
Executive summary

Introduction

Australia's media landscape is changing rapidly. Today Australians have access to a greater range of communications and media services than ever before. Developments in technology and increasing broadband speeds have led to the emergence of innovative services not previously imagined. It is now possible to access traditional communications and broadcasting services in new ways, such as radio and television delivered over the internet.

Users are increasingly at the centre of content service delivery. They are creating their own content and uploading it to social media platforms. They are controlling what content they want to view and when they want to view it, for example, through podcasts of popular radio programs and catch-up television services provided by free-to-air networks.

Despite these dramatic changes, Australia's policy and regulatory framework for content services is still focused on the traditional structures of the 1990s—broadcasting and telecommunications. The distinction between these categories has become increasingly blurred and these regulatory frameworks have outlived their original purpose. These frameworks now run the risk of inhibiting the evolution of communications and media services.

Convergence presents significant opportunities but also potential threats for traditional media, creating a need to transform both business and delivery models to keep up with changes in user behaviour. Australia's creative industries are well positioned to seize the opportunities offered by this new environment, and to ensure the development of our digital economy. Australian industry can expand our traditional screen businesses and develop excellence in emerging areas like smartphone and tablet apps. These industries can flourish in a converged environment that opens up new trade opportunities and cultural interactions with the rest of the world, where global distribution is virtually free. A new policy and regulatory framework is needed to support these outcomes.

The Convergence Review

The Convergence Review Committee was established in early 2011 to examine the operation of media and communications regulation in Australia and assess its effectiveness in achieving appropriate policy objectives for the convergent era. The terms of reference for the Review covered a broad range of issues, including media ownership laws, media content standards, the ongoing production and distribution of Australian and local content, and the allocation of radiocommunications spectrum.

Throughout 2011 the Review conducted a comprehensive consultation process to inform its findings and provide all Australians with the chance to have their say. During this process, the Review held public forums in metropolitan and regional locations across Australia, met with industry representatives, and analysed more than 340 detailed submissions and over 28 000 comments.

The Review was also asked to take into account the findings of the report of the recent Independent Inquiry into the Media and Media Regulation in its deliberations.¹ In addition, it has also taken into account the recommendations of the Australian Law Reform Commission's review of the National Classification Scheme.² The Convergence Review acknowledges the considerable work undertaken by these two concurrent reviews.

1 The Hon R Finkelstein QC, *Report of the Independent Inquiry into the Media and Media Regulation*, February 2012, www.dbcde.gov.au/digital_economy/independent_media_inquiry.

2 Australian Law Reform Commission, *Classification—Content Regulation and Convergent Media: Final Report*, ALRC report 118, February 2012, www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118.

Why regulate?

As part of its initial deliberations, the Review established a set of 10 principles to guide its work.³ The first and most fundamental principle states that:

Citizens and organisations should be able to communicate freely and, where regulation is required, it should be the minimum necessary to achieve a clear public purpose.

The Review's starting point, guided by this principle, was that unnecessary regulation should be removed. A consistent theme of the submissions received by the Review was that parts of the current communications environment, particularly broadcasting, are overregulated and many of the existing rules are unnecessary and expensive to comply with. The Review has concluded that a range of existing regulations no longer serve their policy purpose. Some current regulation can be difficult for government to administer and is an unnecessary burden on industry.

The key example of this is the detailed legislative arrangements requiring a licence to provide broadcasting services in a specific part of Australia. With the increasing availability of broadband, services of these kinds can be delivered over the internet across Australia and the world. It is no longer efficient or appropriate for the regulator to plan for the categories of broadcasting service for different areas and issue licences to provide those services.

The Review recommends that the licensing of broadcasting services should cease. As a consequence, the current costs for government and business associated with planning and issuing licences and administering categories of broadcasting services will disappear entirely.

The effects of convergence have been profoundly positive, resulting in new services, expanded consumer choice and greater competition. In light of these changes some submissions to the Review proposed that no regulation at all is necessary in the global digital world. However, the Review concluded that convergence in itself does not totally remove the need for some regulation in the public interest. During its year-long process, the Review asked the question, 'Why should government regulate?' The Review has identified three areas where continued government intervention is clearly justified in the public interest:

- > *Media ownership*—A concentration of services in the hands of a small number of operators can hinder the free flow of news, commentary and debate in a democratic society. Media ownership and control rules are vital to ensure that a diversity of news and commentary is maintained.
- > *Media content standards across all platforms*—Media and communications services available to Australians should reflect community standards and the expectations of the Australian public. As an example, children should be protected from inappropriate content.
- > *The production and distribution of Australian and local content*—There are considerable social and cultural benefits from the availability of content that reflects Australian identity, character and diversity. If left to the market alone, some culturally significant forms of Australian content, such as drama, documentary and children's programs, would be under-produced.

Who should be regulated?

Since the 1990s, there has been a diversification in the way Australians access media. Australians have embraced smartphones and tablets to access news and entertainment. This trend will only accelerate. Despite these changes, Australians continue to get the vast majority of news and entertainment from a relatively small number of established providers.

³ See Convergence Review, *Emerging Issues*, July 2011, pp. 8–10.

A key finding of the Review was that the community expects significant enterprises controlling professional media content to have some obligations, no matter how they deliver their services. The Review proposes a policy framework that will regulate these enterprises based on their size and scope, rather than how they deliver their content.

The Review recommends that these significant media enterprises be defined as ‘content service enterprises’ and be subject to regulation. Organisations would be defined as content service enterprises if they:

- > have control over the professional content they deliver
- > have a large number of Australian users of that content
- > have a high level of revenue derived from supplying that professional content to Australians.

The threshold for users and revenue would be set at a high level to exclude small and emerging content providers. This proposed framework is only concerned with professional content. For example it would include ‘television-like’ services and newspaper content but exclude social media and other user-generated content. As a guide, modelling conducted for the Review indicates that currently around 15 media operators would be classified as content service enterprises.⁴ This modelling suggests that currently only existing broadcasters and the larger newspaper publishers would qualify as content service enterprises.

The Convergence Review was required to take a long-term view. The content service enterprise concept is dynamic and is designed to be effective in a changing media landscape. Organisations may move in or out of the content service enterprise framework, with its related regulatory obligations, depending on the size and scope of the services they deliver in the future.

Chapter 1 provides further discussion on content service enterprises.

What should be regulated?

As outlined above, the Review has concluded that there are three areas where regulatory intervention is justified: media ownership, media content standards, and Australian and local content.

This section explores the rationale for regulation in each area in more detail.

Media ownership

Convergence has undoubtedly increased the range of information available to Australians. There are virtually no costs to publishing information on the internet. There are compelling examples where a viral video or a tweet can change the news agenda or when content can bubble up from social networking platforms into the mainstream media.

Despite these developments, news and commentary consumed by Australians across all platforms is still overwhelmingly provided by the news outlets long familiar to Australians. What has changed most dramatically is how Australians access their news—the source largely remains the same. For example, someone may read a news story on Facebook, but the originator of the article is a newspaper publisher.

Diversity of news and commentary is fundamental to a healthy democracy. The Review has concluded that rules preventing the undue concentration of ownership remain an important factor in maintaining diversity of news and commentary. Diversity of ownership at a local and national level will be maintained by revising the existing rules to ensure that they are targeted and effective.

⁴ See Chapter 1 for further discussion.

At a local level, the Review proposes a ‘minimum number of owners’ rule to ensure that no media operator has a dominant influence in a local market for news and commentary. The rule should apply to all content service enterprises and media operators that have significant influence in particular local markets.

Media convergence has made content readily available nationally; however, the current regulation is focused mostly on local areas. The Review recommends that a public interest test apply to changes in control of content service enterprises of national significance. The public interest test would be administered by a new communications regulator, which is described below.

The focus of the test would be on maintaining diversity at a national level and would complement, not duplicate, the Australian Competition and Consumer Commission’s existing mergers and acquisitions powers.

With the introduction of the ‘minimum number of owners’ rule and the public interest test, the Review recommends that the ‘75 per cent audience reach’ rule, the ‘2 out of 3’ rule, the ‘two-to-a-market’ rule and the ‘one-to-a-market’ rule be abolished.

The media ownership rules recommended by the Review are discussed in Chapter 2.

Content standards across all platforms

Today, content that was previously only delivered in a cinema, on television or in a newspaper can be accessed on devices such as smartphones and tablets. However, this content is regulated differently depending on how it is accessed.

There should be a flexible and technology-neutral approach to content regulation that reflects community standards. The Review broadly accepts the recommendations of the Australian Law Reform Commission’s recent classification report and recommends that a common classification scheme apply to media content. Significantly, under this proposed scheme content would be classified once and that classification would be applied across all platforms.

Content service enterprises should be subject to other media content standards where there is a case for regulatory intervention (for example, children’s television standards). The new communications regulator should use the existing co-regulatory codes as a starting point. Content providers that are not of sufficient size and scope to qualify as content service enterprises should also be able to opt in to content standards or develop their own codes.

The regulator should work with industry to improve information for users about what they can do to control access to content and build on existing government programs to educate consumers. It should also set technical standards that assist users in managing access to content, such as parental locks or age-verification systems.

News and commentary play a vital role in any democracy. Content service enterprises that provide news and commentary should meet appropriate journalistic standards in fairness, accuracy and transparency regardless of the delivery platform. The Review has taken into account the findings of the Independent Media Inquiry. While agreeing with much of the analysis and some of the findings of the Independent Media Inquiry, the Convergence Review recommends an approach based on an industry-led body for news standards rather than a statutory body.

The Review’s recommendations on media content standards can be found in Chapter 4.

Production and distribution of Australian and local content

Both the public and most industry stakeholders told the Review that it was important to ensure Australian stories and voices continued to be represented in our media. Despite Australian content regularly rating in the top 20 television programs, the Review has found that the high costs of Australian production relative to buying international programs mean that there is a continued case for government support of Australian production and distribution. The Review found that Australian drama, documentary and children's programming requires specific support as it would not be produced at sufficient levels without intervention.

While digital television multichannels are introducing new opportunities for content, these channels are not currently subject to Australian content requirements. Similarly, a new range of internet-delivered channels and services with television-like content are becoming available. These two factors are reducing the proportion of Australian content across all media available today. With the high costs of producing some Australian content, such as drama, documentary and children's programs, the Australian content obligations should be spread more evenly over the range of competing services.

The Review proposes a 'uniform content scheme' to ensure that Australian content continues to be shown on our screens. The uniform content scheme will require qualifying content service enterprises, with significant revenues from television-like content, to invest a percentage of their revenue in Australian drama, documentary and children's programs. Alternatively, a content service enterprise will be able to contribute a percentage of its revenue to a 'converged content production fund' for reinvestment in traditional and innovative Australian content.

Not all content service enterprises will be required to contribute under the uniform content scheme. To qualify for the scheme, content service enterprises will need to meet both 'scale' and 'service' criteria. The scale criterion will require the content service enterprise to meet minimum revenue and audience thresholds for the supply of professional television-like content to the Australian market. These thresholds should be set at a high level so only significant media enterprises will be required to invest in Australian content. As an example, if a new internet-delivered service grew revenue and audience from providing professional television-like content to a level comparable with today's established television broadcasters, it would then have obligations to contribute to Australian content.

In addition to the scale threshold, there will be a 'service' criterion. The service criterion will mean that only content service enterprises that offer drama, documentary or children's programs will be subject to the uniform content scheme.

Both the scale and service criteria can be reviewed over time as providers emerge and grow, and to take account of any changes to the targeted genres.

Adoption of the uniform content scheme will mark a significant departure from the present obligations. The Review therefore proposes a transitional framework to allow the government to address the challenges of producing Australian content while working on the implementation of the uniform content scheme. The key features of the transitional framework are:

- > For commercial free-to-air broadcasters—there should be a 50 per cent increase in Australian sub-quota content obligations for drama, documentary and children's content to reflect the two additional channels each broadcaster currently operates that do not attract any quotas. The broadcasters should be able to count Australian content shown on the digital multichannels towards meeting the expanded sub-quota obligations.
- > For subscription television providers—the 10 per cent minimum expenditure requirement on eligible drama channels should be extended to children's and documentary channels.

The Review has identified a number of other measures to directly support content production, including raising the Producer Offset from 20 per cent to 40 per cent for television drama and recommending the establishment of an interactive entertainment offset.

The increased offset for television drama recognises the significant investment being made in Australian television drama and the high production values and cultural benefits inherent in this genre. The new interactive entertainment offset would assist Australian industry to continue to develop emerging formats, which are expected to grow significantly. Adoption of the interactive entertainment offset would also recognise that games and other interactive genres make a significant contribution to cultural identity and innovation.

The Review has recommended the creation of a converged content production fund. This fund should have a broad focus that supports traditional Australian content, new innovative content, and services for local and regional distribution. The converged content production fund should also play a role in supporting Australian contemporary music. In addition to direct funding from government, this fund could be supported by spectrum licence fees from broadcasting services and contributions from content service enterprises under the uniform content scheme.

Further details on the Review's recommendations on Australian screen content can be found in Chapter 5.

The Review considered Australian music quotas on analog commercial radio. The Review found that the quotas are generally effective, and recommends that they apply to content service enterprises that offer both analog and digital commercial radio services. Occasional or temporary digital radio services should be exempted from this requirement. The diversity and emerging nature of internet-delivered audio services would make it difficult and ineffective to apply quotas to these services at this time.

Further details on the Review's recommendations on Australian radio content can be found in Chapter 6.

The importance of local news to regional communities was one of the key messages from the Review's consultations around Australia. Commercial free-to-air broadcasters using spectrum should continue to program material of local significance. The existing rules around complying with local programming can, however, be onerous and a more flexible reporting regime should be implemented. The Review recommends removing the current rules triggered by a change in control of a commercial radio broadcasting service that require minimum levels of local presence and additional local content requirements.

Content providers should also have access to the converged content production fund to encourage a diverse range of local services on new platforms.

Further details on the Review's recommendations on local television and radio content can be found in Chapter 7.

A principles-based policy framework

The recommendations in this report constitute a shift towards principles-based legislation to ensure the policy framework can respond to the future challenges of convergence. An independent regulator and a principles-based approach would provide increased transparency for industry and users. This approach moves away from detailed 'black-letter law' regulation, which can quickly become obsolete in a fast-changing converged environment and is open to unforeseen interpretations.

The current model of communications regulation relies largely on detailed requirements in Acts of Parliament. Much of this regulation is based on specific delivery platforms and business models and it cannot effectively address concerns that were not anticipated at the time the legislation was passed.

Given the ongoing changes in technology and in the way Australians use media, legislation would be more effective if it focused on creating a framework of principles within which an independent regulator could apply, amend or remove regulatory measures as circumstances require. This approach is used in comparable countries, such as the United States, the United Kingdom and Canada. It would enable the new communications regulator to adjust rules to respond quickly to changes in the industry. The regulator, when exercising its powers, would need to act in accordance with the principles set out in the legislation and be able to justify its decisions under administrative, parliamentary and judicial scrutiny. This model is the best approach to a changing landscape and would lead to more independent, open and consultative policy making in the media and communications sector.

Who regulates?

The Review recommends the establishment of two separate bodies:

- > a statutory regulator to replace the existing Australian Communications and Media Authority
- > an industry-led body to oversee journalistic standards for news and commentary across all platforms in the media and communications sector.

A new communications regulator

The Review recommends that a new communications regulator be established to replace the existing Australian Communications and Media Authority. The regulator should operate at arm's length from government direction, except in a limited range of specified matters.

The communications regulator should incorporate a Classification Board as recently recommended in the Australian Law Reform Commission's review of the National Classification Scheme.

Among its responsibilities, the new regulator will define the thresholds for content service enterprise, administer the 'minimum number of owners' rule and the public interest test, and ensure that Australian and local content obligations are applied.

In addition, the communications regulator should also have flexible powers to make rules on content-related competition issues. Content has the potential to be the new competition bottleneck in the digital economy, and the new regulator must have the necessary powers to promote fair and effective competition in content markets.

These powers will complement, rather than duplicate, the existing powers of the Australian Competition and Consumer Commission. The Review proposes that the commission retain its telecommunications-specific powers, and that these powers be reviewed once the National Broadband Network is implemented.

Further discussion on proposed content-related competition powers can be found in Chapter 3.

The Review believes that many of the changes recommended in this report will streamline regulation and increase the effectiveness of the regulator's operations. Removing the broadcast licensing regime and the duplication of classification functions will free up resources.

A new industry-led body to oversee standards for news and commentary

While the establishment of a publicly funded statutory authority to look at news and commentary as proposed by the Independent Media Inquiry remains an option available for government, the Review considers this to be

a position of last resort. Instead, the Review recommends that content service enterprises be required to be members of an industry-led body established to develop and enforce a media code aimed at:

- > promoting news standards
- > adjudicating on complaints
- > providing timely remedies.

This body would ultimately absorb functions performed by both the Australian Press Council and the Australian Communications and Media Authority in news and commentary. Other media organisations would be free to become members of the news standards body and may see benefits in doing so.

The majority of funding for the body should come from its members. As it is in the public interest for the body to be appropriately resourced, government contributions should be available but limited to specific purposes, such as to cover a shortfall or to provide project-based funding.

In a converged world it is no longer viable to argue that news and commentary in print media should be treated differently from news and commentary in television, radio and online. The new industry-led body should cover all platforms—print and online, television and radio.

Further discussion of the Review's recommendations on news standards can be found in Chapter 4.

Other matters covered in this report

This report also makes recommendations in relation to the allocation and management of broadcasting spectrum, and public and community broadcasting.

New arrangements for the allocation and management of broadcasting spectrum

The Review recommends the government adopt a market-based approach to pricing broadcasting spectrum in line with arrangements for other types of radiocommunications spectrum. This would replace the existing approach of charging commercial free-to-air broadcasters licence fees, which are calculated as a percentage of revenues. Instead, existing holders of commercial broadcasting licences should be issued with spectrum licences planned for the supply of broadcasting services. This would enable the current broadcasters to continue to supply their existing services.

It would also give them the ability to adopt new business structures as they would no longer be required to be both a platform operator and a supplier of content services. For example, following the switchover to digital television, current licensees would have the opportunity to develop new channels, lease channel capacity, or sell their spectrum licence. The spectrum licence will continue to be used to supply digital television.

Spectrum on the 'sixth channel' should be allocated to new services and to maintain the distribution of community television services. The Review has concluded that the sixth multiplex should not be allocated to create a full fourth commercial television network operated by a single enterprise. The Review considers that allocating individual channel capacity to a range of providers will maximise diversity. Use of the sixth multiplex is a unique opportunity to encourage and promote innovative services, which will give consumers new content and contribute to competition and diversity.

Established commercial and public broadcasters should not be allowed to bid for channel capacity on the 'sixth channel.' The channel capacity should be awarded to a range of operators to increase the diversity of ownership and content in Australian free-to-air television.

Any new spectrum planning framework should take into account the public interest considerations currently reflected in the *Broadcasting Services Act 1992* that have contributed to the diversity of the Australian broadcasting system.

The Review also believes the government should consider reviewing its proposed spectrum arrangements for the post-analog television switch-off period to ensure that they maximise the provision of digital radio services in regional Australia.

The Review's recommendations for a new framework for the allocation and management of spectrum can be found in Chapter 9.

Recognition of the role played by public and community broadcasters

A key feature of the Australian media sector has been its sectoral diversity, including strong commercial, public and community broadcasters.

Our public broadcasters were among the first in Australia to embrace digital technologies and new platforms. This innovation has led to the development of a range of new services that have extended the reach and impact of publicly funded programming. However, neither the Australian Broadcasting Corporation (ABC) charter nor the Special Broadcasting Service (SBS) charter explicitly recognises the broad range of functions these broadcasters now perform. The Review recommends that the charters of the ABC and the SBS be updated to expressly reflect the range of existing services, including online activities, currently provided.

The Review considers that given the substantial taxpayer investment in the ABC and SBS, it is appropriate that these broadcasters also comply with Australian content transmission quotas. For the ABC, the Review recommends that a 55 per cent quota be applied to its main channel, and for the SBS the Review recommends a 27.5 per cent quota. The Review found that sub-quotas on the main channel and transmission quotas on the digital multichannels were unnecessary and impractical, given the public broadcasters' special commitment to broadcast a diverse range of genres. The new quotas would recognise that public broadcasters have a mission to support Australian content in meeting their charter obligations. The lower quota for the SBS recognises its mission to reflect multiculturalism to Australians and the need to achieve this objective partly through international content.

The Review also recommends continued support for community broadcasters through the availability of spectrum for radio services and availability of spectrum on the 'sixth channel', and access to funding to drive innovation in the delivery of these services on new platforms.

Further discussion on the Review's recommendations about public and community broadcasters is in Chapter 8.

Implementation

Given the far-reaching nature of the Review's recommendations and the substantial legislative changes proposed in this report, the Review recommends a staged approach to implementation.

Key transitional arrangements flowing from the removal of broadcasting licences and the development of a regulatory framework centred on content service enterprises would need to be planned in further detail. The planning process should include close consultation with industry and include the new communications regulator once it is established.

Important changes needed to implement the Review's recommendations include the development of legislation to establish the new regulator and develop a transition plan for the transfer of continuing functions from the Australian Communications and Media Authority.

This report proposes a three-stage approach to implement the Review's recommendations. Further discussion of the proposed implementation process is outlined in Chapter 10.

The Review's recommendations are listed in full below.

Recommendations

Chapter 1: The need for a new approach

1. The policy framework for communications in the converged environment should take a technology-neutral approach that can adapt to new services, platforms and technologies.
 - a. Parliament should avoid enacting legislation that either favours or disadvantages any particular communications technology, business model or delivery method for content services.
 - b. The focus of legislation should be on creating a sustainable structure within which a new independent communications regulator can apply, amend or remove regulatory measures as circumstances require.
2. There should be no licensing or any similar barrier to market entry for the supply of content or communications services, except where necessary to manage use of a finite resource such as radiocommunications spectrum.
3. Large enterprises that provide professional content services to a significant number of Australians should be expected to continue to:
 - a. have proposed changes in ownership scrutinised
 - b. meet community expectations about standards applicable to the content they provide
 - c. contribute in appropriate ways to the availability of Australian content.
4. These enterprises (which would be called content service enterprises) should be identified by the following criteria:
 - a. they have control of professional content they deliver
 - b. they meet a threshold of a large number of Australian users of that professional content
 - c. they meet a threshold of a high level of revenue derived from supplying that professional content to Australians.

The thresholds for revenue and users would be set at a high level so that only the most substantial and influential entities are within the category of a content service enterprise.
5. The appropriate threshold levels of revenue and of users should be determined following a review of relevant media enterprises by the new communications regulator. The appropriate threshold levels should be reviewed periodically by the regulator.

Chapter 2: Media ownership

6. Media ownership and control rules should promote a diverse range of owners at a local and national level.
 - a. Ownership of local media should continue to be regulated through a 'minimum number of owners' rule. The existing '4/5' rule should be updated to take into account all entities that provide a news and commentary service and have a significant influence in a local market. The new communications regulator should be able to provide an exemption from the rule in exceptional circumstances, if it is satisfied that a transaction will provide a public benefit in a specific local market.
 - b. The new communications regulator should have the ability to examine changes in control of content service enterprises of national significance. It should have the power to block a proposed transaction if it is satisfied—having regard to diversity considerations—that the proposal is not in the public interest.

7. The following rules should be removed and replaced by a 'minimum number of owners' rule and a public interest test:
 - > the '75 per cent audience reach' rule
 - > the '2 out of 3' rule
 - > the 'two-to-a-market' rule
 - > the 'one-to-a-market' rule.

Chapter 3: Content-related competition issues

8. The new communications regulator should be empowered to instigate and conduct market investigations where potential content-related competition issues are identified.
9. The new communications regulator should have flexible rule-making powers that can be exercised to promote fair and effective competition in content markets. These powers should complement the existing powers of the Australian Competition and Consumer Commission to deal with anti-competitive market behaviour. These powers should only be exercised following a public inquiry.

Chapter 4: Content standards

10. There should be a technology-neutral and flexible approach to media content standards.
 - a. The new communications regulator should be responsible for all compliance matters related to media content standards, except for news and commentary. This will include the responsibility for administering the new national classification scheme proposed by the recent Australian Law Reform Commission review. An independent classification board would be established as part of the organisational structure of the new regulator to undertake specific classification functions.
 - b. An independent self-regulatory news standards body operating across all media should be established by industry to enforce a media code aimed at promoting fairness, accuracy and transparency in professional news and commentary.
 - i. Content service enterprises should be required to be members of the news standards body, which should be established and adequately funded and resourced by its industry members.
 - ii. As it is in the public interest that such a body be appropriately resourced, the government should make a financial contribution.
 - iii. News and commentary providers that are not content service enterprises should be encouraged to join the news standards body.
 - iv. The news standards body should have credible sanctions and the power to order members to prominently publish its findings.
 - v. The news standards body should be able to refer to the new communications regulator instances where there have been persistent or serious breaches of the media code. The new communications regulator should also be able to request the news standards body to conduct an investigation.
 - c. The new arrangements outlined at paragraph 10(b) should be implemented in stages and the co-regulatory broadcasting codes in relation to news standards should not be repealed until the communications regulator is satisfied that the new self-regulatory arrangements are working effectively.

- d. Content service enterprises should also be subject to:
 - i. children's television content standards, where appropriate
 - ii. other content standards made by the new communications regulator where there is a case for regulatory intervention, with the starting point being the matters covered by the existing co-regulatory codes made under the *Broadcasting Services Act 1992*.
 - e. Content providers that are not of sufficient size and scope to be classified as a content service enterprise should be encouraged to opt in to content standards applying to content service enterprises, or to develop their own codes.
11. Where the new communications regulator is responsible for approving and enforcing content standards, it should have:
- a. discretion to approve industry codes or adopt its own standards
 - b. discretion to determine the most effective and efficient complaints and investigation procedures
 - c. direct enforcement powers in response to a breach of codes or standards
 - d. a graduated range of effective remedies to ensure compliance.
12. The new communications regulator should also:
- a. certify whether complaints systems, privacy controls and other measures in self-regulatory industry codes meet best practice standards
 - b. work with industry to provide transparent information to content users about what they can do to control access to content, building on government programs to educate consumers about media and digital literacy
 - c. set technical standards that assist content users in managing access to content (such as parental locks or age-verification systems).

Chapter 5: Australian content: screen

13. The quotas and minimum expenditure obligations applying to the free-to-air and subscription television sectors should be repealed and replaced with the uniform content scheme set out in recommendations 14 and 15.
14. Content service enterprises that meet defined service and scale thresholds should be required to invest a percentage of their total revenue from professional television-like content in the production of Australian drama, documentary or children's content or, where this is not practicable, contribute to a new converged content production fund.
15. The government should create and partly fund a new converged content production fund to support the production of Australian content.
16. Premium television content exceeding a qualifying threshold should attract the 40 per cent offset available under the Producer Offset scheme. This will bring premium television content in line with the current rate of offset available for feature film production.
17. Interactive entertainment, such as games and other applications, should be supported by an offset scheme and the new converged content production fund.

18. The following transitional arrangements should apply for commercial free-to-air and subscription television broadcasters until they are included within the uniform content scheme:
 - a. For commercial free-to-air television broadcasters:
 - i. The existing 55 per cent transmission quota that is imposed on each broadcaster's primary channel should continue.
 - ii. There should be a 50 per cent increase in Australian sub-quota content obligations for drama, documentary and children's content to reflect the two additional channels each broadcaster currently operates that do not attract any quotas.
 - iii. The broadcasters should be able to count Australian content shown on their digital multichannels towards meeting the expanded sub-quota obligations.
 - iv. The existing 80 per cent quota for Australian-produced advertising on each broadcaster's primary channel should be maintained.
 - b. For subscription television providers:
 - i. The 10 per cent minimum expenditure requirement on eligible drama channels should be maintained.
 - ii. A 10 per cent minimum expenditure requirement should be placed on children's and documentary channels.

Chapter 6: Australian content: radio

19. Australian music quotas should continue to apply to analog commercial radio services offered by content service enterprises and be extended to digital-only radio services offered by content service enterprises.
20. Music quotas should not be applied to occasional or temporary digital radio services.
21. Given the evolving state of internet-based music services, quotas should not be applied at this time.

Chapter 7: Local content: television and radio

22. Commercial free-to-air television and radio broadcasters using spectrum should continue to devote a specified amount of programming to material of local significance.
23. A more flexible compliance and reporting regime for television and radio should be implemented for the obligations set out in recommendation 22.
24. The current radio 'trigger event' rules should be removed.

Chapter 8: Public and community broadcasting

25. The charters of the ABC and the SBS should be updated to expressly reflect the range of existing services, including online activities.
26. While Australian content quota obligations continue for commercial free-to-air television broadcasters as a transitional measure, quotas should also apply to the public broadcasters.
 - a. The primary ABC channel should have a 55 per cent Australian content quota consistent with the obligation on commercial free-to-air television broadcasters.
 - b. Reflecting its multicultural charter obligations, the SBS should be required to target half this amount (27.5 per cent).

Chapter 9: Spectrum allocation and management

27. There should be a common approach to the planning, allocation and management of both broadcasting and non-broadcasting spectrum that includes:
- a. a market-based pricing approach for the use of spectrum, and one that provides greater transparency when spectrum may be used for public policy reasons
 - b. spectrum planning mechanisms that explicitly take into account public interest factors, and social and cultural objectives currently reflected in the *Broadcasting Services Act 1992*
 - c. ministerial powers to reserve and allocate spectrum to achieve policy objectives considered important by the government and the Australian community, including public and community broadcasting, which have contributed to the diversity of the Australian broadcasting system
 - d. certainty for spectrum licence holders about licence renewal processes.
28. Existing holders of commercial broadcasting licences should have their apparatus licences replaced by spectrum licences to enable them to continue existing services. In addition:
- a. as broadcasting licence fees will be abolished with the removal of broadcasting licences, the regulator should set an annual spectrum access fee based on the value of the spectrum as planned for broadcasting use
 - b. commercial broadcasting licensees should have the flexibility to trade channel capacity within their spectrum.
29. The new communications regulator should allocate channel capacity on the sixth planned television multiplex (known as the ‘sixth channel’) to new and innovative services that will increase diversity. The use of capacity on the sixth multiplex for the distribution of community television services should continue. Existing commercial free-to-air television broadcasters and the ABC and the SBS should be precluded from obtaining capacity on the sixth multiplex.

Chapter 10: Implementing the new approach

30. The Review’s recommendations should be implemented in three distinct stages:
- a. Stage 1: Stand-alone changes that can be achieved in the short term should be made to policies, programs and legislation, including the public interest test that will apply to changes in control of content service enterprises.
 - b. Stage 2: New content services legislation should replace the *Broadcasting Services Act 1992* and existing classification legislation.
 - c. Stage 3: The reform of communications legislation should be completed to provide a technology-neutral framework for the regulation of communications infrastructure, platforms, devices and services.
31. The new communications regulator should be established in time to implement the new regulatory arrangements recommended for stage 1, and assume the remaining functions of the Australian Communications and Media Authority at the conclusion of stage 2 of the implementation process outlined in recommendation 30.