



AUSTRALIA

Submission by Free TV Australia

Social Media and Australian Society

Submission to the Joint
Parliamentary Select Committee
on the influence and impacts of
Social Media on Australian Society
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1. Executive summary

- Free TV Australia appreciates the opportunity to submit to the Joint Select Committee’s Inquiry into the influence and impacts on social media on Australian Society (**Inquiry**).
- Drawing from the Terms of Reference of the Inquiry, this submission focuses on:
 - Harmful or illegal content disseminated over social media, which can be contrasted with the value and safety of commercial free-to-air television
 - Algorithms and recommender systems influencing what Australians see, the dominance and role of social media platforms as unavoidable business partners, and the harms arising from their practices
 - Importance of Australian journalism, news and public interest media in countering mis and disinformation
 - Meta’s abandonment of deals under the News Media Bargaining Code and the need for it to be designated to ensure the fair remuneration of those who produce the news content
 - Enforcement measures to be taken.
- In short, this submission sets out the significant and varied risks to Australian individuals and Australian society. The harmful impact of social media content on audiences, individuals and businesses is becoming more prevalent and is now well recognised by governments, academics, researchers and health care professionals.
- Given these harms, social media platforms should be regulated in a way that places safety as a priority. Harmonisation should not be an end in and of itself, but rather, regulation should be appropriate to the entity and industry being regulated, taking into account the level of risk posed to society, the degree of market dominance and status as an unavoidable trading partner for many businesses. To this end, we ask Government to consider the following:
 - **Ex ante framework as a first step** – The ACCC has already recommended to the Government the development of mandatory codes for designated digital platforms under an ex ante framework. Implementing and using this regulatory tool in respect of social media and digital platforms should be a key priority and is an important first step.
 - **Fair remuneration for news** – Measures to ensure that Australian media organisations, and the hard-working journalists that bring public interest stories to life, are given attribution and are fairly remunerated for the new that is used on social media, including that which is ingested into large language models for generative AI systems.
 - **ACCC market study** – Free TV has previously called for an ACCC market study of the impact of generative AI on the creative sector. This should extend to AI uses by social media platforms.
 - **Social media platforms as publishers** – Free TV recognises that there have been earlier attempts at legislative changes,¹ which aimed to make social media services the publishers of end-user comments, providing an incentive for these services to manage defamatory and harmful content. We consider that properly characterising social media platforms as publishers, subject to the same laws as other publishers, is critical.
 - **Transparency and complaints handling** – Transparency of social media platforms is vital to mitigating harms. Free TV has recommended in the past the introduction of enhanced

¹ Such as through the Social Media (Anti-Trolling) Bill 2022, which lapsed in April 2022 - https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6831

moderation tools for page owners and timely removal of content where it misuses brand or personal identities. There must also be improved complaints-handling and responsiveness on the part of social media services, to ensure members of the public are able to make contact and resolve their grievances in a simple and timely manner.

- **Other policy solutions** – Government should consider other policy solutions and explore whether there are additional options that could be applied to the social media context, such as regulatory measures that ensure that they carry news and that the producers of that news are fairly and properly compensated.
- In addition to the above, we urge Government to designate Meta, particularly in respect of both Facebook and Instagram, but also WhatsApp and Threads, under the News Media Bargaining Code, as there is a significant imbalance in the bargaining position in favour of Meta, without Meta making any discernible contribution to news sustainability in Australia. Government should also designate other platforms such as YouTube and TikTok to ensure that the creators of Australia’s news content are fairly remunerated.
- Free TV members are committed to providing a positive experience for audiences and acknowledge the Government’s focus on online harms regulation through its consultation on the Online Safety Act Review, to support a healthy media ecosystem. We will continue to engage in this, and other consultation processes, into the future.

2. Introduction

2.1 About Free TV Australia

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. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluating the economic and social benefits of commercial television in Australia* (the **Deloitte Report**), 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. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

Free TV members are vital to telling Australian stories to Australians, across news, information and entertainment. FTA television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television, and that Australians prefer local stories. In FY23, commercial television networks spent \$1.67 billion on Australian content, dedicating 87% of their content expenditure to local programming.

3. Safe and regulated - Australian free-to-air commercial broadcasters

3.1 How we safeguard our audience's experience

Commercial free-to-air broadcasters have always placed the safety of their audiences and the content delivered to them as a priority of the highest order. Our members are subject to robust regulation, which they have adopted into their practices, and their very ethos, and have refined over many years.

The *Broadcasting Services Act 1992 (BSA)* provides for a regulatory environment for the broadcasting industry in Australia. The Free TV Commercial Television Industry Code of Practice (**Free TV Code**), developed under s 123 of the BSA, and registered by the Australian Communications and Media Authority (**ACMA**), applies to all commercial television broadcasting services operated by a licensee.

The Free TV Code regulates the broadcast content of commercial free-to-air television according to current community standards and assists viewers in making informed choices about their television viewing. It also provides a procedure for handling viewer complaints about matters covered by the Free TV Code.

Through regulation, Australian society is guaranteed that when they turn on the television, they are entering a secure environment where they can expect:

- **Classification that is clear and consistent** – The content they watch on linear TV is subject to clear and consistent classification standards, properly classified into categories that are well-understood and have a high level of awareness across all consumers. Our members adhere to the Television Classification Guidelines under the Free TV Code to ensure that classified programs are appropriately labelled for their target audience. This means that audiences can expect programming to be classified according to age suitability, themes, and content warnings. For example, programs may be rated G (General), PG (Parental Guidance), M (Mature) or MA15+ (Mature Accompanied). This allows audiences to make informed decisions about their viewing.
- **Advertising subject to restrictions** – The advertising they encounter complies with advertising codes including those that are set out in the Free TV Code for broadcast TV, and the Australian Association of National Advertisers (**AANA**) Codes:
 - the AANA Code of Ethics
 - the AANA Code for Marketing & Advertising Communications to Children
 - the AANA Food and Beverages: Advertising and Marketing Communications Code
 - the AANA Environmental Claims in Advertising and Marketing Code
 - the ABAC Responsible Alcohol Marketing Code, where applicable,

all of which extend to our members' Broadcast Video on Demand (BVOD) services (being the free online and 'catch up' content that individuals may consume at a time they choose) to ensure that advertising is suitable, having regard to the time of its placement and target audience, and in accordance with community standards.
- **News and current affairs that is accurate and impartial** – All news and current affairs programming produced by our members is presented accurately, ensuring all viewpoints included in the program are not misrepresented. Our news is presented fairly and impartially, and clearly distinguishes the reporting of factual material from commentary and analysis. In

addition, before deciding to air news and current affairs stories, our members pay due regard to privacy, ensuring that there is always a public interest reason to broadcast such information or clear consent has been obtained. This underlines the commitment of our members to quality news programming that sets their programming apart from other sources of news.

- **Commercial disclosures are transparent** – If watching a factual program that endorses or features a third party’s products or services in accordance with a commercial arrangement, this will be brought to the attention of the viewer. For any program principally directed to children, any endorsement will be presented as a discrete segment and sponsorship will be clearly disclosed.

3.2 Clear and direct complaints processes

Free TV members have rigorous complaints-handling processes under the enforceable Free TV Code, as applicable to broadcast television. Where a viewer is dissatisfied with a particular broadcast, wishes to raise a concern or provide feedback, they are able to contact a free-to-air broadcaster and can expect what they raise to be acknowledged and addressed in a timely manner. The licensee must send a written response within 30 days of receiving the complaint, or will use their best efforts to refer complaints to the Advertising Standards Bureau (**ASB**), where the ASB is better placed to respond.

Should the complainant not be satisfied with the response received from the licensee, they may refer the complaint to the regulator, the ACMA. Free TV reports annually to the ACMA about Code complaints received by licensees. This co-regulatory complaints-handling process ensures that audiences have a clear and direct pathway to contact television licensees about content broadcast on television.

By adhering to these measures and practices, and by striving for constant improvement, commercial free-to-air television broadcasters uphold their commitment to providing a safe and responsible broadcast environment for audiences of all ages and backgrounds to enjoy.

3.3 Social benefits of free television

The free-to-air television industry is the largest producer and commissioner of Australian content. As set out in ACMA’s recent report, *TV in Australia: Spending on commercial TV programs for FY23*,² which documents a record spend on Australian content by Free TV broadcasters, notably:

- \$1.67 billion spent by commercial television broadcasters on Australian content, a record amount.
- 87% of all program expenditure was for Australian content, an increase of 8% on the previous year.
- Increased amount spent on sports, up 17% on the previous year.
- Record investment of \$413 million in trusted news that Australians can rely on.
- 16% increase in expenditure on regional news. Notably, the only provider of local TV news bulletins in Australia is regional commercial television.

²<https://www.acma.gov.au/commercial-tv-program-expenditure>

Our members are committed to ensuring Australian audiences continue to see Australian faces, voices and stories on their screens. The local content broadcast by our members also delivers enormous cultural and social value by creating and reinforcing our national identity.

Providing quality Australian programming for free to all Australians and bringing Australians the trusted news, live and free sport and local entertainment programming that they love sets our members apart from other content creators, including those that post content on social media platforms.

3.4 Value of free-to-air news

Public interest journalism plays a critical role in our society. Robust, accountable and independent public interest journalism educates and informs citizens, holds power to account and is an essential component of a well-functioning democracy. That is why the sustainability of the Australian news media sector is so important.

Whether it is ahead of an election, in times of crisis like fire and flood, or to understand issues of daily national and local relevance, Australians can turn to commercial free-to-air television for news and current affairs. Free TV's members distribute public interest journalism across platforms, delivering audiences news content where and when they want it, including flagship television news bulletins, and across a range of owned and third-party digital platforms.³

With respect to news and current affairs, the Deloitte Report showed that:

- More than two-thirds (65%) of Australians say commercial television is a trusted source of news that is essential to society and democracy.⁴
- Commercial television is chosen as the most useful news source during an election (35%).⁵
- Commercial TV supports regional and remote economies by providing a valuable source of employment. Networks employed 1,115 full time equivalent jobs in regional areas in 2021, with local hiring ensuring coverage of relevance to the local area and community and directly contributing to local regional economies.⁶

On the issue of accurately informing Australians ahead of important moments of civic participation, it is notable that JWS Research findings reported in *The Australian Financial Review* found that in the lead-up to the 2022 Federal Election commercial free-to-air television was the most useful source of election news and information. At a total of 35%, this was 12 points higher than the next news source.⁷

³ Owned and operated properties include 7Plus (Seven West Media including Prime7), 9Now (Nine Entertainment) and 10 Play (Paramount ANZ). News content is also made available through YouTube (including 7NEWS, 9 News Australia, 10 News First, Nightly News 7 Tasmania) and through Facebook via pages such as WIN News Illawarra (WIN Corporation), Spencer Gulf Nightly News and Nightly News 7 Tasmania (Southern Cross Austereo). There is also an extensive presence on Instagram (7News, 9News, 10 News First).

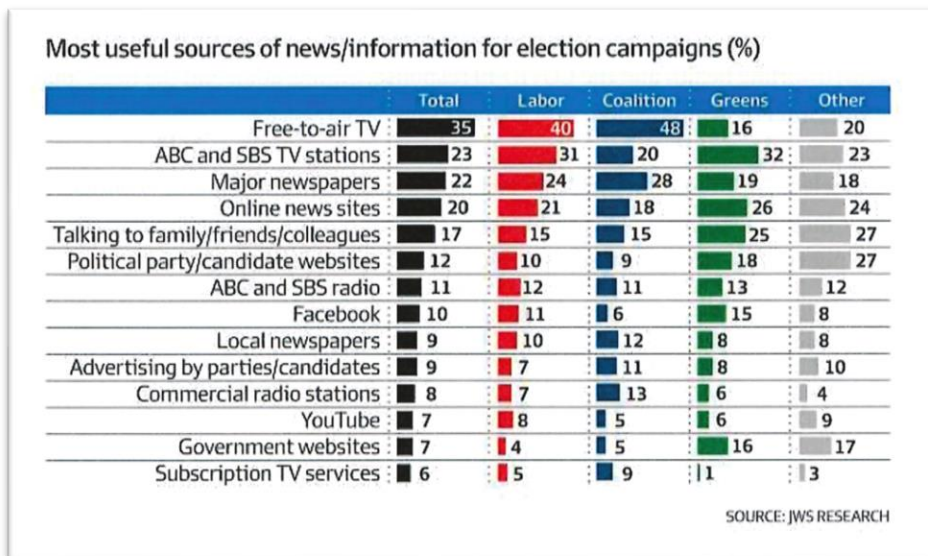
⁴ Deloitte Report, page 38.

⁵ Deloitte Report, page 37, citing 2022 JWS Research.

⁶ Deloitte Report, page 32.

⁷ *The Australian Financial Review*, 'The real reasons why Labor won the election', Phillip Coorey, 9 August 2022 -

<https://www.afr.com/politics/federal/voters-motivated-by-economy-and-climate-but-not-by-covid-or-borders-20220808-p5b811>



JWS Research findings relating to the 2022 Federal Election

More recently, the enduring importance of news from commercial free-to-air television networks was demonstrated by research from the ACMA into the news consumption habits of Australians in 2023. Among other things, the *Communications and media in Australia series: How we access news* report,⁸ released in February 2024, found that free-to-air television remains the most common main source of news, used by a quarter of Australian adults (26%—stable compared to 2022), followed by online news websites or apps (23%).⁹

Even more recently, the 2023 Television and Media Survey conducted for the Australian Government by the Social Research Centre (the **Television and Media Survey**), and released in April 2024, found that:

- Commercial free-to-air TV was the most commonly reported source of news (58%), followed by radio (51%), domestic/Australian news websites or apps (49%), and social media (46%).¹⁰
- Commercial free-to-air TV was the most common main source of local (26%), state or territory (30%), Australian national (28%), and international news (20%).¹¹
- The factors that respondents most commonly indicated were important when choosing news and media content were that it is from a source they have used before and trust (60%), that it is recent (58%), and that it is professionally produced (53%).¹²

The Television and Media Survey also contains relevant insights into Australians’ concerns about the news they get from AI. Relevantly, it notes that:

⁸ *Communications and media in Australia series: How we access news* – Executive summary and key findings (ACMA Report) – available at <https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news>.

⁹ ACMA Report p 1.

¹⁰ Social Research Centre, *The 2023 Television & Media Survey – Summary Report (prepared for the Department of Infrastructure, Transport, Regional Development, Communications and the Arts) (Television and Media Survey)*, April 2024, page 76 – available at <https://www.infrastructure.gov.au/sites/default/files/documents/the-2023-television-and-media-survey-summary-report-april2024-pdf.pdf>.

¹¹ Television and Media Survey p 83.

¹² Television and Media Survey p 84.

- More than three-quarters (78%) of respondents who were aware of Generative AI said that their trust in a news article would be negatively impacted if they knew that the article had been written in full by Generative AI (net somewhat negatively and very negatively).¹³
- The key concern driving this negative sentiment is that the information for the AI comes from untrustworthy sources (33%).¹⁴
- There is strong consensus that people should be made aware of how much news they consume is created by Generative AI (95% net strongly agree and agree).¹⁵

These factors of trust and professional news production, and transparency, should be at the heart of public policy responses relating to regulation of social media platforms.

3.5 Sustainability issues for free television

Free TV has on many occasions outlined to Government, most recently in our pre-budget submission, how the commercial broadcasting tax (spectrum tax) poses critical challenges to the viability and competitiveness of Australian broadcasters. The spectrum tax was introduced in 2017 as a five-year interim arrangement as part of the Media Reform package. When the spectrum tax commenced in 2017, \$40 million (with an aggregate \$43.5 million per annum determined by Cabinet) in taxes was imposed on the Free TV industry. Through CPI indexation, the underlying rate has increased by almost 19% (not taking into account compounding effects).

As the spectrum tax has increased, industry revenues have decreased. This is particularly the case in an increasingly global media environment dominated by multinational digital platforms. In short, nowhere in the world do free-to-air commercial television broadcasters pay more for licence fees than in Australia, and the amounts we pay are significantly higher than in comparable jurisdictions – 52 times higher than the equivalent per capita charge on US broadcasters.

This is having very real consequences for the industry as a whole. We are now in a position where regional licensees have been forced to start turning off unprofitable licences. For example, the shareholders of Mildura Digital Television (**MDT**) can no longer subsidise the losses incurred, with the result that it will be wound up and cease to operate on 30 June 2024. This means that almost 68,000 people will now miss out on content supplied by Network 10 to MDT and its viewers.

A number of key policy objectives are needed to support our local commercial television sector:

- Policies that support public interest journalism in the face of rising mis and disinformation
- Action to address Meta’s refusal to pay for news under the News Media Bargaining Code framework, and
- Fairer competition rules to address the power of digital platforms who benefit from an increasing share of advertising revenue, but do not share broadcasters’ responsibility for producing accurate news and information, or the competition caps imposed by the voices test and the one-to-a-market rules.

¹³ Television and Media Survey p 91.

¹⁴ Television and Media Survey p 92.

¹⁵ Television and Media Survey p 93.

4. Social media harms

Social media has become an accepted part of modern society, globalising communication, increasing connectivity and providing rapid information dissemination. However, alongside such benefits, social media platforms have in many respects become places of harmful content, including mis and disinformation. Left unchecked, this proliferation of harmful content has contributed to poor mental health outcomes, particularly amongst young people, and has left businesses unable to compete with practices that put profits above safety.

4.1 Design of social media

Social media interfaces are designed in a way that keeps individuals using, longer than they may have planned, and sometimes even when it is interfering with their day-to-day life. The very design of social media feeds capitalise on the human brain's desire for intermittent reinforcement, novelty and unpredictability, and a never-ending stream of content.

The US Surgeon-General, Dr Vivek Murthy, has recently called for warnings to be placed on social media, similar to those on tobacco and alcohol products, and has referenced research showing an association between time spent using social media and mental health problems amongst adolescents.¹⁶ Dr Murthy has said:

*The platforms are designed to maximize how much time we all spend on them ... It's one thing to do that to an adult, and another thing to do it to a child, whose impulse control is still developing, whose brain is at a sensitive phase of development.*¹⁷

Prominent psychologist, Dr David Greenfield, who established the Center for Internet and Technology Addiction, posits that social media companies design their interfaces to be addictive, capitalising on human behaviours and traits to keep users endlessly scrolling.¹⁸ In any given social media session, an individual engaging with the platform will have significant neurological impulses at play, making it challenging for that user to disengage, given the frequency and type of audiovisual stimuli. Social media platforms employ tactics like intermittent reinforcement, encouraging users to expect rewards in an unpredictable pattern.¹⁹ This is enhanced by personalised content tailored to users' preferences, and is exacerbated by the vast data holdings of the platforms. These tactics are particularly enticing to young people, due to the underdevelopment of brain regions responsible for impulse control.²⁰

In the US, Meta is being sued by a number of states including California, New York and Columbia alleging platforms harm young people and contribute to the youth mental health crisis. In the California case, the plaintiffs have made allegations about how Meta keeps young people interacting with Facebook and Instagram, referencing the impact of the 'infinite scroll' feature, preventing users from viewing a single post in isolation, and providing a continuous stream of content without a natural

¹⁶ Research from the JAMA Network showing that Adolescents who spend more than 3 hours per day using social media may be at heightened risk for mental health problems, particularly internalizing problems - *Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth*, Kira E. Riehm, MS1; Kenneth A. Feder, PhD1; Kayla N. Tormohlen, MPH1; et al, 11 September 2019 - <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749480>

¹⁷ See New York Times, *Surgeon General Calls for Warning Labels on Social Media Platforms*, Ellen Barry and Cecilia Kang, 17 June 2024 - <https://www.nytimes.com/2024/06/17/health/surgeon-general-social-media-warning-label.html>

¹⁸ Richtel, Matt – New York Times - *Is Social Media Addictive? Here's What the Science Says*, October 2023 - <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>

¹⁹ See comments of Dr David Greenfield – as above - <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>

²⁰ Dr David Greenfield also notes that young people are at risk due to their special receptivity for social connections – as above - <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>

endpoint. Former Meta employee, Frances Haugen, described this as being similar to giving users small dopamine hits, creating a sense of wanting more and leaving them less likely to exercise self-control. The plaintiffs also allege features such as ‘variable reward schedules’ are implemented to encourage compulsive use by young people, which they say causes further physical and mental harm, such as from a lack of sleep.²¹

It is against this backdrop, whereby social media feeds are designed to keep individuals using for as long as possible through an enticing and ‘endless’ scroll, that individuals access the content, in many cases, content that can only be described as extremely harmful.

4.2 Harmful content

Social media platforms have increasingly become arenas for showcasing harmful content, impacting individuals and society at large. The expanse of these harms that social media facilitates are numerous and varied. It is well known that cyberbullying, where individuals are targeted with abusive messages or threats, have devastating psychological effects, especially among young users.²²

In a National Youth Mental Health Survey conducted by headspace in 2020, more than half of young people (57%) indicated they believed their mental health to be getting worse, with 42% citing social media as the main reason for the decline. From the previous 2018 survey, where 37% of young people named social media as the cause of declining mental health, this represented a large increase.²³

Furthermore, the easy accessibility of graphic or explicit content poses extreme risks to young people, resulting in users being desensitised to violence or inappropriate behaviour. It is also undoubtedly the case that social media has given a stage for the spread of extremist ideologies and hate speech, with dangerous results, including encouraging violence and radicalisation of individuals and groups.²⁴

These examples illustrate how such content on social media platforms can negatively impact mental health, exacerbate violence and perpetuate negative behaviours with far-reaching consequences. This is particularly the case when considering the way in which this content is served through the ‘endless scroll’, together with intermittent rewards.

Examples of harmful content hosted by social media include:

- **Violent content** – Social media platforms including Facebook and X (formerly Twitter) enabled live streams of the Christchurch terrorist events in March 2019, prompting the Government to legislate against the sharing of abhorrent violent material through the Criminal Code. Notwithstanding this, in April 2024 Meta and X facilitated the circulation of videos of a violent stabbing incident in Sydney on their platforms until the eSafety Commissioner issued take down

²¹UNSW Newsroom – 41 US states are suing Meta for getting teens hooked on social media. Here’s what to expect next, Kayleen Manwaring and Siddhart Narrain, 13 November 2023 - <https://www.unsw.edu.au/newsroom/news/2023/11/41-us-states-are-suing-meta-for-getting-teens-hooked-on-social-m>

²² eSafety Commissioner – Cyberbullying - <https://www.esafety.gov.au/key-topics/cyberbullying/how-to-help-someone-deal-with-cyberbullying>

²³ headspace – young people cite social media as main reason for worsening mental health – 9 May 2022 - <https://headspace.org.au/our-organisation/media-releases/young-people-cite-social-media-as-main-reason-for-worsening-mental-health/>

²⁴ See for example, research on what has been described as the ‘accelerating role’ of social media in the radicalisation of foreign fighters and that radicalisation involving social media has risen substantially over time - Jensen M., James P., LaFree G., Safer-Lichtenstein A., Yates E. (2018). *The use of social media by United States extremists*. National Consortium for the Study of Terrorism and Responses to Terrorism (START), referenced in Binder JF, Kenyon J. *Terrorism and the internet: How dangerous is online radicalization?* Front Psychol. 2022 Oct 13;13:997390. doi: 10.3389/fpsyg.2022.997390. PMID: 36312087; PMCID: PMC9606324.

orders. Distressing content was also allowed to circulate on social media platforms in the wake of the Bondi stabbing incidents.

- **Hate speech** – The eSafety Commissioner currently reports that over 50% of young people have seen or heard hateful comments about cultural or religious groups online.²⁵ As referenced in the Online Safety Act Review issues paper, in February 2024, the Standing Council of Attorney’s-General acknowledged an increased prevalence of vilification, particularly online across social media platforms.²⁶
- **Self-harm** – In research conducted by UNICEF Australia, nearly two in five Australian teenagers reported seeing online content about how to physically harm or hurt themselves.²⁷ In September 2022 the findings of a coronial inquest in the UK concluded that a 14-year-old girl died from an act of self-harm while suffering from depression and negative effects of online content, including on Pinterest and Instagram. The child had been viewing images, video and text relating to suicide, self-harm or other negative and depressing subject matter.²⁸ There are also numerous examples of accidental deaths and serious injuries of children and young people from engaging in dangerous challenges posted to social media.²⁹
- **Pro-eating disorder content** – In a recent experiment conducted by Reset Australia, a digital advocate group, a fake profile of a 16-year-old Australian was created on three social media platforms and ‘liked’ or ‘hearted’ 50 items of pro-eating disorder content. Two of the three platforms recommended pro-eating disorder content.³⁰ Twelve ads that promoted dangerous weight loss techniques and behaviours were submitted to social media platforms and on each of the three platforms, the vast majority were approved to run.³¹
- **AI deep fakes** – Together with AI tools, social media allows for the dissemination of deep fakes and the associated harms to individuals. Recently graphic images of 50 female students of a high school in Australia were allegedly circulated on social media. In order to generate the deep fakes, the victims’ images were allegedly taken from social media.³²

²⁵ eSafety Commissioner – *Online hate* - <https://www.esafety.gov.au/young-people/online-hate>, drawing upon research conducted between November and December 2016 - *Young people and social cohesion* - <https://www.esafety.gov.au/research/young-people-social-cohesion>

²⁶ <https://www.infrastructure.gov.au/sites/default/files/documents/online-safety-act-2021-review-issues-paper-26-april-2024.pdf> p 46.

²⁷ <https://www.unicef.org.au/media-release/unicef-brings-global-experience-to-help-protect-children-in-the-online-world>

²⁸ Judiciary UK – The Coroner’s Service - *Regulation 28 Report to prevent future deaths*, 13 October 2022 - https://www.judiciary.uk/wp-content/uploads/2022/10/Molly-Russell-Prevention-of-future-deaths-report-2022-0315_Published.pdf

²⁹ Examples include challenges involving asphyxiation and blacking-out; dangerous consumption behaviours, including overdosing on antihistamines; and activities involving head injuries – The Canberra Times, *Skull breaker, one chip, black out challenges: most dangerous social media challenges*, by Emma Horn, 20 October 2023 - <https://www.canberratimes.com.au/story/8391438/dying-for-likes-social-media-trends-causing-deaths/>

³⁰ Reset Australia, *Report: Not Just Algorithms*, 24 March 2024 - 23% of the content recommended to the fake user on Instagram was pro-eating disorder content, while 67% of the content recommended by X was pro-eating disorder content - <https://au.reset.tech/news/report-not-just-algorithms/>, (**Reset Australia Report**) as reported in Sydney Morning Herald, *Social media giants are meant to block harmful content. In reality, it’s thriving*, by David Swan, 25 March 2024 - <https://www.smh.com.au/technology/social-media-giants-are-meant-to-block-harmful-content-in-reality-it-s-thriving-20240320-p5fdx4.html>

³¹ Reset Australia Report - On TikTok, 100% of the ads were approved to run; on Facebook, 83% of the ads were approved to run; on Google, 75% of the ads were approved to run.

³² The Guardian - *Bacchus Marsh Grammar: schoolboy arrested after 50 female students allegedly targeted in fake explicit AI photos scandal*, Jordyn Beazley and Rafqa Touma, 12 June 2024 - <https://www.theguardian.com/australia-news/article/2024/jun/12/schoolboy-arrested-after-allegedly-posting-fake-explicit-images-of-female-students-ntwnfb>

- **Scams** - Even Australia's politicians are not immune from deep fakes, especially scams seeking to capitalise on celebrities' and personalities' reputations. Notably, the images of Foreign Affairs Minister Penny Wong, Finance Minister Katy Gallagher and Nationals senator Bridget McKenzie have all been used in deepfake investment scam videos on Facebook ads.³³

It goes without saying that dangerous types of content of this nature would not be delivered on free-to-air TV. Given our alignment with Australian community values, our commitment to social benefits for the nation and our adherence to a co-regulatory Free TV Code, the content seen on Australian TVs is appropriate, inclusive and safe for all Australians to enjoy.

4.3 Mis and disinformation

Mis and disinformation, spanning false news articles, deep fake images and videos, and scam advertisements are well recognised as potential harms on social media platforms.

Social media plays a large part in the dissemination of mis and disinformation, particularly amongst end-user generated content that is posted on social media platforms including those of Meta, X and TikTok. This end-user generated content, which is often distributed by unknown entities, lacks the robust regulation that applies to our members. It is difficult for third parties, such as Australian regulators, to track this content and is also difficult, if not impossible, for third parties to determine the identity of the entities behind that content.

The ACMA has linked the origins of mis and disinformation to 'highly emotive and engaging posts within small online conspiracy groups', which are then 'amplified by international influencers, local public figures, and by coverage in the media.'³⁴

The ACMA has noted that misinformation can pose a significant risk to people's health and safety:

*We have seen this with misinformation about COVID-19 and 5G technology...[o]nline, there is such a large amount of information from different sources that it can be hard to know who or what to believe. It may not be clear where the information has come from, who wrote it, or when it was produced. When we share something online, we do not always stop to think whether it is true. Misinformation can be new, surprising, or emotive. This can make us more likely to share it and it can often spread faster than the facts.*³⁵

The ACMA has also referenced the presence of disinformation:

*The impacts of disinformation and misinformation on digital platforms continue to evolve. COVID-19, the Russian invasion of Ukraine, climate change issues and elections around the world have provided focal points for the dissemination of disinformation and misinformation.*³⁶

The ACMA had earlier commented on the spread of such disinformation through bots or fake users:

In addition to promotion from genuine supporters, some conversations within Australian misinformation communities appear to be spread inorganically, such as via the use of bots or

³³ The Guardian - Deepfakes of Australian politicians including Penny Wong and Katy Gallagher used in investment scams, Josh Butler, 8 June 2024 - <https://www.theguardian.com/australia-news/article/2024/jun/08/deepfakes-of-australian-politicians-including-penny-wong-and-katy-gallagher-used-in-investment-scams>

³⁴ ACMA - Digital platforms' efforts under the Australian Code of Practice on Disinformation and Misinformation Second report to government July 2023 (ACMA Mis and Disinformation 2nd Report) p 1 - <https://www.acma.gov.au/sites/default/files/2023-07/Digital%20platforms%20efforts%20under%20Code%20of%20Practice%20on%20Disinformation%20and%20Misinformation.pdf>

³⁵ ACMA web page: Online misinformation - <https://www.acma.gov.au/online-misinformation>

³⁶ ACMA Mis and Disinformation 2nd Report p 1.

*fake users. This suggests the presence of disinformation campaigns, typically orchestrated by bad actors seeking financial gain, or by foreign governments or other entities seeking to intentionally cause social harm by undermining trust in a democratic process, the breakdown of community cohesion, or the destabilisation of local institutions.*³⁷

Since February 2021, these harms have been sought to be addressed through a voluntary³⁸ self-regulatory code, the Australian Code of Practice on Disinformation and Misinformation, developed by the Digital Industry Group Inc (DIGI), however its effectiveness is unclear. As reported by the ACMA in July 2023:

- The code framework is not operating effectively to provide an appropriate level of public transparency about the measures signatories are taking under the code and the effectiveness of those measures.³⁹
- No key performance indicators have been identified by which signatories have used to track their progress to achieve the code's objectives and outcomes - providing isolated data points with limited meaningful analysis.⁴⁰
- The ACMA considers that the operation of the complaints function is currently being hindered by the lack of awareness and some uncertainty about signatories' commitments under the code. The availability of transparent, public information in one place about platform commitments and measures may assist users in understanding what they can complain about under the code.⁴¹

The Government has previously consulted industry on the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023,⁴² the intent of which is to target the real sources of mis and disinformation, being end-user generated content. While recognising the negative impacts that online misinformation and disinformation have, as Free TV has submitted in relation to that consultation, regulation must not inadvertently suppress the ability of our members, including their online services, to reasonably express ideas, beliefs and opinions. Our members' content and services are not the types of services and content that spread misinformation or disinformation. Where content derived from our members' linear services is presented online, through digital simulcast or on-demand, audiences benefit from the robust safeguards provided by the classification regulatory frameworks outlined above. As set out in Free TV's submission in response to the Classification Consultation Paper,⁴³ the classification of programs provided online is an important audience safeguard.

For these reasons, we remain of the position that it is necessary and appropriate to ensure our members' services and content are carved out from such regulation.

³⁷ ACMA - A report to government on the adequacy of digital platforms' disinformation and news quality measures, June 2021 - <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf?ref=quillette.com> p 27-28.

³⁸ The signatories are: Adobe, Apple, Google, Meta, Microsoft, Redbubble, TikTok and X - <https://digi.org.au/disinformation-code/>

³⁹ ACMA Mis and Disinformation 2nd Report p 3.

⁴⁰ ACMA Mis and Disinformation 2nd Report p 4.

⁴¹ ACMA Mis and Disinformation 2nd Report P 4.

⁴² See Free TV's submission - <https://www.infrastructure.gov.au/sites/default/files/documents/acma2023-e3666-free-tv.pdf>

⁴³ <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Classification-Scheme-Stage-2-reforms-May-2024.pdf>

4.4 Misuse of brand, personal identity and scam advertising

Fake corporate and individual accounts being created on social media platforms, and advertisers have used images of corporate brands and well-known individuals to sell products without their permission.⁴⁴ The Australian Securities and Investment Commission has reported on '[t]he fraudulent use of celebrities, prominent businesses, news sites and government agencies in the marketing of financial products and services.'⁴⁵

Free TV's members have long been concerned about the significant consumer harm caused by scam advertising and the inadequate practices of digital platforms in addressing the issue. Scam advertisements featuring prominent Australians without their consent is a significant problem and one that has persisted and adversely affected our members, and the talented individuals who are the subjects of these scams, for quite some time. It is well known that celebrity endorsement is highly impactful on consumer behaviour, influencing consumers' intention to purchase, as well as the credibility they attribute to the product or service advertised. Consumers place their trust in well-known Australian personalities, relying on their opinions and expertise in exercising their choices. When scammers exploit this trust, they cause immense damage to the consumer, including financial, psychological and emotional harm. Additionally, these fake endorsements harm the business reputations of broadcasters and the personal reputation of the celebrities themselves that are misrepresented.

Despite these harms, social media platforms such as Meta have failed to implement timely and effective take-down processes in relation to deep fake ads, with such ads continuing to quickly reappear after take-down. They have also failed to stop these deep fake ads from being placed on their social media platforms in the first place.

There should be a robust framework for dealing with scams, particularly one that holds digital platforms to account. Free TV welcomes government initiatives in this direction.⁴⁶ Digital platforms that have extensive control over material on their sites, such as Meta, Google and TikTok, should be required to ensure that the material is not fake, damaging, misleading or defamatory. Given the role of social media platforms in relation to scam ads, we consider that the resolution for this significant issue will most easily be achieved through a social media services specific code, under the anticipated ex ante framework put forward by the ACCC, that focuses on both preventative obligations as well as timely and effective take-down procedures.

Audiences face significant harm, particularly financial harm, from these accounts and advertising practices. Additionally, they reduce trust in the original brand and in the personal identity of the individual who is used in the scam. Social media services should have a regulatory responsibility to

⁴⁴ For example, it has been reported that Andrew 'Twiggy' Forrest has called for Facebook to be held to account after a fake ad used his face to advertise cryptocurrency - see Today: 'Twiggy' demands Facebook protect everyday Australians against scams, by Raffaella Ciccarelli, 2019 - <https://9now.nine.com.au/today/andrew-twiggy-forrest-v-facebook-why-billionaire-is-taking-on-social-media-giant/4a38da51-866e-4c31-9bb2-de3eb4e5b728>. There are numerous other examples, such as a fake endorsement of Georgie Gardner in respect of the 'Mayan Diamonds' app; Ally Langdon was the subject of a fake account encouraging individuals to register for a fake competition, and Karl Stefanovic's image was used without permission to suggest he endorsed a cryptocurrency - Submission by Free TV Australia to the ACCC Digital Platform Services Inquiry 2020-2025 - September 2022 - https://www.accc.gov.au/system/files/Free%20TV%20Australia_1.pdf

⁴⁵ ASIC: *That celebrity-endorsed bitcoin ad is probably a scam*, 29 July 2020 - <https://asic.gov.au/about-asic/news-centre/news-items/that-celebrity-endorsed-bitcoin-ad-is-probably-a-scam/>

⁴⁶ Such as the consultation led by Treasury and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRCA) on a Scams Code Framework - <https://treasury.gov.au/consultation/c2023-464732>

ensure that this content is authentic and to take timely action to reduce harm to audiences and damage to reputations.

5. Social media and news

5.1 Social media as a news source

Consumers are increasingly turning to social media platforms to search for information, services, entertainment and news sources. Recent research of the ACMA reveals that 20 per cent of Australians nominated social media as their main source of news in 2023, increasing from 17 per cent in 2022. The change is most evident among younger Australians with 46 per cent of 18-24 year olds preferring social media as their primary news source, an increase from 28 per cent in 2022.⁴⁷

These increased levels of news consumption on social media platforms are consistent with the international experience. For example, more than 40 per cent of people in the US use TikTok to search for information, with nearly 10 per cent of young people in the US using it as their search method of choice,⁴⁸ and nearly a third of 18-29 year olds in the US relying on TikTok as a news source.⁴⁹ In the UK, Ofcom notes similar trends, where around 71 per cent of 16–24 year olds in the UK now use social media to keep up with news, and this does not appear to change as they get older.⁵⁰

The increasing levels of social media being used for search represents a significant change in news consumption patterns and modes of delivery. News has become atomised to the user, served in bite-sized pieces, without the need to view on the originating website. TikTok is emerging as a video search engine, with its short-form video ‘story’ format serving news in a fragmented way, whereby, in any one session, a viewer may engage with news pieces from multiple news media sources.

This has important implications for how people, particularly young people, engage with the news. For example, in Australia, while professionally produced news media outlets and reputable sources remain the most popular social media sources, they have declined in popularity in recent years.⁵¹ Community groups as news sources have gained popularity, especially among younger demographics. Of particular note is that younger age groups rely more on celebrities and influencers (31%) and unknown sources (33%) for news content.⁵²

Research in the UK recognises these trends in using social media for search and how these impact engagement with news:

- The ranking of news content articles in a social media feed has a substantial impact on the amount of time people spend viewing, reading and engaging with the content.
- While social media platforms expose consumers to many different news outlets, they tend to serve a narrower range of topics than people might otherwise encounter on traditional news websites.

⁴⁷ The ACMA, *How we access news report*, February 2024 - <https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news>.

⁴⁸ Adobe Express, *Using TikTok as a Search Engine*, 1 March 2024 - <https://www.adobe.com/express/learn/blog/using-tiktok-as-a-search-engine>.

⁴⁹ Pew Research Center, K Eva Matsa, *More Americans are getting news on TikTok, bucking the trend seen on most other social media sites*, 15 November 2023 - <https://www.pewresearch.org/short-reads/2023/11/15/more-americans-are-getting-news-on-tiktok-bucking-the-trend-seen-on-most-other-social-media-sites/>

⁵⁰ Ofcom, report, *Understanding the influence of social media as gateways to news*, 25 March 2024 - <https://www.ofcom.org.uk/media-use-and-attitudes/media-plurality/influence-of-social-media-gateways-to-news/>

⁵¹ Down to 69% in 2023 from 78% in 2022.

⁵² The ACMA, *How we access news report*, February 2024, p 2 - <https://www.acma.gov.au/publications/2024-02/report/communications-and-media-australia-how-we-access-news>

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- Consumers who access news via social media may see less diversity of viewpoints, as well as more polarising and false content, which tends to drive high user engagement.
 - Consumers generally have a limited understanding of the role they play in curating the news that appears on their feed.⁵³

This trend runs in parallel to the proliferation of user-created content. This is particularly the case for user-generated news content, such as commentary and opinions, and its influence on shaping public opinion.

⁵³ Ofcom, *Understanding the influence of social media as gateways to news*, 2024 - <https://www.ofcom.org.uk/news-centre/2024/influence-of-social-media-gateways-to-news>

6. Meta decision to stop paying for news

Meta's decision not to renew news deals has drastic implications for the Australian media landscape and for Australian society more broadly.

Free TV is firmly of the view that the Assistant Treasurer should designate Meta platforms under section 52E of the *Competition and Consumer Act 2010* (Cth), the News Media Bargaining Code, as well as the implementation of fair processes to ensure equitable compensation for news content.

There are two reasons why Meta should be designated:

- the significant bargaining power imbalance between Meta and Australian's commercial free-to-air broadcasters and
- The absence of any significant contribution to the sustainability of the Australian news industry through commercial agreements.

6.1 Bargaining power imbalance

There is a significant bargaining power imbalance between Australian news businesses, including the Australian commercial free-to-air television broadcasters that Free TV represents, and Meta, in favour of Meta.

The ACCC's Digital Platform Service Inquiry Report (**DPSI**) laid bare the unprecedented levels of market dominance by Meta platforms generally. The DPSI revealed that Meta's platforms (Facebook and Instagram) are the most widely used social media platforms in Australia as well as critical intermediaries for businesses, influencers and advertisers. With 80% of the population using Meta platforms as monthly active users, Meta has the most users on mobile apps, greatest share of users' time, most advertisers and largest amount of advertising revenue in Australia.⁵⁴

Given its extensive reach, vast data holdings and capacity to target individuals at an extremely detailed level,⁵⁵ Meta is an unavoidable business partner for just about all Australian businesses, including Free TV's members. The ACCC recognises that where social networking platforms are one of limited alternatives — that is, there are just a few where all or most of an individuals' contacts congregate in the online space — consumers feel compelled to use the platform and may find it necessary to accept 'take it or leave it' terms.⁵⁶

This inability to negotiate fair and desirable terms applies equally to news organisations. Social media has evolved to the point where publication of articles and stories is now an integral part of social media feeds and, as set out above, one of the top ways in which consumers obtain their news and current affairs. While in its beginnings, social media platforms featured just messaging and posts, and later developed user profiles, with groups, tagging, and reactions, the services on offer in more recent times involve the sharing of livestreams, short-form video and news content.⁵⁷ Within this context, it becomes clear that social media platforms are unavoidable business partners for news organisations,

⁵⁴ Digital Platform Services Inquiry Interim Report No. 6 – Social media services in Australia (**DPSI Interim Report No. 6**), p 8 - https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services_0.pdf

⁵⁵ For example, Facebook can target advertising based on demographics, interests or other profile information - DPSI Interim Report No. 6, p 12 and 34.

⁵⁶ DPSI Interim Report No. 6 p 13-14.

⁵⁷ DPSI Interim Report No. 6 p 29.

which rely on them to provide referral traffic to their website which may then be monetised through online advertising.⁵⁸ In circumstances where Meta's platforms have a large majority of the Australian population as its audience, capitalise on the trusted position of holding immense troves of that population's data (in terms of both volume and detail) and serve that audience news from sources of its choosing, like consumers, news organisations are placed in the difficult position of accepting Meta's offering on a 'take it or leave it' basis.

6.2 Unavoidable business partners

Given its extensive user bases for both Facebook and Instagram, Meta holds a gatekeeper position in relation to access to Australian consumers for Free TV Australia's members. This is not only because of its substantial market power, but also because the nature of the services that Free TV Australia's members provide means that connecting with Australian users via other social media platforms is not currently a substitute for reaching the audience via Facebook or Instagram.

Broadcasters rely on Meta, and particularly Facebook, as a key source of referral traffic, not only for news but also for other types of content. This means Meta remains an unavoidable business partner for broadcasters.

It is worth noting that the advertiser funded business model that underpins commercial free-to-air broadcasters relies on reaching the widest possible audience. In the modern media environment, that means free-to-air broadcasters need to connect with audiences across all available platforms from terrestrial broadcast delivery, owned and operated digital assets and other platforms such as social media channels. The need to maximise audience reach means that any platform with a material number of users is an unavoidable business partner for local media businesses.

Our members have provided the ACCC, in its role assisting the Assistant Treasurer to consider designation, with information as to how this market power impacts their businesses specifically and will continue to engage on this subject.

6.3 No significant contribution

It is also our strong view that, without payment from Meta to Australian news businesses, Meta can only be seen to be making less than a significant contribution to news sustainability in Australia.

As acknowledged by Government through its News MAP consultation on public interest journalism and media diversity in Australia, the business models that once supported the production of quality, public interest news and journalism have been fundamentally disrupted by technological, social and economic change.⁵⁹ We have outlined the sustainability issues facing the industry above.

While our members and their ability to invest in public interest journalism face these sustainability challenges, Meta's first quarter profits for 2024 more than doubled to USD 12.37 billion, suggested to be largely as a result of higher advertising revenue and increasing the cost of ad placement.⁶⁰

⁵⁸ DPSI Interim Report No. 6 p 26, with reference to UK Competition and Markets Authority, Online platforms and digital advertising market study, Appendix S: The relationship between large digital platforms and publishers (1.7.20), 1 July 2020, p 1.

⁵⁹ Free TV Submission - News Media Assistance Program (News MAP), March 2024 - <https://www.freetv.com.au/wp-content/uploads/2024/03/Free-TV-submission-News-Media-Assistance-Program-March-2024.pdf>

⁶⁰ AP news, Barbara Ortutay, 25 April 2024 - *Meta more than doubles Q1 profit but revenue guidance pulls shares down after-hours* <https://apnews.com/article/meta-facebook-instagram-earnings-profit-1q-guidance-378d5a7e487b7b17bf89c2ad0cad4a6c>

Not long after its announcement that it would no longer pay Australian media for news content, Meta's platform Facebook removed its news tab, a dedicated section where users could access news, for Australians. Regardless of its action in removing the news tab, users may still post and access news articles and professional news videos on the main feed. This means that Facebook users continue to be served news, but that Facebook is no longer renewing deals when those deals expire. Facebook is also choosing not to serve or push content it considers news, including from Facebook and Instagram account pages that broadcasters use to publish their professional content. This means that quality news will increasingly be seen less and less by Meta's Australian users.

High quality news is expensive to produce, but fundamental to a strong democracy. Our citizens need to be informed of the stories that matter and that can only happen with investment in talented and skilled journalists, who are supported and resourced in their endeavours to conduct robust investigations and to apply intellectual acumen in their reporting. As a very lucrative platform with phenomenal reach, where its primary function is to facilitate communication and information sharing, it is untenable for a responsible platform to turn its back on the industry that is most capable of creating and unearthing reliable, accurate, timely and informative news stories. Meta's decision will likely have detrimental consequences for the employment of journalists and the production of news on topics of public interest.

6.4 Designation action

Government should designate all Meta platforms—Facebook, Instagram and Reels services, and other relevant Meta services on which news is shared, including WhatsApp and Threads —under the News Media Bargaining Code, to enliven the legislative bargaining framework. The digital and social media landscape has continued to evolve since the passage of the News Media Bargaining Code, as evidenced by the emerging role of WhatsApp as a means of sharing news. This emerging trend suggests we can expect to see Meta utilise its well-established WhatsApp platform, as well as its recent text-based conversation app, Threads, to play a major role in the distribution of news and become an unavoidable business partner for news media companies.

6.5 Other platforms

Beyond Meta, Government should be ready to designate any relevant digital platform where there is evidence of unwillingness to engage in fair and appropriate remuneration for television or video-based news content. Critically, this must include dominant video sharing platforms that have now become 'must engage' platforms for free-to-air newsrooms due to their now cemented role in the consumption of news content for a large and growing number of Australians, particularly younger audiences.

The disparity in bargaining power exists in respect of relationships with other platforms such as Google's YouTube and ByteDance's TikTok. It has been reported that there are 8.5 million Australians active on TikTok every month. On average, these users spent 58 minutes a day on the platform.⁶¹ On YouTube, 63% of Australians reportedly used the platform to watch video content.⁶² YouTube had 75%

⁶¹ Australian Financial Review, *TikTok made me write this – and it's time for it to go*, The Parrhesian, 15 March 2024 -

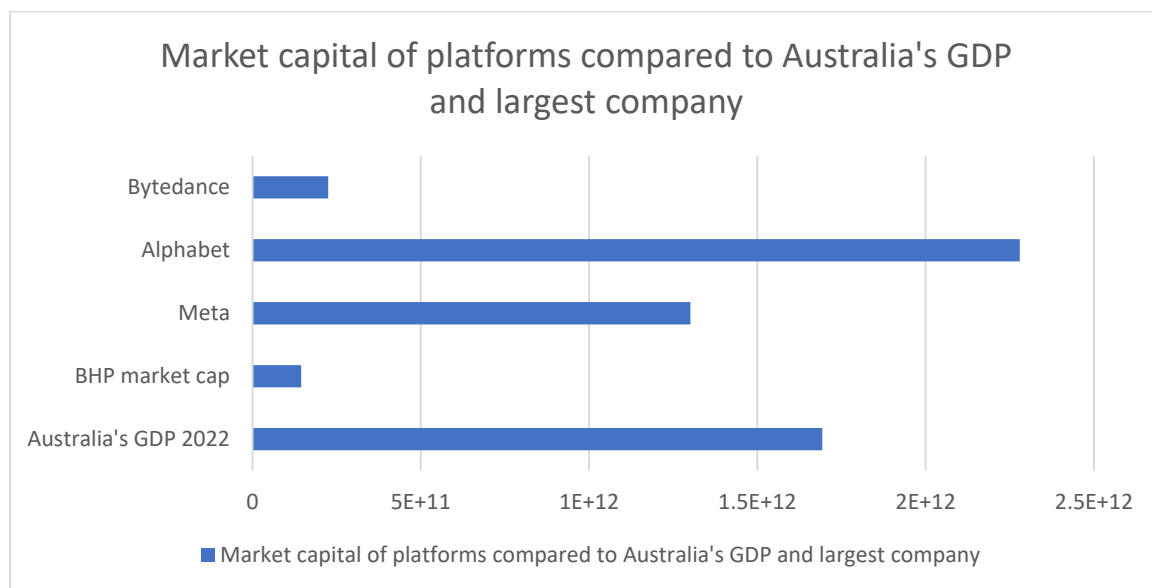
<https://www.afr.com/politics/federal/tiktok-made-me-write-this-and-it-s-time-for-it-to-go-20240312-p5fbnv#:~:text=Every%20month%2C%20there%20are%208.5,%2C%20advice%2C%20and%20commercial%20recommendations>

⁶² ACMA – *How we watch and listen to content* – December 2023 - https://www.acma.gov.au/sites/default/files/2023-12/ACMA_How%20we%20watch%20and%20listen%20to%20content_Executive%20summary%20and%20key%20findings.pdf p 4.

of the Australian adult population using the platform in the previous 6 months to June 2023.⁶³ Average monthly time spent on the YouTube by Australian visitors was 17 hours and 6 minutes.⁶⁴

The market dominance of the large social media platforms is also exemplified through their market capitalisation. As of June 2024, Meta has a market cap of USD 1.301 trillion.⁶⁵ YouTube as a brand is reported to be worth USD400 billion, as assessed by analysts,⁶⁶ while Alphabet (Google) market cap is USD2.280 trillion. For the TikTok brand, suggestions vary anywhere between USD20 and 100 billion, depending on whether it is the US operations or global values,⁶⁷ while Bytedance is estimated to be worth USD225 billion.⁶⁸

To put this into context, Australia’s GDP for 2022 was USD1.693 trillion,⁶⁹ just 75% of Alphabet’s market capital. The BHP Group, the largest Australian company,⁷⁰ has market capitalisation of AUD216.45 billion⁷¹ (USD144.415 billion):



In the media context, Evan Shapiro’s well known media universe maps 2020-2024 serve to show the incredible scale of the dominant players in the media and technology ecosystem, setting out market cap by circle size. A new map designed by Shapiro also sets out where audiences are moving to in the ecosystem. These maps are set out in **Appendices A and B**.

⁶³ AMCA – *How we communicate* – December 2023 - https://www.acma.gov.au/sites/default/files/2023-12/ACMA_How%20we%20communicate_Executive%20summary%20and%20key%20findings.pdf p 2-3.

⁶⁴ Genroe - *Social Media Statistics for Australia (Updated June 2024)*, Adam Ramshaw - <https://www.genroe.com/blog/social-media-statistics-australia/13492>

⁶⁵ Companies Market Cap - <https://companiesmarketcap.com/meta-platforms/marketcap/>

⁶⁶ MoffettNathanson’s Michael Nathanson and Needham & Co. Senior Analyst Laura Martin have assessed YouTube to be worth around \$423 billion if it were a separate company from Alphabet - *YouTube Is A Streaming Giant No One Notices*—Blame Google’s AI Investments – David Bloom, 1 February 2024 - <https://www.forbes.com/sites/dbloom/2024/01/31/youtube-is-a-streaming-giant-no-one-notices-blame-googles-ai-investments/>

⁶⁷ The Wall Street Journal - *What Is TikTok Worth? Some Say \$20 Billion, Others Say \$100 Billion*, Raffaele Huang and Weilun Soon, 25 April 25, 2024 - <https://www.wsj.com/tech/what-is-tiktok-worth-guesses-range-from-20-billion-to-over-100-billion-e7d61a0f>

⁶⁸ The New York Times - *The Big Dilemma Facing ByteDance’s U.S. Investors* - Andrew Ross Sorkin, Ravi Mattu, Bernhard Warner, Sarah Kessler, Michael J. de la Merced, Lauren Hirsch and Ephrat Livni, 15 March 2024 - <https://www.nytimes.com/2024/03/15/business/dealbook/bytedance-tiktok-us-investors.html>

⁶⁹ https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2022&locations=AU&most_recent_value_desc=true&start=1960

⁷⁰ By market cap - <https://companiesmarketcap.com/australia/largest-companies-in-australia-by-market-cap/>

⁷¹ <https://www.asx.com.au/markets/company/bhp>

As set out earlier in this submission, social media for news has increased over time. As reported by the ACMA in December 2023:

Nearly a third of adults (63%) accessed news on a communication or social media website or app in the previous 7 days to June 2023, up from 59% in 2022. While use of Facebook for news (36%) was stable in 2023, use over the previous 12 months increased for YouTube (16% to 23%), Instagram (10% to 12%), Twitter (7% to 9%), TikTok (2% to 5%) and LinkedIn (2% to 4%). These increases were largely driven by younger age groups.⁷²

Our members are proactive in addressing this issue. For example, Network 10 has recently launched a nightly news bulletin that premieres first on video sharing platforms such as YouTube, Instagram and TikTok before it is broadcast on terrestrial TV in an effort to bring quality, impartial news journalism to younger Australians. These are audiences that are incredibly hard to reach, ones that predominantly seek news content on social platforms, not traditional media services. These are the audiences most at risk of being exposed to content on social media that does not have the accuracy and transparency requirements of Australian-regulated news or contains the type of mis and disinformation that is spread to undermine Australia's social fabric. We strongly encourage the ACCC to further support the Government with evidence about these matters as part of its digital platforms monitoring remit.

Considering the reach of their audience, level of engagement and the fact that use of social media as a news source is becoming more prevalent, Government should be ready to designate these and other social media platforms.

⁷² AMCA – *How we communicate* – December 2023 - https://www.acma.gov.au/sites/default/files/2023-12/ACMA_How%20we%20communicate_Executive%20summary%20and%20key%20findings.pdf p 2

7. How to regulate and enforce

For too long, social media platforms have created and perpetuated significant harms. Not only must there be strong rules, but social media platforms must be held to account in a way that is commensurate with the damage caused and in a way that incentivises them to proactively prevent such harms in the future.

7.1 Ex ante framework

In its *Digital Platform Services Inquiry Interim Report No. 5 – Regulatory reform*,⁷³ the ACCC recommended a new framework of targeted rules that are placed upon digital platforms ‘up-front’ or ‘ahead of time’, through mandatory, service-specific codes (ex ante framework). This ex ante framework would apply to digital platforms that meet designation criteria in respect of specific digital services they supply, in order to guide their future conduct, and would complement enforcement of existing competition laws.

In its response in December 2023, the Government noted that it considered the ACCC had put forward a ‘strong case’ for an ex ante digital completion regime and that Treasury would consult on its design in 2024.⁷⁴

This framework should be extended to address concerns about social media platforms, engaging in practices that thwart the attempts of unequal bargaining partners to compete and create other harms, including restrictive terms of service, blocking content inappropriately, contributing to mis and disinformation and non-compliance with regulation designed to safeguard against harmful content. This should also include prohibiting designated platforms from self-preferencing their own products and services in ranking, indexing and crawling. For example, serving a video of a news clip in search results on a video platform owned by the search service, rather than the original clip on the news publisher’s website.

7.2 Social media platforms as publishers

Social media platforms are now a primary content distributor for many users to consumer and exchange information. Their algorithmic recommender systems disseminate content determined to be relevant for the end user. They do this by determining which types of content to endorse, where to position certain content, whether to allow or ban certain individuals from their platforms, blocking types of content and taking down certain pieces of content. As they act in ways that are similar to traditional publishers like newspapers or magazines and they make decisions that are akin to those of publishers, it is time that they are properly characterised as such.

The Australian laws that apply to publishers must equally apply to social media platform companies so that social media platforms are subject to:

- Defamation laws, which protect individuals and entities from having their reputation unfairly damaged by false statements and be held liable if they publish defamatory material.

⁷³ <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202022%20interim%20report.pdf>

⁷⁴ ‘Government’s response to the ACCC’s major competition and consumer recommendations for digital platforms’, 8 December 2023 – available at <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/governments-response-acccs-major-competition-and#:~:text=The%20ACCC%20also%20presented%20a,digital%20competition%20framework%20in%202024.>

- Copyright laws, which protect original literary, artistic, musical, and dramatic works, including obtaining permission to reproduce copyrighted material and acknowledging the creator of the work.
- Laws with respect to contempt of court by publication, including facing contempt of court charges if they publish material that interferes with the administration of justice, such as prejudicial material that could influence a jury or disrupt court proceedings.
- Other laws, such as those relating to the dissemination of information that depicts undue violence or cruelty, that provides instructions in crime, or that shows abhorrent content.

7.3 Measures to address AI and search

Consumers are increasingly turning to social media platforms to search for information, services, entertainment and news sources, which are themselves increasingly being powered by generative AI. Legal frameworks must be equipped to deal with issues of fairness that inevitably arise from the exponential volumes of material used to train AI models, lack of transparency of inputs and outputs, and the absence of copyright protection. They must also address the intrinsic data advantage of social media platforms.

AI systems must both fairly attribute their summaries to the news media organisations on which they rely, and their operators must fairly remunerate those news media organisations. This is reasonable because it is news media organisations who invest in the collection, verification and distribution of news, not the AI operators.

Free TV has called for an ACCC market study of the impact of generative AI on the creative sector, most recently in relation to the ACCC's Digital Platforms Inquiry Issues paper on search services and Submission to the Senate Select Committee on Adopting Artificial Intelligence.⁷⁵

The ACCC is able to initiate market studies or undertake them at the direction of the responsible Minister.⁷⁶ The ACCC has the power to compel industry participants to provide information and documents when a market study is undertaken at the direction of the Minister. Such a direction should be made.

One option is to amend the existing direction made on 10 February 2020 to the ACCC to conduct an inquiry into markets for the supply of digital platform services. Amendment may be required if relevant AI systems do not fit within the scope of the current direction, which covers internet search engine services, social media services, online private messaging services, digital content aggregation platform services, media referral services and electronic marketplace services.⁷⁷

Among other things, the ACCC's market study should examine transparency about the materials ingested by AI systems, protection by copyright of both inputs and outputs, remuneration, and competition issues arising from the market advantages that immense data holdings confer on operators of AI systems, including in relation to generating advertising revenue.

⁷⁵ <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Select-Committee-on-Adopting-Artificial-Intelligence-May-2024.pdf>

⁷⁶ See <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25>

⁷⁷ See <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/governments-response-acccs-major-competition-and#:~:text=The%20ACCC%20also%20presented%20a,digital%20competition%20framework%20in%202024>

7.4 Designation of platforms

For the reasons outlined earlier in this submission, Meta and all of its platforms must be designated under the News Media Bargaining Code. This includes Facebook, Instagram, WhatsApp and Threads. It is clear that the threshold question of whether there is an unequal bargaining position in favour of Meta is met and that none of its platforms have made a significant contribution to the sustainability of the Australian news industry. Designation will allow our members to commence a bargaining process with Meta and, if necessary, enter into arbitration to secure a fair deal for news content.

Other platforms, including YouTube and Tik Tok should also be designated. These are also unavoidable trading partners for our members, as they distribute the news content created by our members. There persists an imbalance in the bargaining position between these and our members, as indicated earlier in this submission, with respect to the high number of users, reflecting a large proportion of the population, time spent on the platforms, and the fact that Australians (particularly young people) are increasingly using social media to access news.

7.5 Other policy solutions

Free TV believes that there is a substantial bargaining imbalance between Meta and its members. As such, all Meta platforms should be designated under the News Media Bargaining Code. If Meta removes our members' news from its platforms, the Government should consider other competition and public policy solutions to ensure that they carry news and that the producers of that news are fairly and properly compensated.

7.6 Complaints processes

As referenced in the Online Safety issues paper, the Government has committed to further work to develop internal and external dispute resolution and is calling on industry to develop voluntary internal dispute resolution standards by July 2024.

Social media platforms should be required to have adequate complaints handling practices and procedures.

Appendix B - Map of the Global Media Ecosystem 2023 by Evan Shapiro

This map sets out revenue and user base, available at <https://eshap.substack.com/p/media-universe-maps-2020-2023>

