


Media Reform—Online Safety, Media and Platforms Division
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

ACMA2022/61-13


Dear Ms Sullivan

Proposed remaking of the *Broadcasting Services (“Broadcasting Service” Definition—Exclusion) Determination 2019*

The Australian Communications and Media Authority (ACMA) welcomes the opportunity to comment on the government’s consultation on the *Broadcasting Services (“Broadcasting Service” Definition—Exclusion) Determination 2019* (the Determination).

The ACMA is particularly pleased that the paper initiates a broader program of work to modernise and harmonise media regulation to establish a consistent regulatory framework for audio-visual and audio services. In this context, we support the proposal to remake the Determination in identical terms to the current determination to provide certainty and stability in the interim period.

The existing broadcasting framework in the *Broadcasting Services Act 1992* (the BSA) is underpinned by licensing arrangements and a co-regulatory regime based on codes of practice. In its current form, this framework is not readily adaptable to online services (i.e. live streaming services) that might fall within the definition of broadcasting service, if the Determination was to lapse.

As the consultation paper explains, a number of challenges are likely to arise under the current licensing scheme and in relation to the development and operation of industry codes that are an important feature of the co-regulatory model. Consideration would also need to be given to the application of other aspects of content regulation that are not covered by codes but are set out in legislation or regulatory instruments, such as content quotas, captioning, and associated reporting obligations.

We consider it would be prudent to provide for the new Determination to apply for a period of time sufficient to enable required legislative reform and associated consultation to modernise the current regulatory framework, so that it is fit for the digital age.

In the interim, while legislative reform is being developed, we would strongly encourage broadcasters and other content providers to consider applying consistent content safeguards across their platforms, on a voluntary basis. This is aligned with the views expressed by the ACMA in our recently published position paper [What Audiences Want – Audience Expectations for Content Safeguards](#) which noted that, from an audience perspective, distinctions between platforms that distribute ‘like’ content are diminishing. We also know

that Australians are increasingly accessing content online—in 2021, for the first time more Australians watched video content online than via traditional broadcast TV, with 58% viewing content provided by online subscription services in a given week, compared to 54% who had watched live or recorded free-to-air television.

In light of these shifts, we expect industry to take a proactive approach to the content that it makes available to audiences, by seeking to understand and respond to audience expectations for appropriate standards and protections. We consider there is an urgent need for broadcasters to apply content rules consistently across their multiple delivery platforms so that all their audiences are afforded similar protections.

We look forward to engaging with the government on the foreshadowed and significant reforms which intersect with the ACMA's current regulatory activities and responsibilities and may have broader implications for our remit.

Yours sincerely



Nerida O'Loughlin PSM

7 September 2022