Submission by Free TV Australia

Creating a more dynamic and resilient economy

Interim report

Productivity Commission

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1. Executive Summary

- Free TV Australia represents all of Australia's commercial broadcasters across metropolitan, regional, and remote areas, which provide trusted news, live sport, entertainment, drama, and local content. Regulatory reform is essential to sustain free, trusted, universally available broadcasting in the face of global digital competition.

- The commercial television industry is highly regulated. Broadcasters face significant regulatory expectations (content quotas, advertising limits, ownership restrictions) while online competitors (YouTube, Netflix, TikTok) operate with lighter or no regulation.

- Examples of regulation that are due for immediate review include the sector-specific taxation in the form of the Commercial Broadcasting Tax ($50m annually) which unfairly burdens broadcasters, despite being introduced as a temporary measure in 2017; and the election advertising blackout which applies only to broadcast TV/radio, not digital or print, disadvantaging broadcasters and confusing audiences.

- Other areas identified as opportunities for regulatory reform include processes around the news media bargaining code, and any future news media bargaining incentive; captioning obligations; the Foreign Owners of Media Assets (FOMA) register; and the registration process for the Commercial Television Industry Code of Practice.

- Commercial broadcasters are experiencing declining advertising revenue due to competition from digital platforms, as well as rising operational costs. Regulatory compliance diverts resources from innovation and content creation, undermining industry sustainability.

- Regulatory stewardship within the APS should therefore encompass regular assessment of the cumulative impact of regulatory requirements on industry viability, with agencies such as the Australian Communications and Media Authority (ACMA) conducting comprehensive regulatory impact assessments that weigh compliance costs against public benefits.

- Measures to reduce regulatory burden may include streamlining reporting requirements, adopting risk-based compliance approaches that focus resources on high-impact areas, and leveraging technology to reduce administrative burdens.

- Free TV recommends that Government, as a result of the Productivity Commission's process, adopt proportionate, outcomes-based regulation across all media platforms. This includes:
    - permanently abolishing the Commercial Broadcasting Tax;
    - removing outdated or duplicative regulation and streamlining compliance processes;
    - ensuring fair competition between broadcasters and digital platforms; and
    - encouraging Australian Public Service (APS) stewardship through targeted, transparent, and flexible regulation that adapts to technological change.

2. Introduction

Free TV Australia appreciates the opportunity to comment on the Commission's interim report, *Creating amore dynamic and resilient economy* (the **Interim Report**), released in August 2025. Free TV comments focus on section 2 of this report, 'Regulating to promote business dynamism'.

Free TV supports the draft recommendations under this section (Draft recommendations 2.1, 2.2 and 2.3), given their broad focus on improving regulatory systems in Australia. The interim report includes a number of 'Information requests', and Free TV's submission focusses on these, being:

- Information request 2.1 - The taxonomy proposed above represents regulatory failures that have been raised regularly with the PC during consultation. We have heard of a number of broad examples that align with these categories – for example, duplicate and inconsistent regulations emerge when regulators are unable to adopt standards from comparable regulators from other states, or from overseas. We would like to hear specific examples of regulations that you think align with the categories above, and that could easily be fixed by government. *See section 4.*

- Information request 2.2 - Which quantitative economywide measures of the quality of regulation and the regulatory burden should the Australian Government track? How should it set targets for these? *See section 5.*

- Information request 2.3 - In which sectors or regulatory systems is immediate regulatory review most warranted, and why? *See section 6.*

- Information request 2.4 - How should regulators and policymakers balance risk with growth objectives? What guidance should governments give? What are the constraints which impede regulators and policymakers from better balancing risk and growth objectives? What guidance can governments give to help? *See section 7.*

- Information request 2.5 - What levers does the government have, beyond statements of expectation and guidance from central agencies, to help promulgate and embed a culture of regulatory stewardship within the APS? *See section 8.*

Free TV also submitted to the Productivity Commission's *Dynamic and Resilient Economy Inquiry* in June this year, and a copy of that submission, which provides additional detail on some of the areas discussed below, is available on the Free TV website[1].

[1] https://www.freetv.com.au/wp-content/uploads/2025/09/Free-TV-responses-PC-dynamic-and-resilient-economy-inquiry-June-2025.pdf

3. About Free TV

Free TV Australia 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 TV 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.

Our members are dedicated to supporting and advancing the important contribution commercial free TV makes to Australia's culture and economy. Free TV members provide vital local services to all Australians, available in almost 100 per cent of homes—whether they be delivered over the air to an aerial, or via free broadcast video on demand (**BVOD**) services delivered via the internet.

Free TV brings Australians together, supporting Australian culture and democracy. The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

Commercial television networks:

- Reach 19.3 million Australians every week, including 11.4 million who watch trusted news every week, and 9.5 million who watch live and free sport each week
- Provide 25,285 hours of Australian content a year
- Spend more than $1.625 billion on Australian content every year, dedicating over 88% of their content expenditure to local programming
- Spend more than $400 million a year on trusted news, including on 390 local news bulletins every week across the country (plus updates and community service announcements)

A report released in September 2022 by Deloitte Access Economics, '*Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*', 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.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

4. Duplicate and inconsistent regulations

Many regulations placed on licensed commercial television broadcasters are complex and time-consuming to administer and often apply only to broadcasters and not their online-only competitors. Or the regulations apply differently and in a more prescriptive manner to commercial television broadcasters than other media providers. Examples are set out below.

Regulations that constrain business operations

Commercial broadcasters do a significant amount of the heavy lifting in supporting Australia's media policy objectives through detailed rules and regulations developed in the 1990s.

The 1990s broadcasting regulations were created at a time when the policy intent was linked to access to limited spectrum resources and audiences, with broadcasters accepting (inter alia) content quotas and advertising restrictions in exchange for the ability to use this precious resource to provide services to Australian audiences.

However, the advent of the internet, which led to the proliferation of streaming services and social media has led to global competitors entering the Australian market and operating without regulatory burdens while broadcasters remain shackled to a framework that was designed before the internet existed.

As the name of the act suggests, the BSA applies to holders of broadcast licences and includes:

- **Media ownership and control rules**, which limit the number of licences one company can control in a licence area and regulate the number of media 'voices' in a licence area
- **Australian content rules**, which require 55% Australian content on primary broadcast channels (6.00 am–midnight), a minimum of 1,460 hours of Australian content per year on non-primary channels, and that at least 80% of advertisements must be Australian (6.00 am–midnight)
- **Local content requirements in certain regional television markets**, such that there are standing obligations in some markets, and events that 'trigger' additional local content obligations

None of these rules apply to online-only media delivery platforms such as YouTube, and social media platforms such as Instagram and TikTok.

Restrictions on ownership and control and other imposts placed on commercial broadcasting services have created regulatory asymmetry in an era where the media environment, and delivery of content, is borderless. These rules limit licensed commercial television broadcasters from operating more efficiently and realising economies of scale that their online-only competitors can achieve. For example, the ownership of online-only platforms is only regulated like any other company under the *Competition and Consumer Act 2010* and the *Foreign Acquisitions and Takeovers Act 1975*.

Sector-specific taxation

Commercial broadcasters are subject to a bespoke taxation arrangement, the Commercial Broadcasting Tax (**CBT**), that does not apply to competitors. The CBT, which amounts to nearly $50 million per year payable by holders of broadcast licences, is a disguised super profits tax being applied to a sector that is not earning super profits and is under increased advertising competition from online-only platforms.

This is important because advertising is by far the principal source of revenue licensed commercial broadcasters may access (the BSA provides that commercial broadcasting services are 'usually funded by advertising revenue'). Broadcasters are also under other significant cost pressures, including high transmission costs to ensure free television services continue to be available to all Australians.

The CBT, which is levied on transmitter licences associated with commercial broadcasting licences, was introduced in 2017 as part of regulatory reforms aimed at improving the financial health of Australia's broadcasters. It replaced a licence fee based on a proportion of gross revenue. While the CBT was positioned as an 'interim' measure for up to five years, its continued existence has created an undue financial burden on broadcasters.

Free TV appreciated the Government's recognition of the burden of the CBT when it announced in December's Mid-Year Economic and Fiscal Outlook 2024–25 that it would suspend the CBT for one year from 9 June 2025. As noted by the Government, this was an important step to support media sector sustainability and contribute to the provision of news for all Australians[2].

Free TV has urged the Government to recognise the vital role that Australian television broadcasters play in our media landscape and to permanently remove this tax to support sector sustainability and increase business dynamism and resilience in the sector.

Election Blackout applied selectively to broadcast media

Currently, there is a law which prevents the broadcast of election advertisements on TV or radio during election blackout periods (as well as referendum advertisements during referendum blackout periods). The blackout period runs from the end of the Wednesday before the relevant polling day until the close of the poll on polling day. It only applies to broadcasters, not to any online services or print media.

Election blackout laws applying only to broadcasters are a hangover from the pre-internet era and unfairly disadvantage commercial broadcasters. This regulatory imbalance has an adverse commercial impact on broadcasters, and creates confusion for audiences, who do not always distinguish between media platforms, and are not aware of the disparate rules.

Free TV recommends the immediate repeal of the election blackout laws to provide regulatory consistency across platforms and media services.

Process improvements – prescriptive Code of Practice registration requirements

As noted above, co-regulatory rules apply to commercial broadcasters terrestrially delivered services. There are opportunities to make these rules more streamlined.

Section 123 of the BSA requires Free TV to make a Code of Practice on behalf of the commercial broadcasting sector. As noted above, this Code must be registered by the Australian Communications and Media Authority (**ACMA**). Free TV is currently engaged with the ACMA in this process—one which began in July 2022. This three-year process has been resource-intensive for Free TV, broadcasters, and the regulator. It has required a public consultation process, as well as frequent engagement with the ACMA.

This process is in stark contrast to the codes of practice of the public broadcasters which are developed and notified to the ACMA under the *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991*. Public broadcasters are not required to complete a public consultation

[2] https://minister.infrastructure.gov.au/rowland/media-release/supporting-australian-tv-and-radio

process in the development of their codes, nor are they required to seek registration (ie. approval) for the codes from the ACMA.

Free TV recommends that the code process for commercial television be amended to replicate that of the public broadcasters, noting that the ACMA would retain the ability to set standards for the industry should there be areas where it felt further regulation was required.

Process improvements – registration under the News Bargaining Code

While the objective of the News Bargaining Code, and proposed Incentive, is strongly supported for the reasons set out above, some regulatory improvements could be considered to streamline the registration process.

In the event that the Minister makes a determination to designate a digital platform, under the News Bargaining Code, only a company that has registered with the ACMA as a news business corporation and has also registered one or more news businesses will be eligible to be a bargaining party in negotiation, mediation or arbitration. In order to ensure that all iterations of the same news service are captured under the Code, Free TV recommends the registration process include the ability to choose multiple platforms under which to register a service.

Section 52L of the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* has resulted in applicants being required to provide a statutory declaration from the company secretary or equivalent certifying that the applicant corporation operates or controls each of the news sources making up the proposed news business. As Free TV members provide Annual Reports which set out the operation and control status of their news services, provision of the Annual Report should be sufficient to support registration under this section. No further statutory declaration should need to be provided.

Process improvement – Foreign Owners of Media Assets (FOMA) register

The ACMA maintains a Register of Foreign Owners of Media Assets. This includes information about foreign stakeholders and their interests in media assets.

As a general principle, Free TV members accept and agree with the public policy rationale for the transparent disclosure of information regarding material foreign ownership of media assets.

However, as previously submitted to the ACMA, any disclosure regime should avoid duplication with other transparency measures, be targeted to foreign owners who have a sustained material ability to control media assets and that ensures the information disclosed is valued by the public.

Free TV would be pleased to provide additional detail on this issue, including in relation to the various legislative provisions that apply.

Captioning

Commercial television broadcasters, as well as national broadcasters and subscription television broadcasters—but not online-only service providers—are subject to legislative rules requiring that certain amounts of closed captions be provided in programs, and that the quality of those captions meets certain standards.

The captioning rules in the BSA are overseen by the ACMA. The current system of compliance measurement, which involves subjective investigations by the ACMA, is not fit-for-purpose. Free TV recommends the ACMA recommence its exploration of the NER, a quantitative standard, which is a promising option to improve compliance measurement.

Additionally, given the unique nature of live captioning, and the particular technical challenges in providing captioning of live content, the ACMA should ensure that it complies with its obligation to disregard failures ‘attributable to significant difficulties of a technical or engineering nature’ associated with live captioning. It would be appropriate for the ACMA to make representations to the Minister to amend the legislation to enable the ACMA to impose technically workable standards for live captioning. A renewed focus on the NER will assist the ACMA in developing appropriate standards for live captioning.

5. Quantitative economy-wide measures of the quality of regulation and the regulatory burden

The financial pressures facing Australian commercial television broadcasters have intensified significantly in recent years, with advertising revenues declining due to audience fragmentation and competition from digital platforms, whilst operational costs continue to rise. Against this challenging economic backdrop, the cumulative burden of regulatory compliance represents a substantial overhead that can strain already tight budgets. Commercial television broadcasters must allocate significant resources to meet and report against ACMA's content quotas, captioning requirements, classification obligations, and technical standards amongst other regulatory requirements (see section XX). These compliance costs include not only direct expenses such as specialised staff, legal advice, and technical infrastructure, but also opportunity costs where resources that could be invested in content creation or technological innovation but are instead directed towards regulatory administration.

The principle of proportionate regulation becomes particularly crucial in this context, as unnecessarily burdensome compliance requirements can undermine the very objectives that regulation seeks to protect—such as local content production and media diversity. Regulatory stewardship within the APS should therefore encompass regular assessment of the cumulative impact of regulatory requirements on industry viability, with agencies like ACMA conducting comprehensive regulatory impact assessments that weigh compliance costs against public benefits. This might involve streamlining reporting requirements, adopting risk-based compliance approaches that focus resources on high-impact areas, and leveraging technology to reduce administrative burdens.

It is noted that the ACMA recently provided correspondence to the Treasurer on regulatory reform to reduce red tape and ease burden on businesses, and we look forward to working with the ACMA to ensure that these reforms are appropriate and beneficial to the industry.

By demonstrating sensitivity to financial pressures whilst maintaining essential consumer protections and promoting public interest outcomes, regulatory agencies can model stewardship that supports both regulatory objectives and industry sustainability, ultimately serving the broader public interest in maintaining a viable and diverse commercial television sector.

6. Regulation of the media industry requires immediate review

Regulation in the broadcast sector is complex and, as set out in this submission, there are many opportunities for simplification, or removal of outdated regulation that applies to licensed commercial broadcasters.

However, there are instances where regulation does enhance business dynamism and resilience, particularly with respect to supporting the sustainability of local media businesses which deliver public goods. In particular:

- regulations, both existing and proposed, the object of which is to correct a power imbalance between global digital platforms and broadcasters;
- regulations which both deliver social policy objectives and support the sustainability of the local media sector—such as the anti-siphoning laws that provide for free access to sport on TV, and prominence laws which (from 2026) will ensure local television services are easy to find on new connected TVs; and
- regulations relating the efficient management of the scarce public resource that is the radiofrequency spectrum.

It is clear that the products and services offered by big tech companies have transformed many aspects of our lives and how we conduct business. In many cases, this transformation has been positive, with its growth driving productivity and efficiency improvements across the broader economy.

However, digital platforms in Australia are characterised by high levels of concentration, with significant markets such as search, social, digital advertising services and app marketplaces (including those offered on connected TVs) each dominated by a limited number of platforms with substantial market power.

A key way in which regulatory burden has changed over the last 30 years or so, since the enactment of BSA, is that regulation to deal with potential harms has been implemented differently according to the platform on which a service is delivered. This is because there is not one cohesive regulatory framework for all media delivery platforms.

This distinction has been maintained for more than 20 years by a Ministerial determination known most recently as the *Broadcasting Services (“Broadcasting Service” Definition—Exclusion) Determination 2022* and referred to previously as the ‘Alston Determination’ (named after the Minister who first made the determination). It excludes certain types of online live-streaming services from the definition of ‘broadcasting service’ under the BSA.

Increasing regulatory imbalance between competing media operators

Another notable feature of the regulatory burden experienced by licensed commercial broadcasters is that it is now significantly imbalanced when compared with the lighter regulatory burden applied to online-only competitors.

The comparative regulatory burden between licensed commercial broadcasters and their competitors has also changed over time, as broadcast television is regulated far more heavily than its online-only media competitors. For example, as set out below there are a range of regulations relating to ownership and control, Australian and local content, taxation and advertising rules that apply only to broadcasters.

This supports a decrease in regulation where possible, combined with regulation to increase competition by moderating the power wielded by major digital platforms.

Examples of regulation imposed on content service providers in Australia	**Commercial broadcasters**	**Online-only services**
Licence fees/broadcasting tax		
Co-regulation of industry codes and standards with investigation pathway		
Hourly advertising limits		
Gambling advertising regulation		
Program classification required		
Minimum voices rule		
One-to-a-market rule		
Australian content quota		
Australian content in advertising standard		
Locally significant content - regional		
Closed captioning		
Online Safety Act		

7. Balancing risk with growth objectives

Based on the regulatory challenges facing commercial television broadcasters outlined this submission, regulators and policymakers should adopt a dynamic risk-growth framework that prioritises proportionate regulation. The current regulatory imbalance, where licensed commercial broadcasters face extensive content quotas, ownership restrictions, and sector-specific taxation whilst their online-only competitors operate with minimal regulatory burden, demonstrates how outdated risk assessments can stifle growth and innovation. Governments should provide clear guidance that regulatory frameworks must evolve with technological change, ensuring that all services enjoy comparable regulatory treatment regardless of delivery platform, and that risk mitigation measures do not inadvertently create competitive disadvantages for broadcasters.

A key constraint impeding effective risk-growth balancing is the fragmented regulatory approach across different platforms and delivery methods, which creates inefficiencies and compliance costs without corresponding public benefits. The three-year Code of Practice registration process described in section 4 exemplifies how overly prescriptive regulatory processes can consume significant industry and regulator resources whilst delivering questionable risk mitigation outcomes.

Governments should guide regulators to adopt outcomes-based regulation rather than process-heavy approaches, implement regular regulatory impact assessments that quantify both compliance costs and competitive effects, and establish sunset clauses for regulations that may have served their purpose. This would enable regulators to focus resources on genuine risks whilst supporting industry dynamism and resilience, ultimately serving both public interest objectives and sustainable industry growth in an increasingly competitive media landscape.

8. Embedding a culture of regulatory stewardship within the APS

ACMA has a comprehensive regulatory framework that underpins commercial television broadcast operations, demonstrating how specialised regulatory bodies can foster stewardship culture through clear statutory mandates and industry engagement. ACMA's licensing regime, content standards, and technical requirements create predictable operating conditions for commercial broadcasters while ensuring public interest objectives are met. This regulatory certainty allows the sector to innovate within defined parameters.

Similarly, the Australian Competition and Consumer Commission (ACCC) provides crucial regulatory oversight of digital platforms that increasingly impact the commercial television landscape, particularly through its 2019 Digital Platforms Inquiry and the design of the News Media Bargaining Code. The ACCC's approach demonstrates how regulatory stewardship can adapt to technological disruption whilst fostering competitive market conditions. By requiring digital platforms to negotiate fair remuneration with news media businesses, , the ACCC has shown how regulatory intervention can address market imbalances and support the sustainability of Australian media companies. These regulatory frameworks illustrate that beyond central agency guidance, government can embed stewardship culture through empowering sector-specific regulators with clear statutory authority, adequate resources, and flexibility to respond to evolving market conditions whilst maintaining accountability through parliamentary oversight and public consultation processes.