



Australian
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and Media Authority

Australian Communications and Media Authority Submission

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References Committee

Inquiry into media diversity in Australia

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Executive summary

The Australian Communications and Media Authority (ACMA) is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia. Our remit also includes some aspects of online content regulation, for example restrictions on gambling advertising in live streamed sport and illegal internet gambling services.

The ACMA undertakes three roles of most relevance to this inquiry:

- > Administering and enforcing media control, localism and diversity obligations set in legislation and associated instruments
- > Collecting data and undertaking research to inform itself and government on trends in the market
- > Undertaking additional roles and functions as requested by government.

Our submission outlines each of these roles and provides links to additional information to assist the Committee in its deliberations.

The ACMA administers media control and diversity obligations

As part of our role, we apply the media control, diversity and localism rules set out in the *Broadcasting Services Act 1992* (the BSA). These rules regulate concentration of, and seek to encourage diversity in, the control of Australian media companies, assessed within individual broadcasting licence areas.

The rules administered by the ACMA relating to ownership and control are separate to and distinct from regulatory frameworks administered by the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Foreign Investment Review Board.

We collect data and undertake relevant research on trends in the market

To assist government, industry participants and the public, the ACMA collects and publishes information on ownership and control of media entities relating to its media diversity functions.

A strategic priority for the ACMA is to monitor market changes and influence regulatory responses.¹ Where appropriate, we also seek to test the ongoing efficacy of these regulatory settings. This includes analysing the impacts of market changes and influencing appropriate regulatory responses.

In this context, and in response to various reported and observed issues within the Australian media market, in 2019 we announced the ACMA news project. The project aimed to, amongst other matters, explore new ways to measure and assess diversity in news and opinion and the availability of local news in a changed environment.

The Australian Government has also asked the ACMA to perform additional roles

A further role performed by the ACMA and relevant to the inquiry's terms of reference is the administration of the Regional and Small Publishers Innovation Fund (the Innovation Fund). This function was given to the ACMA as part of the Australian Government's 2017 Regional and Small Publishers Jobs and Innovation Package. Since June 2018, the ACMA has conducted three grant rounds under the Innovation Fund, awarding around

¹ See Strategy 3, ACMA 2019, [Corporate plan 2019-20](#).

\$17.5 million (GST exclusive) in funding for 134 grants to regional and small publishers to support the production of public interest journalism.²

As part of the government's response to the Australian Competition and Consumer Commission's Digital Platforms Inquiry (ACCC DPI) in December 2019, the ACMA has also been asked to oversee the development of a voluntary code of conduct on disinformation and news quality for digital platforms. This work is currently underway.

² The ACMA publishes a list of grantees awarded grant funding on the [ACMA website](#). In some cases, grantees may choose to withdraw from the program before their grant agreement is executed. Once the grant agreement is executed the information is published on [GrantConnect](#).

Regulation of media ownership, diversity and localism

In carrying out its functions, the ACMA administers rules set out in the BSA and subordinate instruments³ which go to compliance by Australian media companies with rules on media control, diversity and localism.

The rules are intended to promote diversity in the Australian media landscape through:

- > managing control over influential newspaper and broadcasting services
- > promoting the availability of local content on radio and television to audiences in regional Australia.

Media control and diversity rules

Nature of the media control and diversity rules

Media control and diversity rules are set out in Part 5 of the BSA and apply to regulated media assets – commercial television licences, commercial radio licences and ‘associated’ newspapers. These rules include the:

- > One-to-a-market television rule: preventing control of more than one commercial television licence in the same licence area including through directorship limitations⁴
- > Two-to-a-market radio rule: preventing control of more than two radio licences in the same licence area including through directorship limitations⁵
- > Number of voices rule: preventing media transactions that would result in fewer than five independent media operators in a metropolitan licence area or 4 in a regional licence area.⁶

To be in ‘control’ of a regulated media asset for the purposes of the BSA, a person must either have over 15% shareholding (‘deemed control’) or otherwise be in a position to actually exercise control (‘actual control’).⁷ Note that ‘control’ for the purposes of the BSA is not the same as ‘control’ under the *Corporations Act 2001*.

Section 63 of the BSA requires commercial television and radio licensees and publishers of associated newspapers to notify the ACMA about any change of control of the licence or associated newspaper within 10 business days of becoming aware of the change in control.

The ACMA enforces the media control and diversity rules both by having regard to any notifications that it receives under section 63 of the BSA and by monitoring public discussions (including media reports) about potential transactions which may involve a change of control.

If the ACMA identifies a breach of a media control or diversity rule, a range of compliance and enforcement options are available, including referral to the Commonwealth Director of Public Prosecutions. The breach of the one-to-a-market or two-to-a-market rules for television and radio is an offence and a breach of the rule

³ These include the Broadcasting Services Local Programming Determination 2018, the Broadcasting Services (Regional Commercial Radio – Material of Local Significance) Licence Condition 2014, the Broadcasting Services (Regional Commercial Radio – Local Presence) Licence Condition 2014 and the Broadcasting Services (Meaning of Local) Instrument 2018.

⁴ Sections 53 and 55 of the BSA.

⁵ Sections 54 and 56 of the BSA.

⁶ Sections 61AG and 61AH of the BSA.

⁷ See Parts 2 and 3 of Schedule 1 to the BSA.

preventing transactions that would lower the number of voices below the minimums may be subject to criminal and civil penalties.

The media control and diversity rules aim to constrain the number of regulated media entities that a single person or corporation can control, while allowing some degree of consolidation. In a single market a person is permitted to control a combination of one commercial television licence, two commercial radio licences and any number of associated newspapers, provided that there are at least three additional independent 'voices' (i.e. media entities or groups of media entities) in the same regional area, or 4 additional voices in a metropolitan area.

Prior approvals for temporary breaches of media control and diversity rules

In some cases, it may be appropriate for the ACMA to permit an unlawful media transaction to occur, provided that any breach of the media control or diversity rules can be rectified within a predetermined period of time.

The ACMA has discretion to provide temporary approval for breaches of the media control rules (section 67 of the BSA) and the media diversity rules (section 61AJ of the BSA), provided that:

- > an application is made *before* the transaction leading to the breach occurs
- > the ACMA is satisfied that the parties involved will take steps to resolve the breaches in an agreed timeframe.⁸

For a section 67 approval, the ACMA must also be satisfied that the unlawful elements of the transactions must be incidental to the transaction.

Once the ACMA grants a temporary approval under sections 67 or 61AJ of the BSA, the unlawful elements of the transaction are no longer regarded as breaches.

Recent examples of where the ACMA has granted prior approval include:

- > On 17 December 2019, the ACMA approved a breach of the two-to-a-market radio rule in the Bunbury RA1 licence area (Western Australia) that would result from the acquisition of 100% of the ordinary shares in Redwave Media Pty Limited, Great Northern Broadcasters Pty Ltd and Geraldton FM Pty Ltd by Regional Broadcasters Australia Pty Limited (owned by Southern Cross Media Limited). Southern Cross Media Limited provided an enforceable undertaking to the ACMA to resolve the breach of the rule through the sale of a commercial licence in the Bunbury RA1 licence area. This occurred on 1 May 2020.
- > On 20 December 2019, the ACMA also approved breaches of the two-to-a-market radio rule and the 'number of voices' diversity rule in 6 licence areas that would have resulted from Seven West Media Ltd coming into a position to exercise control of Prime Media Group Ltd. Seven West Media Ltd provided an enforceable undertaking to the ACMA that it would resolve the breaches. However, as the control event never occurred, on 16 April 2020 the ACMA revoked the prior approvals and the enforceable undertaking was withdrawn by Seven West Media.

Local content and local presence rules

Nature of the local content and local presence rules for regional broadcasters

Commercial television and radio licensees in regional areas are subject to rules intended to ensure that regional commercial broadcasting services provide minimum levels of local content. These rules include requirements to provide general local

⁸ Under section 61AJ the elements that period must be 6 months, one year or 2 years – see section 67(5) of the BSA.

content, which can include local news, as well as requirements or incentives for the production and broadcast of local news bulletins.

Regional television local content obligations

Division 5D of Part 5 of the BSA sets out rules that require regional commercial television services to broadcast minimum levels of local content (with a preference for local news) each week. The rules are weighted to incentivise the broadcast of local news over other local content as each minute of local news is worth 2 minutes of non-news content.

The rules apply to services in larger regional commercial television licence areas in Queensland, New South Wales, Victoria and Tasmania. The BSA contains triggering provisions that will, in the event that a commercial television service becomes part of a group of television licences with a common controller that covers more than 75% of Australia's population,

- > extend the local content rules to the commercial television service if it is in a smaller regional licence area
- > increase the required weekly amount of local content required to be broadcast by the commercial television service if it is in a licence area already covered by the obligation
- > include a new incentive for commercial television services to provide local news that depicts people places or things in the local area so that each minute of this news content is worth 3 minutes of non-news content.

The ACMA generally determines compliance with the television local content rules through the investigation of complaints made by audiences of these services. Compliance with the local content rules is very high. For example, in 2018-19 no instances of non-compliance were found by the ACMA.

Regional radio local content obligations

The [Broadcasting Services \(Regional Commercial Radio – Material of Local Significance\) Licence Condition 2014](#) made by the ACMA under section 43 of the BSA (the radio local content licence condition) requires regional commercial radio services to broadcast of minimum amounts of local content each business day. Regional commercial radio services in licence areas with populations of 30,000 or more are required to provide at least 3 hours of local content between 5 am and 8 pm each business day. Services in other licence areas are required to provide at least 30 minutes of local content between 5 am and 8 pm each business day.

Local content provided under this obligation can include local news, but this is not required. Licensees often meet this obligation through a 3-hour locally produced and hosted radio program (e.g. 'Breakfast' or 'Drive') which can include discussion of local issues.

As with regional television local content obligations, the ACMA generally determines compliance with the radio local content licence condition through the investigation of audience complaints. Compliance with the licence condition is very high. In 2018-19 no instances of non-compliance were found by the ACMA.

Regional radio minimum service standards

Under Division 5C of Part 5 of the BSA, regional commercial radio services that have ever been subject to a change of control (known as a 'trigger event') are required to broadcast minimum levels of local news, weather, community service announcements and emergency warnings (the minimum service standards). Licensees have also been required to submit local content plans which set out how they will comply with the minimum service standards.

Under this obligation, trigger event affected licences must provide the same number of local news bulletins each business day that were provided on average in the year

before the trigger event. Local news bulletins must also total at least 62.5 minutes each week. At least one local weather bulletin is required each day and at least one community service announcement is required each week.

For each year up to and including 2019-20, compliance with the minimum service standards was enforced both through audience complaints, and through an annual compliance report that each licensee was required to submit by 30 September. This reporting obligation was removed by the enactment of the [Broadcasting Services Amendment \(Regional Commercial Radio and Other Measures\) Act 2020](#), which simplifies the compliance regime.

Compliance with the minimum service standards is high. In 2018-19, 4 regional commercial radio broadcasting services were found to have breached the minimum service standards (i.e. less than 3% of all services subject to the minimum service standards). Four regional commercial radio broadcasting services were also found not to have taken all reasonable steps to ensure compliance with an approved local content plan.⁹

The ACMA's assessment of annual reports on compliance with the minimum service standards for the 2019-20 financial year has not been finalised as, in accordance with the ACMA's announcement on 20 May 2020 about COVID-19 relief (see below), these reports are still being received.

Regional radio local presence obligations

The [Broadcasting Services \(Regional Commercial Radio – Local Presence\) Licence Condition 2014](#) made by the ACMA under section 43 of the BSA sets out local presence obligations for regional commercial radio services, which require them to maintain existing levels of local staffing and production facilities for 24 months following any change of control. This requirement is not limited to staff and facilities involved in news gathering and production but can result in affected licensees retaining local journalists after the licensee or licence has been sold to a new owner.

Compliance with the local presence rules is determined at the end of the 24-month local presence period. Affected licensees must report their staffing and local production facilities at the beginning and end of the 24-month period and the ACMA will take action if there has been a material reduction of either staff or production facilities.

2019-20 response to COVID-19

The ACMA expects that non-compliance with local content and local presence rules may have been higher in 2019-20 than in previous years. This view is based on reports about the impact of COVID-19 from industry bodies and some broadcasters – no complaints about non-compliance with the regional television or radio local content rules were received in 2019-20.

Regulatory relief – regional radio

In response to concerns raised by Commercial Radio Australia on behalf of regional commercial radio licensees, on 20 May 2020 the ACMA [announced](#) that it would be taking no action for non-compliance with the minimum service standards for services that broadcast 80% of their required local news and weather bulletins and community service announcements throughout the 2019-20 financial year.

The ACMA also announced that it would accept the late submission of annual reports about compliance with the minimum service standards, up until 31 December 2020 (instead of 30 September 2020).

⁹ The creation of local content plans is no longer required due to the effect of the *Broadcasting Services Amendment (Regional Commercial Radio and Other Measures) Act 2020*.

The ACMA did not exercise a similar approach for local presence and local content rules but advised that it would consider exercising forbearance against non-compliance with those rules on a case by case basis, where the non-compliance was due to the impacts of the COVID-19 pandemic. The ACMA is currently considering approaches from regional radio broadcasters for regulatory relief against local presence and local content rules.

Collecting data and conducting research

Registers related to the media control and diversity rules

As part of its role in administering media control and diversity rules, the ACMA is required to keep detailed records. We maintain and publish a number of media ownership and control registers which are available here:

<https://www.acma.gov.au/media-control-registers>.

These are:

- > a recent control notifications report. This report sets out details of control changes notified to the ACMA over at least the previous six months. The report is maintained in accordance with the requirements of section 75 of the BSA. (<https://www.acma.gov.au/media-control-registers>)
- > the register of controlled media groups (RCMG). The RCMG shows which media groups are in each commercial radio licence area and can be used to show the number of media diversity 'points' in an area, calculated in accordance with section 61AC of the BSA. The RCMG is maintained in accordance with section 61AU of the BSA. (<https://www.acma.gov.au/register-control-media-groups>)
- > the associated newspaper register (ANR). The ANR lists newspapers 'associated' with commercial radio or commercial television licence areas in accordance with section 59 of the BSA and which are therefore regulated under the media control and diversity rules in the BSA. (<https://www.acma.gov.au/media-control-registers>)
- > a register of approvals, extensions and notices given by the ACMA under Division 7 and 8 of Part 5 of the BSA in relation to temporary breaches of media control rules. (<https://www.acma.gov.au/-/media/Diversity-Localism-and-Accessibility/Publication/PDF/Register-of-Prior-Approvals-pdf.pdf>).

The ACMA also maintains the Media Control Database. It has information from the RCMG and provides details on ungrouped or independently owned media operations and a guide to the number of points in each radio licence area.

(<https://www.acma.gov.au/media-control-database>)

These records of control arrangements can identify potential 'unacceptable media diversity situations' (as defined in section 61AA of the BSA).

Foreign owners of media assets register

Under the BSA, the ACMA is required to maintain a register of foreign owners of media assets on its [website](#) (the FOMA Register). The purpose of the FOMA Register is to improve transparency of foreign investment in Australian media companies and enable the public to readily access and understand such information foreign stakeholders must notify the ACMA if they have company interests of 2.5% or more in Australian media companies. For the purpose of the FOMA Register, an Australian media company is a company that holds a commercial television or radio broadcasting licence or a company that is the publisher of an associated newspaper.

Failure by a person to comply with a requirement to provide a notification to the ACMA about being a foreign stakeholder in an Australian media company is an offence.

Under the legislative framework for the FOMA Register, the ACMA is required to report to the Minister for Communications, Cyber Safety and the Arts about foreign stakeholder company interest in Australian media companies. The Minister has published the ACMA's first report, which is for the 2018-19 financial year on the Department of Infrastructure, Transport, Regional Development and Communications' [website](#).

As at 30 June 2020, there were 92 registered foreign stakeholders in 138 Australian media companies.

Research data to inform the ACMA's approach

The ACMA undertakes consumer research and data analysis to test the effectiveness of local content and local presence rules. For example, the [Local content in regional Australia—2017 report](#) examined the availability and consumption of local content and local news in regional Australia and, where possible, to enable comparisons with similar earlier research. Related analysis on media diversity and local content arrangements is currently being undertaken in the context of the ACMA's news project (see below).

ACMA news project

In 2019, we commenced work on a cross-agency project relating to news. The purpose of this project is to examine Australia's contemporary news environment, including market developments and consumer expectations, to support analysis of whether existing safeguards continue to be fit for purpose.

The news project focused on two themes relating to key public policy objectives and existing regulatory settings for the news and media market: commercial influence and impartiality in broadcast news; and diversity and localism in news more broadly.

Impartiality and commercial influence in broadcast news and current affairs

The co-regulatory scheme established by the BSA requires the broadcasting industry to develop codes of practice that are registered and enforced by the ACMA. Matters covered by a code include promoting accuracy and fairness in news and current affairs programs and provisions relating to the impartiality of news and editorial independence from commercial interests.

This component of the ACMA's project explored whether existing broadcasting safeguards relating to issues of impartiality and commercial influence in broadcast news and current affairs continue to meet the needs and expectations of consumers.

The ACMA released a [discussion paper](#) in January 2020 to gauge whether these current regulatory mechanisms directed to ensuring impartiality and restricting commercial influence in broadcast news and current affairs continue to provide appropriate community safeguards. The ACMA also published a literature review on these matters and the results of consumer [research](#).

The six-week consultation period for the discussion paper closed on 28 February 2020 and submissions are published on the [ACMA website](#).

Measuring diversity of news and local content

The current media diversity and localism rules (outlined above) are limited to commercial television, radio broadcasting and associated newspapers.

Australia's news environment has changed significantly over recent years, including in the production, dissemination and consumption of news. Noting these developments, this part of the news project explored diversity and localism in Australia's contemporary news environment, including how diversity in news and the availability of local news could be measured.

The ACMA undertook initial scoping work for the measurement framework with academics throughout 2019 and, on 10 December 2020, the ACMA released a paper titled [News in Australia: diversity and localism - News measurement framework](#). This

paper outlines our thinking on how a measurement framework could potentially be designed. It is the result of broad consideration of issues, commissioned research, desktop research and stakeholder and academic consultation.

We identified a number of key measures that we consider necessary to support a robust examination of diversity and localism across the contemporary Australian news media market.

As illustrated in **Figure 1** below, our key measures of diversity include source diversity (a diverse range of media sources and voices), content diversity (a diverse range of information and viewpoints), and consumption diversity (a diverse range of consumption habits across the community). For localism, our key measures include connection (news specifically relating to a locality), originality (unique news stories) and civic journalism (news of public significance).

Figure 1: Key measures of diversity and localism



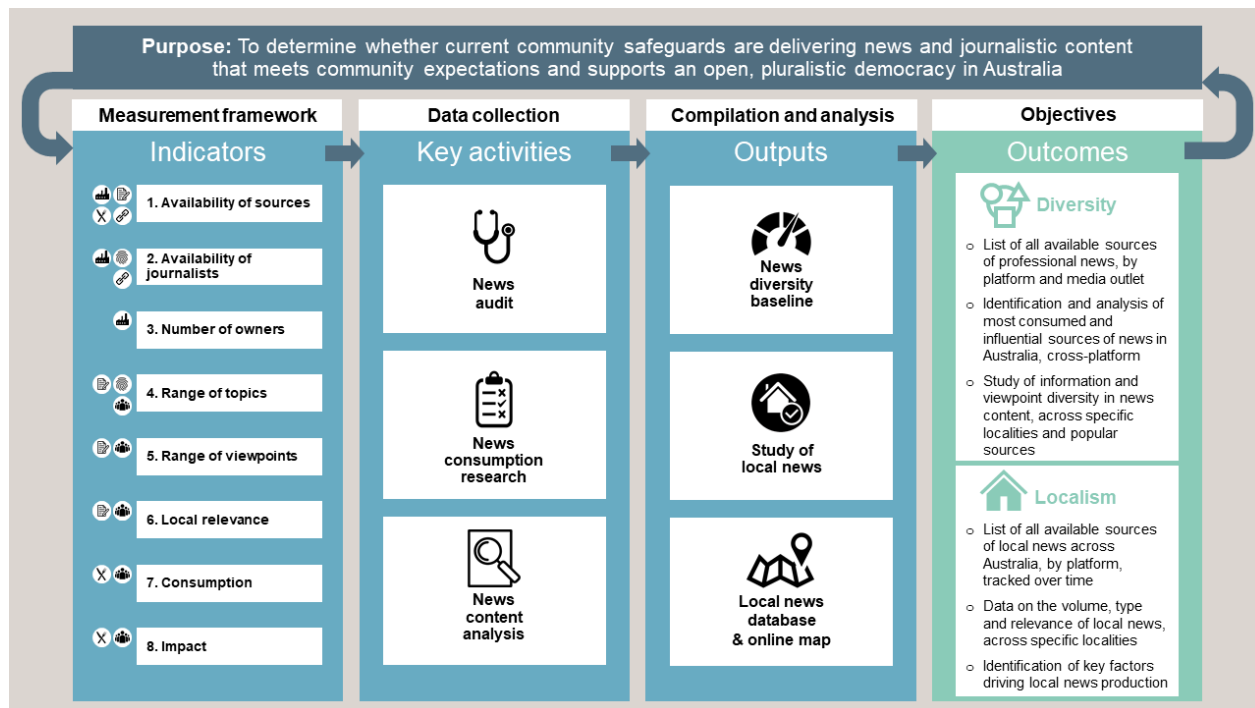
Building on these broad measures, we have outlined a series of 8 indicators of market performance. These include:

- > Availability of sources
- > Availability of journalists
- > Number of owners
- > Range of topics
- > Range of viewpoints
- > Local relevance
- > Consumption
- > Impact.

Each of these indicators would assist in the measurement of different aspects of diversity and localism. Collectively, these indicators could provide a valuable data set allowing for a comprehensive analysis and assessment of the performance of the news media market in Australia, and to monitor changes to Australia's news market over time.

In order to capture the necessary data to inform these outputs, several key activities are suggested. **Figure 2** demonstrates how these various components may interact as part of a broader news measurement framework.

Figure 2: News measurement framework overview



This research project builds on comparable work undertaken in the EU and UK. While the ACMA is not proposing to implement the measurement framework outlined in the occasional paper at this point, it is hoped that this work will inform discussion on how changes in news diversity and localism could be monitored to feed into future policy and regulatory considerations.

Additional ACMA functions relevant to the inquiry

Online misinformation and news quality code

As part of the government's response to the ACCC DPI, the ACMA has been tasked with overseeing the development of a voluntary code (or codes) of conduct for disinformation and news quality on digital platforms.

In June 2020, the ACMA released a [position paper](#) to guide the development of the code. The paper outlines our expectations of the code development process including a potential code model. The overall code objectives are to reduce the impact of harmful misinformation, empower users to identify quality news, and strengthen transparency and accountability of measures that combat misinformation.

The ACMA is engaging with platforms and DIGI, the industry association that advocates for the digital industry in Australia, on the code development process. DIGI released a draft code for public consultation in October 2020 and submissions closed on Tuesday 24 November 2020.

In line with our position paper, the ACMA considers that the code should be in place by the end of 2020. The ACMA is due to report to the government by June 2021 on the code development process, the adequacy of digital platform's measures and the broader impacts of disinformation in Australia.

Regional and Small Publishers Innovation Fund

In October 2017, the government announced a Regional and Small Publishers Jobs and Innovation Package which included three programs:

- > the Regional Journalism Scholarships Program
- > the Regional and Small Publishers Cadetship Program
- > the Regional and Small Publishers Innovation Fund (the Innovation Fund)

The ACMA administers the Innovation Fund and in this role has supported a viable and diverse public journalism sector by focusing on sustainability when assessing applications.

The Innovation Fund is targeted at regional and small news publishers to enable them to compete more successfully in the evolving media environment.

In the 2017-18 MYEFO process, the government allocated \$50 million to the Innovation Fund over three years commencing in 2018-19, comprising \$48 million in administered funds (grant funding) and \$2 million for ACMA departmental expenditure.

An indicative amount of \$16 million per year was originally earmarked per year. Round One (which opened in June 2018) awarded \$3.425 million, contracted for distribution from 2018-19 to 2020-21. Round Two, the Regional Grant Opportunity awarded \$9.05 million, contracted for distribution from 2019-20 to 2020-21.

In June 2020, the government reallocated \$30.3 million of unspent funding to a new [Public Information News Gathering program](#) administered by the Department of Infrastructure, Transport, Regional Development and Communications (discussed below), leaving sufficient fund to cover grants already committed and \$5 million, earmarked for the 2020 Round, the results of which were announced in August 2020.

Details of all grantees funded under the Innovation Fund are available at <https://www.grants.gov.au/>.

The 2020 Round was the final funding round under the Innovation Fund. The ACMA's legislative authority to make grants expires at the end of the 2020-21 financial year, and no further grant funding for this program has been budgeted for future years.