



AUSTRALIA

Submission by Free TV Australia

**Proposed 2024-25 fees for
service:**

- **Broadcasting licence
renewal under BSA Section
46**

May 2024

Submission from Free TV Australia

- Free TV Australia welcomes the opportunity to comment on the draft 2024-25 fees for service.
- Free TV Australia is the peak industry body for Australia's commercial free-to-air (FTA) television broadcasters. It proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



- Free TV acknowledges the need for cost recovery of certain ACMA functions and appreciates the Authority's diligence in keeping its actual costs of performing functions under review.
- However, the proposed changes to the Broadcasting (Charges) Determination 2017 are of concern for several reasons.
- They would roughly treble the existing charge for renewal of a commercial broadcasting licence under section 46 of the Broadcasting Services Act.
- By drawing attention to the anachronistic requirements of section 46, the proposal also poses questions both for ACMA and the government about whether the current Gazettal requirements in that section are doing any useful work.
- We would suggest that in addition to adding to the red tape costs of the broadcasting industry, the requirements of section 46 are also wasting scarce ACMA time and resources.

A substantial new impost

- The ACMA proposes to increase the cost of renewing a commercial television broadcasting licence from \$202 to \$778.
- The new impost is fiercely regressive, falling with equal weight on the Sydney commercial TV licences (with 5,228, 375 inhabitants in 2021) as they do on licences in Riverland, S Aust (35,007), Mt Isa, Qld (18,216) and Broken Hill, NSW (17,797).
- As there are somewhat under a hundred BSB TV licences on issue, the aggregate of all extra charges for all TV broadcasters will be somewhere in the vicinity of \$50,000 over five years, which is a further red-tape burden for an industry busy adapting to rising levels of competition, while still providing an essential service to Australians regardless of location.
- The impact on tiny commercial radio broadcasting services will be even worse, noting there are many more of these and they include even smaller businesses.

Understanding why section 46 requires so much ACMA work

- The ACMA paper is silent about how the average cost of \$778 has been determined. Unlike many other costs ACMA seeks to recoup, it is hardly obvious what ACMA is required to do.
- The new fee suggests either that ACMA staff are spending several hours considering the merits of each application, or that the sole requirement of section 46 (Gazettal) is incurring significant fees.
- The first explanation appears unlikely, as the legislation is explicit in not requiring substantive investigations into the circumstances of each renewal. Our members' experience of renewals is they receive a standard notice and invoice, and they sign the notice to apply for renewal and send it back with a payment. There is no other interaction or review of their standard application.
- In any case, Free TV seeks further detail from ACMA about what the activities are, that are costing the ACMA so much to routinely roll over commercial TV broadcasting licences.

Is it time to update section 46?

- An additional red tape impost of 'only' hundreds of thousands of dollars on the TV and radio industries might be dismissed as minor, but in this case, it will fall on some very small businesses in regional and remote Australia that are already facing adverse conditions and which carry other regulatory obligations and restrictions that are arguably inappropriate to businesses of their scale.
- As the requirements of section 46 are now almost 32 years old, it is surely timely to consider what, if any, substantive work they are doing.
- The 1992 Act subjected TV licences to a requirement to remain 'suitable' licensees, which was ascertained with reference to the likelihood they would breach any laws or licence conditions.
- At licence renewal time, the regulator was empowered to decide a licensee was not a suitable person, in which case it was required not to renew.
- But the law also states that the regulator was not required to investigate, just to Gazette the fact of the renewal application.
- If we can channel the logic of the authors of the 1992 Act, the publication in the Gazette was intended to give interested parties with any concerns about a licensee's suitability at least a formal or token opportunity to bring their evidence to the regulator.
- The context of the 1992 reforms should also be recalled. They replaced an extremely strict regulatory regime applying to broadcasters, including a 'fit and proper person' test that had only recently – in the case of Mr Alan Bond – been used to find a major public figure unfit to hold a TV licence.
- Similar to many other regulatory reform measures enacted in law in 1992, the intention of the section 46 requirements was in part to reassure parliament that a significant

deregulation of broadcasting did not mean an end to the possibility of close regulatory scrutiny of what were still, in those days, often described as ‘licences to print money’.

- In the ensuing three decades, no BSB commercial licensee has ever been found to be an unsuitable person.
- This alone might not be sufficient reason to remove the Gazettal requirement now, but on closer examination the requirement is also doing no useful work and, for the following reasons, should arguably never have been imposed.
- Prior to the 1992 passage of section 46, investigations prior to licence renewal were the norm and the regulator was able to delay expiry of a broadcasting licence while it completed investigations into any breaches of the law or conditions that might give grounds not to renew.
- While the Gazettal requirement reflected this expectation that a licensee’s behaviour might be scrutinised at renewal, the 1992 legislation failed to include any mechanism that would allow renewal to be delayed while such an investigation took place.
- Instead, the regulator was given a separate power to suspend or revoke a broadcasting licence at any time (Broadcasting Services Act, section 143).
- Thus, the requirement to notify the renewal of each broadcasting licence in the Gazette serves no useful purpose, as investigation of suitability doesn’t need to wait till renewal and cannot delay renewal in any case.
- Instead, the regulator is free to investigate suitability at any time, meaning that anyone with concerns about a licensee’s behaviour may also raise those concerns at any time. Unsurprisingly, at least to the knowledge of this organisation, no investigation into the renewal of a BSB TV broadcasting licence has ever taken place.
- It remains only to be added that the Gazettal requirement, which replaced a range of previous obligations to publish notices in more conspicuous places such as newspapers, is a completely ineffective way of drawing the public’s attention to the renewal of a licence.
- A few minutes spent using Google, or the FRL’s own search fields, should suffice to demonstrate that the notices are almost impossible to find, even by people who know they should be there.
- The proposed \$572 increase in a routine licence renewal process, while it may well reflect real costs incurred by ACMA, should be a call-to-arms for government to review the anachronistic requirements of section 46 itself.
- Maintaining a valid commercial TV broadcasting licence is an important formality but should make no additional work either for the regulator or the broadcaster.