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Submission on the ACMA's Consultation Paper: Implementing Australia's TV prominence framework

I welcome the opportunity to respond to the Australian Communications and Media Authority (ACMA) consultation paper.

The prominence legislation recently passed through the Parliament was a response to a changing media environment that sought to address the imbalance between global streaming giants and Australia's free-to-air broadcasters by promoting user access to, and prominence of, free-to-air broadcasting services on Australian televisions. It is my view that the prominence framework requirements in the legislation were clear, and there is no need for the ACMA to exercise certain discretionary powers at this point.

Unfortunately, some proposals put forward by the ACMA in this consultation paper risk entirely undermining this policy intent and perpetuating concealment of our national broadcaster and other free-to-air services in favour of contractual deals with global streaming giants. In particular, the definition of *primary user interface* in the ACMA's proposed determinations and guidelines run counter to the policy intention of the legislation recently passed.

In the legislation, minimum prominence requirements included obligations for free-to-air broadcasters to be on the primary user interface, including through application installation and visibility on primary user interface. *Primary user interface* is subsequently defined as "the home screen or main screen of the device".

Despite these legislative requirements and clarity of intent for free-to-air television services to be displayed on the home screen (made clear both in the explanatory memorandum and through parliamentary inquiry and debate), the ACMA consultation paper proposes to define primary user interface "as a virtual space that may extend beyond the bounds of the screen". The reasoning for which is that there may be technical or contractual obstacles that prevent manufacturers displaying all services on its home screen without the user needing to scroll.

The effect of this proposed definition is that global giants would continue to take precedence over Australia's free-to-air broadcasters through financial advantage, while Australia's free-to-air services would remain concealed beyond the screen. The purpose of the legislation was to stop this imbalance and bring free-to-air back on a level playing field, yet ACMA's proposal would run counter to this.

Further, regarding ACMA's reference to "technical obstacles", the Senate Inquiry into the proposed prominence requirements heard that six months would have been a reasonable, yet practical, timeframe for manufacturers to transition to meet their new obligations. Despite this, the transition period remains 18 months, giving manufacturers even longer than necessary to make any necessary

technical transitions. As such there is no basis for technical issues being a reasonable excuse for manufacturers to not prominently display broadcasters BVOD apps such that they are visible to the user without scrolling.

I do not believe it necessary for the ACMA to further define *primary user interface* in this manner, given the operating legislation is sufficient to stipulate that BVOD apps like ABC iView must be displayed on the home screen. All the ACMA's definition would do is add a loophole by which manufacturers can place all BVOD apps off the screen while still technically complying with the legislation.

Global streaming giants already dominate Australian TVs, without paying their fair share of profits back into the communities they benefit off. The prominence legislation was a first step in reining these giants in by evening the playing field between national broadcasters and ensuring Australians can access and choose to see Australian content on their screens for free. It cannot be turned into another loophole for international players - particularly when other critical legislation such as streaming quotas seems to have been indefinitely stalled. The broken promise to implement local content quotas by 1 July 2024, requiring streaming giants to reinvest their Australian profits in making content for Australians, has been a major disappointment for our screen sector and Australians who want to see themselves and their communities reflected on their screens.

With the rising number of Australians watching television online as opposed to terrestrial broadcast, we cannot allow free-to-air services to be phased out. The online services of our national broadcasters, ABC and SBS, are particularly critical to our democracy and Australians' access to timely news and emergency information, which must be prioritised in the prominence framework. For this reason, the Greens proposed the addition of a mandatory requirement for an iView button on television remotes as part of the prominence framework, and we remain hopeful that the Australian Parliament will see fit to legislate this in future. Deals between manufacturers and streaming giants cannot be allowed to override Australians' access to their public broadcaster.

I trust the ACMA will take on board these concerns that I note have been raised with me by free-to-air broadcasters, including the ABC. I support the broad concerns contained in their submissions. It is important that the ACMA, broadcasters and the Minister work to ensure that the original policy intent of the prominence framework as passed through Parliament is upheld, and that any changes such as those proposed by the ACMA are subject to Parliamentary oversight.



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