



COMMUNITY
BROADCASTING
ASSOCIATION OF
AUSTRALIA

25 January 2024

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

Dear Committee Secretary

***Communications Legislation Amendment
(Prominence and Anti-Siphoning) Bill 2023 (the Bill).***

The Community Broadcasting Association of Australia (the CBAA) and Australian Community Television Alliance (ACTA) represent 450+ not-for-profit community broadcasters across Australia, delivering 500+ radio services and 2 TV services on AM, FM and DAB+ platforms, as well as streaming, podcasts and catch-up online.

As recognised in the National Cultural Policy *Revive: a place for every story, a story for every place*, community broadcasting is a vital part of the Australian media landscape. Our sector provides a voice for underrepresented and underserved communities including First Nations people, culturally and linguistically diverse communities, education, faith-based communities, people with disability, youth and seniors. Community broadcasting is also recognised for its key role in emergency resilience, local engagement and as a significant platform for original Australian content and music and launchpad for emerging media talent.

Our organisations welcome and strongly support the Government's reform of a legislated prominence framework for connected TV devices as an important step to level the playing field for free-to-air broadcasting services, subject to our comments below on specific aspects of the Bill.

We note the objects of the Bill, as outlined in section 130ZZG, are to ensure that audiences throughout Australia are able to access free-to-air television content in order to:

- (a) support Australia's representative democracy by informing Australians of issues or events that are relevant to public debate and democratic decision-making; and
- (b) ensure that audiences throughout Australia are able to access content that is of public significance at a local, regional or national level; and
- (c) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

This reform aligns with the goals of *Roadmap 2033 – Community Broadcasting's Plan for Greater Impact in Every Australian Community* to “ensure Australians can access community broadcasting across AM/FM, DAB+, terrestrial TV, online and emerging platforms of their choice.”

We also refer to [submissions](#) made by our organisations in February 2022 in response to the prominence proposals paper consultation which led to this Bill.

This submission firstly responds to aspects of the Bill which specifically affect community broadcasting and then addresses more general matters around implementation.

We contend that community TV should be treated equally with all regulated television services including commercial and public broadcasting services.

1, Community broadcasting licences

Regulated television services, to which the prominence framework applies, are defined as follows in section 130ZZJ of the Bill:

- under subsection 130ZZJ(a), community broadcasting services are **regulated television services** and therefore covered by the prominence provisions in the Bill.
- however, under subsection 130ZZJ(b), which includes broadcasting video on demand services in the definition of regulated television services, community BVOD services are not included.

This omission has a significant impact on community broadcasting services. As noted in the Explanatory Memorandum Impact Analysis (see for example the graphs on page 61 and 78), Australian audiences are increasingly adopting BVOD services and there is a significant decline in live free-to-air viewing, so the negative impact on Channel 31 and other community broadcasting licence holders of not having guaranteed BVOD prominence will only increase in the years ahead, and their audiences may lose access to this important part of their service.

To rectify this, we believe subsection 130ZZ(b) needs to be amended by the addition of a new paragraph (v):

(b) a broadcasting video on demand service provided by any of the following, using an application that is covered by subsection (5) of this section:

- (i) the Australian Broadcasting Corporation;
- (ii) the Special Broadcasting Service Corporation;
- (iii) a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1));
- (iv) a related body corporate of a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1));
- (v) a community television broadcasting service provided by a community television broadcasting licensee.**

This amendment will ensure that community BVOD services are treated fairly alongside other BVOD services and are guaranteed to be accessible to Australian audiences. The proposed amendment is consistent with and supports the objects of the Bill in section 130ZZG.

An explanation for the omission of these services from paragraph 130ZZJ(1)(b) is outlined on page 18 of the Explanatory Memorandum for the Bill: it refers to the current situation where one of the partners in the joint venture operating the CTV+ community television BVOD service holds a community television broadcasting licence and the other holds an open narrowcasting television licence.

Regardless of the current status of a service, the legislation should be structured in a way that is neutral and future-proofed for existing and future services. Most importantly, the legislation should ensure that community broadcasting services as a sector category are treated equitably alongside other sectors.

It may be inferred from the Explanatory Memorandum that had this situation not existed, community broadcasting licensees would have been included in paragraph 130ZZJ(1)(b).

However, there is no apparent policy reason why the scenario mentioned in the Explanatory Memorandum (where one BVOD partner has a broadcast licence and the other currently has an open narrowcast licence), should prevent a community broadcast licence holder's BVOD services being covered by the prominence framework.

The Explanatory Memorandum infers that the concern is that the community broadcast licence holder's BVOD service is part of a joint venture (which includes content provided by the community narrowcast service). This appears to be the only reason given for treating community broadcasting BVOD differently.

This approach is in contrast to provision in paragraph 130ZZJ(1)(b) to include the BVOD services of a related body corporate of commercial television broadcasting licensee (other than section 38C or subsection 40(1) licensee). The Explanatory Memorandum at page 19 states "This is because the BVOD services provided by commercial television broadcasters are typically not provided by the same incorporated entity that holds a commercial television broadcasting licence, but rather a related body corporate of a commercial television broadcasting licensee." There appears to be nothing to prevent a related body corporate being a joint venture with another entity.

We further note that the BVOD services provided by commercial and national broadcasters currently contain a range of content from sources other than their own free-to-air service. In this regard, they are no different to Channel 31 providing a BVOD service to its viewers which includes additional content from other sources including a narrowcast partner, where it is content that is consistent with its licence requirements and objectives.

In addition, by their nature, the BVOD TV services of community broadcasters are made up exclusively of Australian content created by and showcasing Australian talent – see <https://ctvplus.org.au/> which is produced weekly by around 1000 volunteers, working with over 40 multicultural producers, and contains 100% Australian content. Examples include:

- *Mob Talks*, a First Nations led series in front and behind the camera, exploring social issues through a First Nations lens.
- *Re-Framed* exploring the representation of people with disability in TV and film.
- *The Bent Spoon* showcasing diverse cultures and First Nations communities in Australia and globally from LGBTIQ+ perspectives.
- *Be Curious* exploring ground breaking innovation of leading museums and institutions.
- *A Healthy State* featuring discussions with culturally diverse doctors and health professionals.

The community television sector is also a key platform for Australian talent, accommodating around 140 internships per year and with almost 3 decades providing career pathways for a diverse range of Australian talent.

As a source of original Australian content, community television BVOD squarely meets the objectives of the Bill and the overall purpose of having a prominence framework for services that are important and significant to Australians. The Bill includes BVOD services which have a significant proportion of non-local content, and should not exclude locally produced community BVOD.

As a result of being omitted from paragraph 130ZZJ(1)(b), community broadcasters are the only sector of existing licensed broadcasters who would need to seek a Ministerial Direction under paragraph 130ZZJ(1)(c) for their BVOD service to be included in the prominence framework.

While the Explanatory Memorandum includes community broadcasting BVOD as an example of a Ministerial Direction which may be made, the Bill provides no guarantee that such a direction would occur in the future.

If the Bill is left as is, Australian audiences will not have future guaranteed access to their local community BVOD services and there is a risk to the sustainability of these services as changing audience behaviours continue to see a shift from live broadcast to BVOD. Further, the status of those BVOD services will be subject to consideration and review from time to time by successive Ministers on

a case-by-case basis, creating a situation where a well-established community broadcasting BVOD service could be removed by a change of government.

The result may be a reduction in the number of free-to-air television services available to Australian consumers on connected televisions and a strongly negative impact on community broadcasters' ability to deliver to the communities they are licensed to serve, both of which go against the policy underlying the Bill and the *Broadcasting Services*.

This situation also complicates compliance processes for television manufacturers, who may also incur unnecessary costs of periodical software updates to add or remove BVOD services of existing community broadcasting licence holders as a result of changes to Ministerial Directions.

The suggested amendment to include community broadcasting licence holders in paragraph 130ZZJ(1)(b):

- meets the objectives of the Bill both now and into the future;
- ensures Australians have guaranteed access to the BVOD services provided by their local community TV station (alongside live community TV services);
- provides certainty and sustainability for community broadcast licence holders; and
- provides certainty to manufacturers and reduces their compliance cost and complexity.

For these reasons, we believe that the matters raised on page 18 of the Explanatory Memorandum do not warrant the exclusion of community television BVOD from paragraph 130ZZJ(1)(b) and we request that the Committee recommend the suggested amendment be adopted.

2. General provisions

The following comments refer to the broader application of the prominence framework. As section 130ZZO provides for minimum standards to be set by Ministerial regulation, we believe these issues can be dealt with in those regulations.

We note that the draft regulations have not yet been released and reserve our right to comment further once the draft is available.

Including regulated television services content in search

Section 130ZZO of the Bill provides for *minimum prominence requirements* to be prescribed by regulation in relation to the matters described in subsection (1)(a)-(f). This appears to exclude provision for minimum prominence requirements for search functionality. This enables television manufacturers to continue to preference paid content and/or exclude free programs from the parameters of their search functions. Search is an essential part of discoverability, which is a key policy driver for the prominence framework.

We contend that the minimum standards to be included in the regulations should require that the content of regulated television services must be included and given appropriate prominence in all search functions.

Commencement and regulated television devices

We refer to the commencement provisions in Schedule 1 Part section 24 – Application of amendments:

- The amendments made by this Schedule apply in relation to a regulated television device that:
- (a) is manufactured on or after the day that is 18 months after the commencement of this Schedule; and

(b) is supplied on or after that day.

Given the importance of this legislation in making significant television services available to the Australia and the fast-moving changes in audience behaviours which have made the Bill necessary (as outlined in the Explanatory Memorandum), the legislative changes for manufacturers need to be implemented as quickly as practicable. The Explanatory Memorandum on page 81 references the CESA submission to the Proposals Paper as saying that the television set market is "\$1.5 to 1.8 million per annum". It appears that CESA's submission was referring to number of sets sold in Australia annually (1.5 to 1.8 million per annum) rather than revenue (which is closer to [\\$2.9bn](#) annually), so the impact of an extended commencement period is significant – every month matters.

We understand that any changes to the primary user interface required under the Bill can be delivered through software updates rather than requiring new hardware manufacture and as a result this should require significantly shorter lead times. This is a matter for expert advice which can be addressed in the regulations. In light of this, we support removing the timeframe from subsection (a) and replacing it with a date to be determined by the Minister in regulations.

For the same reasons, the Committee should also consider whether the prominence framework should apply to existing more recently manufactured television devices which are capable of receiving the same updates as will be delivered under this legislation, not just to devices manufactured after commencement. This approach would support the objectives of the legislation and (based on Australian sales of upwards of 1.5 million sets per year) bring its intended benefits to potentially millions of Australian households who have purchased smart televisions in recent years.

We support amendments to the definition of regulated television devices which includes existing televisions that are capable of receiving the software updates that give effect to this legislation.

We would be pleased to discuss these matters with the Committee and are happy to make ourselves available to appear before the Committee in upcoming hearings.

Sincerely,

Jon Bisset
Chief Executive Officer
CBAA

Shane Dunlop
President, ACTA