



# Pre-Budget Submission 2020-2021

Submission to The Treasury

December 2019

## 1 Executive Summary

- Free TV Australia thanks the Treasury for the opportunity to provide our priorities for the 2020-2021 Commonwealth Budget.
- Free TV represents all commercial free-to-air commercial broadcasters in Australia. Collectively, these networks invest over \$1.6 billion every year to make great Australian content. This investment supports over 15,000 direct and indirect jobs and contributes a total of \$2.8 billion each year into the local economy.
- For this investment and support of local employment to be sustained in the long-term, the 2020-2021 Budget needs to include provision for the urgent implementation of the Government's roadmap for reform of Australia's ageing media regulatory system.
- Despite the increased competition for viewers from unregulated streaming services and the significant advertising revenue impact from the rise of the dominant digital players, Google and Facebook, commercial television remains the most heavily regulated media platform.
- We have welcomed the Government's roadmap for reform, beginning in early 2020 with an options paper for reform of the Australian content quotas and incentive framework. As part of a broader suite of reforms, the 2020-2021 Budget should make provision for the equalisation of the producer offset at 40% of qualifying expenditure for both television and film content and the removal of the current restriction on broadcasters accessing Screen Australia funding.
- The Budget will also need to make ongoing provision for the new digital platforms branch of the ACCC, including the resources required to administer the new voluntary commercial bargaining Code of Conduct to be established between digital platforms and media businesses.
- The 2020-2021 Budget should provide for long-term funding for the Viewer Access Satellite Television (VAST) service. This provides a high-quality free-to-air delivery platform, with a total of around 1.5 million Australians relying on VAST to receive free-to-air television services. The lack of long-term funding certainty results in less economically efficient short-term satellite capacity contracts having to be entered.
- The Government's approach of seeking multilateral solutions to the taxing of highly digitised firms should be maintained in the upcoming Budget. We remain concerned that unilateral approaches taken ahead of the ongoing OECD work, such as a digital services tax, would capture the digital offerings of Australian based media companies. Revenue taxation would be a retrograde step in comparison to the much-needed reforms the Government has only recently taken to remove the revenue-based broadcast licence fee. Any such interim measure would amount to double taxation and would be a disincentive for further innovation and investment by Australian based businesses.
- Any move in the Budget to extend the Audio Description obligations recently imposed on the ABC and SBS to commercial broadcasters must be accompanied by funding for both the establishment of the delivery mechanism and the ongoing operating costs.

## 2 Introduction

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

Free TV Australia proudly represents 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-to-air television makes to Australia's culture and economy. Australia's commercial free-to-air broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

Our industry is the largest producer and commissioner of Australian screen content, responsible for \$6 out of every \$10 spent on domestic content. The latest financial reports by the ACMA show that local content investment continues to grow and now exceeds 80% (\$1.63 billion) of all content spending.<sup>1</sup> We are deeply committed to ensuring Australian audiences continue to see Australian faces, voices and stories on their screens.

Exports of Australian television productions also help showcase Australia to the world. These direct exports have been valued by Deloitte at \$252 million a year, with a further \$725 million a year coming from related tourism. The commercial free-to-air broadcasting industry plays a huge role in generating these benefits by creating and delivering content across a wide range of genres. These include news and current affairs, sport, entertainment, lifestyle and Australian drama.

We are also assisting the Government deliver on its soft diplomacy initiative in the Pacific, through our work with the Department of Communications and the Arts in providing 1,000 hours annually of premium Australian content to Pacific broadcasters.

The 2020-2021 Budget needs to ensure that the regulatory and incentive settings keep pace with the rapid change being experienced in the media sector. The explosion in competition for viewers is fragmenting audiences and reducing advertising revenues. Online advertising revenue has grown exponentially since 2008, while commercial TV revenue has been flat or declining.

Free TV members are fully committed to the role that they play in telling Australian stories to Australians. They understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television. The Budgetary measures proposed in this submission will help ensure the Australian public continues to enjoy watching a large quantity of high-quality local content free via our broadcast networks. They will also ensure our members can continue to act as the cornerstone for the local production sector – in a way that is relevant and sustainable.

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<sup>1</sup> <https://www.acma.gov.au/theACMA/Library/Industry-library/Broadcasting/broadcasting-financial-results-report>

### 3 Funding outcomes from Digital Platforms Inquiry

On 12 December 2019, the Government announced its response to the 2-year inquiry by the Australian Competition and Consumer Commission (ACCC) into the impacts of the digital platforms on consumers and media businesses.

Importantly, the Government's roadmap sets out a staged approach to regulatory harmonisation, the creation of a voluntary commercial bargaining Code of Conduct and the establishment of a permanent digital services branch with the ACCC. The Government also signalled the expansion of the regional and small publishers fund for news and journalistic content. Below we set out the key areas where the Government's roadmap will have an impact on the 2020-2021 Budget.

#### 3.1 Australian Content and Incentives Reform

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As demonstrated above, commercial free-to-air television is the proud home of Australian content and we remain committed to local content and our role as the cornerstone of the Australian screen production industry. However, this relies on supportive policy settings that allow us to sustainably invest in great content that is valued by today's audiences.

The immediate priority for the Government's roadmap is the publication of an options paper for reforms to the Australian content policy settings. This is critical as these policy settings have been in place since the 1980s, together with the production incentive schemes that have not been significantly updated in the last decade.

The full suite of the Government's reforms to the Australian content quotas and incentive schemes should be known well in advance of the Budget. Relevant to the 2020-2021 Budget will be the level of the producer offset and Screen Australia funding. In our view, the reforms must include:

- Equalising the producer offset for all qualifying production expenditure (TV and film) at 40% and removing the 65-episode cap; and
- Allowing equal access to Screen Australia funding by all producers, including free-to-air broadcasters.

Further detail on these measures and their justification can be found in our submissions to the ACCC and our submission to the Australian and Children's Content Review.

#### 3.2 Support the creation of the ACCC's Digital Platforms Branch

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The Government's response to the Digital Platforms Inquiry noted that the 2019-2020 MYEFO would commit \$27 million over four years for a permanent digital platforms branch within the ACCC. This funding should be continued into the forward estimates included in the 2020-2021 Budget.

In our view, the creation and ongoing funding for this branch is a crucial response to the issues identified by the ACCC in two key respects: the fundamental imbalance in bargaining position between media businesses and digital platforms and the incentive and opportunity for favouring their own businesses in the advertising market. These two issues are set out below.

##### 3.2.1 Commercial bargaining Code of Conduct

The Government has accepted the ACCC's finding that Google and Facebook enjoy significant market power in their respective markets and are unavoidable business partners for many Australian businesses, including the media. This creates a significant imbalance in

the bargaining position between media businesses and the digital platforms that precludes the normal commercial negotiations that would ordinarily take place in a competitive market.

To address this imbalance, the Government has asked the ACCC to work with the digital platforms and media businesses to create a voluntary bargaining Code of Conduct, to be finalised by November 2020, with a progress report in May 2020.

The forward estimates included 2020-2021 Budget should continue the funding provided in MYEFO to ensure that the ACCC has sufficient ongoing resources to undertake the role of administering and enforcing this Code. This is necessary to prevent the platforms from restricting the reasonable and sustainable monetisation of Australian news and media content on their platforms and to enable appropriate data sharing by those who derive audience, data and financial benefit from the consumption of content on their platforms.

### 3.2.2 Direction to the ACCC on ad tech inquiry

The Final Report of the ACCC found that it is unclear how Google and Facebook rank and display advertisements and the extent to which each platform self-prioritises their own platforms or businesses in which they have interests. In the ACCC's view, this gives rise to the risk of anti-competitive conduct:

*“Given the substantial market power of each of Google and Facebook, their presence in a significant number of related markets and the opacity of their key algorithms, there is significant potential for self-prioritising by Google and Facebook to substantially lessen competition.”<sup>2</sup>*

Accordingly, the Government has indicated that it will direct the ACCC to undertake an in-depth inquiry into these competition issues. In our view, the direction to begin the inquiry should also include a requirement for the ACCC to provide advice to Government on the most appropriate form of regulation to apply on an on-going basis, taking into account the issues the ACCC identified in the conduct of the inquiry.

The challenge for competition regulators is to detect anti-competitive conduct in a timely manner and seek court enforcement action and penalties. The experience to-date is that such ex-post enforcement action has been slow and ineffective in preventing future anti-competitive conduct. Therefore, in our view the best solution to these competition issues is for the digital platform branch to administer a set of up-front digital market rules designed to prevent the abuse of market power.

## 3.3 Enhancing the regional and small publishers fund

Commercial free-to-air networks invest significantly in news and local journalistic content, producing high quality, accurate and impartial news services watched by 11 million Australians each week. In particular, the ACCC highlighted ACMA research that found that regional Australians exhibit distinct preferences in their consumption of local news, favouring traditional media formats. This study found that the most trusted source of local news in regional areas was commercial television.<sup>3</sup>

However, these vital services are coming under increasing commercial pressure. Where services have had to close, they are not being replaced by alternative news sources as the advertising revenue available to fund them is diverted to the digital platforms.

The 2020-2021 Budget should fund the enhancement of the regional and small publishers fund to support the continued production of news and journalistic content in specific

<sup>2</sup> Ibid, pg 12

<sup>3</sup> ACCC, Digital Platforms Inquiry Final Report, pg 291

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categories. The Regional and Small Publishers fund should be expanded and re-targeted as a grants program aimed at addressing:

- Declines in public interest journalism in areas such as local government and courts, health and science reporting
- A sustained decline in local and regional news coverage more broadly.

However, in expanding the fund the Government should also address the flaws in the previous model. We consider that the fund criteria should be expanded and explicitly support the product of local television news services. Such an expansion should include removing the existing turnover threshold. In our view, it is important that the criteria for funding from the amended grants program focus on the services being provided by the media business, rather than its earnings.

#### 4 Long-term certainty for funding of VAST service

The 2020-2021 Budget should ensure continuous and long-term funding for the Viewer Access Satellite Television (VAST) service.

The VAST service is an extremely reliable, consistent and high-quality delivery platform for free-to-air television services to remote Australia. In addition, in regional and metropolitan areas, VAST is critical to providing access to viewers in digital television black spots. There are currently approximately 340,000 registered VAST set top boxes. In addition, the not-for-profit remote broadcaster, Imparja, relies on VAST to reach its 28 retransmission sites including major remote cities like Alice Springs and Mount Isa. In total, around 1.5 million Australians rely on VAST to receive free-to-air television services.

In regional and remote Australia, commercial free-to-air television is a particularly highly valued source of local content and local news services. It connects Australians with their communities and serves an important function in remedying the sense of distance and isolation that can arise in geographically remote locations. VAST is critical to delivering these services.

VAST technology is and will remain critical to delivering television services into the foreseeable future. In fact, the number of households accessing commercial free-to-air television via VAST is gradually but steadily increasing. IP based delivery is not a viable alternative from either a technical or a cost perspective:

- From a technical perspective, as a one-to-one transmission rather than a one-to-many transmission, IP based delivery does not guarantee access to a suite of services comparable to the VAST channel offering (where IP access exists at all).
- From a cost perspective: IP based delivery options are not free to the consumer and would require consumers to purchase broadband plans with sufficient data to be able to watch television.

Government funding of VAST together with broadcasters' funding of the Conditional Access Scheme has ensured that viewers in remote and terrestrial black spot areas have free access to substantially the same free-to-air television services as metropolitan viewers.

The contract with Optus for the provision of VAST services is soon to expire. The lack of continuous funding and a commitment to long-term funding certainty results in less economically efficient short-term supply contracts having to be entered. We request that the 2020-2021 Budget provide consistent funding for this service for the forecast period and include a commitment to ongoing funding beyond the forward estimates.

## 5 Significant reduction to spectrum charge from 2022

### 5.1 Background to the current charge

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In 2017, the revenue-based broadcasting licence fee was replaced with an interim spectrum tax, locked in for five-years. The aggregate level of the spectrum charge of \$43.5 million per annum was determined by Cabinet and then levied via a tax on broadcast transmitters.

Free TV has previously expressed concerns with this approach, on the basis that the pricing does not properly reflect economic value of the spectrum, taking into account its use for free-to-air broadcasting. The amount of the spectrum charge is also high by international standards. In addition, to offset the disproportionate impact on regional broadcasters who have many more transmitters than their metro counterparts and serve much smaller populations, the charging method requires a complex system based on the power and population density of the transmitters. In some cases, regional broadcasters have received an additional rebate to ensure that they were not worse-off as a result of the 2017 removal of the broadcast licence fee and the imposition of a spectrum charge.

In our view, the forward estimates from 2022 should include a spectrum charge for broadcasters based on the costs incurred by ACMA of managing and planning the spectrum, in line with international best practice.

### 5.2 Consistent with harmonised approach to regulation

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As outlined above, the Government response to the Digital Platforms Inquiry notes that it will commence a staged process to reform media regulation, towards a platform-neutral regulatory framework covering both online and offline delivery of media content to Australian consumers. Free TV considers that this needs to include reform of the spectrum charging framework.

Currently, our primary advertising competitors Google and Facebook, together with audience attention competitors like Netflix, rely on consumer funded internet connections, primarily over a taxpayer funded National Broadband Network. None of these competitors are required to pay a spectrum charge.

### 5.3 Spectrum charge out of step with international best practice

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A spectrum price signal can be useful in driving the efficient use of spectrum where users are able to respond effectively to that signal. However, broadcasters are heavily constrained in how they can use the spectrum. For example, they face extensive content obligations, advertising restrictions and captioning requirements. They also have complex technical restrictions in how the spectrum can be used to protect against interference.

In addition, free-to-air broadcasting by its very nature is a public good. In the free-to-air model, broadcasters can only capture the value of providing the platform to advertisers. They cannot capture the value of the broadcast to viewers (as they, by definition, receive the content free of charge).



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As a result of the restrictions on the use of broadcast spectrum and the difficulties in estimating the positive externalities associated with the provision of public good free-to-air services, applying a spectrum price for broadcasting based on the costs of managing the spectrum is the most common approach used globally. Work undertaken by CEG concluded that they had:

*“not identified any jurisdiction with a comparable free-to-air broadcasting sector and content obligations, which charges for spectrum beyond fees for spectrum management.”*

Given the restrictions on the use of broadcast spectrum, spectrum charges in excess of the cost of managing the spectrum only result in a wealth transfer, with no increase in spectral efficiency. Such a wealth transfer harms free-to-air broadcasters at a time when the costs of meeting our obligations are continuing to increase and advertising revenues are declining.

## 6 Imposition of a digital services tax remains unwarranted

In previous Pre-Budget submissions, Free TV has cautioned against the imposition of a digital services tax. Accordingly, we warmly welcomed the Government's decision announced in March 2019 not to proceed with an interim measure, ahead of the ongoing OECD processes.

Free TV is aware of the work of the OECD in attempting to reach a multilateral solution to the issue of appropriately taxing multinational digital companies. In our view, reaching a multilateral solution should remain the focus of the Government in the 2020-2021 Budget.

As highlighted in the Government's announcement:

*Many stakeholders raised significant concerns about the potential impact of an Australian interim measure across a wide range of Australian businesses and consumers, including discouraging innovation and competition, adversely affecting start-ups and low-margin businesses, and the potential for double taxation.*

*Given this feedback and recent international developments, the Government has decided to continue to focus our efforts on engaging in a multilateral process and not to proceed with an interim measure, such as a digital services tax, at this time.<sup>4</sup>*

In our view, this conclusion remains valid as we are still concerned that the digital services provided by some of our members could be captured by a digital services tax. This would undermine their significant investment in these services and amount to reimposing double taxation on commercial free-to-air broadcasters, who were only recently relieved of the gross revenue tax imposed by the broadcast licence fee.

The measures already undertaken by the Australian Government has seen \$7 billion worth of revenue brought back onshore by Facebook and Google. Free TV considers that further international cooperation should be sought to build on the success of these initiatives, rather than seeking to apply potentially costly interim taxation measures.

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<sup>4</sup> <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/government-response-digital-economy-consultation>

## 7 Any Audio Description obligations must be fully funded

Free TV members accept the role that our services play in an inclusive community. Accordingly, in April 2019, Free TV took the initiative to establish a pan-industry broadcaster working party to examine the complex issues involved in implementing Audio Description for free-to-air services in Australia. This followed on from the Government's own working party process that concluded in late 2017, with no firm recommendations being made in relation to delivery options.

We have been seeking a cooperative way forward with Government to explore options for the delivery of audio described content to the community, in a technically and financially sustainable manner. Importantly this work involved all broadcasters as we consider that any solution needs to be developed on a consistent basis across the platform.

Despite this ongoing work and without prior communication with the rest of the free-to-air sector, the 2019/20 MYEFO including one-off funding for the ABC and SBS to implement Audio Description services. Free TV notes that this funding has been provided while critical delivery issues have not been addressed.

While MYEFO only refers explicitly to the ABC and SBS, if similar obligations were to be contemplated for commercial broadcasters, future Budgets would need to fund both the operational and setup costs of implementing Audio Description services.

With industry revenues in decline, it is impossible for the industry to fund additional regulatory obligations, such as Audio Description. Industry revenues declined by 9.2% during 2013-2018 from \$3.876 billion to \$3.52 billion. This amounts to a cumulative decline of over \$1 billion during this 5-year period.

It must be noted that comparisons with the technological means of delivery in other countries like New Zealand and the UK are not valid. These countries adopted AD at a different stage of technological development (for example, the UK incorporated the appropriate receiver standards prior to digital switchover), operate in a single time-zone and are less spectrally constrained than Australia.

## 8 Next steps

We thank the Treasury for the opportunity to outline our priorities for the 2020-2020 Budget. We understand that submissions received during this process will be made public early in 2020.

Free TV looks forward to further engagement with the Government on these important issues in the lead up to the delivery of the Budget in May 2020.