

21 June 2024

Director – Strategy and Research
Online Safety, Media and Platforms Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

By email: OSAReview@COMMUNICATIONS.gov.au

Dear Madam/Sir

Response to Statutory Review of the Online Safety Act 2021 Issues Paper

Free TV Australia (**Free TV**) welcomes the opportunity to provide a submission in response to the *Statutory Review of the Online Safety Act 2021 Issues Paper* (**Issues Paper**). Free TV is the peak industry body representing all of Australia’s commercial television broadcasters who provide professionally produced content via both broadcast and digital services.

Free TV’s members deliver trusted local news, information and entertainment to audiences across the platforms they operate. As such, this response is focused on ensuring that any reforms to the *Online Safety Act 2021* (**Online Safety Act**) focus on digital services such as social media platforms on which serious user harms are more likely to arise, and do not unnecessarily capture all digital services.

As noted in Free TV’s recent submission in response to the *Modernising Australia’s Classification Scheme – Stage 2 Reforms* public consultation paper (**Classification Consultation Paper**), it is appropriate to distinguish regulations that apply to professionally-produced content, from regulations that address harms arising from user-generated content and higher-impact material posted online.¹

This submission recommends close consideration be given to regulations in other jurisdictions which use risk and reach thresholds, among other mechanisms, to focus online harms regulations on digital environments of most concern. This will ensure online harms regulation is proportionate and does not impose duplicative or unnecessary regulatory burdens on lower-risk services.

Free TV’s members provide trusted content in accordance with established editorial standards

Commercial broadcasters provide content that is comprehensively covered by editorial standards set out in the Commercial Television Industry Code of Practice (the **Free TV Code**). The Free TV Code is developed by Free TV and registered by the Australian Communications and Media Authority (**ACMA**).² It applies to content broadcast terrestrially. Where that content is also provided online on Free TV members’ digital services, audiences also benefit from the robust safeguards it provides. As set out in Free TV’s submission in response to the Classification Consultation Paper, the classification of programs provided online is an important audience safeguard.

¹ Available at <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Classification-Scheme-Stage-2-reforms-May-2024.pdf>. As noted in that submission, the two reviews should be carefully coordinated, including to remove current ambiguity and potential duplication between the two schemes.

² Among other matters, the Free TV Code sets out rules relating to program classification, news and current affairs, advertising restrictions and complaints-handling.

Online harms regulation should be focused on higher-risk digital services

The Minister’s foreword to the Issues Paper notes that this review is about identifying optimal online safety regulatory settings, with the paper also referring to opportunities to simplify regulatory arrangements.³ This presents an opportunity to consider whether the very broad definition of ‘designated internet service’ is optimal, given it is the basis on which nearly all websites and many online services, such as streaming services, are subject to the Online Content Scheme and Basic Online Safety Expectations (**BOSE**).

Where it refers to vectors for online harm, the Issues Paper identifies services with scale that permit social media posts, direct messages and stories as being among higher risk platforms.⁴ These services are very different in nature to the digital services Free TV’s members provide, including because our members’ services do not enable user uploads or interaction between audience members.

Indeed, the Issues Paper notes in relation to codes being made under the Online Content Scheme that the scope of services covered by the designated internet services sector is very broad.⁵ It acknowledges that while this gives regulators significant flexibility to capture a wide set of services, it also adds complexity to drafting a single industry code. This is particularly the case where a single code attempts to cover websites providing pornographic material, as well as websites, like those of Free TV’s members, that do not host any adult content.

The Issues Paper appropriately refers to other jurisdictions where regulatory approaches are based on the risk and reach of services.⁶ There is a strong argument that reform should refocus online harms regulations, like in the UK and Ireland, on user-to-user platforms with higher reach and risk and other services with high-risk functionalities.⁷ This would mean that digital services like those provided by Free TV’s members—including both broadcast video on demand (**BVOD**) services that carry classified content and other websites, such as news and sport websites, which do not provide high risk content—would be exempt.

Protections for people in prominent positions

The Issue Paper looks at the issue of online abuse of public figures, noting that those with a public profile are subject to higher rates of online abuse and harassment.⁸ In particular, it lists women in prominent positions as being among Australians more likely to experience online harm,⁹ as well out journalists, who often have a professional requirement to be active online.

³ Issues Paper, page 9.

⁴ Issues Paper, page 9.

⁵ Issues Paper, pages 14–16.

⁶ Issues Paper, page 16.

⁷ As noted in the Issues Paper, in the UK even transparency measures—which in Australia includes regulatory powers relating to reporting on BOSE requirements—focus on the highest risk or highest reach services. See page 49.

⁸ Issues Paper, page 42.

⁹ Issues Paper, page 10.

The Issues Paper explains that:

Online abuse may...force public figures to withdraw from public life, and stifle the quality of public debate by making it more difficult for public figures to participate safely in online discourse. In the context of women journalists, this phenomenon has been coined 'the chilling effect', where the 'chilling' of women's active participation in public debate is described as a threat to the public's right to information and an attack on media freedom and democracy.¹⁰

This issue is of significant concern. Journalists and other public figures should not be attacked for doing their job. Given that high amounts of online abuse of public figures may compound into volumetric attacks (or 'pile-on attacks')—and given the potential impact that has on both the individual and quality of public debate of matters of public interest—consideration should be given to adjusting current thresholds for online abuse.

Free TV acknowledges that careful consideration should be given to how to define public figures and agrees that appropriate weight should be given to both freedom of expression and public interest considerations so that reasonable debate online is not unduly stifled.

Yours sincerely



Bridget Fair
Chief Executive Officer

¹⁰ Issues Paper, page 49.