



Pre-Budget Submission 2022-23

Submission to The Treasury

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1. Executive Summary

- Free TV Australia is the peak industry body for Australia's commercial free-to-air (FTA) broadcasters.
- While commercial television now needs to compete with a greater range of services than ever before, our recent experiences with bushfires, floods and COVID-19 demonstrate that Free TV broadcasters deliver a vital national public service.
- The budgetary measures proposed in this submission for Federal Budget 2022-23 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.

Commercial Broadcasting Tax

- The *Commercial Broadcasting (Tax) Act 2017 (CBT Act)* was introduced as a 5-year interim arrangement as part of the 2017 Media Reform package.
- 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.
- Without a genuine review of the tax, as anticipated by the legislation and supporting materials, there is no clear pathway for the proper consideration of appropriate taxation arrangements going forward.
- In addition, arrangements to compensate regional television broadcasters for the disproportionate impact of the 2017 spectrum tax arrangements are due to expire in 2022.
- Unless the level of the tax is urgently reviewed and reduced, some regional broadcasters could be required to pay spectrum taxes in excess of pre-2017 broadcast licence fees.

Prominence of free-to-air services

- FTA television content (both broadcast and online services) are becoming increasingly hard to find amongst the multitude of other choices in the connected TV environment.
- Legislating a prominence framework is the only way to guarantee that Australian audiences will be able to continue to discover and easily access FTA content no matter how, when or where they choose to find it.
- Australians have a right to easily access FTA content on their televisions, without having to navigate the growing list of global services or be forced to pay for content.

Anti-siphoning list

- Free TV remains the most inclusive, accessible and communal way for every Australian to access sport. The aim of the anti-siphoning list is to ensure that sporting events of national importance and cultural significance are available to all Australians free of charge.
- Free TV proposes harmonising the existing conditions on subscription television licensees by introducing provisions in the *Broadcasting Services Act 1992 (BSA)* that allow Australian Communications and Media Authority (ACMA) to make rules replicating the current anti-siphoning regime to apply to telecommunications companies, digital platforms and online streaming providers.

PacificAus TV

- The PacificAus TV service was launched in May 2020, delivering over one thousand hours of content to local broadcasters across the Pacific every year for 3 years.
- The funding for PacificAus TV is due to expire on 30 June 2022. Should the Government be minded to continue investment in PacificAus TV, Free TV would welcome the opportunity to continue managing this service.

2. Introduction

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



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

Free TV members are vital to telling Australian stories to Australians. 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. It is critical that policy settings for future delivery of television services are set in such a way as to ensure that as a country we can continue to enjoy the benefits delivered by a viable and thriving local broadcast industry. Without this, we risk losing our access to local news, local stories and free sport.

While commercial television now needs to compete with a greater range of services than ever before, our recent experiences with bushfires, floods and COVID-19 demonstrate that Free TV broadcasters deliver a vital national public service. Australians expect and continue to rely on these services in times of national crisis to make sure they get the facts they need, and to bond with their communities over entertainment viewing. The fact that FTA services are available to all Australians for free is key to delivering the public policy outcomes of the Government. Without access to this platform, the Government's policy objectives – the provision of trusted news and Australian stories – would not be able to be delivered as reliably or to the same number of people.

The Government's Media Reform Green Paper stated that '...our existing public policy framework relies heavily on FTA television to meet public policy objectives...[t]he financial pressure on broadcasters will have knock-on effects for the production of Australian content. The volume, variety and quality of Australian content available is likely to decline; audiences will have access to fewer Australian voices and stories.'¹

The Budgetary measures proposed in this submission for Federal Budget 2022-23 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.

¹ Media Reform Green Paper, page 4.

3. The commercial broadcasting tax should be abolished

3.1 The commercial broadcasting tax was introduced as an interim measure

The *Commercial Broadcasting (Tax) Act 2017* was introduced as a 5-year interim arrangement as part of the 2017 Media Reform package. Free TV broadcasters agreed at the time to a package of measures, including a new \$40m spectrum fee to be imposed on the industry, on the basis that this was a five-year arrangement that would be reviewed.

Without a genuine review of the tax, as anticipated by the legislation and supporting materials, there is no clear pathway for the proper consideration of appropriate taxation arrangements going forward.

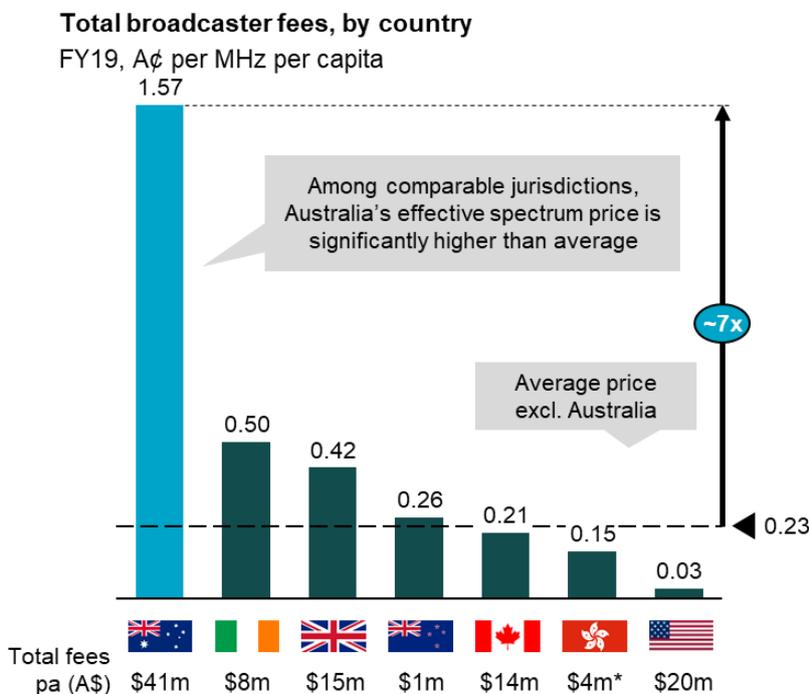
We submit that a full examination of the appropriateness of the CBT, including international approaches to the level of taxation, would lead to a recommendation to repeal the CBT Act. The Government’s Media Reform Green Paper (December 2020) did not provide an avenue for the urgently needed and previously promised review of these taxation arrangements.

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.

3.2 Australian broadcasters pay the highest spectrum prices in the world

Work undertaken by Venture Consulting has revealed that the spectrum tax is 52 times higher than equivalent per capita charges in the USA (see figure below).

Consistent with international approaches, Free TV submits that the aggregate amount of any tax levied should not exceed the ACMA costs of managing the spectrum allocated to broadcasting.



3.3 A review of the level of the commercial broadcasting tax is overdue

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. The Government applied a 100 percent offset to this tax for a 12-month period from February 2020, however this was not extended in 2021.

A review of the level of this tax is now overdue. Free TV submits that the commercial broadcasting tax should be abolished in the 2022-2023 budget.

In addition, arrangements to compensate regional television broadcasters for the disproportionate impact of the 2017 spectrum tax arrangements are due to expire in 2022.

Unless the level of the tax is urgently reviewed and reduced, some regional broadcasters could be required to pay spectrum taxes in excess of pre-2017 broadcast licence fees.

3.4 Broadcasters are constrained in how they use the spectrum

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, FTA broadcasting by its very nature is a public good. In the FTA 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).

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 FTA services, applying a spectrum price for broadcasting based on the costs of managing the spectrum is the most common approach used globally.

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 FTA broadcasters at a time when the costs of meeting our obligations are continuing to increase and advertising revenues are declining.

4. Free-to-air services must be prominent on online platforms

4.1 Device manufacturers decide access to Australian free-to-air services

FTA television is integral to the Government's cultural and social objectives. The principles that underpin our proposed approach to prominence are aligned with and intrinsically linked to the Australian screen sector funding principles.

FTA television content (both broadcast and online services) are becoming increasingly hard to find amongst the multitude of other choices in the connected TV environment. Decisions about whether free, licensed terrestrial services, together with broadcast video on demand (BVOD) apps will be readily available to Australian viewers, and if so on what terms, are increasingly being made in boardrooms in Japan, South Korea, and the US.

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

Local incumbent FTA linear broadcasters who operate BVOD services are at a distinct disadvantage. It is difficult, if not impossible, to negotiate fair and reasonable commercial terms with the manufacturers. Limited "real estate" means a premium is placed on available space, which invariably goes to the highest bidder.

To safeguard the future of access to free terrestrial television and BVOD services, policy makers need to reaffirm a basic tenet of broadcast policy through a modern approach.

4.2 A legislated prominence framework will guarantee access for Australian audiences

Legislating a prominence framework is the only way to guarantee that Australian audiences will be able to continue to discover and easily access FTA content no matter how, when or where they choose to find it.

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

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

The holder of a commercial television broadcasting licence under section 14 of the BSA (the Licensee) should automatically be provided access to the Prominence Principles framework in respect of their services under the BSA. Similarly, the national broadcasters, (the ABC and SBS) would be provided access to the Prominence Principles.

The mandatory industry code would contain obligations to implement and achieve the Prominence Principles. The code would also require that:

- No BSA Device can be imported into Australia, or promoted for sale in Australia or sold in Australia by a supplier (whether a manufacturer or a retailer) unless the BSA Device complies with the Prominence Principles;
- BSA Device manufacturers must enter into free of charge prominence agreements with the BSA Service licensees in respect of each BSA Service that contain stipulated minimum

prominence obligations and other terms agreed between the manufacturer and licensee (e.g. Dairy Industry Code); and

- Copies of prominence agreements to be provided to the Australian Competition and Consumer Commission (**ACCC**).

4.3 Australian audiences must be able to easily access Australian free-to-air content

Australians have a right to easily access FTA content on their televisions, without having to navigate the growing list of global services or be forced to pay for content.

The choice that Australians make on their access to content is being increasingly controlled, not by a consideration of quality of service, but by the decisions of connected television (**CTV**) and set top box (**STB**) manufacturers who now act as the gatekeepers to the way that Australians access content. As such, these manufacturers pose an existential threat to ongoing free access to important Australian content which underpins our identity and democracy.

Action is needed now to secure the long-term availability and prominence of Australian commercial FTA content services for Australian viewers.

5. The anti-siphoning list should be extended to online subscription platforms

5.1 Sporting events should be available to all Australians free of charge

Free TV remains the most inclusive, accessible and communal way for every Australian to access sport. The aim of the anti-siphoning list is to ensure that sporting events of national importance and cultural significance are available to all Australians free of charge.

At the moment, however, the list applies only to Foxtel. It does not protect major sporting events from migrating to telecommunications companies, digital platforms and online streaming providers, despite the fact there is an impending risk that sports on the list could be acquired by platforms many Australians do not have access to.

New services provided by these platforms have all demonstrated interest in acquiring sports rights. For this reason, Free TV views this as a regulatory harmonisation issue that should be dealt with as a priority issue.

This proposal would:

- prevent telecommunications companies, digital platforms and online streaming providers from circumventing the anti-siphoning regime;
- maintain the efficacy of the regime's original objective; and
- ensure that commercial and national broadcasters continue to be supported in fulfilling their role of reflecting and developing a sense of Australian identity, through enabling Australians to access events of national importance and cultural significance.

5.2 The anti-siphoning regime should be harmonised

The anti-siphoning list expires in April 2023 and there is currently no process or plan to review the list.

Free TV proposes harmonising the existing conditions on telecommunications companies, digital platforms and online streaming providers by introducing provisions in the BSA that allow ACMA to make rules replicating the current anti-siphoning regime to apply to these platforms.

5.3 Australians value sport on free-to-air services

Major sporting events are at the core of commercial television for audiences. Research undertaken by Deloitte in 2020 found that '...Australians favour sport, local news, reality and light entertainment, which together account for the most popular genres on commercial television'.² The research also found that '[t]he ability to watch sports on commercial television is highly valued by Australians — having to pay to watch sports was nominated as being one of the consequences of losing commercial television in Australia.'³

Australians must not lose free access to this content — even when a paid subscription is not required, audiences need data and strong internet access to stream sporting events online. Commercial free-to-air television is free and ubiquitous, providing audiences with the opportunity to have a shared experience of these moments of national significance, and encouraging engagement and involvement in sporting codes.

² *Everybody gets it - The economic and social benefits of commercial television in Australia*, Free TV Australia, 2020, page 27

³ *Ibid*, page 32

6. Continuation of the PacificAus TV service

The PacificAus TV service was launched in May 2020, delivering over one thousand hours of content to local broadcasters across the Pacific every year for 3 years.

In establishing the initiative, Free TV consulted with broadcasters in the region to determine the genres and specific programs that were most sought after by the Pacific audience. The Pacific FTA broadcasters then make independent decisions on the scheduling of the content to meet audience needs, while being under no obligation to use any of the programming provided. Free TV maintains regular communication with Pacific Partner Broadcasters and conducts regular feedback surveys.

Much of the programming supplied in 2020 and 2021 has been scheduled in prime-time, or in the case of children's programming, child-friendly viewing times. This reflects the broadcasters' assessment of the high audience interest in the programs provided, and is supported by the very positive feedback received from Pacific Partner Broadcasters.

The PacificAus TV model is scalable – demonstrated by its expansion to Tonga and Samoa at minimal incremental cost. It is also an efficient and high value model:

- it is managed by a staff of one plus support from Free TV;
- over 80% of funds spent directly on programming rights and technical delivery;
- FreeTV members receive no financial benefit other than program rights payments;
- programming reaches the maximum local audience through incorporation in local FTA broadcast services; and
- PacificAus TV has an annual budget less than \$6 million per annum.

The funding for PacificAus TV is due to expire on 30 June 2022. Should the Government be minded to continue investment in PacificAus TV, Free TV would welcome the opportunity to continue managing this service.