FOXTEL GROUP

a **DAZN** company

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23/02/2026

Dear Carolyn,

Application for Class Exemption from Part 8C under s121FZD of the Broadcasting Services Act 1992 (Cth)

We refer to the new Part 8C of the Broadcasting Services Act 1992 (Cth) (the Act), which sets out the Australian content requirements for subscription video on demand services.

Under section 121FZD of the Act, the ACMA may exempt a specified class of online content services from the application of Part 8C of the Act.

Foxtel Group requests that the ACMA determine pursuant to section 121FZD of the Act that the following class of online content services be exempt from Part 8C of the Act:

- an online content service that is an online component of a content service that also makes available channels on a broadcast basis as subscription television broadcasting services and/or subscription television narrowcasting services.

If the ACMA makes the above exemption this would mean that the Foxtel subscription television service, along with its companion service Foxtel Go, would be exempt from Part 8C of the Act.

Please note that the above exemption is not intended to exempt Foxtel Group's standalone online services, Foxtel Now and Binge, from Part 8C of the Act.

Rationale

Foxtel Group makes available the Foxtel subscription television service to subscribers, which includes:

- broadcast of content to set top boxes via satellite;
- online transmission of content to set top boxes; and
- online transmission of content to mobile devices as part of the "Foxtel Go" companion service.

Foxtel's set top boxes are hybrid boxes that are capable of receiving program signals via satellite and/or via internet delivery.

The Foxtel subscription television service is already subject to Australian content requirements as set out in Division 2A of Part 7 of the Act, known as the "NEDE" obligations for subscription television broadcasters.

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Foxtel Group submits that it is contrary to the intention of Part 8C of the Act for the obligations set out in Part 8C of the Act to apply in respect of content services that are already subject to the NEDE obligations set out in the Act.

The Explanatory Memorandum for the Communications Legislation Amendment (Australian Content Requirement for Subscription Video On Demand (Streaming) Services) Bill 2025 which introduced Part 8C of the Act sets out the following in relation to s121FZD:

> *Subsections 121FZD (1) and (2) permit the ACMA to exempt a specified class of online content services from new Part 8C or one or more of its specified provisions. This section would allow the ACMA to ensure that a class of online service providers would not be subject to Australian content requirements in circumstances where imposing those requirements would have adverse consequences or be contrary to the intent of the legislation.*
>
> *It is intended that the ACMA would only use these powers sparingly and only in exceptional circumstances. For example, if an existing broadcaster has an online content service that is an exact mirror of its main service (such as Foxtel, being the main service, and Foxtel Go, being a duplicate of the main service), and that main service is already subject to local content requirements, it would not be intended to be captured by this Part. In this case, it would be up to the ACMA to consider whether this class of services should be exempt.*

The Explanatory Memorandum also sets out the SVOD services that were expected to be regulated under the new Part 8C of the Act, in reference to section 121FY (Meaning of major SVOD service), as follows:

> *At the time of drafting, such services are expected to include Netflix, Amazon Prime, Stan, Apple TV+, Disney+, Paramount+, and Binge. It is expected that HBO Max would also meet this definition once it has established its presence in Australia.*

It is clear from the Explanatory Memorandum that Part 8C was not intended to impose additional Australian content requirements on the Foxtel subscription television service, even though components of that service may be delivered on an online basis.

The granting of a class exemption for services such as Foxtel that offer a combination of broadcast and online delivery will also simplify the administrative burden of complying with the parallel schemes under Division 2 of Part 7 of the Act (NEDE) and Part 8C (SVOD scheme).

Please let us know if you would like further information or would like to discuss.

Yours sincerely,

[redacted]

Foxtel Group

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