

ABC submission on the Broadcasting Services ("Broadcasting Service" Definition—Exclusion) Determination 2019

September 2022

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to contribute to the consultation being undertaken by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on the Broadcasting Services ("Broadcasting Service" Definition—Exclusion) Determination 2019 (**Determination**) ahead of its scheduled expiry on 18 September 2022.

When the predecessor to the Determination (known as the "Alston determination") was made in 2000, its purpose was to ensure that the development of the nascent market for the delivery of content over IP was not constrained by legislation that did not foresee the advent of Internet technology. This was achieved by specifying in the instrument that a certain class of services is not included in the definition of 'broadcasting service' and therefore not subject to the regulatory framework of the *Broadcasting Services Act 1992* applicable to broadcasting services. Consequently, online services have not been regulated in Australia in the same manner as broadcasting services.

In the 22 years since the original determination was made, the market for Internet delivery of live streamed television and radio programs has matured. However, allowing the Determination to expire without the provision of a comprehensive legislative framework that underpins and encompasses the converged media environment would remove the certainty that the current definition of 'broadcasting service' provides.

Furthermore, as the Determination affects the meaning of 'broadcast' in the *Copyright Act 1968*, allowing it to expire without replacement would also have a significant effect on the many and various content licensing arrangements that rely on the current legislative distinction between broadcasting and online services that the Determination provides.

As acknowledged in the consultation paper, the Determination "is a key part of the current regulatory framework for media services in Australia".

The ABC supports the proposal put forward in the consultation paper to remake the Determination in identical terms and considers that a period of at least five years would be the more appropriate duration for the new instrument. Ideally, the operation of the new instrument would cover the period of time required to develop, enact and implement the broader media reform referred to in the consultation paper that will eventually make the Determination redundant.