



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

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

Report

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Digital Switchover Policy and Regulation
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Introduction

On 4 December 2009, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, announced the release of the discussion paper, 'Content and Access: The future of program standards and captioning requirements on digital television multi-channels'.

The discussion paper sought public comment on the standards (for children's programs and Australian content) and captioning requirements that should apply to commercial digital television multi-channels.

Submissions closed on 31 December 2009. Nineteen submissions were made to the review from a variety of stakeholders, including the national broadcasters, organisations representing the commercial free-to-air and subscription broadcasters, organisations representing the hearing and vision impaired and advertising organisations. A complete list of submitters can be found at Appendix A. The submissions to the review have been published online on the Department of Broadband, Communication and the Digital Economy (the Department) website and can be accessed at <http://www.dbcde.gov.au/multichannels>.

Legislation

The *Broadcasting Services Act 1992* (the Act) required the Minister for Broadband, Communications and the Digital Economy to cause to be conducted by 31 December 2009 a review of:

- (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.¹

The Act further requires the Minister to cause to be prepared a report of the review, copies of which must be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

¹ *Broadcasting Services Act 1992*, Schedule 4, Clause 60C.

Background

As outlined in the discussion paper, '[Content and Access: The future of program standards and captioning requirements on digital television multi-channels](#)', free-to-air broadcasters have had the option to transmit digital television multi-channels since 2007.² Digital technology currently used by broadcasters allows them to supply up to six digital television multi-channels in the same amount of spectrum previously used to deliver a single analog television channel. This has led to a significant increase in the amount of television content available to Australian viewers. For example, the range of digital television multi-channels on offer in metropolitan licence areas now includes ABC2, ABC3, SBS TWO, the Seven Network's 7TWO, the Ten Network's ONE and the Nine Network's GO!

Each broadcaster is required to transmit a simultaneous digital broadcast, or simulcast, of their analog television channel under the Act before digital switch-over occurs in each area across Australia.³ These simulcasts are also known as 'core' channels, and are usually affiliated with one of the three commercial broadcasting networks: Network Seven, Network Ten or the Nine Network.

The commercial broadcasters are regulated by the *Broadcasting Services (Australian Content) Standard 2005 (ACS)*; *Children's Television Standards 2009 (CTS)*; and the *Television Program Standard for Australian Content in Advertising*. These standards require commercial analog television channels, and hence their simulcasts, to broadcast a minimum quota of Australian content and children's programming and Australian advertising each year. The program standards imposed on commercial broadcasters are not applied to the Australian Broadcasting Corporation (ABC). However, the *Australian Broadcasting Corporation Act 1983* requires that the ABC 'take account of...the standards from time to time determined by the ACMA in respect of broadcasting services.'⁴

Under the Act, both national and commercial broadcasters are required to caption television programs transmitted on a core service during prime viewing hours (between 6.00pm - 10.30pm each day) and news or current affairs programming transmitted on a core service outside prime viewing hours.⁵ The program standards and captioning requirements that currently apply to each analog television channel are automatically replicated on its digital simulcast, however, digital television multi-channels are generally exempt from these requirements.⁶

² *Broadcasting Services Act 1992*, Sections 41A and 41B. Before 1 January 2009, commercial television broadcasting licences in force before 1 January 2007 were authorised to provide two digital services: a core digital service and a high definition multi-channel. Commercial licences allocated on or after 1 January 2007 were authorised to provide two digital services: a standard definition core commercial digital broadcasting service and a high definition multi-channel before 1 January 2009. After 1 January 2009, commercial broadcasters licensed before 1 January 2009 are authorised to provide three digital television services: the core commercial service, a high definition multi-channel and a standard definition multi-channel. Commercial broadcasting licenses allocated on or after 1 January 2009 are authorised to provide three digital services: a high definition multi-channel and two standard definition multi-channels.

³ *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.

⁴ *Australian Broadcasting Corporation Act 1983*, Section 6(2)(a)(ii).

⁵ *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..

⁶ *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 multi-channel that were previously shown with captions on an analog television channel or its digital simulcast.

Program standards and captioning requirements were intended to apply to a commercial broadcaster's digital television multi-channels at the conclusion of the simulcast period. At that time, this was envisaged as a single national switch-over date. Since then, a phased, region by region switch-over has been planned as a more manageable approach. A phased, progressive switch-over means that the imposition of program standards and captioning requirements on broadcasters' digital television multi-channels would now be staggered across the country rather than applying to all broadcasters at the same time.

As switch-over progresses across each licence area in Australia, broadcasters in these areas will no longer be exempt from meeting program standards and captioning requirements on their digital television multi-channels. Current legislation would require broadcasters to dramatically increase the level of captioning, children's programs and Australian content across all digital television multi-channels. This creates a regulatory environment for a broadcaster which is determined by the status of switch-over in different licence areas.

Regional commercial broadcasters generally source the content for their multi-channels from the metropolitan broadcasters to which they are affiliated. With digital switch-over commencing in regional Australia, this means the digital television multi-channels regional commercial broadcasters provide will need to meet program standards and captioning requirements, in most cases, well before the same content is subject to those requirements in metropolitan areas. After switch-over to digital television is complete in all areas of Australia on 31 December 2013, this discrepancy will no longer exist and all commercial broadcasters will have to meet the same requirements.

This report provides an analysis of issues raised in submissions and discusses recommendations on the application of program standards and captioning requirements to commercial digital television multi-channels. In doing so, this report will also take into consideration the digital television multi-channels provided by the national broadcasters.

Five options for addressing the future of digital television multi-channels were outlined in the discussion paper.

- Option 1 specifies that one digital television multi-channel must continue to meet all program standards and captioning requirements whilst other digital television multi-channels remain exempt. This would maintain program standards and captioning requirements at the current level.
- Option 2 proposes bringing forward the date at which exemptions for program standards and captioning requirements end for all services to just prior to when switch-over begins on 30 June 2010. This would uniformly apply program and captioning standards to all the multi-channels broadcast by all commercial broadcasters across all licence areas.
- Option 3 allows broadcasters to apply to the Australian Communications and Media Authority (ACMA) for exemption from program standards for particular digital television multi-channels they deem unable to address the standards.
- Option 4 aggregates all programming shown across all digital television multi-channels so that the programs and captioning on all digital television multi-channels together meet the minimum requirements. Under this option, one digital television multi-channel may address Australian content requirements whilst another includes children's programming.
- Option 5 suggests a tradeable obligations scheme whereby a commercial broadcaster can trade a portion or all of its program standards quotas on children's and Australian program content with another commercial or national broadcaster.

Each submission to the review has addressed one or more of the options proposed. The key issues raised in the submissions are summarised in the following section.

This report does not examine the standards applying to Australian content and children's programming or the captioning requirements themselves. Rather, this report considers how and to what extent program standards and captioning requirements should apply to digital television multi-channels in the future in light of the submissions provided. This report does not detail the availability, or otherwise, of digital television multi-channels provided by broadcasters to individuals across regional and remote Australia.

Summary of submissions

Program standards

Australian content on commercial television is regulated by mandatory standards through the *Broadcasting Services (Australian Content) Standard 2005* which requires a minimum quota of 55 per cent Australian programming to be broadcast by commercial broadcasters each year on their ‘core’ channel. The *Children’s Television Standards 2009* requires each commercial broadcaster to provide 390 hours of children’s programming each year on their ‘core’ channel.

Exceptions to the *Australia-United States Free Trade Agreement* (AUSFTA) obligations permit the Australian Government to mandate Australian content quotas on television services up to a maximum limit. However, these limits do not stop broadcasters voluntarily exceeding them as part of their programming.

One exception reserves Australia’s right to impose an Australian content quota in relation to the core commercial television service.⁷ 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).⁸ However, the maximum number of digital television multi-channels that can be subject to Australian content quotas is three.⁹

The AUSFTA also 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.¹⁰

Program standards exist to ensure there is a minimum level of Australian and children’s content on commercial television for viewers and to support the local industry. Several stakeholders argued in their submissions that without program standards it is uncertain whether commercial television broadcasters would continue to maintain the current levels of Australian and children’s programs.

This review did not consider any amendments to program standards in the *Broadcasting Services (Australian Content) Standard 2005* or the *Children’s Television Standards 2009*. The focus of this review was the application of the existing rules for program standards for Australian content and children’s programs to commercial broadcasters’ digital television multi-channels.

The Alliance of Industries states in its initial submission that, ‘the FTAs [free-to-air broadcasters] have been provided with privileged access to additional multi-channel capacity by the Australian people. The Government should ensure that in return, the FTAs do not contribute to the diminution of Australian culture by allowing any exemptions from the Australian Content Standards across the full digital transmission environment.’¹¹ The Alliance recommends that the content standards should be applied to all commercial broadcasters on their first digital television multi-channel and

⁷ 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.

⁸ *Australia-United States Free Trade Agreement*, Annex II-Australia-5.

⁹ *Australia-United States Free Trade Agreement*, Annex II-Australia-5.

¹⁰ *Ibid.*

¹¹ Alliance of Industries submission, p2.

then be applied to any further new digital television multi-channels to the extent permitted under the AUSFTA.

Free TV Australia (Free TV) argues that it is not aware of any comparable jurisdiction overseas which has imposed a similar level of obligations on commercial digital television multi-channels. Free TV believes that these channels could not continue in their current form if additional content obligations were imposed. For example, children's programming may be incompatible with a 24 hour sports channel such as ONE HD.¹²

Free TV further considers that the cost of complying with Australian content and children's programming quotas after switch-over commences in different regions across the country would severely impact the viability of digital television multi-channels, particularly in regional areas. According to Free TV, commercial broadcasters invest almost \$800 million each year in original Australian programming. Free TV believes that 'setting the same content quota requirements across core services and multi-channels is likely to only permit the development of services which mirror a broadcaster's main channel.'¹³ That is, increasing quotas may only lead to the repetition of programming and captioning on digital television multi-channels that have already been broadcast and hinder the development of a channel which has separate and distinct content.

The Music Council of Australia and the Alliance of Industries argue that some options canvassed in the discussion paper risk marginalising Australian content. For example, if only one digital television multi-channel was required to meet all program standards; then the broadcast of Australian content could be limited to that single digital multi-channel. Similarly, if broadcasters could apply to exempt digital television multi-channels from the standards, or, if all programming shown across all digital television multi-channels was aggregated, the result could be a dilution of the percentage of Australian content and children's programming across all digital multi-channels.

The Music Council of Australia and the Alliance of Industries believe that a failure to extend the obligations to broadcast Australian content to the maximum extent possible would not be consistent with the free-to-air broadcasters' responsibility to acquit social and cultural objectives. These responsibilities should be in proportion to the amount of spectrum broadcasters receive for free-to-air programming.¹⁴ The Alliance of Industries' submission notes that the audience for the new digital commercial multi-channels are now well established. Their 'access to spectrum and ongoing profitability' should 'be no barrier to the application of the Australian content standard across all channels on an FTA network.'¹⁵

The Music Council of Australia instead indicates a preference for bringing forward the end date for exemptions from program standards so that standards are applied across all digital television multi-channels as soon as possible. The Music Council believes this 'is the very minimum that Australian audiences deserve.'¹⁶ The Alliance of Industries submission also recommends that the Television Program Standard for Australian Content in Advertising be applied to all the commercial broadcasters' core channels and to all subsequent digital television multi-channels permitted under the AUSFTA.¹⁷

The Australian Federation Against Copyright Theft (AFACT) supports aggregating content across all digital multi-channels, and believes there is no need for Australian content obligations to be increased beyond what currently applies, or that the retention of a 'core' channel is necessary.

¹² Free TV submission, p7.

¹³ Free TV submission, p2.

¹⁴ Music Council of Australia submission, p6; Alliance of Industries submission, pp2-3.

¹⁵ Alliance of Industries submission, p3.

¹⁶ Music Council of Australia submission, p5.

¹⁷ Alliance of Industries submission, p2.

AFACT states that ‘Australian content can now compete with the best international content and Australians produce programs of the highest standard that attract significant viewership’.¹⁸ AFACT argues that viewers will continue to receive the same amount of Australian content and producers and filmmakers would have greater scope to produce different types of programs to fit broadcaster requirements.¹⁹

The Australian Broadcasting Corporation (ABC) argues that, if the national broadcasters are included in a tradeable obligations scheme, the ABC has no official program ‘quota’ and nothing to trade with in return for a commercial broadcaster’s program standard quotas. Commercial broadcasters would effectively be buying transmission time from the ABC if it were to be implemented. The ABC states that it would need to have transparent, independent processes in place and control over content when dealing with commercial broadcasters.²⁰ Many submitters stated that if a tradeable obligations scheme were implemented, commercial broadcasters should only be allowed to trade with other commercial digital television multi-channels.

The ABC also drew attention to the initial decision made by Government to assign a single national switchover date, and that current legislation will require all digital multi-channels to comply with program standards and captioning requirements when digital switchover is completed in each licence area. The ABC argues that, now, ‘it is not practical or reasonable to introduce program standards or new captioning requirements that would apply differently in different coverage areas. For example, the current legislative wording would require services in the Mildura/Sunraysia area to apply the standards from the middle of 2010, while adjoining coverage area services would not be required to apply the standards.’²¹

The ABC suggests that the most practical approach is to wait until the switchover period concludes nationally in December 2013 before introducing updated arrangements for the application of program standards for digital multi-channels, which would allow more time to consider how standards will be applied and for the multi-channel platform to develop further.²²

The Australian Children’s Television Foundation (ACTF) stresses that the broadcasting and digital multi-channel environment will change over time and the Government should have the opportunity to continue to review outcomes as the free-to-air broadcasters experiment with changing business models and scheduling. The ACTF refers to the potential impact of the rollout of the National Broadband Network as evidence that regulation should not only need to strike a balance between interests of the commercial broadcasters and their audiences but must be reassessed over time. “[R]apid changes to the broadcast environment means that audience figures collected in an analogue environment may have little bearing on the future.”²³

Submissions from the ACTF, the Australian Subscription Television & Radio Association, and Media, Entertainment and Arts Alliance all call for a further comprehensive review of program standards that will take into account the changing broadcast environment after digital switchover is complete.

¹⁸ AFACT submission, p3.

¹⁹ AFACT submission, p4.

²⁰ ABC submission, p5.

²¹ ABC submission, pp6-7.

²² ABC submission, p7.

²³ Australian Children’s Television Foundation submission, p2 and p19.

Captioning requirements

All commercial and national broadcasters are required to provide captioning under the Act. They must caption television programs transmitted on a core service during prime viewing hours and news or current affairs programming transmitted on a core service outside of prime viewing hours.²⁴ In certain circumstances captioning is not required. This is 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; or
- the audio component of the program consists of incidental or background music.

During the simulcast period, a captioning service is not required on a national or commercial digital television multi-channel with one exception. If a program was previously transmitted with captioning on the broadcaster's core service, and the program is repeated on one of their digital television multi-channels, then captioning must also accompany the repeat broadcast. Once an area has switched over to digital television, a broadcaster is no longer exempt from providing captioning on its digital television multi-channels in that area, according to the Act.

Captioning requirements become more complicated when they are considered in the context of the program supply relationship between metropolitan and regional broadcasters. Even though they remain distinct business entities, regional broadcasters such as Prime, WIN and Southern Cross Media rely on a program feed that, with the exception of some unique programming such as local news, sources each program directly from their corresponding network affiliate, Network Seven, Nine Network and Network Ten. The discussion paper raised the concern that there may be technical and financial issues involved with increasing captioning requirements as currently required under the Act on the digital television multi-channels broadcast in regional licence areas after switch-over.

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 programs broadcast by regional broadcasters. Conversely, if the metropolitan program feed has no captioning then the regional broadcasters will not receive captions either. Regional commercial broadcasters would have to disrupt the feed they receive from metropolitan broadcasters to caption programming.

Free TV notes in its submission that should the current regulatory framework continue, and captioning requirements apply to multi-channels after digital switch-over, regional broadcasters would be required to produce and insert captions into multi-channel streams to ensure compliance. Free TV claims, 'this is unlikely to be a feasible or viable option and... would likely result in regional broadcasters suspending these services in order to avoid regulatory enforcement action.'²⁵

²⁴ *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. Prime viewing hours are between 6.00 pm and 10.30 pm each day.

²⁵ Free TV submission, p8.

Most hearing impaired support organisations support a target of 100 per cent captioning across all digital television multi-channels, whether this is effective immediately or gradually introduced over time. It is arguable that any reduction from the current statutory captioning requirements may not be consistent with the general objectives and principles of the *United Nations Convention on the Rights of Person with Disabilities* and its *Optional Protocol*.

Deaf Australia notes that one in six people in Australia have hearing loss and benefit from captioning. Deaf Australia argues that people who are deaf or hearing impaired constitute a substantial market rather than being a ‘burden’ on broadcasters, and the provision of captioning from 30 June 2010 would ‘provide a powerful incentive for people to switch to digital, including people who have been identified as potential late adopters, such as people with disabilities. This fulfils both commercial audience development and the Digital Television Taskforce objective of switching people to digital as early as possible.’²⁶

The Deafness Forum of Australia argues that the discussion paper lacks an assessment by the Government as to the accuracy of the claim made by industry that increased access to captioning is technically and financially unviable. Industry has an obligation under the *Disability Discrimination Act 1992* to remove barriers to access unless they claim they are experiencing unjustifiable hardship. The Deafness Forum of Australia believes that Government needs to closely assess whether or not industry claims meet that test.²⁷

Media Access Australia explains that closed captioning is mostly ‘content-neutral’ and can be applied to all digital television multi-channels (with the exception of music and non-English language content), and there is no technical challenge to caption almost all program content in this sense.²⁸

Media Access Australia also undertook an analysis of the program guides of the digital television multi-channels from 28 November to 4 December 2009 to estimate the level of existing captioning shown on those digital television multi-channels each day. In that period, it found that the digital television multi-channel 7TWO provided captions on 14 per cent of its daily programming (in a mix of first run programs and repeated programming); GO! provided 13 per cent captioning (all repeated programming) and One HD provided no captioning on its daily sports programming.

Media Access Australia considers that the current percentage of captioned programming on 7TWO and GO! and the increase in captioning on ABC2 and ABC3 indicates a general ‘ramping up’ of captioning on digital multi-channels as well as the ‘commercial and technical feasibility of meeting current captioning requirements’.²⁹ They argue that the current level of captioning on digital multi-channels are already close to the levels of captioning that would be required after any exemptions are lifted. This demonstrates that broadcasters should be able to meet the prospective captioning requirements during prime time on their digital television multi-channels.³⁰

As noted in the previous section on program standards, Free TV believes that ‘setting the same content quota requirements across core services and multi-channels is likely to only permit the development of services which mirror a broadcaster’s main channel.’³¹ The figures presented by Media Access Australia include a significant portion of repeated programming from core channels or from old shows, not necessarily new content that is captioned. On the other hand, Deaf Australia

²⁶ Deafness Forum of Australia submission, p7.

²⁷ *Disability Discrimination Act 1992*, section 29A; Deafness Forum of Australian submission, p10.

²⁸ Media Access Australia submission, p3.

²⁹ Media Access Australia submission, p3.

³⁰ Media Access Australia submission, p2.

³¹ Free TV submission, p2.

claims that broadcasters have known about switch-over for a long time and should have had ample time to prepare for the content and captioning standards involved.³²

Free TV further argues that, should captioning requirements be imposed on all programming broadcast by regional broadcasters, the provision of digital television multi-channels would become unfeasible in the short term. Free TV states that captioning obligations currently require a multi-million dollar annual commitment for the free-to-air broadcasters and allowing the current exemptions to expire would be the equivalent of doubling the current investment in captioning.³³ SBS states in its submission that all of its subtitling and captioning services together currently cost \$4 million annually.³⁴

Many submissions have called for further reviews to allow an ongoing dialogue about program standards and captioning requirements, where mechanisms 'should be established to allow the Government and community to continue to have a say about the nature of the evolving broadcast environment.'³⁵ SBS notes the Australian Human Rights Commissions exemption requires the free-to-air broadcasters to consult with deafness organisations on captioning levels being achieved on their multi-channels by 31 December 2010.³⁶ SBS concludes its submission by stating that a review should be conducted of captioning requirements prior to the end of the switch-over period, and calls for the Government's 'Access to Electronic Media for the Hearing and Vision Impaired' Discussion Report to also inform the next steps in the process. Free TV also suggests it would be appropriate to conduct a further review of captioning requirements, 'given the need to allow multi-channels to mature and establish long-term viability'.³⁷

Discussion of options

The discussion paper canvassed a number of options for applying program standards and captioning requirements to digital television multi-channels. All the submissions discussed the validity of one or more options put forward in the discussion paper and many provided comments about them.

Option 1

This option specified that one digital television multi-channel must continue to meet all program standards and captioning requirements whilst other digital television multi-channels remain exempt.

Multiple submissions argued that either increased program standards and captioning requirements may lead the broadcasters to drop transmission of digital television multi-channels altogether in regional areas, or, that it is not financially or practically feasible to adjust programming on multi-channels in different areas to reflect different program content and captioning requirements at the same time. An excess of requirements may also lead a multi-channel to mirror the core channel rather than present something new, and may inhibit the development of new digital services.

Other submissions do not support this proposal as it would constrain the program standards to a single channel rather than expanding them in proportion to the number of digital television multi-channels offered by the broadcasters and dilutes Australian content as a percentage of overall content; neither would it take advantage of those requirements permitted under the AUSFTA.

³² Deaf Australia submission, p3.

³³ Free TV submission, pp2-3.

³⁴ SBS submission, p3.

³⁵ Australian Television Children's Foundation, p9.

³⁶ SBS submission, p4.

³⁷ Free TV submission, p9.

Many of these submissions call for a target of 100 per cent captioning and note that, should only a core channel be required to provide the majority of captioning, the potential to improve captioning services to the hearing impaired would not be realised.

Requests were also made for a continuing dialogue between Government, industry and viewers in the form of additional reviews to monitor the progress of these issues.

Option 2

This option proposed bringing forward the date at which exemptions for program standards and captioning requirements on digital television multi-channels end to prior to when switch-over begins on 30 June 2010. Program and captioning standards would then be uniformly applied to all commercial broadcasters across all licence areas.

Some submissions noted that broadcasters will have, or are likely to have been aware for some time of when the exemptions from program standards and captioning requirements would no longer apply in each region across Australia. This should have allowed them to factor in complying with program standards and captioning requirements on their digital multi-channels when making business decisions to launch new digital television multi-channels. In their view, there is no reason why broadcasters would not be able to comply with bringing forward the date at which exemptions for program standards and captioning requirements on digital television multi-channels end.³⁸

Some submissions also argue that, through the mandating a switchover to digital only television, the Government has provided broadcasters with the means to increase the number of television channels and content, and this should be matched by a corresponding increase in Australian content and children's programs during prime viewing hours.

However, many broadcasters are concerned that applying this option would demand a large investment of funds in a short amount of time. They also reason that applying different requirements to different licence areas is not practical for broadcasters.

With regards to captioning, one submission argues this option would allow a continuation of the Human Rights and Equal Opportunity Commission (HREOC) increments towards 100 per cent captioning, which currently requires incremental growth in captioning to 85 per cent of the content broadcast between 6.00 am to midnight on a broadcaster's core or primary channel.³⁹ Multiple submissions argue that there are no technical barriers to captioning most types of programming, including sport, and increased captioning would encourage greater take-up among potential 'late-adopters' of digital television.

Option 3

This option proposed that broadcasters could apply to the ACMA for exemption from program standards for particular digital television multi-channels unable to sufficiently meet the program standards and captioning requirements.

One suggestion made was that current program standards are incompatible with some content-specific digital television multi-channels, although other submissions argue that exempting specific free-to-air digital television multi-channels from providing Australian content would reduce the percentage of Australian content broadcast overall and is therefore undesirable.

³⁸ Screen Producers Association Australia submission, p2 and Media Access Australia submission, p5.

³⁹ Michael Lockrey submission, p2.

Some submissions suggested that broadcasters should not be able to apply for exemption from captioning requirements as the majority of content can now be captioned successfully.

Option 4

Option 4 suggested aggregating all programming shown across all digital television multi-channels so that the programs and captioning on all channels together would fulfil the minimum requirements. For example, one digital television multi-channel may meet Australian content standards whilst another meets those for children's television.

Some submissions argued that this option was preferable as it would maintain current requirements of Australian and children's programming and captioning. It was also argued that Australian content would remain competitive with foreign content, viewers would continue to receive the same amount of Australian content and producers and filmmakers would have greater scope to produce different types of programs to fit broadcaster requirements.⁴⁰ Another submission suggested this would allow the broadcasters more flexibility in allocating Australian content and children's programs to more accessible timeslots across digital television multi-channels.⁴¹ On the other hand, other submissions also argued that an aggregation of Australian and children's content across the multi-channels would lead to a dilution of the percentage of this content overall.

Option 5

This option suggests introducing a tradeable obligations scheme whereby a commercial broadcaster can trade a portion or all of their program standards quotas on children's and Australian program content with another national or commercial broadcaster.

Multiple submissions argued that the national broadcasters should not be involved in a tradeable obligations scheme. As outlined earlier, the ABC noted that involving the ABC in this scheme would require a transparent process to ensure its independent control over programming decisions.

Some submissions stated that this option may marginalise Australian content and children's programs to individual broadcasters. For example, if children's programming were only broadcast on a single channel such as ABC Kids, this would reduce a viewer's choice of programming to one channel. Some submissions argued that all free-to-air broadcasters are obliged to provide relevant television to the community and a tradeable obligations scheme would not encourage this sense of obligation, nor take advantage of the maximum content requirements permitted for digital multi-channels under the AUSFTA.

⁴⁰ Australian Federation Against Copyright Theft submission, p4.

⁴¹ Australian Children's Television Foundation, p3.

Proposed way forward

The Government remains strongly committed to the provision of high levels of Australian content on free-to-air television. It is also supportive of arrangements which are resulting in the steady increase of captioning on television programs and reaffirms its commitment to working with industry to continue to develop ways of improving access to broadcasting services.

The Government accepts that certain options for applying program standards and captioning requirements would be difficult for broadcasters to implement in advance of the completion of the switch-over to digital nationally by 31 December 2013. An unintended consequence of the introduction of a phased digital switch-over timetable is that an impractical regulatory burden will be placed on regional broadcasters who switch to digital-only broadcasting in advance of the metropolitan areas from which they source their programming for over three and a half years.

To address this inconsistency and to standardise nationally the application of the rules governing program standards and captioning requirements on digital television multi-channels it is proposed that amendments are made to the Act to extend the current exemptions on digital television multi-channels until the last switch-over date, which can not be after 31 December 2013.⁴² The Government will seek to introduce these changes prior to 30 June 2010, when the Mildura/Sunraysia licence area is due to switch to digital only television. This will allow the commercial broadcasters to provide digital television multi-channels without regulatory discrepancies arising between those broadcast by metropolitan broadcasters and those provided to regional broadcasters, as specified under the commercial broadcasters' affiliation agreements, and will prevent similar regulatory discrepancies between multi-channels broadcast by national broadcasters in metropolitan and regional areas.

The temporary extension of the exemptions for commercial digital television multi-channels will not affect the requirement for each broadcaster to continue to apply the current program standards and captioning requirements to the channels they currently broadcast as digital simulcasts of their analog channels. Similarly, if a program was previously transmitted with captioning on this core or primary channels, and the program is repeated on the digital television multi-channels, then captioning must also accompany its repeated broadcast.

To remain consistent with the commercial broadcasters, a similar extension of the exemption from captioning requirements on digital multi-channels would be provided to the national broadcasters. National broadcasters would maintain their current core channels on which captioning would be provided. If the captioned program is repeated on their digital television multi-channels, then captioning would accompany the repeated broadcast.

This means that there will be no reduction in the levels of Australian and children's program content or in captioning requirements during the switch-over process and broadcasters can continue to choose to further increase Australian content, children's programs and captioned content on their digital multi-channels to meet audience demand. Australians will continue to have access to a core or primary channel from each commercial broadcaster that complies with the requirements for program standards and captioning requirements.

This will provide broadcasters with a consistent regulatory framework over the next three and a half years, during which their digital television multi-channels will become more established.

The Government is not convinced that multi-channels should remain free of Australian content standards and captioning requirements beyond switchover, but at this stage it is not clear how

⁴² *Broadcasting Services Act 1992*, Schedule 4, subclause 6A(3).

channels will evolve and what will be the right balance of requirements as these channels develop further.

Due to the temporary nature of this exemption and the call in many submissions for a continuing dialogue regarding commercial free-to-air broadcasting issues, the Government considers that a further review of program standards and captioning requirements on digital television multi-channels operating in a post switch-over environment is warranted. This review will consider whether there remain valid and compelling reasons for maintaining exemptions from program standards and captioning requirements for broadcaster multi-channels after digital switchover is completed nationally, and if not, what standards and requirements should be set for these channels. The default position would be that the existing standards and requirements would be extended to all multi-channels.

This further review will provide another opportunity for stakeholders to contribute to the development of policy on how program standards and captioning requirements should apply to free-to-air digital television multi-channels in light of the rapidly evolving broadcast environment.

The review will be conducted by 31 December 2012 to allow sufficient time for the Government to implement any legislation before the switchover to digital television is completed nationally and provide the broadcasting industry with sufficient notice of the intended regulatory settings. It will also allow digital switchover to progress further and for digital multi-channels to become better established.

The Government considers this is the most appropriate arrangement given the current complexities and challenges facing the industry in finalising the roll out of digital services and managing the switchover to digital television over the next three and a half years.

Appendix A

The following organisations, industries and individuals made submissions to the review:

Alliance of Industries

Australian Association of National Advertisers

Australian Broadcasting Corporation

Australian Children's Television Foundation

Australian Communications Consumer Action Network

Australian Federation against Copyright Theft

Australian Subscription Television and Radio Association

Blind Citizens Australia

Deaf Australia

Deafness Forum of Australia

Family Voice Australia

Free TV Australia

Media Access Australia

Media Entertainment and Arts Alliance

Michael Lockrey

Music Council of Australia

National Indigenous Television

Special Broadcasting Service

Screen Producers Association of Australia

Appendix B: Digital switch-over timetable

Up to date information on digital television switch-over can be found at www.digitalready.gov.au.

Type	Switch-over area	Major centres	Switchover Date or Window
VIC	Mildura / Sunraysia	Mildura	30 June 2010
SA	Broken Hill	Broken Hill	14 December 2010
SA	Riverland	Renmark and Loxton	14 December 2010
SA	Mt Gambier / South East South Australia	Mt Gambier, Naracoorte and Bordertown	14 December 2010
SA	Spencer Gulf	Port Lincoln, Whyalla, Port Augusta	14 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	30 June 2013
Metro	Perth	Perth	30 June 2013
Metro	Brisbane	Brisbane, Gold Coast and Noosa	30 June 2013
Metro	Melbourne	Melbourne	31 December 2013
Metro	Adelaide	Adelaide	31 December 2013
Metro	Sydney	Sydney and Gosford	31 December 2013
Metro	Darwin	Darwin	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 C: Current regulations

There are three concepts of commercial television channels which are addressed in this report. The first is the analog channels, ABC1, SBS ONE, Network Seven, Nine Network and Network Ten, which will cease transmission, region by region, according to the digital switch-over timetable found at Appendix B. The second concept is of the ‘core’ channels, which are the digital channels that act as direct simulcasts of the analog channels. The third concept is that of the multi-channels, such as 7TWO, Go! and ONE HD. After switch-over, the analog channels will no longer be in transmission, and therefore the ‘core’ simulcast service no longer applies. All channels will be therefore be digital television multi-channels, with the number of channels limited only by the amount of spectrum available or the financial capacity of a broadcaster to provide them.

Currently, 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.

The *Broadcasting Services (Australian Content) Standard 2005* specifies that Australian programs⁴³ 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* also specifies that 80 per cent of advertisements broadcast during that time period must be Australian-produced.

The *Children’s Television Standards 2009* requires each commercial broadcaster to provide 390 hours of children’s programming each year.⁴⁴ According to current legislation, up until switch-over the *Children’s Television Standards 2009* only apply to a commercial broadcaster’s core service.⁴⁵ If no statutory changes are made, the total amount of hours of children’s programming that a commercial broadcaster provides after switch-over will remain unchanged, but a broadcaster will remain free to determine on which channel, or combination of channels, to meet this quota.

The program standards and captioning requirements that currently apply to each analog television channel are automatically replicated on each digital simulcast channel. Digital television multi-channels are currently exempt from these requirements, although if captioned programs broadcast on an analog television channel or its digital simulcast are then repeated on a digital multi-channel, they must include captions as well.⁴⁶

Captioning is the presentation of the audio component of a television signal as text on screen. 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.⁴⁷ 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

⁴³ ‘Australian programs’ can include some programs of New Zealand origin in accordance with clauses 18–20 of the *Australian Content Standard 2005*.

⁴⁴ The *Children’s Television Standards 2009* replaced the *Children’s Television Standards 2005* on 1 January 2010.

⁴⁵ *Broadcasting Services Act 1992*, Subsection 122 (7).

⁴⁶ *Broadcasting Services Act 1992*, Subsections 122 (7) and (8) and the *Broadcasting Services Act 1992*, Schedule 4, Clause 38 (4) and (4A).

⁴⁷ *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.

broadcaster's core service, then captioning must also accompany its broadcast on the digital multi-channel.

The *Disability Discrimination Act 1992* 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 1992*, 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.

These additional requirements, although far in excess of the requirements in broadcasting legislation, do not apply to digital television multi-channels.

The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol was ratified by Australia on 17 July 2008 and also applies to broadcasting in the following articles:

- Article 9: Identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies; and
- Article 21: Countries are to promote access to information by providing information intended for the general public in accessible formats and technologies, by facilitating the use of Braille, sign language and other forms of communication and by encouraging the media and Internet providers to make on-line information available in accessible formats.

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
CTS	Children's Television Standards 2005
FTA	Free-to-air (broadcasters or channels)
HD	High definition
SBS	Special Broadcasting Service
SD	Standard definition
simulcast	The simultaneous digital broadcast of an analog television service.