



Committee Secretary
Senate Standing Committees on Environment and Communications
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Canberra ACT 2600

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By Email: ec.sen@aph.gov.au

Dear Committee Members,

SUPPLEMENTARY SUBMISSION IN RELATION TO THE BROADCASTING SERVICE (MINIMUM PROMINENCE REQUIREMENTS) REGULATIONS 2024

The Consumer Electronics Suppliers Association (**CESA**) welcomes the opportunity to make a written supplementary submission in relation to exposure draft of the *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* (the “**Regulations**”).

This supplementary submission is to be read in conjunction with and references parts of CESA substantive submission dated 22 January 2024 (“**Substantive Submission**”).

On 29 November 2023, the Minister for Communications introduced the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (the Bill) into Parliament. If passed, the Bill would introduce a prominence framework for connected television devices. The Regulations prescribes the minimum prominence requirements that connected television devices must meet in order to be able to be supplied in the Australian market.

Introduction

CESA is the premier national, industry body representing major suppliers and retailers of consumer electronics in Australia. CESA members include all the major television brands in Australia. This submission represents the position of those major television suppliers in Australia (**CESA TV Members**) and supplements CESA’s Substantive Submission.

As noted in CESA’s Substantive Submission, regulatory design of a prominence framework must take into account the:

- (i) technical capabilities of connected TV devices, their interfaces, operating systems as well as the device development process and timeframes;
- (ii) design constraints and compliance burden imposed on local suppliers who are not the ‘actual’ manufacturers of the device or operating system and in relation to matters which are largely out of their control;

- (iii) adverse cost implications with and consumer impacts of developing ‘bespoke’ devices and user interfaces for the Australian market which accounts for only 1% of the global television market; and
- (iv) need for commensurate obligations on the regulated television service providers to provide, update and support the regulated television service apps at their cost and in accordance with manufacturers’ device development specifications.

These same considerations apply in relation to the minimum prominence requirements in the Regulations. CESA proposes certain amendments to the Regulations as set out below and in **Attachment A** to this supplementary submission.

Overview of the Regulations

- In relation to an application that is designed for the purpose of providing access to regulated broadcasting video on demand service (the “**BVOD application**”), a regulated television device must, pursuant to section 6, comply with the following requirements. Each BVOD application must be:
 - (a) 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
 - (b) updated when an update is made available by or on behalf of the provider of the regulated television service;
 - (c) visible on the primary user interface of the device;
 - (d) of a similar size and shape to other non-regulated applications displayed on the primary user interface; and
 - (e) located in the same area of the primary user interface as non-regulated applications.
- In relation to regulated linear television broadcasting services (“**Live TV Services**”) a regulated television device must, pursuant to section 7, comply with the following requirements:
 - (a) each of those services must be identified and accessible on the device using the service’s logical channel number;
 - (b) the user must be able to access each of those services on the device by selecting a single icon or visual representation;
 - (c) the single icon or visual representation must be visible on the primary user interface of the device; and
 - (d) the single icon or visual representation must be of a similar size and shape to other applications displayed on the primary user interface.
- If there is an **electronic program guide** for Live TV Services on the device, the device must, pursuant to section 7(3), also comply with each of the following requirements:
 - (a) the guide must be readily accessible on the device;
 - (b) a user of the device must be able to use the guide to access the Live TV services and must be identified in the guide using the service’s logical channel number
 - (c) users must be able to view live television program by selecting the program in the guide;
 - (d) the guide must accurately display the information for each service for the next 7 day period. the information must include:

- (i) the name of the television program;
- (ii) the start and finish time of the television program;
- (iii) a brief description of the television program;
- (iv) a detailed description of the television program;
- (v) the classification information of the television program.

Key Comments and Amendments to the Regulations

Generally, the minimum prominence requirements outlined in the Regulations are far more prescriptive than the UK and German Bills which do not prescribe homescreen positioning let alone the shape, size of icons and the area where regulated television service applications must be shown on the primary user interface.

The television market is highly competitive, and manufacturers develop operating systems for Smart TVs to attract customers, distinguish their televisions from competitors and gain market share. Manufacturers utilise a diverse range of ‘globally designed’ user interfaces to perform various essential operations on a Smart TV.

An overly prescriptive, “one size fits all” regulations is unsuitable, not futureproof and will ultimately harm consumers. CESA seeks a flexible, principle-based approach which enables manufacturers to choose an option which best suits the relevant operating system and does not stifle innovation, user experience or access to latest homescreens

Section 6 – Minimum Prominence Requirements for BVOD applications

- **Installation before a device is supplied is not provided for any broadcasting video on demand applications and should be removed and Installation upon Initial Connection must be further defined**

In relation to **subparagraph 6(3)(a)** currently no manufacturer installs any BVOD app (neither Australian free-to-air BVOD service apps or international BVOD apps) *prior to supply* of regulation television devices.

Pre-installation of BVOD service apps is technically problematic because BVOD service apps reside on the ‘app owners’ (regulated television service providers) or operating system providers’ servers and are updated time to time.

For that reason, reference in subparagraph 6(3)(a) to “installation on the device before the device is supplied” should be removed from the Regulations.

With respect to “installation when the device connects to the internet for the first time after the device is supplied” it must be further defined in the Regulations to:

- (i) allow for different standard ways for applications to be installed including completion of the set up process; and
- (ii) make clear that the minimum requirement does not include installation of the application itself, but instead requires an icon or visual representation for the relevant broadcasting

video on demand service application which when clicked takes the user to a page to install the relevant application.

- **Updates provided by regulated service providers must be compatible with the device**

In relation to **subparagraph 6(3)(b)** the update must be compatible with the device. Refer to proposed amendment set out in **Attachment A**.

- **Allow alternate positioning options for broadcasting video on demand service (BVOD) applications**

Under **subparagraph 6(3) (c) - (e)** the current requirement is for **individual icons to be visible in the same area on the primary user interface as other non-regulated services**.

In the second reading of the Bill, Government stated that the Regulations “would not prescribe the exact position of tiles, tabs or links on the primary user interface nor prevent them from occupying a different position on the primary user interface from time to time”¹.

By prescribing that the icons must be in the same area as other non-regulated applications, the minimum prominence requirements at subparagraph 6(3) goes further than what is intended in the second reading of the Bill and what is required in the UK and German Bills.

As detailed in CESA’s Substantive Submission “individual BVOD Homescreen Positioning will radically impact Australian consumers access to latest models and innovations, interfering with their preferences and stifling innovation and user experience into the future”.

For certain manufacturers it is not possible to fit the 5 BVOD applications (let alone an additional 4 applications if prominence is extended to also include community and the children’s television BVOD service applications) on a homescreen menu due to the space constraints on the primary user interface and interference with contractual arrangements with non-regulated services.

It is therefore imperative that the minimum prominence requirements outlined in the Regulations are drafted in manner that can apply to a range of interface designs (both now and in the future) and are not overly prescriptive. Manufacturers should be able to choose the option which helps minimise the impact on consumers noted in CESA’s submissions and which is most feasible from a technical and commercial perspective.

Accordingly, the Regulations should be amended to **remove the requirement that applications be in the same area as other non-regulated service applications** and must include the alternative positioning options outlined in CESA’s Substantive Submission namely:

Option 1: Individual App Store page Positioning requiring BVOD service tiles to appear first in the top row of the App Store page (which is the main place consumers go to access BVOD apps and is one click from the homescreen via an App or App Store tile). If one of these BVOD service tiles was then clicked on by a user, it would open a page which would prompt the user to click to install the relevant BVOD service app.

OR

¹ Second Reading, Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023.

Option 2: One combined BVOD service tile for all BVOD service apps on the homescreen (instead of 5 or more separate tiles).

OR

Option 3: One combined tile on the homescreen for all regulated television services (free-to-air TV services and BVOD services).

Section 7 - Minimum Prominence Requirements for Linear Television Broadcasting (Live TV) Services

Refer to clarifying amendments and comments as set out in **Attachment A**.

In relation to subsection 7(2) it must be clarified that the accessibility requirement permits the inclusion of a “Live TV” icon which when clicked goes to the last terrestrial television channel viewed and from where a user can access other Live TV services via the electronic program guide or by using the channel navigation buttons on the remote control.

CESA seeks flexibility regarding the size and shape of the Live TV icon provided that the icon is easy for users to locate on the primary user interface.

Additional Minimum Prominence Requirements – Electronic Program Guides

Whilst the EPG layout is designed by manufacturer, the type and accuracy of information is provided by and controlled by the regulated television service broadcaster. CESA’s requested changes outlined at Attachment A, are intended to clarify this position.

Exceptions

In relation to subsection 7(5), CESA seeks clarification regarding the reasons for excluding “regulated television device” that is not capable of displaying a television program without being connected to other equipment”.

It is also imperative that an exception be included in the Regulations stating that the requirements at section 6 do not apply if a regulated television device does not include any streaming applications at all (outside the manufacturer’s own Fast TV feature). That is, where no international or local apps appear on a homescreen section 6 requirement should not apply. As explained below, this is critical to accommodating technological advancements and avoiding the dire consumer impacts in creating ‘barriers for entry’ of new technology.

Notably, future homescreens innovation are headed towards Smart ‘adaptive’ UI’s which do not include any streaming applications and which instead personalise content/programming (based on AI) and include features linked to other IoT devices. As such homescreens may shortly not have any applications, let alone the compulsory regulated television service applications in which case manufacturers will not have the capability to auto download apps on a homescreen as required by the Regulation.

Examples of industry commentary showing this imminent advance in homescreens (and the need to adapt the current static UIs into Smart adaptive UIs) include:

- Science Direct proposing a personalised adaptive UI to improve users' smart TV usage and watching experience, and
- Connected TV possibilities (under “The TV will finally know you”) analysing the trend towards a smart content based homescreen UI.

This next innovative evolution in Smart TV technology will mean that there may shortly be no technical and/or commercial capability for manufacturers to meet the section 6 minimum prominence for regulated television services. Unless there is an exception in the Regulations to deal with this (as well as alternatives such as Option 1 above) the prominence legislation will mean that Australian consumers miss out on these latest TV models, homescreens and innovations that other consumers around the world get, including these Smart UI’s.

This is because if new TV models no longer include any applications on homescreens, or homescreens look very different to today’s menu based app presentation and innovations cannot accommodate 5-8 regulated television service tiles (and possibly more into the future), overseas manufacturers will not incur the costs of reconfiguring homescreens just to comply in the small Australian market. What will instead happen is Australian consumers will only feasibly be offered older model TV’s with old style homescreens, and/or a much reduced range of new models.

As early technology adopters, this is something Australians will resent.

Responding to Free TVs position

1. **Discoverability and searchability of content** across all apps: This isn’t currently provided by most manufacturers and isn’t possible given required app provider backend work across all makes and models not being feasible.

The Bill must not be amended to regulate or affect the search functions of a device or, as noted in the Explanatory Memorandum, constrain the capacity of the device manufacturers to promote, preference or recommend particular content or services to users, including their own-brand content and services.

2. **Extending the prominence framework to existing models:** The minimum prominence obligations extinguish once the consumer customises the homescreen including moving or uninstalling a regulated television service, so as to preserve consumer choice. Extending the minimum prominence obligations to existing models would remove consumer installed applications and alter consumer configured homescreens. Such action will be viewed by consumers as highly intrusive resulting in consumer complaints.

Further, there are technical and operational challenges applying prominence requirements to existing models in the market where:

- (i) operating systems have changed; or
- (ii) lower end models] require hardware changes due to memory issues downloading the regulated television service applications; or
- (iii) development resources and platforms have been disbanded and will require multi-disciplinary engineering teams to be reconvened to deliver the prominence requirements.

As manufacturers will be unable to recover the costs incurred implementing the prominence framework for models that have already been supplied, they will have little choice but to further increase the price of new televisions.

For the reasons noted above any extension of the prominence requirements to existing models is unacceptable and the scope of the Bill should not be amended to include existing models.

3. **A reduced (1 month to 6 month) implementation timeframe:** Having regard to the product launch cycles and lead times to reconfigure bespoke Australian homescreens outside fixed global design and planning processes, a lesser implementation timeframe is not possible without consumer and operational impacts.

Free TV asserts that manufacturers have been on notice of the prominence changes since 2022, however overseas engineering teams or third party operating providers cannot commence implementation works based on exposure drafts. They require final legislation and even after that there are still to be prepared ACMA guidelines/Ministerial directions in order to move forward and understand what is required for each model, before implementation planning can even begin.

Given that development of 2025 products are currently being finalised and assuming a mid-year Act commencement date, practically the prominence requirements will be applied to 2026 television models.

The Free TV expert acknowledges that “*software requirements would be collected during January of the calendar year X for the line up released in Australia during the autumn/winter of calendar year X+1*”². This aligns with the 18-month timeframe under the current Bill however a further 6 months is required to enable a smooth transition from 2025 to 2026 models, during the first half of 2026.

CESA has called for extending the implementation timeframe to 2 years, instead of 18 months, to allow for these factors and for dealing with rapid technological advancement in the context of this regulation.

Observations regarding Free TV’s expert report.

The Free TV expert’s assessment is based on his experience with one manufacturer and is not representative of the position of other manufacturers. Further the Free TV expert misses the point and incorrectly (or unreasonably) assumes that:

- homescreens will remain static - with a menu of apps and manufacturer capability to just replace a few apps or include a whole new menu row to cater for me.
- Overseas manufacturers or third party operating system providers will ‘prioritise’ prominence framework implementation and ‘drop’ their existing development programs (which are

² Section 2.5.3 of Free TV Expert Report dated 22 January 2024.

already set to the end of the year) just for Australia which accounts for a 1% of the global television market.

The Free TV expert's assessment does not take into account the complex multi-party arrangements, technology stack, the relevant pre-approvals, pre-planning, testing, rollout schedule and existing contractual issues – all of which materially affect the 1 month/6 month implementation timeframe proposed by Free TV.

Reconfiguring Australian homescreens and doing it outside of standard timelines/product development process is not just a mere inconvenience for manufacturers, it has significant cost and implications for Australians consumers in getting far fewer and more expensive new models with most Australians missing out on the latest homescreens, models and emerging user experiences.

TV homescreens are sold to millions of people globally and are carefully designed to capture consumers imaginations. maximise experience and differentiate competing products in the market. The design, testing and implementation process takes well over a year.

Even if homescreen changes can be implemented via software changes, forcing manufacturers to keep the current application based homescreens to meet Australia-only requirements, and suggesting they should just “add another menu row” to carefully designed global homescreens, is flawed.

If implementation is forced within 6 months, it will mean that Australian consumers will get a smaller range of old models at a higher price and will not have access to the latest 2025 models or those going forward.

Concluding Remarks

CESA appreciates the opportunity to make a supplementary submission in relation to the Regulations and would be pleased to discuss these matters with the Committee at the upcoming hearing.

If the Committee would like assistance with any aspect of this submission, please do not hesitate to contact Evelyn Soud

Yours sincerely

Evelyn Soud
Chief Executive Office

Attachment A: Table of Amendments to the *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* (the “Regulations”)

Provision	Current provision marked with CESA amendments	Comments and/or further amendments
<p>Section 6</p>	<p>6 Minimum prominence requirements <u>in relation to broadcast video on demand services</u></p> <p>Scope</p> <p>(1) This section applies in relation to all regulated television devices.</p> <p>Minimum prominence requirements</p> <p>(2) The device must comply with the requirements set out in subsection (3) in relation to each application that is designed for the purpose of providing access to:</p> <p>(a) a broadcasting video on demand service mentioned in paragraph 130ZZJ(1)(b) of the Act; or</p> <p>(b) a service prescribed by the Minister under subsection 130ZZJ(2) of the Act, if that service is a broadcasting video on demand service <u>that is offered by a regulated television service provider</u>.</p> <p>(3) The requirements are all of the following:</p> <p>(a) the an icon or visual representation 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 <u>to enable access to the application</u>;</p> <p>(b) the application must be able to be updated when an update is made available by or on behalf of the provider of the regulated television service <u>provided that such update is backward compatible with the device</u>;</p>	<p>In addition, to the marked amendments, there needs to be a definition of ‘will be installed when the device connects to the internet for the first time’ which:</p> <p>(iii) allows for different standard ways for applications to be installed including completion of the set up process; and</p> <p>(iv) makes clear that the minimum requirement <u>does not include installation of the application itself</u>, but instead requires a icon or visual representation for the relevant broadcasting video on demand service application which when clicked takes the user to a page to install the relevant application; and</p> <p>(v) enables access to the application via the alternate positioning options noted in CESA’s Substantive and these Supplementary Submissions.</p>

	<ul style="list-style-type: none"> (c) the icon or visual representation application must be visible on the primary user interface of the device; (d) the icon or visual representation application must be of a similar size and shape to other applications that: <ul style="list-style-type: none"> (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; (e) the application must be located in the same area of the primary user interface as those other applications. 	
<p>Subsection 7(2)</p>	<p>7 Additional minimum prominence requirements for certain devices</p> <p>Additional minimum prominence requirements for certain devices in relation to linear television broadcasting services</p> <p>(2) In addition to the requirements of section 6, the device must also comply with all of the following requirements:</p> <ul style="list-style-type: none"> (a) a user of the device must be able to access: <ul style="list-style-type: none"> (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; 	<p>The Regulations should include the marked amendments for clarity and subsection 7(2) must permit access to linear television broadcasting services via a single icon which when clicked goes to the last terrestrial television channel viewed, where the user can access other Live TV services via the electronic program guide or by using the channel navigation buttons on the remote control.</p>

	<p>(b) each of those services must be identified and accessible on the device using the service’s logical channel number;</p> <p>(c) the user must be able to access each-all of those services on the device by selecting a single icon or visual representation;</p> <p>(d) the single icon or visual representation must be visible on the primary user interface of the device;</p> <p>(e) the single icon or visual representation must be of a similar size and shape to applications that:</p> <p style="padding-left: 40px;">(i) are displayed on the primary user interface of the device; and</p> <p style="padding-left: 40px;">(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.</p>	
<p>Subsection 7(3)</p>	<p><i>Additional minimum prominence requirements—electronic program guides</i></p> <p>(3) In addition to the requirements of subsection 7(2)6 and subsection (2) of this section, if there is an electronic program guide on the device, the device must also comply with each of the following requirements:</p> <p style="padding-left: 40px;">(a) the guide must be readily accessible on the device;</p> <p style="padding-left: 40px;">(b) a user of the device must be able to use the guide to access each of the following services:</p> <p style="padding-left: 80px;">(i) national television broadcasting services provided by the Australian Broadcasting Corporation;</p> <p style="padding-left: 80px;">(ii) national television broadcasting services provided by the Special Broadcasting Service Corporation;</p> <p style="padding-left: 80px;">(iii) if, at a particular time, a broadcasting service covered by subparagraph 130ZZJ(1)(a)(iii) or (iv) or</p>	<p>The Regulations should include the marked amendments for the reasons noted in the Supplementary Submissions.</p>

	<p>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;</p> <p>(c) each of those services must be identified in the guide using the service’s logical channel number;</p> <p>(d) a user of the device at a particular time must be able to view a television program (a <i>live television program</i>) that is being broadcast on each such service, at that time, by selecting the program in the guide;</p> <p>(e) the guide must be capable of accurately displaying, at a particular time, the information listed in subsection (4) about each of the following:</p> <p>(i) the live television program that is being broadcast on each such service at that time;</p> <p>(ii) the television program that will be broadcast on each such service immediately after the live television program;</p> <p>(iii) each television program that will be broadcast on each such service during the period of 7 days beginning from that time.</p> <p>(4) For the purposes of paragraph (3)(e) <u>and subject to the regulated television service making the information available</u>, the information is:</p> <ul style="list-style-type: none">(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.	
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Subsection 7(5)	<i>Exceptions</i> <p>(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.</p> <p>(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).</p>	<p>Clarification sought regarding reasons for the exception at subsection 7(5).</p> <p>Additional exception should be included in the Regulations stating that the requirements at section 6 do not apply if a regulated television device does not include any streaming applications at all (outside the manufacturer’s own Fast TV feature).”</p>
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