



AUSTRALIA

Submission by Free TV Australia

***News Media Assistance
Program (News MAP)***

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1. Executive Summary

- Robust and independent public interest journalism informs and educates citizens and holds power to account. It plays a critical role in our society and is an essential underpinning of a well-functioning democracy.
- Free, universally available and accountable news and current affairs programs that audiences can trust are more important now than ever. As Governments around the world grapple with ways to counter mis- and disinformation, address the risks of deep fakes, and deal with how to increase news and media literacy, they must also look at ways to ensure accountable news services remain sustainable.
- Free TV's members are central pillars of the accountable news ecosystem in Australia. The public interest journalism that commercial free-to-air television broadcasters provide reaches millions of Australians every day. No one else brings Australians the same breath of local television news and current affairs programming—across metropolitan and regional areas. We are regulated for it, and we deliver.
- The News Media Assistance Program Consultation Paper (**Consultation Paper**) recognises the importance of trusted Australian news. Appropriately, it also recognises pressures facing Australian news producers. Commercial pressures are real as advertising revenue continues to migrate from local regulated commercial services to global digital platforms who do not share regulatory responsibility for producing accurate news and information.
- Given market conditions, the Consultation Paper suggests some level of Government intervention is required. Any policy making in this area should have regard to two key themes:
 - Policy interventions must preserve editorial independence—to effectively operate as the fourth estate, our members must always be free, and be seen to be free, to hold power to account.
 - As a result, measures that support industry sustainability are preferred. The benefits of public interest journalism provided by Australian commercial television networks can only continue to flow if the local industry remains sustainable.
- Therefore, sustainability should be added to the list of policy objectives set out in the Consultation Paper (being access, quality, media diversity and engagement). Sustainability should be the principal objective. Instead of quality, which may be perceived as a subjective consideration, the concept of accountability is preferred. Accountability can be measured where there are clear rules governing public interest journalism, complaints-handling mechanisms, and a resolution pathway for unresolved complaints.
- In the **short-term**, and taking the objective of sustainability into account, the most important steps that Government and Parliament can take now are:
 - Pass the prominence framework currently before Parliament, which will ensure that free and trusted Australian television services are available and easy to find on connected devices. The draft scheme has a number of shortcomings. However, with some important enhancements it can make a material positive impact on the ability of Australians to continue to access public interest journalism.

- Abolish the commercial broadcasting tax, which is significantly higher in Australia than in comparable jurisdictions. Nowhere in the world do free-to-air commercial television broadcasters pay more for licence fees than in Australia.
- Support and strengthen the News Media Bargaining Code framework under which major global digital platforms are incentivised to remunerate media companies for the Australian public journalism that is available on their platforms. Government should be ready to designate relevant platforms, including those who have emerged as dominant since the scheme began, and ensure remuneration for video content. Meta's recent decision not to enter into new commercial deals for traditional news content in Australia means designation is now a current imperative.
- In the **medium-term**:
 - Reform of the *Privacy Act 1988* must not have a chilling effect on journalism. To apply new privacy legal rights of action to public interest journalism will curb its production. It will also drive-up news media operating costs as broadcasters are required to divert resources from making journalism to litigation. Any new privacy tort, or other new privacy direct right of action, must be subject to a journalism exemption.
 - In the emerging area of artificial intelligence (**AI**) policy makers should assess how AI legislative frameworks can take account of issues of public interest journalism sustainability where the legitimate news content of our members is used to train AI models that go on to provide services to Australians.
 - Press freedom issues also continue to be relevant noting, for example, that the Government is currently looking at reform of secrecy provisions across a suite of federal legislation, and a Parliamentary Inquiry has recently considered the operation of the *Freedom of Information Act 1982*.
- In the **longer-term** Free TV's members are open to ideas of tax reform as set out in the Consultation Paper. Tax reform is relevant where threshold sustainability measures have been addressed. For sustainable news businesses it is appropriate to consider rebates or offsets for:
 - costs, including support costs (like legal costs) of making public interest journalism; and,
 - the cost of new and innovative ways to report (such as by using data analytics).
- Legislative media ownership and control rules are also relevant to the long-term sustainability of the news media industry and consideration of these should be included in the policy review roadmap. It is noted that Government is developing new evidence frameworks to consider settings in this area. The ability of broadcasters to scale up activities to compete with global platforms and other digital news platforms is a relevant consideration.
- Finally, as a matter of broader policy and regulatory design, decision makers should be mindful of unintended consequences and potential adverse impacts on public interest journalism of regulation aimed at countering online harms. Where these rules are too broadly drafted, and public interest journalism is not adequately exempted, they can have a chilling effect on journalism, or at minimum lead to duplicative regulation and unnecessary compliance cost.

2. Introduction

Free TV Australia (**Free TV**) welcomes the opportunity to provide a submission in response to the Consultation Paper.

As noted in the Consultation Paper, public interest journalism plays a critical role in our society. Robust, accountable and independent public interest journalism holds power to account and is an essential underpinning of a well-functioning democracy.

Free TV's members are central pillars of the accountable news ecosystem in Australia. This submission sets out how policy and regulatory settings can support the sustainability of commercially funded local public interest journalism provided by our members. Responses to issues dealt with in the Consultation Paper are provided in the main body of the submission, with answers to specific consultation questions in Section 5 of this document.

2.1 About Free TV Australia

Free TV is the peak industry body for Australia's commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



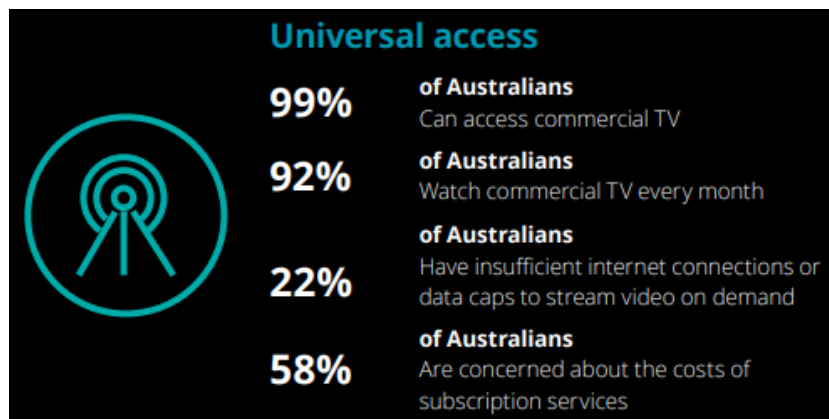
Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

Free TV members are vital to telling Australian stories to Australians, across news, information and entertainment. Free-to-air television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television. We know that Australians prefer local stories. Commercial television networks spend more than \$1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia* (the **Deloitte Report**), highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

2.2 Commercial free-to-air television news is free, trusted and local

As the Deloitte Report makes clear, universal access to free-to-air television is essential. Whether it is ahead of an election or referendum, in times of crisis like fire and flood, or to understand issues of daily national and local relevance, Australians can turn to commercial free-to-air television for news and current affairs. And they don't have to pay to be reliably informed.



The Deloitte Report demonstrates the enduring value of free, universally accessible commercial television.¹

With respect to news and current affairs, the Deloitte Report showed that:

- Television is the go-to method of staying updated with the latest news or winding down with light entertainment. In an average week, over 64% of the population, or 16 million Australians, tune in linear commercial television.²
- In 2021, Free TV member networks collectively broadcast a total of 1,381,272 minutes (23,000 hours) of news and current affairs that directly related to a local regional area.³
- More than two-thirds (65%) of Australians say commercial television is a trusted source of news that is essential to society and democracy.⁴
- Commercial television is chosen as the most useful news source during an election (35%).⁵
- 75% of respondents to a survey conducted by CT Group agreed that commercial TV plays an important role as an information source during times of crisis.⁶
- Commercial TV supports regional and remote economies by providing a valuable source of employment. Networks employed 1,115 full time equivalent jobs in 2021, with local hiring ensuring coverage of relevance to the local area and community.⁷

On the issue of accurately informing Australians ahead of important moments of civic participation, it is notable that JWS Research findings reported in *The Australian Financial Review* found that in the lead-up to the 2022 Federal Election commercial free-to-air television was the most useful source of election news and information. At a total of 35 per cent, this was 12 points higher than the next news source.⁸

¹ *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia (Deloitte Report)*, page 3 – available at <https://www.freetv.com.au/wp-content/uploads/2022/09/Everybody-gets-it-2022.pdf>.

² Deloitte Report, page 31.

³ Deloitte Report, page 36.

⁴ Deloitte Report, page 38.

⁵ Deloitte Report, page 37, citing 2022 JWS Research.

⁶ Deloitte Report, page 37.

⁷ Deloitte Report, page 32.

⁸ *The Australian Financial Review*, 'The real reasons why Labor won the election', 9 August 2022.

Most useful sources of news/information for election campaigns (%)

	Total	Labor	Coalition	Greens	Other
Free-to-air TV	35	40	48	16	20
ABC and SBS TV stations	23	31	20	32	23
Major newspapers	22	24	28	19	18
Online news sites	20	21	18	26	24
Talking to family/friends/colleagues	17	15	15	25	27
Political party/candidate websites	12	10	9	18	27
ABC and SBS radio	11	12	11	13	12
Facebook	10	11	6	15	8
Local newspapers	9	10	12	8	8
Advertising by parties/candidates	9	7	11	8	10
Commercial radio stations	8	7	13	6	4
YouTube	7	8	5	6	9
Government websites	7	4	5	16	17
Subscription TV services	6	5	9	1	3

SOURCE: JWS RESEARCH

JWS Research findings relating to the 2022 Federal Election

More recently, the enduring importance of news from commercial free-to-air television networks was demonstrated by research from the Australian Communications and Media Authority (ACMA) into the news consumption habits of Australians in 2023. The *Communications and media in Australia series: How we access news* report,⁹ released in February 2024, found that:

- In 2023, nearly all Australians consumed news, with most accessing news from at least one source in the past week, with Australians on average using 3.1 different sources of news.¹⁰
- Free-to-air television remains the most common main source of news, used by a quarter of Australian adults (26%—stable compared to 2022), followed by online news websites or apps (23%).¹¹
- Although down from the previous year, professionally produced news media outlets (69% down from 78%) and official/reputable sources (43% down from 51%) remained the most popular social media news sources.¹²
- Consumption varies by age demographic, with:
 - older Australians being more likely to watch news on the TV (90% of those aged 75+ used a television source in the past week, compared to 30% of 18–24-year-olds);¹³
 - the move towards online news websites as a main news source is greatest for those aged 65–74 (25% up from 19% in 2022),¹⁴ and
 - younger Australians are shifting away from online news websites and towards social media websites and apps (social media websites or apps were more likely to be the main

⁹ *Communications and media in Australia series: How we access news* – Executive summary and key findings (ACMA Report) – available at <https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news>.

¹⁰ ACMA Report, page 1.

¹¹ ACMA Report, page 1.

¹² ACMA Report, page 4.

¹³ ACMA Report, page 1.

¹⁴ ACMA Report, page 2.

source of news for those aged 18–24 (46%) and 25–34 (38% up from 28% in 2022), higher than all other age groups).¹⁵

As noted in the Consultation Paper, any policy interventions to support public interest journalism should be done within an evidence-based framework. What this evidence shows is that policy settings must acknowledge that:

- **Commercial free-to-air television remains a vital source of reliable and trusted news**, whether accessed using an aerial or via the internet—policy settings must ensure it remains a sustainable business model so that Australians can continue to get free news they can trust.
- **Professionally-produced news and current affairs content from sources audiences can trust matters**—as Australians, particularly younger Australians, migrate to social media for their news, access to content from news providers who are accountable for the reliability of their content is more important than ever.

Misinformation and disinformation, the risk of deep fakes and issues of news and media literacy are significant concerns—like other Australians, young citizens need access to news they can trust for effective civic participation, and to be educated about why that is important. The health of Australian democracy depends on effective civic participation for people of all ages.

- **Commercial free-to-air television brings Australians unrivalled breath of local metropolitan and regional televisions news**—policy settings must acknowledge that commercial free-to-air television networks provide significant services both in metropolitan areas, regionally and in remote areas (with associated significant transmission costs), despite challenging economic conditions. They are regulated to do so, and they deliver for their communities. Sector sustainability should remain at the forefront of policy making.

3. Framework and objectives

3.1 Benefits of public interest journalism

The Consultation Paper appropriately recognises the benefits of public interest journalism. As described above, this includes informed democratic participation, informed public administration and policy, and scrutinising and publicising the actions of both public and private institutions to build trust and accountability. As noted in the paper, among other things, the ‘watchdog’ function of journalism contributes to:

*greater trust in democracy and public institutions where citizens develop a clearer understanding of the decisions and actions taken by their representatives and institutions, and where they perceive there to be consequences for wrongdoing.*¹⁶

Australians must be able to access public interest journalism to benefit from it

The Consultation Paper also recognises factors moderating these benefits. Importantly, it notes that the existence of public interest journalism alone is not enough to guarantee that society will benefit

¹⁵ ACMA Report, page 2.

¹⁶ Consultation Paper, page 9.

from it. It recognises that ‘[r]egardless of the merits of news content, it provides no benefit if Australians cannot access it, or otherwise glean its informational content’.¹⁷

This is very pertinent to the current consideration by Parliament of a legislative prominence scheme to make sure Australians can access and easily find Australian free-to-air services on their connected devices. Free TV’s detailed views on the importance of this scheme are set out in a submission to a current Parliamentary Inquiry about the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023* (the **Prominence and Anti-Siphoning Bill**). Further detail is set out below.

Accountability in news matters and should be recognised in policy making

A further factor moderating benefits relates to qualities of news and journalism, with the paper noting that not all news and journalism content is the same. Issues of accuracy and impartiality of reporting and fairness are raised. These are matters that are comprehensively covered in the Commercial Television Industry Code of Practice (the **Free TV Code**) developed by Free TV and registered and enforced by the ACMA.¹⁸ Among other things, the Free TV Code requires all commercial television broadcasting licensees to:

- present factual material accurately and ensure viewpoints included are not misrepresented;
- present news fairly and impartially, and clearly distinguish the reporting of factual material from commentary and analysis; and
- observe certain requirements with respect to material relating to a person’s personal or private affairs or a person’s privacy.

Commercial free-to-air television networks take these obligations very seriously—not only because they are regulatory requirements, but because they underpin audience trust. Audiences know that there are rules, and that they have a right to complain if they are concerned. And they can take their complaint to the regulator, the ACMA, if they are not satisfied with our members’ response.

However, compliance comes with operational cost, and this must be taken into account in developing policy responses to sustain public interest journalism, particularly in the context of competition for audiences and advertisers from global digital platforms who are not subject to the same rules or compliance costs.

3.2 The role of Government

Recognition of commercial realities

The Consultation Paper notes that the vast majority of organisations producing news and conducting journalism in Australia are commercial, being producers who must generate revenue to sustain operations.¹⁹ It notes that they may have a legitimate interest in returning value for their owners, while also noting that commercial incentives may align with public interests from news and journalism.

Both statements are true and it should be acknowledged more clearly that this is how commercial media should be supported to work. That is, in order to continue to attract audiences, and to be financially successful, commercial television broadcasters will need to continue to provide robust and

¹⁷ Consultation Paper, page 10.

¹⁸ Available at <https://www.freetv.com.au/resources/code-of-practice/>.

¹⁹ Consultation Paper, page 12.

accountable public interest journalism that delivers public goods. Policy settings should enable these businesses to return value for their owners, so that there can be continued investment in news making.

Editorial independence and the importance of press freedom

The Consultation Paper recognises the importance of improved protection for press freedom. While options for specific press freedom reforms are the subject of a separate policy process, Free TV notes more generally the link between press freedom and the importance of policy settings that preserve editorial independence.

The Consultation Paper notes that given market conditions in recent years, some level of Government intervention in news journalism is required but indicates that this should be considered on a case-by-case basis.²⁰

Within this context, preservation of editorial independence is most relevant where Government seeks to make direct interventions—such as by directly funding public interest journalism. While direct funding, such as via grants, may be appropriate in certain circumstances (a good example was support to various organisations to mitigate the impact of the COVID-19 pandemic), for particular infrastructure and transmission purposes, and for the delivery of costly ongoing accessibility frameworks, long-term sustainability measures are preferred. Getting broader structural and policy settings right allows commercial media businesses to continue to operate independently for the benefit of audiences.

With respect to infrastructure, and noting the particular challenges of funding terrestrial transmission across the broad Australian continent, broadcasters would benefit from long-term infrastructure funding support. Broadcast transmission is a fixed and escalating cost while revenues decline, putting pressure on other activities such as local news production. The Commonwealth has provided ongoing funding for telecommunications infrastructure operated by private business, and it is appropriate to consider a similar approach for broadcasting.

It goes without saying that before implementing any infrastructure funding support, the commercial broadcast tax should be abolished. The tax is a significant and unjustified impost on broadcasters and impedes the ability of broadcasters to meet high fixed operating costs. See further detail below.

3.3 Policy objectives

Free TV supports the establishment of clear policy objects to guide future policy and regulatory decisions.

Sustainability should be added to the headline list of policy objectives set out in the Consultation Paper (being access, quality, media diversity and engagement).²¹ For the reasons set out above, sustainability should be the principal policy objective.²²

²⁰ Consultation Paper, page 12.

²¹ It is acknowledged that Consultation Paper recognises the importance of sustainability in other contexts, such as in the section relating to considerations for future policy, regulatory and program design on page 19.

²² Recent news from New Zealand, where structural decline in TV advertising led to the loss of more than 200 jobs at free-to-air broadcaster Newshub indicates that sustainability is a key consideration for the free-to-air sector.

Free TV otherwise generally endorses the objectives set out in the Consultation Paper, with a number of adjustments as follows:

- **Access** – Free TV strongly agrees that citizens should have access to public interest journalism to support their democratic participation. Freely available news provided on a local basis at zero cost is important to Australians from all socio-economic demographics. This objective is why the Government’s prominence framework is so important to get right.

Easy access is also a very relevant consideration when assessing the role and impact of digital gatekeepers, who are increasingly the intermediaries between Australian audiences and public interest journalism. As the ACMA’s recent research demonstrates, this will be an increasing area of concern as younger Australians continue to shift towards social media websites and apps to be informed.

Whether seen through the lens of competition law (such as implementation of important ex ante obligations on digital platforms to address systemic or structural obstacles to effective competition)²³, remuneration under the News Media Bargaining Code,²⁴ or algorithmic transparency, access should be an enduring policy objective.

- **Quality** – Free TV supports the objective that public interest journalism, and news content more broadly, should be accurate and impartial so that it reliably informs Australians. However, as noted earlier, the concept of accountability is preferred to quality, which may be considered a subjective concept.

The Consultation Paper notes that the regulatory model for news and journalism in Australia is dependent on the effectiveness of codes of practice and their administration.²⁵ The co-regulatory scheme under which the Free TV Code is registered and overseen by the ACMA, is highly effective and delivers accountability for audiences.

- **Media Diversity** – the objective of policy settings which promote a diversity of perspectives, voices and presentation is supported. The commercial free-to-air television industry includes a range of differentiated metropolitan, regional and remote news providers who make an important contribution to a diverse news eco-system.

However, it remains important to note that these regulated news providers must be sustainable in a market context in which major digital platforms dominate search and social media, and who are far less constrained by regulation than free-to-air broadcasters from scaling their businesses up.

- **Engagement** – Free TV agrees that Government should endeavour to foster citizens’ civic engagement and trust in democratic government, news and journalism—as well as support citizens to develop news media literacy. It is agreed that the benefits of news journalism rely on citizens being able to critically engage with and interpret news content.

²³ Free TV has consistently argued for implementation of ACCC recommendations to amend the *Competition and Consumer Act 2010* to allow it to make digital platform specific codes of conduct to create an ex ante competition framework. These would deal with issues including self-preferencing, bundling and tying, data integration and restrictive terms imposed by major digital platforms.

²⁴ In light of Meta’s decision to remove Facebook News (its dedicated news tab) and not enter into new commercial deals for traditional news content in Australia, Free TV has called on the Government to immediately designate all Meta platforms – Facebook, Instagram and Reels – under the News Media Bargaining Code, and require it to pay a fair price for the news content shared widely on its platforms.

²⁵ Consultation Paper, page 13.

For the reasons set out below, Government control of the education syllabus is the most important means of improving Australians' news and media literacy.

3.4 Future Policy, Regulatory and Program Design

While noting the importance of striking a balance between support and maintaining the independence of the press, the Consultation Paper concludes that:

every recent public review of inquiry examining the state of public interest journalism has advocated some form of government support for public interest journalism in the face of declining revenues and changing market conditions.²⁶

Free TV acknowledges targeted direct financial assistance provided by Government to the sector in recent years, including the Journalist Fund to assist regional news businesses; and, the Public Interest News Gathering Program, which provided relief during COVID, including to Free TV members.

However, direct support is most appropriate in time-limited circumstances (such as during COVID), in respect of infrastructure and transmission costs and accessibility frameworks (as noted above), and for targeted purposes such as talent incubation (like through support for cadetship programs in under-served areas).

Similarly, industry support via Government commitments to purchase advertising from local commercial media businesses is appreciated. However, these commitments are a welcome complement to, but not a substitute for the short-, medium- and long-term structural steps detailed below that Government can take to support sustainability.

A fit-for-purpose prominence regime is essential

In the immediate-term, the single most important step the Government can take to support sector sustainability is to legislate a fit-for-purpose prominence regime.

The Government's introduction of the Prominence and Anti-Siphoning Bill is a very welcome step that recognises the integral role of free-to-air television in the Australian media landscape. In particular, Free TV welcomes measures that:

- require that Free Broadcast Video on Demand (**BVOD**) Service apps and a Live TV tile be available when a viewer first sets up their TV, and for the apps to be pre-installed on the TV's home page on regulated devices;
- prohibit charging fees or payment from free-to-air broadcasters for compliance with the minimum prominence requirements that will be imposed on device manufacturers; and
- prohibit interference with free-to-air services and their content.

The Prominence and Anti-Siphoning Bill is crucial because local free services are getting harder to find on connected TVs as manufacturers are preferencing subscription services they are paid to put on the TV home screen. Free TV has made a number of submissions to a Parliamentary Inquiry to improve

²⁶ Consultation Paper, page 18.

the Bill. Key amongst those is reducing the implementation timeframe and applying the requirements to televisions already in the market that receive software updates.²⁷

Abolishing the commercial broadcasting tax is a key sustainability measure

The *Commercial Broadcasting (Tax) Act 2017 (CBT Act)* was introduced as a 5-year interim arrangement as part of the 2017 Media Reform package, a set of reforms which themselves were aimed at improving the sustainability of Australia’s free-to-air broadcasting sector.

At that time, to assist broadcasters to compete in the modern media environment, the Government abolished previous broadcasting licence fees and introduced a transmitter licence tax for the use of broadcast spectrum. The interim measure was introduced as part of the previous Government’s commitment to broader spectrum reform (such as rewriting the *Radiocommunications Act 1992*), which did not proceed.

The tax imposed under the CBT Act was intended to be reconsidered within five years. However, despite a legislative obligation to do so, this has not occurred. The tax has become an unjustifiable and unreasonable burden on commercial television broadcasters that demands immediate repeal.

Free TV recently made a detailed submission about this matter, which will be published Government in due course.²⁸ For the purpose of this consultation process, it is noted that this tax issue is key to the ongoing viability of Free TV services, and as such, is a high priority for Free TV members.

The News Media Bargaining Code must evolve to sustain public interest journalism

The Consultation Paper notes the important role of the News Media Bargaining Code in helping to support the sustainability of the Australian news media sector.²⁹

As Free TV has previously stated, the News Media Bargaining Code has addressed the fundamental bargaining power imbalance that led to the previous refusal of digital platforms to pay a fair price for news content despite the value it creates on their services. It is critical for the sustainability of the new media sector in Australia that the legislation be maintained, as without the bargaining Code framework the commercial arrangements that have been struck to-date would not have been possible. As noted above, Meta services must now be designated.

Free TV’s views are set out in detail in its submission to the 2022 Treasury Review of the framework.³⁰ Improvements should be made to the framework to ensure that all eligible news media businesses are fairly remunerated for their news media content. Critically, this must include video news content on social video platforms such as YouTube and TikTok, and Meta’s Reels and Facebook Watch.

Tax-based incentives where sustainability has been secured

The Consultation Paper provides an overview of preview reviews and inquiries that have considered tax-based incentives to support public interest journalism, noting advantages such as lower compliance costs than direct support mechanisms.³¹

²⁷ For more detail see Free TV’s submissions at <https://www.freetv.com.au/wp-content/uploads/2024/02/Free-TV-submission-PA-S-Submission-2024-Final.pdf> and <https://www.aph.gov.au/DocumentStore.ashx?id=0d195a3c-ed2d-4133-a7e8-06cec9f54fa7&subId=751980>.

²⁸ Expected to be published at <https://treasury.gov.au/consultation/2024-25-pre-budget-submissions>.

²⁹ Consultation Paper, page 19.

³⁰ Available at <https://treasury.gov.au/sites/default/files/2023-02/c2022-264356-free-tv.pdf>.

³¹ Consultation Paper, page 22.

While there are a number of measures that would not apply to commercial free-to-air broadcasters, such as adjustments to Deductible Gift Recipient status settings, and concessional rates of taxation for new ventures investing in public interest journalism, Free TV's members are open to discussing tax reform ideas. We would be happy to engage with Government on ideas such as rebates or offsets in relation to:

- costs, including support costs (like legal costs) of making public interest journalism; and,
- the cost of new and innovative ways to report (such as by using data analytics).

A useful model to consider is the successful refundable tax offset for producers of Australian feature films and television, which represents a source of funds for producers of eligible Australian screen projects. Screen Australia's 2017 analysis of the impact of the producer offset in its first 10 years revealed that it:

- continues to enable producers to finance productions while retaining substantial equity in their projects, thus strongly supporting producer and production company sustainability;
- production companies that most frequently use the offset operate across formats and are able to retain in-house staff to develop further projects; and
- 91% of surveyed production companies indicated that the producer offset was 'critically important' to the operation of their businesses, with 87% of respondents indicating that it contributed to their ability to consistently produce content.³²

Regulation across a range of areas can impact sector sustainability

Regulation has the capacity to impact the type of public interest journalism that is produced, and the compliance costs that must be factored into running news media businesses. These impacts should be carefully considered by decision-makers when designing news laws or regulations, even where news media is not the main subject of those rules.

A good example is the potential application of new privacy legal rights of action to public interest journalism. With the Government's Privacy Act Review well advanced, Free TV strongly advocates for appropriate exemptions for journalism to avoid a chilling effect on journalism and freedom of speech.³³

In the emerging area of AI, policy makers should assess how AI legislative frameworks can take account of issues of public interest journalism sustainability where the legitimate news content of our members is used to train AI models that go on to provide services to Australians.

Press freedom issues also continue to be relevant noting, for example, that the Government is currently looking at reform of secrecy provisions across a suite of federal legislation,³⁴ and a Parliamentary Inquiry has recently considered the operation of the *Freedom of Information Act 1982*.³⁵

More generally, there are a number of other ways policy makers should ensure that regulation does not adversely impact public interest journalism:

³² Screen Australia, *Skin in the Game: The Producer Offset 10 Years On*, November 2017, page 3 – available at <https://www.screenaustralia.gov.au/getmedia/cbd7dfc8-50e7-498a-af30-2db89c6b3f30/Skin-in-the-game-producer-offset.pdf>.

³³ Detail on Free TV's position is in its 2022 submission to the Attorney-General's Department – available at https://consultations.ag.gov.au/rights-and-protections/privacy-act-review-discussion-paper/consultation/download_public_attachment?sqlid=question-2021-10-22-3093449261-publishablefilesquestion&uuld=148317300.

³⁴ More information is available at <https://www.ag.gov.au/crime/publications/review-secrecy-provisions>.

³⁵ The report of the Inquiry is at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CommonwealthFOI2023/Report.

- **Avoid duplicative regulation**—free-to-air broadcasters operate digital services as well as terrestrial television services, and these digital services can sometimes be inadvertently swept up in regulatory responses designed to address harms arising on digital platforms operated by others. A good example is the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* which seeks to regulate digital platform services and content to address online misinformation and disinformation. The policy intent is to regulate harmful end-user generated content that is not otherwise subject to any form of meaningful regulation.

Free TV has noted that as it is currently drafted, the proposed regulatory response would apply to certain online services of Free TV's members as well as to the content that Free TV's members make available to Australians through other online channels. Free TV has made recommendations to improve the Bill.³⁶

- **Recognise the efficacy of existing self- and co-regulatory safeguards**—the Free TV Code has operated effectively for many years, under the co-regulatory system mentioned above whereby the ACMA registers the Code and oversees compliance. This model is connected with the use by broadcasters of radiofrequency spectrum. Other participants in the news media operate effectively under self-regulatory arrangements.

The efficacy of these frameworks has been recognised to date in a number of ways, including in the *Privacy Act 1988*, which exempts acts and practices undertaken in the course of journalism, so long as media organisation are publicly committed to observe standards that deal with privacy.³⁷ This current exemption applies to commercial free-to-air broadcasters because the Free TV Code deals robustly with privacy. However, as noted earlier, this is under threat from a range of reforms proposed by Government to privacy regulations. Free TV has made a range of recommendations to preserve the existing co-regulatory approach and avoid a chilling effect on journalism.³⁸

3.5 Fostering media diversity

The Consultation Paper notes that some media interests have advocated for regulatory changes to enable consolidation or vertical integration to achieve scale.³⁹ While this submission does not address this issue in detail, it is notable that the Consultation Paper recognises that operators in smaller markets, including regional areas, have seen the largest business disruptions.

The paper notes that the ACMA has undertaken work to develop new approaches to measuring diversity which better reflect the modern ways news is produced, distributed and consumed, and that this will inform options to update current rules in the *Broadcasting Services Act 1992 (BSA)*.⁴⁰

The role digital aggregators play in media diversity is among considerations to which the Government must pay regard to when considering how best to modernise these existing policy settings.

³⁶ Available at <https://www.infrastructure.gov.au/sites/default/files/documents/acma2023-e3666-free-tv.pdf>.

³⁷ Under s 7B(4) of the Privacy Act 1988, acts and practices of 'media organisations' are exempt from the operation of the Act, provided the acts or practices are undertaken in the course of journalism at a time when the organisation is publicly committed to observe standards that deal with privacy.

³⁸ Free TV's December 2020 submission to the Privacy Act Review is available at <https://www.freetv.com.au/wp-content/uploads/2021/09/FINAL-Free-TV-Submission-7-Dec-2020-Privacy-Act-Review.pdf>.

³⁹ Consultation Paper, page 17.

⁴⁰ Consultation Paper, page 25.

3.6 Supporting media literacy

Free TV agrees that the benefits of news journalism are contingent on the propensity and capability of citizens to critically engage with and interpret news content. It is therefore disturbing that the Consultation Paper cites a Centre for Media Transition study from 2020 that suggests news literacy in Australia is quite low—with most consumers having low or very low levels of news literacy.⁴¹

We support the calls referred to in the Consultation Paper from the 2017 Senate Select Committee on the Future of Public Interest Journalism to determine how the Australian Curriculum may be improved regarding digital media awareness and media literacy.

This topic was the subject of a recommendation in the Australian Competition and Consumer Commission's (ACCC's) landmark Digital Platforms Inquiry, which provided a holistic set of recommendations to support public interest journalism. In that case, the ACCC focused on measures to improve digital media literacy across the community, to ensure all Australians are well equipped to identify and appropriately scrutinise low quality or unreliable news encountered through digital platforms.

As noted in the ACCC's report, online safety education activity undertaken by the eSafety Commissioner provides a good template.⁴² To this end it is positive that the Government has provided targeted support for literacy tools in schools through the Alannah and Madeline Foundation and the Federation of Ethnic Community Councils of Australia, and that the Government is mapping media literacy efforts across the Commonwealth.

However, to the extent that the efforts are considered fragmented and inconsistent,⁴³ they should be improved and become a permanent feature of the Australian education system, focusing on both children and Australian adults who need support.

4. Establishing the evidence base

A robust and long-term evidence base is essential to developing policy to support public interest news journalism.

Free TV has previously made submissions to the ACMA on its News Measurement Framework, including noting that the proposed scope and methodology of any BSA review which considers digital platforms and services should guide the collection of data under the framework. This would clarify the purpose of the data collection, and the planned use, as well as leading to a regulatory outcome for the industry.⁴⁴

It is noted that the ACMA will be launching a dashboard and releasing its first report as part of the Media Diversity Framework by the end of 2024, and that the Government has provided funding to the Public Interest Journalism Initiative to support relevant data projects.

⁴¹ Consultation Paper, page 27.

⁴² *Digital Platforms Inquiry – Final Report*, page 22 – available at <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

⁴³ Consultation Paper, page 28.

⁴⁴ Available at <https://www.acma.gov.au/consultations/2023-01/new-framework-measuring-media-diversity-australia#submissions>.

Free TV will engage constructively with all parties on these initiatives, mindful of the importance of using existing data sources and not imposing administrative burden on industry to report which diverts resources away from delivery of content for audiences.

5. Consultation questions

Consultation question	Free TV response
<p>Q1.1: Is access to news the right objective?</p>	<ul style="list-style-type: none"> • There can be no access to news services without sustainability of the services that provide them, and for this reason we believe sustainability should be the principal objective • However, access is also endorsed as an objective
<p>Q1.2: How should the access objective be understood, and to what extent should this include access to, or availability of, news and journalism relevant to each level of government, including national, state/territory, and local? What do citizens require at each level of government?</p>	<ul style="list-style-type: none"> • Citizens should have access to public interest journalism to support their democratic and civic participation • Easy access is a very relevant consideration when assessing the role and impact of digital gatekeepers • A sustainable commercial free-to-air television sector provides trusted local news around Australia • Commercial television broadcasters are the only providers of local television news bulletins in regional licence areas
<p>Q1.3: What are the appropriate roles for government and industry in pursuing this objective?</p>	<ul style="list-style-type: none"> • Government policy should promote sector sustainability so that industry can

	<p>continue to provide public interest journalism</p> <ul style="list-style-type: none"> • Specific interventions such as a regulated prominence scheme should promote access • Use of competition and other powers to address the gatekeeper role of digital platforms promotes access is important • Funding support in areas such as accessibility services, and transmission and infrastructure is appropriate • Before implementing any infrastructure funding support, the commercial broadcast tax should be abolished. The tax is a significant and unjustified impost on broadcasters and impedes the ability of broadcasters to meet high fixed operating costs
<p>Q2.1: Is quality the right objective?</p>	<ul style="list-style-type: none"> • Accountability is an important component of delivering quality • The co-regulatory scheme under which the Free TV Code is registered and overseen by the ACMA, is highly effective and delivers accountability for audiences
<p>Q2.2: How should the quality objective be understood? Is it the same for all forms of journalism?</p>	<ul style="list-style-type: none"> • Accountability (as a component of delivering quality) can be measured where there are clear rules governing public interest journalism, complaints-handling mechanisms, and a resolution pathway for unresolved complaints
<p>Q2.3: What are the appropriate roles for government and industry in pursuing this objective? Assessments about the quality of news content raise concerns about the independence and freedom of the press. What approaches might government consider to measuring, safeguarding and promoting the quality of news content? What content,</p>	<ul style="list-style-type: none"> • Robust and independent public interest journalism informs and educates citizens and holds power to account • It relies on policy settings which preserve editorial independence and ensure press freedom • Preservation of editorial independence is most relevant where Government seeks

<p>procedural and organisational factors might be taken into consideration?</p>	<p>to make direct policy interventions relating to public interest journalism</p> <ul style="list-style-type: none"> • Ongoing Government support for the News Media Bargaining Code, and willingness to designate when required, is essential given: the code addresses the competition policy issue of the power of major digital platforms in the advertising market; the media policy issue of this power impacting the sustainability of news media organisations that rely on advertising revenue to fund journalism; and, the resulting impact on democracy when the sustainability of the independent media sector is affected in this way
<p>Q3.1: Is media diversity the right objective?</p>	<ul style="list-style-type: none"> • A diversity of perspectives is important • The commercial free-to-air television industry includes a range of differentiated metropolitan, regional and remote news providers who contribute to a diverse news eco-system
<p>Q3.2: How should the media diversity objective be understood? How might the media diversity objective be promoted in the contemporary media environment?</p>	<ul style="list-style-type: none"> • Regulated news providers must be sustainable in a market context in which major digital platforms dominate • The ability of broadcasters to scale up activities to compete with global platforms and other digital news platforms is a relevant consideration when evaluating media ownership and control rules
<p>Q3.3: What are the appropriate roles for government and industry in pursuing various elements of this objective? For example, is it the role of government to monitor media diversity and regulate ownership and control?</p>	<ul style="list-style-type: none"> • A robust and long-term evidence base is essential to developing policy to support public interest news journalism • Legislative media ownership and control rules are relevant to the long-term sustainability of the news media industry and consideration of these should be included in the policy review roadmap

<p>Q4.1: Is engagement the right objective?</p>	<ul style="list-style-type: none"> • The benefits of news journalism rely on citizens being able to access, critically engage with, and interpret news content
<p>Q4.2: How should the engagement objective be understood? How might the engagement objective be promoted in the contemporary media environment?</p>	<ul style="list-style-type: none"> • The education syllabus is the most important vehicle for improving Australians’ news and media literacy
<p>Q4.3: What are the appropriate roles for government and industry in pursuing this objective? For example, does government have a responsibility to foster citizens’ critical engagement with news content?</p>	<ul style="list-style-type: none"> • News and media literacy tools should be improved and become a permanent feature of the Australian education system, focusing on both children and Australian adults who need support
<p>Q5.1: In what circumstances is it appropriate for government to intervene in the form of direct funding? What are the competitive impacts of Government funding?</p>	<ul style="list-style-type: none"> • Preservation of editorial independence is essential where Government seeks to make direct policy interventions • While direct funding, such as via grants, may be appropriate in certain circumstances, including for particular infrastructure and transmission and accessibility purposes, long-term sustainability measures are preferred • With respect to infrastructure broadcasters would benefit from long-term infrastructure funding support • This would be consistent with the provision by the Commonwealth of funding for telecommunications infrastructure operated by private business • Before direct funding measures are considered, removal of financial imposts that impede the ability to absorb high fixed operating costs, such as the commercial broadcasting tax, should be implemented

<p>Q5.2: How can any government support for public interest journalism be structured to maintain the editorial independence of recipients and avoid undue influence over news content? What factors should be taken into consideration, and how do these factors change between short-term and ongoing support?</p>	<ul style="list-style-type: none"> • Editorial independence should be guaranteed in formal instruments relating to any Government support • This is consistent with the guarantee to public broadcasters of independence from Government direction in relation to content in their establishing legislation
<p>Q5.3: How should any support for public interest journalism be targeted? For what purposes and to what entities and why? For example, should regional areas and local news be a focus of Australian Government support? What other factors are relevant to targeting? Serving particular communities or addressing particular issues? Organisational form such as not-for-profit organisations or commercial providers? What are industry or private interests best-placed to deliver</p>	<ul style="list-style-type: none"> • Support should be targeted on a case-by-case basis
<p>Q6.1: What are the key barriers or challenges faced by news media organisations in adopting innovative business models or pursuing new revenue streams? How can these barriers be addressed through policy, regulation, or industry-led initiatives?</p>	<ul style="list-style-type: none"> • Commercial free-to-air broadcasters are highly regulated • Compliance comes with operational cost, and this must be taken into account in developing policy responses to sustain public interest journalism, particularly in the context of competition for audiences and advertisers from global digital platforms who are not subject to the same rules or compliance costs • Broadcasting is a high fixed cost business in terms of distribution and content creation. Policy and regulation that adds to the fixed cost base is counterproductive to policies that aim to enhance access to news, and also impede the ability of broadcasters to divert capital to invest in innovation and pursuing new and uncertain revenue streams
<p>Q6.2: How can government and regulators encourage and support innovation and the development of sustainable business models</p>	<ul style="list-style-type: none"> • This submission sets out a range of short-, medium- and longer-term suggestions for

<p>in the news media sector? Are there any examples from Australia or internationally that could be adapted to serve this purpose?</p>	<p>supporting innovation and sustainability of commercial free-to-air broadcasters</p>
<p>Q6.3: How are news organisations reacting to, or leveraging, the development of more sophisticated artificial intelligence services? What are the likely consequences for news and journalism resulting from existing and novel artificial intelligence services over the coming years and decades? What opportunities and challenges are likely to emerge?</p>	<ul style="list-style-type: none"> Legislative frameworks should take account of issues of public interest journalism sustainability where the legitimate news content of our members is used to train AI models that go on to provide services to Australians
<p>Q7.1: What are key advantages and disadvantages of tax-based incentives to support public interest journalism?</p>	<ul style="list-style-type: none"> Commercial television broadcasters are subject to a particular broadcasting tax under the CBT Act, which should be abolished Free TV's members are open to discussing tax reform ideas such as rebates or offsets A useful model to consider is the successful refundable tax offset for producers of Australian feature films and television
<p>Q7.2: Are tax-based incentives preferable to other mechanisms, such as grants?</p>	<ul style="list-style-type: none"> As set out above, both tax-based incentives and grants for particular purposes should be considered to support sustainability
<p>Q8.1: What are key advantages and disadvantages of government advertising to support public interest journalism?</p>	<ul style="list-style-type: none"> Government commitments to purchase advertising from local commercial media businesses are a welcome complement to, but not a substitute for the short-, medium- and long-term sustainability steps recommended in this submission
<p>Q8.2: Is government advertising preferable to other mechanisms, such as grants?</p>	<ul style="list-style-type: none"> Government advertising and grants can both be considered on a case-by-case basis
<p>Q9.1: Who should be regulated? The contemporary news ecosystem includes a broader range of actors, including intermediaries such as digital platforms. How</p>	<ul style="list-style-type: none"> As set out above, Free TV supports implementation of important ex ante obligations on digital platforms to address

<p>should these intermediaries be considered in relation to diversity of control, and should they be subject to any specific regulations or requirements? What other factors affect diversity? Should this consider transparency of the source of donations or funding? Should diversity be considered at the production or program-input level? Should personnel diversity within an organisation be considered?</p>	<p>systemic or structural obstacles to effective competition</p> <ul style="list-style-type: none"> Legislative media ownership and control rules are relevant to the long-term sustainability of the news media industry and consideration of these should be included in the policy review roadmap
<p>Q9.2: Why should they be regulated? Should news media diversity be regulated at a national level or at a more localised level (for example, major cities, regional and remote)?</p>	<ul style="list-style-type: none"> Specifics should be considered during any policy review
<p>Q9.3: How should they be regulated? What are your views on whether government regulation of news media diversity be focussed on the media through which it is delivered or be agnostic to the media delivery mechanism?</p>	<ul style="list-style-type: none"> As above—specifics should be considered during any policy review
<p>Q10.1: What segments/groups/demographics in the community most need support from government to improve media literacy?</p>	<ul style="list-style-type: none"> Younger citizens should be a particular focus for media literacy initiatives as they need access to news they can trust for effective civic participation, and to be educated about why that is important It is also appropriate to provide support for adults as required
<p>Q10.2: In what areas (e.g. Access to trusted news, media technologies and environments, evolving news consumption habits etc) is media literacy education or research most needed?</p>	<ul style="list-style-type: none"> These are matters for education experts
<p>Q10.3: What are the social and economic risks of low media literacy levels in the community?</p>	<ul style="list-style-type: none"> As above—these are matters for education experts

<p>Q10.4: What further research and evidence is required to inform understanding of the impact of media literacy levels on the quality of news and journalism?</p>	<ul style="list-style-type: none"> • As above—these are matters for education experts
<p>Q10.5: What metrics and data sources should be considered to track media literacy levels of Australians in the future? What can Australia learn from approaches adopted in other countries?</p>	<ul style="list-style-type: none"> • As above—these are matters for education experts