



TELSTRA CORPORATION LIMITED

Submission to Dept of ITRDCA consultation on

Prominence Framework for Connected TV Devices

Public Submission

24 February 2023



1 Introduction

Telstra welcomes the opportunity to respond to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DoITRDCA) **Proposal Paper** on a **Prominence Framework for Connected TV Devices**.

Telstra is a committed supporter of Australian content, local content providers and the Free-to-Air (FTA) broadcasters. We have a long history of working with FTA broadcasters and local content providers, including Foxtel, Stan and Streamotion to ensure local content is distributed and readily available through various platforms and devices through a variety of access options. At the same time, we are concerned that a legislated Prominence Framework is a blunt instrument that is not necessarily capable of solving the Government's concerns related to the availability and consumption of Australian content. We remain unconvinced that a legislated Prominence Framework will achieve the policy objective of increasing viewing of Australian content, but instead will result in imposing cost on the manufacturers of regulated TV devices. These costs will ultimately be borne by Australian consumers.

Irrespective of the ultimate approach (based on the options canvassed in the Proposal Paper), we are concerned the Framework will be complex to implement and difficult to enforce. This risks stifling innovation and creating a compliance burden for industry and the delivery of the Government's policy objective.

Our submission is structured as follows:

- Section 2 outlines our views on why a legislated framework will not achieve the Government's policy objective.

Then, given the government has committed to implementing a legislated prominence framework:

- Section 3 contains our objection to capturing any devices that are not primarily designed for TV viewing within the framework.
- Section 4 outlines some actions we consider the FTA broadcasters could take to increase the availability (and prominence) of Australian content as well as making it easier to find.
- Section 5 advocates for a reasonable implementation period to allow for device development cycles.

2 Care must be taken to avoid unintended regulatory burden

Legislating a prominence framework is a blunt instrument that may not achieve the Government's policy objective, yet risks stifling innovation and creating a regulatory cost burden that is ultimately passed onto the consumer. The opening sentence of the Executive Summary of the Proposals Paper notes "*The Australian Government has committed to legislating a prominence framework to ensure local TV services are easy for Australian audiences to find on connected TV devices*", however, we are unconvinced that a legislated prominence framework will necessarily make it easier for Australian audiences to find local content, as having the icon for a BVOD App in a prominent location does not tell audiences what is available to watch, or viewing times.

The Proposal Paper raises the issues of declining viewership of linear TV as a threat to the business model and ultimate viability of the FTA Broadcasters. The Proposal Paper also highlights access to, and



availability of, local content as something to be addressed by the Prominence Framework. We address these two issues separately.

First, declining viewership: Chapter 3 of the Proposals Paper discusses the changing media environment and the impact this has on the traditional business and operating models of FTA broadcasting and the objectives of media policy. The Proposals paper notes the percentage of Australians who view linear FTA TV in a 7-day window has decreased over the last 20 years, from 95% to 80% of Australians.¹

Although consumption of linear FTA TV has decreased, there has been an increase in BVOD, suggesting that FTA broadcasters are still capturing their audience through their own services. Reinforcing this, the ACMA's most recent consumer survey² indicates that viewership of FTA BVOD has grown every year since data collection began in 2017, such that now 38% of survey respondents (across all demographics) watched FTA BVOD within the past 7-days. Worth of note is that linear (broadcast) FTA TV viewing also increased in 2022 to return to 2020 levels. In addition, the CEO of Seven West Media, James Warburton recently cited an 18% growth in their BVOD products, with an ongoing forecast of double-digit growth.³ Similarly, Nine's first half results briefing noted "*the company's BVOD service 9Now also witnessed a 19% revenue growth to \$88.6 million, primarily boosted by live viewing.*"⁴

What these reports show is there are a range of perspectives being reported, and trends in viewing habits appear to be changing without the aid of a legislated Prominence Framework, especially for BVOD, which is the target of a Prominence Framework.

Second, access to and availability of local content: We agree that increasing availability of local content is an important social and cultural endeavour. To this end, the most recent Screen Australia Drama Report⁵ shows a significant increase in spend by subscription TV and SVOD on Australian dramas, delivering not only an increase in the availability of quality Australian content for viewers but also supporting the local screen industry.

The Proposal Paper notes the "*changes in technology and consumption present significant challenges for the operating models of FTA*"⁶ and we agree the rise of both SVOD and Digital Platforms more generally has spread viewers, and hence advertising revenue, more thinly across a range of service providers.

3 Do not apply the prominence framework to devices that are not primarily Connected TV Devices

Chapter 6 of the Proposal Paper canvasses views on the scope of the proposed legislation. Two options are proposed. The first (Proposal 6.1) aims to capture **any** device capable of displaying streaming

¹ Proposal Paper, Figure 7, p.23.

² [How we watch and listen to content \(February 2023\)](https://www.acma.gov.au/publications/2023-02/report/communications-and-media-australia-how-we-watch-and-listen-content). Available at: <https://www.acma.gov.au/publications/2023-02/report/communications-and-media-australia-how-we-watch-and-listen-content>

³ Seven West Media half-year results to 31 Dec 2022. See media release, middle of p.2. <https://www.sevenwestmedia.com.au/assets/pdfs/Media-Release-for-the-Half-Year-ended-31-December-2022.pdf>

⁴ Nine Group half-year results. See Mumbrella report: <https://mumbrella.com.au/nines-group-profit-squeezed-in-latest-half-year-earnings-776828>

⁵ [Screen Australia Drama Report - Production of feature films, TV and VOD drama in Australia in 2021/22](https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report) <https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>

⁶ Proposal Paper, bottom of p.22.



content, including “...connected devices that are capable of displaying television content, or facilitating the display of television content (i.e. gaming consoles, pucks, dongles, laptops, tablets, mobile phones).”⁷ The second (Proposal 6.2) proposes to limit the scope to devices where the “...primary use of the device must be to facilitate television viewing by Australian audiences.”⁸

We foresee several difficulties with Proposal 6.1, which intends to capture mobile phones, laptops and tablets within the scope of the legislation, which we outline in the sections below.

3.1 The UI for devices that are not primarily TV viewing devices is designed for a different purpose.

Unlike SmartTVs and Set Top Boxes, the user interface (UI) on devices such as mobile phones, tablets and laptops is designed around a variety of activities including accessing the internet, making phone calls, playing games or office software. While the operating system and applications loaded onto the device may accommodate the viewing of SVOD, it is not the device’s primary purpose. On smaller form-factor devices (e.g., mobile phone handsets and smaller tablets) the “real estate” (available space) on the start-up screen is limited, affording limited space for FTA BVOD Apps to be accommodated. Where the users of these devices have no intention of using them for watching streaming content, forcing FTA BVOD Apps onto the start-up screen will make using the device more awkward and less convenient for those users (assuming they don’t simply delete the Apps the first time they use them), resulting in frustration that potentially leads to animosity either toward the BVOD provider or the device manufacturer (e.g., Apple, Samsung, etc).

Further, some users have accessibility needs where they require larger icons and/or fonts on the start-up screen. A prominence framework requiring FTA BVOD Apps to be accommodated prominently on the start-up screen of a small form-factor device such as a mobile phone handset may cause accessibility issues for such users.

The scenario through which the user of a device is supplied the device is also a worthy consideration. Corporate entities and other businesses who supply laptops or tablets to their staff for work purposes may not wish to have BVOD Apps prominently displayed on the start-up screen. Laptops and tablets are used in a variety of scenarios from hospital staff through to couriers. If nothing else, occupying the real estate on the start-up screen with BVOD Apps could be annoying to the user who needs to get on with their work, and Australian enterprises and business owners are unlikely to welcome a framework that distracts staff by prominently displaying TV viewing to the staff member each time they start work for the day.

A further aspect to bear in mind is devices that are not primarily used to access streaming or broadcast content (laptop, mobile phones, gaming consoles) will employ multiple modes/methods for users to access BVOD/SVOD content, including direct Apps of the BVOD/SVOD operators, third-party Apps (e.g., access Free TV through Fetch) or browsers that can provide access to such content. Consumers will have different preferences for these different modes, therefore raising questions about which of the modes should be specified under a Preference Framework? Further, any requirement to pre-load devices with Apps (either direct BVOD Apps or third party Apps) will need to be performed by the OEM, pushing up the cost for Australian consumers, as we outline in the next section.

⁷ Proposal Paper, Proposal 6.1 c), p.31.

⁸ Proposal Paper, Proposal 6.2, top of p.32.



3.2 Bespoke customisation for an Australian market will add cost that is ultimately passed to the consumer

Bespoke device customisation for an Australian market can often be expensive, and when amortised over a small market population, it will push the cost of devices up. However, customisation is only part of the overall cost burden. There will also be compliance costs borne by the retailers and distributors of devices captured by the Prominence Framework, and each of the regulatory models in Chapter 8 of the Proposal Paper will require some level of reporting to the government to demonstrate compliance. Ultimately, these costs will be borne by the consumer.

3.3 Regulatory oversight for Proposal 6.2 will be simpler

We disagree with the Department's observation that Proposal 6.2 will require "a greater degree of oversight and involvement by the regulator than Proposal 6.1". Proposal 6.2, which aims to exclude any device that is not primarily intended for TV viewing will require less regulatory oversight, as the circle of devices captured by the legislation will be substantially smaller.

In addition, forcing the Prominence Framework onto devices sold in Australia will only be partially effective, as some consumers purchase their device from overseas (e.g., online marketplaces). Such devices will not comply with the Prominence Framework, diluting the efficacy of a legislated framework. This is a further justification for proceeding with Proposal 6.2.

4 Actions FTA broadcasters and Government can consider to increase viewing of FTA content

The consultation focuses solely on legislating obligations onto connected devices capable of displaying streaming TV, with no consideration of actions the FTA broadcasters could take to increase the viewing of FTA content by Australian audiences. In this section of our submission, we suggest four actions that could be taken by FTA broadcasters to increase viewing of Australian FTA content.

4.1 IP Streams outside FTA apps will enhance FTA consumption

IP streams of broadcast FTA channels can enhance the availability and prominence of Australian (local) FTA content. IP streams (being a version of the terrestrial broadcast of an FTA channel which is delivered over the internet rather than via DVB-T tuners) serve multiple purposes, all of which enhance FTA viewing. They permit FTA viewing in Australian homes which do not have aerials and in locations where, because of topology (black spots) or construction (some apartment dwellings), FTA signals are difficult to pick up. However, at present these streams are only accessible from within the FTA's BVOD App. If the IP streams of the FTA channels could be accessed in a standardised way via other Apps, or from within an Electronic Program Guides (EPG), on a range of platforms and devices such as mobile and other handheld devices, it would increase the viewing of the FTA channels by broadening the way in which FTA content may be consumed.



Another avenue that is likely to lift viewing rates of FTA content by Australian audiences is for the FTA providers to provide IP streams directly into EPGs, such that viewers can directly access the IP stream via the EPG on the platform, rather than needing to access it via the relevant App or website. Adding FTA content into the EPG will raise its prominence and can result in a significant uplift in viewing rates.

4.2 Consolidation of FTA into a single App and single, on-line EPG

Consolidation of FTA broadcast content, including local content, into a single application / user interface that is available to be natively integrated into devices primarily designed for displaying broadcast and streaming TV, could improve retention and accessibility. While there are online services that aggregate the program guides of FTA operators into a consolidated TV guide,⁹ this not available in a manner that is easily integrated into the Electronic Program Guide (EPG) on other platforms such as set-top boxes and SmartTVs, i.e., users still do not have direct access to the IP streams from within the EPG, and hence they are forced out of the EPG into the specific BVOD apps or websites to access the content.

A code of practice on EPGs, like that of the UK¹⁰, could be used to ensure prominence and fair representation of all FTA channels, including local content.

4.3 Universal search also improves visibility

Universal search is a capability that operates across all the content providers, including BVOD, and is commonly found on most platforms. Using universal search, consumers can search for specific content by searching for a known title. However, universal search also facilitates serendipitous discovery by allowing the consumer to search on genre (drama, documentary, action, kids, etc), on actor, or other key words.

At present, it is not possible to search for 'Australian Made'¹¹ as a search term, but that doesn't mean it cannot be introduced. If Australian produced content were to carry a meta-tag that platform providers can expose and use for further discoverability, it would enable consumers to 'find' Australian made content more readily. We consider this to be something the Department of Communications should explore with industry.

4.4 Increase funding for local content

Finally, increasing funding and investment in local broadcasters and content producers will help create quality local content to compete with global content producers.

⁹ For example, Freeview.com. <https://freeview.com.au/tv-guide>

¹⁰ Ofcom. Code of practice on electronic programme guides. https://www.ofcom.org.uk/_data/assets/pdf_file/0031/19399/epgcode.pdf

¹¹ An 'Australian program', as defined by the **Broadcasting Services (Australian Content and Children's Television) Standards 2020, s10** is one that is produced under the creative control of Australians. This may include having Australian producers, directors, writers, and cast



5 A reasonable implementation period is required

Should the government decide to proceed with a legislated Prominence Framework it is important that a reasonable implementation period of around 2-3 years is afforded to industry. The development cycle time for devices can take multiple years, and the most cost-effective way to introduce new requirements is at the start of a development cycle. If the government is of a mind to introduce a legislated prominence framework, there needs to be a transition period of several years to accommodate device development cycles.

We also consider the legislation should not be made retrospective. In other words, there needs to be a grandfathering of existing devices and platforms (including set-top boxes and SmartTVs).