

22 October 2024

By email: CAMR@acma.gov.au

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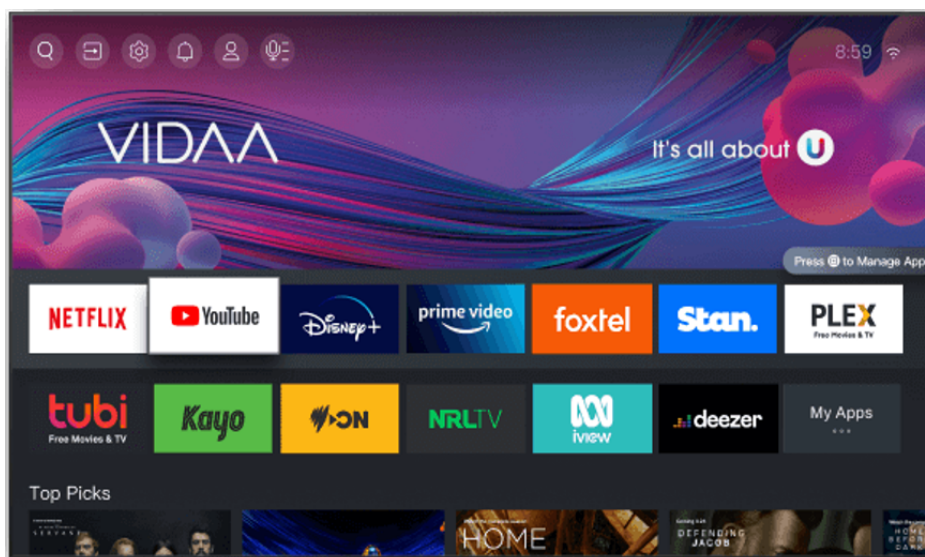
Consultation paper: Implementing Australia's TV prominence framework

Stan has reviewed the consultation paper that the Australian Communications and Media Authority (**ACMA**) released on 24 September 2024 and welcomes the opportunity to provide feedback in relation to the ACMA's call for submissions and evidence on the implementation of Australia's TV prominence framework.

Stan maintains that the inclusion of Stan as a regulated television service is critical for Australian viewers and would be a significant step in achieving the objectives of the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (Prominence Bill)*, including ensuring that audiences throughout Australia can access content of public significance and contributing to meeting the communications needs of Australia's multicultural society. Stan's position was previously outlined the joint submission by Stan and Nine Entertainment Co. dated 29 January 2024 to the Senate Environment and Communications Legislation Committee inquiry into the Prominence Bill, which we **attach** to this letter as part of this submission.

Stan provides the following responses to specific questions raised in the ACMA's Consultation Paper, which relate to the impact of the prominence framework on Stan:

Question 5 – Any determination by the ACMA regarding the scope of a primary user interface should account for the different structures of primary user interfaces (single ribbons, grids, different arrangements vertically and horizontally) and should not restrict the ability of a manufacturer to offer more than one row or ribbon on a screen (immediately visible on-screen), as exemplified in the Hisense VIDAA Smart TV interface (see screenshot below).



Question 9 – Greater transparency is required around the technical specifications and requirements of device manufacturers for the acceptance of VOD applications. This objective can be achieved by publishing a standardised set of specifications for each device. Provided that such specifications are publicly available, this would arguably create greater certainty across the industry and would benefit SVOD services as well as the regulated television services.

Question 10 – Stan has faced pressure from certain device manufacturers and operating system providers to require users accessing the Stan service through their device/operating system to pay for their Stan subscription through the manufacturer's own unique payment portal. Aside from the uncommercial rates that are generally charged for these billing services (often 10-15 times the industry-standard cost), such a model also removes the direct relationship between TV services and their customers in relation to payment transactions, leading to poor customer service outcomes. This approach may also hinder customers' ability to receive important information about their subscriptions. The acceptance of an app should, therefore, not be conditional upon the television service's payment and billing processes being integrated with the manufacturer's systems.

Please let us know if the ACMA requires any further information from Stan.

Yours sincerely

Emren Kara
General Counsel, Stan.

ANNEXURE

**Submission of Stan Entertainment Pty Ltd and Nine Entertainment Co.
to the Senate Environment and Communications Legislation Committee
Inquiry into the Prominence Bill**

29 January 2024



29 January 2024

Mr Stephen Palethorpe
Committee Secretary, Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

**Senate Environment and Communications Legislation Committee
Inquiry into Communications Legislation Amendment (Prominence & Anti-siphoning) Bill 2023**

Nine Entertainment Co Holdings Limited and Stan Entertainment Pty Ltd welcome the opportunity to participate in the Senate Environment and Communications Legislation Committee's inquiry into the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023* (the **Bill**).

Nine and Stan have had an opportunity to review, and both support, the position put forward by Free TV Australia in its submission on the Bill's proposed prominence framework, with one key addition - the imperative of including Stan within the framework. There is a strong public policy rationale to include Stan, and other media organisations with similar key attributes, within the scope of the proposed prominence framework; doing so would achieve all of the stated policy objectives of the Bill and other regulation being pursued by Government. In this regard:

- Stan's inclusion in the prominence framework is critical for Australian viewers given its position as the leading local streaming service, its status as the largest commercial commissioner of Australian scripted programs and its role as broadcaster of key Australian sports and major international sporting events, including the upcoming Paris 2024 Olympic and Paralympic Games.
- Stan's inclusion in the prominence framework would reflect Stan's unique position in the Australian media landscape, as a single-territory SVOD service which has shared ownership with the holder of a commercial television broadcasting licence. Stan is an increasingly important extension of the Nine Group's content eco-system, with Stan and the Nine Network collaborating and co-producing entertainment and Australian current affairs programming, as well as working closely to jointly offer a range of live sports and events.
- As a streaming service dedicated entirely to an Australian audience, Stan has been able to focus its commissioning of drama and current affairs documentary content on telling important and culturally significant Australian stories. Stan's inclusion in the prominence framework would provide Australians with access to content that is of significant public



interest and drives public debate and discourse, adding to the content put forward by the commercial and national broadcasters.

- As an Australian-focussed service, Stan is strongly positioned to continue to address the communication requirements of Australia's multicultural society, which it has already exemplified by its investments in First Nations storytelling, and its move to make available to Australia's multicultural society broadcasts in multiple non-English languages as part of its Paris 2024 Olympic Games coverage.

As Nine and Stan have previously submitted as part of the consultation process on the Government's proposed introduction of content quotas for streaming services, the extension of the prominence framework to include Stan would be a vital cog in mitigating the disproportionate burden that a content quota regime will impose on a single territory SVOD service, and will ensure that a level playing field with the global SVOD services, who are able to negotiate global deals for prominence with television manufacturers, is maintained.

With respect to the updates to the anti-siphoning scheme proposed by the Bill, Nine supports the position put forward by Free TV Australia in its submission being the expansion of the scheme to all online content service providers, as well as the expansion of events on the anti-siphoning list that has been foreshadowed by Minister Rowland. It also reiterates Free TV Australia's position that a "Total TV" approach to anti-siphoning, by the inclusion of rights for a simulcast BVOD service, is crucial. Not making such a change will inadequately address the needs and behaviours of modern audiences, who increasingly need to be able to watch "television" either via an antenna or via the internet, using the services offered by the free to air channels, and runs the risk of undermining the commercial sustainability of local free-to-air services.

Nine and Stan's joint submission is set out in the Annexure to this letter.

Yours faithfully

Mike Sneesby
Chief Executive Officer
Nine Entertainment Co

Martin Kugeler
Chief Executive Officer
Stan



ANNEXURE – NINE AND STAN'S SUBMISSION PROMINENCE FRAMEWORK

The prominence framework proposed in the Bill is currently limited to broadcasting video on demand (BVOD) services provided by a commercial television broadcasting licensee, or its related entity, and “made available free to the general public”¹. There is a strong public policy rationale that Stan and organisations with similar key attributes should also come within the scope of the prominence framework, for the reasons detailed below.

1. Stan’s unique position in the Australian media landscape

Stan holds a unique position within the Australian media landscape as the only single-territory SVOD that is exclusively available to Australian audiences, and which has common ownership with the holder of a free-to-air television licence. Stan is an extension of the content offering provided to the Australian public by the Nine group and an increasingly important part of the Nine eco-system. In this regard:

- Stan and the Nine Network collaborate closely on the production of original Australian productions, having recently co-produced the premium dramas *Bali 2002* and *Scrublands*, as well as two seasons of the newly created format *Love Triangle*. This is in addition to the ongoing collaboration between Stan and Nine’s 60 Minutes program on the *Revealed* documentary and current affairs series which, as further detailed below, focusses on in-depth investigative reporting and coverage of important Australian current affairs;
- As further detailed below, Stan partners closely with the Nine Network in the broadcast of live sport to Australian audiences; and
- Stan and the Nine Network’s collaboration extends to the live broadcast of significant Australian events, recently having jointly broadcast the *2023 ARIA Awards*.

2. Stan faces inherent competitive disadvantages

As a single-territory streaming service, Stan faces an inherent competitive disadvantage when compared to global SVOD services on a number of fronts, including specifically:

- in Stan’s efforts to negotiate commercially viable deals with TV device manufacturers for availability and accessibility, as Stan only negotiates for a single territory. Global SVOD services, on the other hand, customarily negotiate with television manufacturers and operating systems centrally, with deals covering hundreds of territories in which televisions are sold. During negotiations, global SVOD services are able to leverage their international reach, which results in the most prominent

¹ *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (Cth) (the Bill)*, s130ZZK.



app placements typically being reserved for the global SVODs. Some device manufacturers have also advised Stan that it is ineligible for branded remote-control buttons because it only operates in a single territory. To date, Stan has been unable to break down these structural barriers. This places Stan at a material risk of being “crowded out by the larger, international services operating in the Australian market”² – something the prominence framework is expressly intended to prevent.

- as a consequence of the imminent imposition of content quotas on subscription streaming services, including Stan and the global SVOD services. As Stan has previously submitted during the consultation process on content quotas for streamers, the impact of the proposed content quota models will have a disproportionate impact on Stan’s business model, as a single territory service. It will put under stress its continued sustainability, further exacerbating inequalities in the market. As part of its Impact Analysis, the Bill’s Explanatory Memorandum suggests that one of the positive outcomes of the prominence framework is to free up funds to enhance the ability of broadcasters to invest in key content genres.³ Under a content quota regime that will commit Stan to unsustainable levels of investment in a narrow category of programming, Stan will likewise need the benefit of such cost savings. This would allow Stan to invest the significant fees that it would otherwise pay to television manufacturers for availability and prominence towards meeting its investment obligations. The inclusion of Stan in the prominence framework is therefore vital to softening the impact of the content quotas and would help Stan compete with the global SVODs into the future, ensuring a level playing field.

3. Stan is the largest commercial commissioner of Australian scripted programs

As part of its consultation process on the introduction of content quotas for streamers, Government has previously indicated a policy objective of ensuring “Australian content [was] visible and easily found by Australian audiences”, including on SVOD services.⁴

Screen Australia’s Drama Report for financial year 2023 confirmed Stan as the largest commercial commissioner of Australian drama for the third consecutive year.⁵ Stan is also one of the most significant commissioners of Australian documentary and current affairs programming. Given this status, ensuring that the huge volume of Australian content that Stan makes available on its service is easy for Australian audiences to find on connected devices by including Stan in the prominence framework is a key pillar in ensuring that Australian stories are easily discoverable. As noted in recent industry commentary:

² Hon Michelle Rowland MP, ‘Modernising Australia’s media laws – for all Australians’ (Media Release, 29 November 2023) <<https://minister.infrastructure.gov.au/rowland/media-release/modernising-australias-media-laws-all-australians>>

³ Explanatory Memorandum, Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023, 78 (the **Explanatory Memorandum**).

⁴ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, ‘Targeted Stakeholder Consultation Paper: Australian screen content requirements on streaming services’ (March 2023), 6.

⁵ Screen Australia, *Drama Report 2022/23: Production of feature films, TV and online drama in Australia in 2022–23*, <<https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>>



*"Stan commissions more local drama than any other streamer, and most of it is excellent. So given there is now controversy about which apps should appear first on smart TVs, how about giving prominence to those networks and streamers with the most Aussie content."*⁶

4. Including Stan meets the objectives of the prominence framework

Bringing Stan within the prominence framework is consistent with the objectives of the Government's prominence framework policy and the stated objectives of the Bill. In this regard:

- *Fostering an environment where Australian media outlets, including new businesses like Stan, can thrive:* In her Second Reading Speech, Minister Rowland confirmed that a key objective of the prominence framework is to "establish a level playing field: one in which Australian media outlets can thrive while maintaining Australia's well-earned reputation as a desirable place to invest and grow new businesses. The introduction of a prominence framework ... will help foster that environment"⁷.

Launched in January 2015, with an unknown brand, zero subscribers and amid the looming launches of Netflix and other global streamers in this territory, Stan has, in just nine years, built a base nearing 2.6 million active subscribers and has successfully established a trusted brand that is beloved by Australians, and which is recognised and respected in film and television circles internationally. Today Stan directly employs over 220 people in its Sydney office and is domiciled in Australia for tax purposes. Importantly, Stan has been able to achieve profitability, an accomplishment that is rare in the SVOD industry and a major achievement for a single territory streaming service.

If the objective of the prominence framework is to create an environment in which Australian media outlets, like Stan, are able to grow and thrive, then it should be included within the framework. Denying this would further exacerbate the lack of a level playing field, leading to a material risk that Stan would be "crowded out by the larger, international services operating in the Australian market."

- *Stan's commitment to content of public significance and contribution to public discourse:* In advocating for the need for a prominence framework in the Second Reading Speech, Minister Rowland stated that:

⁶ Mercado, Andrew, 'Mercado on TV: Scrublands a compelling new drama on the platform with most Aussie content', Mediaweek (2023) 17 November <<https://www.mediaweek.com.au/mercado-on-tv-scrublands-a-compelling-new-drama-on-the-platform-with-most-aussie-content/>>

⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 29 November 2023, 8760, Hon Michelle Rowland MP (Second Reading Speech).



*"[Free-to-air broadcasting services] keep Australians informed through news and current affairs and support our democratic institutions. And they tell Australian stories with the creative sector and provide a trusted source of entertainment for all Australians, including children..."*⁸

The Bill proposes to codify these principles as stated objectives of the new legislative regime.⁹ Stan meets these principles, and it is imperative that it is able to benefit from the new prominence regime in order to continue to secure its commitment to these principles. In this regard:

- Stan co-produces its important *Revealed* documentary and current affairs series in collaboration with the Nine Network's 60 Minutes, focussing on in-depth investigative reporting and coverage of important Australian topics. The series features the work of some of Australia's most trusted journalists including Nick McKenzie, John Silvester, Chris Masters and Carrie Fellner. To date, the *Revealed* series has included an exposé into Melbourne's sex trafficking underbelly (*Trafficked*), an exploration into the fight to preserve the Great Barrier Reef (*Reefshot*), a profile of former AFL player and coach Danielle Laidley (*Two Tribes*); an exposé into the rise of neo-Nazi activity in suburban Australia (*Amongst Us*) and, more recently, a full-length insight into the defamation proceedings brought by Ben Roberts-Smith (*Truth on Trial*). In 2024 Stan will release an additional six *Revealed* documentaries covering important topics of national, regional and local interest and which are intended to contribute to Australian public discourse, including a feature that explores the impact of the 'forever chemical' PFAS on local First Nations communities (*How to Poison a Planet*¹⁰).
- Stan's focus on the telling of significant Australian stories extends to its scripted drama content. Among the dozens of scripted programs and films commissioned by Stan over the past 9 years are important Australian stories like *Bali 2002* - a mini-series based on the 2002 Bali bombings, *Nitram* - a film depicting the events leading up to the Port Arthur massacre in 1996, and *Ten Pound Poms* - a series which recounts the story of the British citizens who migrated to Australia as part of the post-War Assisted Passage Migration Scheme. Last year, Stan launched the series *Black Snow* which was filmed in and set within the Australian South Sea Islander community of North Queensland.
- Stan, in collaboration with Nine broadcasts a wide range of live sports into Australian homes. Stan is the "Home of Rugby" – covering the broadcast of all levels of the sport from grassroots State club rugby through to International Test match rugby including, recently, coverage of the 2023 Rugby World Cup. Stan

⁸ Second Reading Speech, 8756

⁹ Bill, s 130ZZG.

¹⁰ Previously announced as being titled "Safe to Drink".



and Nine continue to collaborate on enhancing the visibility of women's rugby – ensuring that matches from the 2022 Women's Rugby World Cup, other Test matches featuring the Australian Wallaroos and the burgeoning Super W competition receive significant carriage and exposure across Stan and Nine's various platforms. Nine and Stan will be the home of all Summer and Winter Olympic Games through to Brisbane 2032, starting with the 2024 Paris Olympic Games and Paralympic Games in July. Stan is committed to delivering sports coverage with a distinct Australian perspective, supplementing its live sport broadcasts with panel discussions and review shows featuring prominent figures in Australian sport. Renowned personalities such as Craig Foster, Tim Horan, Kate Bates, Mark Bosnich, Mike Tomalaris, Sam Stosur and Wally Masur contribute to Stan's comprehensive sports coverage, enhancing it with unique Australian insights to engage Australian audiences.

Including Stan within the prominence regime will be integral to realising the Government's public policy goal of ensuring that Australians are informed and entertained by a trusted service; one that is devoted solely to the interests, preferences and tastes of Australian audiences.

- *Stan's commitment to meeting the communication needs of Australia's multicultural society:* As an Australian-focussed service, Stan can address the communication requirements of Australia's multicultural society. Stan has demonstrated its commitment to diversity in its productions. For instance, Stan will later in 2024 broadcast *Windcatcher* - a First Nations written and directed feature film targeted specifically at a family audience; as well as *Thou Shalt Not Steal* – a series in which several characters will speak a mixture of their own First Nations language as well as English. Likewise, as noted above, projects such as *Black Snow* have shone a light on Australian communities that are not typically represented on-screen. That series was produced in collaboration with the Australian South Sea Islander community within which the series was based and filmed, and also involved emerging Australian South Sea Islander filmmakers and production personnel, with the intention of encouraging career pathways for such community members.

On the sports side, Stan is currently negotiating for the provision of broadcast coverage in multiple non-English languages for the Paris 2024 Olympic Games. The intention of this is to allow multicultural audiences to watch coverage in their native tongues, allowing them to follow athletes representing their native countries as they compete.



5. Minimum prominence requirements

The draft legislation provides that minimum prominence requirements will be set out in regulations¹¹ and that the regulations will be made prior to the application of the obligation.¹² The Explanatory Memorandum notes that the Government's current intention is that the minimum requirements "would include obligations to ensure that free-to-air television services are present on the primary user interface, or home screen, of regulated television devices, and that certain BVODs are pre-installed or auto-installed on these devices".¹³ Nine agrees with this approach as it pertains to Nine's channels and BVOD service, 9Now, but submits that it is important to clarify that regulated television services should be visible on the primary user interface or home screen *without scrolling*, otherwise this would undermine the practical impact of the prominence framework.

Nine and Stan propose that the Stan app should also be readily accessible on the primary user interface or home screen of devices, and that the Stan app is pre-installed or auto-installed on such devices. Nine and Stan propose that the Stan app would be visible *immediately after* the commercial and national broadcasters' BVOD apps but visible to users *without scrolling* or moving to a separate page. Where there are multiple feeds of apps visible on a device's home screen, Nine and Stan propose that the Stan should be in the first position of the feed where global SVODs sit.

6. Implementing the inclusion of Stan as a regulated television service

Nine and Stan support the extension of the scope of the prominence scheme to include single-territory SVOD services which are provided by a commercial television broadcasting licensee, or its related entity of such licensee. This extension of scope can be implemented:

- By amendment to the definition of "regulated television service" in section 130ZZJ of the Bill or the definition of "broadcasting video on demand service" in section 130ZZK; or
- By way of ministerial determination pursuant to sections 130ZZJ(1)(c) and (2) of the Bill. The Explanatory Memorandum clarifies that this power is intended to confer on the Minister a broad discretion to deem a service to be a regulated television service, one that isn't necessarily limited to the *free* BVOD services provided by commercial television broadcasting licensees.¹⁴

¹¹ Bill, s130ZZO

¹² Explanatory Memorandum, 2

¹³ Explanatory Memorandum, 5.

¹⁴ Explanatory Memorandum, 8