
FETCH TV PTY LTD

Submission to THE ACMA

Implementing Australia's TV prominence framework

22 October 2024

1. Introduction

Fetch TV Pty Ltd (**Fetch TV**) welcomes the opportunity to provide input for the development of guidelines and determinations relevant to the ACMA's implementation of the legislated prominence framework

Fetch TV has been actively engaged with the Department since 2022 on prominence issues and also provided evidence to and appeared before the Senate Inquiry in connection with the prominence framework.

Fetch TV is generally supportive of the overarching policy intention that gave rise to the Government's commitment to legislate a prominence framework, although we are disappointed that the legislation has not mandated certain reciprocal obligations affecting the FTA networks.

Fetch TV is keen to ensure that ACMA is aware of the matters affecting the development and display of the primary user interface so that the legislation can be implemented in a way that permits the requisite degree of flexibility and differentiation for content aggregation platforms such as Fetch TV, bearing in mind that Fetch TV has always accorded – voluntarily - a very high degree of prominence to the FTA networks and their content. Our experience in working with content providers and broadcasters for over a decade, coupled with our own experience as an OEM manufacturer of set top boxes and as the developer and designer of our own user interface gives us a unique insight into a range of issues affecting prominence.

2. About Fetch TV

About Fetch TV

Fetch TV is an Australian technology company providing families with a home-grown, world-class entertainment platform offering both ease of use and value for money. Bringing together content from the world's best entertainment providers, Fetch is a true aggregator presenting Free-to-Air, FAST, and subscription channels, streaming services, and a transactional movie and TV store all together on one intuitive menu. Underpinning the Fetch customer proposition of "The way to watch" is a market-leading UX, developed in-house, with integrated features such as universal voice search, continue watching, curated watch lists, a free-to-me filter, plus the ability to browse multiple streaming apps all on one screen, and to easily see all the places a show, season or episode is available without the frustration of having to jump in and out of menus and apps.

Founded in Sydney in 2008, and following an investment by Telstra Group in 2022, Fetch TV operates as a joint venture between the Telstra Group and Astro Holdings. Currently reaching around 1.8m Australians via 700,000 customer households, acquired through ongoing partnerships with leading Australian ISPs and directly via retailers, Fetch is growing rapidly towards 1 million subscribers as Telstra migrates the Telstra TV base across to the Fetch platform. Fetch TV continues to evolve, with plans to develop beyond TV and streaming aggregation, into new complementary entertainment, gaming and lifestyle offerings. [Fetch.com.au](https://fetch.com.au)

3. Executive Summary

Note: this submission uses "Fetch TV" to refer to the corporate entity and "Fetch" to refer to the Fetch Service.

- 3.1** Fetch TV earns no revenue directly from FTA broadcasters via the Fetch service. Nonetheless, the Fetch service has always featured the FTA channels and FTV BVOD apps prominently, and

done so without any regulatory or direct commercial incentive to do so. In fact, Fetch TV has introduced Virtual Playlist channels to provide additional EPG listing to promote content from the BVOD Apps. Providing prominence is rational because viewer demand for the FTA content remains high.

3.2 Fetch TV will continue to provide prominence without any legal obligation to do so. Fetch TV considers that the implementation by the ACMA of a prominence framework needs to be developed with the following principles affecting Primary User Interface. That is, the framework needs to be carefully calibrated such that it does not

- compromise the consumer experience,
- introduce impracticalities that stifle innovation, or
- unbalance, limit or extinguish commercial opportunities critical for the continued viability of platforms.

4. Background: Fetch TV's existing and continuing engagement with FTA broadcasters

4.1 Fetch TV has a long history of working with FTA broadcasters and also ensuring local content is readily available through our respective platforms and devices through a variety of access options, including but not limited to:

- a. **hardware capabilities** in the Fetch set-top boxes (STB) to receive and access digital terrestrial free-to-air channels (via a dedicated tuner), the electronic programming guide and ability to pause, rewind and record free-to-air content;
- b. **Access to all BVOD applications** (BVOD apps) on the device to stream and view local content, including all current FTA broadcast video on demand applications (ABC iView, 9Now, 7+, 10play and SBS on Demand) ("**BVOD Apps**").
- c. **software capabilities** to surface and editorialise local content to end-users by promoting content directly on the user interface or home screen, integration of the provider catalogues into an aggregated search feature supported through text and voice input, ensuring ease-of-discoverability that extends beyond application availability, including a time-shifting TV Guide
- d. Provision at no cost to the FTA broadcasters of a **virtual playlist channel**, programmed by the FTA broadcasters. A virtual playlist channel is a feature that aggregates and curates content from linear TV into a single, continuously streaming "channel" that mimics a traditional TV channel. Instead of broadcasting live, it pulls content from a pre-defined list of on-demand shows, movies, or other media, playing them in a sequence, similar to a playlist. In the context of Fetch, these virtual playlist channels are used to surface and promote content from Free-to-Air (FTA) broadcasters' BVOD (Broadcaster Video-On-Demand) apps. For example, the playlist might showcase on-demand content from ABC iView, 9Now, or 7Plus, allowing viewers to discover this content directly through the Electronic Program Guide (EPG) without needing to open individual apps. It essentially bridges the gap between traditional linear TV viewing and VOD, offering a seamless, curated viewing experience;
- e. Provision of functionality (at Fetch's cost) of access via the Fetch service to **IP feeds** of the free to air linear channels. Access to the IP feeds of the linear channels allows Fetch TV to list the IP feed of the FTA Linear channels in the Fetch EPG – and gives users who either do not have access to an antenna or whose access to the free to air feeds may be compromised because

they live in a digital black spot, the ability to access the FTA linear channels as an IP feed directly from the EPG.

- 4.2** The purpose of listing the functionality above is to draw to the ACMA's attention the very high degree of prominence and show-casing of the FTA content that is already provided via the Fetch Service for no fee and to request that such matters form part of the background of facts that the ACMA takes into consideration when formulating any guidelines.

5. Limits to overly prescriptive regulation

- 5.1** We reiterate that the key strategic principle that Fetch TV has previously suggested should guide the prominence considerations for the ACMA is the importance of ensuring that regulation does not stifle innovation, commercial opportunity or viewer choice. Some of the matters to be considered are set out below.

5.2 Maintain Viewer choice

Fetch TV's position is that a number of steps can be taken to increase/maintain prominence of FTA Channels whilst still ensuring that the viewer experience on devices may be configured and customised – at the instigation of the viewer- to reflect personal preferences and engagement:

- a. All free to air terrestrial channels should be available on relevant devices on the numbers to which those channels have been assigned and the channels should be readily discoverable using a search.
- b. Viewers should be able to continue to use functionality on a television interface which permits customisation – a viewer should be able to “hide” or “favourite” FTA channels and/or applications (including BVODs) according to their personal preferences.
- c. Viewers should be permitted to re-arrange FTA channels within their “favourites” sections, that is customisable re-sequencing should be permissible.
- d. In the case where a FTA channel is being re-transmitted (e.g., Foxtel retransmission via satellite) then the FTA channel number should be the same, for consistency, when re-transmitted.
- e. Placement of BVOD Apps within parts of the UI that are algorithmic depending on a user's viewing patterns (for example, Fetch's “My Stuff area) should not be affected by any prominence provisions.

5.3 Recognize distinctions

User Interface (UI/UX) differentiation is core to competitiveness and commercialisation by home entertainment product providers such as Fetch TV. We consider it extremely important that platforms such as Fetch TV have the flexibility to present menu structures that customise the user experience, based on functionality such as user settings, policy rules, algorithms, etc. Such functionality may, for example, prioritise “favorited channels” in the EPG, present Apps in rank order based on active subscription / sign in, frequency of use, last viewed, etc.

The Fetch service needs to be distinguished, from, in particular, Connected TVs, in that it is driven by different incentives. Rules adopted should recognize that in this area there should not be a “one size fits all” approach which runs the risk of stifling competition and innovation.

6. Areas for Comment: Regulated Television Devices

- 6.1 Fetch TV does not in this paper provide any detailed submissions in relation to the issue of the determination of what is a *regulated television device*. Fetch TV accepts that the devices which Fetch TV currently offers, being set top boxes, would be regulated television devices.
- 6.2 We agree generally with the ACMA's description of the matters to be taken into consideration when determining the application of the "primary purpose" test.
- 6.3 We point out that the edge cases which are referred to are likely to increase - our view is that the concept of "primary purpose" may become increasingly difficult to denote as manufacturers and/or platforms seek to integrate the ability to view audio-visual content with other functionality. By of examples, devices which are sold primarily for gaming or health and fitness purposes (e.g., a device presenting as a mirror in one-mode to offer personalised AI driven training program) could have the ability to view related audio-visual content. In such a case, the identification of "primary purpose" might be difficult.
- 6.4 We therefore agree with the ACMA's assessment that guidance is likely to need to change over time.

7. Areas for Comment: Defining a primary user interface

- 7.1 It has always been and remains Fetch TV's position, that access to FTA linear channels and BVOD Apps will be "pre-installed" on the Fetch Service and accessible via the "primary user interface" [howsoever defined] without the user having to go to an app store or otherwise "download" or initiate any other steps to introduce these channels or apps onto the Fetch Service.
- 7.2 We note that the ACMA has reviewed Fetch TV's submissions to the senate inquiry and included a quote which underlines Fetch's key philosophy with regard to the user interface – at least for content aggregation platforms such as Fetch, that is:

The Fetch primary UI [user interface] provides significant prominence in a manner that is logical and intuitive but does not involve literal "visibility" of BVOD apps on the first page (home page) that the viewer sees, nor does the UI provide a single row of apps anywhere. Navigation is based on the customer use case

- 7.3 We are pleased to see that the ACMA has appreciated that the concepts of a "Primary User Interface" and the concept of a "Home screen" may not be static concepts nor ones which necessarily have precise application to a content aggregation platform such as Fetch.
- 7.4 As will be seen in our response to the question below, we consider that the ACMA should take an approach to content aggregation platforms that recognises that such platforms must differentiate themselves for competitive purposes from devices such as connected TVs and that the differentiator is often driven by the UI/UX. Our view is that the underlying principle that the ACMA should adopt in considering content aggregation platforms is that a UI/UX which offers access to the linear channels and BVOD apps in a way that is logical, intuitive (and can, if the functionality exists, be ordered based on user driven choice) is one which conforms to the legislation.
- 7.5 We would urge the ACMA to continue to approach the subject in a way that allows it to make determinations that are non-prescriptive. Although we agree that:

Theprimary user interface as a virtual space that may extend beyond the bounds of the screen.

We do not necessarily agree with the statement that a conforming primary user interface is one where

scrolling may be required to reach all regulated television service apps, but not beyond a space that is double the initial view.

As stated, certainly for voice-capable content aggregation platforms generally and for the Fetch Service in particular, “scrolling” is not the only way to consider access and prominence and any determinations cannot refer to scrolling only. To that end references to “ribbons” and “Grids” have to be considered, but more generally the overarching concept of logical and intuitive access is likely to be more useful for a content aggregator.

8. Limits to overly prescriptive regulation

- 8.1** We reiterate the key strategic principle that Fetch TV has previously suggested should guide the prominence considerations is the importance of ensuring that regulation does not stifle innovation, commercial opportunity or viewer choice.

Some of the matters to be considered are set out below.

8.2 Maintain Viewer choice

Fetch TV’s position is that a number of steps can be taken to increase/maintain prominence of FTA Channels whilst still ensuring that the viewer experience on devices may be configured and customised – at the instigation of the viewer- to reflect personal preferences and engagement:

- a. All free to air terrestrial channels should be available on relevant devices on the numbers to which those channels have been assigned and the channels should be readily discoverable using a search.
- b. Viewers should be able to continue to use functionality on a television interface which permits customisation – a viewer should be able to “hide” or “favourite” FTA channels according to their personal preferences.
- c. Viewers should be permitted to re-arrange FTA channels within their “favourites” sections, that is customisable re-sequencing should be permissible.
- d. In the case where a FTA channel is being re-transmitted (e.g., Foxtel retransmission via satellite) then the FTA channel number should be the same, for consistency, when re-transmitted.

8.3 “No Worse Off”

Fetch TV would be supportive of a general approach that ensures that the FTA content is “no worse” off with regard to the establishment of a rule set for navigation in the context of any prominence framework.

We consider it extremely important that platforms such as Fetch TV have the flexibility to present menu structures that customise the user experience, based on functionality such as user settings, policy rules, algorithms, etc. Such functionality may, for example, prioritise “favorited channels” in

the EPG, present Apps in rank order based on active subscription / sign in, frequency of use, last viewed, etc.

8.4 “Guaranteed Supply”

Fetch TV notes that timely and commercially reasonable supply of IP channel feeds, BVOD apps and updates by FTA broadcasters is critical to enabling compliance with any anticipated regulations. It is critical that FTA broadcasters are compelled to deliver BVODs to all platforms in a consistent, commercially reasonable and timely manner for any prescribed regulation to be practically enforceable.

9. Issues for comment

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?

Fetch's view is that if the ACMA exercises its powers:

- a. It should do so in a way that captures the concept that a primary user interface can extend beyond a static landing page or home page and that also permits the ACMA has the right to determine on a case by case basis whether a devices' primary user interface complies with the legislation. That is, the ACMA should be non-prescriptive.
- b. If the ACMA chooses to describe or require a primary user interface then such description or requirements must include the various ways in which (at present) UI/UX's typically offer access, including scrolling, presentation of content access points in "Ribbons" (or "Rows") or grids or some combination of these.
- c. The ACMA must build in flexibility such that novel and inventive presentation of content and future developments can be accommodated and the legislation does not stymie such developments;
- d. Any requirements or determinations must permit re-arrangements of the primary user interface or relevant access points if driven by the user (if the relevant functionality permits). By way of example, in the Fetch Service, the first row of content accessed via the "My Stuff" tab is arranged algorithmically based upon the user's most recently watched content (see Annexure A – page 15).

Question 6

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

There is a good basis for arguing that content aggregation platforms such as Fetch and Hubbl should be treated as sui generis.

- a. The service which is provided by the content aggregator, by way of set top box or other external device is by its nature, highly dependent upon the attractiveness and functionality of the UI/UX. A user will buy a connected tv for features and functions that rarely relate to the manner in which content apps are available, for example, the size of the screen or the resolution remain primary (price notwithstanding). A user of a content aggregation service such as Fetch is explicitly purchasing the product/service because it offers special and often unique functionality in the way in which content is accessed.
- b. To that end, to be prescriptive or highly determinative of the way in which a content aggregator must present FTA channels and BVOD apps undermines the very basis upon which such aggregator seeks to compete in the market – for example, by offering a compelling and intuitive UI and being responsive to the way in which a User wishes to access content.

-
- c. The Fetch Service does not readily fall within the description of offering access to the FTA linear channels and the BVOD apps within defined “scrolls” on the user interface or left or right movements on a “ribbon”. The configuration is more closely aligned to the “grid” – but as we have outlined above, the Fetch Service provides multiple points of access to the FTA Content, both within and without the BVOD apps, including curated “rails” of deep-linked content. See annexure A and in particular, access points offered via the Apps Tabs – TV Apps. See also Annexure A, page 30– an example of another algorithmically programmed display in which the user’s most recently watched apps (including the BVOD apps) appear first.

Despite the above matters which distinguish the content aggregation platform from other devices such as Connected TVs Fetch TV’s view is that provided the ACMA is not highly prescriptive in the determination of what constitutes a primary user interface and favours an approach that permits flexibility and primacy of the user experience, an entirely separate set of principles may not be required as between regulated TV devices.

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?

Fetch’s existing interface separates BVOD apps from other apps. There are some contractual provisions affecting placement of the non-BVOD apps (e.g. streaming apps such as Netflix) within the non-BVOD app pages and some contractual provisions that determine placement of BVOD apps within TV Apps pages. But because of Fetch’s ability to provide separate access points for streaming and BVOD Apps, there are no contractual terms which constrain placement across the *current* UI.

This is an example of the kind of flexibility (i.e. , multiple access pages) that the Fetch Service can currently adopt which allows the Fetch Service to provide prominence equally to the FTA BVODs without comprising access to the streaming apps.

Fetch TV does wish to re-iterate that timely and commercially reasonable supply of IP channel feeds, BVOD apps and updates by FTA broadcasters is critical to enabling compliance with any anticipated regulations. It is critical that FTA broadcasters are compelled to deliver FTA BVODs to all platforms in a consistent, commercially reasonable and timely manner for any prescribed regulation to be practically enforceable.

10. Conclusion

Annexure A to this submission sets out screen shots showing various access points to FTA Linear Channels and the BVOD apps via the Fetch Service.

Fetch TV notes that we have provided a real time demonstration to the ACMA earlier this year and remains available to provide ongoing demonstrations/ feedback on the Fetch Service and the way in which the FTA linear channels and BVOD are showcased via the Fetch Service.

ANNEXURE A

FTA

UI Prominence

 2024

fetch

fetch

9:16am ● Actions

Have
you been
paying
attention

?

 play ▶ stream now



Stream Now



My Stuff

Guide

Shows

Movies

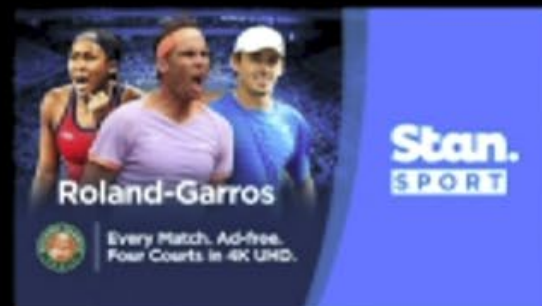
Apps

Sport

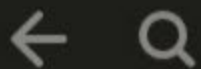
Add More



What's new



My Stuff tab



My Stuff

12:34pm ● Actions

My Stuff

Recordings

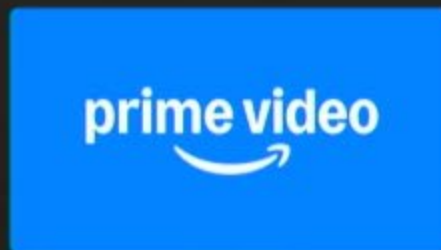
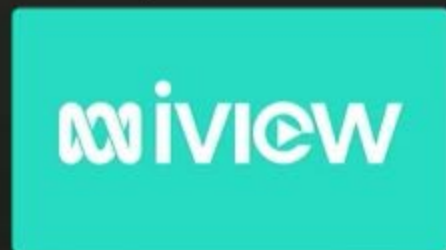
Scheduled

Priority

Recently Deleted

My S

Recently Used



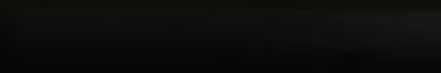
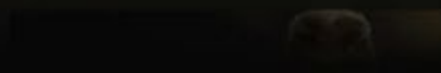
Continue Watching



My Purchases & Rentals



My Prime Video





My Stuff

Recordings

Scheduled

Priority

Recently Deleted

My S

My Stuff

12:34pm Actions

Continue Watching



My Purchases & Rentals



My Prime Video

prime video



Guide tab



fetch

12:37pm ● Actions



On now



My Stuff

Guide

Shows

Movies

Apps

Sport

Add More





12:39pm ● Actions

ABC News at Noon

E

S2024 E212 - Ros Childs and Lorna Dunkley bring you today's top stories and the latest news including live coverage of King Charles visit to Western Sydney. Plus..



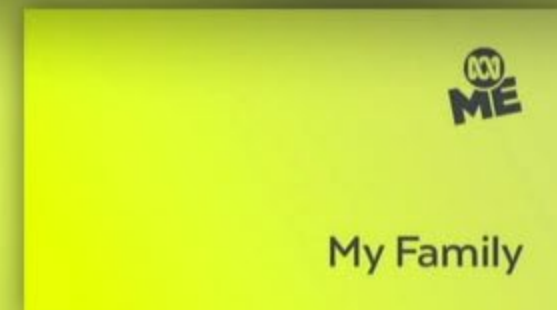
Today		12:30pm	1:00pm	1:30pm
1		Family Feud	10 News First: Lunchtime	
2		ABC News at Noon		Tony Armstrong's Extra-Ordinary..
3		ABC World News Tonight	PBS NewsHour	
7		7news Special: The Royal Tour	My Kitchen Rules	
9		9News Morning	Our State on a Plate	Getaway
10		Family Feud	10 News First: Lunchtime	
11		The Big Bang Theory	Two and a Half Men	The King of Queens
		<div>Info Program Options ● + Channel ● Top</div>		







My Family

PG

S10 E1 - The local council insists that Ben is disabled, and when they start sending him cheques in the mail, what can he do but play along with it until the wheels start..



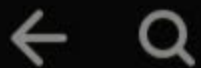
Today		12:30pm		1:00pm			1:30pm		
17		Copper Chef Titan Pan		CruiseAway			PowerXL Grill Airfryer Combo		
20		ABC News at Noon		Tony Armstrong's Extra-Ordinary Things					
21		ABC News at Noon					Tony Armstrong's Extra-Ordinary..		
22		Moon and Me	hoopla doopla!			Hey..	Octonauts	PJ Masks	Ben and..
23		My Family	The IT Crowd			Louis Theroux: Selling Sex			
24		ABC News at Noon		ABC News Day					
25		Afternoons							

Info

Program Options

+ Channel

Top



12:40pm Actions

9News Morning

E

Join Davina Smith for extended news coverage of the Royal Tour.



Today		12:30pm		1:00pm	1:30pm	
	7		7news Special: The Royal Tour		My Kitchen Rules	
	9		9News Morning		Our State on a Plate	Getaway
	10		Family Feud		10 News First: Lunchtime	
Bang Th	11		The Big Bang Theory		Two and a Half Men	The King of Queens
	12		Dr. Phil			Dr. Phil
ol	13		Paw Patrol	Paw Patrol	Paw Patrol	The Smurfs
Gourn	15		Family Feud		10 News First: Lunchtime	

Info

Program Options

+ Channel

Top



8:38am

Actions

Peter Overton

9NEWS

NIGHTLY 6.00

**Your Sydney
Your News**

Today

8:30am

9:00am

9:30am

Grill Ai	17		Pocket Hose Copper Bullet		Jet Hawk		PowerXL Grill Airfryer Combo	
	76		Get..	Get Clever		Home Shopping		Home Shopping
	112		The Vicar of..		Who Do You Think You Are? UK			
	250		Walk on the Wild Side - (S1.7).. ▶		Ice Stars - (S3.7) No Fear ▶		MI High - (S3.10) The Glove ▶	
	9News		Latest news and headlines from Australia and the world					
	1		The Bold and the Beautiful		Dr. Phil			
	2		News Breakfast		ABC News Mornings			

Top






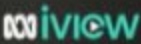

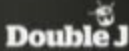
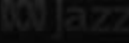
12:40pm ● Actions

Jamie Cooks The Mediterranean S1 Ep. 1

PG

Jamie heads to the Greek island of Skopelos. Inspired by meze plates and the traditional cuisine, he cooks up a smoky aubergine flatbread, and a lemony chargrilled..



	Today	12:30pm	1:00pm	1:30pm
t Up..	180 	The Cook Up with Adam Liaw -.. ▶	The Cook Up with Adam Liaw -.. ▶	The Cook Up with Adam Liaw -.. ▶
	184 	▶ American Crime - S2E8 ▶	American Crime - S2E9 ▶	
S1 Ep.	192 	Jamie Cooks The Mediterranean S1 Ep. 1 ▶		Jamie Cooks The Mediterranean.. ▶
	196 	Restoration Australia - (S4.3) ▶	Restoration Australia - (S4.4) ▶	
nd the \	197 	Ginger and the Vegesaurs -.. ▶	Play School: Down At The Beach.. ▶	Play School: Down At The Beach.. ▶
	200 	Lunch		
	201 	Jazz Lunch		

Shows Tab

fetch

12:42pm ● Actions

Popular today



My Stuff

Guide

Shows

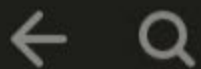
Movies

Apps

Sport

Add More





Shows

12:43pm ● Actions

Shows

Featured TV

Store

Browse the TV Apps

● Filter

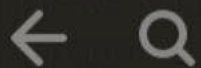


What to Watch



Use Your Telstra Plus Points





Shows

2:05pm ● Actions

Shows

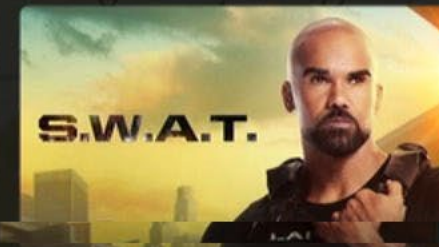
Featured TV

Store

Free-to-air favourites



Crimes & Consequences



Untouchable Rewatchables

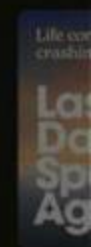


Apps Tab

fetch

12:45pm ● Actions

What's new



My Stuff

Guide

Shows

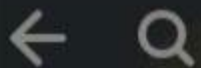
Movies

Apps

Sport

Add More





Apps

12:45pm ● Actions

Apps

Streaming

TV Apps

Music & More

New to 9Now



Recommended on 7plus



Featured on SBS On Demand



The Best of ABC iview



Apps

2:03pm ● Actions

Apps

Streaming

TV Apps

Music & More

26 Items



Sports Tab



fetch
LIVE

12:47pm Actions

On now & upcoming



My Stuff

Guide

Shows

Movies

Apps

Sport

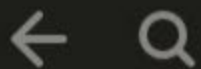
Add More



ROYAL TOUR OF SYDNEY

COMMUNITY BBQ BEFORE OPERA HOUSE MEET-AND-GREET

NEWS



Sport

12:47pm ● Actions

Sport

Find your Sport



Sport on Paramount+



More to explore

Motor Sports

Basketball

Cricket

Football

Rugby League

Tennis