

SUBMISSION BY
FREE TV AUSTRALIA

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News Bargaining Incentive Revenue Distribution – Statutory Payment Scheme



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1. Executive Summary

- Free TV strongly supports the aim of the government’s News Bargaining Incentive (**NBI**) scheme, which is to support the sustainability and diversity of the Australian news media sector. In particular, Free TV supports the government’s preference that relevant digital platforms make commercial deals with eligible news publishers.
- However, this submission addresses the Statutory Payment Scheme which will be relevant where platforms elect not to do commercial deals with news publishers and instead elect to pay a charge under the scheme.
- Section 3 of this submission sets out Free TV’s responses to the questions in the News Bargaining Incentive Revenue Distribution – Statutory Payment Scheme Consultation Paper (**Revenue Distribution Consultation Paper**).
- While Free TV has adopted the requested approach of responding to the questions in the Revenue Distribution Consultation Paper, there are issues that are of significance to the operation of the proposed Statutory Payment Scheme that are not addressed by those questions. These include:
 - The regulation for the Statutory Payment Scheme and the legislation for the NBI scheme must work together.

Recommendation: Part 3 of the News Media Bargaining (Administration) Bill 2026 deals with the liability of each regulated platform to pay the news media bargaining incentive charge (NMI) in the event that the platform does not voluntarily enter into agreements with news businesses. It should be amended to provide that any amounts collected from platforms will be distributed under the Statutory Payment Scheme.

- As stated in the Revenue Distribution Consultation Paper, the intention is to distribute all revenue received under the Incentive Scheme to eligible news businesses, with payments to be distributed as soon as practicable following collection. Collection will however occur at different times for different platforms, meaning such an arrangement will be difficult to administer.

Recommendation: An alternative regime, where eligible news businesses are paid once a determination is made of the amounts to be collected for a tax year (irrespective of when collection occurs), would be more efficient and also fairer to eligible news businesses who would have certainty as to the time and quantum of payment. The mechanisms for collection and payment require further consideration and consultation.

- Legislation will be required to establish the Statutory Payment Scheme, however the details of the allocation arrangements are best addressed via a regulatory instrument, which may be updated from time to time, rather than primary legislation. This will allow necessary adjustments to be made without formally amending the legislation.

Recommendation: Free TV recommends that the structure of the regulatory framework for the Statutory Payment Scheme reflects the structure adopted for the recently enacted TV prominence regime, with key provisions in primary legislation but the detail addressed in regulation.

Recommendation: Free TV recommends that there be a statutory review of the Scheme after the first two years of its operation to ensure that it remains fit for purpose given the rapidly evolving media and digital platform landscape, with provision for periodic review

thereafter. The regulation making power means that necessary adjustments can be made after such reviews without the need for legislative amendment.

- While the Revenue Distribution Consultation Paper suggests that the ACMA will be responsible for determining which entities are eligible news businesses under the Statutory Payment Scheme, the Consultation Paper does not state which government agency or regulator would be responsible for determining the allocation of NMI revenue or generally administering the collection and payment regime. Depending on the criteria that is ultimately used to determine allocations, and the evidence that would need to be provided to support an application to receive NMI revenue, that government body will play a very important role.

Recommendation: An early decision on which entity will have that responsibility should be made and consultation to inform that decision should occur at an early stage of the process of developing the Scheme.

- In this context, each eligible news business should have a clear pathway to appeal a determination of its allocation of NMI revenue in any year as made by the government body responsible for administering the Statutory Payment Scheme. Again, this is a matter that requires further consideration and consultation.
- The timing of the implementation of the Statutory Payment Scheme is also important, given the timing for the NBI regime commencement. Free TV encourages the government to progress with the necessary development of, and further consultation required for, the Scheme as soon as possible. This is necessary to ensure that the Statutory Payment Scheme is implemented at the same time as the broader NBI scheme.

Recommendation: The legislation and regulations for the Statutory Payment Scheme should be put in place at the same time that the legislation for the NBI scheme is enacted.

- Notwithstanding that timing is constrained, given the need for both the NBI scheme and the Statutory Payment Scheme to be implemented at the same time, Free TV recommends a further consultation phase for the proposed Statutory Payment Scheme legislation and regulation. This will enable stakeholders to provide input on the issues raised above, as well as other important issues.
- Free TV looks forward to continuing to engage with government as these important reforms are progressed and it is hoped that legislation for both the NBI scheme and the Statutory Payment Scheme is enacted in the short term.

2. Introduction

2.1 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 FTA television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free 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. Revenue Distribution Consultation Paper: Responses to Questions

Consultation Question	Free TV Response
Eligibility	
1. Do you have any concerns with the proposed registration and application process?	Free TV supports use of the register for eligible news businesses under the Code to determine eligibility under the Statutory Payment Scheme.
2. Would your organisation meet the criteria as set out under the ACMA register? If not, please explain which component of the eligibility criteria may cause an issue.	Free TV’s members meet the criteria for registration as eligible news businesses under the Code.
3. Is the proposed eligibility criteria fit-for-purpose in ensuring that the scheme supports continued investment in public interest news; diversity of media voices; and quality journalism?	Yes, the criteria are fit for purpose.
4. Do any of the proposed eligibility criteria present significant costs or administrative burden for your organisation?	No, the proposed eligibility criteria do not present significant costs or administrative burdens for Free TV’s members. Those who are already registered under the Code should not be required to re-register.
Payment Allocation Formula	
5. Is FTE journalists a good approximation for investment in news and journalism, and an appropriate basis for determining payments to the sector?	<p>Free TV does not support the view that FTE journalists provide a reasonable approximation for actual investment in news and journalism. FTE journalists should not be used as the basis for distribution of NMI revenue to eligible news organisations.</p> <p>The reliance on FTE journalists as the basis for payments does not adequately reflect the contributions of free to air commercial television broadcasters, over a long period of time, to public interest journalism.</p> <p>The objective of the News Bargaining Incentive scheme, as a whole, is to support the sustainability and diversity of the Australian news media sector. The costs incurred by eligible news organisations in producing news content extend well beyond the direct costs of employing journalists.</p> <p>While the costs of employing journalists will be one of</p>

	<p>the core components incurred in producing news content, there are other components that should be taken into account to assess the investment by a news business in news and journalism. Those components include direct costs; production costs such as studio equipment and technology; for broadcasters, a proportion of transmission costs; legal; publicity and marketing; training; digital transformation and innovation. These additional – and unavoidable – actual business expenses associated with producing news and journalism should be recognised in the allocation mechanism for the NMI revenue.</p> <p>In addition, allocation should be determined based on historical data, that is, financial information for the most recent financial year of an eligible news organisation at the time that its application is submitted, rather than being determined on a look forward basis, as appears to be contemplated.</p> <p>As discussed in Free TV’s response to question 10, this will achieve two purposes. First, it minimises the need to impose obligations on eligible news businesses to maintain particular levels of expenditure over a future period (where unexpected events may result in unforeseeable changes to business plans) and secondly it also minimises the burden on government to monitor eligible news businesses over future periods.</p> <p>Although this approach may impose more of an administrative burden on news organisations in terms of information gathering in support of annual applications, this provides a fairer means of distribution of NMI revenue and will assist in ensuring that the overall aims of the NBI scheme are met. In addition, the Consultation Paper raises a concern that “gaming the system” may be encouraged. If the allocation of NMI revenue is based on historical performance, such gaming would not be possible.</p> <p>Recommendation: Investment in news and journalism should be determined based on a broader range of costs of a news organisation, in its most recent financial year, in producing news and journalism content.</p>
<p>6. Are the identified editorial roles clear and fit-for-purpose? Are there other roles that should be included?</p>	<p>As noted in the response to question 5, Free TV does not support the currently proposed narrow eligibility criteria based on the number of journalists employed.</p> <p>However, if this basis is used to determine eligibility,</p>

	<p>the definition is too narrow and there is a lack of clarity as to what constitutes a journalist and how an FTE journalist would be determined.</p> <p>For example:</p> <ul style="list-style-type: none"> • The criteria are stated to exclude “narrators, anchors, and presenters who primarily present core news content produced by journalists”. This does not recognise the core role of those individuals in producing news content. The role of the majority of anchors of news and current affairs programs, many of whom are highly experienced journalists, involves significant editorial involvement, including conducting interviews, editorial decision making and processes and full story development. There appears to be no flexibility allowed to demonstrate the important role that they play or the collaboration between many different employees in producing news content. • It is unclear how an FTE journalist will be determined, that is, will it be necessary for only some part of an employee’s time to be devoted to producing news content for that employee to be included as an FTE journalist or is there a minimum amount of content that the employee is expected to produce to enable the employee to be determined to be an FTE journalist.
<p>7. Do the proposed evidentiary requirements present any specific difficulties, or a sizeable burden, for your business? Are there any risks arising from these evidentiary requirements?</p>	<p>Again, as noted in the response to question 5, Free TV does not support the currently proposed narrow eligibility criteria based on the number of journalists employed.</p> <p>However, if this basis is used to determine eligibility, although the evidentiary requirements are not clearly set out in the Consultation Paper, the information that is included in the Consultation Paper creates concern.</p> <p>Free TV’s concerns relate to the evidence of the <i>nature</i> of the role of each journalist that may be required to be put forward. The Consultation Paper states that this “<i>could take the form of evidence of news content produced by that employee, or via a statutory declaration</i>”. If each potentially eligible news organisation was required to provide news content for each journalist that it employed, that would be administratively burdensome not only for the news organisations but also for the government</p>

	<p>agency or regulator that was required to review the applications.</p> <p>It is also unclear what the purpose of providing such content would be. There is no indication whether the agency or regulator reviewing that content would be required to assess whether that content was news content. Free TV's view is that such an assessment would be inappropriate and would also mean that decisions in relation to allocation of NMI revenue would be subjective and opaque.</p> <p>Recommendation: Whatever criteria is ultimately applied to determine the allocation of NMI revenue, the supporting evidence should be a standard statutory application that is provided by each eligible news business each year to support its application for an allocation of that revenue.</p>
<p>Additional support for activities (weightings)</p>	
<p>8. Are the proposed weighting categories an appropriate and effective means of accounting for the economies of scale and resourcing differences across the sector; and meeting the objectives of the Statutory Payment Scheme?</p>	<p>If the payment allocation formula is amended in the manner recommended by Free TV in response to question 5, this will provide for a fair and equitable allocation between different news businesses.</p> <p>For example, if a broader range of costs incurred in producing news and journalism is taken into account, the costs of supporting journalists in providing news in regional and rural areas will already be reflected in allocations. Small businesses will receive allocations that are commensurate with their investment in news and journalism and will not be limited by the fact that they may employ only a small number of FTE journalists. Further, the overall costs of producing news serving or representing marginalised communities will also be recognised by the alternative proposed by Free TV.</p> <p>Recommendation: If Free TV's alternative mechanism for determining investment in news and journalism is adopted, this will remove the need to provide additional support through a weightings mechanism for specific news and journalism activities.</p>
<p>9. What weighting values would best achieve these aims?</p>	<p>Please see Free TV's response to question 8.</p>

Payment Conditions

10. Is the proposed retention obligation an appropriate measure to ensure that funding provided to the sector delivers against a clear and valid public purpose?

To eliminate commercial volatility and business planning uncertainty, the scheme must be anchored to the financial year just completed rather than forecasts for a year ahead.

This would incentivise the employment of journalists over the period of any given reporting year with the payment made at the end of the period, while still allowing news media businesses to retain appropriate autonomy to make commercial decisions without impacting previous payments. This is because changes to headcount (up or down) would be reflected in the next distribution payment for the corresponding (relevant) period.

Therefore, Free TV’s view is that the proposed retention obligation is not a viable approach.

It is difficult for any business, not limited to eligible news businesses, to absolutely commit to retain a specific number of employees in a future period. Unexpected changes in economic conditions may make head count changes inevitable and decisions by employees to leave a business – which also impact employee numbers – are difficult to forecast in advance. If eligibility for allocation is determined on a look forward basis limited to FTE journalists, different media organisations may underestimate the number of FTE journalists that they will employ thereby distorting the allocation process as there will be no possibility of the allocation increasing if numbers are higher than anticipated.

In addition, where allocations are based on forward looking estimates, the administration of the Statutory Payment Scheme becomes more complex than is necessary as it is inevitable that a high level of monitoring will be required.

For this reason, Free TV supports determining allocations of NMI revenue based on historical data. In other words, whatever test is used (noting Free TV’s responses to earlier questions) the test should be assessed by reference to the financial year immediately prior to the application period for allocations are made.

For example, if (which is not Free TV’s preferred outcome) allocations are based on FTE journalist numbers, each eligible news business should be

	<p>assessed on the basis of the number of FTE journalists employed for the previous financial year. That would be able to be verified and would not subsequently need to be re-assessed.</p> <p>In addition, if allocations are made on the basis of future operations of eligible news businesses, it is not clear what would be required to be demonstrated for those businesses claiming additional weightings. As noted in the responses to question 8, Free TV does not support additional weightings. If that approach is nonetheless adopted, what action would be taken to monitor that an eligible news business met the criteria? It is clear that it would be more appropriate to assess eligibility for weightings based on historical performance.</p> <p>Recommendation: Free TV supports determining allocations based on the financial information for the financial year immediately prior to the application period for allocations. On that basis, the proposed retention obligation is not required.</p>
<p>11. Are there any risks or other issues we should take into consideration with regard to the retention obligation, including time periods and tolerance thresholds?</p>	<p>Please see Free TV’s response to question 10. If eligibility is determined on the basis of historical business performance (that is, for the financial year that ended most recently prior to an application for an allocation being made) this will remove the risks from “look forward” tests.</p> <p>Additionally, to provide greater certainty and meet the spirit of the intent of the scheme, when media entities are calculating the number of qualifying FTEs it should be done on a 365 day pro rata basis for those not employed for the financial year or, for example, on a part time. This would mean news organisations were only receiving a payment for the actual period during which the qualifying FTE was employed. This would avoid the risk of “gaming” of the scheme and prevent complex pay back obligations and penalties.</p>
<p>12. What penalties should apply for organisations that are later found to have mis-reported their eligibility or employment practices?</p>	<p>Free TV does not support the imposition of any form of penalties on organisations that are found to have mis-reported their eligibility or employment practices.</p> <p>There are no penalties imposed under the <i>Competition and Consumer Act 2010 (CCA)</i> in relation to incorrect provision of information for registration under the Code and the same approach should be used for the Statutory Payment Scheme.</p>

	<p>There is another advantage of basing allocation on historical information. That information will be able to be verified by the administering government agency or regulator at the time that an application for an allocation of NMI revenue is made, removing the need for a penalties regime to be considered.</p>
<p>Transparency arrangements</p>	
<p>13. Do you have any concerns about the general approach to regular reporting and an event-based notification framework?</p>	<p>Free TV has a number of concerns regarding the proposed approach to reporting.</p> <p>The proposed reporting is unnecessary:</p> <ul style="list-style-type: none"> • The first category of reporting is to update “<i>figures relevant to payment calculation</i>”. It is assumed that this refers to reporting on FTE journalist employment numbers. As outlined in Free TV’s previous responses, this would be unnecessary if allocation of NMI revenue was based on historical data. • The second proposed report is to outline “<i>figures relevant to conditions imposed on the recipients of payments</i>”. It is assumed that this refers to the payment conditions that are set out in section 4 of the Consultation Paper. However, reporting on those conditions is covered by one of the category of reporting referred to immediately above. • It is also the case that the final two categories of reporting would be unnecessary if the approach on allocation suggested by Free TV was adopted. <p>Further, if the approach suggested by Free TV was adopted, as applicants would provide accurate information in relation to their businesses or, at a minimum, the numbers of FTE journalists that they employed, in their annual applications that data would be able to be used by government in considering the effectiveness of the Scheme.</p> <p>If additional reporting is required, it should be the case that this reporting relates only to matters where data is not already collected by government. For example, section 5 of the Consultation Paper states that regular reports would include the local government areas covered by news media. The ACMA has developed the Media Diversity Measurement Framework and has in place the necessary arrangements to collect the data that is required to support that Framework. Free TV is supportive of the Framework however, given that existing regime, this</p>

	<p>raises the question of why further data of coverage is required to be collected under this Scheme.</p> <p>While supporting appropriate transparency measures, Free TV opposes the disclosure of granular, company-specific data or the creation of tools such as comparative league tables (which might, for example, rank entities based on funds received or number of journalists) due to acute commercial sensitivities.</p> <p>To protect press independence and minimise commercial risks, the public register should only display:</p> <ul style="list-style-type: none"> • An annual alphabetical list of all media entities that successfully received funds. • The total collective number of journalists eligible under the scheme. • The total collective pool of money distributed across the industry. • Any collected revenue that went undistributed in a financial year and reasons why. <p>As a final comment on this question, Free TV notes that the Consultation Paper at page 6 states in part:</p> <p style="text-align: center;"><i>To satisfy public accountability requirements for the use of public resources, the Statutory Payment Scheme would be subject to the Commonwealth Resource Management Framework and the Public Governance, Performance and Accountability Act 2013.</i></p> <p>It is unclear whether Part 5 of the Consultation Paper is intended to set out how public accountability will occur or whether other requirements would be imposed consistent with the <i>Public Governance, Performance and Accountability Act 2013</i> and clarification on this point would be welcome.</p>
<p>14. What lead-in time would you require for information required under regular reporting and event-based notices? Do you have any concerns about the feasibility of collecting this information, the timing or sequencing of obligations, or disclosure of commercially sensitive information?</p>	<p>Please see Free TV’s response to question 13. Free TV has the following additional comments if information is required to be collected (though as noted above, Free TV’s view is this is not the case):</p> <ul style="list-style-type: none"> • It is imperative that the process to receive payment is swift and timely. • While it is feasible to collect financial information (including employment numbers) there is insufficient detail provided in the Consultation Paper as to how information supporting weightings

	<p>would be collected, for example, information regarding news serving or representing marginalised communities would be collected.</p> <ul style="list-style-type: none"> • Publication of information on the recipients of payments, the amount of funding received by recipients or weightings applied. While such information will be held by government and could be used by government to assess the effectiveness of the Scheme this type of granular, and highly commercially sensitive information, should not be publicly released (see comments above). • It is assumed that the reference to “aggregate industry figures and outcomes” refers to government publishing reports on the effectiveness of the Scheme. Free TV believes that the Scheme will be effective to support news businesses and therefore welcomes the publication of assessments of the effectiveness of the Scheme, when these are undertaken. However, it is stressed again that any such reports should not include granular details of the participants in the Scheme, or how much was raised. • As Free TV does not support the imposition of penalties (whether in the form of pecuniary penalties or exclusion from the Scheme), Free TV equally does not support the publication of details of the imposition of any penalties. <p>Furthermore:</p> <ul style="list-style-type: none"> • The ACMA must issue explicit, clear lists/guidance of eligible and ineligible job roles. • Media companies should never be required to provide personal identifying information of employees. A collated outline of roles/titles is more than sufficient. • The annual application should require nothing more than a Statutory Declaration from an authorised executive confirming that the data contains only qualifying, pro-rata-calculated FTEs for the reporting period. • The ACMA should be restricted to conducting full audits on a random basis or alternatively only when backed by clear, evidence-based suspicion of non-compliance. • Media entities must be granted a grace period and a right of reply to challenge any negative audit findings. If an error is verified and uncontested, the
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	entity should simply pay back the discrepancy.
15. Do you have any concerns or views about penalties under the scheme, including the thresholds and penalties for serious non-compliance?	Please see Free TV's response to question 12.