

SUBMISSION BY
FREE TV AUSTRALIA

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News Bargaining Incentive



AUSTRALIA

Table of Contents

1. Executive Summary	3
2. Introduction	4
3. NBI Exposure Draft Legislation	5
3.1 <i>Key issues</i>	5
3.2 <i>Determination of the platforms that are subject to the NBI regime</i>	5
3.3 <i>Charge and the offsetting amount</i>	6
3.4 <i>Determination of eligible expenditure</i>	9
3.5 <i>Other issues</i>	9

1. Executive Summary

- Free TV supports the aims of the government’s News Bargaining Incentive (**NBI**) scheme and the associated Statutory Payment Scheme to promote the sustainability and diversity of the Australian news media sector and congratulates the government for progressing these schemes.
- Nonetheless, changes are required to be made before the schemes are implemented to ensure these aims are achieved. Free TV’s recommendations are set out in this submission and the separate submission that Free TV has made in response to the News Bargaining Incentive Revenue Distribution – Statutory Payment Scheme Consultation Paper (**Revenue Distribution Consultation Paper**).
- The key concerns of Free TV and its members are:

- Only three platforms will be likely to be subject to the NBI scheme, namely, Google, Meta and TikTok. This is too narrow and a broader range of platform businesses, in particular, Microsoft and Apple, should fall within the regime

Recommendation: To achieve the purpose of the scheme, Free TV supports the regime applying to a broader range of digital platforms which generate significant advertising revenues in Australia, including Microsoft and Apple. Free TV would also support a specific inclusion for news aggregator sites.

- Partly as a result of the restrictive scope of the platforms that will be subject to the scheme, but also because the proposed charge will be set at a low level, the value of the agreements entered into under the scheme will be likely to be significantly less than the value of agreements entered into under the News Media and Digital Platforms Mandatory Bargaining Code (**Code**). The government should increase the level of the charge, to ensure that the value of the deals at least equals the value of those entered into under the Code, adjusted to reflect the changes in circumstances since agreements were put in place under the Code and to reflect the number of platforms subject to the NBI scheme
- The government is urged to consider alternatives that will promote a greater number of deals, including by facilitating the likelihood that regulated platforms will enter into agreements with commercial free-to-air television broadcasters, who provide a trusted news source valued by Australians

Recommendation: In summary, changes are required to the legislative provisions for determining the charge and the offsetting amounts to ensure that news businesses receive the same benefits under the NBI scheme as were received under the Code (adjusted to reflect current circumstances) and to facilitate the regulated platforms entering into agreements with the commercial free-to-air television broadcasters.

- The regulation for the Statutory Payment Scheme and the legislation for the NBI scheme must work together. Free TV recommends the NBI legislation is amended to expressly provide that any amount of the charge that is collected from regulated platforms will be distributed under the Statutory Payment Scheme
- Free TV looks forward to continuing to engage with government as these important reforms are progressed. Free TV strongly encourages the government to put in place the necessary legislation and statutory instruments for both the NBI Scheme and the Statutory Payment Scheme in the short term.

2. Introduction

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 FTA 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.



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.

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.

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.

3. NBI Exposure Draft Legislation

3.1 Key issues

The Treasury has released for consultation exposure drafts of the following:

- the News Media Bargaining (Administration) Bill 2026 (**NBI Bill**)
- the News Media Bargaining Charge Bill 2026 (**Charge Bill**)
- the Treasury Laws Amendment (News Media Bargaining) (Consequential) Bill 2026 (**Consequential Bill**)

In this section 3, Free TV focusses on the key issues arising from these exposure drafts, namely:

- the determination of the platforms that are subject to the NBI scheme
- the amount of the charge payable by regulated platforms, as set out in section 14 of the NBI Bill and the Charge Bill, as well as the determination of the offsetting amount
- the range of eligible agreements that may be entered into by each regulated platform
- other issues, such as requiring the distribution of any NMI amounts received to eligible platforms, the grant of power to investigate declarations of gross revenue by the platforms and removing carry forward provisions from the NBI Bill

3.2 Determination of the platforms that are subject to the NBI regime

Recommendation: To achieve the purpose of the scheme, Free TV supports the regime applying to a broader range of digital platforms which generate significant advertising revenues in Australia, including Microsoft and Apple. This could be achieved by removing the significance test and limiting the exclusions from the regime that are currently set out in section 8(3) of the NBI Bill. Free TV would also support a specific inclusion of news aggregator platforms that meet the revenue threshold to ensure that Apple, given the significant revenues that it generates from advertising in Australia as well as the use that Apple makes of news content through its popular Apple News app, is captured by the scheme.¹

The NBI Bill provides that two criteria must be met for a platform to be subject to the NBI regime in a financial year:

- the platform must provide a social media or internet search service “of significance for Australia”, meaning, for a social media service, that it has 5 million or more average monthly Australian users or, for an internet search service, 10 million or more average Australian monthly searches, in each case, in that year (**significance test**)
- the platform’s relevant revenue attributable to Australia exceeds \$250 million for that year

¹ Apple states in this media release that Apple News was the “No. 1” news app in Australia in 2025: <https://www.apple.com/au/newsroom/2026/01/2025-marked-a-record-breaking-year-for-apple-services/>

The exclusion of services that have the sole or primary purpose of enabling end-users to engage in professional networking or development from the definition of “social media service” in section 8(3)(d) of the NBI Bill means that LinkedIn, notwithstanding that it carries a significant amount of Australian news content and that Microsoft generates significant revenues from that service in Australia, would be excluded. In addition, Microsoft’s Bing, the second most used search engine in Australia² is also excluded because of the significance test, irrespective of the revenue that Microsoft generates from that service.

Further, given the limitation of the NBI scheme to only social media and internet search services, not a broader range of digital platforms that use Australian news content and generate advertising revenue in Australia, Apple – including its Apple News service – which generates significant digital advertising revenue in Australia, would be excluded.

As the NBI Bill is currently drafted, as a consequence of needing to satisfy both criteria, there are only three entities that will be subject to the regime. These are:

- Google (for Google Search)
- Meta (for Facebook and Instagram)
- ByteDance (for TikTok)

The limited number of platforms to which the NBI regime applies will have flow on negative consequences for the *value* and *number* of the commercial deals that are likely to be entered into, as Free TV explains later in this section 3.

The purpose of the NBI scheme is to support a strong and diverse news sector. Unless the NBI scheme is amended to expand the limited range of platforms that will fall within the regime that purpose will not be achieved. Accordingly, Free TV supports amending the regime to capture a broader range of platforms.

3.3 Charge and the offsetting amount

3.3.1 Charge Base

Recommendation: The NMI base should be determined based on the Australian consolidated revenue of a regulated platform for the then current financial year.

In order for a digital platform to be subject to the NBI regime in a financial year, the Australian consolidated revenue of the parent entity’s service group must exceed \$250 million in that financial year, but in determining the news media bargaining incentive charge (**NMI**) base (and therefore the offsetting charge) the consolidated revenue for the third most recent financial reporting period is used. The exposure draft explanatory materials (**Draft EM**) states that this is to provide certainty to each digital platform:

over the amount of eligible expenditure it requires to completely offset their NMI for three financial years. This provides the parent entity time to negotiate and make agreements with news business corporate groups to the level of expenditure required to allow the parent entity to fully or partly offset their NMI payable. It also encourages multi-year agreements, which provide more certainty to news businesses.

² See <https://gs.statcounter.com/search-engine-market-share/all/australia>. Statcounter estimates that for the period April 2025 to April 2026, Google’s search engine market share was 88.51% and Bing was the second most popular search engine with a market share of 8.38%.

Certainty is not undermined if, as Free TV recommends, the NMI base is determined based on consolidated revenues for the *current* financial year. Like any business, digital platforms would have forward forecasts of revenue for future years. Those forecasts should be used by regulated platforms to determine the aggregate eligible expenditure that will be required to offset the NMI. If a platform determines during a financial year that its aggregate eligible expenditure may be insufficient, it will be able to make adjustments to the agreements that it has entered into to increase the amounts payable to the news businesses. Determining the NMI base using consolidated revenue in the current financial year will not make it less likely that multi-year deals will be entered into as there is still efficiencies for both platforms and news businesses in negotiating such deals.

In circumstances where ASX-listed companies need to submit their preliminary final reports to the ASX within two months of the end of each relevant accounting period, it is also not unreasonable from an accounting perspective to require that the NMI base of a regulated platform is determined based on the then current financial year.

The primary effect of determining the NMI base (and offsetting charge) on a platform's third most recent financial reporting period is simply to artificially reduce the amount of eligible expenditure that is required to be committed by platforms, which disadvantages Australian news businesses.

3.3.2 NMI Rate

Recommendation: The NMI rate should be set at a level at least equal, in current terms and reflecting current circumstances, to the \$250 million per annum estimated as payable to Australian news businesses at the commencement of the Code regime.

As Free TV has previously submitted to government, the proposed NMI rate of 2.25% is too low. Given the number of platforms that will be subject to the NBI scheme, and the offset rate (which is discussed below), even from the inception of the new scheme, the value of the deals done under the new scheme will not match, in nominal terms, the value of the deals entered into under the Code.

Although the aggregate value of the deals entered into under the Code is not publicly available given those agreements are confidential, it is commonly estimated that the value of those agreements was \$250 million per annum.

With an NMI rate of 2.25% and an offset rate set at 150% (or 170% in the case of deals with small or medium businesses), the regulated platforms would need to generate in aggregate revenue in a financial year of approximately \$16 billion in order for the value of the deals under the NBI scheme to reach \$250 million per annum.³ Although it is not possible to determine from publicly available information the consolidated revenue of each of the three platforms (Google, Meta and TikTok) that would be subject to the regime, it appears unlikely this would be \$16 billion.

Another useful comparison for setting the NMI rate is the amount that is required to be invested in Australian content under the Australian content requirements imposed on large streaming services by the government in late 2025. Under those content quota laws, streaming services with more than one million Australian subscribers will need to invest at least 10% of their total program expenditure in Australia, or 7.5% of their revenue, on new Australian content. Free TV submits that there are no policy reasons why eligible expenditure levels under the NBI scheme should be set at levels that are considerably lower than those under the streaming services Australian content legislation.

³ In fact if the 170% offset rate is used, the aggregate revenue would be closer to \$19 billion before the \$250 million amount is reached.

Free TV encourages the government to set the NMI rate at a level that will ensure that the aggregate value of the deals struck under the NBI scheme is at least equal to \$250 million per annum, adjusted to reflect the current circumstances given that agreements entered into under the Code were entered into in 2021, approximately 5 years ago. The \$250 million per annum should therefore be adjusted to reflect increases in revenue of the digital platforms from digital advertising since the Code was first implemented⁴ and the greater number of platforms captured under the NBI scheme as compared to the Code. The amount should also be indexed for inflation.

3.3.3 NMI Offset

Recommendation: The NBI scheme should not provide different offset rates for agreements entered into with different types of media organisations.

Free TV has concerns with the proposed offset rate. First, the rate will lead to low levels of investment in the sustainability of Australian news content by digital platforms, as discussed in the section immediately above. Free TV's second concern is that there should not be a differential in the offset amount depending on the character of the recipient news business, given the significant distorting impact this will have on the types of news businesses that the regulated platforms will enter into agreements with.

A simple example demonstrates this. If a regulated platform's NMI amount for a financial year was \$75 million, it could reduce the NMI it was required to pay to nil by either entering into deals with news businesses that were not small or medium business that in aggregate had a value of \$50 million or it could enter into deals with small and medium businesses that in aggregate had a value of \$44.12 million, a "saving" of just under \$6 million. The only sensible course of action for the regulated platform to take is to enter into deals with small and medium businesses.

So that the regulated platforms are not incentivised to only enter into agreements with small or medium news businesses, the value of deals with all news businesses should be given equal weighting under the proposed offset regime. An alternative mechanism is required to ensure that agreements are entered into with a diversity of news businesses, as discussed in the next subsection immediately below.

Free TV recommends that the offset rate is increased for all news businesses to at least 200%. As pointed out in Free TV's previous submissions to government regarding the NBI scheme, an offset rate of 150% is simply too low to incentivise platforms to enter into agreements. The offset rate will need to be considered holistically with the other issues that have been raised in this section to ensure that the amounts received by news businesses (whether under agreements entered into with regulated platforms or as a result of allocation of NMI amounts paid by the platforms) will be at least equal to the amounts initially received under the Code, that is, \$250 million adjusted in the manner set out in section 3.3.2.

⁴ See for example, this Australian Financial Review article: <https://www.afr.com/companies/media-and-marketing/google-and-meta-send-11b-offshore-amid-buoyant-australian-revenues-20260427-p5zraf>, which refers to Google and Meta sending \$11 billion in revenue offshore in 2025. A similar article reporting on the profits of Google and Meta (as well as Amazon) appeared in the Sydney Morning Herald: <https://www.smh.com.au/technology/meta-s-australian-cash-machine-1-5-billion-shipped-offshore-20260427-p5zra1.html>

3.4 Determination of eligible expenditure

Recommendation: The government should implement a regime that incentivises agreements with commercial free-to-air television broadcasters.

Under section 20 of the NBI Bill a requirement is imposed on each regulated platform to enter into agreements with at least four news business groups, by ensuring that a credit cannot be given for an agreement for more than 25% of that platform's NMI amount.

Free TV agrees with the sentiment underlying the inclusion of this limitation. As stated in the Draft EM:

This prevents the entity from being able to fully offset its NMI with one large agreement with a single news business corporate group and encourages the sustainability and diversity of the Australian news media sector.

Free TV recommends that government implements a mechanism to ensure that the regulated platforms enter into agreements with a range of news businesses to protect the diversity of Australia's media landscape. At a minimum, the mechanism incorporated in the NBI Bill should achieve an outcome which facilitates agreements being entered into between commercial free-to-air television broadcasters and the regulated platforms. The mechanism should also take into account the audience reach achieved by those broadcasters and the value the Australian public places on the news and journalism that those broadcasters have provided over many years. A distribution mechanism that reflected this would be consistent with the overall purpose of the scheme.

Again, Free TV refers to the Code which resulted in more than 30 agreements being signed between Google or Meta, on the one hand, and Australian media companies on the other. It is hoped and expected that the NBI scheme would incentivise a broader range of agreements than currently contemplated, even if ultimately the same number of agreements that were in place under the Code are not entered into.

3.5 Other issues

3.5.1 Direct obligation to distribute the NMI

Recommendation: Part 3 of the NBI Bill should be amended to provide that any amounts collected from platforms will be distributed under the Statutory Payment Scheme.

The regulation for the Statutory Payment Scheme and the legislation for the NBI scheme must work together. In its separate submission on the Statutory Payment Scheme, Free TV has stressed the importance of the regulatory framework for that separate scheme being put in place at the same time as the NBI legislation.

Part 3 of the NBI Bill deals with the liability of each regulated platform to pay the NMI in the event that the platform does not voluntarily enter into agreements with news businesses. It is currently silent on the question of how any NMI amounts which are collected will be distributed. To ensure the two schemes work together, the NBI legislation should directly require that the any NMI amounts collected from platforms are distributed to eligible news businesses under the Statutory Payment Scheme.

3.5.2 Determination of gross revenue

Recommendation: Robust powers should be given to the Tax Commissioner to ensure that each regulated platform properly reports its consolidated revenue attributable to Australia, as defined under section 10 of the NBI Bill.

While section 10 of the NBI Bill contains a clear definition of the “consolidated revenue attributable to Australia”, which will be used to calculate a regulated platform’s NMI liability, we remain concerned that the contracting practices employed by these multinational search services and social media services will circumvent this definition by, for example, domiciling multi-jurisdictional arrangements overseas, such that revenue generated under those agreements that is attributable to Australia, will not be counted towards the consolidated revenue actually attributable to Australia. Further, there is no detail in either the NBI Bill or the Consequential Bill of the evidence required to be provided by a regulated platform to demonstrate its determination of this amount on an annual basis.

Free TV is concerned that there is insufficient power granted to the Taxation Commissioner to investigate whether a platform may exclude Australian generated gross revenues from its calculations of this amount.

Free TV recommends that the NBI Bill (or the Consequential Bill) is amended to include provisions similar to those in the *Communications Legislation Amendment (Australian Content Requirement for Subscription Video On Demand (Streaming) Services) Act 2025*, which permit the ACMA to make determinations regarding the nature of the revenue of each streaming service that is required to be considered in determining whether the service is subject to the regime or has acquitted its expenditure obligations. Incorporating similar provisions in the NBI legislation will assist in setting the “ground rules” for determining what revenues a platform must include in its calculations of “consolidated revenue attributable to Australia”.

3.5.3 No limitations related to Covered News Content

Free TV remains of the view that the government should not intervene into the nature of the agreements that are entered into between the regulated platforms and news businesses. Accordingly, the restrictions that are included in section 18(b) of the NBI Bill that the expenditure must relate to the production, or dissemination, of covered news content should be removed.

3.5.4 Appropriate administrator

Recommendation: The Taxation Commissioner should be required to consult with the ACCC and the ACMA in the administration of the NBI legislation.

The Consequential Bill provides that the Taxation Commissioner will be the sole administrator of the regime. While Free TV acknowledges that the NMI is a tax and therefore the involvement of the Commissioner is appropriate, it is equally important that the Australian Competition & Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) have a role in determining what expenditure is determined to be eligible expenditure. Consultation by the Commissioner with the ACCC and the ACMA is also likely to be beneficial in the context of the anti-avoidance provisions that are included in the NBI Bill. A consultation provision could be structured in a similar way to the provision in the *Radiocommunications Act 1992* which requires the ACMA to consult with the ACCC when the ACMA exercises its powers to impose spectrum allocation limits.

3.5.5 Carry forward expenditure

Recommendation: Regulated platforms should not have the ability to carry forward to future years eligible expenditure that is not applied to reduce a platform’s NMI liability.

As the NBI Bill is drafted, regulated platforms will be able to carry forward expenditure that is not applied in relation to their NMI in a year to a future year. As Free TV has previously submitted to government, such an element creates unnecessary complexity and administrative burden without any clear benefits. In this regard, while the Draft EM notes that carrying forward eligible expenditure is possible no reasons are given as to why this is appropriate. Free TV recommends that the carry forward provisions are deleted.

3.5.6 Review of the efficacy of the legislation

The NBI Bill does not include any provisions allowing for its operation to be reviewed. In the same manner that a formal review process was included in the Code legislation, Free TV recommends that review provisions are included in the NBI Bill, requiring a review two years after commencement. This will provide an opportunity for government to consider, in an open and transparent manner, whether the scheme is achieving its intended purpose.