

September 2026

Submission to Privacy Amendment (Personal Data Protection) Bill 2026 Consultation

Thank you for providing this opportunity to Free TV Australia (**Free TV**) to make a submission regarding the Privacy Amendment (Personal Data Protection) Bill 2026 (**Privacy Bill**).

This submission is in two parts. First, Free TV has set out its position on the core issues that arise from the Privacy Bill and, separately, in the Schedule has proposed alternative drafting for some provisions.

1. Exclusion on public interest grounds

Free TV's members are inadvertently caught within the scope of many of the provisions in the Privacy Bill that are targeted at online services and new technologies.

This should be rectified. Free TV's members provide broadcasting and broadcasting video on demand (**BVOD**) services under the *Broadcasting Services Act 1992* (**BSA**) which requires broadcast services to be free and advertiser-funded.¹

Free TV's members play a vital role in achieving public policy objectives, including providing free sport, trusted news and Australian stories. These contributions are essential to the protection of Australia's democracy and cultural fabric. Any reduction in advertising revenue due to unnecessary regulation imposed by provisions of the Privacy Bill that are directed at other sectors would negatively impact the ability of Free TV's members to provide this high-quality content and diminish their important role.

To ensure that the Privacy Bill achieves an appropriate balance, Free TV submits that the existing journalism exemption should be modernised, and that carve outs from direct marketing rules should be made to protect Free TV members' existing segment-based marketing practices. The changes proposed to the journalism exemption include extending it to distribution of exempt content (as has been done for the tort exemption in Schedule 2), to sources, to data used to surface content for viewers, and to public interest entertainment content produced by Media organisations (in line with the broader scope of the GDPR exemption, which extends to art, literature and academic expression as well as journalism).

2. Direct marketing

While it is acknowledged that the definition of direct marketing is intended to be technology agnostic, as currently drafted it may include advertising that is shown on the online services provided by Free TV's members. This is not appropriate, noting again that the BSA contemplates that Free TV's members are funded by advertising.

¹ See section 14 of the BSA.

The public policy of ensuring that advertising-funded free content is available from multiple large commercial media companies employing media professionals remains the same regardless of the transmission technology. The growth in online delivery, and the advent of competition from social media and other short form content providers, means that it is important to ensure that Free TV's members have every possible opportunity to attract viewers to their quality, long form content, and to provide their own funding. The Government has already recognised that such funding is essential for Australia's democracy and society. It has already taken legislative steps to safeguard such funding.

In a practical sense, it would also be impossible for Free TV's members to comply with the proposed amended Australian Privacy Principle (**APP**) 7, for example, compliance with APP 7.3 is not viable for each individual ad on a BVOD service. Further, APP 7.5 (addressing "ad-supported services") would provide limited benefit to Free TV's members, as it is not practically feasible for service differentiation to be implemented as contemplated by that principle.

Free TV respectfully submits that its members should be at liberty to provide sustainable BVOD services consistent with the advertising-funded model which is embodied in the BSA for broadcast. The public policy underlying that model is not affected by the transmission method. In order for free, quality Australian BVOD services to be sustainable in a highly competitive global content market it is important for BVOD providers to be able to continue to provide BVOD on the basis that users who do not log in must accept advertising targeted using cookies, pixels and other similar mechanisms to receive advertising on a segmented (not fully individualised) basis. Otherwise, the effect will be to require BVOD providers to also operate SVOD models for users who opt out, which is not a good public policy outcome and is inconsistent with the service being one that is provided to all Australians free of charge.

3. Consent to trade

The proposed amendments to APP 4.2 of the Privacy Bill impose overly broad consent requirements that risk unintentionally restricting privacy-protective practices such as clean room operations. Clean room (and similar) practices are both well-known and essential mechanisms that enable Free TV members to enrich data and generate aggregate insights while safeguarding individual privacy. These are used to enhance the relevance of Free TV members' advertising without any adverse privacy impact on individuals. Section 6FC(2) of the Privacy Bill should therefore be amended to explicitly exclude clean room and similar practices.

In addition, the trading requirements should not apply to the disclosure of any personal information between members of a corporate group, including the disclosure of sensitive information. Entities should be allowed to disclose sensitive information to their related bodies corporate, as is the case under the current Act in respect of other personal information that is not sensitive information. This can be achieved through the inclusion of a new section 6FC(2)(d) as set out in the Schedule to this submission.

4. Right to erasure

A refusal to erase in a journalism context would likely be an "act in the course of journalism" such that the current exemption would apply. This should be confirmed in the drafting of the legislation. Free TV also advocates modernisation of the exemption as set out above. To preserve the constitutional validity of the legislation, there should also be an exception to the new APP 14 which applies where the public interest in retention of the personal information outweighs the public interest in the individual's privacy. This is in line with Schedule 2.

This and a modernised journalism exemption are necessary because otherwise the erasure right could be used as a way to require take down of material relating to government, political and other matters which the public has a strong interest in receiving. This would make the legislation disproportionate and therefore likely to be constitutionally invalid.

5. Fair and reasonable test

Proposed new APP 3, the fair and reasonable test, introduces new concepts into Australian privacy law. Those concepts in many cases do not have any counterparts under the privacy laws of other jurisdictions. An example of this is APP 3.2(f) which provides for a very subjective test in assessing the impact on the relevant individual. This is not only of uncertain application but is duplicative of other protections that individuals have. In the case of disclosure of information as one example, individuals are adequately protected by defamation laws.

Free TV recommends the deletion of APP 3.2(f) as well as a regime for public consultation on any guidelines proposed by the OAIC, including to ensure that the scope of the test cannot be expanded by means of those guidelines.

6. Commencement Period

For organisations such as Free TV's members, which rely on advertising revenues as their main source of income, the proposed expansion of the scope of the personal information definition – even without the other amendments to be implemented under the Privacy Bill – will potentially require significant modifications of their operating and compliance policies and processes. Free TV will provide submissions on this issue in response to the Attorney General's Department's separate *Privacy Reforms Consultation on Impact Assumptions*.

A period of at least 24 months before commencement is required to implement the changes proposed in the Bill, given the complex information technology and other system changes that are required.

The same commencement period should apply to related reforms affecting the same systems, including the Children's Online Privacy Code and the Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), so that costs can be minimised by aligning implementation. The Government should also review this overlapping reform landscape to reduce duplication and fully address the matters above.

Schedule: Recommended Amendments to the Privacy Bill

1. Modernised Journalism Exemption

Free TV suggests amending section 7B as follows:

Journalism

(4) An act done, or practice engaged in, by a media organisation is exempt for the purposes of paragraph 7(1)(ee) if the act is done, or the practice is engaged in:

(a) by the organisation in the course of journalism; and

(b) at a time when the organisation is publicly committed to observe standards that:

(i) deal with privacy in the context of the activities of a media organisation (whether or not the standards also deal with other matters); and

(ii) have been published in writing by the organisation or a person or body representing a class of media organisations.

(4A) An act done or a practice engaged in by an entity in the course of, or for the purpose of, the publication or distribution of content prepared for publication by a media organisation to which paragraph 7B(4) applies in the course of journalism;

(4B) an act or practice by an entity in the course of providing information to a media organisation for the purpose of journalism in circumstances in which the public interest in disclosure of that information outweighs the public interest in an individual's privacy;

*(4C) for the purpose of this section, **journalism** includes:*

(a) The collection, production, preparation for publication and publication of any material which has the character of news, current affairs, a documentary or public interest entertainment, or commentary or opinion on news, current affairs or a documentary or public interest entertainment;

(b) acts and practices for the purpose of recommending or otherwise making available content to individuals;

(c) acts and practices in connection with requests for erasure under Australian Privacy Principle 14 including any refusal to accede to any request.

*(4D) for the purposes of this section **public interest entertainment** means entertainment content in respect of which the public interest in publication outweighs the public interest in in privacy.*

2. Direct marketing

Free TV suggests a new APP 7.8 to address the concerns that it has raised in relation to direct marketing:

This principle does not apply to any organisation to the extent that it:

(a) provides a datacasting service as defined in section 6 of the Broadcasting Services Act 1992; or, provides a broadcasting video on demand service as defined in section 130ZZK of the Broadcasting Services Act 1992; or

(b) *is a registered news business corporation as defined in section 52A of the Competition and Consumer Act 2010.*

Alternative to (a) and (b):

*engages in **segment based marketing** and is a registered news business corporation as defined in section 52A of the Competition and Consumer Act 2010.*

***Segment based marketing** is marketing based on aggregated information about the content and consumption preferences of one or more demographic segments applicable to the individual].*

3. **Consent to trade**

The following amendment to section 6FC(2) is proposed to provide for an exclusion of clean rooms (and similar processes):

(c) *the disclosure is made to:*

- (i) *a processor by a controller for the purpose of the processor doing an act, or engaging in a practice, on behalf of the controller in relation to the information; or*
- (ii) *a person for the purposes of that person doing an act, or engaging in a practice, on behalf of the provider of the information to produce aggregated data, where:*
 - (A) *The recipient may not access, use or hold the information for any other purpose;*
 - (B) *The recipient may receive and combine personal information from multiple entities but may only disclose aggregate data (which does not comprise personal information) to each contributor; and*
 - (C) *The recipient must promptly destroy the personal information after the aggregate data has been produced.*

The following addition to section 6FC(2)(d) is proposed to confirm trading requirements should not apply to the disclosure of any personal information between members of a corporate group:

(d) *the disclosure is made by an organisation that is a body corporate to a related body corporate.*

4. **Right to erasure**

Free TV's proposed changes may be implemented by the following amendments to the Privacy Bill:

(a) To ensure that Free TV's members services are not subject to the regime, a new section 6EB(1A) is required:

(1A) *For the purposes of this section 6EB and Australian Privacy Principle 14 a "designated internet service" does not include a broadcasting video on demand service as defined in section 130ZZK of the Broadcasting Services Act 1992.*

(b) To exclude news content from the regime, the following amendments are required:

(i) Insert the following definition in section 5:

journalism content means:

- (a) *material having the character of news, current affairs, information or a documentary or public interest entertainment;*
 - (b) *material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary or public interest entertainment; or*
 - (c) *any information or material that is necessary for the provision of the material referred to in subparagraphs (a) or (b).*
- (ii) Insert the following as a new subparagraph (f) at the end of APP 14.3 (and replace the full stop at the end of APP 14.3(e) with a semi colon):
- (f) *the information is journalism content, or part of that content.*
- (iii) The following addition should also be made to the end of APP 14.3:
- (g) *the public interest in retaining the information outweighs the public interest in erasure*

5. **Fair and reasonable test**

The requirement for public consultation regarding any proposed guidelines for APP 3 and that the guidelines should not expand its scope may be implemented through new sections 28(5) and (6) of the Privacy Act:

- 5) *Before making, or amending, any guidelines under subsection (1)(a) in relation to APP 3, the Commissioner must undertake public consultation for a period of not less than 30 days including with stakeholders likely to be affected by the guidelines. All comments and submissions received are to be appropriately considered by the Commissioner.*
- 6) *If any guidelines under subsection (1)(a) in relation to APP 3 are inconsistent with APP 3, or expand the scope or application of APP 3, those guidelines are invalid to the extent of the inconsistency or expansion.*