



AUSTRALIA

Submission by Free TV Australia

Broadcasting Services (Minimum Prominence Requirements) Regulations 2024

February 2024



Table of contents

1. INTRODUCTORY COMMENTS	1
2. FINDABILITY OF REGULATED TELEVISION SERVICES	3
2.1 SCOPE OF PROMINENCE REGULATIONS.....	3
2.2 HOW EASY WILL IT BE TO FIND REGULATED TELEVISION SERVICES?	3
2.3 PROPOSED AMENDMENTS TO BILL.....	5
2.4 PROPOSED AMENDMENTS TO PROMINENCE REGULATIONS.....	7
3. SEARCH AND DISCOVERABILITY	11
3.1 WHY EPGs AND CONTENT SEARCHING ARE IMPORTANT.....	11
3.2 PROPOSED AMENDMENTS TO REFLECT EPG PROPOSALS IN THE PROMINENCE REGULATIONS.....	11
4. TIMING ISSUES	14
4.1 BILL SUBMISSION ON TIMING: AN URGENT NEED FOR QUICKER ACTION	14
4.2 REQUIRED AMENDMENTS FOR APPROPRIATE TIMING.....	14

1. Introductory comments

- Free TV Australia (**Free TV**) appreciates this opportunity to provide a submission to the Senate Environment and Communications Legislation Committee (**Committee**) in relation to the exposure draft of the Broadcasting Services (Minimum Prominence Requirements) Regulations 2024 (**Prominence Regulations**).
- This submission is supplementary to our submission (**Bill Submission**)¹ to the Committee on the Communications Legislation Amendment (Prominence and Anti-Siphoning) Bill 2023 (**Bill**).
- Our Bill Submission set out the reasons why a regulatory prominence regime for free-to-air television (**FTA**) is urgently required, in recognition of the integral role of FTA services in making Australian content available to all Australians, free of charge.
- We highlighted in our Bill Submission the difficulties of commenting on the Bill without having an opportunity to comment on an exposure draft of the regulations proposed to be made under the new Part 9E of the Broadcasting Services Act 1992 (**BSA**), as contained in the Bill.
- Our review of the Prominence Regulations has highlighted the issues of concern that Free TV raised regarding the Bill. For the reasons discussed in our Bill Submission, the Bill should be amended so that:
 - The timeframe by which compliance with the prominence requirements commences should be reduced from 18 months to not longer than 6 months (with shorter periods in some cases).
 - Both existing devices, and newly supplied devices, that fall within the definition of regulated television device should be subject to the new regime.
 - Given the importance of content search functions and electronic program guides (**EPGs**) on connected devices, minimum prominence requirements should include:
 - ❖ both content provided through FTA services and BVOD Services (as we have suggested that term is defined in the Bill) should be included in the content search function for regulated television devices; and
 - ❖ EPGs should place FTA linear services, including primary and multi-channels (whether broadcast or simulcast over the internet), prominently so that those services appear ahead of other channels.
- This submission outlines Free TV's suggested amendments to the Prominence Regulations and also provides in some cases suggested drafting for both the Bill and the Prominence Regulations to achieve these amendments. Free TV's proposed changes address:
 - Essential clarification changes regarding the findability of regulated television services.
 - The need for the minimum prominence requirements to comprehensively address content search functions and EPGs.

¹ Available here:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/ProminenceAntiSiphoning/Submissions



- Timing requirements for compliance with the new regime.
- Free TV looks forward to appearing before the Committee on 23 February 2024 to discuss both this supplementary submission and our Bill Submission.



2. Findability of regulated television services

2.1 Scope of Prominence Regulations

The Prominence Regulations, as contemplated by the proposed section 130ZZO of the Broadcasting Services Act 1992 (**BSA**) contained in the Bill, set out the minimum prominence requirements that will apply to regulated television devices. The Prominence Regulations are of critical importance in the operation of the prominence regime and must comprehensively cover:

- Findability of regulated television services on regulated television devices.
- Availability of information regarding content provided on regulated television services through both EPGs (for linear regulated television services, whether broadcast or simulcast via the internet) and other content search and recommendation services.

This section 2 addresses the primary findability issues, with section 3 considering information availability through EPGs and other content search and recommendation services.

Section 4 addresses timing. As set out in our Bill Submission, Free TV recommends a reduction of the timeframes by which compliance with the prominence requirements commences, which would be able to be achieved through changes implemented in both the Bill and the Prominence Regulations.

2.2 How easy will it be to find regulated television services?

As explained in this subsection, changes are required to both the Bill and the Prominence Regulations to ensure that the legislative package achieves the intended objects set out in the proposed section 130ZZG of the BSA, that is, to ensure Australians are able to access FTA services in order to support and contribute to optimal public policy outcomes.

Definition of regulated television device

“Regulated television device” is defined in the proposed section 130ZZI of the BSA. It is intended to extend to equipment that meets particular criteria – essentially, that it is capable of connecting to the internet and is primarily designed to be used as a television. In other words, a smart TV, or other streaming device designed to facilitate TV viewing over IP such as Google Chromecast or Amazon Firestick.

While it is more difficult to formulate a definition of smart TV than to describe the concept, Free TV has a concern with the use of the term “domestic reception equipment” in the proposed section 130ZZI. While that term is currently used in the BSA, it is not defined. There is no guidance in the Explanatory Memorandum for the Bill as to the meaning of this term.

There is a risk that the term could be limited to equipment capable of receiving television broadcasting services transmitted using the broadcasting services bands (see, for example, section 130B(1) of the BSA). This does not reflect the policy intent of the Bill, which is intended to capture within this definition smart TVs that are *not* capable of receiving services transmitted using the broadcasting services bands (that is, that connect only to the internet). The definition should be clarified.

Definition of primary user interface

“Primary user interface” is a key term for the purposes of the findability provisions of the Bill and the Prominence Regulations. The proposed section 130ZZL of the BSA, as contained in the Bill, provides



that this means the home screen and/or most commonly used interface of a regulated television device. However, in addition, the relevant interface must also meet the description or requirements of the Australian Communications and Media Authority (ACMA), if ACMA makes any legislative instrument describing an interface or the requirements for an interface. Free TV is concerned as to whether the ACMA does, in fact, propose to make any such legislative instrument.

Given the critical nature of this definition – and the ambiguity of the reference in the proposed section 130ZZL(1)(a)(ii) to the “main interface most commonly used” to access BVOD services (rather than audiovisual content services more generally) – it is recommended that the ACMA does make a legislative instrument under the proposed section 130ZZL of the BSA to provide necessary clarity. It is hoped that a draft of that instrument is made available for consultation as soon as possible.

In addition, the definition should be amended to both seek to clarify the definition and to reflect the implementation timing proposals set out in our Bill Submission.

Designated applications

Free TV’s review of the Prominence Regulations has surfaced a concern regarding the nature of the applications that the findability provisions of the prominence regime will apply to. At the current time the Bill defines these in section 130ZZJ(5) of the Bill. That definition is too broad, referring to any application “designed” to provide access to the relevant BVOD Service. Free TV’s view is that the applications referred to in 130ZZJ(5) of the Bill should be applications provided by or on behalf of the relevant regulated television service provider that meet the technical specifications to be included on the regulated television device. That is, the apps of our members, being 7plus, 9Now and 10 Play.

Internet simulcast of linear FTA services

Clause 7 of the Prominence Regulations addresses terrestrial broadcasts of FTA services. This has highlighted that the definition of “broadcasting video on demand service”, as set out in the proposed section 130ZZK of the BSA, is not sufficiently clear in ensuring, consistent with the general usage of the term “BVOD service”, the inclusion of internet simulcast of FTA services. This is because simulcast is a linear service rather than on demand service. Again, our recommendation is that this should be clarified.

Reasonable steps

The proposed section 130ZZN(2) of the BSA, which sets out the ongoing must carry obligations of manufacturers of regulated television devices and their related bodies corporate, requires that those entities must “take reasonable steps” to ensure ongoing compliance with the minimum prominence requirements.

It is clear, having regard to the Prominence Regulations and the manner in which the minimum prominence requirements are defined, that compliance with this reasonable steps obligation will require significant engagement by manufacturers (and/or their related bodies corporate) with the regulated television service providers. This engagement should occur in good faith, which should be a requirement included in the Bill.

General lack of clarity

Free TV has concerns generally that the findability provisions of the Prominence Regulations are unclear. We have suggested changes in section 2.3 to appropriately clarify the regime.



2.3 Proposed amendments to Bill

This section sets out the amendments to the Bill required to give effect to the suggested amendments in relation to findability above outlined above. These changes are in addition to the changes suggested in the Bill Submission (particularly our changes recommended for the proposed section 130ZZN of the BSA).

The amendments are set out as proposed drafting. **Attachment A** sets out the amendments in mark up against the original drafting.

Regulated television device: proposed sections 130ZZI and 130ZZM(1)

The drafting is suggested to the proposed section 130ZZI of the BSA:

130ZZI Regulated television devices

Meaning of regulated television device

- (1) For the purposes of this Part, a regulated television device means:
 - (a) equipment that:
 - (i) is capable of connecting to the internet and providing access to BVOD Services;
 - (ii) is designed for the primary purpose of facilitating the viewing of audiovisual content; and
 - (iii) is of a kind ordinarily acquired for personal, domestic or household use; or
 - (b) specified equipment that the ACMA determines, under subsection (2), is a regulated television device;

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

ACMA may determine specified regulated television devices

- (2) For the purposes of paragraph (1)(b), the ACMA may, by legislative instrument, determine that specified equipment is a ***regulated television device***.
- (3) For the purposes of subsection (1), the ACMA may, by legislative instrument, determine that specified equipment is not a ***regulated television device***.

In addition, the proposed section 130ZZM(1) would be amended to replace the reference to “particular kinds of domestic reception equipment” with “particular kinds of equipment”

Primary user interface: proposed section 130ZZL

The following drafting is suggested to the proposed section 130ZZL of the BSA:

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 of a kind ordinarily used as the primary interface for users to access audiovisual content services on devices of that nature, whether or not that interface is commonly referred to as the “home screen”, “main screen” or any similar term in relation to that device;
 - (b) meets the requirements under subsection (2); and
 - (c) meets the description or requirements (if any) determined by the ACMA under subsection (4).
- (2) On and from the date which is 6 months after the date this Part 9E commences, if 100% of a **primary user interface** may not be viewed by a user of the device on first opening that interface without the user of the device scrolling or taking any other action, **primary user interface** means only that part of the interface that may be viewed on first opening that interface without the user of the device scrolling or taking any other action. If scrolling or any other action is required to view any part of an interface, that part will not be considered to be part of the **primary user interface** of the device on and from that date.
- (3) 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

- (4) For the purposes of paragraph (1)(c), the ACMA may, by legislative instrument, do either or both of the following:
- (a) describe an interface;
 - (b) determine requirements relating to an interface.
- (5) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the ACMA may describe an interface, or determine requirements relating to an interface, differently in relation to:
- (a) different regulated television devices or kinds of regulated television devices; or
 - (b) different kinds of things or circumstances.
- (6) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (4) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (7) If an instrument under subsection (4) makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the ACMA must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (8) Subsection (7) does not apply if the publication would infringe copyright.

Designated applications: proposed sections 130ZZH and 130ZZJ

The following definitions should be inserted in proposed section 130ZZH of the BSA:



application has the same meaning given to “app” in the *Online Safety Act 2021*.

designated application has the meaning given in the regulations made in accordance with section 130ZZO(1).

As a consequence of these changes section 130ZZJ, and all other provisions of the Bill and the Prominence Regulations which refer to the applications in the proposed section 130ZZJ(5) of the BSA, would need to be amended and those references replaced with “designated applications”.

BVOD Service and internet simulcast of linear FTA services: proposed sections 130ZZH and 130ZZK

The defined term “broadcasting video on demand service” should be replaced with “BVOD Service” and all references to “broadcasting video on demand service” in the Bill and the Prominence Regulations replaced with “BVOD Service”. Section 130ZZK should also be replaced with the following drafting:

130ZZK BVOD Service

For the purposes of this Part, a ***BVOD Service*** means a service that:

- (a) makes audiovisual content available using a listed carriage service, either:
 - (i) on demand; or
 - (ii) as part of a service that simulcasts predominantly all of the audiovisual content provided on a broadcasting service (excluding advertising or sponsorship material, promotions of television programs or services, community information or promotional material or similar material) of a person referred to in subsections 130ZZJ(1)(a)(i), (ii), (iii) or (iv), whether or not any other audiovisual content is provided as part of that service; and
- (b) is made available free to the general public.

Reasonable steps: proposed section 130ZZN(2)

The provision is recommended for insertion as a new section 130ZZN(10). This has been drafted on the basis of the current drafting of the Bill. In our Bill Submission, Free TV has recommended changes to section 130ZZN to reflect the need for early commencement dates for the proposed new Part 9E of the BSA (and for it to apply to all regulated television devices that are still subject to updates by manufacturers as at the time of commencement, not only newly supplied devices) and the drafting below will need to be modified accordingly to reflect that alternative drafting.

Reasonable steps for the purposes of subsection 130ZZN(2)

For the purposes of subsection 130ZZN(2) ***reasonable steps*** includes, for each person who is subject to a requirement under subsection 130ZZN(1), an obligation to consult in good faith with each regulated television service provider to ensure that the device continues to comply with the minimum prominence requirements for the regulated television service of that provider for the period specified in subsection 130ZZN(2).

2.4 Proposed amendments to Prominence Regulations

Set out below are our suggested changes to provide a definition for “designated application”.

4 Definitions

Designated application means 7Plus, 9Now, 10Play, ABCiView and SBS on Demand, or, in the case of any regulated television services and any regulated television device, any alternative application agreed between the manufacturer of that regulated television device and the provider of those regulated television services from time to time, provided that the manufacturer must not withhold its consent to an alternative application where that alternative application is technically compatible with that device.

Set out below is our suggested drafting for sections 6 and 7(1) and (2) of the Prominence Regulations to address Free TV's concerns regarding findability. Again, this drafting assumes that from commencement of the new regime, the Prominence Regulations will apply to both existing devices that are continuing to be updated and new devices.

6 Minimum prominence requirements

Scope

- (1) This section applies in relation to all regulated television devices.
- (2) This section applies in addition to, and does not limit the application of, section 7 or 8.

Minimum prominence requirements

- (3) The device must comply with the requirements set out in subsection (4) in relation to each designated application for:
 - (a) a BVOD Service mentioned in paragraph 130ZZJ(1)(b) of the Act; or
 - (b) a service mentioned in paragraph 130ZZJ(1)(c) of the Act, if that service is a BVOD Service.

For the purposes of this section 6, a BVOD Service referred to in subsection (3)(a) or (b) is a **regulated BVOD Service**.

- (4) The requirements are that immediately from first use of the device on:
 - (a) the date the device is supplied by the manufacturer and first connected to the internet; or
 - (b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section;

the device must be configured to satisfy all of the following requirements:

- (c) a user of the device must be able to access the designated application for the regulated BVOD Service, without taking any action (including any installation action);
- (d) the designated application for the regulated BVOD Service is immediately updated, without any further action required from any person (including any user or the provider of the regulated BVOD Service), other than the manufacturer or a contractor of the manufacturer, when an update is made



available to the manufacturer or such a contractor by or on behalf of the provider of the regulated BVOD Service;

- (e) the representation of the designated application for the regulated BVOD Service approved by the regulated television service provider must be visible to each user of the device on the primary user interface of the device;
- (f) the representation of the designated application for the regulated BVOD Service must be not less prominent on the primary user interface of the device, having regard to size, shape, colour, formatting and any other relevant matter, than any other visual representation of an application that is:
 - (i) displayed on the primary user interface of the device; and
 - (ii) designed for the purposes of providing access to a service that makes audiovisual content available using a listed carriage service; and
- (g) the representation of the designated application for the regulated BVOD Service must be located in close proximity on the primary user interface to the representations of the other applications referred to in paragraph 6(4)(f).

7 Additional minimum prominence requirements for certain devices

Scope

- (1) This section applies in relation to a regulated television device if the device is capable of receiving a television broadcasting service that:
 - (a) uses the broadcasting services bands; and
 - (b) is either:
 - (i) mentioned in paragraph 130ZZJ(1)(a) of the Act; or
 - (ii) mentioned in paragraph 130ZZJ(1)(c) of the Act.
- (2) This section applies in addition to, and does not limit the application of, section 6 or 8.

Additional minimum prominence requirements for certain devices in relation to linear television broadcasting services

- (3) In addition to the requirements of section 6, immediately from first use of the device on:
 - (a) the date the device is supplied by the manufacturer and first connected to the internet; or
 - (b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section;

the device must be configured to satisfy all of the following requirements:



- (c) a user of the device must be able to access all of the following services (each referred to in this section 8 as a *regulated service*) in each case without taking any action (including any installation action):
 - (i) national television broadcasting services provided by the Australian Broadcasting Corporation; and
 - (ii) national television broadcasting services provided by the Special Broadcasting Service Corporation; and
 - (iii) if, at a particular time, a broadcasting service covered by subparagraph 130ZZJ(1)(a)(iii) or (iv) or paragraph 130ZZJ(1)(c) of the Act is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted—each such service;
- (d) all of the regulated services must be identified on the device by an icon that represents, to a reasonable person, linear television services (referred to in this section 7 and in section 8 as the *Live TV Icon*), and each of the regulated services must be accessible on the device through the Live TV Icon and using the service’s logical channel number;
- (e) a user must be able to access each of the regulated services on the device by selecting the Live TV Icon for the device;
- (f) the Live TV Icon must be visible to each user of the device on the primary user interface of the device;
- (g) the Live TV Icon must be not less prominent on the primary user interface of the device, having regard to size, shape, colour, formatting and any other relevant matter, than any other visual representation of an application that is:
 - (i) displayed on the primary user interface of the device; and
 - (ii) designed for the purposes of providing access on that device to a service that makes audiovisual content available using a listed carriage service; and
- (h) the Live TV Icon must be located on the primary user interface in a position that appears in close proximity to, but ahead of, the representations of the other applications referred to in subparagraph 7(3)(g).



3. Search and discoverability

3.1 Why EPGs and content searching are important

Changes required to the provisions of the Prominence Regulations addressing EPGs

There is no doubt that, at the current time, EPGs on connected TVs are confusing. Often a manufacturer will include on a device an EPG with hundreds of channels. Irrespective of whether a regulated device is supplied with an EPG installed by the manufacturer, FTA linear services (whether broadcast, or simulcast using the internet) must be given prominence on all EPGs (or equivalents) that are accessible on regulated television devices. Therefore the EPG regime must apply irrespective of whether a regulated television device is of a type referred to in section 7(1).

We have suggested amendments to create a proposed new section (previously sections 7(3) to (7)) of the Prominence Regulations in section 3.2 to achieve this outcome. These changes are in addition to Free TV's proposed change to the proposed section 130ZZO(1)(f) of the BSA, as set out in our Bill Submission.

Content searching

Our Bill Submission set out the reasons why the incorporation of content searching in relation to regulated television devices is a critical element of the prominence framework. Content search and discovery are important tools for use by Australians to discover Australian content, especially free content.

To address search and discoverability, the proposed section 130ZZO of the BSA should permit the Prominence Regulations to include, as a minimum prominence requirement, that where a regulated device includes any content search, discoverability or prominence tools (whether at the time of first supply or subsequently):

- each of those tools must give prominence to the content provided by FTA broadcasters. If a consumer searches for content that is made available by FTA, the tool must provide prominence to that content, not the same content provided by another service – particularly if the other service will charge a fee for that content; and
- the content from each BVOD Service (excluding a simulcast of a linear FTA service) must be made prominently available in any aggregated "More like this" or similar services offered through any of those tools.

The Prominence Regulations should be further amended to reflect the above, though proposed drafting to achieve this has not been provided.

3.2 Proposed amendments to reflect EPG proposals in the Prominence Regulations

Set out below is our suggested drafting for the proposed new section 8 (previously sections 7(3) to (7)) of the Prominence Regulations to address Free TV's concerns regarding findability.

Additionally, we do not consider that previous sections 7(6) and (7) are necessary. They should be removed to avoid uncertainty.



8. Additional minimum prominence requirements—electronic program guides

- (1) This section applies to all regulated television devices and is in addition to, and does not limit the application of, section 6 or 7.
- (2) The requirements set out in subsection 8(3) must be complied with immediately from first use of a regulated television device on:
 - (a) the date the device is supplied by the manufacturer and first connected to the internet; or
 - (b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section.
- (3) In addition to the requirements of sections 6 and 7, if any electronic program guide, however described, is accessible on a regulated television device (each referred to in this section 8 as an *EPG*), at any time, and irrespective of whether that EPG was installed by the manufacturer, the device must be configured to satisfy each of the following requirements in relation to each EPG:
 - (a) a user of the device must be able to easily access the EPG on the device, either through:
 - (i) if the regulated television device is required, in accordance with section 7, to have a Live TV Icon, the Live TV Icon; or
 - (ii) otherwise, a visual representation of the EPG on the primary user interface of the device which must be located in close proximity to the representations of the applications referred to in subparagraph 6(4)(f),

without taking any action (including any installation action);
 - (b) the EPG is immediately updated, without any further action required from any person (including any user or the provider of a service referred to in paragraph 8(3)(c), referred to in this section 8 as *Linear Services*) other than the manufacturer or a contractor of the manufacturer, when an update is made available to the manufacturer or such a contractor;
 - (c) a user of the device must be able to use the EPG to access each of the following services:
 - (i) in the case of each regulated television device referred to in subsection 7(1):
 - A. national television broadcasting services provided by the Australian Broadcasting Corporation;
 - B. national television broadcasting services provided by the Special Broadcasting Service Corporation;
 - C. if, at a particular time, a broadcasting service covered by subparagraph 130ZZJ(1)(a)(iii) or (iv) or paragraph 130ZZJ(1)(c)



of the Act is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted— each such service; and

- (ii) for each regulated television device, each BVOD Service that makes audiovisual content available as part of a service described in section 13OZZK(a)(ii) of the Act;
 - (d) each Linear Service must be identified in the EPG using the service’s logical channel number and each Linear Service must appear at the beginning of the services listed in the EPG, before the listing of any other services;
 - (e) a user of the device at a particular time must be able to view a television program (a **live television program**) that is being broadcast or simulcast, as applicable, on each Linear Service, at that time, by selecting the program in the EPG;
 - (f) the EPG must be capable of accurately displaying, at all times, the information listed in subsection (4) about each of the following:
 - (i) the live television program that is being broadcast or simulcast, as applicable, on each Linear Service at the time the EPG is accessed;
 - (ii) the television program that will be broadcast or simulcast, as applicable, on each Linear Service immediately after the live television program referred to in subparagraph (f)(i);
 - (iii) each television program that will be broadcast or simulcast, as applicable, on each such service during the period of 7 days beginning from the time the EPG is accessed.
- (4) For the purposes of paragraph (3)(f), the information is:
- (a) the name of the television program; and
 - (b) the start and finish time of the television program; and
 - (c) a brief description of the television program; and
 - (d) a detailed description of the television program; and
 - (e) the classification information of the television program.



4. Timing issues

4.1 Bill Submission on timing: an urgent need for quicker action

As stated in the Bill Submission, a key concern with the Bill, which will significantly constrain its effectiveness, is the timeliness of its implementation. As set out in that submission, the evidence provided by Free TV's technical expert, Mr Cleary, demonstrates that manufacturers may comply with the prominence obligations by the implementation of software changes (rather than, for example, hardware changes), meaning there are no valid reasons for the substantial delays that are reflected in the current drafting of the Bill.

As described in the Bill Submission, the combination of the 18 month delay in commencement of the proposed new Part 9E of the BSA, together with the current proposal that the new Part 9E only apply to regulated devices first supplied after that commencement, will mean that many Australian families will not benefit from the prominence regime for between 8 to 10 years. This will exacerbate the significant public policy harm from Australians being denied, for too long, access to free Australian content.

In short, manufacturers would have more than sufficient time to comply with almost all of the obligations currently set out in the Bill and the Prominence Regulations within one month of the Bill commencing, with the more complex obligations needing not more than six months before compliance may be achieved. The Bill and the Prominence Regulations should be amended to reflect this.

4.2 Required amendments for appropriate timing

To give effect to the timing amendments set out in our Bill Submission, as highlighted above, and noting the proposed amendment to the definition of primary user interface contained in the Bill which is outlined in section 2.2 of this supplementary submission, the following changes should be incorporated in the Bill and the Prominence Regulations:

- Clause 24 of Part 2 of Schedule 1 of the Bill should be deleted.
- The Prominence Regulations should be amended to provide that all provisions will commence on the date which is one month after the making of the Prominence Regulations other than:
 - Sections 7 and 8 (dealing with linear television and EPGs), which will commence on the date which is six months after the making of the Prominence Regulations; and
 - the new provisions to be inserted dealing with content search and discoverability, which will commence on a date to be determined when those provisions are finalised.

Attachment A

This Attachment A sets out the proposed drafting in mark-up.

Proposed amendments to Bill

Regulated television device: proposed sections 130ZZI and 130ZZM(1)

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~~BVOD Services; ~~and~~
 - (ii) is designed for the primary purpose of facilitating the viewing of audiovisual content; and
 - ~~(ii)~~(iii) is of a kind ordinarily acquired for personal, domestic or household use; 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.

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**.
- (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**.

(Proposed section 130ZZM(1) would be amended to replace the reference to “particular kinds of domestic reception equipment” with “particular kinds of equipment”.)

Primary user interface: proposed section 130ZZL

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 of a kind ordinarily used as the primary interface for users to access audiovisual content services on devices of that nature, whether or not that interface is commonly referred to as the “home screen”, “main screen” or any similar term in relation to that device; 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 access broadcasting video on demand services; and

~~(b)~~ meets the requirements under subsection (2); and

~~(b)(c)~~ meets the description or requirements (if any) determined by the ACMA under subsection (34).

~~(2)~~ On and from the date which is 6 months after the date this Part 9E commences, if 100% of a *primary user interface* may not be viewed by a user of the device on first opening that interface without the user of the device scrolling or taking any other action, *primary user interface* means only that part of the interface that may be viewed on first opening that interface without the user of the device scrolling or taking any other action. If scrolling or any other action is required to view any part of an interface, that part will not be considered to be part of the *primary user interface* of the device on and from that date.

~~(2)(3)~~ 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)(4)~~ For the purposes of paragraph (1)(~~b~~c), the ACMA may, by legislative instrument, do either or both of the following:

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

~~(4)(5)~~ Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the ACMA may describe an interface, or determine requirements relating to an interface, differently in relation to:

- (a) different regulated television devices or kinds of regulated television devices; or
- (b) different kinds of things or circumstances.

~~(5)(6)~~ Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (34) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

~~(6)(7)~~ If an instrument under subsection (34) makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the ACMA must ensure that the text of the matter applied, adopted or incorporated is published on its website.

~~(7)(8)~~ Subsection (67) does not apply if the publication would infringe copyright.

Designated applications: proposed sections 130ZZH and 130ZZJ

application has the same meaning given to “app” in the Online Safety Act 2021.



designated application has the meaning given in the regulations made in accordance with section 130ZZO(1).

(All other provisions of the Bill and the Prominence Regulations which refer to the applications in the proposed section 130ZZJ(5) of the BSA, would need to be amended and those references replaced with “designated applications”.)

BVOD Service and internet simulcast of linear FTA services: proposed sections 130ZZH and 130ZZK

130ZZK ~~Broadcasting video on demand service~~ BVOD Service

For the purposes of this Part, a ~~broadcasting video on demand service~~ BVOD Service means a service that:

(a) makes audiovisual content available ~~on demand~~ using a listed carriage service, either:

(i) on demand; or

~~(+)(ii)~~ as part of a service that simulcasts predominantly all of the audiovisual content provided on a broadcasting service (excluding advertising or sponsorship material, promotions of television programs or services, community information or promotional material or similar material) of a person referred to in subsections 130ZZJ(1)(a)(i), (ii), (iii) or (iv), whether or not any other audiovisual content is provided as part of that service; and

~~(+)(b)~~ is made available free to the general public.

130ZZK

Reasonable steps for the purposes of subsection 130ZZN(2)

For the purposes of subsection 130ZZN(2) *reasonable steps* includes, for each person who is subject to a requirement under subsection 130ZZN(1), an obligation to consult in good faith with each regulated television service provider to ensure that the device continues to comply with the minimum prominence requirements for the regulated television service of that provider for the period specified in subsection 130ZZN(2).

Proposed amendments to Prominence Regulations

Designated application

4 Definitions

Designated application means 7Plus, 9Now, 10Play, ABCiView and SBS on Demand, or, in the case of any regulated television services and any regulated television device, any alternative application agreed between the manufacturer of that regulated television device and the provider of those regulated television services from time to time, provided that the manufacturer must not withhold its consent to an alternative application where that alternative application is technically compatible with that device.

Prominence and discoverability

6 Minimum prominence requirements

Scope



(4) This section applies in relation to all regulated television devices.

(5) This section applies in addition to, and does not limit the application of, section 7 or 8.

Minimum prominence requirements

~~(5)~~(6) The device must comply with the requirements set out in subsection ~~(4)~~ in relation to each designated application ~~that is designed for the purpose of providing access to for:~~

(a) a ~~broadcasting video on demand service~~BVOD Service mentioned in paragraph 130ZZJ(1)(b) of the Act; or

~~(b) a service prescribed by the Minister under subsection 130ZZJ(2)~~service mentioned in paragraph 130ZZJ(1)(c) of the Act, if that service is a BVOD Service~~broadcasting video on demand service.~~

For the purposes of this section 6, a BVOD Service referred to in subsection (3)(a) or (b) is a *regulated BVOD Service*.

(7) The requirements are that immediately from first use of the device on:

(a) the date the device is supplied by the manufacturer and first connected to the internet; or

(b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section;

the device must be configured to satisfy all of the following requirements:

(c) the application is either installed on the device before the device is supplied or will be installed when the device connects to the internet for the first time after the device is supplied; a user of the device must be able to access the designated application for the regulated BVOD Service, without taking any action (including any installation action);

(d) the designated application for the regulated BVOD Service is immediately ~~must be able to be~~ updated, without any further action required from any person (including any user or the provider of the regulated BVOD Service), other than the manufacturer or a contractor of the manufacturer, when an update is made available to the manufacturer or such a contractor by or on behalf of the provider of the ~~regulated television service~~regulated BVOD Service;

(e) the representation of the designated application for the regulated BVOD Service approved by the regulated television service provider must be visible to each user of the device on the primary user interface of the device;

(f) the representation of the designated application for the regulated BVOD Service must be ~~of a similar size and shape~~ not less prominent on the primary user interface of the device, having regard to size, shape, colour, formatting



and any other relevant matter, than any ~~to~~ other visual representation of an applications that is:

- (i) ~~are~~ displayed on the primary user interface of the device; and
 - (ii) ~~are~~ designed for the purposes of providing access to a service (~~other than a regulated television service~~) that makes audiovisual content available using a listed carriage service; and
- (g) the representation of the designated application for the regulated BVOD Service must be located in the same area of in close proximity on the primary user interface as those to the representations of the other applications referred to in paragraph 6(4)(f).

7 Additional minimum prominence requirements for certain devices

Scope

- (1) This section applies in relation to a regulated television device if the device is capable of receiving a television broadcasting service that:
 - (a) uses the broadcasting services bands; and
 - (b) is either:
 - (i) mentioned in paragraph 130ZZJ(1)(a) of the Act; or
 - (ii) prescribed by the Minister under mentioned in paragraph 130ZZJ(1)(c) subsection 130ZZJ(2) of the Act.
- (2) This section applies in addition to, and does not limit the application of, section 6 or 8.

Additional minimum prominence requirements for certain devices in relation to linear television broadcasting services

- (3) In addition to the requirements of section 6, immediately from first use of the device on:
 - (a) the date the device is supplied by the manufacturer and first connected to the internet; or
 - (b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section;

the device must be configured to satisfy all of the following requirements:

~~the device must also comply with all of the following requirements:~~

~~(a)(c)~~ a user of the device must be able to access all of the following services (each referred to in this section 8 as a *regulated service*) in each case without taking any action (including any installation action):

- (i) national television broadcasting services provided by the Australian Broadcasting Corporation; and



- (ii) national television broadcasting services provided by the Special Broadcasting Service Corporation; and
 - (iii) if, at a particular time, a broadcasting service covered by subparagraph 130ZZJ(1)(a)(iii) or (iv) or paragraph 130ZZJ(1)(c) of the Act is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted—each such service;
- ~~(b)(d)~~ each-all of these-the regulated services must be identified on the device by an icon that represents, to a reasonable person, linear television services (referred to in this section 7 and in section 8 as the Live TV Icon), and each of the regulated services must be accessible on the device through the Live TV Icon and using the service's logical channel number;
- ~~(c)(e)~~ the a user must be able to access each of these-the regulated services on the device by selecting a single icon or visual representation the Live TV Icon for the device;
- ~~(d)(f)~~ the single icon or visual representationLive TV Icon must be visible to each user of the device on the primary user interface of the device;
- ~~(e)(g)~~ the single icon or visual representationLive TV Icon must be not less prominent on the primary user interface of the device, having regard to size, shape, colour, formatting and any other relevant matter, than anyof a similar size and shape to other visual representation of an applications that is:
- (i) ~~are~~ displayed on the primary user interface of the device; and
 - (ii) ~~are~~ designed for the purposes of providing access on that device to a service ~~{other than a regulated television service}~~ that makes audiovisual content available using a listed carriage service; and
- (h) the Live TV Icon must be located on the primary user interface in a position that appears in close proximity to, but ahead of, the representations of the other applications referred to in subparagraph 7(3)(g).

Proposed amendments to reflect EPG proposals in the Prominence Regulations

8. Additional minimum prominence requirements—electronic program guides

- (1) This section applies to all regulated television devices and is in addition to, and does not limit the application of, section 6 or 7.
- (2) The requirements set out in subsection 8(3) must be complied with immediately from first use of a regulated television device on:
 - (a) the date the device is supplied by the manufacturer and first connected to the internet; or
 - (b) if the device is supplied by the manufacturer prior to the date of commencement of this section, the date the first software update is made to the device following commencement of this section.



~~(2)~~(3) In addition to the requirements of sections 6 and ~~7~~ ~~subsection (2) of this section~~, if ~~there is any~~ electronic program guide, ~~however described, is accessible~~ on ~~the a~~ regulated television device (each referred to in this section 8 as an EPG), at any time, and irrespective of whether that EPG was installed by the manufacturer, the device must ~~also comply with~~ be configured to satisfy each of the following requirements in relation to each EPG:

~~(a)~~ the guide must be readily accessible on the device a user of the device must be able to easily access the EPG on the device, either through:

- (i) if the regulated television device is required, in accordance with section 7, to have a Live TV Icon, the Live TV Icon; or
- (ii) otherwise, a visual representation of the EPG on the primary user interface of the device which must be located in close proximity to the representations of the applications referred to in subparagraph 6(4)(f),

without taking any action (including any installation action);

~~(b)~~ the EPG is immediately updated, without any further action required from any person (including any user or the provider of a service referred to in paragraph 8(3)(c), referred to in this section 8 as Linear Services) other than the manufacturer or a contractor of the manufacturer, when an update is made available to the manufacturer or such a contractor;

~~(b)~~(c) a user of the device must be able to use the ~~guide~~-EPG to access each of the following services:

~~(i)~~ in the case of each regulated television device referred to in subsection 7(1):

- A. national television broadcasting services provided by the Australian Broadcasting Corporation;
- B. national television broadcasting services provided by the Special Broadcasting Service Corporation;
- C. if, at a particular time, a broadcasting service covered by subparagraph 13OZZJ(1)(a)(iii) or (iv) or paragraph 13OZZJ(1)(c) of the Act is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted—each such service; and

~~(i)~~(ii) for each regulated television device, each BVOD Service that makes audiovisual content available as part of a service described in section 13OZZK(a)(ii) of the Act;

~~(e)~~(d) each ~~of those services~~ Linear Service must be identified in the ~~guide~~-EPG using the service's logical channel number and each Linear Service must appear at the beginning of the services listed in the EPG, before the listing of any other services;



~~(d)~~(e) a user of the device at a particular time must be able to view a television program (a **live television program**) that is being broadcast or simulcast, as applicable, on each ~~such service~~Linear Service, at that time, by selecting the program in the guide~~EPG~~;

~~(e)~~(f) the guide~~EPG~~ must be capable of accurately displaying, at ~~a particular~~all times, the information listed in subsection (4) about each of the following:

- (i) the live television program that is being broadcast or simulcast, as applicable, on each ~~such Linear s~~Service at ~~that the~~ time the EPG is accessed;
- (ii) the television program that will be broadcast or simulcast, as applicable, on each ~~such Linear s~~Service immediately after the live television program referred to in subparagraph (f)(i);
- (iii) each television program that will be broadcast or simulcast, as applicable, on each such service during the period of 7 days beginning from ~~that the~~ time the EPG is accessed.

~~(3)~~(4) For the purposes of paragraph ~~(3)(e)~~ (3)(f), the information is:

- (a) the name of the television program; and
- (b) the start and finish time of the television program; and
- (c) a brief description of the television program; and
- (d) a detailed description of the television program; and
- (e) the classification information of the television program.

Exceptions

~~———— (5) ——— The requirements in paragraphs (2)(b) and (3)(c) do not apply in relation to a regulated television device that is not capable of displaying a television program without being connected to other equipment.~~

~~———— (6) ——— The requirements in paragraphs (3)(d) and (e) do not apply in relation to a television program that is advertising or sponsorship matter (other than a television program that is broadcast on a television broadcasting service that exclusively broadcasts advertising or sponsorship matter).~~

Continuity of programs

~~———— (7) ——— For the purposes of paragraphs (3)(d) and (e), any break during the transmission of a television program for the purposes of the transmission of other matter is taken not to affect the continuity of the program.~~