



Submission by Free TV Australia

Safe and Responsible AI in Australia

Proposals Paper

Department of Industry, Science
and Resources

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1. Executive Summary

- Free TV Australia (**Free TV**) fully supports the Government’s comprehensive approach to designing regulation of high-risk uses of AI to ensure they are safe and responsible.
- The issue of how AI is adopted, used and regulated in Australia is inextricably linked to the health of Australian democracy and the sustainability of the Australian news media sector.
- The Government appropriately seeks to take a risk-based approach to regulating AI. The definition of ‘high risk’—which warrants a mandatory regulatory response—should include uses which pose a risk of harm to democracy and local media industry sustainability.
- Under this graduated approach, the use of AI in low-risk settings by the creative sector should be enabled to flourish unimpeded.
- Proposed principles for designating an AI system as high-risk due to its use should specifically refer to risks to access to accountable news and current affairs and associated risks of harm to democratic processes.
- The guardrails for high-risk use of AI should include clear transparency requirements. Free TV agrees that organisations across the AI supply chain should be informed about data models and systems—this includes those whose data (like news content) is ingested, not just those who deploy AI systems.
- Technical considerations about how to provide transparency, such as via the use of tokens to denote how much content has been used, would be considered once the mandatory guardrail relating to transparency was put in place.
- The domain-specific knowledge of existing industry regulators should be preserved. Implementation options which enable the application of their expertise by reference to an overarching AI regulatory framework and principles are preferred.
- While these matters are being considered, Government should direct the ACCC to conduct a market study of the impact of generative AI on the creative and news media sectors.
- The ACCC should be given new powers under an ex ante regulatory framework for digital platforms that should be applied to address AI-related risks set out in this submission, and as informed by the ACCC market study.
- This should include mandating transparency of inputs to AI modes and support remuneration when content, such as news and current affairs content, is used by AI.

2. Introduction

Free TV Australia (**Free TV**) appreciates the opportunity to comment on the Department of Industry, Science and Resources' September 2024 *Safe and Responsible AI in Australia* Proposal Paper (the **Proposals Paper**).

Free TV fully supports the Government's comprehensive approach to designing mandatory guardrails to regulate high-risk uses of AI—to ensure the design and deployment of these systems and services is safe and responsible. We commend the Department on the depth of analysis of ways to implement this regulation in the Proposals Paper, including its explanation of why ex ante regulation is appropriate to prevent certain harms. It is acknowledged that the Australian Government is seeking to maximise interoperability with overseas schemes, which is supported.

This consultation process is being conducted in parallel to the Attorney General's Department's (**AGD**) Copyright and AI Reference Group consultation to obtain views on whether there are specific copyright-related AI transparency issues requiring AGD's work, which may fall outside the scope of the Proposals Paper. Free TV is also participating in that consultation process. There should continue to be close alignment between the two processes.

As this submission notes, the issue of how AI is adopted, used and regulated in Australia is inextricably linked to the health of Australian democracy and the sustainability of the Australian news media sector. These are the areas of high-risk that this submission focuses on.

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 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.



A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluating 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.

Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Free TV members provide vital local services to all Australians. In FY23, commercial television networks spent \$1.67 billion on Australian content, dedicating 87% of their content expenditure to local programming, an increase of 8% on the previous year. Commercial television networks spent more than \$400 million on accountable news and current affairs alone. This is a substantial investment in Australian, trusted and free television content which benefits our culture, democracy and local screen production industry.

Commercial free-to-air broadcasting is inherently a public good because it informs, educates and entertains all Australians no matter where they live or how much they earn. Required by law to be

funded by advertising, it provides equitable access to information that supports a thriving democracy and contributes to a sense of Australian identity.

However, a range of public policy processes have, in recent years, collated a substantial evidence-base demonstrating the ways in which major digital platforms' scale, market-power and vertical integration have adversely impacted Australian businesses, including local media businesses.

Further to dominance in social media, search, digital advertising markets and apps stores, development and deployment of AI systems and services is the next chapter. This is the case both with respect to platforms with existing market power (such as Google and Meta), and those who are quickly gaining it (including those who own and operate systems powered by AI, especially large language models (**LLMs**)).

3. Free TV's position on regulating AI

Recommendations

- The Government should direct the ACCC to conduct a market study of the impact of generative AI on the creative and news media sectors
- The ACCC should be given new powers under an ex ante regulatory framework for digital platforms that should be applied to address AI-related risks set out in this submission, and as informed by the ACCC market study
- This should include mandating transparency of inputs to AI modes and support remuneration when content, such as news and current affairs content, is used by AI

The key policy problems to address in relation to AI and news media relate to:

- **Risks to democracy**—there is a significant risk that citizens will consume AI-generated or AI summarised news without transparency as to its source. They will not know if it is accurate and reliable and will not be able to assess if a diversity of viewpoints and sources have been used to train the AI. They may be exposed to misinformation and disinformation, including from AI-generated fakes, which will impair their ability to make informed decisions about public interest issues, and most concerningly when forming voting intentions.
- **Risks to the sustainability of the Australian media sector**—the sustainability of news media and other content businesses will be at risk if content, the production of which they have funded, is used to train AI without transparency or remuneration.¹

As a starting point, Free TV is seeking a regulatory scheme which:

- **mandates transparency of inputs to AI models**—so that both citizens are aware of the source of the information they are consuming, and so that Free TV members can see if, and to what extent their content has been ingested to train the models; and
- **supports remuneration when content, such as news and current affairs content, is used by AI**—where Free TV's members bear the cost of producing content and being held to account for it under robust regulatory arrangements, while the AI providers otherwise benefit from it without paying, including by selling advertising against it.

Following its extensive expert work on the impact of major digital platforms on consumers and competition in Australia—and in particular the production of local, trusted and accountable news and current affairs content like that provided by commercial television broadcasters—Free TV has recommended that the Australian Competition and Consumer Commission (**ACCC**) play an integral role in assessing the impact, and ameliorating the potential harms, of AI on the media sector. As noted in Free TV's most recent submission on this matter, the ACCC should:²

¹ Other concerns for Free TV members include the use of AI in creating deep fake content; AI generated scams that adversely affect brands and news professionals, including with respect to false celebrity endorsements; and cybersecurity risks both from and to AI systems themselves must remain on Australia's national cybersecurity agenda given the material risks to businesses, including media businesses, from AI-driven or AI-related cyberattack.

² See Free TV's submission to the ACCC's July 2024 *Digital Platform Services Inquiry – March 2025 – Final Report Issues Paper* at <https://www.freetv.com.au/wp-content/uploads/2024/08/Free-TV-Submission-Digital-Platform-Services-Inquiry-%E2%80%93-March-2025-%E2%80%93-Final-Report-Issues-Paper-%E2%80%93-August-2024.pdf>.

- be directed to conduct a market study of the impact of generative AI on the creative and news media sectors; and
- be given new powers under an ex ante regulatory framework for digital platforms that should be applied to address AI-related risks set out in this submission, and as informed by the ACCC market study.

4. High-risk uses of AI

Recommendation

- Proposed principles for designating an AI system as high-risk due to its use should specifically refer to risks to access to accountable news and current affairs and associated risks of harm to democratic processes

The Government appropriately seeks to take a risk-based approach to regulating AI. The definition of ‘high risk’—which warrants a regulatory response—should include uses which pose a risk of harm to democracy and local media industry sustainability. Under this graduated approach, the use of AI in low-risk settings by the creative sector should be enabled to flourish unimpeded.

Risks to democracy

The Proposals Paper identifies a range of potential harms including bias leading to discrimination, and also a more general set of collective harms to society. In particular, the paper calls out mis and disinformation, including in the context of AI-enabled campaigns, especially in the context of elections.³ In this way it recognises the risks to democracy identified above.

It is noted that the Department of Home Affairs has expanded on these in its seven dimensions of AI’s impact on democracy, cited in the Proposals Paper:

<p>1. Connectedness – Polarisation</p> <p>A more connected society has greater democratic resilience than a polarised one. Current AI technologies have the potential to push democracies toward greater polarisation.</p>
<p>2. Transparency – Opacity</p> <p>Transparency is a key pillar of democracy. A large proportion of current AI technologies are characterised by opaqueness including how and what data is collected, how decisions are made, who is responsible for those decisions and where the technology is leading democracies.</p>
<p>3. Decentralisation – Consolidated control</p> <p>Democracy, by definition, decentralises power to the public by way of elections, the rule of law, a free press and other principles and processes. The current trajectory of AI technology is leading to greater control by small number of players.</p>
<p>4. Democratising voices – Narrowing voices</p> <p>Liberal democracy defends and benefits from a plurality of voices, whereas AI technology has the potential to be exclusionary or biased against certain voices in its development and application.</p>
<p>5. Truth and deliberation – Deception</p> <p>Democracy is founded on the ability to have an equal stake in the future, which requires access to factual information in order to make informed decisions. The current trajectory of AI is increasing the prevalence of deceptive material in the information environment.</p>
<p>6. Public good – Private gain</p> <p>Liberal democracy as a system has at its foundation the aim of providing good to the broadest element of the public without undermining the rights of the minority. AI technologies are often seen to further private gain rather than the public good.</p>
<p>7. Information engagement – Information transmission</p> <p>Democracy is based on deliberation of ideas, a discussion of what the public values and what it wants. Current AI technologies are predominantly about the supply and transmission of information rather than the deliberation of it.</p>

Department of Home Affairs’ 7 dimensions of AI’s impact on democracy⁴

³ Proposals Paper, page 12 and page 14.

⁴ Proposals Paper, page 24.

Professionally-produced news and current affairs content counteracts many of these risks:

- **Risk of polarisation**—the risk of polarisation is reduced when information about issues of public importance is accurate, fairly presented and impartial. These are hallmarks of commercial television news and current affairs content, on whichever platform it is consumed.⁵
- **Opacity**—unlike with some AI services, with news and information provided by commercial television providers the source of the content is always clear, and there are clear accountability mechanisms where audiences have concerns about its content. It holds power to account, and in doing so it can be held to account, as is appropriate.
- **Diversity of perspectives and plurality of voices**—as noted by the Department of Home Affairs, a free press is among essential safeguards of democracy. Commercial television broadcasters, like other members of the fourth estate, provide a forum for a diversity and plurality of voices. Developments in the AI market should support, not suppress access by citizens to accountable news and current affairs content which delivers these benefits.
- **Reliable factual information to support informed decision making and deliberation of ideas**—as noted above, it is a hallmark of the accountable news and current affairs content provided by commercial television broadcasters, across platforms, that is factually accurate. Audiences can rely on our services to inform their decision making, and civic participation at times like elections.

These benefits will be lost if it is not transparent to audiences where news and current affairs presented by AI comes from. They will not be able to interrogate sources and will not be able to hold those who actually gathered it to account.

Risks to news media sustainability

Developments in the AI market are putting news media organisations' revenue at risk—both from loss of audience exposure to advertising on their own digital properties (where the audience does not travel from the AI summary to the source), and circumvention of news media organisations' subscription paywalls.

The fact that AI services can summarise the news based on their survey of accountable news source online, and build on these summaries as prompted by users, means that audiences may not need to leave their platform for more information. If they do not click through to the news media organisation's platform where commercial news-gatherers generate revenue from advertising impressions, this will have a material business impact.

In a future where audiences stop at the AI generated news summary, and do not click through the source—either because it has not been provided, or they are satisfied with the AI-generated summary—news media organisations will not be able to generate their own advertising revenue.

Where AI has circumvented a paywall this will be an infringement of intellectual property rights, and transparency measures applied to AI should facilitate identification of such infringements. In this regard, it is notable that the paper also talks about the importance of data used by AI systems being legally obtained.⁶ While in that section the paper refers to illegal material like abuse material, this principle should also be applied with respect to intellectual property. That is, given wholesale ingest

⁵ Commercial television broadcasting licenses must comply with the Commercial Television Industry Code of Practice (the **Code**), which includes for news and current affairs enforceable requirements to present factual material accurately, and ensure viewpoints included in a program are not misrepresented. Among other things, news programs must also present news fairly and impartially. The Code is available at https://www.freetv.com.au/wp-content/uploads/2019/07/Free_TV_Commercial_Television_Industry_Code_of_Practice_2018.pdf.

⁶ Proposals Paper, page 37.

of news content will not be a fair dealing under copyright law, any such ingest without consent (consent likely to require remuneration).

Proposed principles for identifying high risk

The Proposals Paper includes, among proposed principles for regulating high risk AI uses, the risk of adverse impacts to groups or collective rights of cultural groups, as well as adverse risks to society and the rule of law.

Proposed principles:

In designating an AI system as high-risk due to its use, regard must be given to:

- a. *The risk of adverse impacts to an individual's rights recognised in Australian human rights law without justification, in addition to Australia's international human rights law obligations*
- b. *The risk of adverse impacts to an individual's physical or mental health or safety*
- c. *The risk of adverse legal effects, defamation or similarly significant effects on an individual*
- d. *The risk of adverse impacts to groups of individuals or collective rights of cultural groups*
- e. *The risk of adverse impacts to the broader Australian economy, society, environment and rule of law*
- f. *The severity and extent of those adverse impacts outlined in principles (a) to (e) above.*

Principles set out in the Proposals Paper

For the reasons above, and given that the Position Paper also refers to harmful synthetic content leading to manipulation of mass public opinion, and impacts on electoral processes,⁷ it is recommended that the proposal specifically refer to risks to access to accountable news and current affairs and associated risks of harm to democratic processes.

⁷ Position Paper, page 23.

5. Transparency requirements among other guardrails

Recommendation

- Organisations across the AI supply chain should be informed about data models and systems—this includes those whose data (like news content) is ingested, not just those who deploy AI systems
- Technical considerations about how to provide transparency, such as via the use of tokens to denote how much content has been used, would be considered once the mandatory guardrail was put in place

The Proposals Paper suggests that regulatory measures would focus on testing, transparency and accountability for governing and managing risk. It notes that accountability processes, testing, human control and intervention, and informing end-users about AI-enabled decisions are among the guardrails proposed.⁸

Free TV strongly supports the proposal that end-users be fully informed about AI-enabled decisions and, importantly, the proposal that AI providers are transparent with other organisations across the supply chain about data models and systems. For precedent, the paper notes that the EU requires a public summary of data used to train to be made available.⁹

It will be important that the requirement to be transparent with other organisations across the supply chain about data models and systems apply not just those who deploy AI systems (for example, those who licence AI systems for use themselves), but also those whose data (like news content) is ingested.

The AGD consultation process noted above will examine specific transparency options. Regulatory mechanisms that promote commercial negotiations are the preferred approach.

There will be a range of technical considerations about how to provide transparency, such as via the use of tokens to denote how much content has been used, which would be considered once the mandatory guardrail was put in place.¹¹

Washington Post coverage of how news content is used by AI

In a recent story about the popularity of chatbots, the Washington Post, looked at how these AI-powered services are trained.¹⁰ Having analysed one of these data sets to determine what goes into an AI's training data, Google's C4 data set, it reported that the News and Media category ranked third across categories, with half of the top 10 sites overall being news outlets: nytimes.com, latimes.com, theguardian.com, forbes.com and huffpost.com.

Furthermore, *The Washington Post* analysis found:

⁸ Proposals Paper, page 35.

⁹ Proposals Paper, page 35.

¹⁰ 'Inside the secret list of websites that make AI like ChatGPT sound smart', *The Washington Post*, 19 April 2024 – available at <https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>.

¹¹ Tokens are the smallest unit of text that carries meaning for a language model. To prepare text for understanding, AI models use tokenisation, a process that breaks down sentences or larger chunks of text into individual tokens. Then, each unique token is assigned a numerical ID.

*several media outlets that rank low on NewsGuard's independent scale for trustworthiness: namely, RT.com No. 65, the Russian state-backed propaganda site; Breitbart.com No. 159, a well-known source for far-right news and opinion; and VDare.com No. 993, an anti-immigration site that has been associated with white supremacy.*¹²

Due to our geographic isolation, Australian news content is particularly unique because the main news sources for Australian news stories are Australian publishers. This fact is important as in the absence of Australian focused media organisations, the global GAI Platforms may ignore relevant Australian media stories. While it may be possible to use more high-profile media issues such as riots, bushfires or even sporting news as more high-profile examples, a more mundane example may be a motor vehicle accident on the Sydney Harbour Bridge. That news story may only exist (and be used to train GAI) because a person in Sydney (such as a professional journalist employed by a Free TV member) attended the scene of the accident to witness the accident and interview witnesses and ascertain if there were any reasons for it the publication of which could lead to road safety improvements. Without this crucial fact finding by local Australian media organisations, we may not be aware that the accident ever occurred.

The Washington Post analysis highlights that Australian media is used by the GAI Platforms. *The Washington Post* analysis also demonstrates how Australian news media content has been used to train Google's c4 dataset.

In addition to training, also of great concern is the ongoing use of content to "ground" the GAI answers to fact-based reliable responses. According to Google's own website, the action of grounding is as follows: "... grounding is the ability to connect model output to verifiable sources of information." It continues: "If you provide models with access to specific data sources, then grounding tethers their output to these data and reduces the chances of inventing content." This is particularly important in situations where accuracy and reliability are significant such as in the above Sydney Harbour Bridge example of news content.

According to the Google website, grounding is said, without demur, to provide the following benefits to the LLM:

- it reduces model hallucinations, which are instances where the model generates content that is not factual;
- it anchors model responses to specific information; and
- it enhances the trustworthiness and applicability of the generated content."¹³

Grounding is often dependant on Free TV's members work product to produce a verifiable and quality result.

¹² <https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>

¹³ <https://cloud.google.com/vertex-ai/generative-ai/docs/grounding/overview>

6. No exemptions for text and data mining

Digital platforms should not be afforded text and data mining (TDM) exemptions or any safe harbours in an AI framework as there is simply no justification or need for an exemption. Such an approach would only further entrench the market power of dominant digital platforms.

For some time now, there has been a clear recognition that data, including unrefined data and text, denotes immense commercial value, particularly to those with the resources, technology and capabilities to refine it. Essentially, a TDM exemption will result in publishers' information being used and monetised by the owner of the AI without any benefit flowing to the publisher.

Reliable news is labour-intensive and expensive to make and distribute—it requires people on the ground to gather Australian stories, persevere with investigative journalism that holds power to account, and curate the news that Australians would not otherwise get in social media echo chambers. In FY23, Free TV's members spent more than \$400 million on accountable news and current affairs. Cost follows quality, with compliance costs being material in the production of accountable news. Therefore, media organisations must be compensated for their content being used to train large language models and exemptions cannot be in place to permit it to simply be taken for free.

Journalists and producers who invest time, money, and resources into producing quality information and content will not be fairly recognised or compensated in any way if exemptions apply. AI systems that are entirely dependent on the creation of content by others should be required to prominently attribute and fairly compensate the originators of the information. Allowing exemptions for digital platforms to realise the commercial benefit from the product of others' creative and intellectual endeavours would serve only to exploit their labours and further embed their market dominance.

A TDM exemption will have adverse ramifications for the production of quality news and other creative content. If platforms can freely mine data without consent and without remuneration, it will disincentivise the investment in quality original content, ultimately leading to poor outcomes for democracy and society generally. As already mentioned earlier, to ensure the creative endeavours of our producers, publishers, journalists and performers are not exploited through AI without commensurate benefits, the ACCC should conduct a market study of the impact of generative AI on the creative sector.

Furthermore, granting safe harbours to digital platforms will create an uneven playing field. Smaller creators and companies may lack the resources to protect their works and assert their rights, while large platforms benefit from exemptions that shield them from liability. This exacerbates existing power imbalances in the digital ecosystem, further embedding the monopolistic practices that stifle competition and innovation.

7. Ex ante powers

Recommendation

- The economy-wide regulatory framework for regulating high-risk uses of AI should include ex ante powers

Free TV is pleased that, as confirmed in the Proposals Paper, ex ante powers are under active consideration when it comes to mitigating harms arising from high-risk uses of AI across a range of sectors. As the paper notes, such preventative measures have been used in other domains such as climate change, food safety, pharmaceuticals and chemicals regulation for many years to mitigate the risks of harm.¹⁴

In December 2023 the Government undertook to consult on the development of a new ex-ante digital competition regime and provided in-principle support for what was an ACCC recommendation. The framework would comprise of targeted rules that are placed upon digital platforms ‘up-front’ through mandatory, service-specific codes (the **ex ante framework**). The 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:

*The ACCC...presented a strong case for the development of a new ex ante digital competition regime to address anti-competitive behaviours of certain digital platforms. Treasury will consult on the design of a potential ex ante digital competition framework in 2024.*¹⁵

The *Competition and Consumer Act 2010* would be amended to allow the ACCC to make digital platform service-specific codes of conduct—effectively creating an ex-ante competition legal framework. This framework will be important to address concerns with conduct by digital platforms including that which amounts to self-preferencing, bundling and tying, conduct relating to data integration that benefits from a dominant market position, and restrictive terms of service.

Free TV fully supports the use of ex ante powers in the the economy-wide regulatory framework for regulating high-risk uses of AI.

¹⁴ Proposals Paper, page 16.

¹⁵ ‘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-majorcompetition-and#:~:text=The%20ACCC%20also%20presented%20a,digital%20competition%20framework%20in%202024.>

8. Regulatory framework

Recommendation

- The domain-specific knowledge of existing industry regulators should be preserved. Implementation options which enable the application of their expertise by reference to an overarching AI regulatory framework and principles are preferred

The Proposals Paper seeks feedback on regulatory options to mandate guardrails, proposing either a domain specific approach, a framework approach, or a whole of economy approach. Free TV's initial view leans towards Option 2, the framework approach, which introduces new framework legislation to adapt existing regulatory frameworks across the economy, though the detail and design must be considered carefully before it can be said whether this is the preferable option.

As the paper notes, Australia has many laws that are impacted by and shape the development of AI, and in some instances regulators have already moved to define how existing regulatory framework could apply to AI.¹⁶ However, the framework approach would allow a centrally-agreed definition of the guardrails that apply, and the threshold for when they apply. This would bring a level of consistency to implementation by domain specific regulators within their areas of expertise and through their regulatory instruments.

In relation to the framework approach, the Proposals Paper notes that:

The provisions included in framework legislation would represent best practice which policy agencies and regulators are expected to build into their own laws. It is expected they would do so unless there are competing policy reasons for them to take a different approach or tailor it for their regulated activities.¹⁷

This approach is currently seen as the better option, on the basis of providing both conceptual consistency and domain-specific flexibility, though careful consideration will need to be given before selecting this as the most appropriate path forward.

¹⁶ Proposals Paper, page 43.

¹⁷ Proposals Paper, page 48.