



**SUBMISSION BY COMMERCIAL RADIO & AUDIO REGARDING
THE COMMUNICATIONS LEGISLATION AMENDMENT
(PROMINENCE AND ANTI-SIPHONING) BILL 2023**

RECOMMENDATIONS AT A GLANCE

- While CRA supports the Prominence Bill, that Bill should be extended to apply not only to TV but also to radio. This is because Australians should be able to easily access not only Australian television content but also Australian radio content.
- A prominence framework for radio would require free, simple and universal access to radio on smart speakers and, in due course, in connected cars and potentially on other devices.
- The Prominence Bill may easily be expanded to provide for radio prominence, using the UK's Media Bill as a model. The UK's Media Bill is expected to become law in mid-2024.
- The core requirements of a radio prominence regime are simple, with manufacturers (at no cost to radio broadcasters) being subject to the following obligations:
 - **must carry:** regulated devices must provide reliable access to Australian radio;
 - **discoverable:** Australian radio should be easily discoverable on regulated devices; and
 - **no interference:** platform operators and manufacturers should be prohibited from adding their own broadcasting or other content without the consent of the radio broadcaster.
- The regime should immediately apply to smart speakers, with the new legislation allowing the Minister for Communications to designate connected cars and other devices as subject to the regime over time.

Detailed recommendations are at the end of this submission.

A. About CRA

CRA is the industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 261 member stations and represents the entire Australian commercial radio industry. 220 of CRA's member stations are based in regional and rural areas.

Commercial radio, whether AM, FM or DAB, plays an essential role in ensuring that Australian communities have access to local news, Australian music, emergency information, community information and entertainment. No other platform offers such a range of live, local and Australian voices in such a diverse range of Australian communities.

Commercial radio dominates commercial listening in Australia, noting:

- 87.2% of Australians aged 10 to 24 tune in to commercial radio weekly, for an average of 11 hours and 26 minutes per week;
- breakfast radio attracts nearly 8.7 million listeners; and

- overall, in 2023, 12.25 million Australians aged 10+ listened to commercial radio across the five major metro markets.¹

The Deloitte Access Economics 2023 Connecting Communities Report² highlights the important economic and social contribution that commercial radio broadcasters make to Australia, through the provision of radio and audio services. Commercial radio broadcasters deliver trusted, local content to Australians all over the country.

As highlighted in the 2023 Connecting Communities Report, every year, commercial radio broadcasters:

- contribute \$1 billion to GDP;
- provide a \$320 million boost to regional Australia;
- produce 1.1 million hours of local content, across broadcast, streaming and podcasts;
- play 160,000 hours of Australian music, or 2.7 million Australian songs – providing an unrivalled platform for the promotion of Australian musicians;
- broadcast 42,000 hours of news and 2,200 hours of emergency service content; and
- provide 251,000 hours of locally significant content in regional communities.

Commercial radio broadcasters support 6,600 full time jobs – 38% of those roles are in regional Australia.

As set out on the 2023 Connecting Communities Report:

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

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

The ways in which Australians access the services of commercial radio broadcasters are important factors to consider in the context of the need for radio prominence regulation. Research shows:³

- the number of listeners streaming commercial radio each week continues to grow, increasing from 14% of Australians aged 12+ in 2021 to 27% of Australians aged 12+ in early 2023, that is, at least 6 million listeners currently access commercial radio online;
- almost half of those Australians who listen to radio online use a smart speaker to do so; and
- 84% of people aged 18 or over travelling in a car in early 2023 reported listening to the radio, with approximately 34.8% of all listening happening in cars.⁴

¹ CRA data available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2023/Commercial-radio-listening-ends-2023-at-an-all-tim>

² Available here: <https://www.commercialradio.com.au/RA/media/General/Documents/CRA-Deloitte-Connecting-Communities-2023-Report.pdf?ext=.pdf>

³ The Infinite Dial Australia 2023 study, details available here: <https://www.commercialradio.com.au/Research/Infinite-Dial-Australia/2023>

⁴ CRA data available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2023/Commercial-radio-listening-ends-2023-at-an-all-tim>

B. Overview of submission

- Commercial Radio & Audio (**CRA**) appreciates the opportunity provided by the Senate Environment and Communications Legislation Committee (**Committee**) to comment on the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (**Prominence Bill**).
- As the Minister for Communications has affirmed, the principle that Australians should be able to easily access local content services holds equally true for radio as it does for television.⁵ Accordingly, the focus of CRA’s submission to the Committee is on the application of a prominence framework to radio, across AM, FM and DAB. The proposed radio regime should apply not only to commercial radio, but also to the national broadcasters and community radio.
- Consideration by the Committee of how the Prominence Bill may be modified to apply to radio will assist the Minister for Communications to move forward quickly with her promised consultation on radio prominence.⁶
- A prominence framework for radio would require free, easy and universal access to radio on smart speakers and, in due course, in connected cars. By supporting a strong local radio sector, the framework will benefit consumers. The framework will support Australians, particularly those in regional and remote Australia, engaging in social, economic and cultural life and participating in our democratic processes.
- Amendments to the Prominence Bill will inevitably be adopted as a consequence of the Committee’s inquiry and its recommendations. As part of that amendment process, the Prominence Bill may easily be expanded to incorporate radio prominence. In drafting the provisions for radio prominence, guidance may be obtained from the UK’s Media Bill.⁷ That Bill passed its third reading in the UK’s House of Commons in late January 2024. It is expected to become law in mid-2024, following consideration by the House of Lords.
- The proposed radio prominence regime is straight forward. The core requirements are that, at no cost to radio broadcasters:
 - smart speakers and connected car entertainment systems (and, in future, potentially other devices) should be subject to a “must carry” obligation, that is, these devices cannot restrict access to Australian radio;
 - Australian radio should be easily discoverable on smart speakers and connected car entertainment systems (and, in future, potentially other devices), through the apps nominated by the radio broadcasters; and

⁵ Minister for Communications Address to the Public Interest Journalism Initiative Roundtable: Future focus on local news, available here: <https://minister.infrastructure.gov.au/rowland/speech/address-public-interest-journalism-initiative-piji-roundtable-future-focus-local-news>

⁶ Ibid.

⁷ Available here: <https://publications.parliament.uk/pa/bills/cbill/58-04/0139/230139.pdf>.

- platform operators and manufacturers should be prohibited, unless broadcaster consent is obtained, from adding their own advertising or other content to Australian radio content.
- CRA recommends that in the first instance the radio prominence regime applies to smart speakers. Adopting this approach will have minimal costs for manufacturers of smart speakers, who may easily and quickly implement the prominence requirements through a software change and will ensure that Australians are in control of their choices of audio content. The Minister for Communications should be given the option to then extend the regime to connected car entertainment systems (and, in future, potentially other devices) when further analysis of the most efficient way to implement this is completed.
- Detailed recommendations are set out at the end of this submission.

C. A prominence regime is required for radio

Commercial radio is important because:

- Commercial radio is local. Commercial radio broadcasters are subject to an onerous legislated Australian content framework, including 3 hours per day of local content for regional stations, and Australian music obligations for all stations. Consequently, commercial radio is one of the most important sources of local news, Australian music and local content for Australians, particularly those in regional and remote areas.
- In regional and remote Australia, the local commercial radio station is often the only source of local news and content. For example, there are two commercial radio stations in Alice Springs – 8HA and Sun FM. Sun FM is located right in the middle of the country, which means that it is the only AM commercial station for around 1,200 kilometres.
- In emergency situations, radio that is freely and easily accessible saves lives. When Australians face natural disasters, radio is often the last communication channel still working and is essential for providing emergency information. One example, of the hundreds that could be provided, demonstrates how commercial radio assists Australians in emergencies, particularly those in their cars. In the 2022 New South Wales floods, regional stations 2ST and Power FM kept their listeners up to date with road conditions. Those radio stations advised CRA:

Late February, early March was the most difficult period, with a major road between Nowra and Bowral cut off due to land slips and damaged roads. Announcers were in the studios at night and across the weekends keeping people up to date with the rising water levels and the traffic situation especially on the Shoalhaven River and surrounding areas.

- Radio is the only technology that may be used for emergency “break-in” announcements in road tunnels, which occur via the radio retransmission installations installed in such tunnels. This again demonstrates that radio is an important channel for the provision of information in emergencies.
- Under the Commercial Radio Code of Practice, commercial radio stations are obliged to play Australian music, up to 25% of total music content in some cases. Providing access

to this content allows Australian artists to reach a broad audience who might not otherwise hear their music. At a time when many Australian musicians struggle to gain visibility on international music streaming services, the benefit provided by Australian radio to Australian musicians should not be underestimated.

As we have already noted, the way that Australians are accessing radio is evolving in a changed media environment, with many more Australians accessing radio through smart speakers and connected car entertainment systems. These trends will inevitably continue.

In Australia, the smart speaker market is dominated by three players – Amazon, Google and Apple. Similarly, vehicle manufacturers control how connected car entertainment systems operate, with Google often providing the operating system (OS) and noting that, in future, Apple will also provide the OS for different vehicle manufacturers. These key players have the power to filter and control the audio content that Australians may access, acting as gatekeepers to this content. This is a power that manufacturers of traditional radio devices, with dedicated analogue or digital tuners, do not have. The power of these platforms and manufacturers is not currently recognised in the Broadcasting Services Act 1992 (BSA).

The unequal bargaining power between Australian radio broadcasters and these international gatekeepers means that it is almost impossible for fair and reasonable deals to be done to provide for easy and free access by Australians to radio on smart speakers or connected car entertainment systems.

The gatekeeper role played by these third parties creates the need for a radio prominence regime. Our concerns, which have already been demonstrated to be well-founded, are:

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

As an example of our concerns, we raise the outage of Google Assistant’s radio integration which commenced on 6 April 2023, took eight days to resolve and caused disruption for more than one million listeners who use Google Nest devices to listen to radio.⁸

Without regulatory intervention, Australia is likely to find itself in a position, in only a few years’ time, where the devices most often used by Australians to access audio content predominantly offer services from international content providers, who pay no regard to providing local information and content, such as news and emergency information, or content that supports our national identity and cultural diversity. Such an outcome would be to the detriment of all Australians. Importantly, as applies for the UK’s Media Bill, the regulatory intervention that has been proposed in this submission will not prevent radio broadcasters

⁸ CRA’s media release is available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2023/2023-04-14-Radio-services-back-on-air-on-Google-sp>.

and platforms or manufacturers entering into other transactions, for example in relation to the podcasts that many radio broadcasters also offer. Instead, the regime would provide a base level of protection for critical services for Australians.

The Australian radio sector, that is, not only commercial radio broadcasters but also the two national broadcasters and community radio, is united in its view that a radio prominence regime, applicable to both smart speakers and connected car entertainment systems, is required to be legislated to provide the best opportunity for radio to have a sustainable future.

D. Prominence Bill needs very few amendments to also address radio prominence

1. The UK Media Bill provides an appropriate model that could easily be incorporated in the Prominence Bill

Australia would not be in a unique position by adopting a prominence framework for radio. Late last year a Media Bill was introduced in the UK Parliament which, amongst other proposals, includes a straightforward and simple regime for radio prominence.

The Prominence Bill currently provides, in summary, that manufacturers of regulated television devices (and their related bodies corporate) must adhere to a set of minimum prominence requirements, and associated obligations, in relation to regulated television broadcasting services, at no cost to broadcasters. The minimum prominence requirements are to be set out regulations made by the Australian Communications and Media Authority (ACMA).

To expand the Prominence Bill to encapsulate radio prominence in a form similar to that specified in the UK's Media Bill would require only minor adjustments to that draft legislation, as discussed below. The Media Bill applies to smart speakers, and therefore will be implemented through easily adopted software updates, at minimal cost. This is because smart speakers operate via "voice assistants", that is, a form of software that interprets, analyses and responds to natural language commands from users. To implement radio prominence requires adjustments to that software so that, when access to a radio station is requested, that access is provided.⁹

2. Regulated audio devices

The key devices to be regulated for a radio prominence regime would be smart speakers and connected car entertainment systems. A two tier approach is suggested:

- From commencement, the new regime would apply to manufacturers of smart speakers (and their related bodies corporate). Defining smart speakers would be a straightforward matter, involving less complexity than the definition of regulated television devices. To restrict the likelihood of unintended consequences, the Prominence Bill incorporates a requirement that the primary purpose of a regulated television device must be to facilitate viewing audiovisual content. Determining a

⁹ Pages 9 and 15 of the Impact Statement for the UK's Media Bill, available here: https://assets.publishing.service.gov.uk/media/65a9336294c997000daeba20/Media_Bill_-_overarching_impact_assessment.pdf

primary purpose would not be relevant in the context of a definition of smart speakers and, for example, is not included in the UK's Media Bill.

- Provisions should be included for the Minister to designate manufacturers of additional devices following a consultation process. This would allow connected car entertainment systems, or potentially other devices, to be included in the regime as soon as practicable. CRA recommends that consideration is given to including connected car entertainment systems not later than 12 months after the regime is first implemented as this should be sufficient time to resolve any technical difficulties in expanding the regime.

3. *Regulated radio services*

The definition of regulated radio services, that is, services that would benefit from the prominence regime, would mirror the definition of regulated television services proposed in the Prominence Bill. Accordingly, regulated radio services would encompass both:

- the radio broadcasting services provided by commercial radio broadcasters, the national broadcasters and community radio broadcasters; and
- equivalent content that is made available online on a free basis, whether directly by the broadcaster or through an aggregator app selected by the broadcaster (such as RadioApp, Listnr, Nova Player or iHeart).

It is important to ensure that the radio broadcaster is able to select the app (potentially being an aggregator app) through which its radio station or stations are provided, unless the listener nominates another app, to ensure that charges or other restrictions are not able to be imposed on radio broadcasters by gatekeepers determining that particular aggregator apps must be used.

4. *“Must carry” obligation*

- To be effective, the radio prominence regime should incorporate a “must carry” obligation.
- This could be in a similar form to the proposed sections 130ZZN(1) to (3) of the BSA, as provided for in the Prominence Bill. Applying those provisions to radio prominence would require, in summary, that, at no cost to broadcasters, manufacturers of regulated devices must ensure those devices are capable of complying with the radio prominence requirements and, in addition, impose a reasonable steps obligation on each manufacturer of a regulated device to ensure that the device continues to comply with those prominence requirements until the manufacturer ceases to provide for updates of the software used in the device (or the user takes action to disable the prominence requirements).

5. *Primary prominence requirement: easy to find*

- CRA supports the minimum prominence requirements being primarily implemented via separate regulation made by the ACMA. CRA agrees, as outlined in the Explanatory Memorandum for the Prominence Bill, that this will provide necessary flexibility particularly in light of ongoing technology advances. In the case of radio, it has the additional benefit that, when the framework is applied to connected car entertainment

systems (and potentially other devices) in future, the regulations will be able to be appropriately modified to incorporate minimum prominence requirements for those devices.

- The primary prominence requirement for smart speakers is that manufacturers should ensure, on an ongoing basis, radio station content is easy to find and that no charge is imposed on broadcasters in relation to compliance with this requirement. Reflecting the UK's Media Bill, when applied in the context of smart speakers, this would require that, when the user of the device gave a spoken command asking for a regulated radio service to play, the command would be complied with. The specific station should also be provided through the app (including an aggregator app) determined by the radio broadcaster, unless the user themselves specifies a different app.
- This approach for smart speakers would not interfere with the rights of other audio content providers whose services may be available through a regulated device, which may be promoted to users when they do not make a specific request for a radio station. It would also give full effect to consumer choice – as it would only be where the user specifically asked for the regulated radio service that it would be required to be played through the smart speaker.

6. *No alterations*

Associated with these prominence requirements is an important additional requirement, which is incorporated in the proposed section 130ZZN(4) of the BSA and also reflected in the UK's Media Bill. This is that, other than for the purposes of identifying the relevant service immediately before it commences playing, manufacturers must ensure that no other content is provided before, or interrupts, the regulated radio service when it is provided through a regulated device. This will stop additional advertising or other content being added to Australian radio content without the consent of the radio broadcaster.

7. *Other provisions for implementation of the prominence regime*

- CRA supports the proposed amendments to the Australian Communications and Media Authority Act 2005, the ACMA's information gathering powers, the civil penalties regime and the review regime, in each case, provided for in the Prominence Bill extending to the proposed radio prominence regime.
- CRA also recommends incorporating in the Prominence Bill an earlier review requirement, within one year of the commencement of the proposed new regime, to determine whether the Minister should extend the framework to connected car entertainment systems, and potentially other devices, and how this regulatory requirement should be implemented.

E. **Quick action is required**

Prompt action is required to ensure that Australian radio remains freely, easily and reliably accessible to all Australians.

Unlike the position that applies to connected TV devices, there is no need for there to be a long initial transition period of 18 months, with the framework to only apply to regulated devices that are manufactured after that time. No hardware changes are required for smart speakers to implement the required changes to give effect to the proposed regime. Only

software updates are required. This means that, not only may the new rules apply immediately, but the rules should apply to both existing smart speakers and such devices manufactured after the commencement of the new regime.

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

Commercial Radio & Audio

February 2024