

Review of the operation of the local programming requirements for regional commercial television broadcasting licensees

Report to the Minister for
Communications, Urban Infrastructure,
Cities and the Arts

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Executive summary

Division 5D and requirement to review

On 17 October 2017, Parliament inserted a new Division into Part 5 the [Broadcasting Services Act 1992 \(the BSA\) \(Division 5D\)](#). Division 5D:

- > replicates existing local content rules for regional commercial television broadcasting licences (**regional licences**) that had previously been set out in the *Broadcasting Services (Additional Television Licence Condition) Notice 2014 (the 2014 licence condition)* made by the Australian Communications and Media Authority (**the ACMA**)¹
- > inserts *new* rules for:
 - regional commercial television broadcasting licensees in aggregated markets to meet increased local content requirements if a ‘trigger event’ occurs
 - regional commercial television broadcasting licensees in non-aggregated markets to meet increased local content requirements if a ‘trigger event’ occurs
- > requires the ACMA to make a local programming determination to include matters required to facilitate the operation of the framework (for example, definitions of local areas and material of local significance).

Part 5D also requires the ACMA to conduct a statutory review of the operation of the local programming requirements for regional licensees (**the Review**) and to provide a report to the Minister for Communications, Urban Infrastructure, Cities and the Arts (**the Minister**) (**the Report**).

The ACMA notes that some provisions of Division 5D and the Local Programming Determination only come into effect if a regional commercial television broadcasting licence becomes affected by a ‘trigger event’. These include provisions that increase the existing level of local content requirements for regional licences affected by a trigger event. They also include provisions in the Local Programming Determination that define local areas for licensees in non-aggregated markets once a trigger event has occurred, and that set out criteria where trigger-event affected licences can accrue 3 local content points per minute of material broadcast.

To date, no trigger events have occurred. Accordingly, the Division 5D and the Local Programming Determination operates to set out requirements for levels of local content for regional commercial television broadcasting licensees in aggregated markets, as adopted from the 2014 licence condition.

Summary of findings

In summary, the Review has found that:

- > In relation to the operation of the local content rules at Division 5D of the BSA, the provision is operating effectively to require regional licensees for aggregated licences to provide minimum levels of local content. This conclusion is supported by high levels of compliance by licensees over the period, including several licensees providing more than the minimum amount of local content. Since

¹ The *Broadcasting Services (Additional Television Licence Condition) Notice 2014* was repealed on 17 April 2018.

Division 5D commenced in 2017, the ACMA has not received any complaints about non-compliance with the local content obligations.

- > In relation to the operation of the *Broadcasting Services Local Programming Determination 2018*, made by the ACMA in accordance with subsection 61CZ(1) of the BSA (**the Local Programming Determination**), it is operating effectively to facilitate the intended outcomes of Division 5D for aggregated licences, by providing an appropriate meaning of 'material of local significance' and specifying workable and balanced local areas for aggregated licences.
- > In relation to the operation of the licence condition at paragraph 7(2)(ba) of Schedule 2 to the BSA (which requires compliance by affected commercial licensees with the content rules in Division 5D), noting the high levels of overall compliance and associated lack of complaints, the ACMA concludes that this licence condition is operating effectively and incentivising compliance.

The ACMA has made no findings in relation to the following matters:

- > The operation of the local content rules at Division 5D of the BSA in relation to non-aggregated licences, as the substantive Division 5D provisions will only affect those licences following a trigger event (should one occur).
- > The operation of certain elements of the Local Programming Determination, as there have been no trigger events for regional licences, making it not applicable to conduct an associated assessment of:
 - local areas specified for non-aggregated licences
 - the additional requirements for trigger-event affected licensees to qualify for the 3-point category of local content.

In general, the Review shows high compliance with the local content requirements by licensees for aggregated licences.

When compared with broadcast local content that was reported in 2013, the overall amount of local content being broadcast since the introduction of Division 5D marginally increased since 2013 levels.

Of the 42 local areas where compliance was reported, licences in 24 local areas accumulated sufficient points to have met the trigger-event requirement (900 points per week) if it was in place, indicating that:

- > the required local content quotas for trigger-event affected and non-affected aggregated licences are set at achievable levels for licensees
- > Division 5D does not incentivise licensees to provide only minimum levels of local content.

Scope

The Review of the operation of local programming requirements for regional licensees has been conducted in accordance with subsection 61CZC(1) of the BSA, which requires the ACMA to conduct a review of the following:

- > the operation of Division 5D of the BSA, relating to local programming requirements for regional licensees
- > the operation of the Local Programming Determination
- > the operation of the licence condition.

The ACMA must prepare a report of the Review and give a report to the Minister.

The Minister must cause copies of the Report to be tabled in each House of Parliament within 15 sitting days of that House after the day on which the Minister receives the Report.

Information taken into account in conducting the Review includes:

- > local programming data from licensees for regional aggregated commercial television broadcasting licences broadcast in each local area during the 6-week 'timing period' from 21 March to 1 May 2021
- > local programming data for the 6-week timing period from 24 March to 4 May 2013 (being the closest corresponding timing period in 2013 to the 2021 timing period)² provided by regional licensees before the commencement of Division 5D.

The ACMA consulted with Free TV Australia and the Department of Infrastructure, Transport, Regional Development and Communications.

² 2013 was the last year in which the ACMA collected routine compliance reports from licensees, under the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007*, before it was revoked by the 2014 licence condition.

Background

The Division 5D local content rules were included in the BSA by the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017 (the Broadcasting Reform Act)* on 17 October 2017. They replaced a previous set of rules in the 2014 licence condition which, as required by section 43A of the BSA, had been made by the ACMA under section 43 of the BSA (the Broadcasting Reform Act revoked the 2014 licence condition and repealed section 43A).

Division 5D requires the ACMA to conduct a statutory review of the operation of the local programming requirements for regional licensees and to provide a report to the Minister.

The Explanatory Memorandum for the Broadcasting Reform Act stated that Division 5D will:

*increase the current local programming obligations that apply in aggregated markets (and Tasmania), and introduce new local programming obligations in non-aggregated markets, for regional commercial television broadcasting licences affected by a ‘trigger event’.*³
*[...] In order to evaluate the extent to which [Division 5D] achieves its objective, the ACMA will review the operation of the new local programming provisions within two years following the commencement of the additional obligations.*⁴

Material of local significance – local content

Division 5D requires relevant licensees to broadcast minimum levels of ‘material of local significance’ to each local area within a licence area for the regional licence (**the local content rules**). In accordance with paragraph 7(2)(ba) of Schedule 2 to the BSA, compliance with the local content rules is a licence condition for licensees, the breach of which can be enforced by the ACMA.

‘Material of local significance’ (**‘local content’**) is defined by the ACMA in the Local Programming Determination to be material that is broadcast to a local area for a licence that relates directly to the local area, or to the licensee’s licence area. There is no requirement for material to be produced in a local area or a licensee’s licence area for it to fall within the meaning of ‘material of local significance’.

Local content requirements

Division 5D contains different local content rules for regional licences depending on:

- > whether the licence is:
 - a ‘regional aggregated commercial television broadcasting licence’ (**an aggregated licence**) or
 - a ‘regional non-aggregated commercial television broadcasting licence’ (**a non-aggregated licence**)⁵, and

³ A **trigger event** is an event where a person comes into control of a commercial television broadcasting licence, and, as a result, is in a position to exercise control of 2 or more commercial television broadcasting licences (at least one of which is a regional licence) with a combined licence area population exceeding 75% of the population of Australia. To date, since Division 5D commenced, there have been no trigger events.

⁴ Explanatory Memorandum to the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, pp 14-15.

⁵ A regional aggregated commercial television broadcasting licence is a regional licence in the following licence areas: Northern New South Wales, Southern New South Wales, Regional Victoria, Eastern Victoria, Western Victoria, Regional Queensland and Tasmania. A regional non-aggregated commercial television

- > whether or not the licence has been affected by a **'trigger event'**.

Greater levels of local content are required to be broadcast by regional aggregated commercial television broadcasting licensees than by regional non-aggregated commercial television broadcasting licensees, and the requirement increases the first time that a licence is affected by a trigger event.

Under the local content rules, the required local content quotas are calculated using a points-per-minute system:

- > where a non-aggregated licence has not been affected by a trigger event, the licensee is not required to broadcast any minimum amount of local content
- > where a non-aggregated licence has been affected by a trigger event, the licensee is required to broadcast at least 600 'points' of local content in a given 6-week timing period (**a timing period**) and 100 points in any given week, commencing 6 months after the trigger event – there are currently no licences in this category
- > where an aggregated licence has not been affected by a trigger event, the licensee is required to broadcast at least 720 points of local content in a timing period and 90 points in any given week – there are currently 16 licences in this category
- > six months after an aggregated licence has been affected by a trigger event, the licensee is required to broadcast at least 900 points of local content in a timing period and 120 points in any given week.

In all cases, not more than 50% of the points accumulated in a local area during a timing period is to be attributable to material that relates directly to the licensee's licence area (as opposed to the local area).

Points accrue at the rate of one point per minute of local content broadcast, except for news that relates directly to the local area in which it is broadcast, which accrues 2 points per minute. For trigger-event affected licences, news that depicts people, places or things in the local area accrue 3 points per minute.

Local programming determination

The Local Programming Determination, specifies:

- > the meaning of 'material of local significance'
- > local areas within each licence area for a regional licence
- > certain criteria that must be met for local content broadcast under a trigger-event affected licence to accrue 3 points per minute.

Requirement to make records and submit compliance reports

Division 5D requires the licensee for an aggregated licence and for a trigger-event affected non-aggregated licence:

- > to make an audio-visual record of local content that has been broadcast in any of its local areas
- > to retain that record for 30 days after the end of the relevant timing period, or for a longer period if directed by the ACMA.

Licensees must provide the ACMA with access to the record at the ACMA's request.

broadcasting licence is a regional licence in the following licence areas: Broken Hill, Darwin, Geraldton, Griffith and Murrumbidgee Irrigation Area (MIA), Kalgoorlie, Mildura/Sunraysia, Mount Gambier/South East, Mt Isa, Remote and Regional WA, Riverland, South West and Great Southern, and Spencer Gulf.

Division 5D does not include a requirement for licensees to report compliance to the ACMA on a regular basis. However, if a trigger event occurs for a licence, the licensee for a trigger-event affected regional licence must give to the ACMA:

- > a compliance report covering the 12-month period that starts 6 months after the trigger event
- > a compliance report covering the 12-month period that starts at the end of the first 12-month period.

The Explanatory Memorandum noted that the first compliance report may assist in providing information for the review of local programming requirements under section 61CZC of the BSA, however, as there have been no trigger events, no compliance reports have been given to the ACMA.⁶

⁶ Explanatory Memorandum to the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, p. 87.

Operation of Division 5D

The Review examined the following matters that are provided for in Division 5D:

- > local content rules for aggregated licences
- > local content rules for non-aggregated licences
- > record-keeping and compliance reporting requirements for regional licences
- > the requirement for the ACMA to make the Local Programming Determination.

Local content obligations – regional aggregated commercial television licences

The local content obligations in Division 5D currently apply to 16 aggregated licences in 7 licence areas. Each licence area is divided up into one or more local areas. A list of the 16 aggregated licences and the licence area and local areas that they serve is in the Appendix.

As noted above, for each local area, a licensee for an aggregated licence is required to broadcast 720 points of local content in a timing period and 90 points in any given week.

Analysis of licensee compliance data for 2021

On 18 May 2021, the ACMA asked the licensees for each aggregated licence to provide records of material of local significance broadcast in each local area during a 6-week timing period from 21 March to 1 May 2021 (the **2021 timing period**). Licensees provided information for every area for which the local content rules apply (noting that more than one licence serves each local area, this is 55 local areas in total).

The information provided shows high licensee compliance with the Division 5D local content requirements. During the 2021 timing period, licensees reported providing between 611 and 2721 points of local content across the timing period in their local areas, averaging between 101 and 453 points of local content per week per local area. Overall, compliance for the 2021 timing period was reported in 42 local areas, and non-compliance was reported in 13 local areas.⁷

Of the 42 local areas where compliance was reported, licences in 26 local areas accumulated sufficient points to have met the trigger-event requirement (900 points per week) if it had been in place. This indicates that:

- > the required local content quotas for trigger-event affected and non-affected aggregated licences are set at achievable levels for licensees
- > while licensees in some local areas broadcast only the minimum required amount of local content, this is not universal, suggesting that Division 5D does not incentivise licensees to provide only minimum levels of local content.

⁷ The reported non-compliance relates to an incident that has been reported previously to the ACMA which affected the amount of local content broadcast by 4 licences during the 2021 timing period. The incident and subsequent non-compliance was attributable to extraordinary circumstances outside the licensees' control and affected broadcasts in 4 of the 6 weeks of the timing period. The ACMA noted that in the first and last week in the 2021 timing period, the services accrued points in each local area at a rate that would be well in excess of the rate necessary to meet the required points quota for the timing period.

The Review also examined what proportion of points reported for the 2021 timing period was attributable to news that relates directly to the local area in which it is broadcast (content that accrues 2 points per minute) and whether at least 50% of the points accumulated in a local area were for material that relates directly to the licensee's local area (as required by Division 5D).

Licensees have reported that, on average they broadcast 139.3 points per week of news that relates directly to the local area, equating to 80.12% of the average weekly points (i.e. the reported local content broadcast by licensees). The remaining points per week was for other material, including news that related to the entire licence area (but not specifically to the local area) and non-news local content that relates to the local area or to the entire licence area.

Except in the case of the licensees that reported non-compliance, no licensee reported that more than 50% of the points accumulated in a local area during a timing period was attributable to material that relates directly to the licensee's licence area (as opposed to the local area).

Comparison of 2021 compliance data with 2013 compliance data

When undertaking the Review, the ACMA also compared local content information received for local areas in the 2021 timing period with local content information received for the same local area (where applicable⁸) in the closest corresponding timing period in 2013 (from 24 March to 4 May 2013) (**the 2013 timing period**). 2013 was the last year in which the ACMA collected routine compliance reports from licensees.⁹

Overall, the comparison of the reported results from the 2021 timing period with the reported results from the 2013 timing period shows that in 2021, licensees reported providing 173.85 points of local content per week in each local area compared to 167.34 points for each week in the equivalent timing period in 2013. This indicates that, on average, since the introduction of Division 5D, local content is being provided at marginally higher levels than in 2013.

When comparing equivalent local areas from the 2021 timing period with the 2013 timing period, the Review found that, of the 42 local areas where licensees reported compliance in 2021:

- > in 22 local areas, licensees reported accruing more points of local content in 2021 than in 2013
- > in 16 local areas, licensees reported accruing fewer points of local content in 2021 than in 2013 (whilst still meeting the quotas specified in Division 5D)
- > 4 local areas (in Northern NSW TV1) were not compared because the licensee for an aggregated licence in those areas changed between 2013 and 2021, although marginally fewer points were provided per week by the licensee for that licence in the 2021 timing period than in the 2013 timing period.

Television local content obligations – regional non-aggregated commercial television licences

No television local content obligations currently apply to regional non-aggregated commercial television licences. This is because obligations only apply to non-aggregated licences that have been subject to a trigger event, which is yet to occur for any licence.

⁸ Between 2013 and 2021, a licensee changed its nominated local areas in Regional Queensland TV1 to which local content is provided, so no comparison could be made.

⁹ Up until February 2014, the *Broadcasting Services (Additional Television Licence Condition) Notice 8 November 2007*, made by the ACMA, required licensees for aggregated licences to provide twice-yearly reports on their compliance with the local content requirements. Following an extended period of continuous compliance, the compliance reporting requirement was discontinued in the 2014 licence condition.

Requirement to make records and submit compliance reports

The ACMA is yet to request access to an audio-visual record kept by a licensee in accordance with the record-keeping requirements in Division 5D. However, on two occasions, the ACMA has requested a written summary of records made by licensees for aggregated licences:

- > in July 2019, the ACMA requested summaries of records from licensees for aggregated licences in the Regional Queensland TV1 licence area
- > in May 2021, the ACMA requested summaries of records from licensees for all aggregated licences.

On both occasions, licensees were able to provide the requested information, indicating that licensees for aggregated licences are complying with the record-keeping requirement.

Licensees for non-aggregated licences are not subject to the record-keeping requirement as there have been no trigger events.

As no trigger events have occurred, no compliance reports have been given to the ACMA.

Conclusion

Division 5D is operating effectively to require licensees for aggregated licences to provide minimum levels of local content. Since the introduction of Division 5D, the average amount of local content provided by licensees for each aggregated licence is marginally greater when compared to 2013 levels, noting that following a trigger event, the amount of local content provided would be expected to increase. This conclusion is supported by the absence of complaints about non-compliance with the local content rules and the fact that, during the period reviewed by the ACMA, compliance by licensees was the norm, with non-compliance arising only during an unanticipated and one-off event.

Operation of the Local Programming Determination

Section 61CZ of the BSA provides that:

- > the ACMA may, by legislative instrument, make a local programming determination that prescribes matters required or permitted by the BSA to be prescribed by the local programming determination
- > the ACMA must take all reasonable steps to ensure that at all times from 17 April 2018, a local programming determination is in force.

The Local Programming Determination that is in force facilitates the operation of Division 5D by:

- > establishing the meaning of ‘material of local significance’, in accordance with section 61CU of the BSA
- > setting out each local area that is within the licence areas of both aggregated and non-aggregated licences
- > setting out additional requirements necessary for licensees to obtain 3 points per minute of local content (the maximum available) for the broadcast of news in a local area that depicts people, places or things in that local area (in accordance with subsection 61CY(3) of the BSA).

The ACMA made the Local Programming Determination on 22 March 2018 and it commenced on 17 April 2018.

Meaning of ‘material of local significance’

The Local Programming Determination provides that material that is broadcast to a local area is ‘material of local significance’ if it relates directly to:

- > the local area, or
- > the licensee’s licence area.

The Local Programming Determination also provides that the following material is not material of local significance:

- > advertising or sponsorship matter, whether or not of a commercial kind, unless it is a community service announcement
- > material (including a station promotion) that constitutes an announcement that material of local significance will appear later.

This definition was adopted substantially unchanged from the definition that was provided in the 2014 licence condition.

The Review has found that the meaning of ‘material of local significance’ as set out in the Local Programming Determination is adequate for the purposes of Division 5D, and should be retained in its current form. In particular, the meaning is sufficiently broad to include a range of broadcast material that would be relevant to audiences in a local area or the licence area for a licence.

The Review has noted that the broadcast of local news is often purported to be of importance to regional audiences. Although material of local significance is not defined to specifically include references to news, the Review has found that this is not necessary. This is because the structure of the points system in Division 5D is designed to incentivise the broadcast of local news, and, as shown in the reports provided by licensees, under the existing meaning of material of local significance, local news makes up the majority of local content that is broadcast.

Local areas

The Local Programming Determination separately specifies local areas for the aggregated licences and the non-aggregated licences.

Aggregated licences

Local areas for each of the aggregated licences are the same as the local areas that were defined for those licences in the 2014 licence condition and have remained unchanged since 2007. In each aggregated licence area except Tasmania TV1, the licence areas are divided into small areas, some or all of which are defined as local areas with respect to a particular licence. In Tasmania TV1, the local area is the same as the licence area and applies to all of the aggregated licences. The local areas are described by reference to geographical areas defined for the purposes of the 7 August 2001 Census conducted by the Australian Bureau of Statistics.

When making the Local Programming Determination, the ACMA decided to adopt the local areas defined in the 2014 licence condition to provide consistency and predictability to broadcasters and audiences. This meant that the obligation on licensees for aggregated licences would not change compared to the obligation in the 2014 licence condition (which was drafted in similar terms as Division 5D with respect to aggregated licences).

In practice, the local areas for the aggregated licences encompass established markets within each aggregated licence area. Each local area is of a size, relative to the licence area, that is large enough to provide economies of scale to licensees (i.e. so that the production and broadcast of local content is affordable), whilst containing a common 'community of interest' across the television audience. Based on the operation of the Local Programming Determination to date, the ACMA is of the view that the local areas for the aggregated licences are fit for purpose and do not need to be varied. If, during the life of the Local Programming Determination, the ACMA forms the view that the existing local areas were not meeting the needs of local audiences for local content, the ACMA would consult on whether the existing local area boundaries within a licence area should be changed. This has not occurred to date.

In two licence areas, Regional Queensland TV1 and Northern NSW TV1, local areas are defined so that a licensee is not required to provide local content to every area in the licence area. In Regional Queensland TV1, the local areas are defined as being 5 of 7 areas in the licence area, and in Northern NSW TV1, the local areas are defined as being 4 of 5 areas in the licence area. This is designed to make compliance with the local content rules in those licence areas affordable (and therefore sustainable) to licensees.

In each case, the specific areas are nominated by the licensee and advised to the ACMA (the ACMA publishes this on its [website](#)). The choice of which local areas a licensee will serve appears often to be based on which historical markets were served by the licensee before those markets were aggregated into the existing single licence area.

The effect of this optional approach means that in the larger licence areas, audiences in some local areas will not necessarily receive local content that relates to their local area from all 3 commercial networks, but are expected to receive local content from at least one. In the event that an area was not chosen to be a local area by any of the licensees, the ACMA would review how local areas are defined in the Local Programming Determination. Again, this has not occurred to date.

Overall, the Review found that the local areas, as defined in the Local Programming Determination for aggregated licences, are workable and balanced, and are operating effectively to facilitate the intended outcomes of Division 5D.

Non-aggregated licences

The Local Programming Determination defines the local area for each non-aggregated licence, except the licence in the Regional and Remote Western Australia TV1 licence area (RRWA), to be the same as the licence area for that licence.

When making the Local Programming Determination, the ACMA noted that, unlike the licence areas for aggregated licences in Queensland, New South Wales and Victoria, which were formed by combining smaller licence areas, the licence areas for the non-aggregated licences (except RRWA) are typically self-contained markets that were planned by the ACMA, having regard to the demographics and social and economic characteristics within the licence area. This means that it is appropriate for local areas to be the same as these licence areas.

For the RRWA regional licence, the Local Programming Determination defines the local area to be the combined geographical area covered by the Geraldton TV1, Kalgoorlie TV1 and South-West Great Southern TV1 licence areas. More remote areas in RRWA (for example, areas that lie in the Western Zone TV1 licence area) were not included. This is because the intention of the Broadcasting Reform Act, as shown in the Explanatory Memorandum, was to exclude remote-only licence areas (such as Western Zone TV1) from the local content obligations:

The obligations specified under these arrangements would not apply to commercial television broadcasts to remote areas of Australia ... broadcasts to remote areas of Australia will be excluded from the new local programming obligations as their diverse, sparse populations dispersed over a large geographical area mean that local programming is economically unsustainable.¹⁰

The approach for the definition of local area in RRWA differed from the approach taken with respect to other large licence areas (i.e. the licence areas for aggregated licences) by combining several geographic areas into one local area rather than creating multiple local areas each with its own local content obligation.

The ACMA took this approach after taking into account the licensing arrangements that oblige the licensee for the non-aggregated licence in RRWA to serve the entire licence area, along with that licensee's satellite-fed delivery platform that provides a single programming stream throughout the licence area. The ACMA concluded that if multiple local areas were defined, the licensee would be required, following a trigger event, to provide multiple 'break-out' programming streams for its licence area, potentially at significant additional cost (which would be on top of the additional cost of producing material of local significance).

During consultation on a draft of the Local Programming Determination, the ACMA noted concerns raised by Free TV Australia that the licensees in the Geraldton TV1, Kalgoorlie TV1 and South-West Great Southern TV1 licence areas would be similarly disadvantaged by the decision to make the local areas equate to the same area

¹⁰ Explanatory Memorandum to the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, p. 36.

covered by each licence area. Free TV Australia suggested that the local areas in those cases be the same as the local area for the RRWA licence. However, the ACMA took the view that the BSA does not permit it to define a local area for a licence as being significantly larger than the licence area for that licence. The issue of the resulting discrepancy between the non-aggregated licences in Western Australia was eventually resolved by amendments made to Division 5D.

Overall, the Review could not make a finding about the operation of local areas as defined in the Local Programming Determination for non-aggregated licences, as none of these licences have been subject to a trigger event and therefore they have not been required to comply with the local content rules.

Additional requirements to obtain 3 points per minute

The Local Programming Determination has set out additional requirements that licensees for trigger-event affected licences must meet in order to accumulate 3 points per minute of local news content that is broadcast (**the 3-point category of local content**) (i.e. other than the requirements set out in the table at subsection 61CY(3) of the BSA).

The Review notes that when the Government drafted the Broadcasting Reform Act, the 3-point category of local content was included because it was ‘the most straightforward method of incorporating an incentive for filming in local areas into the local programming obligations’ and ‘would also mitigate against overly centralised approaches to local news, for example, news broadcasts being filmed out of central locations without significant engagement with the local area in which it is broadcast’.¹¹

The Explanatory Memorandum to the Broadcasting Reform Act noted that:

*The legislation ... would include within its scope both pre-recorded footage and live broadcasts or ‘crosses’ to the local programming or licence area. The ACMA would need to consider how ‘file footage’ should be treated, for example, reusing the same footage of local schools or the main street.*¹²

Consequently, the Local Programming Determination sets out the following additional requirements for the 3-point category of local content:

- > the news item in question must relate directly to the local area
- > the depiction of people, places or things must predominantly consist of moving images
- > certain restrictions on the extent and nature of file footage (as defined in the Local Programming Determination) which may be used, including that file footage:
 - must not be the only kind of footage used
 - must be visually relevant to the news item
 - must be recently obtained or provide a different perspective to the news item
 - must not be used extensively (unless it is directly relevant to the news item).

As no trigger events have occurred for a licence, the Review could not evaluate whether these additional requirements have been effective in ensuring that the 3-point category of local content properly incentivises the local production of television news articles. In the event that one or more trigger events do occur, the ACMA will be responsible,

¹¹ Explanatory Memorandum to the *Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017*, p. 38.

¹² *Ibid.*

through its role in maintaining the Local Programming Determination, for monitoring the operation of these requirements so that they support the intention of Division 5D.

Conclusion

The Review found that, based on the performance of aggregated licences, the Local Programming Determination is operating effectively to facilitate the intended outcomes of Division 5D by providing an appropriate meaning of 'material of local significance' and specifying workable and balanced local areas for aggregated licences.

As there have been no trigger events for regional licences, the Review was unable to make an assessment of:

- > the local areas specified for non-aggregated licences
- > the additional requirements for trigger-event affected licensees to qualify for the 3-point category of local content.

Operation of the local content licence condition

Paragraph 7(2)(ba) of Schedule 2 to the BSA provides that each commercial television broadcasting licence is subject to the condition that:

If a requirement under Division 5D of Part 5 (which sets out local programming requirements) applies to the licensee—the licensee will comply with that requirement.

To date, no licensee has been found to be in breach of the licence condition.¹³ Further, the ACMA has not received a complaint alleging that a licensee is not providing local content that has warranted an investigation into a licensee's compliance with a requirement under Division 5D. This, together with evidently high compliance as reported, tends to indicate that the Division 5D requirements and the licence condition are appropriately designed to require the broadcast of local content at levels that can be sustained by licensees.

The Review noted that the high level of compliance reported by licensees is to be expected, as the requirements in Division 5D are similar to requirements that have been in operation under a series of licence conditions that have been in force continuously since in 2007.

The Review also noted that if a trigger event occurs and one or more non-aggregated licences become subject to the Division 5D requirements for the first time, it is possible that licensees for newly affected licences may take some time to comply consistently with the requirements. The Review has noted that one of the Division 5D requirements is for regional licensees to provide compliance reports following a trigger event, which is expected to assist the ACMA in detecting and remedying non-compliance.

Conclusion

The Review found that, as the ACMA has received no complaints and has not conducted any investigations regarding compliance with the local content rules, there have been no recorded breaches of the licence condition. Therefore, the licence condition appears to be adequately suited to incentivising licensees for aggregated licences to comply with the requirements in Division 5D of the BSA.

¹³ The Review notes that non-compliance has been reported by 3 regional licensees following a cyber-attack on their metropolitan affiliation partner, which affected the provision of local content for 4 licences. While this may lead to a finding of a breach of the licence condition, this matter is yet to be finalised by the ACMA.

Appendix – Licence areas and local areas served by regional aggregated regional commercial television broadcasting licences

Network	Licensee	Licence Number	On-air ID / Callsign ⁱ	Licence Area	Local Area ⁱⁱ
Nine Network	NBN Pty Ltd	94	Nine/NBN	NORTHERN NSW TV1	Central Coast
					Hunter
					North West Slopes & Plains
					Northern Rivers & Mid North Coast
Prime Television	Prime Television (Northern) Pty Limited	95	Prime7/NEN	NORTHERN NSW TV1	Hunter
					North West Slopes & Plains
					Northern Rivers & Mid North Coast
					Richmond Tweed
	Prime Television (Southern) Pty Limited	90	Prime7/CBN	SOUTHERN NSW TV1	ACT & Southern Tablelands
					Central Tablelands & Central Western Slopes
					Illawarra & South Coast
					South Western Slopes & Eastern Riverina
	Prime Television (Victoria) Pty Limited	103	Prime7/AMV	REGIONAL VICTORIA TV1	Gippsland
					North Central Victoria
South West Victoria					
Upper Murray & Goulburn Valley					

Network	Licensee	Licence	On-air ID / Callsign	Licence Area	Local Area
Seven Network	Channel Seven Queensland Pty Ltd	115	Seven/ STQ	REGIONAL QUEENSLAND TV1	Central Coast & Whitsundays
					Far North Queensland
					North Queensland
					Sunshine Coast
					Wide Bay
Southern Cross Austereo	Regional Television Pty Limited	113	Nine/TNQ	REGIONAL QUEENSLAND TV1	Capricornia
					Far North Queensland
					North Queensland
					Sunshine Coast
	Australian Capital Television Pty Ltd	85	Nine/CTC	SOUTHERN NSW TV1	ACT & Southern Highlands
					Central Tablelands & Central Western Slopes
					Illawarra & South Coast
Southern Cross Communications Pty Limited	104	Nine/BCV	WESTERN VICTORIA TV1	North Central Victoria	
				South-West Victoria	
Southern Cross Communications Pty Limited	106	Nine/ GLV	EASTERN VICTORIA TV1	Gippsland	
Tasmanian Digital Television Pty Ltd	1150806	Nine/TDT	TASMANIA TV1	Upper Murray & Goulburn Valley	
Tasmania					
Southern Cross Television (Tnt9) Pty Limited	133	Southern Cross Television/ TNT	TASMANIA TV1	Tasmania	

Network	Licensee	Licence	On-air ID / Callsign	Licence Area	Local Area
WIN Media	WIN Television QLD Pty Ltd	116	WINHD/ RTQ	REGIONAL QUEENSLAND TV1	Capricornia
					Darling Downs
					Far North Queensland
					North Queensland
	Network Investments Pty Ltd	96	WINHD/ NRN	NORTHERN NSW TV1	Hunter
					North-West Slopes & Plains
					Northern Rivers & Mid North Coast
					Richmond Tweed
	WIN Television NSW Pty Ltd	99	WINHD/ WIN	SOUTHERN NSW TV1	ACT & Southern Tablelands
					Central Tablelands & Central Western Slopes
					Illawarra & South Coast
					South Western Slopes & Eastern Riverina
	WIN Television Vic Pty Ltd	107	WINHD/ VTV	REGIONAL VICTORIA TV1	Gippsland
Upper Murray & Goulburn Valley					
North Central Victoria					
South West Victoria					
WIN Television TAS Pty Ltd	132	WINHD/ TVT	TASMANIA TV1	Tasmania	

ⁱ On-air ID is at May 2021 – before regional affiliation changes on 1 July 2021.

ⁱⁱ In accordance with the *Broadcasting Services Local Programming Determination 2018*, local areas in Regional Queensland TV1 are 5 of 7 areas, as selected by each licensee. Local areas in Northern NSW TV1 are 4 of 5 local areas, as selected by each licensee.