



Submission to the Australian Communications and Media Authority on “Implementing Australia’s TV prominence framework”

1. Introduction

- CRA welcomes the opportunity to provide a submission to the Australian Communications and Media Authority (**ACMA**) in relation to the September 2024 Consultation Paper “Implementing Australia’s TV prominence framework” (**Consultation Paper**).

Key points

- An efficient and effective prominence regime is of critical importance not only to the free-to-air television broadcasting sector, but also to Australia’s free-to-air radio broadcasting sector.
 - The ACMA will play a critical role in the effectiveness of the radio prominence regime, if it is enacted under the Broadcasting Services Act 1992 (**BSA**), in the same way that it will play a key role in the effectiveness of Part 9E of the BSA.
 - CRA supports the ACMA taking a pragmatic and flexible approach to its role for both the television and (if enacted) radio prominence regimes, to ensure that the intention of the Parliament to facilitate Australians’ free, easy and reliable access to free to air television and radio content is achieved.
-
- CRA is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations and represents the entire Australian commercial radio industry.
 - The Australian Government is currently consulting on a prominence regime for radio that, in many respects, will reflect the prominence regime contained in Part 9E of the BSA. CRA strongly supports the enactment of a prominence framework that will ensure commercial radio is freely, easily and reliably accessible to all Australians on connected devices.
 - The ACMA will play a key role in ensuring the effectiveness of the radio prominence regime, if it is enacted, in the same way that it will play a key role in the effectiveness of Part 9E of the BSA. This submission provides comments on the three key issues addressed in the Consultation Paper from the perspective of the ACMA’s future role in the administration of a radio prominence regime.

2. **Commercial radio and audio is a key part of the Australian media landscape**

- Commercial radio, whether AM, FM or DAB, plays an essential role in ensuring that Australian communities have access to local news, Australian music, emergency information, community information and entertainment – all for free. No other platform offers such a range of live, local and Australian voices in such a diverse range of Australian communities. Importantly, research shows that commercial radio is a trusted source of news and current affairs. Increasingly, Australian audiences access the services and content of commercial radio broadcasters online.
- Commercial radio dominates commercial listening in Australia. The Infinite Dial 2024 Australia survey¹ found that:
 - in any given week, 81% of the Australian population over the age of 12, comprising 18 million Australians, listened to radio, either broadcast or streaming services. This is an even higher percentage than the 77% of Australians that watch live free-to-air TV each week; and
 - listening to radio is popular across all Australian age groups, with audiences of 82% of Australians aged 18 to 34; 84% aged between 25 to 54 and 79% aged 55 or older.
- Not only does commercial radio dominate commercial listening in Australia, but the way Australians are accessing that content is changing:²
 - there has been a 75% increase in the use of in-car streaming of radio over the past two years; and
 - streaming is becoming increasingly popular, with 15% of Australians 12 and older streaming radio in 2022, rising to 27% streaming in 2024, with 31% of adults in the 25 to 54 age bracket streaming radio online weekly in 2024.
- The latest results from GfK, released by CRA on 27 August 2024, show that 3.4 million Australians stream commercial radio weekly for an average of 4 hours and 16 minutes, with 69.1% of these listeners tuning in from home, 28.1% in the car, and 26.9% at work.³
- The Deloitte Access Economics 2023 Connecting Communities Report⁴ highlights the important economic and social contribution that commercial radio broadcasters make to Australia, through the provision of radio and audio services. Commercial radio broadcasters deliver trusted, local content to Australians all over the country.
- As highlighted in the 2023 Connecting Communities Report, every year, commercial radio broadcasters:
 - contribute \$1 billion to GDP;
 - provide a \$320 million boost to regional Australia;

¹ Available here: <https://www.edisonresearch.com/wp-content/uploads/2024/08/Infinite-Dial-2024-Australia-Presentation.pdf>

² As above.

³ Media release available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2024/2024-08-27-Radio-s-Consistent-Growth-%E2%80%93-Connecting>

⁴ Available here: <https://www.commercialradio.com.au/RA/media/General/Documents/CRA-Deloitte-Connecting-Communities-2023-Report.pdf?ext=.pdf>

- produce 1.1 million hours of local content, across broadcast, streaming and podcasts;
- play 160,000 hours of Australian music, or 2.7 million Australian songs – providing an unrivalled platform for the promotion of Australian musicians;
- broadcast 42,000 hours of news and 2,200 hours of emergency service content; and
- provide 251,000 hours of locally significant content in regional communities.
- Commercial radio broadcasters support 6,600 full time jobs – 38% of those roles are in regional Australia.
- Commercial radio is important because:
 - Commercial radio is local. Commercial radio broadcasters are subject to a comprehensive legislated Australian content framework, including 3 hours per day of hyper-local content for regional stations⁵, and Australian music obligations for all stations.
 - In regional and remote Australia, the local commercial radio station is often the only source of local news and content. For example, there are two commercial radio stations in Alice Springs – 8HA and Sun FM. Sun FM is located right in the middle of the country, which means that it is the only AM commercial station for around 1,200 kilometres.
 - In emergencies, radio that is freely and easily accessible saves lives. When Australians face natural disasters, radio is often the last communication channel still working and is essential for providing emergency information.
- As set out in the 2023 Connecting Communities Report:⁶

74% of Australians believe commercial radio and audio build a sense of community.

59% of Australians believe radio is a trusted source of news and current affairs.

3. A prominence regime is required for radio

CRA supports the prominence regime for free-to-air television and supports the introduction of a similar regime for free-to-air radio.

By supporting a strong local radio sector, a radio prominence framework will support Australians, particularly those in regional and remote Australia, to engage in social, economic and cultural life and participate in democratic processes.

It is vital that prompt action is taken to ensure that Australian radio can be easily and reliably accessed on connected devices – for free.

Without a mandated framework, the bargaining power imbalance between radio and dominant digital platforms means that access to local radio may become increasingly difficult, to the detriment of Australian communities.

Dominance of digital platform ‘gatekeepers’

⁵ 30 minutes for stations serving populations of less than 30,000. Only 8 regional stations fall into this category.

⁶ As above.

The unequal bargaining power between Australian radio broadcasters and international gatekeepers, which reflects the unequal bargaining power between Australian TV broadcasters and those gatekeepers and was a key reason for the introduction of the television prominence regime, means that it is almost impossible for fair and reasonable deals to be done to provide for easy and free access by Australians to radio on smart speakers or connected car entertainment systems.

In Australia, the smart speaker market is dominated by three players – Amazon, Google and Apple.

New vehicles are increasingly connected to the internet, with connected car entertainment systems using either the Google or Apple operating systems (**OS**):

- 44% Australians have Android Auto/Apple CarPlay in their vehicles;
- 89% of Australians with Android Auto/Apple Car Play listen to radio in their cars.

These key players have the power to filter and control the audio content that Australians may access, acting as gatekeepers to this content.

This is a power that manufacturers of traditional radio devices, with dedicated analogue or digital tuners, do not have. The power of these platforms (and manufacturers of smart speakers and connected vehicles) is not currently recognised in the BSA.

The gatekeeper role played by these third parties creates the need for a radio prominence regime. CRA's concerns are:

- Google, Amazon, Apple and vehicle manufacturers may be incentivised to promote access to audio content providers that pay for that promotion (either through direct payment, access to data or through the platforms and manufacturers inserting advertising). In subscription models, a share of the payments may be provided to the gatekeeper entities.
- Commercial radio broadcasters are not in a financial position to compete for promotion with the likes of, for example, Spotify, or other international digital platforms.
- Google, Amazon and Apple have their own audio content services and are able to preference those to the disadvantage of Australian radio services (including potentially by not making Australian radio services available at all).

What will happen without regulatory intervention?

Without regulatory intervention, Australia is likely to find itself in a position where connected devices predominantly offer audio services from international content providers.

Such an outcome would be to the detriment of all Australians as these providers pay no regard to providing local information and content, such as news and emergency information, or content that supports our national identity and cultural diversity.

The Australian radio sector is united in its view that a radio prominence regime, applicable to both smart speakers and in future connected car entertainment systems (with the potential to include other devices in future as well), is required to be legislated to provide the best opportunity for radio to have a growth focussed and sustainable future.

4. Comments on the proposed ACMA approach to the TV prominence regime

Background

The radio prominence regime that CRA has proposed is straight forward. The core requirements are that, at no cost to radio broadcasters, OS providers, that is, predominantly the large digital platforms (Google, Apple and Amazon), and manufacturers of the regulated devices should be required to ensure:

- access to Australian radio is available on smart speakers, connected car entertainment systems and potentially other devices in future (a “must carry” obligation);
- Australian radio is easily discoverable on these regulated devices, through the apps nominated by the radio broadcasters; and
- no advertising or other content may be added to Australian radio content except with broadcaster consent.

Given the structure for the radio prominence regime that is supported by CRA there are many areas of similarity with the current television prominence regime in Part 9E of the BSA.

What is a regulated device?

The first issue that is considered in the Consultation Paper is what could constitute a regulated television device for the purposes of Part 9E of the BSA. This is a crucial definition, as the prominence rules apply to manufacturers of those devices.

Section 130ZZI sets out the definition of regulated television device. It provides

130ZZI Regulated television devices

Meaning of regulated television device

(1) *For the purposes of this Part, a regulated television device means:*

(a) *domestic reception equipment that:*

(i) *is capable of connecting to the internet and providing access to broadcasting video on demand services; and*

(ii) *is designed for the primary purpose of facilitating the viewing of audiovisual content; or*

(b) *specified domestic reception equipment that the ACMA determines, under subsection (2), is a regulated television device;*

but does not include specified domestic reception equipment that the ACMA determines, under subsection (3), is not a regulated television device.

Note: The ACMA may also make guidelines about regulated television devices: see section 130ZZM.

ACMA may determine specified regulated television devices

- (2) For the purposes of paragraph (1)(b), the ACMA may, by legislative instrument, determine that specified domestic reception equipment is a **regulated television device**.

Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

- (3) For the purposes of subsection (1), the ACMA may, by legislative instrument, determine that specified domestic reception equipment is not a regulated television device. Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

The approach that the ACMA has adopted as to what might constitute a regulated television device under the Consultation Paper appears narrow. CRA's view is that, to reflect the legislative intent of Part 9E of the BSA - which is to ensure that devices which are used by Australians primarily for viewing audiovisual content are captured within the regime - a more pragmatic and broader approach of looking at the uses of devices should be taken.

On its face, section 130ZZI does not provide for the ACMA to determine, in all cases, what domestic reception equipment is designed for the primary purpose of facilitating the viewing of audiovisual content. That is factual question, and the answer will determine whether a device falls within section 130ZZI(1)(a). This will necessarily change over time. This question should be judged by the practices of Australians as they use devices, not by guidelines that do not have the flexibility to be constantly amended to reflect those changing practices. The ACMA would only have a role in cases where there was uncertainty as to whether section 130ZZI(1)(a) applied.

One example demonstrates that "hard and fast" rules cannot be applied. The ACMA has stated in the Consultation Paper that "tablets" should not be considered to be regulated television devices on the basis that they do not meet the primary purpose of facilitating the viewing of audiovisual content. "Tablets" covers a broad range of devices, some of which would very easily be seen to fall within section 130ZZI(1)(a). A simple internet search shows this. An internet search for best tablets includes this product:⁷

Best for Big-Screen Streaming

LEARN MORE

[Samsung Galaxy Tab A9+ Review](#)



Amazon Fire Max 11
Best for Big-Screen Streaming
●●●○ 4.0 EXCELLENT

Why We Picked It

The Fire Max 11's 11-inch, 2,000-by-1,200-pixel screen is ideal for watching shows and movies on the go. Amazon doesn't cut too many corners on the specs either, outfitting the tablet with 4GB of RAM, an octa-core MediaTek processor, and up to 128GB of built-in storage (expandable via microSD). It looks and feels more premium than the company's other tablets thanks to its titanium frame and minimal bezels.

While this is a "tablet", which would fall outside the categories that the ACMA would consider to be a regulated television device, this does meet the definition of regulated television device as set out

⁷ Accessed here: <https://au.pcmag.com/tablets/48666/the-best-cheap-tablets-for-2020>

in section 130ZZI(1)(a) of the BSA – it is designed for watching “shows and movies”, that is, audiovisual content. There is no need for the ACMA to make a determination on this point under section 130ZZI(1)(b) of the BSA.

In the context of radio prominence, CRA supports a broad definition of what would constitute a regulated audio device. As CRA set out in its recent submission to the ACCC:⁸

The key devices to be regulated for a radio prominence regime would initially be smart speakers, being any devices that are able to be voice activated and which provide access to audio entertainment services. However, the legislation should provide for connected car entertainment systems and other devices to be designated by the Minister as subject to the regime.

As applies in the case of the television prominence regime, it will be very important, in the context of a possible radio prominence regime that there is sufficient flexibility to ensure that the devices Australians use for listening to the radio are captured within the regime.

What is an “interface”?

Under Part 9E of the BSA “primary user interface” is also a key term, because that is the area on a regulated television device where the regulated services will appear. What constitutes a primary user interface, and the ACMA’s ability to make determinations in relation to what constitutes an interface, is governed by section 130ZZL of Part 9E of the BSA.

As relevant here, section 130ZZL provides as follows:

130ZZL Primary user interface

Meaning of primary user interface

(1) *For the purposes of this Part, the primary user interface of a regulated television device means the interface of the device that:*

(a) *is either or both of the following:*

(i) *the home screen or main screen of the device;*

(ii) *the main interface most commonly used to provide access to applications that make audiovisual content available on demand using a listed carriage service; and*

(b) *meets the description or requirements (if any) determined by the ACMA under subsection (3).*

(2) *For the avoidance of doubt, the primary user interface of a regulated television device does not include any ancillary hardware or equipment for the device.*

ACMA may specify interface requirements

(3) *For the purposes of paragraph (1)(b), the ACMA may, by legislative instrument, do either or both of the following:*

⁸ Available from here: <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25/march-2025-final-report>, see page 6 of the submission

- (a) *describe an interface;*
- (b) *determine requirements relating to an interface.*

In the context of a potential radio prominence regime “interface” is not a relevant concept for voice activated services. For other devices that provide audio services, such as in connected cars, “interfaces” and “primary user interfaces” will have different meanings from the meanings given for the purposes of a regulated television device.

In the Consultation Paper, the ACMA suggests that the “primary user interface” for a regulated television device may be a second apps ribbon or a second screen which a user would need to scroll to (that is, not the primary user interface as commonly understood, because it is not the interface that is visible as a home screen when switching on a device). This would seem to be inconsistent with the legislative intent of free and easy access to the services of free-to-air television broadcasters as scrolling to access the regulated services does not provide for “easy” access.

In any event, under a radio prominence regime, a similar approach would not be appropriate for those regulated devices that have interfaces equivalent to those of regulated television devices. Entertainment systems in cars are a relevant case study as Australians would not scroll to subsequent ribbons or screens in driving a vehicle looking for the radio app as it is not practical to do so. An app for radio services must be easily accessible on the screen that is first visible when the car entertainment system is turned on – this would need to be an aggregator app determined by radio broadcasters that provided access to all regulated radio services.

When does a broadcaster “offer” a service?

CRA and commercial radio broadcasters have given careful consideration to the third issue that is addressed in the Consultation Paper, which is when a regulated radio service would be considered to be offered for the purposes of a radio prominence regime.

For a future radio prominence regime to be effective, when radio prominence is enacted, as applies under Part 9E of the BSA, radio broadcasters should be able to determine the app or other service from which radio content is sourced, which could potentially be an aggregator app. This will ensure that charges or other restrictions cannot be imposed on radio broadcasters by gatekeepers, for example, by determining that particular aggregator apps must be used (as is currently the case with Google smart speakers). This would be consistent with the approach adopted in the United Kingdom’s Media Act 2024, on which the proposed radio prominence regime should be based.

The Consultation Paper contemplates that the ACMA may make a legislative instrument determining circumstances in which a regulated television service is taken to be offered. It is difficult to envisage how a legislative instrument could effectively specify the technical requirements that must be met by an app in order for it to be “offered”. At most, a legislative instrument would be useful for determining timings for when information would need to be provided by device manufacturers or OS providers as to their requirements for technical specifications for new devices and for when apps would need to be provided to such device manufacturers and OS providers in advance of the launch of a new product or service.

Thank you very much for considering this submission. CRA would be happy to discuss it further with the ACMA.

Commercial Radio & Audio

October 2024