

The Manager
Content and Media Reform Section
Australian Communications and Media Authority

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CESA Submissions in relation to “Implementing Australia’s TV Prominence Framework” Consultation Paper dated September 2024 (the “Consultation Paper”)

Introduction

The Consumer Electronics Suppliers Association (**CESA**) welcomes the opportunity to comment on the ACMA’s Consultation Paper in relation to the implementation of the TV prominence framework established by the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024*¹ (**Prominence Framework**).

CESA is the premier national, industry body in Australia representing suppliers of consumer electronics products in Australia. CESA represents importers of the major brands of smart televisions supplied in Australia and certain brands of audiovisual equipment (**CESA TV Members**).

The Prominence Framework operates through an obligation on manufacturers of ‘regulated television devices’ to carry (make available) regulated television services without any fee or other consideration being provided for this access. CESA TV Members are therefore major stakeholders in relation to the Prominence Framework and the have responded to consultations and the Senate Committee inquiry undertaken during the development of the Prominence Laws.

CESA TV Members support the availability of Australian free-to-air television services and BVOD services on regulated television devices and would like to emphasis that practical and efficient device integration is critical for the successful implementation of the Prominence Framework.

Comments on the Consultation

Under the *Broadcasting Services Act 1992* (**BSA**), the ACMA has the power to:

- (i) make guidelines about regulated television devices, or determine that specified domestic reception equipment is or is not a regulated television device;
- (ii) describe or determine requirements for a primary user interface (PUI) on regulated television devices; and
- (iii) determine circumstances in which a regulated television service is offered.

¹ *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024* amended the *Broadcasting Services Act 1992*

The above matters are essential in:

- (a) defining the scope and requirements for compliance with the Prominence Framework noting that items (i) and (ii) are time critical to enable CESA TV Members to comply with the minimum prominence requirements by 10 January 2026; and
- (b) ensuring that the reasoning in the Explanatory Memorandum and outcomes of the Government's Impact Analysis are integrated into the implementation of the Prominence Framework.

Context in which the Prominence Framework is being Implemented

When developing guidelines and legislative instruments, it is important for the ACMA to appreciate the context in which CESA TV Members are implementing compliance measures.

- CESA TV Members import regulated television devices from overseas manufacturing entities some of which use third party operating systems such as Google TV. CESA TV Members have no control over the device development process and timeline for televisions supplied in Australia. The implementation of changes to user interfaces and the app integration process are controlled solely by the overseas TV manufacturers and third-party operating systems and CESA TV Members are reliant on these parties agreeing to implement the minimum prominence requirements.
- Smart TVs supplied in Australia are based on global designs and the user interface is a critical feature of the product and the gateway through which users access other smart TV features and settings, not just content. As CESA has demonstrated there is insufficient space to display the 5 – 6 regulated television services apps and the Live TV icon on the initial home screen.

CESA TV members have consulted with their respective overseas suppliers in relation to the process, timeframes and requirements necessary to meet the prominence obligations. This feedback has informed CESA TV Members' responses to the proposals in this Consultation Paper set out at **Appendix A** and the Call for Evidence at **Appendix B**.

We thank you for your consideration of the views provided in our response and please do not hesitate to contact us should you have any questions.

Yours sincerely,



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APPENDIX A – CESA’S RESPONSE TO THE ISSUES FOR COMMENT

Question 1:

Do you have any views on the ACMA's proposed approach?

The minimum prominence requirements will apply to devices *manufactured and supplied on* or after 10 January 2026.

According to the ACMA's indicative timeline the initial guidelines for the implementation of the prominence framework will not be finalised until the first quarter of 2025 and will be communicated to stakeholders from March 2025. This timing is problematic for the reasons noted below.

The impact of ACMA’s proposed timeline on device development programs.

Currently, CESA TV members have:

- (a) finalised the development of 2025 televisions and are undertaking pre-production testing, certification and registration processes. Mass production and release of 2025 televisions generally occurs during the period March ~ June 2025. 2025 television models sales cycle generally ends from March 2026 to June 2026 and in the case of slower moving models can extend beyond these dates.
- (b) already commenced work on 2026 devices. In the lead up to December 2024, internal approvals are being obtained and R&D resources allocated. Longer lead times are needed as additional approvals and resources will likely be required to amend the standard global home screen designs to accommodate the prominence requirements for Australia.

The clarification in the ACMA guideline and determinations are needed to finalise the user interface and user experience design briefs for internal approval and for resource planning purposes.

CESA TV members seek that the ACMA adapt the timeline at Figure 2 of the Consultation Paper so that guidance on what constitutes a primary user interface and whether smart projectors are in-scope are provided by the end of December 2024.

This will enable CESA TV Members to progress the necessary approval and resource planning stages prior to the Christmas and Asia New Year holiday periods. This is essential for CESA TV members to meet the 10 January 2026 timeframe noting that the compliance measures are subject to additional approvals and the device development programs of overseas TV manufactures and third-party operating system providers.

If the guidelines are issued in March 2025 this will impact software/device development timelines and launch schedules for 2026 televisions. The impact will be even greater if additional devices such as smart projectors are included as a regulated television device.

Question 2

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

Both the revised explanatory memorandum to the Bill and the Minister's second reading speech on the Bill reinforced that the definition and primary purpose test for 'regulated television devices' *is intended to include* "devices that are *predominantly used for TV viewing, while excluding devices* that may technically be used to do so but *where this is a secondary function.*"

Whether a device is *used [by consumers] predominantly for TV viewing* should be the overriding consideration when applying the primary purpose test. Focussing solely on the manufacturers marketing and technical specifications is not sufficient as manufacturers promote a broad range of features on their devices. The main consideration should be:

- how consumers typically use the device, and
- whether the prevailing use is to view regulated television services.

In the case of smart projectors, the target consumer is tech savvy and is not the class of consumers who has difficulty navigating devices. Smart projectors are multi-purpose devices designed for business, education, gaming, home cinema and even outdoor use, with battery operated portable models becoming more popular. Also, home cinemas are a speciality, secondary entertainment zone and are unlikely to be used for everyday television viewing or for viewing of regulated television services.

Given the above and the small volume of sales of smart projectors, the proposed inclusion of "smart projectors" as a regulated television device would impose an unnecessary regulatory burden on industry without delivering meaningful prominence.

CESA submits that an additional (and overriding) consideration when applying the primary purpose test, is whether consumers typically use the device to view regulated television services.

This will become increasingly relevant as more multi-functional 'smart' devices emerge where, the viewing of audiovisual contents whilst technically possible, it is an ancillary function.

Multifunctional devices that include disc players and Personal Video Recorder (PVR) functionality should be excluded from the scope of TV prominence rules. Although these devices are marketed with various features, including internet connectivity, their primary purpose is distinct and does not centre on the delivery of internet-based TV services. For smart Blu-ray players, the core function remains the playback of physical disc media, with internet-connected apps serving as a secondary, supplementary feature.

Similarly, internet-connected PVRs, equipped with multiple tuners for recording free-to-air content, are primarily designed for time-shifting and storage, not for delivering prioritised TV services.

Imposing TV prominence requirements on such multifunctional devices would be inappropriate and cumbersome, as their user interface and functionality are tailored for different consumer behaviours - namely, the playback of recorded or physical media rather than streaming or on-demand TV consumption.

Therefore, ACMA should carefully consider device functionality, the user interface, and typical consumer use when applying the primary purpose test, ensuring that devices primarily designed for other uses, like disc playback, recording, media management, content storage are excluded.

Question 3

Is there a device the ACMA has not mentioned in this paper that you think should be considered?

The scope of regulated television devices should be limited to the scope intended in the Bill namely smart televisions, set top boxes and plug-in devices which we estimate would account for approximately 80% of TV viewing devices.

CESA submits that other devices should not be considered, at this stage, including smart projectors for the reasons noted in Question 2 and below.

TV manufacturers are already facing significant challenges and time pressures implementing prominence requirements for Smart TVs given the novel requirements and size of the Australian market.

Where smart projectors utilise different (often older) operating systems than smart televisions, with generally limited resources and longer development timelines and sales cycles, the implementation of minimum prominence requirements will add to the complexity both from a technical and operational perspective.

Notably there has been no consultation with the main players in the projector industry in relation to the Bill or this Consultation Paper. Prior consultation with the projector industry such as BenQ, Xgimi, Acer, Philips, Epson, Anker, Viewsonic and, Kodak is necessary if smart projectors were to be included as a regulated television device.

The inclusion of smart projectors adds to the already significant compliance burden on TV manufacturers and increases the risk of certain brand 'smart projectors' being removed from the Australian market.

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?

Further guideline needed re transition from 2025 to 2026 models

2026 models are generally not released until the period March 2026 to July 2026.

There will be a cross over period between 10 January 2026 and July 2026 where old 2025 models (as well as new 2026 models) will potentially need to be both manufactured and supplied. Since the home screen design for those 2025 models are already locked in and cannot be changed for part of a manufacture/supply period (given the global design and approval process which cannot be re-done for Australia only), there is no way to make these transition period 2025 models compliant with prominence requirements.

In circumstances where:

- (a) the prominence legislation was enacted in July 2024 after the design process for 2025 devices had been completed;
- (b) the exposure draft regulations and the ACMA guidelines are still to be finalised; and
- (c) the legislation does not contain a grandfathering provision;

the minimum prominence requirements cannot feasibly be applied to 2025 television models.

CESA submits that ACMA should use its power under subsection 130ZZI(3) of the BSA to determine that televisions launched in 2025 are not regulated television devices or alternatively provide a moratorium against enforcement to allow sell out of 2025 television devices from the market.

This is needed to ensure manufacturers can still manufacture and supply those previous year model TVs in the 10 January 2026 to July 2026 period i.e. the minimum prominence requirements are to be applied on television models first released (i.e. launched) in the Australian market after 10 January 2026.

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?

The current definition at section 130ZZL of the BSA is not in itself sufficient to outline what constitutes the primary user interface and does not deal with the requirements for different interface layouts or circumstances.

ACMA should exercise its discretion to include a description or requirement that the primary user interface (PUI) extends beyond the initial view. In the case of horizontal and vertical interface layouts, the PUI should permit scrolling across or down the screen. As noted in CESA’s evidence to the Senate Standing Committee and submissions in relation to the Bill, this requirement is essential for TV manufacturers to apply the prominence requirements for different user interface designs.

This scrolling option was also explicitly referred to as an option in the 6 March 2024 report of Stephen Cleary which was Annexure A to the Free TV/ABC/SBS response to Questions on Notice at the prominence Bill Inquiry.

“...Alternatively, it may be possible to expand the number of tiles to the sides, typically to the right.”

Whilst CESA members support the proposal that the primary user interface comprise “double the initial view”, this requirement must be expressly qualified to ensure that it does not impinge on TV manufacturers’ existing and future commercial arrangements with other streaming services or “constrain the capacity of the manufacturer to promote, preference content or services to users including their own brand content and services”.²

CESA opposes the comment at page 12 of the Consultation Paper *“that it may be appropriate to set a limit for the number of apps that can be displayed before regulated television services”*. Setting a limit on the number of apps would have the effect of a ‘must promote’ requirement and contrary to the above intent of the prominence legislation.

The Department’s Impact Analysis is clear that the ‘must carry’ prominence model would:

- (i) not require free to air services and apps to be promoted above or ahead of competitor services or impede TV manufacturers’ ability to promote its own services; and
- (ii) not impact TV manufacturers’ existing and future commercial arrangements with other streaming services.

In exercising its powers, it is essential that the ACMA ensures that its guidelines and legislative instruments gives effect to the above.

The guidelines should also afford manufacturers flexibility to apply the prominence framework in different ways including through the use of a folder for free-to-air apps located on the primary user interface provided that that it is easy to find and access. The “folder” option helps overcome the challenge of space constraints on the primary user interface whilst still providing prominence for regulated television services.

² [Revised Explanatory Memorandum](#), page 27

Question 6

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

CESA TV members support this proposal.

Question 7

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

Contractual arrangements with content service providers are managed globally or by the third-party operating system provider such as Google TV. CESA TV members in Australia do not have visibility of the global contractual arrangements to which confidentiality undertakings apply.

As noted in evidence to the Senate Standing Committee and submissions in relation to the amendments to the BSA and exposure draft Regulations, existing contractual arrangements will affect the ability to provide prominence to free to air BVOD's on the PUI if the PUI is not defined as the ACMA proposes.

It is not possible to define the extent of this without breaching confidential contractual obligations.

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?

The Explanatory Memorandum to the Bill contemplates that the ACMA would "prescribe that, for a television service to be offered, it must meet the minimum technical specifications for integration into the software used on regulated television device".³

CESA TV Members believe that the ACMA should define the conditions for when a regulated television service is offered as envisaged in the Explanatory Memorandum including that regulated television service providers must conform with TV manufacturers' app submission and integration processes.

Question 9

Is there sufficient transparency about which apps are currently offered to which manufacturers?

CESA believes that a standardised and centralised list of applications available across platforms and operating systems would enhance transparency.

³ [Revised Explanatory Memorandum](#), page 27

Question 10

What circumstances should the ACMA consider for a regulated television service to be, or not be, taken to be ‘offered’?

The Explanatory Memorandum to the Bill contemplates that the ACMA would “prescribe that, for a television service to be offered, it must meet the minimum technical specifications for integration into the software used on regulated television device”.⁴

In addition, for an app to be taken to be offered the app must be made available for inclusion in devices in accordance with the relevant manufacturer’s development timeline and their standard conditions regarding maintenance of the apps. Furthermore, to avoid consumer complaints regulated television service providers should commit to support free to air BVOD apps for a minimum period of 3 to 5 years and must update their apps when Smart TV platforms are upgraded.

Conversely, an app should be taken as not offered where there is a failure to meet the above conditions or if there is a material compatibility or operation issue and it is not rectified by the regulated television service providers within a reasonable period of time.

It is inequitable and damaging for TV manufacturers’ brands if they are compelled to make a sub-standard app available on devices. As a minimum where a regulated television service provider develops and makes free to air BVOD apps available on an operating system store (apps playstore or library or as otherwise described) then that apps should be made available to all manufacturers using that operating system.

Question 11

Under what circumstances might a manufacturer ‘reject’ an app that meets its quality and timeliness criteria?

In addition to the considerations noted at Question 10, TV manufacturers have standard terms and conditions that all app providers must agree to before app development can proceed. These terms outline amongst other things the criteria for compatibility testing, app support, maintenance and resolution of technical issues.

TV manufacturers should be able to reject an app if a regulated television service provider does not accept its standard terms and conditions for app providers and fails to address issues affecting multiple consumers.

Question 12

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

Product design and capability originates from the system on a chip (SoC) and its firmware.

⁴ [Revised Explanatory Memorandum](#), page 26

SoC are developed based on global requirements. OS, API, SDK etc are based around the SoC with features being made available based on the known requirements of the region to which the product will be made available.

Therefore, the capabilities available to development of an app depends on the SoC and available features included in the software components of each device. SoC used by a single brand can vary in capability between entry point and high-end product. That is the models of a single brand may vary depending on the SoC being employed.

As at now regulated television service apps are generally made available to the full range of each major brands of regulatory television devices.

If, however a regulated television service provider introduces a new feature, or a new regulated television service is introduced, TV manufacturers must be given appropriate time to firstly determine that the new requirements represent a commercially viable proposition and to integrate the apps on devices. TV manufacturers should not be forced to introduce features that are unique to Australia.

APPENDIX B: CESA RESPONSE TO THE CALL FOR EVIDENCE

See below images of the home screens on 2024 TV models (where BVOD and SVOD apps are commonly located) of the major TV brands. Note that the design of user interfaces change from time to time. The layout of the home screen for 2026 may vary from those shown below.

Samsung



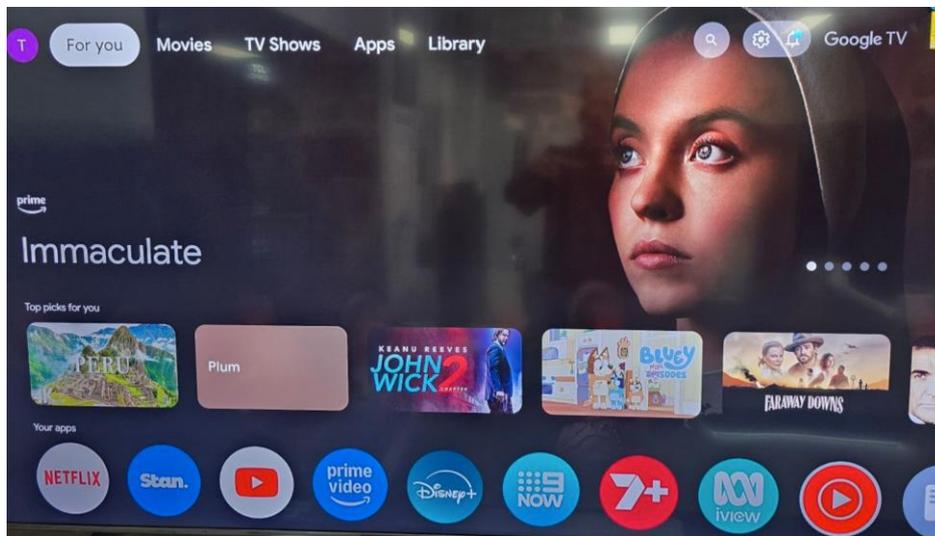
LG



Hisense



TCL



Sony



Call for evidence 2**What platforms and operating systems are regulated television services available on?**

Google TV, Android TV, Roku TV. PS5, Xbox, Foxtel. Tizen, webOS

Call for evidence 3**How do app developers provide assurance of an app's compatibility with each device or operating system? For example, is there internal or external certification of apps?**

Each manufacturer has its own internal quality assurance and certification processes and testing requirements and which regulated television service providers currently adhere to for apps currently available on regulated television devices. Regulated television service providers generally also acquire, at their cost, sample devices for testing.

There may be benefit for regulated television service providers to standardise the architecture/platform used for the free-to-air BVOD apps. The 'skin' of each app can be customised and branded. This way, only one app per platform would need to be developed and maintained easing associated costs and resourcing for regulated television service providers.

Call for evidence 4**What lead times are required to incorporate additional regulated television service applications into a device if they are compatible and made available today? For a given model of device, what do manufacturers consider the deadline for an app to be pre-installed, or added to a setup procedure?**

Lead times varies across manufacturers and operating system providers and is dependent on the availability of resources, time of year, and complexity of the application noting that regulated television devices can be integrating as many as 1000 apps at time for new platforms.

By way of a general guide and as per previous submissions on the Act, Regulations and to the Prominence Inquiry:

- even where apps are installed via a software change on a manufacturers own OS (which is not all manufacturers and models) it is already too late (as at October 2024) to include further apps for 2026 models
- lead times must allow for an app being included from the start of a manufacturer's 2-year design, development/planning, testing processes (which are commencing now for 2027 models and entail separate teams and processes for each model). New apps can't just be 'added in at the end' or part way through these global manufacturing development timetables as that entails a whole re-design and going back to the start of the 2-year process/re-seeking approvals and re-convening teams for each model for Australia only.

It should also not be assumed that additional regulated local BVOD applications could even be incorporated for 2027 models if required today as this would depend on how many more of these apps were being required, on ACMA's PUI definition and on existing contractual arrangements.

Call for evidence 5

Data on the likely costs of compliance would help the ACMA evaluate the efficiency of the regulatory framework. What costs do regulated television service providers incur when offering apps to manufacturers? What costs do manufacturers incur when assessing or accepting apps submitted to their app store? Noting this is commercially sensitive information, indicative figures are acceptable.

The costs for manufacturers is the manpower and time spent on the device integration and QA process. It is not feasible to calculate the cost since the QA process, labour and operating costs differ from manufacturer to manufacturer and this is not data that is readily available to CESA or CESA TV Members.