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SARAH HENDERSON
SHADOW MINISTER FOR COMMUNICATIONS
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The Hon Michelle Rowland MP
Minister for Communications
Parliament House
Canberra ACT 260
Via email: minister.rowland@mo.communications.gov.au

Dear Minister

Commercial broadcasters require urgent regulatory certainty

I write to raise concerns about the regulatory uncertainty which currently exists by reason of the sunseting, on 18 September 2022, of the Broadcasting Services ("Broadcasting Service" Definition – Exclusion) Determination 2019 (*the Determination*).

The *Broadcasting Services Act 1992* defines 'broadcasting services' to mean 'a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means...'

The Determination, or the "Alston" Determination as it is commonly known, makes clear that audio and video streaming over the internet are not broadcasting services.

Should the Determination lapse, the operations of Australian commercial television and radio companies, many of which operate live streaming platforms, would be thrown into chaos. Put simply, it would be an impossible task, in such a short time frame, for a broadcasters' streaming platform to comply with the law including in relation to licenced geographical areas, Australian content quotas, programming and technical codes and content acquisition.

Should a broadcaster be forced into operating an unlicensed service, this could have dire consequences including putting at risk a broadcaster's contracts with third party program suppliers.

Similarly, if live streaming operated by digital platforms such as Facebook and Twitter were defined as a 'broadcasting service', this would give rise to enormous regulatory uncertainty.

As the ACCC's Digital Platform Inquiry has recommended, there should be a harmonisation of media regulation between traditional media and those delivering services over the internet. This requires thorough consideration.

It is disappointing that the Albanese Government has not acted more expeditiously on this matter. Accordingly, in the interim, I urge you to urgently remake the Determination on the same terms and provide both the commercial broadcasters and live streaming platforms with the regulatory certainty they require.

Your sincerely

Sarah Henderson

15 September 2022