



COMMUNITY  
BROADCASTING  
ASSOCIATION OF  
AUSTRALIA

22 October 2024

The Manager  
Content and Media Reform Section  
Australian Communications and Media Authority  
PO Box 78  
Belconnen ACT 2616  
By email: [CAMR@acma.gov.au](mailto:CAMR@acma.gov.au)

**Submission on the ACMA's Consultation Paper:  
Implementing Australia's TV Prominence Framework**

Thank you for the opportunity to make this submission.

**Who we are**

The CBAA represents 450+ not-for-profit community broadcasters across Australia, including two community television services and 500+ radio services on AM, FM and DAB+ platforms, streaming, podcasts and catch-up online. Our sector is a vital part of the Australian media as recognised in National Cultural Policy *Revive: a place for every story, a story for every place*. Our members provide a trusted voice for underrepresented and underserved communities including First Nations people, culturally and linguistically diverse communities, education, faith-based communities, people with disability, youth and seniors. Community broadcasting is also recognised for its key role during emergencies and for disseminating trusted public health information during the pandemic.

Channels 31 Melbourne and Channel 44 Adelaide are much-valued services in their local communities.

**Our support for the prominence framework**

The CBAA welcomed Government's legislated prominence framework for connected TV devices and we strongly support the objectives outlined in section 130ZZG of the *Broadcasting Services Act 1992* to enable audiences throughout Australia to access free-to-air television content in order to:

- (a) support Australia's representative democracy by informing Australians of issues or events that are relevant to public debate and democratic decision-making; and
- (b) ensure that audiences throughout Australia are able to access content that is of public significance at a local, regional or national level; and
- (c) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

**Summary of our position on the ACMA's consultation paper**

It is fundamental that ACMA's guidance fulfils these public interest objectives by ensuring that regulated television services are available as freely available as possible audience access to those services is not unduly restricted or impeded.

Manufacturers are gatekeepers for access to television services and the prominence framework is intended to address this power imbalance. The legislation is necessary to counter the effects of commercial incentives for manufacturers to prioritise paid-for services on television devices. It is intended to level the playing field by ensuring that free services which deliver on key public interest objectives - including community broadcasters - are not deprioritised by manufacturers and, most importantly, that Australian audiences do not miss out.

The intention of the prominence reforms is to establish a legislated framework that compels manufacturers to adapt their practices and change the way they present information to users. The ACMA has a key role in ensuring that the manufacturers comply with the purposes of the legislation.

The ACMA must ensure there is a transparent compliance regime with documented and readily available reporting for consideration and review. It is also essential any guidance implemented by the ACMA does not have the effect of diluting the intent of the legislation.

In this regard, the CBAA is aligned with and supports the other free-to-air broadcasters, including in the submissions made by the ACTA, Free TV and SBS, and notes how important it is that:

- section 130ZZL be given its clear and intended effect to ensure that all regulated television service apps appear on the static home pages of regulated television devices;
- the “primary purpose” test be used in its practical meaning, to recognise that there may be multiple primary purposes - for example, where families are sharing the use of screens; and
- whatever screens they choose to watch on (whether on a wall via a smart projector or a so-called “smart monitor”), Australian audiences should have immediate ready access to the regulated television services defined in the legislation, and that manufacturers must not be incentivised (by a smart monitor exclusion) to remove UHF/VHF receivers from devices.

The CBAA also has the following responses to the consultation questions.

## 1. ACMA APPROACH

### **Question 1: Do you have any views on the ACMA's approach?**

We agree with the television industry view that the ACMA's focus should be on preparing manufacturers for compliance with the minimum requirements specified in the new legislation (and the Minister's regulations, once finalised) and the ACMA's timetable should, where possible, be concurrent rather than consecutive to support the manufacturers preparing for compliance. It is also important that ACMA develops and issues an annual monitoring and compliance report, which includes identifying actions for non-compliance.

## 2. DEFINING A REGULATED TELEVISION SERVICE

### **Question 2: What are your views on the proposed considerations when applying the primary purpose test? Is there anything else the ACMA should consider?**

As noted in the Explanatory Memorandum, the definitions in subparagraphs 130ZZ1(1)(a)(i) and (ii) outline regulated devices provide for “edge cases” to be determined as technology evolves. The CBAA acknowledges that this will need to be reviewed from time to time.

However, in terms of the “edge cases” identified in the Consultation Paper's Table 1, the CBAA believes that smart projectors and smart monitors are clearly in scope as they are likely to remain key places where Australian audiences view television, regardless of other functionalities these devices may offer.

The exclusion of smart monitors has real potential to undermine the intent of the legislation to give Australians access to the content provided by free-to-air broadcasters, because it may incentivise manufacturers to remove the VHF/UHF tuner and market most of their products as smart monitors. This may create financial benefits for manufacturers by lowering their costs, maintaining the ability of their products to offer access to audiovisual services (which they can monetise) and undermine the legislation's public-interest objectives.

It is clear from the way people currently use devices that many devices may have more than one “primary purpose” especially when use is shared by members of a household (e.g. television viewing vs playing video games) and, for this reason, the definition should be understood accordingly. If this ordinary meaning is not applied, the definition offers the potential to become a loophole to avoid compliance with the intended purpose of the legislation.

### **Question 3: Is there a device the ACMA has not mentioned in this paper that you think should be considered?**

### **Question 4: Do you consider there is a need for the ACMA to clarify whether certain specific domestic reception equipment is, or is not, a regulated television device**

See above. The legislation should be implemented on the basis of devices captured by its definitions and new devices identified by regular reviews.

There is already provision for the legislation to be reviewed (section 130ZZV) and appropriate intervals for reviews by the ACMA could be determined depending on the speed of market development (which may itself change over time). As noted in the SBS submission, the ACMA should inform the sector how it proposes to treat certain new services, such as Foxtel IQ and the new Google TV streamer and other comparable services.

### 3. DEFINING A PRIMARY USER INTERFACE

**Question 5: Should the ACMA exercise its discretion to make descriptions or requirements for a device's primary user interface? Should the descriptions or requirements refer to the primary user interface extending beyond the static landing page for access to VOD apps, to include scrolling (horizontally or vertically)? Do ribbon or row layouts require different consideration to grid layouts?**

As above, the legislation and Exposure Draft Ministerial Regulation are designed to ensure prominence on the static landing or home page. It would not be appropriate to extend this meaning and such an extension would undermine the protections the legislation clearly gives to enable Australian audiences to easily find regulated services that serve the public interest.

**Question 6: Do you support treating content aggregating interfaces differently from other regulated television devices when describing requirements for the primary user interface?**

As outlined elsewhere, the primary objective should be to ensure prominence on the static landing or home page seen by the audience, however provided.

**Question 7: To what extent do existing contractual arrangements between device manufacturers (or operating systems) and content service providers (such as SVOD providers) affect the ability to provide prominence for BVOD apps on the primary user interface?**

The legislative obligation and Ministerial regulations should be the starting point for the ACMA's consideration. Manufacturers have been aware of discussions around the legislation for several years and have 18 months between the passing of the legislation and its implementation to determine how they will comply with it. This is a compliance matter for the manufacturers, not a regulatory matter for the ACMA and should not negatively impact the important protections being delivered under the legislation for the benefit of the Australian public.

### 4. WHEN A REGULATED TELEVISION SERVICE IS OFFERED

**Question 8: Should the ACMA determine circumstances in which a regulated television service is, or is not, taken to be "offered"? Is the ordinary meaning of "offered" adequate?**

**Question 9: Is there sufficient transparency about which apps are currently offered to which manufacturers?**

**Question 10: What circumstances should the ACMA consider for a regulated television service to be, or not be, taken to be "offered"?**

**Question 11: Under what circumstances might a manufacturer "reject" an app that meets its quality and timelines criteria?**

**Question 12: Are there different circumstances that the ACMA needs to consider for different kinds of regulated television services?**

The CBAA supports and affirms comments made by the other free-to-air broadcasters in relation to this section of the consultation paper, including the use of existing industry practice and maintenance of a standardised and centralised list of applications.

This will assist in not only transparency about what is available in the market but will also be a useful tool to ensure that there is compliance by manufacturers, which should not be entitled to reject an application that meets its criteria. It would be contrary to the purposes of prominence framework - which was designed to create a levelled playing field - to allow for manufacturers to discriminate against regulated television services.

### **Calls for evidence - Community television BVOD app**

For community television, the costs and efforts of developing a BVOD application for television devices has a major financial impact and consumes scarce time and resources of small organisations already operating under pressure and with a substantially voluntary workforce.

To make this type of investment, the community television sector needs to ensure that manufactures will act appropriately and in good faith to make CTV+ available to the public in a timely way once it is developed and ready for television devices.

The sector will need to rely on the support of the regulator in monitoring this and enforcing compliance by manufacturers with their obligations under the prominence provisions in the *Broadcasting Services Act 1992*.

As outlined in the ACTA submission to this consultation, the community television industry's app CTV+ is currently not available as a BVOD service, although the industry Transformation Plan aims to improve the sector's presence which includes this BVOD service.

The sector is also seeking Ministerial Designation for CTV+ as a regulated television service as, due to a technicality, the community broadcasting sector was not included the statutory definition prior to passing the legislation. (The submission of the community broadcasting sector to the Government's Review of the Sustainability of Community Broadcasting has raised this as an issue for future legislative update. The Department's (DTRDCA) Sustainability Review is due for completion this month.

Achieving prominence on regulated television devices is absolutely critical to the survival of the community television sector and the future sustainability of its business model. The comments made in this submission should be read in that context.

The CBAA appreciates the excellent working relationship we have with the ACMA and would be happy to meet with your team and the ACTA to further discuss any aspect.

Sincerely,



Jon Bisset

Chief Executive Officer, CBAA