

**ABC Response to the
Government's Media Reform
Green Paper**

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1. Executive Summary

- The Green Paper has served as a catalyst for an overdue discussion of the policy settings needed to support sustainable future pathways for the Australian television and screen industry and the public-policy outcomes it delivers.
- The Green Paper is built on several legitimate public-policy objectives, particularly promoting audiences' access to Australian culture and stories and to news and current affairs programs that keeps citizens informed and strengthen Australian democracy. To do this, it seeks to support the sustainability of the free-to-air broadcasting industry, including the national broadcasters, and to strengthen requirements and incentives to support Australian television content production. In addition, it proposes to achieve a new “digital dividend” through the reallocation of UHF spectrum to support demand for mobile broadband services.
- While the ABC supports these audience and industry objectives, it does not believe that a number of the proposals set out in the Green Paper represent viable means of achieving them. Accordingly, the Corporation has taken up the invitation in the Green Paper to propose other means of ensuring a sustainable Australian broadcast television sector.

Environmental context

- The Green Paper responds to the ongoing transition from broadcast to IP-delivered audiovisual media services. Audiences for television services are declining while use of video-on-demand (VOD) services is growing.
- Nonetheless, free-to-air television retains significant audiences. Each week, 75% of Australians watch it for an average of 21.3 hours. In contrast, VOD viewers, many of whom are also television viewers, watch 12.4 hours per week. There are demographic and geographic variations within this: younger Australians are noticeably lighter television viewers, while rural Australians are considerably less likely to use VOD services.
- On current trends, the ABC does not expect the use of broadcaster VOD (BVOD) services to exceed broadcast reach before the end of the decade.
- At the same time, internet access is far from universal. In 2020, 2.5 million Australians are estimated to have remained offline and those without digital access were disproportionately likely to be older, from lower income quintiles, unemployed, less educated and/or living in rural areas.
- There is evidence that many non-users do not see a need to be connected to the internet. Many of these people are likely to remain users of television for the foreseeable future.

ABC digital television services

- As the national public broadcaster, the ABC aims to ensure that all Australians will always have free access to the same baseline suite of comprehensive, quality media services.
- The ABC employs an extensive terrestrial television network of nearly 500 transmitters across the country to reach over 98.6% of Australians. Where terrestrial coverage is impractical, its services are available via Viewer Access Satellite Television (VAST).
- The ABC uses its 7 MHz television multiplex to deliver five services over four channels. It offers a version of each service in standard definition (SD) format using MPEG-2 compression so they are viewable by all Australians, regardless of the age of their television set.
- The ABC also broadcasts 10 radio services within its television multiplex, including retransmissions of DAB+ digital radio services that are only available in the capital cities. This makes these additional services available to Australians in regional, rural and remote Australia.

Spectrum

- The Green Paper sets out a proposal to significantly change free-to-air television broadcasters' use of spectrum. Under this Green Paper model, broadcasters would shift to delivering their services through shared multiplexes, reducing the number of 7 MHz channels allocated for broadcasting. This would free up 84 MHz of UHF spectrum in the 600 MHz band that would then be "restacked" and auctioned to the telecommunications sector for mobile broadband use. As proposed, the restack would begin in mid-2024 and the process would be complete by 1 January 2026. With that timeline, it would be achieved with the current DVB-T broadcasting standard and wider use of MPEG-4 compression.
- The ABC has participated in industry engineering forums convened by Free TV Australia to consider the Green Paper model. As a result of this work, it is clear that the Green Paper model is based on flawed assumptions and does not represent a viable means of ensuring a sustainable television sector. The Corporation's concerns about the Green Paper model include:
 - The model will require broadcasters to reduce the number and/or quality of the channels that they offer audiences using the reduced spectrum footprint, as MPEG-4 does not provide sufficient efficiency to offset proposed spectrum reductions.
 - The proposed process for implementing the model will make the spectrum that is available to the ABC and SBS subject to commercial broadcasters' decisions, rather a result of Government policy decisions. This does not represent good public policy.
 - Multiplex-sharing raises a number of issues of equity and practicality. In particular, inequitable allocations of spectrum could force broadcasters to further reduce the number and/or quality of the services they offer to Australians.
 - The Green Paper model removes any future growth path for free-to-air television. It will prevent broadcasters from offering television services in higher-resolution formats to meet audiences' expectations and remain competitive with online platforms.
 - The Green Paper contains no commitment to the Government meeting the potentially high costs of a transition to multiplex sharing, including costs associated with long-term transmission contracts.
 - The proposed timeline is unrealistically rapid, particularly as the telecommunications sector is not showing any strong appetite for the rapid clearance of the 600 MHz band.

There is a risk that proceeding quickly will result in a spectrum auction that lacks competitive tension and results in a smaller return to the Australian taxpayer.

- The Green Paper model does not provide a viable forward path for free-to-air television. It has however prompted an important policy debate. The ABC would welcome a consultative process, involving government and the national and commercial broadcasters, to agree the elements of a sustainable future for television for the next decade and beyond.
- The Corporation has proposed a set of principles that should be applied to developing a future roadmap for television. These include maintaining the Australian television broadcasting system and the distinct roles that national and commercial broadcasters play in it, equitable distribution of spectrum in each broadcast market and ensuring consistent access to ABC services for all Australians across metropolitan, regional and remote areas.
- Any future roadmap should take account of a number of potential elements, including: upgrading terrestrial broadcasting to the next generation of standards, DVB-T2 transmission and HEVC compression; supporting hybrid viewing experiences, including HbbTV (Hybrid Broadcast Broadband TV) and IP delivery; and exploring opportunities to reduce transmission costs, including through direct-to-home (DTH) satellite delivery.

Strengthening Australian Content

Create Australian Screen Trust (CAST)

- The ABC supports the creation of CAST and the allocation of funds for investment in Australian content. However, the lack of clarity around how it would operate, who the beneficiaries might be, and the timing and value of the fund make it difficult to provide meaningful feedback.
- The ABC does not endorse splitting the fund into two pools and questions whether projects expected to generate commercial return require funding support.
- The ABC strongly believes that content that is not available for free to the Australian people should not be the beneficiary of public funds. Alternatively, if content commissioned by a subscription service receives a proportion of its funding from public sources, free access for all Australians should be provided in the form of a free-access window on a free-to-air broadcaster who will give the program appropriate prominence, following a reasonable holdback period.

Public Interest News Gathering (PING) Trust

- The ABC welcomes the proposal to allocate spectrum sale proceeds to public interest news journalism, focusing on the needs of regional, rural and remote areas of Australia. It would only seek to access PING Trust funding that it could usefully apply to further address the needs of audiences in underserved markets in relation to regional areas or concerning specialist subject matter.

Australian content obligations for SVOD and AVOD services

- The ABC supports measures that would sustain and grow the Australian production sector and believes that content commissioners and audiences benefit from a thriving independent sector. It sees merit in the idea that major international SVOD services should contribute to Australian content production.

- The ABC and Free TV Australia engaged Oliver & Ohlbaum Associates (O&O) to provide advice on the possible means of securing genuinely Australian content of high quality and cultural value.
- O&O's work examined international approaches to VOD regulation to support local content in a range of jurisdictions. It identified three common policy models: quotas on share of local content in VOD catalogues, direct investment in production, and indirect investment via a central fund used to support local content production.
- The research made clear that different policy models are suited to delivering specific policy outcomes and that there are critical issues of policy design and risks to consider regardless of the type of regulatory intervention. Any new regulatory regime adopted in Australia would need to strive to maintain current policy settings and ensure that quality and distinctive Australian content is universally and freely available to all Australians.
- The ABC's assessment of the alternative models evaluated in the O&O report is that the indirect investment model minimises the risk of unintended negative consequences and is likely to be the most effective means of meeting the Government's cultural policy objectives.
- In the current market conditions, where crew shortages and lack of equipment are increasing production costs, there is a risk that the introduction of SVOD content obligations may lead to further inflationary pressures, and result in further challenges for broadcasters and producers seeking to deliver locally tailored content.
- The ABC is concerned with Screen Australia's recent support for television productions that are partnered with international VOD services. With a finite total funding pool, allowing productions for VOD services to access public funds reduces the availability of such funds to Australian broadcasters and, with it, their capacity to commission new content. This includes the national broadcasters, whose ability to serve as key cultural commissioners is effectively diminished. The ABC deems such access to be of critical importance.

Imposing Australian content obligations on the national broadcasters

- The Government proposes legislating an explicit requirement for the national broadcasters to provide new Australian programming.
- This is unnecessary. The ABC's Charter responsibilities have proven to be an effective policy mechanism for enabling the production and availability of Australian content. In the absence of any quota, the Corporation is already a major investor in Australian content and a key partner to Australia's independent production sector.
- Further, the imposition of an explicit content obligation, particularly in the form of an expenditure obligation, risks affecting the ABC's operational independence as it will constrain the ability of the ABC Board and management to flexibly allocate funds to best meet the Corporation's Charter remit in a changing media environment.
- Likewise, the Green Paper's proposal that the Corporation report to the ACMA on its Australian content production breaks established reporting lines and is inconsistent with established policy approaches that preserve its independence.
- The ABC proposes an alternative approach. Publishing forward commissioning commitments in key content genres at the beginning of each triennial funding period would allow the Corporation to adjust expenditure in line with its budget while providing clear signals to potential production partners about its intentions.

- In the interests of transparency, this could be accompanied by publishing more detailed information on its commissioning activities in the ABC Annual Report in line with information regularly provided to Senate Estimates.
- The ABC proposes an additional appropriation of \$30 million per annum over the next three years to support Australian content production. This would enable it to commission 36 hours of high-quality Australian drama, premium factual and children’s content each year, as well as commissioning 30 hours of new and original Australian arts, music and specialist programming.
- The ABC’s ability to meet expenditure commitments of this kind and fulfil its role as the national broadcaster depends on its ability to leverage funding from external sources. The Corporation proposes that Screen Australia, and any new funds that are created, be required to introduce guidelines mandating a minimum allocation of funds for the public broadcasters.

Other means of strengthening broadcasting: Prominence

- The ABC believes that there is an urgent need for regulatory guarantees of prominence for broadcasters’ services on Smart TVs and other connected-TV platforms, which are becoming a new type of gatekeeper for Australian media services and content.
- Both the presence and prominence of app icons on smart TVs and aggregated search facilities on connected-TV devices can shape viewers’ use of services. They represent a potential public-policy risk, as they may make it more difficult to discover Australian content, including ABC programs for which audiences have already paid.
- The ABC would strongly support the introduction of regulatory mechanisms to ensure the presence and prominence of free-to-air broadcasters’ services on connected-TV platforms and suggests a body such as the ACMA be given a general power to regulate for prominence. The Corporation recommends an approach developed by the UK regulator Ofcom as a possible template for such mechanisms.

2. Introduction

The Australian Broadcasting Corporation welcomes the opportunity to comment on the Australian Government’s Media Reform Green Paper, “Modernising television regulation in Australia”.

For several decades, media in Australia have been undergoing a transition from analogue formats to on-demand services delivered over IP networks. In the case of television, audiences’ use of video-on-demand (VOD) technologies has grown steadily since the launch of ABC iview in 2008. It began to expand significantly in 2015, when subscription video-on-demand (SVOD) services launched in Australia. Widespread home isolation as a result of the COVID-19 pandemic has further accelerated the adoption of VOD services since March 2020.

The ABC, like other broadcasters, continues to adapt the services it provides to Australians to respond effectively to this changing environment. As one of the largest commissioners of Australian content and a leading source of independent news and information, the Corporation seeks to meet the needs of broadcast and online audiences alike.

However, as an industry, television has continued to operate with broadcast technologies and standards that were introduced at the turn of the century. A discussion about policy settings that can support sustainable future pathways for the Australian television industry and the public-policy outcomes it delivers is overdue. While the ABC does not agree with a number of the specific proposals it contains, the Green Paper has served as a catalyst for such discussions.

The Green Paper is built on several legitimate public-policy objectives. In particular, it aims to promote Australian audiences’ access to Australian culture and stories and to news and current affairs programming that keeps citizens informed and strengthens our democracy. To this end, it seeks to support the sustainability of the free-to-air broadcasting industry, including the national broadcasters, who play an important role in making such content freely available. Likewise, it seeks to strengthen requirements and incentives to support Australian television content production. In addition, it seeks to achieve a new “digital dividend” through the reallocation of UHF spectrum to support Australians’ growing demand for mobile broadband services.

The ABC supports these audience and industry objectives. However, as outlined below, it does not believe that a number of the proposals set out in the Green Paper represent viable means of achieving them. In particular, the spectrum changes outlined in the Paper cannot be achieved in the proposed timeframe and are based on flawed assumptions; they will result in audiences receiving access to fewer or lower-quality channels and are more likely to weaken the broadcasting industry than to ensure its sustainability. Likewise, the Corporation is concerned that the proposals in relation to Australian content obligations for the national broadcasters are unnecessary and risk interfering with its operational independence.

The ABC notes that the Green Paper invites other proposals that would contribute to the objective of a sustainable Australian broadcast television sector. In relation to questions of spectrum, it proposes an alternative process based on consultation between government and the broadcasting industry to determine a sustainable and equitable roadmap for television for the next decade and beyond. It also proposes the introduction of measures to strengthen the prominence and discoverability of broadcasters’ content and services on connected-TV devices, which are vitally important to the sustainability of the sector.

3. Environmental context

As the Green Paper identifies, the Australian audiovisual media industries are in the midst of a period of change. Australians' use of free-to-air television is declining, both in terms of the number of people viewing television services each week and the time they spend watching. Where weekly television viewing in the mainland capital cities in 2010 was 90%, by 2020 it had fallen to 73%.¹ At the same time, their use of VOD services and other streaming video delivered over IP networks has accelerated rapidly since the arrival in 2015 of SVOD services offering on-demand access to large content libraries. In 2020, 64% of Australians reported having used a VOD service in the previous week.² The ABC anticipates that the use of BVOD services will exceed broadcast reach around by the end of the decade.

Moreover, as all VOD services are delivered over the same IP platforms and to the same devices, they create a new competitive space in which services supported by a variety of business models compete directly for viewers' attention. In 2021, the Australian VOD market is crowded, and viewers can choose between more than a dozen options, including global SVOD and advertising-based VOD (AVOD) services, domestic SVOD services and broadcaster VOD (BVOD) offerings from the free-to-air broadcasters, including ABC iview. The VOD audience is fragmented, with most VOD users watching programs across multiple services—the average in 2020 was 2.7.³

Where VOD viewing was initially a “small screen” activity primarily carried out on laptops and tablets, it has now become a “large screen” activity that increasingly takes place in the same household contexts as traditional television viewing. In 2020, ABC research found that 75% of VOD consumption was through a smart TV or a TV-connected device, such as an Apple TV box or a Google Chromecast.⁴ These devices mediate access to programs and are becoming a new type of gatekeeper for Australian media services and content.

It is timely to consider, as the Green Paper seeks to do, how media policy settings should be adjusted to take account of these changes. At the same time, it is important that those settings reflect the reality of the current situation.

Free-to-air television retains significant audiences

Despite continuing declines in viewer numbers, free-to-air television is and will remain a popular medium. Three-quarters (75%) of the Australian population watches broadcast television each week, viewing an average of 21.3 hours of programming.⁵ By comparison, VOD consumers, many of whom are also television viewers, watch an average of 12.4 hours per week.⁶

It is also clear that Australians' VOD use is far from uniform. Where 68% of respondents in metropolitan environments reported having watched a VOD service in the previous week, 60% had done so in regional cities and towns and only 45% in rural areas.⁷

¹ OzTAM. (Five-city metro) Consolidated 28 data.

² ABC Audience Data and Insights. “ABC VOD Study”, August 2020.

³ ABC VOD Study.

⁴ ABC VOD Study.

⁵ OzTAM. (Five-city metro) Consolidated 28 data, Average weekly time spent.

⁶ ABC VOD Study.

⁷ ABC VOD Study.

Similarly, there is a significant age dimension to VOD use. Not only are younger demographics more likely than their older counterparts to use VOD services, but there is a stark difference in the amount of time they spend doing so. ABC research found that 18–54-year-olds are noticeably lighter consumers of video content, watching an average of 14.0 hours of VOD content each week and only 15.1 hours of television.⁸ In contrast, Australians aged 55 and over watched an average of 32.6 hours of broadcast television and only 8.5 hours from VOD services.

Internet access is far from universal

A significant number of Australians are unable to use streaming video services as they do not have access to the internet at home. There is a high likelihood that most of these people do and will continue to use free-to-air broadcast television to meet their news and entertainment needs. As the Green Paper notes, these include “older Australians, the less affluent and those in regional and remote areas are less likely to use alternatives to free to air” (p.3).

According to the 2020 Australian Digital Inclusion Index (ADII) report, more than 2.5 million Australians remained offline in 2020.⁹ Further, the report notes that rate of increase of the ADII Access score, which reflects frequency of use and other measures of internet access, had slowed to 0.6% in 2020.

The ADII has consistently highlighted the existence of a “digital divide” in Australia, as those with no or poor home access to the internet are disproportionately likely to be older, from lower income quintiles, unemployed, less educated and/or living in rural areas. Likewise, Indigenous Australians and people with disabilities are less likely to be “digitally included” than the wider population, as are the more than four million Australians who only access the internet through a mobile connection (i.e. a mobile phone or mobile broadband device with a data allowance).¹⁰

This is not inconsistent with the take-up of the NBN. The initial roll-out of the national network to all premises was completed in September 2020.¹¹ However, as of March 2021, only 68% (8.1 million) of 11.9 million premises passed by the NBN had activated those connections.¹² Moreover, the NBN Corporate Plan anticipates NBN connections of 73–75% in 2024.¹³ In remote Australia, where take-up of the NBN Sky Muster satellite service is roughly 25% (about 96,000 premises),¹⁴ most people have either mobile-only access or no internet access at all.

The 2020 ADII report noted research suggesting that many non-users may not see a need to be connected to the internet.¹⁵ If this is correct, it suggests that a non-trivial minority of Australians,

⁸ ABC VOD Study.

⁹ Julian Thomas and others. “Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2020”, Report, 2020, https://digitalinclusionindex.org.au/wp-content/uploads/2020/10/TLS_ADII_Report-2020_WebU.pdf, p.6.

¹⁰ Thomas et al. “Measuring Australia’s Digital Divide”, p.7

¹¹ NBN. “Initial build complete, NBN Co announces next phase of network investment to meet future demand”, Media release, 23 September 2020, <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/Initial-build-complete-NBNCo-announces-next-phase>, accessed 4 May 2021.

¹² NBN. <https://www.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-march-2021>, accessed 4 May 2021.

¹³ NBN Co. “NBN Co Corporate Plan 2021”, September 2020, p.53.

¹⁴ Subscriber numbers reported in ACCC. “NBN Wholesale Market Indicators Report: December quarter 2020 report”, 19 February 2021, Table 1. Total addressable market for NBN Satellite services of approximately 400,000 premises from “NBN Co Corporate Plan 2021”, p.41.

¹⁵ Thomas et al. “Measuring Australia’s Digital Divide”, p.13.

including many who are relatively disadvantaged, will continue not to use internet services for the foreseeable future.

Broadcast television will continue to be important over and beyond the coming decade

While current trends suggest that the dominance of free-to-air television as an information and entertainment medium may be coming to an end—and has likely already passed for some segments of the Australian population—it nonetheless remains significant and can be expected to be so for the foreseeable future.

Accordingly, policy and regulatory settings should reflect a hybrid media environment in which Australians use a mix of broadcast and IP services to fulfil their information and entertainment needs. Importantly, they should ensure free-to-air television retains future pathways that allow it to continue to develop services that meet the needs of Australian audiences.

The ABC anticipates continuing to provide television services for Australians into the next decade and beyond. At the same time, the Corporation has been a constant innovator in the Australian media and delivers a range of digital services, including Australia's first VOD service, ABC iview, to ensure that it is able to meet the needs and expectations of audiences on the platforms of their choosing.

4. ABC digital television services

The ABC's contribution as a national public broadcaster is, at least in part, to be Australia's foundation media service. Whether audiences are living in a densely populated coastal city, such as Sydney or Melbourne, that can sustain a wealth of media options or a small regional town with very few, the Corporation seeks to ensure that they will always have free access to the same baseline suite of comprehensive, quality ABC services.

Each week, an average 10.7 million Australians watch ABC television services.¹⁶ In 2020, Australians turned to the ABC in record numbers. The Corporation's primary channel, ABC Television, was the only free-to-air network to experience significant growth in reach in 2020 (up 1.4 percentage points on 2019 to 46.9%).¹⁷ During the year, the ABC News channel achieved its highest-ever monthly reach of 6.4 million viewers. The dedicated children's channel ABC Kids is the leading children's service, achieving a share of 52.3% among four-year-olds.¹⁸ ABC Kids is also the first-ranked service among 5–12-year-olds during the day, with older-children's channel ABC ME ranked second.¹⁹

The ABC uses its 7 MHz television multiplex to deliver the following television services to the Australian public:

¹⁶ OzTAM and Regional TAM (excluding spill) Consolidated 28 Data, Weeks 1–13 2021.

¹⁷ OzTAM. (Five-city metro) Consolidated 28 data, Average weekly reach percentage, total people.

¹⁸ OzTAM. (Five-city metro) Consolidated 28 data, 5am–7.30pm.

¹⁹ OzTAM. (Five-city metro) Consolidated 28 data, All-day.

LCN	Channel name	Resolution	Compression
21	ABC TV	SD	MPEG-2
20	ABC TV HD	1080i HD	MPEG-4
22	ABC Kids/ABC TV Plus	SD	MPEG-2
23	ABC ME	SD	MPEG-2
24	ABC News	SD	MPEG-2

With the exception of ABC TV HD, these services are transmitted in standard definition (SD) format using MPEG-2 compression. ABC TV HD is delivered in 1080i high definition (HD) format using MPEG-4 compression. This ensures that a version of each of the Corporation's services is viewable by all Australians, regardless of the age of their television set.

The ABC provides audio description services for all of its television channels. This requires the Corporation to transmit an additional audio streams alongside each channel.

In addition, the ABC broadcasts 10 radio services within its television multiplex, providing retransmissions of five DAB+ digital radio services and its five analogue services:

LCN	Channel name	Retransmission
25	ABC Radio	analogue
26	ABC RN	analogue
27	ABC Classic	analogue
28	triple j	analogue
29	triple j Unearthed	DAB+ digital radio
200	Double J	DAB+ digital radio
201	ABC Jazz	DAB+ digital radio
202	ABC KIDS listen	DAB+ digital radio
203	ABC Country	DAB+ digital radio
204	ABC News on Radio	analogue

The Corporation regards the provision of its digital radio services via television as particularly important, as DAB+ digital radio broadcasting is only available in the capital cities. Transmission via television makes these additional services available to Australians in regional, rural and remote Australia. Some 18% of ABC radio listeners use radio-over-television each week, including a greater proportion of younger listeners.²⁰

Consistent with the obligation to make its services available to all Australians, the ABC operates an extensive network of terrestrial television services across the country serving over 98.6% of Australians. This consists of 420 transmission services under contract with BAI Communications and an additional 76 transmission services under contract with RBAH. In some areas, the ABC is the only service delivered by terrestrial broadcast. Viewers who can't receive ABC television services through terrestrial broadcasts are able to access them by free, direct-to-home satellite access via VAST.

The effort the Corporation takes to reach Australia's population in this way is a reflection of geography and settlement patterns. Australians are clustered on the coast, particularly in the east. The ABC can reach more than 96% of the population with only 127 broadcast towers. However,

²⁰ ABC Audience Data and Insights. "ABC Audio Survey: Radio, Podcast & Music Streaming", August 2020.

it takes a further 293 towers to deliver television to the next 2.6% of the population. Most of the remainder are served by satellite. These patterns are likewise reflected in the Corporation's per-capita transmission costs: when compared with major metropolitan markets, broadcasting to regional and remote Australia costs significantly more per head and will represent an increasingly inefficient use of resources as terrestrial audiences decline.

5. Spectrum

Chapters three and four of the Green Paper set out a proposal for significantly changing the use of spectrum by free-to-air television broadcasters. While the elements are presented as possible, indicative or conditional, when taken together they amount to a single, concrete proposal. Under this Green Paper model, commercial broadcasters would be offered incentives to agree to deliver their services through shared multiplexes, rather than each operating a separate multiplex, as they currently do (Green Paper, p.17). Assuming commercial broadcasters agree, the national broadcasters would then be required to do likewise (p.18). This would reduce the number of 7 MHz channels allocated in each broadcast area from six to three, freeing up at least 84 MHz of UHF spectrum in the 600 MHz band that would then be "restacked" and auctioned to the telecommunications sector for other uses, most likely 5G mobile broadband (p.21).

The Green Paper proposes an aggressive timetable for this change, commencing the restack in mid-2024 and completing the process by 1 January 2026 (p.40). Such a timeline would not allow for the introduction of new broadcasting or compression technologies, meaning that it would need to be achieved with the current DVB-T broadcasting standard and wider use of MPEG-4 compression. The Green Paper asserts that this would nonetheless allow broadcasters to "maintain service levels at close to current levels, with a minimal impact on viewers" (p.5).

The ABC has participated in industry engineering forums convened by Free TV Australia to consider the model proposed in the Green Paper. These have highlighted a range of difficulties with the model, which are discussed below. The Corporation understands that they are also set out in greater technical detail in the Free TV Australia submission. In particular, the model rests on flawed technical assumptions and will require broadcasters to reduce the number and/or quality of the channels that they offer audiences using the reduced spectrum footprint. The proposal will inhibit the industry's ability to provide better-quality services that will allow free-to-air television to remain relevant and competitive into the future.

While the ABC is willing to assist with the Government's objective of shifting spectrum in the 600 MHz band to alternative uses, the findings of the engineering group indicate that the Green Paper model is not the best means of doing so and that a longer a timeline will be required to achieve it without undermining the public-policy benefits delivered by broadcast television. While broadcast television audiences remain significant and there is no alternative method for universal delivery of such services across the nation, free-to-air television represents the highest-value use of the 600MHz band.

5.1. Concerns about the Green Paper model

5.1.1. MPEG-4 does not provide sufficient efficiency to offset proposed spectrum reductions

Each free-to-air television broadcaster currently delivers its services in a multiplex that occupies a single 7MHz broadcast channel. As Australian television is currently broadcast using the DVB-T

transmission standard, each multiplex has a bandwidth “budget” of 23 Mbps for carrying content channels and associated system information.

Under multiplex sharing, each broadcaster will have access to part of a 7 MHz broadcast channel, which will reduce the amount of bandwidth it has available to deliver services to audiences. As discussed below, the size of this reduction will depend on the way in which the spectrum is divided between broadcasters. The available bandwidth could be as little as half of current levels, if two broadcasters were required to share a single multiplex, or as high as two-thirds, if three broadcasters shared two multiplexes; if five broadcasters were to equitably share the three proposed multiplexes, each would have access to 60% of their current bandwidth.

The Green Paper model proposes switching from the mix of MPEG-2 and MPEG-4 compression that broadcasters currently use to solely using MPEG-4. The Green Paper claims that, using this approach, “the content offering of the broadcasters on three multiplexes would remain at similar levels” (p.24). However, analyses by industry engineers indicate that an MPEG-4-only model will not deliver the comparative efficiency required to offset the reduction in bandwidth that will result from multiplex sharing. Under the Green Paper model, broadcasters would need to reduce the number and/or quality of services that they offer to audiences.

A cumulative reduction in the number of channels across broadcasters will likely affect the overall value proposition of broadcast television in the minds of viewers. The alternative of maintaining channels by reducing broadcast quality—either by converting high-definition (HD) channels to standard definition (SD) or by reducing bitrates, which sacrifices picture and motion quality—would likewise reduce the apparent quality of broadcast TV services when compared with streaming alternatives, such as SVOD services, some of which already offer content in high-resolution formats like 4K ultra-high-definition (UHD).

There are a number of reasons for this:

Broadcasters have already realised some of the efficiency benefits of MPEG-4

No broadcaster currently transmits their services using MPEG-2 compression alone. Instead, all broadcasters transmit some of their channels using MPEG-4, meaning that a large proportion of potential efficiency gains from a shift to MPEG-4 have already been realised. In this regard, the ABC is slightly unusual, as it uses MPEG-2 for all channels except ABC TV HD in order to ensure that Australians can view all of its services. By comparison, SBS and the commercial broadcasters all already use MPEG-4 for multiple channels. Overall, nearly half of all the channels broadcast today are in MPEG-4.

As some of the HD channels transmitted in MPEG-4, such as ABC TV HD, are simulcast in SD in MPEG-2, broadcasters would be able to achieve some efficiencies by removing these simulcast services, although there would be limits to these gains.

MPEG-4 does not provide a sufficient efficiency benefit

MPEG-4 encoding is roughly 30–35% more efficient than MPEG-2. This suggests that, if a multiplex entirely encoded using MPEG-2 were to be instead use MPEG-4 compression, it could be carried without loss of services using 65–70% of the bandwidth of a shared 7 MHz DVB-T multiplex. This would be at the upper end of the capacity that might be made available to some broadcasters under the Green Paper model; it would not be possible if all broadcasters received an equitable 60% of current bandwidth or for any broadcasters allocated only 50% of current bandwidth.

Moreover, as described above, no broadcaster currently operates a solely MPEG-2 multiplex, so the conversion benefit would not be of this magnitude, meaning that even more capacity would be required to maintain broadcasters' current services.

By way of illustration, broadcasters currently collectively transmit 27 unique video channels (18 SD and nine HD channels) and 17 radio services, as well as seven MPEG-2 SD simulcasts of HD services. If the five broadcasters were to share three 7 MHz channels, in one scenario, a shift to all-MPEG-4 delivery might allow them to collectively operate 10 HD, 10 SD and four radio channels, which would result in a loss of audience amenity of seven video services and 13 audio services—although, as described below, other issues likely to affect multiplex sharing suggest that this may be an overly-optimistic assessment of the capacity of the spectrum.

In addition, as described below, it also would not allow broadcasters to improve the video quality of their offerings by broadcasting all services in 1080i HD or using higher-quality formats, such as high-dynamic range (HDR) HD or 4K UHD television.

Shared multiplexes may lose some of the current efficiency benefits of statistical multiplexing

Broadcasters' current channel line-ups benefit from the use of statistical multiplexing, which provides efficiencies relative to the number of channels transmitted within a 7 MHz multiplex. In effect, it allows broadcasters to carry more channels than would be possible without it.

Statistical multiplexing depends on the fact that the bit rate required to carry a compressed video stream without a perceptual loss of quality varies with the amount of change occurring between frames; for example, vision of a traditional newsreader in front of a static background can be transmitted at considerably lower bit rate than footage of a fast-moving sports match or a constantly changing scene, such as rolling waves at sea. Statistical multiplexing exploits these differences, dynamically adjusting the compression applied to individual channels within the broadcast multiplex to minimise the total bandwidth required, as well as ensuring adequate bandwidth is allocated to content that requires a higher bit rate. This works well in a multiplex with a mix of channels of different genres, but not where two or more competing networks are broadcasting fast-moving sports.

Shared multiplexes will need to employ statistical multiplexing and achieve comparable efficiencies if broadcasters are to maintain equivalent services. For the broadcasters to share capacity and employ statistical multiplexing, mechanisms would need to be implemented to ensure that, at times when multiple broadcasters are carrying competing content with higher bandwidth requirements, all the broadcasters are treated equally and can provide equally high-quality services. This mechanism should also allow the broadcasters to be able to change their mix of services in the future without affecting the services of other broadcasters.

However, there is a significant risk that broadcasters will not accept arrangements that potentially allocate higher bit rates to competitors' channels at the expense of their own and that, as a result, some or all of the efficiency benefits of statistical multiplexing may not be realisable in shared multiplexing arrangements.

Broadcasters are already transitioning to MPEG-4-only multiplexes

Finally, it is important to note that broadcasters are already in the process of shifting to MPEG-4-only delivery to provide more HD services as a means of ensuring their services can meet current and anticipated viewer expectations.

Increasingly, Australians are purchasing television sets capable of displaying 4K and, in some cases, 8K UHD resolutions, while SVOD services offer programming in 1080p HD and 4K UHD resolutions. In comparison to these higher-resolution formats, current SD television broadcasts offer a noticeably poorer viewer experience. If free-to-air television is to maintain parity with online platforms, it is imperative that it upgrade its baseline resolution to 1080i HD. This requires moving to MPEG-4 compression.

To date, broadcasters have been unwilling to abandon MPEG-2 out of a desire not to leave viewers whose receivers cannot decode MPEG-4 without access to television services. This is particularly important for the ABC as a national broadcaster with a responsibility to ensure that all Australians have access to the baseline of services it provides. The Corporation delivers all of its channels using MPEG-2, employing MPEG-4 only to provide an HD simulcast of its primary channel. Due to the lower compression efficiency of MPEG-2, such ABC channels are only offered at SD resolution. In addition, the audio description service that the Corporation provides for its primary SD ABC Television channel is carried using an old audio compression scheme called MPEG-1 Layer II at 256 kbps, to ensure all legacy receivers can access it.

The industry has sought to understand the proportion of households that do not have an MPEG-4-capable television set, but no accurate data currently exists. While the proportion is understood to be very small, the experiences of broadcasters with exclusively MPEG-4 channels indicates that it is not nil. All televisions sold since 2015 are likely to include MPEG-4 decoders. However, it is unclear what proportion of the households who bought them chose to also retain their older, non-MPEG-4-capable televisions for use as second or third sets. Likewise, a proportion of pay-TV subscribers continue to use older-generation set-top boxes that cannot decode MPEG-4 (the set-top boxes serve in lieu of a tuner, making this an impediment even if they are connected to newer television sets).

Understanding the number of legacy receivers still in use in Australia will be critical to planning any future migration to MPEG-4-only broadcasting. It would be of considerable value if the Government and the ACMA were to undertake research into domestic consumer reception arrangements. Such research could consider not just legacy receivers, but also the penetration of emerging technologies, including proportions of higher-resolution screens and devices capable of receiving DVB-T2 and decoding HEVC in broadcast mode, which might help the industry and Government to assess future transition options.

The industry is considering a program of work to enable a transition to exclusively MPEG-4 delivery in a timely fashion without compromising the public policy objectives and other imperatives tied to the delivery of free-to-air service. This work is likely to entail a number of steps, including:

- Scoping legacy issues: Research to determine the approximate number of MPEG-2 receivers still in use.
- Communications campaign: A consumer engagement campaign alerting viewers to the coming changes, including information on timing, service improvements and steps to maintain continuity of service. In parallel, engagement with equipment manufacturers and other recipients of complaints about reception issues.
- Soft launch in all markets: Broadcasters are exploring the feasibility of switching the logical channel numbers (LCNs) of their channels simulcast in MPEG-2 and MPEG-4 so that the HD channels transmitted in MPEG-4 become the primary brand identities. Most households will not need to take any action in response to this change, while those unable to view the MPEG-4 channels will still be able to receive them on a different LCN. This will be part of the prior

communications and will draw attention to the coming transition and alert households that may not be aware that their sets are not MPEG-4-capable.

- Testing MPEG-2 switch off by market: Some networks already have experience in ceasing simulcasts of MPEG-2 services, which will provide useful insights into the likely consumer impact of a complete conversion and allow further consideration of a complete transition plan.

It is important to note that this transition to a baseline of MPEG-4 HD is envisaged as occurring within broadcasters' existing 7 MHz multiplexes. Any subsequent reduction in available bandwidth due to spectrum sharing will necessarily require the cessation of channels.

5.1.2. PSM spectrum allocations become subject to commercial broadcasters' decisions

The Green Paper model proposes that, in any areas where two or more commercial broadcasters agree to move to multiplex sharing, the Government would mandate that the national broadcasters do likewise (p.18). The ABC expects to be part of any industry-wide transition to alternative broadcasting and spectrum arrangements. However, this proposed process would effectively make the national broadcasters' spectrum allocations subject to the decisions of commercial broadcasters, rather than a result of Government policy decisions.

The national and commercial sectors within Australian television broadcasting are distinct and play different roles. The spectrum that the ABC and SBS are allocated to deliver services and contribute to public-policy outcomes should be determined on its own merits. Subordinating public broadcasting to the commercial sector in this way does not represent good public policy.

Moreover, this model creates the possibility that, where some, but not all commercial broadcasters agree to participate in spectrum sharing, the national broadcasters would have access to different amounts of spectrum in different markets and, as a result, be obliged to offer different levels of service to audiences. This would result, for example, if metropolitan commercial broadcasters chose not to share spectrum, while regional broadcasters did. Such a situation would undermine the ABC's ability to deliver a consistent set of services to all Australians, as well as preventing the clearance of 84 MHz, as metropolitan broadcasters would need to retain the UHF channels currently used for in-fill transmissions in city areas.

What is instead required is a whole-of-industry approach to spectrum policy that equally values and reflects the needs and roles of all broadcasters and ensures that audiences across Australia receive equitable access to services.

5.1.3. Multiplex-sharing models need to be equitable

The Green Paper is not prescriptive in relation to how shared-multiplex spectrum would be divided between broadcasters. As noted above, the allocation of spectrum directly affects the bandwidth each broadcaster will have at their disposal under multiplex sharing and the number and quality of services they can provide to audiences.

The most equitable model would be for all broadcasters to receive an equal proportion of the available spectrum. With three channels, this would amount to 60% of a 7 MHz multiplex each or approximately 13.8 Mbps within which to deliver their services.

However, other divisions are conceivable. The Green Paper, for example, entertains the possibility of two commercial broadcasters agreeing to share multiplexes, but the third choosing to retain a full multiplex (23 Mbps) to itself. In such a circumstance, the two commercial broadcasters

engaging in spectrum sharing and the national broadcasters would each have access to only 50% (11.5 Mbps) of a multiplex. Not dissimilarly, if all broadcasters were engaged in spectrum sharing and the three channels were divided so that the three commercial broadcasters shared two “commercial” multiplexes and the ABC and SBS shared a “national” multiplex, the commercial broadcasters would each enjoy 66.7% (15.3 Mbps) of a multiplex, while the national broadcasters would be confined to 50% (11.5 Mbps) each.

Both of those potential scenarios would produce an unacceptably inequitable outcome. They would necessarily force the ABC to reduce the number and/or quality of the services that it could offer to Australians and substantially reduce its ability to deliver on its public purposes.

The ABC believes that spectrum needs to be distributed fairly and believes this should be a design principle that informs any reallocation of spectrum.

In addition to these equity questions, there are a set of practical matters in relation to spectrum sharing that must be considered and will take time to resolve. Bringing national and commercial services together on shared multiplexes will mean broadcast from the same transmitters.

Currently, the antenna transmission patterns for commercial and national broadcasters differ at many transmission sites, as commercial services are constrained to their licence areas in ways that the ABC and SBS, which seek to provide national coverage, are not. Shifting to a shared antenna and uniform transmission pattern would require either reconsidering commercial licence-area boundaries or constraining the national broadcasters’ transmissions.

In addition, the shift to all services in an area being broadcast from a single transmitter site may involve significant upgrades to that site, which are likely to be expensive. These issues are not insurmountable but will require careful planning to ensure that Australians are not disenfranchised.

Likewise, the ABC is aware that, where its transmission services are provided under contract by third parties, other broadcasters have different arrangements. These would need to be harmonised in any arrangement that brought broadcasters together in shared multiplexes. Such harmonisation is likely to be complicated and costly, particularly if it entails the renegotiation or termination of long-term contracts with transmission-service providers.

5.1.4. The Green Paper model removes any future path for free-to-air television

An essential element of the Green Paper model is the release of 84 MHz of spectrum in the 600 MHz band for alternative uses. Following that change, all UHF channels allocated for television broadcasting will be occupied; there will be no spare capacity that might be used as transitional or simulcast spectrum for future changes to television broadcasting. In effect, whatever state in which the industry lands after the conversion—in terms of broadcasters’ spectrum allocations and broadcasting and transmission technologies—is likely to be how it remains in perpetuity.

The Green Paper model’s final state would amount to broadcasters providing as many of their current services at current resolutions as are able to fit in the proportion of a multiplex that is allocated to them using MPEG-4 compression. As indicated above, analysis by industry engineers indicates that, under those circumstances, broadcasters will almost certainly need to reduce channels and/or service quality.

Instead, the industry would like to see a final state that leaves open future pathways for delivering competitive services. While audiences for broadcast television are in slow decline, the medium remains vibrant and viable. The ABC anticipates delivering free-to-air television services to Australians beyond the end of the current decade. Given the transition to higher-resolution formats that online video services are already undergoing, free-to-air broadcasting will need to likewise shift its baseline resolution to at least 1080i HD, if it is to deliver competitive audience experiences. This is why, as described above, the television industry is planning to transition to MPEG-4 compression. Ideally, the industry would prefer a final state that leaves open the option to explore offering 1080p HDR HD or even 4K UHD services in the future.

5.1.5. There is uncertainty about how the costs of transition will be met

As the Green Paper identifies, there will be range of costs associated with a transition to shared multiplexing. These are likely to be significant. In 2012, the then Government allocated \$143.2 million to support timely implementation of the spectrum restack that enabled the first “digital dividend”. This was in addition to funding support to broadcasters making the transition from analogue to digital television. While the proposed restack will include a smaller number of services, there will be new costs related to the collocation of broadcasters. In addition, there are a range of extra operational costs that are more or less likely to arise depending on implementation, including compensating for changes in levels of off-air signal distribution to transmitters and third-party multiplex management. Finally, there will be costs relating to the audience having to purchase new televisions and changing their antenna equipment as a result of the transition, and a communications campaign to explain the changes and ensure that the audience is not disenfranchised.

Further, the ABC’s transmission arrangements with BAI Communications and RBAH are long-term contracts. While the details of those contracts are confidential, implementing the Green Paper model, under which the restack of UHF spectrum would begin in mid-2024, would require the Corporation to negotiate early termination terms with its transmission-service providers, which would likely entail substantial costs.

The ABC is unlikely to be able to meet these additional costs within its appropriation without reducing services.

The Green Paper states that the Government’s recognises the particular cost challenges for the ABC, SBS and the regional commercial broadcasters as a result of “high transmission costs associated with serving regional and remote audiences” (p.26). However, the following statement that “[a] contribution to these costs could be made from the proceeds of the spectrum auction” (p.26) implies that the Government is only willing to partially cover the costs of implementation.

Given the expense and disruption that broadcasters will face as a result of another restack, it is only appropriate that the Government fully fund any transition to alternative broadcasting spectrum arrangements.

Further, as these funds would become available only after a spectrum auction scheduled for 2025 at the earliest, the Green Paper model represents a delayed response to the urgent need to address regional, remote and national broadcasters’ transmission costs.

5.1.6. The proposed timeline is unrealistically rapid

The Green Paper model envisages a rapid process for restacking and “refarming” spectrum for non-broadcasting uses. Specifically, it proposes that, subject to the passage of enabling legislation and commercial broadcasters’ agreement to participate in the new model, the Australian Communications and Media Authority (ACMA) would begin planning the restack of spectrum in mid-2022 (p.40). Assuming the ACMA’s planning process ran for between 18 and 24 months, implementation of the restack would commence in mid-2024 and be completed by December 2025. The auction for the cleared spectrum would be run in parallel during 2025, allowing the successful bidders to take up the licences for the reassigned spectrum in 2026.

It is unclear why an accelerated transition to a second digital dividend is required. Unlike the period immediately preceding the first digital dividend, which released spectrum in the 700 MHz bands, the ABC is unaware of any immediate or urgent calls from telecommunications companies for access to 600 MHz spectrum. The Corporation notes that the 850–900 MHz band already provides alternative spectrum for low-band 5G mobile broadband service delivery.

Submissions from the mobile telecommunications sector to ACMA five-year spectrum outlook (FYSO) workplan consultations show a clear interest in the spectrum, albeit in the medium term.²¹ Successive FYSO workplans have identified the broadcast use of the band and say only that the ACMA will continue to monitor international developments.²² The draft 2021–26 FYSO, which was released as a consultation draft in March 2021, states that the ACMA will move consideration of the 600 MHz band to an initial investigation stage in light of the Green Paper.²³ However, it does not identify any interest from telecommunications providers as a motive force in that decision.

Given the absence of an urgent driver for the rapid clearance of the 600 MHz band, the Corporation believes the needs of industry and the Australian public alike would be better served by a more measured transition process that allowed for the introduction of next-generation broadcasting and compression technologies.

Indeed, there are several reasons why it would be prudent to delay the transition until later in the decade. First, the apparent lack of urgency on the part of mobile services providers suggests that any auction of the spectrum may lack competitive tension and, as a result, provide a smaller return to the Australian taxpayer than might be secured under circumstances of greater competition. The ABC understands that independent economic research commissioned by Free TV found that the economic value that might be derived from an auction of the 600 MHz band is more likely to be maximised towards the end of the current decade.

In addition, the Corporation notes that, while spectrum in the 600 MHz band has been cleared for low-band 5G use in Canada and the United States, there is no global consensus on the use of the

²¹ See, e.g., Telstra Corporation. “Five year spectrum outlook 2020-2024”, Public submission, 24 June 2020, p.8; Optus. “Submission in response to ACMA’s draft spectrum management work programme: Draft Five Year Spectrum Outlook 2020-2024”, June 2020, p.11; Vodafone Hutchison Australia. “Five-year spectrum outlook 2020-24 consultation draft: Vodafone submission”, June 2020, p.3. Submissions are accessible via <https://www.acma.gov.au/consultations/2020-04/draft-five-year-spectrum-outlook-2020-24-consultation-092020>.

²² E.g., ACMA, “Five-year spectrum outlook 2020–24: The ACMA’s spectrum management work program”, September 2020, <https://www.acma.gov.au/sites/default/files/2020-09/FYSO%202020-24.pdf>, accessed 4 May 2021, p.36.

²³ ACMA. “Five-year spectrum outlook 2021–26 work program”, Consultation draft, March 2021, https://www.acma.gov.au/sites/default/files/2021-03/Draft-FYSO-2021-26_consultation_0.docx, accessed 4 May 2021, pp.29–30.

band. For example, as the ACMA's FYSO 2020–24 notes, the European Commission's long-term strategy for the future of the UHF band suggests the band remain available for broadcasting services until at least 2030.²⁴ Use of the band in ITU Region 1 countries (Europe, Africa, the former Soviet Union, Mongolia, and the Middle East west of the Persian Gulf) is scheduled to be considered at the 2023 World Radiocommunications Conference (WRC-23) under agenda item 1.5, which will review spectrum use and spectrum needs of existing services in the frequency band 470–960 MHz. In this light, adopting the North American approach may be premature for a country like Australia, which tends to be “standards taker” in relation to transmission and receiver standards.

5.1.7. Other known technical issues

The industry engineering group has identified additional technical issues that are likely to add to the cost and complexity of any spectrum restack. None is a reason not to proceed, although all will need to be considered during planning and implementing. It is possible that some of these issues may be able to be more effectively mitigated if planned over a longer period.

Wireless microphones

Wireless microphones and in-ear monitors (IEMs) are used by professional and community users in a range of contexts, including outside broadcasts, reporting press conferences, live musical performances, theatrical productions, church halls and community events. They are currently operated under low-interference class licences in UHF bands not occupied by television broadcasts.

The proposed restack would reduce and reorder the unoccupied spectrum available to wireless microphones and IEMs. As many of these devices are likely to be tuned to fixed frequencies, it is probably that a significant number will become unusable and require outright replacement. In addition, because they are operated under class licences, which are not registered with the ACMA, there is every chance that many users will be initially unaware that they are affected. Effective communication with makers, retailers and users of wireless microphones well ahead of any restack will be critically important to minimise these issues.

The ABC notes that, of the 84 MHz of spectrum cleared under the 600 MHz channel plan adopted in the US and Canada, included an allocation for wireless microphones.²⁵ However, industry discussions with US broadcasters suggests that mobile interference has inhibited the use of wireless microphones in this way. Further work will be required to identify a satisfactory solution for wireless microphones, as they are an important tool used in local content production and community events.

Co-channel interference

When two transmitters operate on the same frequency, they can create co-channel interference. This can affect individual viewers' receivers directly or, more disruptively, interfere with the off-air receivers used to feed “child” transmitters in an over-the-air distribution network, impacting all viewers in the coverage area. The industry's experience of co-channel interference after the 2012

²⁴ ACMA, “Five-year spectrum outlook 2020–24”, p.36.

²⁵ Federal Communications Commission. “Broadcast Incentive Auction and Post-Auction Transition”, 9 May 2017, <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions#block-menu-block-4>, accessed 4 May 2021.

restack is that it can be unpredictable, sporadic and dependent on environmental conditions; mitigating it can be complicated and costly.

In planning any future restack—whether in accordance with the Green Paper model or on a different basis supported by industry—it will be important not only to plan carefully to minimise opportunities for co-channel interference, but to make allowance for funding mitigation when it does arise. Mitigating co-channel interference affecting off-air receivers may require establishing alternative distribution paths to child sites, which may result in significant on-going costs.

Potential mobile-carrier interference

It is anticipated that any post-restack band plan will make provision for a “guard band” to prevent mobile broadband services transmitting in the 600 MHz band from interfering with free-to-air television signals. Experience from the first digital dividend restack suggests that mitigating such interference is likely to require the installation of specialised filters to remove carrier interference at both audience members’ homes and any broadcast transmitter sites that use off-air feeds.

Such problems are likely to be more widespread and harder to mitigate if mobile broadband providers adopt a “reverse duplex” model that uses the frequencies adjacent to broadcasting bands for higher-power transmissions to users’ mobile devices, rather than from devices to mobile towers, as is the case in the 700 MHz band.

The approach to remediating interference from mobile services adopted in the UK provides a potential model for Australia. In 2012, Ofcom established licence conditions for mobile carriers operating in the 800 MHz band requiring them to collectively establish a help scheme for terrestrial television viewers affected by the roll-out of 4G services in the band.²⁶ The carriers jointly fund a company, Digital Mobile Spectrum Limited (DMSL; publicly branded as “at800”), to provide this remediation.²⁷ Its work is overseen by a 4G/TV Co-existence Oversight Board, which reports to the UK Department of Culture Media and Sport.²⁸

Antenna incompatibilities

A proportion of older UHF antennas were designed to receive UHF Band V (channels 36 and above), but not UHF Band IV (channels 25–35). While they are compatible with 600 MHz and 700 MHz signals, they are unlikely to be able to successfully tune signals in the 500 MHz bands, where television services will be substantially located after the 600 MHz band is cleared. Premises dependent on such antennas to access free-to-air television, will need to replace their antenna at some level of cost and inconvenience to households. Further, affected households may not realise there is a problem until after the changes are made and will likely not be able access broadcast services until the antenna is replaced.

The ABC does not know the extent of this problem. Work to understand the size of the problem and develop a communications plan to ensure potentially affected households are aware of the issues needs to form part of the preparation for any restack process.

²⁶ Ofcom. “The award of 800 MHz and 2.6 GHz spectrum”, Information Memorandum, 24 July 2012, pp.49–58.

²⁷ <https://at800.tv/about/>

²⁸ <https://www.gov.uk/government/groups/4gtv-co-existence-oversight-board>

5.2. Towards an alternative future model for television

While the Corporation accepts the policy objective of reallocating the 600 MHz band for non-broadcasting uses, it is also aware that once that change occurs, there will be no further upgrade path for terrestrial television in Australia; the platform will be locked into the broadcasting and compression technologies current at the point of transition. On the timeline proposed in the Green Paper, those standards will be DVB-T transmission and MPEG-4 compression. While several multiplex configurations are possible within the Green Paper model, none would allow the services of five broadcasters to be carried in three multiplexes using that combination of technologies without some reduction in channels, quality or both. Such reductions would, in turn, undermine the ability of free-to-air broadcasters to contribute to cultural and social policy objectives, including the ABC's delivery the public services in accordance with its enabling legislation.

Accordingly, the ABC does not believe that the Green Paper model provides a viable forward path for free-to-air television.

At the same time, it acknowledges that the Green Paper has served as a catalyst for shared consideration within the industry of potential future pathways for broadcast television. The Corporation believes that this provides a potential foundation for a consultative process, involving government and the national and commercial broadcasters, to agree the elements of a sustainable future for television for the next decade and beyond. The process should consider inputs from suppliers and other stakeholders. Its objective would be to determine a roadmap that ensures that free-to-air television continues to meet the expectations of Australian audiences in terms of video and audio quality and remains accessible to all, and that future transition plans cause minimal disruption to audiences.

The ABC welcomes the decision by the Department of Infrastructure, Transport, Regional Development and Communications to schedule a further round of consultations on the future of television. The Corporation will actively participate in those discussions.

5.2.1. Principles for developing future pathways for television

The ABC proposes the following principles as the basis for the development of any future roadmap for free-to-air television:

- Maintain the Australian television broadcasting system, which includes national and commercial broadcasters, with different, but equally important roles. To this end, spectrum should be equitably distributed between commercial and national broadcasters in each broadcast market.
- Provide an equitable and effective path that allows the Government to secure a second “digital dividend” while supporting the important cultural and societal benefits provided by free-to-air broadcasting.
- Ensure that all Australian audiences, whether in metropolitan, regional or remote areas, have access to the same suite of ABC services. To this end, the ABC will need a consistent spectrum allocation in all broadcast areas. (For example, if the model were to provide less capacity in the regions than the cities, it would force the Corporation to offer regional Australians a reduced set of services.)
- Ensure the availability of a reliable broadcasting “safety net” for Australians who do not use IP services in all parts of the country. This has particular implications for emergency situations.

- Minimise cost and inconvenience for audiences.
- Audiences in any given location are not required to switch between platforms (e.g. terrestrial and DTH satellite) to access the full suite of available free-to-air services available to them.
- Provide a future path for broadcasters that gives them the option to improve the quality of the viewing experience to remain competitive with online VOD services.
- Support efforts by broadcasters to reduce transmission costs, particularly in regional areas, by moving to hybrid delivery models that potentially include satellite and IP components.
- Provide regulatory guarantees of prominence for broadcasters' services on connected-TV and online aggregated platforms (this is explored further in section 6.1, below).

The Corporation does not consider this list exhaustive and anticipates that additional principles might be proposed by other participants in a future consultation process.

5.2.2. Elements of a potential future model

The principles allow the ABC to sketch out some of the elements of an appropriate future pathway for television in Australia over the next decade.

While the viewership of terrestrial television will continue to decline over the decade, there is currently no alternative technology that can provide ubiquitous and free services to all Australians. At the same time, a sustainable future for television distribution is likely to increasingly be a hybrid of terrestrial, IP and direct-to-home (DTH) satellite delivery. By creating a holistic roadmap that considers all technology options, the industry will be better placed to take advantage of advances in IP delivery (fixed and wireless) and satellite technologies to ensure the sustainability of the industry and the accessibility of its content by audiences.

Upgrading terrestrial broadcasting to DVB-T2 and HEVC

In relation to terrestrial broadcasting, the Corporation believes, as described above, that the Australian public would be better served by a more measured transition process that enabled the release of UHF spectrum for mobile broadband uses at or near the end of the decade. This longer timeline would alleviate key difficulties with the Green Paper model, as it would create opportunities for the introduction of next-generation broadcasting and compression technologies that would enable broadcasters to maintain services and/or offer audiences higher-quality media experiences.

The adoption of DVB-T2 transmission and HEVC compression, which represent generational improvements on DVB-T and MPEG-4, would significantly expand the capacity of multiplexes. DVB-T2 expands the bit rate of a 7 MHz broadcast channel from 23 Mbps to 32 Mbps, while HEVC reduces the capacity required to carry content streams within that channel. Together, they offer a significant efficiency benefit when compared with the combination of DVB-T and MPEG-4 and would allow broadcasters to maintain current channel line-ups at 1080i resolution within a shared multiplex. It would also potentially allow broadcasters to adopt higher-resolution standards, such as HDR 1080p HD and 4K UHD broadcasts.

In addition, DVB-T2 using single-frequency networks (SFNs) may enable a channel configuration in which broadcasters share four, rather than three, 7 MHz multiplexes in each market while still delivering 84 MHz of spectrum after restacking. In contrast, a four-channel model of this kind could not be achieved using DVB-T, as the capacity for SFNs is more limited and, as a result, some viewers would have to repoint antennas and others would lose reception altogether.

Implementing a transition to DVB-T2 will require industry-wide collaboration to develop a roadmap for the future delivery of free-to-air television that gives broadcasters and consumer electronics suppliers a common understanding of functionality requirements and timeframes. The industry is working with Standards Australia to develop an Australian Standard for DVB-T2-capable television receivers. The ABC supports Free TV Australia's call for the current standards-review process to mandate that all future televisions sold in Australia support DVB-T2/HEVC and clarify that the current DVB-T standard (AS4933) would continue to exist only to ensure backwards compatibility. Further, it supports the proposal that all DVB-T2 receivers with internet connectivity include HbbTV 2.0.3 as a mandatory function and that DVB-T2 receivers operating in DVB-T mode support HEVC decoding.

If the industry agrees to transition to DVB-T2, broadcasters will need to install upgraded playout equipment that supports the new standards and install DVB-T2 transmitters across the country. As only a single channel of unencumbered spectrum—the “sixth channel”—is available in each broadcast area, the industry will need to consider carefully whether audiences would be better served by using the sixth channel as showcase service for the new technologies or by a “hot swap” from DVB-T/MPEG-4 to DVB-T2/HEVC at the time of a restack.

From a consumer perspective, these technologies would require an upgrade of television receivers to devices that support the newer standards. Much of that changeover could be achieved through the cycle of consumer replacement of televisions, particularly if the relevant Australian receiver standards mandated inclusion of DVB-T2 receivers and HEVC decoders in all receivers. The ABC understands that some receivers in the Australian market are already DVB-T2 and HEVC-capable, although their numbers are unknown, as manufacturers tend not to advertise capabilities that cannot be used in a given market. As described above, this is a question that could be usefully addressed in a comprehensive survey of consumer receiver equipment.

As DVB-T2 receivers are expected to be backwards-compatible with DVB-T, it may be feasible for the industry to maintain DVB-T transmission in the first stage and use HEVC compression to provide 1080p HD HDR to encourage the take up of the new DVB-T2 TVs. This would also allow broadcasters to provide viewing experiences that are competitive with other platforms, such as Pay-TV and SVOD services, which provide higher-resolution services. It would potentially give broadcasters the ability to move to DVB-T2 transmission more efficiently in the future without a simulcast.

Supporting hybrid viewing experiences: HbbTV and IP delivery

Given the growing consumer adoption of smart TVs, the ABC anticipates that audiences will increasingly bridge between broadcasting and broadband. While smart-TV interfaces support this activity, HbbTV (Hybrid Broadcast Broadband TV) provides a more seamless integration, empowering audiences to directly access broadcasters' BVOD services from within television broadcasts.

In April 2021, Freeview Australia launched an enhanced HbbTV service, which provides viewers with a simplified experience and a comprehensive search function that supports content discovery across all BVOD services—ABC iView, SBS On Demand, 7plus, 9Now and 10 play—without the need to download separate apps.

The ABC would support the mandating of HbbTV 2.0.3 in all internet-capable future television receivers to ensure that viewers enjoy easy access to broadcast and BVOD services. It will allow

the broadcasters to seamlessly insert localised content into the broadcast feeds for example for localised news inserts.

Over time, there may also be scope to make greater use of IP networks to deliver broadcasting services. The ABC notes with interest proposals in relation to broadcast- or multicast-over-IP as a potential alternative delivery platform for television services.²⁹ However, high-speed internet access is far from universal in Australia, which limits the current viability of IP-based alternatives. The Corporation would be interested in working with NBN Co and the industry to devise possible solutions that could reduce distribution costs for the industry and increase the reach of broadband connectivity while delivering equivalent or better services to audiences.

The ABC notes that multicast IP streaming over high-speed wireless networks may also provide alternative delivery mechanisms for broadcasting services. Likewise, the developing DVB-I standard facilitates delivery of terrestrial television services to internet-connected devices, including allowing broadcast and IP television streams to be displayed within the same user environment and electronic programme guide (EPG).³⁰ DVB-I supports the display of on-demand content and is compatible with HbbTV.

The ABC would welcome continued exploration of these possibilities.

Reducing broadcasting transmission costs: direct-to-home satellite

The ABC believes that the wider adoption of DTH satellite has the potential to reduce costs for broadcasters serving audiences in regional and remote Australia, as it enables the cost-effective replacement of large numbers of smaller transmitters and the distribution paths required to provide signals to them. In the longer term, as online platforms displace broadcast as the dominant means of accessing video content, DTH satellite is likely to play an important role as a cost-effective means of delivering “safety net” broadcasting services to non-internet audiences.

Currently, the Viewer Access Satellite Television (VAST) DTH platform only provides access to a full suite of television and radio services in remote parts of the country. This preserves the integrity of regional advertising markets. However, future generations of software-defined satellites are expected to be able to provide both broadband and broadcast services to DTH receivers, allowing insertion of localised content, including local news and advertising, into the broadcast stream from IP sources or pre-populated on-device storage. Such a change may make wider use of DTH in regional Australia feasible, particularly if software-defined satellites can support targeted delivery that matches the current regional sub-markets and is able to preserve regional advertising markets. The availability of both broadcast and broadband through a single satellite may improve the take-up of broadband in remote parts of Australia.

As noted previously, the ABC can reach more than 96% of the population with only 127 broadcast towers; it takes a further 293 towers to deliver television to the next 2.6% of the population. Satellite DTH is the most cost-effective way to provide services to small communities (fewer than 2,000 residents). Already, some broadcasters use services on VAST to feed transmitters with small populations. Instead of reconfiguring those transmitters as part of a restack, it would likely be

²⁹ Venture Insights. “Taking Free-to-Air TV online in Australia: opportunities and challenges”, Report, December 2020.

³⁰ DVB Consortium. “DVB-I Service Discovery: Service Discovery and Programme Metadata for DVB-I”, <https://dvb.org/?standard=service-discovery-and-programme-metadata-for-dvb-i>, accessed 19 May 2021.

more economical to reduce this type of duplication of distribution services by transitioning small communities to DTH satellite delivery.

The availability of next-generation DTH features will depend on satellite operators building and deploying satellites with relevant capabilities. To date, the Government has funded VAST in short increments, which provides little incentive for Optus, which operates the satellite, to undertake such investment in future capabilities. The ABC has recently agreed to a long-term satellite contract with Optus in order to ensure continued delivery of its services to Australians in remote areas, which according to Optus has over 350,000 registered VAST set-top boxes. It notes, however, that a number of commercial broadcasters have not done so, which creates a risk of a reduction of services to already underserved audiences. A decision by the Government to fund VAST satellite transmissions for all remote broadcasters and adopt longer-term contracts would help ensure the sustainability of remote television services and create opportunities to introduce more advanced DTH services.

As with all proposals that require the use of new technologies, an expansion of DTH delivery will entail the installation of consumer equipment in the form of a satellite dish and receiver hardware. The ABC estimates that the current cost of such equipment, including installation, is in the order of \$850 per premises, although that cost would likely be reduced if the Government were to purchase receivers in bulk to support a DTH roll-out. The anticipated future introduction of self-tuning antenna technologies may further reduce costs by eliminating the need for professional installation.

The Corporation would welcome further exploration of the potential for DTH to provide cost savings for broadcasters operating in regional areas as part of any future roadmap for television.

6. Strengthening Australian content

Australian content is critical to national identity. It is through our unique stories that we explore, understand, challenge and shape who we are as a nation. Likewise, the provision of public interest journalism ensures that Australians are informed and able to participate fully in our democracy.

The Green Paper includes three proposals aimed at strengthening Australian television content production and the provision of high-quality local journalism: using some of the revenue generated through the auction of the 600 MHz bands to establish public trusts that what offer funding support for Australian television content production and public interest journalism in regional Australia; introducing Australian content obligations for large international SVOD and AVOD services; and introducing Australian content obligations for the national broadcasters.

As a key provider of independent news and current affairs and a leading commissioner and broadcaster of Australian content, the ABC has perspectives on all of these proposals.

6.1. Trusts

The Green Paper proposes that a portion of the proceeds of the 600 MHz spectrum auction could be allocated to capitalise two specific funds that would support regional news services, the Public Interest News Gathering Trust (PING Trust), and Australian drama, children's and documentary content, the Create Australian Screen Trust (CAST). Under the proposal, each fund would be overseen by an independent board of trustees.

The Green Paper proposes that the two trusts be established in 2025 (p.40), while the television broadcasting industry's recommended approach for the release of UHF spectrum for mobile broadband, as described above, does not envisage a transition until at or near the end of the decade. The challenges confronting both the Australian production sector and public interest news organisations are immediate. Waiting four years, let alone nine, for these funds to be established may be too long a period to provide meaningful assistance to the affected industries and the vital services they provide to audiences.

6.1.1. CAST

While the ABC supports the allocation of funds for investment in Australian content, the lack of clarity around how the fund would operate, how the funds would be distributed, and the timing and value of the fund make it difficult to provide meaningful feedback.

Likewise, the lack of guidance as to how much funding is likely to be available through CAST makes it difficult to assess whether the fund represents a significant increase to screen funding. There is also a concern that there is no indication as to how much funding will be allocated to supporting projects of cultural significance, versus the pool for commercial investments.

The ABC does not endorse splitting CAST into two pools as it is likely to lead to unnecessary duplication of effort and confusion, as many projects may meet the criteria for both.

The pool available for projects that will generate a commercial return has no requirement for "cultural significance", so the underlying policy aim is unclear. There is a risk that the commercial return requirement would conflict with the ABC's editorial policies and so preclude the Corporation from accessing the fund. In principle, projects expected to generate significant commercial returns should not require government support.

In relation to leverage and accessibility, if Screen Australia guidelines were to be applied to the CAST fund, and similar leverage were required, there is a concern that Australian broadcasters may not have adequate resources to support this leverage, which would limit their ability to make use of the fund to create new Australian content.

It is unclear which content genres, or which platforms or producers, would be the beneficiaries of CAST. The ABC is not in favour of CAST funds being made accessible to international VOD operators, as the fund is allocated from the sale of spectrum—public infrastructure that Australian broadcasters are giving up in return for access to the fund.

The ABC strongly believes that content that is not available for free to the Australian people should not be the beneficiary of public funds and that, as a result, CAST funding should be only available to free-to-air services. Alternatively, if content commissioned by a subscription service receives a proportion of its funding from public sources, whether via CAST funds or other public sources, free access for all Australians should be provided in the form of a first or second window on a free-to-air broadcaster who will give the program appropriate prominence, following a reasonable holdback period.

When looking to other jurisdictions for alternative frameworks, the ABC recommends a funding model such as the UK's Young Audiences Content Fund, which was specifically targeted to fund gaps in financing and awarded producers up to 50% of the production budget. With eligibility requirements aligned to the production of cultural content, this would present an opportunity for growing the industry and providing audiences with content that reflects Australia. This could

potentially relieve the ABC of providing additional funding through equity in order to close finance plans, and free up funds for licence fees for new programs, triggering greater access to leverage from the new funds.

6.1.2. PING Trust

The ABC welcomes the allocation of spectrum sale proceeds to public interest news journalism, focusing on the needs of regional, rural and remote areas of Australia. The substantial decline of local news options in those areas, as well as of local reporting from outer-metropolitan areas, reduces citizens' access to vital sources of information about local events and activities, as well as democratic institutions, and reduces media diversity.

Local commercial media outlets have struggled with the loss of advertising revenue to digital platforms and with the impact of COVID-19. Small newspapers have closed or moved to digital platforms and news organisations are providing less local coverage. This has a direct impact on communities in Australia's regions and suburbs. It also has an impact on public interest journalism, as issues in communities go unreported at both local and national levels. The loss of media diversity also reduces public access to a breadth of perspectives.

As Australia's key provider of news and current affairs at a local, state and national level, and operating 48 regional bureaux, the ABC provides substantial public interest reporting in regional Australia.

The ABC acknowledges that an objective of the PING Trust is strengthening the diversity of sources of public interest journalism. The Corporation would only seek to access PING Trust funding that it could usefully apply to addressing the needs of audiences in underserved markets in relation to regional areas or concerning specialist subject matter.

6.2. Australian content obligations for SVOD and AVOD services

Chapter six of the Green Paper sets out a proposal for imposing Australian content obligations on SVOD and AVOD services that meet certain eligibility criteria. The ABC acknowledges the merit of the proposition that major international VOD services should contribute to the Australian production sector. Both content commissioners and audiences benefit from a thriving independent production sector, and the Corporation supports measures that would sustain and grow that sector.

As proposed in the Green Paper, major international VOD services would be required to invest a percentage of their local revenue in Australian content in the form of commissions, co-productions and acquisitions as a means of harmonising regulation across content providers.

As a contribution to policy development, the ABC and Free TV Australia engaged Oliver & Ohlbaum Associates (O&O) to provide advice on possible means of regulating VOD services to secure genuinely Australian content of high quality and cultural value. In developing their analysis, O&O drew on the design and implementation of policy and regulation in other jurisdictions and considered the potential impact of the policy options on the Australian market. Their full report appears as Attachment B.

O&O find that "global SVOD services have a legitimate role to play in the sector and bring additional consumer choice and production opportunities", but that their offering is

“fundamentally different” to that of domestic broadcasters in a number of ways.³¹ The online digital platforms in which global SVODs operate are “affected by competitive factors that differ significantly from those operating on national and commercial FTA broadcasters and have little to do with the production of Australian-originated new content”. Further, content on SVOD services tends to be in a narrower range of genres and, while it can resonate with both local and global audiences, “‘rest of world’ success is more important than Australian”. As a result, they observe, “programmes set in Australia take the most exportable elements of Australian culture”.

O&O contrast this with content commissioning by national and commercial broadcasters, which is “the cornerstone of investment in Australian content in terms of both expenditure, range and volume” and “expected to be distinctly reflective of life in Australia”. While some Australian programming is successful in international markets, O&O argue, this is “in addition to the primary purpose of serving all Australian audiences”.

O&O’s examination of international approaches to VOD regulation identified three common policy models:

- Quota on share of local content: required minimum amounts of local content, often expressed as a percentage, that must be included in channel schedules or VOD catalogues.
- Direct investment: required expenditure by SVOD/AVOD services on local content for inclusion in their own catalogues.
- Indirect investment: required contributions by SVOD/AVOD services to a central fund used to support local content production.

In addition, O&O considered approaches to ensuring prominence of local content and the specific conditions that have allowed the UK to maintain a relatively low level of direct SVOD regulation.

The research indicated that each of policy models was best suited to delivering specific policy outcomes. Imposing a local content “exhibition quota” on channel schedules and VOD catalogues is “most relevant if the policy concern is that certain audience segments using AVOD/SVOD are not sufficiently exposed to local content overall, measured by quantity not quality”.³² This is the approach adopted in the European Union’s Audiovisual Media Services Directive, which requires that at least 30% of the works in European VOD-service catalogues be European content. As O&O note, it assumes an adequate supply of local content in the market and does not directly target investment in new original content. In particular, it creates scope for VOD services to meet quotas using lower-quality “filler” content.

Direct investment models have the advantage of stimulating expenditure on new local content. This is the approach proposed in the Green Paper and O&O examined versions of such models applied in France and Italy and before the legislature in Canada. They noted that, without appropriate constraints, direct investment has the capacity to increase local commissioning without necessarily leading to a significant increase in content that is truly reflective of local culture. Direct investment also increasingly allows international companies to own the intellectual property in local productions. Due to VOD services’ interest in delivering content that will resonate with a global audience, local stories are often viewed through an international lens

³¹ Oliver & Ohlbaum Associates Ltd (O&O). “Supporting Local Content Investment: International Policy Approaches to VOD Services”, p.6.

³² O&O. “Supporting Local Content Investment”, p.57.

and the local identity of stories adjusted for global audiences.³³ Further, an examination of the genres of content produced by Netflix in Australia, as compared to the Australian market more broadly, suggested that global SVOD services do not have incentives to invest in the depth and breadth of genres that national and commercial broadcasters do.³⁴ O&O also observe that content funded by direct investment would appear “on services that are not free to access and do not have universal reach, in contrast to the national and commercial FTA broadcasters”.³⁵

In contrast, an indirect investment model allows an independent body to pool funds from international VOD providers and then target the investment at proposed productions according to local content criteria and identified gaps in overall market performance against public-policy goals. O&O describe variants of this model employed in France, Germany and Canada. The approach allows the attachment of conditions to support universal availability and secures access to intellectual property and standard terms of trade by funding national producers with national distributors attached, while permitting international co-productions including with international VOD partners. However, O&O caution that care is needed in the design of such a fund to minimise administrative costs for the fund and applicants, ensure alignment with public-policy goals, and minimise the replacement of investment that would have happened anyway.

O&O’s research identifies that there are critical issues of policy design and risks to consider regardless of the type of regulatory intervention adopted. In considering models that have been implemented in other countries, it is also important to the broader media ecosystem and regulatory settings in those jurisdictions.

With any regulatory intervention, it is critical that it does not lead to unintended consequences or conditions which undermine the ability of free-to-air broadcasters to continue to play their critical role in supporting the production of Australian content that reflects the nation’s unique cultural identity. Current policy settings ensure that quality and distinctive Australian content is universally and freely available to all Australians. Any new regulatory regime must strive to ensure that this remains the case.

The ABC’s assessment of the alternative models evaluated in the O&O report (catalogue quotas, direct investment obligations, indirect investment fund) is that the indirect investment fund model minimises the risk of unintended negative consequences and is likely to be the most effective means of meeting the Government’s cultural policy objectives.

In the event that this type of model was adopted by government, design considerations would still be vitally important. For example, a guiding principle for this model should be that any content created through the fund has a free-access window, either on-demand or on broadcast. Other design considerations should include supporting cultural outcomes in key genres that would otherwise be under-served by the market.

Additional considerations

O&O’s research considered the relationship between international funding sources and the cost and availability of production resources in Australia. While Australian production companies are currently engaged in high levels of activity for international entities on a service-provision basis,

³³ O&O. “Supporting Local Content Investment”, pp.52–54.

³⁴ O&O. “Supporting Local Content Investment”, p.51.

³⁵ O&O. “Supporting Local Content Investment”, p.7.

O&O caution that levels of foreign investment have ebbed and flowed over time and “may not provide long-term, stable investment in local content as international producers can move about according to global competition in tax breaks.”³⁶ Production on this kind of service-provision basis is also not a guarantee of local storytelling. As O&O observe, Canada has a large service industry that produces a significant volume of film and television content for US firms “that are made in Canada, but do not reflect Canada in their content”.³⁷ Further, international investment of this kind “does not provide the same access to IP to allow growth in the local industry”.³⁸

As noted, the Australian production sector is undergoing a period of intense activity. Government incentives, together with Australia’s response to COVID-19, have increased interest in Australia as a location for international production.³⁹ While this provides a boost for some parts of the sector, the benefits are not being felt evenly. Local creatives, who play a critical role in Australian storytelling, have limited opportunities in these productions and there has been no commensurate increase in the volume of culturally significant Australian content available to audiences. Indeed, the sharp increase in production activity has resulted in shortages of crew, equipment and sound stages, which impacts on Australian productions through lack of resources and higher costs. In an April 2021 survey conducted by Screen Producers Australia (SPA), 80% of respondents said they had had problems finding crew for productions and 66% said this was one of their most significant problems.⁴⁰ The same survey found that costs have increased by an average of 24%—and by as much as 75% in some cases—which has meant staff cuts and a reduction in funding to programming.

Screen practitioners and production companies specialising in documentaries and children’s programs, in particular, are struggling due to the removal of genre sub-quotas that previously applied to commercial broadcasters,⁴¹ together with the impact of COVID-19.

If SVOD/AVOD content quotas are introduced at a level that drives significant new demand for local production, there is a risk that, in the current market conditions, they may lead to further inflationary pressures on production costs, and result in further challenges for broadcasters and producers seeking to deliver locally tailored content. Over time, market conditions would be likely to stabilise as facilities and resources increased to meet demand, and suitably skilled creative personnel entered the industry. The likely result would be a more capable Australian production sector. However, it is unclear how long such a process might take. While further analysis of this risk is likely required, there may be arguments for staging the introduction of such quotas to reduce inflationary effects and for Government support for skills development in the industry.

A further issue of concern is Screen Australia’s recent support for productions that are partnered with international VOD services. Arguably, there are a number of international SVOD services that benefit from public funding who do not require funding support for Australian content. They

³⁶ O&O. “Supporting Local Content Investment”, p.43.

³⁷ O&O. “Supporting Local Content Investment”, p.45.

³⁸ O&O. “Supporting Local Content Investment”, p.43.

³⁹ See, e.g., Bridget Cormack. “Cashed-up international producers draining local talent pool”, *The Australian*, 9 May 2021, <https://www.theaustralian.com.au/nation/cashedup-international-producers-draining-local-talent-pool/news-story/fa6f43734531869456b86b23f9b38102?btr=eec646e3e0f0e040417567c7cb8c1126>.

⁴⁰ Screen Producers Australia. “Local Productions Facing Skills Shortage”, Media Release, 26 April 2021, <https://assets-us-01.kc-usercontent.com/89c218af-4a5a-00a2-9d83-3913048b3bc7/b6bb5dc4-89c3-4ff6-bff6-881ce08547cb/20210426%20-%20Media%20Release%20-%20Crewing%20issues.pdf>.

⁴¹ Australian Government. “Fact sheet—Modernising Australian content regulation”, September 2020, file:///Users/suttond7e/Downloads/fact-sheet-modernising-australian-content-regulation_1.pdf.

generate significant Australian revenue and may use work-arounds to minimise Australian income tax. These organisations have the opportunity to amortise their content investments across subscribers around the world. With a finite total funding pool, allowing productions for VOD services to access public funds reduces the availability of such funds to Australian broadcasters and, with it, their capacity to commission new content. This includes the national broadcasters, whose ability to serve as key cultural commissioners is effectively diminished.

The proposed introduction of SVOD and AVOD content obligations, and the increased production activity that will result, will likely see additional requests from such bodies to access public funding, further limiting its availability to Australian broadcasters and not adding to the broader pool of funds within the Australian screen sector.

The ABC deems such access to be of critical importance, and the diversion of screen agency funding to VOD platforms one of the largest threats to its ability to continue to commission quality drama, children's, documentary and factual content.

6.3. Imposing Australian content obligations on the national broadcasters

The ABC plays a crucial role in Australian storytelling by producing and commissioning Australian content and making it available to audiences through broadcast and online platforms, advertising-free to audiences. As Australia's largest creative organisation, the Corporation is a leading provider of first-run Australian drama and documentary, and the primary commissioner of quality Australian children's programming.

As set out in the Green Paper, the Government proposes to introduce legislation to establish an explicit requirement for the ABC to provide new Australian programming. It describes the intention of such obligations as being to "put a floor under the national broadcasters' commitment to Australian content, codifying what they already do". (p.36) Given its strong commitment to Australian content in the absence of content obligations to date, the ABC believes such obligations are unnecessary and of considerable concern, as they have the potential to interfere with its operational independence.

The ABC is already a leading commissioner of Australian content

The *Australian Broadcasting Corporation Act 1983* ("ABC Act") provides clear direction on the ABC's public purposes. The ABC Charter, contained in Section 6 of the ABC Act, requires the Corporation to broadcast "programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community". The ABC Charter also requires the Corporation to invest in specialised programming and cater to mass audiences, as well as to provide a diversity of programming and programming of broad appeal. In meeting these obligations, it is the responsibility of the ABC Board and management to determine the best use of available resources, including making decisions about competing imperatives and the challenges of a transitional landscape.

The obligations contained in the ABC Act have proven to be an effective policy mechanism for enabling the production and availability of Australian content. In the absence of specific Australian content obligations, the ABC has been, and continues to be, a major investor in Australian content, and a key partner to Australia's independent production sector.

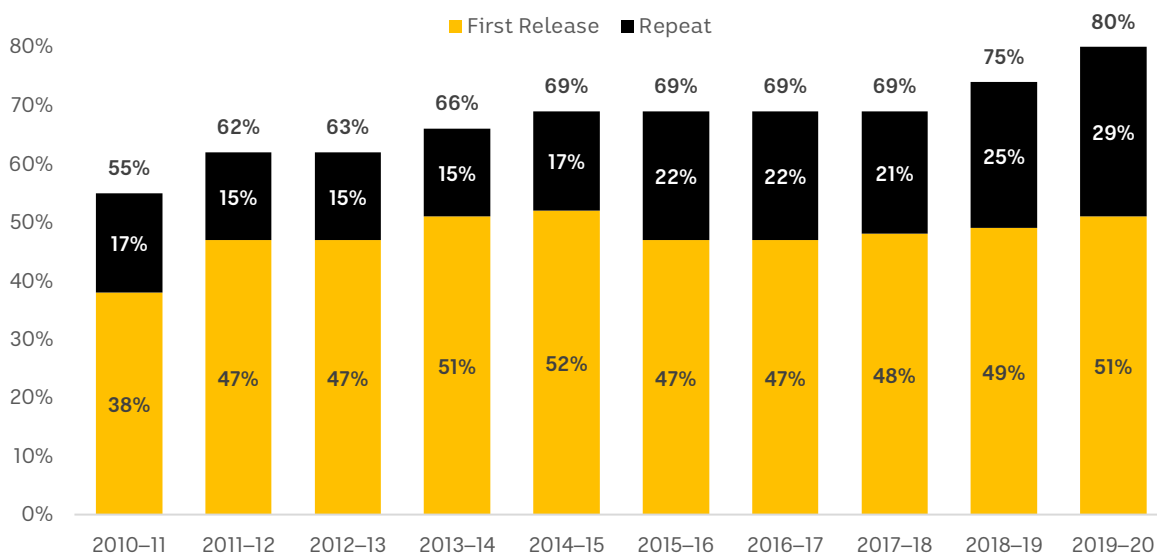
Telling Australian stories is central to the Corporation's purpose and, accordingly, it is the nation's largest commissioner of new Australian content. In the five years to 2019/20, the ABC

invested more than \$468 million in the independent sector on productions worth a total of \$971 million. This investment generated 1,477 commissioned hours. The content produced includes Australian drama, comedy, Indigenous, arts, factual and children’s content. In 2018/19, the ABC invested in more Australian drama titles than Seven, Nine, Ten and SBS combined.⁴²

The ABC has a consistent and long-standing track record of delivering substantial levels of high-quality Australian content well in excess of the hours-based transmission quota imposed on commercial broadcasters.⁴³ In recent years, the percentage of Australian content on its main channel, ABC Television, has ranged from 70% to 80% (see Chart 1, below), which compares favourably to commercial network quotas of 55%.

Chart 1: Australian content, ABC main channel, 6am–midnight

Australian first-release and repeat linear content as a percentage of hours broadcast



Notes: This chart reflects linear hours broadcast from the Sydney transmitter, comprising national and NSW transmission. Figures may differ slightly in other states and territories as a result of varying levels of local content. Hours have been rounded to the nearest whole number.

As audiences have moved to digital platforms, the ABC has been there too, continuing to inform, educate and entertain. Regardless of the platform that audiences gravitate to, the Corporation will continue to play a vital role in producing, commissioning and sharing Australian content for decades to come. It does so because Australian storytelling is fundamental to its role and a key part of its Charter remit.

Accordingly, the ABC cannot see why the Green Paper proposes to create an obligation that is clearly unnecessary. The rationale provided by the Green Paper is that content obligations “should apply fairly across all platforms” (p.36), although the nature of any apparent “unfairness” that requires addressing is unclear. In general, quotas and other similar forms of obligation are imposed in circumstances where there is a reasonable expectation that a required public policy

⁴² Screen Australia. Drama Report 2018/19, October 2019.

⁴³ *Broadcasting Services Act 1992*(Cth), s.212G.

outcome will not otherwise eventuate. The ABC's Charter and activities demonstrate that that is not the case with Australian content.

Expenditure-based quotas potentially undermine ABC operational independence

More fundamentally, the ABC is concerned that the proposed obligations have the strong potential to reduce its operational independence. This would run counter to established public policy that seeks to minimise the opportunity and potential for government to direct or otherwise interfere with the independent decision-making processes of the public broadcasters.

The ABC is a self-regulating entity that is accountable to its Board, which is required to "maintain the independence and integrity" of the Corporation.⁴⁴ The ABC is subject to further scrutiny by the Parliament as a whole through regular appearances at Senate Estimates hearings, questions on notice and detailed reporting on a range of specified matters in its annual report.⁴⁵ Its independent financial and governance arrangements are subject to audit by the Australian National Audit Office. With the exception of broadcasting matters in the national interest, the Corporation is "not subject to direction by or on behalf of the Government of the Commonwealth" unless the power to give direction is "expressly provided by the provision of another Act".⁴⁶ It is not subject to statements of Ministerial expectation. The ABC Board is obliged to consider relevant matters of Government policy when requested to by the Minister, but is likewise not subject to Ministerial direction.⁴⁷

It is important to note that the Corporation's concern with this proposal relates to potential influences on its operational, rather than editorial, independence. Setting a minimum level of expenditure for television production in relation to specified genres would reduce the flexibility of the ABC Board and management to appropriately and independently allocate funds across all ABC activities, including news, regional services, education, the musical and other performing arts, and the process of digital transition. Any such expenditure requirement would reduce the pool of funds that can be allocated across the remainder of the ABC's activities and the ability of the Board and management to prioritise spending and adapt services to best meet the needs of Australians in a changing media environment.

The impact of expenditure-based content obligations in relation to other ABC activities is a function of available funding. While the budget remains at its current level, "codifying" current activity levels might not sound onerous. However, if the ABC's budget were to be further reduced, Australian content production would come to represent a greater proportion of the overall budget and the Corporation would be effectively forced to cut more deeply in other areas of activity to maintain the legislated production obligations.

Moreover, an expenditure requirement would set a precedent for further such interventions in the allocation of the Corporation's budget. The ABC has, for example, already seen proposals to require it allocate a proportion of its budget to regional employment in the lapsed Private

⁴⁴ ABC Act, s.8(1)(b)

⁴⁵ In addition to the matters that the ABC is required to report on under the *Commonwealth Authorities and Companies Act 1997* ("CAC Act") and the Finance Minister's Orders applying to CAC Act companies, the ABC is subject to specific reporting requirements set out in s.80 of the ABC Act.

⁴⁶ ABC Act, s.78.

⁴⁷ ABC Act, s.8(2).

Senator's Bill put forward in 2015.⁴⁸ Each such additional requirement would further reduce the pool of funds that can be allocated across the remainder of the ABC's activities and the ability of the Board and management to prioritise spending and adapt services to best meet the needs of Australians in a changing media environment.

An alternative might be specifying a fixed percentage of the Corporation's budget be allocated to Australian content, rather than a fixed level of expenditure. This would address the problem of the proportion of the budget that must be allocated to Australian content rising and falling with overall funding, but would nonetheless still reduce the Board's and management's discretion to appropriately allocate the Corporation's budget in a manner that best meets the needs of Australians in a changing media environment.

Alternative quota models may produce perverse policy outcomes

The Green Paper seeks comment on a number of alternative quota constructions, including whether an obligation could be structured as a broadcast requirement, as is the case with the commercial television broadcasting licensees, who are required to ensure that 55% of the content they transmit between 6am and midnight is Australian. While there is little risk of such a model affecting operational independence, it is important to note that, particularly with declining funding, a broadcast quota can create incentives to commission or acquire higher volumes of lower-quality content in order to reach the targets.

In addition, broadcast quotas fail to acknowledge changes in audience behaviour. Broadcast viewing is declining as audiences adopt digital platforms, and viewing behaviours are no longer connected to the broadcast schedule. Quotas that reference broadcast hours are increasingly irrelevant.

The Green Paper invites comment on whether obligations in relation to new Australian programs should be broad or incorporate specific genres, such as drama, documentaries and children's programming. The ABC's ability to commission these genres depends largely on the availability of external funding. The ABC commissions approximately \$180 million of external production each year for its most successful first-run content, to which it contributes approximately \$90 million. The remaining funding comes from other sources, such as Screen Australia, state funding bodies, distributors, and producers. Changes in the availability of funding from these sources has a considerable impact on the ABC's ability to produce Australian content. Output also fluctuates depending on genres, the availability of creative ideas, production costs and funding sources. A genre target would remove the flexibility the ABC currently has to move between genres, invest in the best ideas and commission high-quality content.

The Green Paper also refers to the BBC in the UK, and CBC/Radio-Canada in Canada, as examples of jurisdictions where content requirements have been applied to public broadcasters, despite the risk of those requirements impinging on their independence. It may be noted that the Green Paper's source for those examples explicitly sought to limit consideration of potential threats to the ABC's independence to "news and current affairs and editorial independence (an absence of

⁴⁸ The Australian Broadcasting Corporation Amendment (Rural and Regional Advocacy) Bill 2015 was introduced in December 2015 as a Private Senator's Bill. It lapsed in July 2019 at the end of the 45th Parliament: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/s1028%22>.

government interference in news and current affairs)”.⁴⁹ It thereby effectively excluded the question of possible impacts on operational independence.

The content obligations imposed on the both the BBC and CBC/Radio-Canada are specified in terms of a number of hours or a proportion of the schedule. Neither is subject to an expenditure requirement. CBC/Radio-Canada is subject to a requirement that its primary English- and French-language television channels include at least specified levels of Canadian content throughout the day and during prime time.⁵⁰ This is not dissimilar to the transmission quota imposed on Australian commercial broadcasters.

The BBC is subject to a considerably higher level of regulatory intervention than has been applied in Australian media policy. Under the Agreement that accompanies the current BBC Charter, the UK communications regulator, Ofcom, issues an Operating Licence for the BBC and provides an annual report on the BBC’s performance that includes, but extends beyond, compliance with the Licence.⁵¹ The Operating Licence sets out a range of content obligations that extend beyond UK-originated content and include granular stipulations such as the number of hours of sport or religion on specific channels.⁵² If comparable powers were to be given to the ACMA in Australia, it would represent a radical deviation from established policy settings that protect ABC independence.

There are a number of important differences between the BBC and the ABC, particularly in relation to funding. The BBC has five-year funding certainty and a level of per-capita funding that is around twice the ABC’s. As such, content quotas on the BBC do not present the same level of risk of adversely impacting operational independence as they would in the context of the ABC’s operations.

Reporting changes must also respect ABC independence

The Green Paper proposes that the ABC report to the ACMA on the amount of Australian programming available on its service and on the level of investment in Australian programming. It recommends these reporting arrangements align with those applicable to other sectors of the industry in relation to Australian programming.

Currently, the Corporation’s reporting obligations are to the ABC Board, which has direct governance responsibility, as well as to the Australian Parliament and the wider Australian public by way of Senate Estimates hearings, questions on notice and annual reporting obligations. The ABC does not report to the ACMA, which is potentially subject to Government direction, and believes that this should continue to be the case.

This is consistent with the public policy objective of ensuring the ABC’s independence. The Corporation is not subject to regulation by the ACMA except insofar as it uses spectrum and is

⁴⁹ Screen Producers Australia. “Submission to the Supporting Australian Stories on Our Screens Options Paper”, July 2020, p.22.

⁵⁰ See, e.g., CBC/Radio-Canada. *Annual Report 2019–2020*, <https://site-cbc.radio-canada.ca/documents/impact-and-accountability/finances/2019-2020-annual-report.pdf>, p.25.

⁵¹ See, e.g., Ofcom. “Ofcom’s Annual Report on the BBC 2019/20”, 25 November 2020, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/207228/third-bbc-annual-report.pdf.

⁵² Ofcom. “Operating licence for the BBC’s UK Public Services”, issued 13 October 2017, updated 25 March 2021, https://www.ofcom.org.uk/_data/assets/pdf_file/0015/216231/BBC-Operating-Licence-Updated-version-for-March-2021.pdf, Schedule 1.

subject to technical standards. Unlike other categories of broadcaster, the ABC does not seek ACMA's authorisation for its Code of Practice, instead only notifying the ACMA of that Code as determined by the ABC Board.⁵³ While the ACMA is able to hear complaints about ABC programming in relation to the Code, it only does so if complainants have engaged with the ABC's complaints-handling process and not been satisfied.

The distinction between the national broadcasters and other media sectors should remain clear. The ABC should not be subject to the same reporting arrangements that apply to other media providers—over and above the reporting obligations already applying under public broadcasting laws and public sector governance arrangements.

There are better ways of supporting Australian content

In its June 2020 submission to the “Supporting Australian Stories on our Screens” Options Paper, the ABC made forward-expenditure commitments for new Australian content production over the remainder of the current funding triennium. Specifically, it committed to scripted drama (including comedy and Indigenous) and children's budgets totalling \$106 million across the remaining two years of the current funding triennium.

The Corporation believes that this provides an appropriate model for future Australian content. At the beginning of each triennial funding period, the ABC would publish forward commitments for expenditure on Australian content production. In the interests of transparency, this would be accompanied by data on the Corporation's Australian content expenditure and outputs over the previous funding triennium. This model would allow the ABC to adjust its expenditure in line with its budget, while providing clear signals to the potential production partners about its intentions.

It is important to note that the ABC's ability to meet expenditure commitments of this kind is dependent on its ability to leverage funding from external sources. The ABC is the largest commissioner of quality Australian content in the scripted, children's factual and documentary categories. To produce that content, it contributes roughly half of the budget of each program it commissions and relies on leverage for the remaining 50%. While the recent increase in the Producer Offset can provide around 25% of the total budget,⁵⁴ the remainder must be found through screen agency support and distribution advances, which are generally diminishing. To fulfil its role as the national broadcaster, the ABC needs a guaranteed pipeline of funds from screen agencies, particularly Screen Australia. Accordingly, the Corporation proposes that Screen Australia, and any new funds that are created, be required to introduce guidelines mandating a minimum allocation of funds for the public broadcasters.

In addition, the ABC notes that, with a commitment from the Government to increase funding, it could increase its content expenditure and output. The ABC has a demonstrated track record in delivering content that meets Australian cultural outcomes to audiences for free. An additional appropriation of \$30 million per annum over the next three years would provide significant support for Australian content production. With \$20 million of that sum, the ABC would commission approximately 36 hours of high-quality Australian drama, premium factual and children's content each year. In addition, the Corporation would be able to direct \$10 million per

⁵³ ABC Act, s.8(1)(e).

⁵⁴ This figure anticipates an increase of the Producer Offset to 30%, as announced by the Government. It reflects the producer margin and items that do not constitute Qualifying Australian Production Expenditure (QAPE), both of which reduce the contribution of the Producer Offset to an overall production budget.

annum to commissioning 30 hours of new and original Australian arts, music and specialist programming. As noted above, the ABC's ability to make effective use of such additional funding would depend on its ability to leverage sufficient screen-agency funding.

In relation to reporting on Australian content levels and investment, the Corporation is committed to transparency and consults regularly with its partners and stakeholders. Through its Annual Report, it documents first-release Australian and total Australian broadcast and ABC view hours for all genres and channels. This data for 2019–20 appears as Attachment A. Other accountability mechanisms include the Corporation's Annual Content Plan and the annual Screen Australia Drama Report. In addition, the ABC has provided information on its expenditure on drama, children's, factual and documentary content in response to requests at Senate Estimates Hearings.

In its response to the Options Paper, the ABC indicated that, in order to enhance transparency, it could commit to providing additional disclosures in its Annual Report including information regularly provided to Senate Estimates. This would include:

- the ABC's total commissioned investment with the Australian production industry across drama (including narrative comedy and Indigenous drama), children's, factual and documentaries;
- the total production expenditure generated in Australia from the ABC's commissioned investment across drama (including narrative comedy and Indigenous drama), children's, factual and documentaries;
- the ABC's commissioned investment with the Australian production industry across drama (including narrative comedy and Indigenous drama) and the estimated total production expenditure generated in Australia by this investment;
- the ABC's commissioned investment with the Australian production industry across children's programming and the estimated total production expenditure generated in Australia by this investment;
- the ABC's commissioned investment with the Australian production industry across factual and documentaries and the estimated total production expenditure generated in Australia by this investment;
- the ABC's total commissioned investment with the Australian production industry;
- the total production expenditure generated in Australia from the ABC's commissioned investment levels; and
- volumes of Australian premiere content broadcast across all platforms by genre throughout the year.

The ABC can re-iterate its commitment to including this information in its Annual Report.

The ABC is not part of the existing commercial television regulatory framework and believes it should remain outside of any new framework that is introduced. Including the ABC in the framework would represent a significant change in its accountability arrangements and a reduction of its independence. It is not justified by any failure in its current approach to commissioning and broadcasting Australian content.

7. Other means of strengthening broadcasting

7.1. Prominence

The Green Paper asks for submissions to identify other regulatory steps that could be taken to enhance the ability of television services to continue play their role in advancing public policy objectives around news and Australian content. The ABC believes that there is an urgent need for regulatory guarantees of prominence for broadcasters' services on Smart TVs and other connected-TV platforms, as they are becoming a new type of gatekeeper for Australian media services and content.

The ABC's research shows that, in 2020, 74% of VOD viewing in Australia was on a television screen, either through built-in "smart" capabilities, connected set-top boxes or digital media devices, such as the Apple TV, Google Chromecast and Amazon Fire Stick.⁵⁵ Between 2019 and 2020, use of smart TVs to view VOD services rose from 48% to 57%, while the use of digital media devices rose from 19% to 32%. Further, the Corporation has observed that a growing number of Australians are solely accessing its services via online streaming, rather than broadcast. This makes these various connected-TV devices a key touchpoint, including for emergencies.

Because streamed content on connected TVs is accessed via dedicated apps, the presence of such apps and the prominence of on-screen icons or "tiles" representing them has a significant effect on the likelihood of viewers choosing to use a media service and its content offering. Where television manufacturers were once willing to preload ABC iView onto smart TVs and provide easy access to it via a home-screen icon, they are increasingly charging for both preloading and prominence. Other broadcasters are subject to similar pressures and it is already possible for Australian consumers to purchase connected TVs that do not include or prominently display one or more of the free-to-air broadcasters' apps. The ABC understands that commercial broadcasters are also being asked to offset the costs of prominence by sharing a proportion of their revenue from connected TVs with manufacturers.

Alongside icons and buttons that directly trigger apps, it is increasingly common for viewers to access content by searching for specific programs or programs that match criteria they specify. This is particularly the case with platforms such as Apple TV, Google's Android TV and Amazon's Fire TV, which offer aggregated search facilities that allow the user to search for content available through any of the video apps that are currently present on the device; when the user selects a piece of content, the platform will launch the appropriate app to play it. While the ABC provides data about the programs on ABC iView to these platforms to aid discovery, it has no way of ensuring that its free versions of programs will be most prominently displayed in search results or that its programs will be given any particular prominence in more generalised searches, such as by genre.

Both of these trends represent a risk in public policy terms, as consumers are increasingly less likely to easily discover Australian content, including ABC programs for which they have already paid. As users become increasingly accustomed to using VOD services and aggregated platforms to access video content, there is a distinct risk of Australian programming becoming "crowded out", as audiences are less often presented with the option of viewing quality Australian content.

⁵⁵ ABC Audience Data and Insights. "ABC VOD Study", August 2020.

These challenges are not unique to the Australian media market. Policymakers globally are grappling with issues of discoverability and prominence, and there may be scope to learn from their experiences and approaches. International approaches to regulating for prominence were highlighted in O&O's report.⁵⁶

- The **United Kingdom** has long had a regime guaranteeing the prominence of the services of public service broadcasters (PSBs; in UK law, this includes the BBC and advertising-funded free-to-air services that have obligations under the *Communications Act*) for the electronic program guides (EPGs) offered by pay-TV services. In 2019, the UK media regulator, Ofcom, examined the prominence of the PSB services on smart-TV and other dedicated VOD platforms and recommended that the UK Government legislate to create a new framework to ensure PSB content remains prominent and to support the sustainability of PSBs in the contemporary, globalised on-demand environment.⁵⁷

Ofcom proposed a framework would apply to scheduled and on-demand delivery of PSB content across a range of connected devices. Its initial focus would be on enabling viewers to easily find PSB content, both through traditional channels and BVOD services, by ensuring its prominence on the home screens of smart TVs and other connected devices and in search results and recommendations. The framework would protect the prominence of PSB content that is made available without charge. It would specify criteria for determining which on-demand services are eligible for prominence protection under the framework based on their delivery of a suitable range and quantity of high-quality content made for UK viewers.

Ofcom also recommended that the framework be adaptable to remain effective and relevant as technologies and audience habits change. It suggested that a means of achieving this might be to give the relevant Secretary of State ordering-making powers to update key definitions and criteria.⁵⁸

The report further noted that ensuring the continued availability of PSB content to viewers in the UK may require the introduction of new obligations for on-demand platforms equivalent to the existing “must offer” and “must carry” rules that apply to PSBs’ traditional channels on pay-TV platforms in the UK. Ofcom said that it would engage with industry and Government on potential and proportionate obligations to ensure the continued availability and prominence of PSB content.⁵⁹

- **Canada** is similarly confronting the issue of ensuring the availability and discoverability of Canadian content. In January 2020, the final report of a comprehensive, 18-month Broadcasting and Telecommunications Legislative Review recommended that ensuring discoverability

⁵⁶ O&O. “Supporting Local Content Investment”, pp.29–33.

⁵⁷ Ofcom. “Review of prominence for public service broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world”, 4 July 2019, https://www.ofcom.org.uk/_data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf.

⁵⁸ Ofcom. “Review of prominence for public service broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world”, par 2.11.

⁵⁹ Ofcom. “Review of prominence for public service broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world”, par 6.18.

become an object of Canada’s communications legislation and that discoverability and prominence obligations be introduced for Canadian content.⁶⁰

The report proposed a substantial unification of media regulation in Canada, including broadcast and online services, under the jurisdiction of the media regulator, the Canadian Radio and Telecommunications Commission (CRTC). It found, among other things, that, as consumers “now have access to an endless choice of content, making it difficult to find, or simply recognise, Canadian content”, the CRTC needed to be given the ability to impose discoverability measures on media content companies.⁶¹

In November 2020, the Canadian Government introduced Bill C-10 to amend the Broadcasting Act and related legislation. Bill C-10 includes provisions giving the media regulator, the Canadian Radio and Telecommunications Commission (CRTC), broad powers to impose conditions on broadcasting undertakings, including in relation to “the presentation of programs for selection by the public, including the discoverability of Canadian programs”.⁶² The Bill amends the definition of a “broadcasting undertaking” to include “an online undertaking”.⁶³

- In **Germany**, a new State Media Treaty (*Medienstaatsvertrag* or MStV) came into effect on 7 November 2020.⁶⁴ It replaced the previous broadcasting-specific treaty, adding broader regulation of digital media platforms, user interfaces and its “gatekeepers”, including search engines, smart TVs, app stores and social media. The MStV includes a “findability” obligation for user interfaces provided by media platforms, including smart TVs and connected media devices, under which TV broadcasting must be “directly accessible and easy to find on the first selection level”.⁶⁵ In this context, “media platforms” are defined as online services (referred to in the English translation of the MStV as “telemedia”) that provide users with an offering determined by the platform provider that combines radio, online media comparable to broadcasting or online media the regularly contains journalistically edited news or political information.⁶⁶ “User interfaces” are defined as providing an overview, whether textually visually or acoustically, of the offers or contents of media platforms so that users can orientate themselves and directly select the media provided through the platform.⁶⁷

As international media regulators have concluded, it is highly likely that new rules will be required ensure that Australian audiences can readily discover Australian stories. The ABC would support the introduction of regulatory mechanisms to ensure the prominence of free-to-air broadcasters’

⁶⁰ Broadcasting and Telecommunications Legislative Review. *Canada’s Communications Future: Time to Act*, Final Report, January 2020, [https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/\\$file/BTLR_Eng-V3.pdf](https://www.ic.gc.ca/eic/site/110.nsf/vwapj/BTLR_Eng-V3.pdf/$file/BTLR_Eng-V3.pdf), recommendations 59, 61 and 63.

⁶¹ Broadcasting and Telecommunications Legislative Review. *Canada’s Communications Future*, p.144.

⁶² House of Commons of Canada. ‘Bill C-10: An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts’, First Reading, 3 November 2020, clause 7, <https://parl.ca/DocumentViewer/en/43-2/bill/C-10/first-reading>.

⁶³ House of Commons of Canada. ‘Bill C-10’, clause 1.

⁶⁴ Die Midienanstalten. ‘State media treaty (MStV) in force – new media concentration law in sight?’ (via Google Translate), Media Release, 9 November 2020, <https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/medienstaatsvertrag-mstv-in-kraft-neues-medienkonzentrationsrecht-in-sicht>.

⁶⁵ Germany. *State Treaty on the modernisation of media legislation in Germany*, Draft legislation notified to European Commission on 24 January 2020, <https://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2020&num=26&dLang=EN>, §84(3).

⁶⁶ *State Treaty on the modernisation of media legislation in Germany*, §2(14).

⁶⁷ *State Treaty on the modernisation of media legislation in Germany*, §2(15).

services on connected-TV platforms and suggests a body such as ACMA be given a general power to regulate for prominence. The Corporation proposes Ofcom’s 2019 recommendations as a possible template for such mechanisms.

As the ABC has previously argued in its submission to the “Supporting Australian Stories on Our Screens” Options Paper, an appropriate first step towards developing such legislation would be for the Government to commission a thorough review of prominence and discoverability of Australian content.