

**Content and access:
The future of program standards and
captioning requirements on digital
television multi-channels**

Discussion paper

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Digital Switchover Policy and Regulation
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

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Introduction

Australian television screens are changing rapidly. Free-to-air digital television broadcasters now provide far more content than at any other time in broadcasting history. Digital television technology not only provides a superior viewing experience with better pictures and better sound, it can also support the delivery of as many as five or six digital television channels with the amount of spectrum previously used to deliver a single analog television channel. This means many viewers are enjoying an unprecedented level of choice when it comes to deciding what to watch free-to-air.

Broadcasters have had the option transmit multi-channels since 2007¹ and the range of multi-channels they now offer includes ABC2, ABC3, SBS Two, the Seven Network's 7TWO, the Ten Network's ONE and the Nine Network's GO!. All these multi-channels are offered in addition to the simultaneous digital broadcast, or simulcast, of the analog television channel that each broadcaster is required to transmit under the *Broadcasting Services Act 1992* (the Act) prior to digital switchover taking effect in a particular area.²

On 19 October 2008, the Minister for Broadband, Communications and the Digital Economy announced a phased, region-by-region timetable for the switchover to digital television. Digital switchover will begin in Mildura in Victoria on 30 June 2010, progress throughout regional and metropolitan Australia, and conclude in the metropolitan and remote area markets in 2013. The full switchover timetable is outlined at **Appendix A**.

Standards for children's programs, Australian content and captioning requirements play a significant role in the way that many view and interact with television. As the switchover to digital television approaches, and because of the proliferation of new content provided by Australian broadcasters when compared to analog television, different ways of regulating program standards and captioning requirements on digital multi-channels may need consideration.

The Government is committed to preserving Australian content on television, and the advent of digital multi-channels is clearly an opportunity for increased transmission of local programming. However, as the Minister noted in his speech to the Screen Producers Association of Australia's annual conference on 20 November 2009, rolling out a suite of new digital channels prior to digital switchover is currently a technical and economic challenge for commercial broadcasters.³

The program standards and captioning requirements that currently apply to each analog television channel are automatically replicated on its digital simulcast, but digital multi-channels are currently exempt from these requirements.⁴ Once digital

¹ *Broadcasting Services Act 1992*, Sections 41A and 41B.

² *Broadcasting Services Act 1992*, Schedule 2 Clause 7(1)(m); as an example this means that, until the switchover to digital television, Channel Seven must provide a duplicate broadcast of the analog Seven Network channel in digital.

³ <http://www.minister.dbcde.gov.au/media/speeches/2009/071>

⁴ *Broadcasting Services Act 1992*, Subsections 122 (7) and (8) and the *Broadcasting Services Act 1992*, Schedule 4, Clause 38 (4) and (4A); with the exception of programs broadcast on a digital multichannel that were previously shown with captions on an analog television channel or its digital simulcast.

switchover is completed in a particular licence area, all digital multi-channels provided to that area will need to comply with program standards and captioning requirements.

Regional broadcasters generally source the content for their multi-channels from the metropolitan broadcasters to which they are affiliated. With digital switchover commencing in regional Australia, this means the multi-channels they provide will need to meet program standards and captioning requirements well before, in most cases, the same content is subject to those arrangements in metropolitan areas. This could impact on a regional commercial broadcaster's decision to establish or maintain those services following digital switchover in their area. The lifting of the exemptions may also affect how the programming on digital multi-channels targets specific or niche audiences. However, the public may believe that in a digital-only environment it is appropriate for these arrangements to apply equally to all the free-to-air television services it receives.

This discussion paper

The purpose of this paper is to discuss how program standards and captioning requirements should apply to commercial digital multi-channels. In doing so, this review will also consider the digital multi-channels offered by the national broadcasters.

The *Broadcasting Services Act 1992* (the Act) requires the Minister for Broadband, Communications and the Digital Economy to conduct a review on:

- (i) the operation of program standards and captioning rules applicable to standard definition and high definition multi-channel commercial television broadcasting services; and
- (ii) whether program standards and captioning rules should be amended in relation to standard definition and high definition multi-channel commercial television broadcasting services.⁵

The Minister for Broadband, Communications and the Digital Economy must cause this review to be conducted before 1 January 2010.

The Government seeks your views on how program standards and captioning requirements should apply to commercial broadcasters' digital multi-channels during and after the phased, region-by-region switchover to digital television.

This review does not examine the actual standards for Australian and children's content, or the existing substantive requirements for broadcasters to provide captioning. Rather, this review examines how and to what extent program standards and captioning requirements should apply to digital multi-channels in the future. The various options outlined in this paper are not exhaustive and are included for consideration only. This review will not consider the availability, or otherwise, of digital multi-channels provided by broadcasters across regional and remote Australia.

⁵ *Broadcasting Services Act 1992*, Schedule 4, Clause 60C.

The Government welcomes submissions from industry, stakeholders, the community and interested members of the public in relation to any of the questions posed throughout this paper. Details on making submissions are provided in **Appendix B**.

Part one: Digital television multi-channels

Under the Act, commercial broadcasters are required to transmit a digital simulcast of their analog television service. This simulcast is defined in the Act as the ‘core commercial television broadcasting service’, which reflects that fact that the analog service still defines the broadcaster’s main channel which is the principle site for its highest value programming, and attracts the largest audiences. In addition to a core service, the Act permits commercial broadcasters to provide one digital standard definition multi-channel and one digital high definition multi-channel.⁶ A commercial broadcaster is required to provide one high definition multi-channel if subject to high definition television quotas.⁷ Otherwise, the decision to broadcast additional digital multi-channels is a commercial decision for that broadcaster.

After the switchover to digital television, the concept of a ‘core’ television broadcasting service falls away. Instead, television broadcasters will simply provide one or more digital multi-channels, with the number of channels limited only by the amount of available spectrum or the financial capacity of a broadcaster to provide them.

Commercial broadcasters in all metropolitan and most of the major regional licence areas currently broadcast additional digital multi-channels. However, in some regional licence areas such as Broken Hill, Spencer Gulf, Griffith, Mt Gambier and Riverland, many of these multi-channels are not yet available. These areas are often served by one broadcaster who, in turn, is licensed to provide two television services.⁸

Broadcasters in the remote licence areas—Regional and Remote Western Australia and Remote Central and Eastern Australia—have reached various stages in converting their analog television signals to digital. Regional broadcasters in Western Australia began rolling out their digital services at the end of June 2009. A third, digital-only commercial service is expected to commence in Remote Western Australia during 2010. Broadcasters in Remote Central and Eastern Australia are also in the process of planning the implementation of their digital conversion. Once that occurs, commercial broadcasting television licensees in these licence areas will have the opportunity to provide additional digital multi-channels if they wish to do so. The Freeview website provides further details of where different multi-channels are available across Australia.⁹

One benefit of digital television multi-channels is that they allow commercial broadcasters to provide channels that target specific audiences. Examples of this include the 24 hour sports channel ONE from the Ten Network, the entertainment channel GO! from the Nine Network, and the ABC3 children’s channel. The launch of these multi-channels suggests that providing specialised programming aimed at

⁶ *Broadcasting Services Act 1992* Section 41B.

⁷ *Broadcasting Services Act 1992*, Schedule 2, Clause 7(1)(ma).

⁸ The second commercial broadcasting television license in each of these licence areas is licensed under Section 38A of the Act.

⁹ www.freeview.com.au

specific audiences is a direction in which broadcasters wish to take their multi-channels.

It is conceivable that at some point in the future, digital multi-channels that broadcast in the traditional format (general programming for a wide audience) may disappear, replaced by several multi-channels aimed at specific audiences targeted by broadcasters and their advertisers. Subscription television in Australia and other countries offer similar channels with, in addition to general entertainment, dedicated natural history, music or do-it-yourself channels.

Part two: Program standards and captioning requirements on digital television multi-channels

Program standards

Australian content on commercial television is regulated by mandatory standards. The *Broadcasting Services (Australian Content) Standard 2005* requires all commercial broadcasters to broadcast a minimum quota of Australian programming each year. For a production to count towards this quota, Australians must have the creative control without financial assistance from the Australian Commercial Television Production Fund.

Mandatory standards help preserve a minimum level of Australian content on commercial television. But the most highly rated drama program in Australian history, *Underbelly*, was an Australian production and *Packed to the Rafters* consistently achieves higher rating than its internationally-produced competitors. These successes suggest that commercial broadcasters will continue to provide Australian-produced programs and that Australian audiences continue to want to see Australian stories on television.

The *Broadcasting Services (Australian Content) Standard* specifies that Australian programs¹⁰ must make up at least 55 per cent of programming broadcast between 6.00 am and midnight. The *Television Program Standard for Australian Content in Advertising* specifies that 80 per cent of advertisements broadcast during that time period must be Australian-produced.

Under current legislation, commercial broadcasters will have to dramatically increase the level of Australian content and Australian advertising that they broadcast after switchover. Until then, these quotas only apply to the core service and not to any other digital multi-channel that the broadcaster provides.¹¹ After switchover, the quotas in the *Broadcasting Services (Australian Content) Standard* and the *Television Program Standard for Australian Content in Advertising* would apply to all programs broadcast on all digital multi-channels provided by a commercial broadcaster.

The *Children's Television Standards 2009* requires each commercial broadcaster to provide 390 hours of children's programming each year.¹² Up until switchover the *Children's Television Standards 2009* only apply to a commercial broadcaster's core service.¹³ After switchover, the total amount of hours of children's programming that a commercial broadcaster provides will remain unchanged, but a broadcaster will remain free to determine on which channel, or combination of channels, to meet this quota.

¹⁰ 'Australian programs' can include some programs of New Zealand origin in accordance with clauses 18–20 of the *Australian Content Standard 2005*.

¹¹ *Broadcasting Services Act 1992*, Subsection 122(8).

¹² The *Children's Television Standards 2009* will replace the *Children's Television Standards 2005* on 1 January 2010.

¹³ *Broadcasting Services Act 1992*, Subsection 122(7).

Any changes to the existing framework would also have to take into consideration the terms of the *Australia-United States Free Trade Agreement* (AUSFTA). The AUSFTA provisions relating to broadcasting services preserve the local content requirements that existed at the time the AUSFTA was negotiated. In particular, the AUSFTA allows regulation of the levels of Australian content required of broadcasters, and also covers the number of channels that can fall subject to Australian content quotas. However, there is still scope for a significant increase on the current level of Australian programming and Australian-produced advertising. The implications of the AUSFTA are discussed in more detail in part three of this paper.

Captioning requirements

Captioning is the presentation of the audio component of a television signal as text on screen. It is generally intended to assist viewers with a hearing impairment. Captions include descriptions of sounds, laughter and music and are usually situated on the television screen to minimise obscuring of the picture.

Under the Act, commercial broadcasters are required to caption television programs transmitted on a core service during prime viewing hours and news or current affairs programming transmitted on a core service outside prime viewing hours.¹⁴ Prime viewing hours are between 6.00 pm and 10.30 pm each day.

During the simulcast period, a captioning service is not required on a commercial digital multi-channel with one exception. If a program was previously transmitted with captioning on the broadcaster's core service, then captioning must also accompany its broadcast on the digital multi-channel.

The *Disability Discrimination Act 1992* makes disability discrimination unlawful and aims to promote equal opportunity and access for people with disabilities. On 13 October 2008, based on an application received, the Australian Human Rights Commission granted metropolitan free-to-air television broadcasters a temporary exemption from complaint under the Disability Discrimination Act provided broadcasters caption 85 per cent of programs between 6.00 am and midnight by 31 December 2011.

The exemption included requirements for incremental growth in captioning to 85 per cent of the content broadcast between 6.00 am to midnight on a broadcaster's primary channel as follows:

- 75 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2009;
- 80 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2010;
- 85 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2011.

¹⁴ *Broadcasting Services Act 1992*, Schedule 4, Clause 38 (1b) and (11); see also *Broadcasting Services Act 1992*, Schedule 4, Clause 38 (7) and Appendix C for exemptions to the captioning requirements.

These additional requirements, although far in excess of the requirements in broadcasting legislation, do not apply to digital multi-channels. Additional information on captioning requirements is provided in **Appendix C**.

The Access to Electronic Media for the Hearing and Vision Impaired discussion paper published in 2008 identified existing arrangements for access to electronic media by people with a hearing or vision impairment.¹⁵ This included captioning and audio description on free-to-air television, subscription television, DVDs, films in cinemas, and the internet. The discussion paper also outlined arrangements in some overseas jurisdictions and invited comments on a number of key issues.

The Australian Government has carefully considered the submissions received in response to the discussion paper and has developed possible approaches to address the key issues raised. These are outlined in the Access to Electronic Media for the Hearing and Vision Impaired—Approaches for Consideration Discussion Report released on 26 November 2009.¹⁶

While the current discussion paper is concerned with the application of captioning requirements on commercial digital multi-channels, submissions made to the above investigation will, as appropriate, be taken into account in this review.

Further information about the investigation into access to electronic media for the hearing and vision impaired is available in **Appendix E**.

Commercial Television Industry Code of Practice

The Act requires the development of a code of practice for commercial television broadcasting services. The Commercial Television Industry Code of Practice (the Code) is developed by Free TV Australia, the industry body for commercial broadcasters. Free TV Australia consults with licensed commercial television broadcasters and the Australian Communications and Media Authority (ACMA) on the development of the Code, which is available from both organisations.¹⁷

The Code works in conjunction with the program standards to make sure that all programs are broadcast in accordance with current community standards. It also makes sure that viewers are assisted in making informed choices about their own and their children's television viewing. Part of the Code specifies classification zones that are reserved for specific programming. For example, General (G) zones apply from 6.00 am to 8.30 am and from 4.00 pm to 7.00 pm on weekdays and from 6.00 am to 10.00 am on weekends. During these times, programs must include only material that is rated G and below. This includes Children's (C) and Pre-school (P) material. The current classification time zones are at **Appendix D**.

The requirements set out in the Code are not restricted to analog television channels but apply to each channel provided by commercial broadcasters. This includes any digital multi-channels. Free TV Australia, in consultation with ACMA, is currently

¹⁵ www.dbcde.gov.au/television/television_captioning/television_captioning_discussion_paper

¹⁶ www.dbcde.gov.au/mediaaccessdiscussionreport

¹⁷ www.freetv.com.au/Content_Common/pg-Code-of-Practice.seo or
www.acma.gov.au/WEB/STANDARD/pc=PC_90096

undertaking a full review of the Code. As part of this process, FreeTV has proposed a simplified time zone system on digital multi-channels under which programs up to a Parental Guidance (PG) classification are permitted between 5.00 am and 9.00 pm. The existing time zones for Mature (M), Mature Audience (MA) and Adult Violence (AV) programs remain unchanged.

This proposal is subject to ACMA's approval as part of the Code registration process. Among other things, the Code must provide appropriate community safeguards that satisfy ACMA.¹⁸

The Code review is proceeding separately to this review, although the outcomes of this statutory review may ultimately flow through to the Code.

¹⁸ *Broadcasting Services Act 1992*, Subsection 123(4).

Part three: Issues and constraints when applying program standards and captioning requirements to digital television multi-channels

Issues for broadcasters

Compliance by regional broadcasters in advance of final switchover in 2013

When each television licence area in Australia switches off its analog television signals, the existing exemption from complying with program standards and captioning requirements on commercial broadcasters' digital multi-channels will end. The Government has decided to implement digital switchover on a phased basis, region-by-region across Australia. Consequently, as each region is switched off, varying program standards and captioning requirements will apply to affected broadcasters at different times.

For example, the Gippsland region is scheduled to switch off its analog television signals between 1 January and 30 June 2011. As the law currently stands, commercial broadcasting television licensees in that television licence area, Regional Victoria, will need to comply with the program standards and captioning requirements on all their digital multi-channels at switchover. However, Melbourne has a switchover date of 31 December 2013.¹⁹ This means that Melbourne's commercial broadcasting television licensees will remain exempt from meeting program standards and captioning requirements on their digital multi-channels until 1 January 2014.

Apart from advertising and some local news and other material, the programming that regional broadcasters provide is often identical to that of metropolitan commercial broadcasters. For example in the Mildura licence area, the same programming that Channel Seven broadcasts in Melbourne is shown simultaneously by its regional affiliate Prime. In many cases the regional affiliate will simultaneously transmit a direct feed of the programming from its metropolitan counterpart while automatically replacing segments of the feed with local advertising, local news and community service announcements. Therefore, programming received from the metropolitan broadcasters with captioning is automatically transmitted with captioning in the regions. Conversely, if the metropolitan program feed has no captioning then the regions will not receive captions either.

The current regulatory settings will remove the captioning exemptions for television programs on multi-channels after switchover.²⁰ This is likely to place the regional commercial broadcaster in the position of either breaching its regulatory requirements or of incurring significant costs to ensure that its broadcasts comply with captioning requirements until the relevant metropolitan broadcaster switches over. Regional commercial broadcasters would have to disrupt the feed they receive from metropolitan broadcasters to caption programming. This may have technical or

¹⁹ *Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009*, subclause 4(b).

²⁰ *Broadcasting Services Act 1992*, Schedule 4 Subclause 38(1), and Schedule 2 Clause 7(1)(o).

practical difficulties, or broadcasters may need to source additional or alternative content to meet required program standards.

Under a worst case scenario, some smaller regional commercial broadcasters may choose not to introduce new digital multi-channels provided in larger metropolitan and regional licence areas, or cease providing those they already provide, to avoid the cost of complying with program standards and captioning requirements.

Standards that should apply to all channels after final switchover in 2013

There is also the issue of the program standards that should apply after digital switchover, and whether exemptions should apply to some channels.

One argument is that maintaining lesser standards on some channels would maximise programming flexibility for broadcasters and encourage the development of new and different types of content. Digital multi-channels targeted at specific or niche audiences may be unable to fulfil requirements such as children's and Australian content quotas. If such standards were applied to all multi-channels, they would restrict the programming that digital multi-channels can show, potentially limit their attractiveness to advertisers and audiences and could affect the decision of a commercial broadcaster to provide them. For example, if a commercial broadcaster was interested in launching a dedicated foreign movie channel, it may fail to comply with the Australian content standards.

Nevertheless, other stakeholders and viewers would argue that the Australian content and children's television standards are important to the community when addressing how these requirements are applied to all digital multi-channels in the future. Parents will still need to know what channel, and at what time, there is appropriate programming for children. Providing Australian content on television not only stimulates the Australian-based television production industry but also provides a valuable outlet for Australian culture. It also supports one of the key objects of the Act, which is to promote the role of broadcasting services in developing and reflecting a sense of Australian identity and character and cultural diversity.

Program standards and the Australia-United States Free Trade Agreement

The AUSFTA indirectly affects the amount of Australian content in programs and advertising on Australian television. It does this by including provisions on the amount of Australian content that the Australian Government can mandate in its program standards.²¹ This gives content producers from the United States the opportunity to supply Australian television broadcasting services.

Exceptions to the AUSFTA obligations permit the Australian Government to mandate Australian content quotas on television services up to a cap. One exception reserves Australia's right to impose an Australian content quota in relation to the core

²¹ *Australia-United States Free Trade Agreement*, Chapters 10 (Cross-Border Trade in Services) and 11 (Investment).

commercial television service.²² That quota is capped at 55 per cent of programs broadcast between 6.00 am and midnight. Another exception reserves Australia's right to impose Australian content quotas on multi-channels, provided the quota does not exceed 55 per cent of the programming between 6.00 am and midnight and is not imposed on more than two multi-channels or 20 per cent of the total number of multi-channels (whichever is the greater).²³ While it is not likely that broadcasters will have the capacity to provide more than five or six multi-channels in the near future, if they did the maximum number of multi-channels subject to Australian content standards is three.

In a similar way, the AUSFTA allows the Australian Government to require that up to 80 per cent of advertising broadcast between 6.00 am and midnight on multi-channels is Australian-produced. Again, there are specifications on the number of multi-channels subject to program standards.²⁴

Importantly, if a program standard reduces the legislated amount of Australian content broadcast on a core commercial television service, then under the terms of the AUSFTA, the Australian Government cannot increase that amount on the core commercial television service in future. For example, program standards currently require commercial broadcasters to broadcast 55 per cent of programs with Australian content every year. If this is subsequently reduced to a requirement to broadcast only 40 per cent of programs with Australian content every year, then mandatory program standards cannot require commercial broadcasters to transmit above 40 per cent again. However, this does not apply to multi-channels and therefore will not have relevance once full switchover occurs.

²² The *Australia-United States Free Trade Agreement*, Annex I-Australia-14 contains a reservation on transmission quotas for local content that attach to 'commercial analogue and digital (other than multi-channelling) television broadcasting services'—equivalent to the core commercial television broadcasting service.

²³ *Australia-United States Free Trade Agreement*, Annex II-Australia-5.

²⁴ *Ibid.*

Part four: Options for applying program standards and captioning requirements to digital television multi-channels

The Government is seeking views on how program standards and captioning requirements should apply to commercial broadcasters' digital multi-channels before and after the phased, region-by-region switchover to digital television. This section of the discussion paper examines some alternative regulatory options.

These options are presented for discussion only. There is no intention to imply that the Government favours any particular option. Equally, submissions could canvass other options.

Program standards

Option 1: Specify that one digital multi-channel must continue to meet all program standards

One way of maintaining program standards on digital multi-channels is for the Government to specify that one standard definition digital multi-channel must continue to meet these requirements. Only this 'core' channel would need to conform to the requirements laid out in the Australian content and children's television standards, with all other digital multi-channels exempt after switchover.

This proposal would not see a reduction in the current actual amount of children's programming and viewers would also continue to receive the same amount of total hours of Australian content and advertising as they currently do. However, the overall proportion of Australian and children's content, when measured against the total content provided on all channels, would fall due to the proposed exemptions on other multi-channels.

For example, a particular broadcaster might provide three digital multi-channels in a metropolitan area, including a standard definition digital channel providing general programming for a wide audience, a genre-specific standard definition multi-channel, and a high definition multi-channel. Under this proposal, only one channel would have to meet Australian content and advertising standards. This could potentially leave the other channels free to broadcast content without having to comply with any Australian content or advertising standards.

Option 2: Bring forward the date at which exemptions for program standards and captioning requirements end

The Government could bring forward the date at which exemptions for program standards end, perhaps by nominating a date just before the start of the phased, region-by-region switchover timetable beginning in the first half of 2010. This approach would guarantee that program standards are uniformly applied to all commercial broadcasters across all licence areas.

Bringing forward the date for complying with program standards and captioning requirements on digital multi-channels will also bring forward additional cost and administrative burdens for commercial broadcasters. It may also discourage commercial broadcasters from providing certain types of program content or even establishing new digital multi-channels. As the first switchover date is now 30 June 2010, this option could prove difficult to implement in the time available.

Under the terms of the AUSFTA, Australian content standards could not be imposed on more than two channels or 20 per cent of the total number of channels provided by an individual broadcaster (whichever is greater) up to a maximum of three channels provided by that broadcaster.

Option 3: Allowing broadcasters to apply for exemption from program standards for particular multi-channels

A potential disadvantage of identifying a core digital multi-channel is that potentially only one of several digital multi-channels offered by a commercial broadcaster would need to continue meeting program standards after switchover.

An alternative is to require, as the default, that standards will apply to digital multi-channels, but establish a process through which broadcasters can apply to ACMA for exemption from the program standards for Australian content and children's programs for one (or more) of their digital multi-channels.

For example, if a commercial broadcaster wanted to launch a dedicated foreign movie channel, the broadcaster could ask that the ACMA exempt this multi-channel from complying with Australian content standards. However, that commercial broadcaster would continue to comply with these requirements on the other multi-channels it offers.

It is possible that under this option a commercial broadcaster could apply for and receive exemptions from program standards for every digital multi-channel it provides. An alternative is to specify an upper limit. The criteria that ACMA would apply when assessing whether to exempt a multi-channel from the Australian content and children's television standards would need clear definition, particularly if it is intended that a broadcaster could not avoid meeting program standards on every single one of its multi-channels. This could be complex for ACMA to administer and may also create uncertainty for broadcasters over which of their proposed multi-channels will be exempt from complying with these requirements.

Option 4: Aggregate all programming shown across all digital television multi-channels

Under this proposal, commercial broadcasters would meet the Australian content standards by aggregating the total programming shown across all of their digital multi-channels. This would take into account the contribution all digital multi-channels make towards meeting requirements and would remove the need for broadcasters to apply for exemptions or to nominate a particular digital multi-channel.

For example, if a commercial broadcaster wanted to provide a digital multi-channel aimed at mature adult viewers aged 35–49, then that channel could contribute to the broadcaster meeting the Australian content requirements, but not the children’s television standards. Alternatively if a commercial broadcaster wanted to provide a multi-channel that specialises in children’s programming, this channel alone could satisfy all of the children’s television standard requirements and may also contribute to meeting the Australian content requirements.

As with Option 1 above, this proposal would not see a reduction in the total amount of children’s programming and viewers would continue to receive the same amount of total hours of Australian content and advertising as they currently do. It would not lead to any overall increase in the amount of Australian content and Australian advertising that is currently broadcast on commercial television. Also, with the content scattered across a wider set of channels this might mean that any one channel has a relatively low amount of such content.

An issue with this option is it could increase the reporting and monitoring requirements associated with the content standards, with content measured and reported across several channels.

Option 5: Introduce a tradable obligations scheme

Commercial broadcasters could meet their Australian content and children’s programs obligations through a tradable obligations scheme.

Under such a scheme, a commercial broadcaster could trade a portion or all of its program standards quotas to another free-to-air broadcaster. This would allow one commercial broadcaster to meet its program standards quota by certifying that programming that met these standards were transmitted by another free-to-air broadcaster, either commercial or national, on its behalf. In effect, a tradable obligation scheme could result in a ‘buy-out’ option for commercial broadcasters who could transfer their existing obligations to provide certain content to another broadcaster.

A tradable obligations scheme was canvassed in the Children’s Television Standards Review discussion paper released by ACMA in June 2007.²⁵ While that discussion paper specifically considered children’s programming, a tradable obligations scheme might also apply to commercial broadcasters’ obligations to provide Australian content.

Some responses to the Children’s Television Standards Review highlighted a concern that a tradable obligations scheme between commercial and national broadcasters could lead to a possible marginalisation of children’s content by limiting children’s programming to national broadcasters that have had a smaller audience share than commercial broadcasters. Similarly, a tradable obligations scheme might result in a possible loss of diversity through a concentration of children’s programming on only one or two multi-channels broadcast by one or two commercial broadcasters.

²⁵ www.acma.gov.au/WEB/STANDARD..PC/pc=PC_310262

Since that review, the ABC has launched its new digital ABC Kids channel. The concerns raised in some responses to the review around loss of diversity and size of audience could become more significant if commercial broadcasters were to rely solely on programming provided on the ABC Kids channel to meet their children's programming obligations.

Issues for discussion

The Australian Government is seeking your views on how program standards should apply to commercial broadcasters' multi-channels after the switchover to digital television, including the issues and options set out in this paper. For example (and without limitation):

- Should the distinction of a 'core' commercial television service remain for the purposes of meeting the requirements in the Australian content and children's television standards?
- Should program standards start applying to all commercial broadcasters' digital multi-channels before the commencement of the phased, region-by-region switchover?
- Should the current exemptions for program standards on multi-channels continue until all of Australia has switched over to digital television?
- Should commercial broadcasters have the opportunity to fulfil the requirements for program standards through some form of a tradable obligation scheme? If so, what criteria would apply to such a scheme?
- What arrangements and standards should apply to digital channels after final switchover in 2013? Should broadcasters have the option to apply for exemption for one or more channels? What criteria should apply to the issuing of exemptions? Should some other modification exist for exemptions for commercial multi-channels? If so what?

Captioning requirements

Issues similar to those raised by the removal of exemptions for program standards on multi-channels after switchover would also apply to captioning requirements, particularly in relation to multi-channels targeted at specific program genres or audience demographics.

The question of the practicability of captioning several live program streams may also need consideration. For example, a commercial broadcaster may choose to transmit two live sports events simultaneously on different multi-channels, as the Ten Network currently does when broadcasting sports on both its main channel and its ONE HD 24-hour sports channel. In such cases some commercial broadcasters may argue that it is difficult for them to caption all the services they provide. Broadcasters are currently not required to caption live sport coverage that is subject to unscheduled extended coverage which displaces a news program, programs in a language other than English or the audio component of a program consisting of music.

If consideration is given to extending the exemptions for captioning requirements on multi-channels, options 1 and 3 above for meeting the Australian content and children's television standards might help point the way.

In submissions to the investigation into access to electronic media for the hearing and vision impaired, representatives of hearing impaired Australians argued that captioning requirements should apply to all television broadcasting services, including multi-channels. Options that propose exemptions could also undermine the captioning levels outlined in the Disability Discrimination Act temporary captioning exemption negotiated between broadcasters and the Australian Human Rights Commission. See **Appendix C** for more details

An alternative option, canvassed in previous discussion papers, is to phase in captioning requirements gradually on multi-channels to allow such specialised channels to establish themselves. For example, the Deafness Forum Australia has previously suggested that all channels, on commencement of digital transmission, caption at least 10 per cent of content for each year of transmission, to a total of 80 per cent of transmission by year 10 and 100 per cent by year 15.

On 30 April 2008, the discussion paper Access to Electronic Media for the Hearing and Vision Impaired invited public comment on appropriate future requirements. The subsequent discussion paper outlining the approaches considered for addressing key issues was published on 26 November 2009 and will also feed into this review. More information about this report is at **Appendix E**.

Issues for discussion

The Australian Government is seeking your views on how captioning requirements should apply to commercial broadcasters' multi-channels after the switchover to digital television. For example:

- Should the current captioning requirements apply to all commercial multi-channels immediately after switchover?
- Should the commercial broadcasters receive exemptions on captioning requirements for certain multi-channels with specialised content? If so, how should these exemptions apply and what structure should they take?
- Should the application of captioning requirements on commercial multi-channels be phased in over a period of time?

Appendix A: Digital switchover timetable

Type	Switchover area	Major centres	Window
VIC	Mildura / Sunraysia	Mildura	1 January–30 June 2010
SA	Broken Hill	Broken Hill	1 July–31 December 2010
SA	Riverland	Renmark and Loxton	1 July–31 December 2010
SA	Mt Gambier / South East South Australia	Mt Gambier, Naracoorte and Bordertown	1 July–31 December 2010
SA	Spencer Gulf	Port Lincoln, Whyalla, Port Augusta	1 July–31 December 2010
VIC	Gippsland	Traralgon, Bairnsdale and Mallacoota	1 January–30 June 2011
VIC	North Central Victoria	Bendigo and Swan Hill	1 January–30 June 2011
VIC	South West Victoria	Ballarat, Warrnambool and Horsham	1 January–30 June 2011
VIC	Goulburn Valley / Upper Murray	Albury/Wodonga, Wangaratta and Shepparton	1 January–30 June 2011
QLD	Wide Bay	Hervey Bay, Bundaberg and Maryborough	1 July–31 December 2011
QLD	Capricornia	Rockhampton, Emerald and Yeppoon	1 July–31 December 2011
QLD	Queensland Central Coast & Whitsundays	Mackay, Proserpine and Bowen	1 July–31 December 2011
QLD	Darling Downs	Toowoomba, Warwick and Dalby	1 July–31 December 2011
QLD	North Queensland	Townsville, Ayr and Charters Towers	1 July–31 December 2011
QLD	Far North Queensland	Cairns, Port Douglas and Innisfail	1 July–31 December 2011
NSW	Griffith / Murrumbidgee Irrigation Area	Griffith and Hay	1 January–30 June 2012
NSW	South West Slopes & Eastern Riverina	Wagga Wagga and Gundagai	1 January–30 June 2012
NSW	Illawarra and the South Coast	Wollongong, Ulladulla and Eden	1 January–30 June 2012
NSW	Central Tablelands & Central Western Slopes	Dubbo, Orange and Mudgee	1 January–30 June 2012
NSW	ACT & Southern Tablelands	Canberra, Thredbo and Cooma	1 January–30 June 2012
NSW	North West Slopes & Plains	Tamworth, Armidale and Inverell	1 July–31 December 2012
NSW	Richmond / Tweed	Byron Bay, Tenterfield and Lismore	1 July–31 December 2012
NSW	Northern Rivers	Coffs Harbour, Forster and Grafton	1 July–31 December 2012
NSW	Hunter	Newcastle, Port Stephens	1 July–31 December 2012
Metro	Tasmania	Hobart, Launceston and King Island	1 January–30 June 2013
Metro	Perth	Perth	1 January–30 June 2013
Metro	Brisbane	Brisbane, Gold Coast and Noosa	1 January–30 June 2013
Metro	Melbourne	Melbourne	1 July–31 December 2013
Metro	Adelaide	Adelaide	1 July–31 December 2013
Metro	Sydney	Sydney and Gosford	1 July–31 December 2013
Metro	Darwin	Darwin	1 July–31 December 2013
Remote	Remote Central & Eastern Australia	Alice Springs and Mt Isa	1 July–31 December 2013
Remote	Regional & Remote Western Australia	Kalgoorlie, Broome and Bunbury	1 July–31 December 2013

Appendix B: Submissions

Submissions are invited from interested parties on the matters covered in this paper. Submissions are also invited to address any other relevant issues not specifically addressed in this paper.

The closing date for submissions is 31 December 2009.

The preferred method for the receipt of submissions is via email attachment to multichannels@dbcde.gov.au

Alternative means for submitting responses are:

1. by facsimile to 1800 065 374
2. by post to the following address

Review of Program Standards and Captioning Requirements on Digital
Multi-channels
The Manager
Digital TV Policy
Digital Switchover Taskforce
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
CANBERRA ACT 2601

Please send a submission only once, using only one of the options above.

Email formats

All email submissions must adhere to the following requirements.

1. Please include all submission material—including the coversheet, submission and any appendixes—as attachments, not as material in the body of the email. This will aid in publishing submissions and ensure that your submission is published as you provided it.
2. The total combined file size for any email (including the coversheet, submission and any appendixes to a submission) should not exceed 3 MB.
3. All files should include the submitter's full name (whether individual or organisation) and indicate whether the file concerned is a coversheet, submission or an appendix to a submission, and indicate if any submission material is confidential.
4. Please submit files only in the following formats:

.doc	.rtf	.pdf
.gif	.tiff	.zip
.jpg	.txt	

Publication of submissions

Unless a contributor specifies otherwise, each submissions will be published on the Department's website after the public submissions period has closed.

The Department will not acknowledge receipt of submissions. Please note the possibility for delay in publishing submissions if a large number is received.

The Department will not publish submissions that breach applicable laws, promote a product or a service, contain offensive language, or express sentiments that are likely to offend or vilify sections of the community.

Please note that the Department reserves the right not to publish submissions it deems inappropriate for reasons other than those outlined above. For example, the Department may choose to only publish one of a series of duplicate, identical or near-identical 'campaign-type' responses.

Discussion paper—alternative formats

An audio version of this discussion is available online at www.dbcde.gov.au/multichannels or by calling 1800 066 480 (free call).

For a Braille copy of the paper, please call 1800 066 480 (free call).

Confidential information

Any submission that is confidential or sensitive must have clear markings to that effect on the front cover to ensure that it is not published.

However, you may choose to provide an additional version of that submission for public release.

Submitters of material marked as confidential or sensitive must understand that submissions may be released where authorised or required by law or for the purpose of parliamentary processes.

The Department will strive to consult submitters of confidential information before that information is provided to another body or agency. However, the Department cannot guarantee that it will not release confidential information through these or other legal means.

Privacy

The Department is subject to the operation of the Privacy Act 1988. Any personal information you provide to the Department through your submission in response to the discussion paper—Content and access: The future of program standards and captioning requirements on digital television multi-channels—will only be used for the purposes of the Australian Government's review of program standards and captioning requirements on digital multi-channels.

Material received by the Department in response to this call for submissions will be considered in the preparation of the report on this review, which the Minister will table in both Houses of Parliament.

Contact information

If you would like a copy of the discussion paper or any other information sent out to you, please call the Department on 1800 066 480 (free call).

If you are deaf or have a hearing or speech impairment, please contact the Department through the National Relay Service:

- TTY users phone 133 677 then ask for 1800 066 480;
- Speak and Listen (speech-to-speech relay) users phone 1800 555 727 then ask for 1800 066 480;
- Internet relay users connect to www.relayservice.com.au and then ask for 1800 066 480.

Appendix C: Regulatory requirements

Program standards

The Act provides for the development of standards for Australian content and children's programs on commercial broadcasting services, and for the development of codes of practice²⁶ for a range of broadcasting services including commercial television services.

The Australian Communications and Media Authority (ACMA) is required to determine the standards that commercial television licensees must observe in providing programs for children and Australian content.

The Act also provides for the development and implementation of a commercial television industry code of practice, registered with the ACMA.

Australian content

The *Broadcasting Services (Australian Content) Standard 2005* (ACS) requires all commercial television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6.00 am and midnight.²⁷ In addition, there are specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programs.

The ACS provides an incentive to encourage the broadcast of Australian children's drama programs during prime time. For example, the standard provides that, if a first release Australian children's drama, film or telemovie of at least 80 minutes is shown during prime time (between 5.00 pm and 11.00 pm), it can count towards the quota as three times its actual duration.²⁸

The *Television Program Standard for Australian Content in Advertising* requires that at least 80 per cent of advertising time broadcast each year by commercial television licensees between the hours of 6.00 am and midnight is used for Australian-produced advertisements.²⁹

Children's content

Under the *Children's Television Standards 2009* (CTS), commercial television licensees must provide a minimum of 390 hours of children's (C) classified material and pre-school (P) material in each year.³⁰ Children are classified as those under the age of 14, while pre-school children are classified as those children that have not yet started school.

²⁶ *Broadcasting Services Act 1992* Section 123.

²⁷ *Ibid.*

²⁸ *Broadcasting Services (Australian Content) Standard 2005*, subclause 12(3).

²⁹ *Television Program Standard for Australian Content in Advertising* clause (5).

³⁰ *Children's Television Standard 2009*, CTS 8 (2); the *Children's Television Standard 2009* comes into effect on 1 January 2010.

For inclusion towards the CTS quota, C programs must broadcast within the time bands of 7.00 am to 8.30 am Monday to Friday, 4.00 pm to 8.30 pm Monday to Friday and 7.00 am to 8.30 pm Saturday, Sunday and school holidays.³¹ P programs must broadcast within the time band of 7.00 am to 4.30 pm Monday to Friday.³²

The CTS also require the broadcast of C and P material each weekday for periods of at least 30 minutes each.³³

Half of the C programs³⁴ (130 hours) must consist of first release Australian content, and all P programs³⁵ must consist of Australian programs. The CTS also requires, in accordance with the ACS, minimum broadcast hours (sub-quotas) of Australian drama within the overall quota of C programming required. Licensees must broadcast at least 96 hours of first release Australian C drama over a three-year period, with a minimum of 25 hours in each year.³⁶ At least eight hours per year of repeat Australian drama is also required.³⁷

A new CTS was registered by the ACMA on 1 September 2009 after a detailed review process. The new CTS includes revised arrangements that commence from 1 January 2010. Among other things, the CTS now limits the use of popular characters or personalities and proprietary characters in advertisements during C (Children) periods. The new CTS are available from the ACMA website.³⁸

Captioning requirements

Since 1 January 2007, commercial television licensees and national broadcasters are required to caption:

- all television programs transmitted on their core commercial channels during prime viewing hours (i.e. between 6.00 pm and 10.30 pm each day)³⁹ and
- news or current affairs programming transmitted on their core commercial outside prime viewing hours.⁴⁰

However, the requirement to provide captioning is subject to some exceptions, including that captioning is not required if the program is televised on a SD or HD multi-channel during the simulcast period, unless the program was earlier transmitted on the core commercial channel and was captioned.⁴¹

³¹ *Children's Television Standards 2009*, CTS 5 (definition of 'C band').

³² *Children's Television Standards 2009*, CTS 5 (definition of 'P band').

³³ *Children's Television Standards 2009*, CTS 13-14.

³⁴ *Broadcasting Services (Australian Content) Standard 2005*, subclause 14(1).

³⁵ *Broadcasting Services (Australian Content) Standard 2005*, clause 15.

³⁶ *Broadcasting Services (Australian Content) Standard 2005*, clause 12.

³⁷ *Broadcasting Services (Australian Content) Standard 2005*, clause 13.

³⁸ www.acma.gov.au/WEB/STANDARD/pc=PC_300296

³⁹ *Broadcasting Services Act 1992*, Schedule 4, Subclauses 38(1)(a) and 38(11).

⁴⁰ *Ibid.*

⁴¹ *Broadcasting Services Act 1992*, Schedule 4, Subclause 38(4).

Captioning is also not required where:

- the program concerned involves live sport coverage that is subject to unscheduled extended coverage which displaces a news program
- the program is wholly or partly in a language other than English
- the audio component of the program consists of music that has no human vocal content recognisable as English
- the audio component of the program consists of incidental or background music.⁴²

The current regulatory settings provide that after digital switchover in a particular licence area, all digital multi-channels provided by a commercial broadcasting licensee or a national broadcaster must include captioning for the prime time programs and the news or current affairs programs. The exceptions listed above would continue to operate.

Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* makes disability discrimination unlawful and aims to promote equal opportunity and access for people with disabilities. On 13 October 2008, as the result of an application received, the Australian Human Rights Commission granted metropolitan free-to-air television broadcasters a temporary exemption from complaint under the Disability Discrimination Act, provided broadcasters caption 85 per cent of programs between 6.00 am and midnight by 31 December 2011.

The exemption included requirements for incremental growth in captioning up to 85 per cent of content broadcast between 6.00 am to midnight on a broadcaster's primary channel as follows:

- 75 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2009
- 80 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2010
- 85 per cent of programming over the broadcast day (6.00 am to midnight) for the period ending 31 December 2011.

Commercial and national broadcasters are also required to report to the Commission on their consultations with deafness organisations concerning the following:

- proposals to address issues regarding the accuracy of captioning by 30 June 2009
- the total captioning hours being achieved by 30 June 2010
- captioning levels being achieved on multi-channels by 31 December 2010
- a review considering the possibility for further increases in captioning by 31 December 2010.

⁴² *Broadcasting Services Act 1992*, Schedule 4, Subclauses 38(2) and 38(7).

Appendix D: Classification time zones

Classification Zones Table

Schooldays

	5am	6	8.30	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	Shaded	Shaded	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	Shaded	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	Shaded

School Holidays

	5am	6	8.30	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	Shaded	Shaded	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	Shaded

School Holidays

	5am	6	8.30	10	12pm	3	4	5	7	8.30	9	9.30	5am
P, C	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
G	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
PG	Shaded	White	White	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded	Shaded
M	White	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded	Shaded
MA	White	White	White	White	White	White	White	White	White	White	Shaded	Shaded	Shaded
AV	White	White	White	White	White	White	White	White	White	White	White	White	Shaded

Commercial Television Industry Code of Practice: 2 July 2004 (amended 20 November 2008).

Appendix E: The investigation into access to electronic media for the hearing and vision impaired

On 30 April 2008, the Minister for Broadband, Communications and the Digital Economy released the Access to Electronic Media for the Hearing and Vision Impaired Discussion Paper.⁴³ The paper examined access to electronic media for the hearing and vision impaired and invited public comment on a number of issues including appropriate future requirements for digital television. Submissions closed on 13 June 2008. This current review will take into account submissions to that investigation that commented on captioning requirements on multi-channels.

In the meantime, the Australian Government has carefully considered the submissions received from the 2008 discussion paper and has developed possible approaches to address the key issues raised in submissions to the investigation. These are outlined in the Access to Electronic Media for the Hearing and Vision Impaired—Approaches for Consideration Report.

Submissions and further views are invited in response to these proposals by 29 January 2010. Further information on that report and how to submit responses is available at the Department's website at www.dbcde.gov.au/mediaaccessdiscussionreport

The Government will review and consider the submissions received in response to that report in relation to this review on digital multi-channels.

⁴³ Senator Stephen Conroy, 'Access to electronic media under review', media release, 30 April 2008, www.minister.dbcde.gov.au/media/media_releases/2008/029

Appendix F: Abbreviations

ABC	Australian Broadcasting Corporation
ACA	Television Program Standard for Australian Content in Advertising
ACMA	Australian Communications and Media Authority
ACS	Broadcasting Services (Australian Content) Standard 2005
The Act	<i>Broadcasting Services Act 1992</i>
AUSFTA	Australia-United States Free Trade Agreement
The Code	Commercial Television Industry Code of Practice
(C)	Children’s classified material
(G)	General classification material
(P)	Pre-school classified material
CTS	Children’s Television Standards 2005
HD	High definition
SBS	Special Broadcasting Service
SD	Standard definition