

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Regulated Television Services) Determination 2024

Issued by the Authority of the Minister for Communications

Authority

The *Broadcasting Services (Regulated Television Services) Determination 2024* (the Determination) is made by the Minister for Communications (the Minister) under subsection 130ZZJ(2) of the *Broadcasting Services Act 1992* (the Act).

Purpose

The prominence framework, legislated in Part 9E of the Act, supports the availability of local free-to-air television services ('regulated television services'), by regulating their accessibility and display on 'regulated television devices' (those that are primarily used to provide television or television-like content).

Subsection 130ZZJ(1) of the Act establishes what is a 'regulated television service' for the purposes of the framework – this is, the services to be afforded prominence. Further, paragraph 130ZZJ(1)(c) of the Act provides that a specified service that the Minister determines, under subsection 130ZZJ(2), is a regulated television service. Subsection 130ZZJ(2) of the Act provides the any such determination is made by a legislative instrument.

The designation of services in the Determination requires the manufacturers of regulated television devices to ensure that the relevant requirements of the prominence framework are complied with in relation to the service.

Background

The prominence framework for internet-connected television devices was legislated as part of the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024* (the CLA Act), giving effect to the Government's 2022 election commitment to implement such a framework. The Act provides that the following services are 'regulated television services' for the purpose of the framework:

- linear television broadcasting services provided by: national broadcasters; commercial television broadcasting licensees (other than a licensee who holds a licence allocated under section 38C or subsection 40(1) of the Act); and community television broadcasting licensees.
- BVOD services provided by: national broadcasters; and commercial television broadcasting licensees and their related body corporates (other than section 38C or subsection 40(1) licensees).

The Act also provides that the Minister may, by legislative instrument, determine that a specified service is a regulated television service (subsection 130ZZJ(2)), or that a specified service is not a regulated television service (subsection 130ZZJ(3)).

In relation to the Ministerial power to determine a service to be a regulated television service, the Explanatory Memorandum to the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2024*, specifically notes a licensing anomaly with the terrestrially-delivered free-to-air community television broadcasting service, Channel 44 Adelaide (C44).

“It would also be open to the Minister to make a determination under subsection 130ZZJ(2) to provide that the linear television broadcasting service provided by Adelaide’s Channel 44, which operates as an open narrowcasting television service, is a regulated television service for the purposes of the prominence framework.”

Consultation

Extensive consultation was undertaken to support the design of the framework and the passage of the CLA Act containing the prominence framework. The prominence framework as legislated incorporates and has been informed by the feedback and views put forward through these consultation processes.

Regulatory impact analysis

The Office of Impact Analysis (OIA) has determined that a detailed impact analysis is not required for the making of this instrument. The OIA reference number is OIA24-08643.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

BROADCASTING SERVICES (REGULATED TELEVISION SERVICES) 2024

NOTES ON CLAUSES

Section 1 – Name

Section 1 provides that the instrument, when enacted, may be cited as the *Broadcasting Services (Regulated Television Services) Determination 2024*.

Section 2 – Commencement

Item 1 of the table in subsection 2(1) provides for the instrument to commence on the day after this instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 130ZZJ(2) of the *Broadcasting Services Act 1992* (the Act).

Section 4 – Definitions

The term ‘Act’ is defined to mean the *Broadcasting Services Act 1992*.

Section 5 – Determination of regulated television service

Section 5 provides that Channel 44 (C44), an open narrowcasting television service provided for community or educational non-profit purposes, by C44 Adelaide Limited, ABN 17 104 643 736, is a regulated television service for the purpose of paragraph 130ZZJ(1)(c) of the Act.

C44 is Adelaide’s community television broadcaster, providing local free-to-air television services across greater Adelaide. However, due to a historical anomaly in the way that C44 is licensed, the station technically operates under the authority of an open narrowcast licence. This means that the service is not classed as a ‘regulated television service’, under paragraph 130ZZJ(1)(a) of the Act, for the purpose of the prominence framework. This determination provides for C44 to be classed as a ‘regulated television service’, under paragraph 130ZZJ(1)(c).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Broadcasting Services (Regulated Television Services) Determination 2024

The *Broadcasting Services (Regulated Television Services) Determination 2024* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Broadcasting Services (Regulated Television Services) Determination 2024* (the Determination) is a legislative instrument to determine C44 Adelaide (C44) to be a ‘regulated television service’ for the purposes of the prominence framework.

The prominence framework, legislated in Part 9E of the *Broadcasting Services Act 1992*, supports the availability of local free-to-air television services (‘regulated television services’), by regulating their accessibility and prominent display on ‘regulated television devices’ (those that are primarily used to provide television or television-like content). Subsection 130ZZJ(1) of the Act establishes what is a ‘regulated television service’ for the purposes of the framework – this is, the services to be afforded prominence. Further, paragraph 130ZZJ(1)(c) of the Act provides that a specified service that the Minister determines, under subsection 130ZZJ(2), is a regulated television service. Subsection 130ZZJ(2) of the Act provides the any such determination is made by a legislative instrument.

The designation of services in the Determination would require the manufacturers of regulated television devices to ensure that the relevant requirements of the prominence framework are complied with in relation to the service.

Human rights implications

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The compatibility of the legislated prominence framework with human rights was comprehensively assessed through the Statement of Compatibility with Human Rights provided in the Explanatory Memorandum to the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2024* (the Bill). The statement provided that the framework contained in the Bill was compatible with human rights and freedoms by providing access to crucial information for democratic and social participation, as well as access to mass media and television services, relevant at a regional and national level, that reflect and promote local culture.

This Determination is an extension of this framework and, as such, it may engage with human rights to the same extent, resulting in the same impacts. Particularly it may engage the following rights:

- the right to freedom of expression in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to enjoy and benefit from culture in Article 27 of the ICCPR; and
- the right of everyone to take part in cultural life in Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 19 of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, through any medium, including written and oral communication, media and television broadcasting. Free-to-air television services provide local, national and international news, information during emergencies and natural disasters, sport, drama, and Australian content to all Australians, regardless of their location or income. By designating C44 to be a regulated television service, the Determination will ensure that C44 is present and easily accessible on regulated television devices. This will increase public access to a range of information and ideas that are of public significance at a local, regional or national level.

Article 27 of the ICCPR and Article 15(1) of the ICESCR respectively recognise the right to enjoy and benefit from culture and the right of everyone to take part in cultural life. The Determination supports the right to culture by ensuring Australian communities continue to easily access local, free television services that are meaningful and locally relevant to them.

Conclusion

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that it may engage Article 19 of the ICCPR, it provides access to crucial information for democratic and social participation. To the extent it may engage Article 27 of the ICCPR and Article 15 of the ICESCR, it promotes access to television services that reflect and promote local culture.