



AUSTRALIA

Submission by Free TV Australia

**Inquiry into Social Media
and Online Safety**

**Senate Select Committee
on Social Media and
Online Safety**

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1. Executive Summary

- Free TV Australia appreciates the opportunity to submit to the Select Committee on Social Media and Online Safety.
- Free TV Australia is the peak industry body for Australia's commercial free-to-air (FTA) television broadcasters. Our members cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success.
- The value and trust that the Australian community places in commercial television has never been more clearly demonstrated than during times of crisis, as shown by the audience response during the ongoing COVID-19 pandemic.
- The Terms of Reference of the Inquiry to which this submission responds are: the range of online harms faced by Australians; industry measures in response to these harms; transparency and accountability of social media platforms and online technology; data privacy; and actions being pursued by Government.
- This submission considers the role Free TV members play in providing a trusted, valued alternative to harmful online content to which audiences are exposed. Commercial FTA television broadcasters are trusted brands, and it is vital that Australian audiences have access to a healthy and sustainable media sector to counter the significant mis- and disinformation across social media platforms
- The co-regulatory nature of the Australian media industry contributes to the trust placed in its content, including by ensuring that there is a clear and robust process for audience feedback and complaints.
- The potential impact of harmful online content on audiences, individuals and businesses has been recognised by governments in recent years. This submission looks at three aspects of potential online harm: social media comments and defamation; misinformation and disinformation in online content; and misuse of brand and personal identity.
- The issue of privacy and data management is also considered, including current proposals to amend the relevant legislation. For the media industry, and the production of news and journalism content, it is necessary for the journalism exemption under the *Privacy Act 1988* to be maintained, and for positive changes to be considered.
- The transparency and accountability of social media services is vital to mitigating potential online harms. Free TV has recommended the introduction of enhanced moderation tools for page owners; timely removal of content where it misuses brand or personal identities; and improved complaints-handling and responsiveness of social media services.
- Free TV recognises that legislative changes and industry codes have been, or are being, implemented to improve the experience of Australian audiences online. The *Social Media (Anti-Trolling) Bill 2021*, if passed, would make social media services the publishers of end-user comments, providing an incentive for these services to manage defamatory and harmful content.
- Free TV members are committed to providing a positive experience for audiences, and supports the Government's focus on this, while ensuring the co-regulatory environment remains, to support a healthy media ecosystem.
- Vital to Australians' ongoing access to a strong media industry is the need for Government to legislate the prominence of FTA commercial television on online platforms, to facilitate Australian audiences' access to this important content.

2. Introduction

Free TV Australia is the peak industry body for Australia's commercial FTA 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 FTA television makes to Australia's culture and economy.



Australia's commercial FTA broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent. A 2020 report by Deloitte Access Economics "*Everybody Gets It: The economic and social benefits of commercial television in Australia*" highlighted that in 2019, the commercial TV industry supported 16,300 full-time equivalent jobs and contributed a total of \$2.3 billion into the local economy. Further, advertising on commercial TV provided an additional \$4.4 billion worth of economic benefit.

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, and Australians prefer local stories. The 2020 Deloitte Access Economics report found that 95% of people think that losing commercial television would have an impact on society and 89% think commercial television is a valuable service. The report also found that during peak times, half of all television viewers watch together with family or friends.

While audiences are exposed to a range of potential harms when using online platforms, Free TV members are committed to minimising this risk where possible, and providing a trusted, valued alternative to harmful online content. The co-regulatory nature of the Australian media industry contributes to this, including by ensuring that there is a process for audience feedback and complaints. This creates a strong Australian media industry.

The potential impact of harmful online content on audiences – individuals and businesses, has been recognised by governments in recent years. Legislative changes and industry codes have been, or are being, implemented, with the aim of improving the experience of Australian audiences online. Free TV members are committed to providing a positive experience for audiences, and supports the Government's focus on this, while ensuring the co-regulatory environment remains.

3. Importance of the Australian media sector

3.1 Free to air television as the trusted source of news

Commercial TV invests significantly in news, and local journalistic content production is a very important part of our businesses. Free TV members broadcast local news services into every State and Territory in Australia and produce news of specific local significance in around 40 separate markets.

The *Media Consumer Survey 2021* found that '[t]elevision is the most frequently used news source, followed by radio and social media'.¹ In separate research, Deloitte also noted that, '[c]ommercial television broadcasters provide 486 hours of news and current affairs every week'².

Deloitte's 2021 survey showed that '...three-quarters of Australians see commercial television as a trusted source of news'.³ Research undertaken by C|T Group in 2021 showed that over a third of voters say that 'maintaining fair and balanced reporting in news and current affairs' is an important issue, as is 'ensuring honesty and transparency on social media platforms'⁴.

High quality, accurate and impartial news services on commercial free-to-air television are watched by 11 million Australians each week.⁵ Our members cover events of national significance, provide critical information in times of emergency and bring Australians together to witness moments in history, life changing occasions and times of national success. This has never been more true than during times of crisis, as shown by the audience response during the ongoing COVID-19 pandemic, with almost half of survey respondents saying that they are watching more commercial TV in the context of COVID-19⁶.

This creates a strong news media industry in Australia, with a diversity of opinion and perspective. The availability of free-to-air, trusted, news and information is an important mitigation to the prevalence of mis- and disinformation on online platforms (see section 4.1).

3.2 Regulation of broadcasting services

Free-to-air broadcasting services are highly regulated in Australia, which provides a basis for its ongoing role as a valued and trusted source of news and information for Australian audiences. The media industry develops and administers its own regulatory arrangements, with government providing a legislative backing to enable these arrangements to be enforced.

¹ Deloitte, *Media Consumer Survey 2021*, page 10

² Deloitte, *Everybody gets it – the economic and social benefits of commercial television in Australia, 2020*, p28-p30.

³ Ibid.

⁴ C|T Group, *Free TV Research*, October 2021

⁵ 1 Source: OzTAM (Metro), RegionalTAM (Regional). Network National Reach Estimate for Metro + Regional for minimum of 5 consecutive minutes viewed of Sun-Sat news across the day (incl Morning, Afternoon, Sunrise/Today, excl Specials) on Commercial Primary channels (and regional affiliates). Wks 7-23 2017. Data: Consolidated (Live + As Live + TSV7).

⁶ Deloitte, *Eyes on TV*, page 11

The *Broadcasting Services Act 1992* (the **Act**) provides for a regulatory environment for the broadcasting and datacasting industry in Australia. The Act also aims to restrict access to certain internet content and to protect children from exposure to unsuitable internet content.

The Free TV Commercial Television Industry Code of Practice, developed under s123 of the Act, applies to all commercial television broadcasting services operated by a Licensee. The Code regulates the broadcast content of commercial free-to-air television according to current community standards, and assists viewers in making informed choices about their television viewing. It also provides a procedure for handling viewer complaints about matters covered by the Code. The Code covers issues including:

- classification and proscribed material;
- news and current affairs;
- disclosure of commercial arrangements;
- advertising limits;
- advertising restrictions; and
- feedback and complaints.

The Code enshrines our members' commitment to accuracy and fairness in news and current affairs programming. The Code requires that commercial free-to-air broadcasters present factual information accurately and ensures that viewpoints included in programming are not misrepresented.

Most importantly, our Code of Practice requires that news programs must be presented fairly and impartially. This underlines the commitment of our members to quality news programming that sets their programming apart.

The Australian Communications and Media Authority (**ACMA**) regulates communications and media services in Australia. The ACMA sets and manages rules about communications and media services and markets; licences people, organisations and products to operate in Australia; looks into complaints and problems; and plans and manages the airwaves.

3.3 Complaints-handling processes

Free TV members have rigorous complaints-handling processes. Complaints can be made under the *Commercial Television Industry Code of Practice*, about any matter covered by the Code, and relating to a broadcast by a Free TV member (television licensee).

Complaints must be received within 30 days of the relevant broadcast. The licensee must send a written response within 30 days of receiving the complaint, or will use their best efforts to refer complaints to the Advertising Standards Bureau (ASB), where the ASB is better placed to respond.

Should the complainant not be satisfied with the response received from the licensee, they may refer the complaint to the ACMA. Free TV reports annually to the ACMA about complaints received by licensees.

The co-regulatory complaints-handling process ensures that audiences have a clear and direct pathway to contact television licensees about content broadcast on television.

4. Online harms faced by Australian audiences

4.1 User comments and defamation risk

Individuals are subject to harm caused by defamatory or otherwise damaging material posted online.

The legal risk faced by Free TV members in relation to online content was significantly extended over the last two years, through the Dylan Voller defamation case. In September 2021 the High Court affirmed that media companies are the publishers of third party comments on their social media pages⁷. This has placed media companies, including Free TV members, under the significant onus of responsibility for end-user interaction on all of their social media posts (including Facebook, Twitter, YouTube etc.).

News media organisations have limited the number and range of articles that they share on social media, and are more often closing the comments section entirely, which prevents any discussion of the news and current affairs they are reporting.

We note the introduction of the *Social Media (Anti-Trolling) Bill 2021* (the **Anti-Trolling Bill**). Free TV's response is considered in section 7.3

4.2 Misinformation and disinformation on social media platforms

Mis- and disinformation are well recognised as potential harms on social media platforms. The ACMA has noted that,

[m]isinformation can pose a risk to people's health and safety. We have seen this with misinformation about COVID-19 and 5G technology...[o]nline, there is such a large amount of information from different sources that it can be hard to know who or what to believe. It may not be clear where the information has come from, who wrote it, or when it was produced. When we share something online, we do not always stop to think whether it is true. Misinformation can be new, surprising, or emotive. This can make us more likely to share it and it can often spread faster than the facts.⁸

While digital platforms have taken steps to manage these harms, such as the development of the *Australian Code of Practice on Disinformation and Misinformation*, through the Digi industry association, more can be done to ensure that audiences have reliable access to trusted news media in Australia. Proposals for this are in section 6.1.

4.3 Misuse of brand and personal identity

Fake corporate and individual accounts being created on social media platforms, and advertisers have used images of corporate brands and well-known individuals to sell products without their permission. For example, it has been reported that Andrew 'Twiggy' Forrest has called for Facebook to be held to account after a fake ad used his face to advertise cryptocurrency. Nine News reported that '[t]he Facebook-hosted fake ads, often taken the faces of well-known public figures, as scammers attempt

⁷ *Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller* [2021] HCA 27

⁸ <https://www.acma.gov.au/online-misinformation>

to use a celebrity's reputation to sell products such as cryptocurrency, face cream and medication.'⁹ The Australian Securities and Investment Commission has also reported on '[t]he fraudulent use of celebrities, prominent businesses, news sites and government agencies in the marketing of financial products and services'¹⁰.

Audiences face significant harm, particularly financial harm, from these accounts and advertising practices. Additionally, they reduce trust in the original brand/personal identity. Social media services should have a social responsibility to ensure that this content is authentic and to take timely action to reduce harm to audiences and damage to reputations.

⁹<https://9now.nine.com.au/today/andrew-twiggy-forrest-v-facebook-why-billionaire-is-taking-on-social-media-giant/4a38da51-866e-4c31-9bb2-de3eb4e5b728>

¹⁰ <https://asic.gov.au/about-asic/news-centre/news-items/that-celebrity-endorsed-bitcoin-ad-is-probably-a-scam/>

5. Protection of privacy

Individuals' concerns around their online privacy are paramount. A number of structures are in place to manage this, with new initiatives also being proposed (see 7.4).

5.1 Privacy arrangements already in place

Free TV members, as well as Free TV itself, have robust privacy policies and privacy governance arrangements in place to ensure compliance with the *Privacy Act 1988* (the **Privacy Act**). This protects individuals and audiences in respect of their personal or private affairs, and is not platform-specific.

Reflecting the requirements of section 7B(4) of the Privacy Act, and consistently with the commitment of our members to upholding high journalistic standards, the Free TV Code of Practice, which applies to all commercial television broadcasting services, includes specific undertakings related to the protection of the privacy of individuals, requiring that members:

must not include in news or current affairs programs material that relates to a person's personal or private affairs, or invades a person's privacy, unless this is in the public interest or the person has provided implicit or explicit consent (which must be obtained from a parent or guardian where the person is under 16); and

must, to ensure compliance with the primary requirement set out immediately above, take special care before broadcasting material relating to the personal or private affairs of a child under 15 in a report of a sensitive matter concerning that child.¹¹

Under the Privacy Act, acts and practices of media organisations are exempt from regulation if these are undertaken in the course of journalism and at a time the media organisation has publicly committed to observe appropriate privacy standards. As noted in Free TV's recent submission to the Attorney-General's Department on the Privacy Act Review Discussion Paper, the journalism exemption is necessary to enable media organisations to provide news and journalism content for Australian audiences. The exemption provides for the correct balancing of privacy protection and the public interest in ensuring the free flow of information to the public in relation to journalism. No practical examples of evidence has been provided which demonstrates a need to limit the exemption. Positive changes could be made to the exemption to define the term journalism; to extend the application of the exemption to content of artistic, academic, literary or entertainment value; and to provide protections for disclosure of personal information by sources.

5.2 Free TV Advisory Note for members on privacy

In addition to the Commercial Television Industry Code of Practice, Free TV maintains Advisory Notes to help broadcasters understand and respond to a range of matters.

Free TV's Advisory Note for its members on Privacy¹², notes that '...a balance must be struck between the public's 'right to know' and respect for individual privacy. The Code of Practice requires stations to strike this balance by only using material relating to a person's personal or private affairs, or which invades an individual's privacy, where there is an identifiable public interest reason for the material to be broadcast'. The Advisory Note considers the Commercial Television Industry Code of Practice,

¹¹ <https://www.freetv.com.au/resources/code-of-practice/>

¹² <https://www.freetv.com.au/wp-content/uploads/2019/07/Privacy.pdf>

and Additional Considerations when Dealing with Children and people in vulnerable circumstances. The Advisory Note also directs journalists to their own network's standards for handling of personal information; and to the Media Entertainment and Arts Alliance Code of Ethics for provisions relating to privacy.

In providing this comprehensive advisory note, we demonstrate our commitment to ensuring that employees of our members are well-informed to make decisions relating to privacy, when balanced with the public's right to know, and the important journalism that is undertaken by our members.

6. Transparency and Accountability of Social Media Platforms

6.1 Need for enhanced moderation tools on social media platforms

To ensure that audiences can have a positive experience while interacting with commercial television content on online platforms, Free TV members must be able to manage their content on digital platforms, and to meet their own statutory compliance obligations. Free TV members are committed to freedom of speech and freedom of communication, while needing to efficiently and effectively take actions to protect audiences, where possible, from trolling. Free TV has previously called for enhanced moderation tools on social media platforms. These remain vital – even if the Anti-Trolling Bill is passed (see section 7.3), removing legal risk for comments on posts, it is still necessary for Free TV members to have some level of control over how their content is presented on these platforms.

However, there is an expanded set of requirements that these tools should satisfy, which are within the current capacities of the platforms to provide. This would include:

- Turn off comments at the time of scheduling a post
- Remove or filter comments
- Filter a word from comments on a single post – when a comment is submitted for a specific post and the comment includes the filtered word or phrase, the comment is automatically stopped from being published
- Hide a comment from all users, including the commenter’s friends
- Disable the making of comments on geo-blocked posts
- Prevent sharing of content by end users
- Prevent individuals from being tagged in comments
- Option to switch off comments after a set period of time

These options should be clearly and easily accessible to users and page owners, generally as a ‘yes/no’ option to provide clarity. One of the most significant challenges that Free TV members face in relation to moderation of comments is on historical posts. Recently introduced moderation tools do not appear to apply retrospectively (eg. it is not possible to turn off comments on old posts), and there is no functionality to remove old comments but to preserve the data, which may be necessary for litigation obligations. Where comments are deleted manually, caching restrictions mean that the comments do not disappear from all users’ views. The resources required to moderate the large archives of material posted by media companies are significant, and tools should be provided to assist media companies to manage this content.

The provision of these tools will allow Free TV members to assist their audiences in keeping safe online. These tools should be prominently displayed and promoted to users and page owners.

These tools are required to assist media companies manage their legal liability that arises through user interaction with our content. One key benefit of ensuring social media services are made legally liable for the content of comments on their platforms, is the rational incentive it would produce for the platforms to provide these tools to page owners to assist in efficiently and effectively managing harmful content. As we discuss in section 7, Free TV notes that the Government has commenced consultation on the related *Anti-Trolling Bill*. That draft Bill places the defamation liability on social media services for user comments and provides a defence to this liability subject to a complaints-

handling process. Similarly, we recommend that the Committee should give consideration to placing the legal liability from user comments on platforms for other matters, such as contempt of court, and provide a defence for social media platforms contingent on the provision of the moderation tools discussed in this section.

6.2 Removal of content

As outlined above, broadcasters have reported misuse of their brands and the identity of individuals on these platforms. This severely undermines the value and trust placed in these brands by Australian audiences.

While noting the challenges in introducing mandatory take-downs, social media services (digital platforms) must have the authority to remove this content or these accounts, when they are identified by either the platforms themselves, or by Free TV members.

Free TV recommends that identified pages or account holders should be provided 72 hours to show authority to use the brand or personality. If they are unable to demonstrate this authority, then social media services should remove the content/account.

6.3 Complaints handling and responsiveness

The *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* (the **Code**) provides for the facilitation of open communication between digital platforms and news media businesses. Until such a time as a digital platform is designated under this Code, however, these provisions are not activated. However, we suggest that it is vital for digital platforms to provide this to news media businesses, including Free TV members, to ensure communication and engagement. This would include:

- Digital platforms to set up a point of contact in Australia, and provide details of this point of contact to Free TV members
- Acknowledge every communication to that point of contact from Free TV members, in relation to their content being made available on the digital platform service.

Equally, Free TV members/news media businesses would also commit to setting up a point of contact and acknowledging communication received from digital platforms.

This process would enable requests for content removal; complaints; reports of misuse of identity (business or personal) to be acted on quickly, to minimise damage to audiences, businesses and individuals.

Social media services should publicly provide details on their complaints review process, and should publish statistics of complaints received and content removed in response to complaints.

7. Actions Being Pursued By Government

7.1 Social Media (Anti-Trolling) Bill 2021

The legal risk faced by Free TV members in relation to online content was significantly extended over the last two years, through the Dylan Voller defamation case. In September 2021 the High Court affirmed that media companies are for the publishers of third party comments on their social media pages¹³. This has placed media companies, including Free TV members, under the significant onus of responsibility for end-user interaction on all of their social media posts (including Facebook, Twitter, YouTube etc.).

News media organisations have limited the number and range of articles that they share on social media, and are more often closing the comments section entirely, which prevents any discussion of the news and current affairs they are reporting.

Free TV supports the introduction of the Anti-Trolling Bill to reduce the legal risk for its members. Free TV will submit to the consultation on the Anti-Trolling Bill, with drafting recommendations to clarify the intentions and impact of the Anti-Trolling Bill, and to consider content falling outside the definition of defamatory material. While the Anti-Trolling Bill is still under consideration, media companies continue to be legally responsible for this material. It will be important, in final drafting of the Anti-Trolling Bill, to ensure that social media services cannot contract-out of legal liability.

7.2 News Media Bargaining Code

The News Media Bargaining Code established an appropriate framework to redress the significant bargaining imbalance between two of the biggest companies in the world and news media businesses in Australia. Prior to the introduction of the legislation, neither Google nor Facebook were prepared to genuinely negotiate, within a voluntary code framework, a reasonable payment for their use of Australian news content on key services.

The quality and value of the news services provided by Free TV members demonstrates why it is so important to address the impact that digital platforms have had on news media businesses by addressing the significant power imbalance and ensuring fair payment for the news content from which they benefit. Free TV has been pleased to see many of its members entering into commercial agreements with Google and Facebook for the provision of news on these services.

The operation of the News Media Bargaining Code is due to be reviewed this year. Free TV submits that the Committee should recommend the Code be maintained as it is critical to the sustainability of trusted locally relevant news sources.

¹³ *Fairfax Media Publications Pty Ltd v Voller; Nationwide News Pty Limited v Voller; Australian News Channel Pty Ltd v Voller* [2021] HCA 27

7.3 Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021

Free TV has provided a submission to the consultation on the *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021* (the **Privacy Bill**), in particular noting that while the primary policy goal of the online platforms code related provisions of the draft Privacy Bill is to protect children and vulnerable individuals, the Code, as currently drafted, would have a much broader application than is required to achieve this primary policy goal.

To ensure that the Code is a targeted regulatory tool, and to reduce the negative regulatory cost impacts on entities across a wide range of economic sectors, Free TV has submitted that the draft Privacy Bill should be amended so that the Code will only apply to social media platforms and will include obligations related only to the collection, use and disclosure of the personal information of children and vulnerable individuals.

Free TV Australia has urged the Government to delay progress of the draft Privacy Bill so that it is included within the Privacy Act Review. This would mean that the Code would not be developed and implemented until any amendments to the Privacy Act arising from the review process are enacted, removing the risk of inconsistencies and unintended consequences. Such consequences could include the need for Free TV Australia members to invest in changes to technology systems to accommodate changes under the Code, and then to have to invest a second time when the meaning of the Code changes as the Privacy Act Review changes come into effect.

8. Recommended Actions

8.1 Ensure free-to-air services are prominent on connected TVs

Australians' continued access to trusted local news provided by Free TV members relies on these services being prominent and easy to find on modern connected TVs and related devices. However, FTA television content, both broadcast and online services, are becoming increasingly hard to find amongst the multitude of other choices in the connected TV environment.

TV manufacturers and operating system developers increasingly exert control over which options are displayed to consumers, directing viewers to those services that can pay the highest price for preferred placement on the home screen. Other mechanisms to divert traffic come through pre-installing apps, putting streaming-specific buttons on remote-controls as well as favourable placement on Smart TV home screens. This means that decisions about whether free, licensed terrestrial services, together with broadcast video on demand (**BVOD**) apps will be readily available to Australian viewers, and if so on what terms, are increasingly being made in boardrooms in Japan, South Korea, and the US.

This risk becomes even greater as manufacturers seek to monetise prominent spots on user interfaces and to reach lucrative deals with global streaming services over and above local, Australian FTA broadcast services. Manufacturers see themselves as distributors and expect a "clip of the ticket" or some form of payment for access to their screen real estate.

The importance of a local, freely available, ubiquitous television service has never been clearer. Global entertainment platforms such as Netflix, Disney+ and Amazon Prime cannot cut to breaking news to cover health advice updates from Government or provide critical bushfire updates.

Prominence and accessibility of Free TV services are therefore essential to ensuring the Government's policy goals are achieved, including those relating to accurate, impartial, and trustworthy news; iconic sporting events; and provision of emergency information.

Free TV therefore submits that the Committee should recommend that the Government introduce legislation to ensure the prominence of commercial free-to-air broadcast services. Legislating a prominence framework is the only way to guarantee that Australian audiences will be able to continue to discover and easily access FTA content no matter how, when or where they choose to find it.

There are three principles which should inform the new Australian framework:

- Principle 1 – Australians must have free, easy and universal access to terrestrial services and BVOD apps
- Principle 2 – Australians must be made aware of the availability of FTA services
- Principle 3 – Maintain free, easy and universal access as new technologies emerge

Australians have a right to easily access FTA content on their televisions, without having to navigate the growing list of global services or be forced to pay for content. Action is needed now to secure the long-term availability and prominence of Australian commercial FTA content services for Australian viewers.