australian screen production sector or regional and remote audiences of the status quo.

Regulator: This option would increase pressure on the regulator, ACMA, to take action should any further breaches occur. Regional and remote broadcasters are currently experiencing difficulties in meeting their quotas in some circumstance, and the effect that COVID-19 on the production sector means that all broadcasters are unlikely to meet their quotas in 2020. While the Government has instructed ACMA to exercise regulatory forbearance for the remainder of 2020, with possible extension into 2021, the dramatic effect on advertising revenue and availability of eligible content may constrain regional and remote broadcasters from meeting their quotas for some time even after forbearance ceases. For this reason, the Government's preference would be to regulate to resolve the issues outlined above, rather than continuing to put pressure on the regulator to resolve the situation.

Option Two: Deemed compliance with the multi-channel obligation

Description

Amend the Australian content multi-channel transmission quota obligation to allow a licensee in a regional or remote licence area who is unable to meet the multi-channel quota of 1,460 hours in a particular year to be 'deemed' to have met the requirement for the particular year if the amount of Australian content broadcast by the licensee on their multi-channel(s) during the particular year is not less than the amount of Australian content broadcast on the equivalent metropolitan multi-channel(s) during the same year.

Assessment

As the main issue facing the 12 licensees that did not comply with the multi-channel obligation in 2017 was the unforeseen scheduling change by their metropolitan affiliate partner (Nine), this option provides regional and remote commercial television broadcasting licensees with an option to be deemed compliant with the multi-channel obligation should similar circumstances occur in the future. As detailed above, it is quite likely that regional and remote commercial television broadcasting licensees will continue to face similar pressures going forward, so this option would provide licensees with important surety over their broadcasting operations.

Regional and remote television licensees: Option two provides significant benefit to regional and remote television licensees given the certainty that this measure will provide licensees with in meeting their quota obligations. A relevant licensee will not need to change its current behaviour, in terms of producing and transmitting content, under this approach. It will be able to continue to obtain content commissioned and/or produced by its metropolitan affiliate partner, and transmit that content within their respective licence areas. The only change in behaviour as a direct result of this option will likely be borne from a minor change in compliance reporting procedures, which ACMA administers.

This is likely to be information that licensees will already have compiled in the course of usual business practice. Licensees that are likely to be relying on the deeming provision are not likely to be in a financial position to commission or produce significant amounts of Australian content themselves.

It is unclear how much scope these licensees would have to alter the content schedules of multi-channels under affiliation agreements. Such a licensee is therefore not likely to be in a position to meet its multi-channel obligation without the deeming provision. A licensee is also not likely to be in a position to alter current practices to maintain compliance with the obligation (short of simulcasting content) in the absence of the deeming provision proposed by option two or some other regulatory intervention.

Metropolitan television licensees: Option two has no impact on metropolitan television licensees, and their behaviour will not change as a result of this option.

Regional and remote audiences: To the extent that this measure does not encourage regional and remote licence holders to broadcast all multi-channels available to metropolitan audiences, this measure may result in less Australian content being available to regional and remote audiences. The risk of other broadcasters dropping non-profitable channels is dealt with in the risk section below.

However, as detailed above the status quo option, in practice it is unlikely to deliver additional Australian content beyond that which they are already receiving. Audiences in the licence areas served by licensees likely to be relying on this provision do not currently have access to the full suite of multi-channels offered by metropolitan networks. This measure is not likely to change the number of multi-channels carried by relevant licensees. In addition, it is important to note that regional and remote audiences will still be provided with significant amounts of Australian television content, specifically in the form of content delivered to satisfy the 55 per cent primary channel quota, as well as sub-quotas for drama, children's content and documentaries. Some regional and rural audiences will also have access to all multi-channels live streamed from metropolitan broadcast video on demand sites. Regional and remote audiences also continue to have access to content delivered by the national broadcasters.

Screen production industry: Regional and remote commercial television broadcasting licensees are less likely to commission Australian content, with most content being acquired or commissioned by metropolitan networks under affiliate agreements. Original content produced by regional and remote commercial television broadcasting licensees is generally limited to the production of content required for acquitting local content obligations set by the BSA, which is mostly local news bulletins, and licensees tend to broadcast such content on their primary channel.

There is a small risk that an independent producer may receive less payment for a commissioned series where audience numbers are lower (for example where it would be programmed on a multi-channel that is not broadcast to some regional and remote audiences). This impact is likely to be more significant in relation to multi-channels that program large amounts of new Australian content. In relation to the Australian content currently programmed on 9Life in table 4, this impact would likely only fall on the single hour of new Australian programming each week.

Risks

Construction of the deeming provision proposed by option two could lead to some adverse outcomes. For instance, there is the risk that the deeming provision could lead to, or not inhibit:

- regional and remote licensees further reducing the number of multi-channels they carry;
- metropolitan networks further diluting the Australian content they broadcast on their multi-channels; and

- regional and remote audiences being deprived of first release Australian drama, children's or documentary content.

Reduction of multi-channels in regional and remote licence areas: There is little to no risk of this outcome materialising as a direct result of this option. Should licensees choose to further reduce the multi-channels that they carry, it is more likely this will be on the basis of whether the revenue to be made by broadcasting the multi-channel would be outweighed by the costs of transmission. It is unlikely that the deeming provision would factor in the decision. However, the Department considers that market forces will likely dictate that, where a licensee can recover the costs of multi-channel transmission, the suite of multi-channels provided by regional and remote licensees will not be reduced further. Also, where audiences value access to the full suite of channels, broadcasters may continue to broadcast non-profitable multi-channels. However, the Department admits that there is a risk that a regional or remote broadcaster may choose to drop an unprofitable multi-channel as a result of this option. The Department is not aware of any information that leads to the conclusion that there are market factors that will see an impending, significant reduction in the number of multi-channels provided by regional and remote television licensees.

Further dilution of Australian content by metropolitan networks: Whilst a further dilution of Australian content is possible, the Department does not consider this to be likely or even probable as a result of this measure. The Department considers that there are market forces acting on metropolitan networks that will see significant amounts of Australian content being broadcast on all multi-channels. Australian content is still highly valued by Australian audiences. It is still the highest rating content on commercial television, including on multi-channels. The metropolitan networks tend to target specific markets and demographics using their multi-channels. As commercial television licensees aim to maximise their audience share, thus maximising their ability to monetise their content on all of their multi-channels, it is unlikely that they would seek to intentionally dilute general Australian content levels. This is evidenced by the high average compliance figures demonstrated by ongoing ACMA compliance monitoring. Further, whilst technically feasible for metropolitan networks to increase the number of multi-channels they carry, actual increases currently seem unlikely. As an example, the Seven Network recently took the step of reducing its multi-channels, by removing its 7Food multi-channel. These factors would indicate this risk to be very low.

Reduced Australian drama, children's and documentary content to regional audiences: The potential impact on this risk is low. Broadcasts of first release Australian drama, children's and documentary content is mandated by program standards made under the BSA, and sub-quotas requiring the minimum amount of this content is set by the *Broadcasting Services (Australian Content) Standard 2016* and the *Children's Television Standards 2009*. The measures would have no impact on licensee's sub-quota obligations.

Option Three: Exemption from the multi-channel obligation

Description

Repeal the Australian content quota on multi-channels for regional and remote commercial television broadcasting licensees.

Assessment

Based on the current market realities of providing television services in regional Australia, especially in relation to the reliance on the provision of content from metropolitan affiliate partners, thought has

been given to completely exempting regional commercial television broadcasting licensees from the multi-channel obligation.

This option is considered viable as, based on current business practice, regional commercial television broadcasting licensees are only likely to make minimal changes to the content provided under affiliation agreements. There are also market forces (such as the ability to monetise content, audience preferences, scheduling and demographic considerations, and the availability of content, which are detailed in option two above) which, in the absence of regulation, are likely to ensure that no real dilution of content provided by metropolitan licensees on the multi-channels carried by regional affiliate partners eventuates.

As option three is quite similar to option two above, the assessment of this option broadly mirrors that of option two.

Regional and remote television licensees: As above, any licensee which is likely to struggle to meet the Australian content multi-channel quota obligation is unlikely to be in a position to commission or produce content itself. A complete exemption from the quota is likely to be well received by regional and remote commercial television broadcasting licensees, as this option takes into account the current market realities relevant to the delivery of commercial television content to regional and remote audiences.

Metropolitan television licensees: As with measure two above, this measure has no impact on metropolitan commercial television broadcasting licensees and their behaviour would not change under this option. However, the Department is aware that metropolitan commercial television broadcasting licensees have long sought removal of the transmission quota obligations. Without intending to limit any future analysis that may be done in this space, it is clear that there are significant market factors driving the broadcast of Australian content, as broadcasters have continuously delivered above the level required by the transmission quotas. Removing the multi-channel quota for regional and remote licensees only may be considered by metropolitan networks to be granting an unfair advantage to regional and remote licensees.

Audiences: As with option two, this measure is very unlikely to have any impact on audiences. This option is not likely to change the amount of content, i.e. the number of multi-channels, carried by relevant licensees, however it should be noted that this option would make it more appealing for a licensee to reduce the amount of multi-channels it offers than option two would. The Department is still of the view that there are significant market forces that will facilitate the continuation of multi-channels being broadcast in regional and remote areas, assuming the advertising market can justify the transmission costs. However, we do believe that a reduction in the number of multi-channels offered is slightly more likely to eventuate under this option.

Screen producers: As above, the Department does not consider that this option will have a negative impact on screen producers.

Risks

This option poses the same risks as option two. Whilst the department considers that the likelihood and outcome of these risks remain minor for this option, it is clear that option three does present slightly increased chances of these risks materialising. Significant market factors remain which suggest that these risks are very unlikely to be realised, however the Department considers that option two presents less risk and a more desirable way of achieving the Government's stated policy objectives.

Preferred option

Based on the evidence of the policy problem outlined in this RIS, the Department acknowledges the case for government intervention and policy movement away from the status quo is not strong.

However, the trends facing all broadcasters are well established, and the Department has no evidence to suggest regional broadcasters are not experiencing the same trends as others in the sector. For the commercial and other reasons outlined in the RIS, it is unlikely that a move from the status quo will materially harm regional and remote consumers.

Given this, on balance the Department considers the adoption of option two to be the preferred approach, acknowledging the risks and uncertainties in this analysis.

Option two will result in regional and remote broadcast licence holders not having to negotiate agreement to simulcast content from its primary channel.

Option two also provides some advantage over option one in that it removes pressure upon ACMA to consider exercise of forbearance where a regional or remote broadcaster is simply re-broadcasting the content of a metropolitan multi-channel without significant change.

Metropolitan broadcasters, which have larger audiences and attract more advertising revenue than regional broadcasters, have been effected by COVID-19. Therefore, since the Government has decided to exercise forbearance with regard to some content obligations in order to provide relief to metro broadcasters, it is reasonable that some form of relief is also made available to regional broadcasters, given the dramatic impact of COVID-19.

While both options two and three would provide sufficient regulatory surety to regional commercial television licensees in meeting their multi-channel quota obligations, option three is considered to be a less desirable way of meeting the stated objective as it is more likely to have an impact on the total level of Australian content available to regional and remote audiences. Although option three is unlikely to result in any reduction in the volume of Australian content provided on multi-channels, it presents a slightly higher chance of this risk eventuating than option two. As the Department considers that the regulatory framework should ensure equality in the content broadcast to metropolitan and regional audiences, option two is the preferred option. Moreover, the Department does not see this RIS, nor the measures needed to fix the policy problem identified in this RIS, as the appropriate vehicle to consider the removal the transmission quotas.

Consultation

Initially both ACMA and the industry peak body for commercial television broadcasters, Free TV Australia, were informed of the Government's intention to act following the 2017 licence breaches. In April 2019, the former Minister for Communications and the Arts, Senator the Hon Mitch Fifield wrote to ACMA and Free TV Australia to announce that he would amend the BSA to better provide surety for regional and remote commercial television broadcasting licensees in meeting their multi-channel obligations. This letter informed ACMA and Free TV Australia that this amendment would take the form of the preferred deeming provision option.

The Department worked closely with ACMA throughout the development of this measure to ensure that the preferred deeming provision option has enacted the Government's policy without any

unintended consequences. This includes sharing and discussing drafting instructions in the development of the deeming provision.

Once the Department was in receipt of an exposure draft of the amending bill that proposes to implement the preferred deeming provision option, it began a targeted round of consultation on the measure. This consultation round included ACMA, Free TV Australia and Screen Producers Australia (SPA).

ACMA was included in the consultation, in part in order to test the impact of the measure on regional audiences, in line with its role as independent industry regulator and its audience research expertise. ACMA did not raise any concerns from regional consumers as part of consultation. The measure does not lead to a reduction on the current level of content provided by the relevant licensees. ACMA's comments on the measure were generally mechanical in nature.

Free TV Australia's consultation comments noted that the measure is an important and indeed urgent one for regional broadcasters, and supports the Bill's introduction in Parliament as soon as possible. Free TV Australia requested that the deeming provision be applied to the entire class of regional and remote commercial television broadcasting licensees, as all regional markets are currently experiencing the market realities that lead to the 2017 licence breaches.

SPA claims that the deeming provision does not further specific BSA objects, namely:

- to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
- to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs.

SPA also raised concerns about the reach of content produced by the Australian television screen production sector. It noted that, per audience figures, regional audiences account for, on average, around 40 per cent of the total Australian audience on television.

The main reason for SPA's concerns about the reach of television content produced by the Australian screen production industry is the adverse impact that a reduced audience reach could have on the value, and financial opportunities open to screen producers of Australian drama, children's and documentary content. This sub-quota content is the most valuable content produced by the Australian television screen production sector, and the total audience able to receive these broadcasts is the largest factor relevant to determining the value and financial opportunities of this content. With the regional audience accounting for around 40 per cent of the audience reach of sub-quota content, SPA noted that this is incredibly significant to the value exchange for Australian producers. However, these concerns are significantly offset as sub-quota content appears to be exclusively broadcast on those multi-channels that are offered by regional and remote commercial television broadcasters, as detailed above. In 2017, regional and remote licensees did not broadcast reduced sub-quota content compared to metropolitan networks.

Contrary to SPA's view, Free TV Australia, as part of its consultation comments, claimed that the preferred deeming provision option would have no impact on content producers, asserting that multi-channel content is exclusively produced or commissioned by metropolitan networks. Furthermore, there are some minor measures that industry could take to achieve technical compliance, such as simulcasting content, as in 2018, or scheduling unnecessary repeats which would result in no new content being commissioned. The Department agrees with Free TV Australia's

assessment that these industry measures to achieve technical compliance are unlikely to provide any suitable public policy benefit to regional and remote audiences.

Implementation and Evaluation

The preferred option will be implemented by amending the BSA to insert the deeming provision within the same part of the BSA as the multi-channel obligation, Part 9. The deeming provision will apply to all regional and remote television licensees.

The Department's view is that the market realities facing regional and remote commercial television licensees are not going away, and acknowledges that the effective obligation to carry multi-channels in order to meet content quotas has not remained aligned with the challenging market. This measure provides industry with immediate regulatory relief from the long-standing issues identified in the RIS. As such, it should be brought forward immediately.

The Government will be reviewing the existing Australian content quota obligations that apply to commercial television broadcasters as part of its response to the ACCC's Digital Platforms Inquiry (DPI). In its report, the ACCC recommended that the Government commence a process to implement a harmonised media regulatory framework. On 23 December 2019, the Government released its response to and implementation roadmap for this recommendation. The response committed the Government to commencing a staged process to reform media regulation towards an end state of a platform-neutral regulatory framework covering both the online and offline delivery of media content to Australian consumers. The policy and regulatory frameworks for Australian content production, among other things, will be one of the Government considers as part of its harmonisation efforts.

As part of Government's consideration of the Australian content framework, it will consider the Australian content obligations that apply to commercial television broadcasters. As an initial step, Screen Australia and ACMA have been asked to co-author an options paper that will look at how to best support Australian stories on our screens in a modern, multi-platform environment. This paper was released on 15 April for a two month consultation. This process will include consideration of the Australian content transmission quotas, including the multi-channel quota. As a result, the option proposed by this RIS will be evaluated, likely focusing on the implementation, future necessity and real-world impact that the measure has had on the key stakeholders, including the significance for screen producers.

The Government keeps the Australian content regulatory framework under constant consideration, and monitors the ongoing effectiveness of the transmission quotas in a number of ways, including ongoing compliance reporting. The Department also keeps across industry views about the Australian content framework to ensure that the regulations remain relevant and continue to have in their intended outcomes.