

Prominence framework for connected TV devices

Second Pass Impact Analysis

November 2023



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Summary

Introduction

The Australian Government is committed to legislating a prominence framework to ensure local television (TV) services are easy for Australian audiences to find on connected TV devices.

Over the last decade there has been a fundamental transition in the TV market in Australia. This has seen linear TV broadcasting services augmented with on-demand services, where audiences typically use specific software applications (apps) that deliver TV content to them. These apps include those used to deliver live linear TV programming, as well as video on demand (VOD) apps that are owned by a range of media providers.

While offering significant benefits for Australian audiences, these technology-driven changes are creating a more challenging environment for local free-to-air TV services to deliver content to viewers.

- Free-to-air services now exist as one of many content options on TV interfaces, and are becoming increasingly difficult for consumers to find on connected TV devices. A significant portion of the Australian population lacks the skills and knowledge to navigate to these services on newer devices.
- The commercial arrangements for securing access to these devices can impose additional costs on broadcasters at a time when they are facing an increasingly challenging financial environment.

This gives rise to a number of challenges from a policy perspective. Free-to-air broadcasting has and continues to play a unique role in achieving key media policy objectives in Australia, including in relation to:

- supporting our democratic processes through an informed citizenry;
- ensuring communities are informed during emergencies;
- developing and reflecting a sense of Australian identity and character;
- reflecting Australia's multicultural society; and
- protecting consumers – particularly children – from material that may be harmful to them.

For free-to-air broadcasters to continue to support the achievement of these media policy objectives, it is important that their services are easily available to audiences on the devices that are commonly used to access TV content. The prominence framework will enable Australian consumers to have access to free-to-air TV services, with minimal input, effort or capability on the part of the consumer.

The implementation of a prominence framework that supports access to broadcasting services would have an immediate and positive effect for Australian viewers in ensuring the availability of local TV services. It would also have positive flow-on impacts for the local TV broadcasting industry, potentially enhancing the visibility and attractiveness of their content and therefore improving the ability to generate advertising revenue.

However, a prominence framework must be carefully calibrated to avoid imposing unreasonable or unintended burdens on the manufacturers of TV devices. In the extreme, an onerous or overly prescriptive framework could increase the cost of TV devices, or limit the functionality or number of models available to Australian consumers.

Public consultation

Two phases of stakeholder and public consultation were undertaken in 2022 and 2023 to support the design of the prominence framework for connected TV devices. The initial phase involved targeted consultation with stakeholders in the broadcasting, TV manufacturing, online subscription service, and digital platform sectors. This consultation was conducted in the second half of 2022.

The subsequent phase of consultation involved the development and release of a prominence proposals paper, detailing four specific models for the new framework.¹ This paper was released on 23 December 2022 and the submissions period closed 24 February 2023.

Post-consultation analysis

The development of the recommended option has taken into consideration the views of stakeholders provided during the two consultation phases, and sought to balance the needs of each sector while supporting the achievement of established media policy objectives. This has led to the development of a model for the prominence framework that includes a number of elements from both the ‘must-carry’ and ‘must-promote’ models that were publicly consulted on between December 2022 and February 2023. This hybrid model is the subject of this Impact Analysis (IA), and is presented alongside the status quo option.

Recommended option

Under the recommended option, the prominence framework would support the availability of free-to-air TV services, delivered both as linear TV broadcasts and broadcast video on demand (BVOD) apps, on regulated TV devices (those that are primarily used to provide TV or TV-like content). The framework would be legislated through the *Broadcasting Services Act 1992* (BSA), with the following key features:

1. An obligation on manufacturers of regulated TV devices to make free-to-air broadcasters’ linear TV and BVOD services available on those devices without fee, payment or other form of consideration, consistent with ‘minimum prominence requirements’ determined via regulations. Minimum prominence requirements would include the pre-installation or automatic installation of free-to-air TV service apps and the availability of linear TV services and BVOD apps of free-to-air broadcasters from the ‘front page’ of the device’s user interface.
2. Compliance with the obligation to be subject to free-to-air broadcasters supplying apps (for their linear TV and BVOD services) that meet reasonable technical standards, with free-to-air broadcasters responsible for maintaining and updating the software for their respective apps and for handling any consumer complaints regarding the operation and functionality of those apps.
3. No restriction on the ability of the manufacturers of regulated TV devices to seek payment, fees or any other form of consideration for the promotion of apps or content on relevant devices from any party, provided that the minimum prominence requirements are upheld for free-to-air broadcasting services. Search functions or other features of regulated TV devices that operate in response to user input or requests would not be subject to the minimum prominence requirements.

¹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2022), [Prominence Framework for Connected Television Devices – Proposals Paper](#).

4. The ability for the regulator – the Australian Communications and Media Authority (ACMA) – to obtain information, documents or evidence from regulated TV device manufacturers, regulated TV service providers, or other persons, where the information or documents are relevant to the oversight and administration of the framework. The Minister for Communications would also be able to request the ACMA to prepare and provide to the Minister particular information or reports in relation to regulated television devices and services, technological developments and user access to these devices and services, and developments in the broadcasting services and BVOD industry.
5. A requirement for the conduct of a review of the prominence framework once it had been in operation for three years, to assess whether it is working effectively and whether amendments may be required.

Under this option, there would be a compliance burden on device manufacturers who would need to make changes to the operation of their device interfaces to comply with the framework. However, it is expected that this would not require hardware modifications as changes to the user interface of regulated TV devices should be able to be implemented via software updates. Free-to-air broadcasters that chose to utilise the framework would also incur a compliance burden for developing, maintaining and updating the software for their respective apps and for handling any relevant consumer complaints.

The Impact Analysis process

This IA has been prepared in accordance with the Australian Government IA requirements. In the subsequent chapters, the seven assessment questions set out in the Australian Government Guide to Policy Impact Analysis (2023) have been addressed. Methods to determine the likely regulatory burden and cost offsets for various measures were considered in the preparation of this IA. However, the information made available through the two phases of consultation and through additional analysis was not of a nature that would enable this type of assessment. The seven IA questions addressed are:

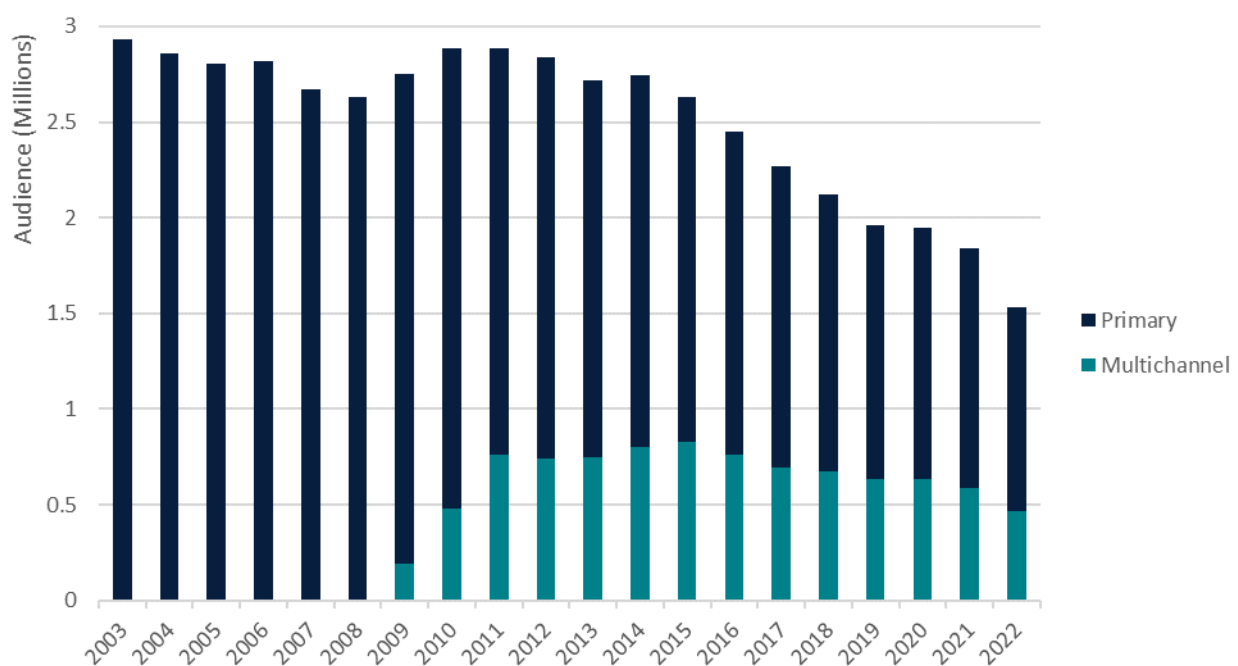
1. What is the problem you are trying to solve and what data is available?
2. What are the objectives, why is government intervention needed to achieve them, and how will success be measured?
3. What policy options are you considering?
4. What is the likely net benefit of each option?
5. Who did you consult and how did you incorporate their feedback?
6. What is the best option from those you have considered and how will it be implemented?
7. How will you evaluate your chosen option against the success metrics?

1. What is the problem?

Australians are increasingly using connected TVs and other devices to access a wide range of audio-visual media content, including video-on-demand and live streaming services provided by broadcasters. Audiences have gradually been shifting away from the linear consumption of free-to-air broadcasts in favour of online and on-demand platforms.²

Although a majority of Australians still watch linear broadcasts,³ some fifteen per cent fewer Australians watched free-to-air TV in a seven-day period in 2021 compared with 2001.⁴ As shown in Figure 1, OzTAM ratings data from 2003-2022 highlights the long-term decline in Australians watching commercial free-to-air TV, even with the introduction of multichannels from 2009.

Figure 1: Commercial free-to-air broadcasters, average primetime audiences: 2003-2022



Source: analysis of OzTAM ratings data. Average audience data is for 6pm-midnight ('primetime') in 5 City Metro, measured as consolidated +7. Only commercial broadcasters 7, 9 and 10 are included. Data copyright © Oz TAM 2023. The data may not be reproduced, published or communicated (electronically or in hard copy) in whole or in part, without prior written consent of OzTAM.

As linear broadcast viewership has declined, Australians have rapidly adopted non-linear services including subscription video on demand (SVOD) and broadcast video on demand (BVOD), usage of which have increased by 81 per cent and 154 per cent respectively since 2017.⁵

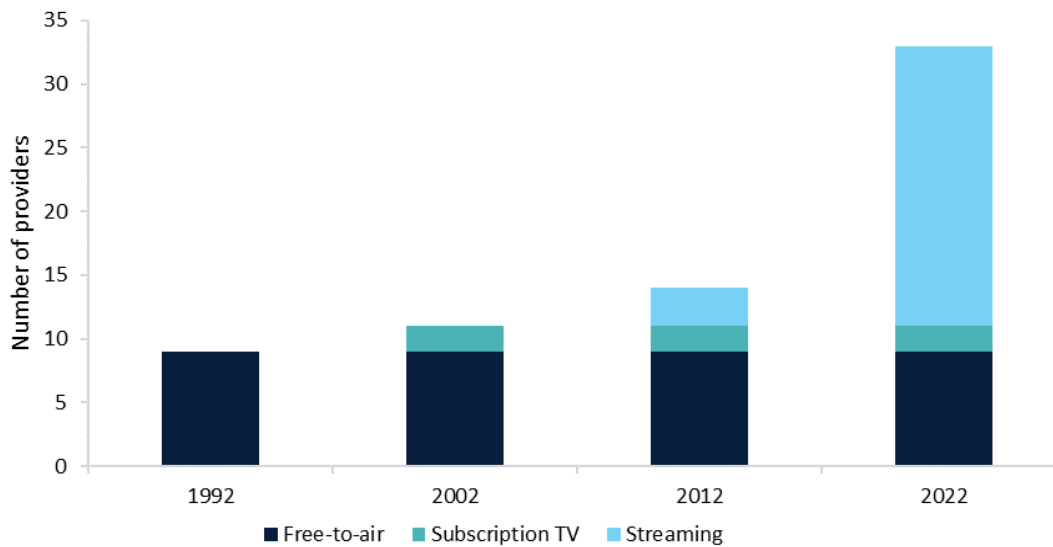
Figure 2 shows that while the number of free-to-air TV services is static, the number of streaming services (not including BVODs) has grown exponentially since 2012.

² Deloitte (2021) [Media Consumer Survey 2021](#).

³ Social Research Centre (2023), [The 2022 Television Consumer Survey – Summary Report](#), reported to the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts, p. 26.

⁴ Roy Morgan Single Source, Australians aged 14+, 2001-2022, based on viewing last 7 days.

⁵ Roy Morgan Single Source, Australians aged 14+, April 2016-June 2022, based on usage last 4 weeks.

Figure 2: Increase in viewing options for Australians — number of providers, 1992-2022⁶

Source: Departmental assessment of service availability

In this changing environment, an emerging challenge for Australian free-to-air TV broadcasters is the ability to reach consumers. This is due, in part, to the difficulties experienced by some consumers in finding and accessing TV apps and content via the interfaces of smart TVs and other connected devices, and in part to increased competition and a wider range of service offerings made available from other content service providers.

Linear broadcast TV services have historically received ‘prominence’ (to varying degrees) on TVs imported into Australia. This is not necessarily the case for newer, connected TVs and devices. These devices effectively operate as digital content distribution platforms, through which device manufacturers and operating system providers work with content service providers to present a range of apps and content for end users. In this environment, the availability and positioning of particular content and services on a device is commonly determined through commercial agreements between device manufacturers (or operating system providers) and content service providers, including free-to-air broadcasters.

The ‘interface’ for smart TVs and other connected devices has therefore become increasingly important in shaping how consumers access TV content. For audiences, these ‘interfaces’ are the gateway through which they navigate an app and / or content ecosystem. In this environment, TV manufacturers and operating system suppliers have a high degree of control in determining where apps and content appear on a device’s primary user interface or home screen, menus or remote, and how content is discovered via search, browsing or recommender systems.

While some manufacturers use third-party operating systems such as Google TV, a number of large manufacturers utilise their own user interface with different technical requirements and formats. In some cases, recommender systems display a selection of content from a particular service. Others aggregate content from multiple service providers. These are sometimes divided into categories including personalised recommendations, genre recommendations, and other categories such as ‘trending now’.

⁶ For the purposes of this chart, a single company that provides multiple services is considered as one ‘provider’. ‘Streaming’ is broadly defined and includes a range of online video services, not just SVOD. BVOD services owned by free-to-air TV services have not been included in streaming.

To an extent, the apps and content that are shown on the home screen depend on which apps a user has installed. If a user wishes to view content from an app that is not pre-installed, they must generally download the app from an app library or store.

In this ecosystem, free-to-air broadcasters contend that device manufacturers have significant bargaining power that allows them to dictate the circumstances under which broadcaster content is made available to Australian audiences. Broadcasters report that some manufacturers require significant annual payments for apps to be preinstalled on connected TVs and for apps or content to be featured as ‘recommended’. This, in turn, increases the cost for free-to-air broadcasters to make their services and content readily available to audiences, and has the potential to impact the availability of linear broadcast and BVOD services for Australian audiences.

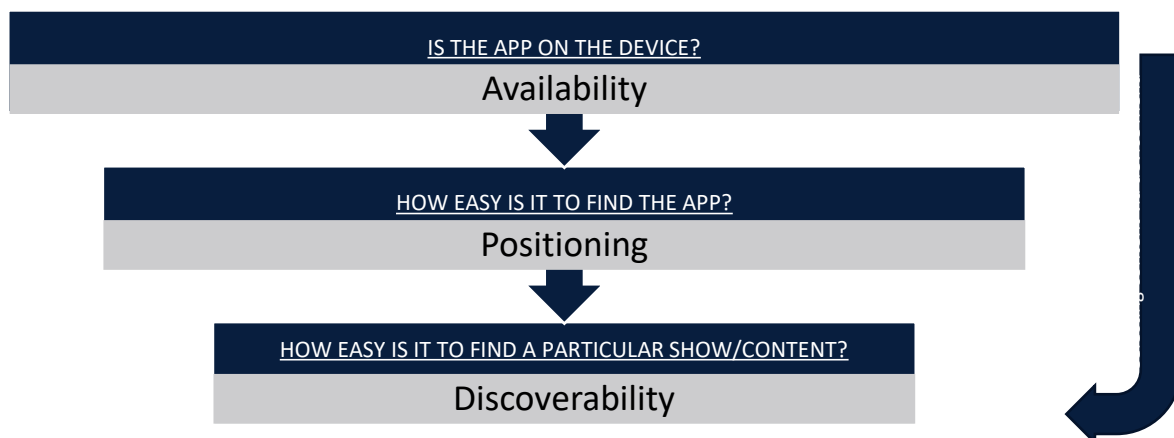
Definition of prominence

Broadly, prominence refers to the ability of users of connected TV devices to access local free-to-air TV services, including their linear broadcast services, live-streamed online services, and on-demand online services. This can be further broken down into three types of prominence.

- The most basic form of prominence is whether an app (or, in some cases, a type of TV content) is present on a TV device, known as ‘availability’. An app that is available on a device may not be pre-installed on the device, but requires activation and downloading from the device’s ‘app store’.
- The relative visibility of apps to users on TV devices can be described as ‘positioning’. A prominent app would be easy to find and positioned on the ‘home’ screen.
- Beyond app positioning, the ability of users to find particular content or programs can be referred to as ‘discoverability’. This can occur within apps, by selecting content through device menus that aggregate content or programming options, and through search functions.

The relationship between these terms is depicted in Figure 3.

Figure 3: Terminology for accessing television services



Free-to-air TV services remain central to Australia’s media policy objectives

Free-to-air broadcasting is an important mechanism for many Australians to access information and content

essential to their entertainment and safety, as well as supporting our national identity, cultural diversity and social cohesion. The legislative framework for media services in Australia relies heavily on these services to meet the policy objectives that are reflected in the objects contained in subsection 3(1) of the BSA.

Among others, these objectives include:

- (a) to promote the availability of a diverse range of radio and television services offering entertainment, education and information;
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs;
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity;
- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance;
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance.

The national broadcasters also occupy unique roles in the Australian media landscape, supporting specific public policy outcomes consistent with the requirements of their respective Acts.

- The ABC is required, among other matters, to provide (within Australia), innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system, including programs that contribute to a sense of national identity, inform, entertain and reflect the cultural diversity of the Australian community, and are of an educational nature.
- The SBS is required, among other matters, to provide multilingual and multicultural broadcasting and digital media services that inform, educate and entertain all Australians, and reflect Australia's multicultural society.

The ability of free-to-air TV broadcasting to support these objectives is a product of the characteristics of the service. As there are no ongoing costs for audiences to access these services, they are available to virtually all Australians who have the equipment to receive them, regardless of their financial means or location. This means that they can provide news and entertainment to Australians across the country.

Despite the growth of online news outlets, free-to-air TV broadcasting continues to be an important mechanism for many Australians to access local news and emergency information.

- In 2022, Deloitte Access Economics reported that 65 per cent of Australians found commercial TV to be a trusted source of news that was essential to democracy.⁷
- Radio and television broadcasting are also highly effective methods of communicating time-critical information to large groups of people before, during and after emergency situations. This is reflected in research undertaken by the Australian Communications and Media Authority (ACMA), which found that

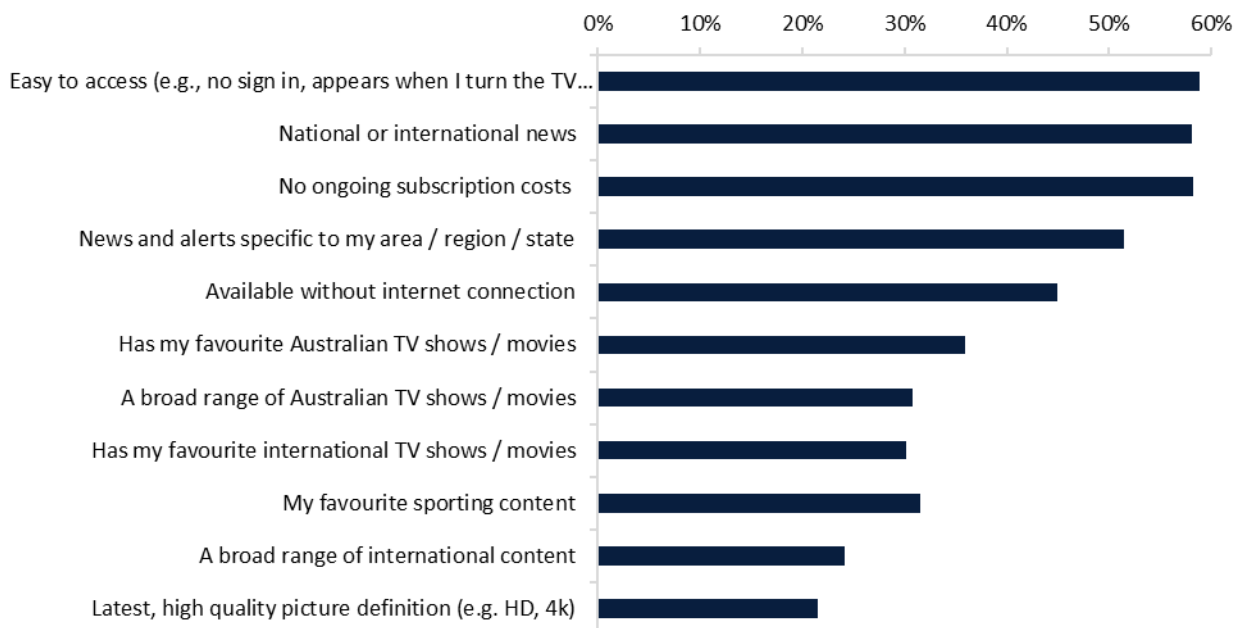
⁷ Deloitte Access Economics (2022), [Everybody Gets It](#), commissioned by Free TV, p 35.

Australian audiences expect to have access to both general and localised information on unfolding emergencies, including from emergency services, to protect the life, health and safety of individuals and communities in times of crisis.⁸

Free-to-air broadcasters have and continue to play an important role in the provision of Australian content, with requirements for commercial broadcasters to provide a minimum of 55 per cent of Australian programming on their main channels between 6:00 am and midnight, coupled with specific program genre requirements under the *Broadcasting Services (Australian Content and Children’s Television) Standards 2020* (ACCTS). Numerous studies and consultation processes have confirmed that Australian content is highly valued by Australians, including a 2020 survey found that 85 per cent of Australians ‘agreed’ or ‘strongly agreed’ that Australian film and TV stories are important for contributing to our sense of Australian identity.⁹

The value that Australians place on these aspects of free-to-air TV services are reflected in the findings of the 2022 Television Consumer Survey (TVCS), commissioned by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. As outlined in Figure 4, the most commonly cited ‘essential’ reasons for watching free-to-air TV were: no ongoing subscription costs (32 per cent); ease of access (27 per cent); and national or international news content (26 per cent).¹⁰

Figure 4: Combined ‘main’ and ‘essential’ reason for watching free-to-air television



Source: 2022 Television Consumer Survey commissioned by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

⁸ ACMA (2022), [What audiences want - Audience expectations for content safeguards](#), p 17.

⁹ Department of Infrastructure, Transport, Regional Development and Communications (2020), [Media content consumption survey](#).

¹⁰ Social Research Centre (2023), [The 2022 Television Consumer Survey – Summary Report](#), reported to the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts, p. 40.

Free-to-air TV services face prominence challenges

As previously noted, linear broadcast TV services have historically received ‘prominence’ (to varying degrees) on TVs imported into Australia. This was a product of the market, not regulation. TV channels were important to manufacturers in terms of their consumer offering and, as such, TV services had a degree of leverage in terms of ensuring that those services were available and prominent on TVs.

If free-to-air broadcasters are to continue to support the achievement of Australia’s media policy objectives, their services need to be easily available to audiences on the devices that are commonly used to access TV content. Information provided through stakeholder and public consultations on the design of the prominence framework (described in Chapter 5) suggests this is not always the case, and that there is a risk that this may worsen in the future.

Free-to-air services may not always be available and prominent

Free-to-air broadcasters raised a range of concerns through consultations on the design of the prominence framework that their services are increasingly difficult to find on connected TV devices. It was noted that broadcasters are charged significant fees, or required to provide a significant share of advertising revenue, by manufacturers in exchange for the placement of their apps on device interfaces.¹¹ Broadcasters also contend that, even when they pay, their services can be crowded out by global content services or by services owned by the device manufacturer or operating system provider.¹² The sector argues that this model is not sustainable, and will result in their services losing prominence on connected TV devices.

Research commissioned by academics at the Royal Melbourne Institute of Technology (RMIT), and provided through the 2022 proposals paper consultation process, suggests that there is validity to these concerns.

RMIT found that while all studied models of TV make linear TV services available, only Samsung and Sony smart TVs have permanent linear broadcast tiles positioned clearly on their platform home page. It also found that other major brands had non-permanent tiles that appear and disappear based on the users recent viewing history, while Hisense provided no direct access from the home screen.¹³

In relation to BVOD apps, RMIT found that these apps are available for download on tested models for all major TV brands sold in Australia, with the exception of Hisense which does not offer 7Plus or 10Play.¹⁴ However, BVOD apps are not always pre-installed and often require consumers to download them from the device’s app store.

- The two leading TV manufacturers in Australia in terms of market share – Samsung and LG, accounting for around 50 per cent of the market – do not pre-install any BVOD apps. In contrast, these and other leading manufacturers pre-install Netflix, YouTube, Amazon Prime Video and Disney+.
- In some cases, consumers are not able to adjust the presentation of these tiles or apps, even if they wish to do so. For example, the Netflix app is set and locked in the first position on Hisense TVs.¹⁵

¹¹ Free TV Australia (2023), [Submission by Free TV Australia](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p. 8.

¹² Ibid, p. 8-9.

¹³ Lobato, R., Scarlata, A. and Schivinski, B. (2023) [Smart TVs and local content prominence](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p. 15.

¹⁴ Ibid.

¹⁵ Ibid.

The RMIT research also found that BVOD apps do not receive prime position on smart TV home pages.¹⁶

- The ‘first tier’ of visible app tiles are typically occupied by manufacturer-owned services (such as Samsung TV Plus or LG Channels), or international streaming services (such as Netflix, YouTube, Amazon Prime Video and Disney+).
- Free-to-air broadcasting services tend to be visible on a ‘second tier’ of app tiles, alongside services that are not manufacturer-owned or international streaming services. That is, there is a ‘two-tier’ app positioning market, and Australian free-to-air TV apps are competing in this second tier.

These findings suggest that free-to-air services face challenges in ensuring that they remain readily available on connected TV devices in the contemporary media environment. This creates a risk that the achievement of key media policy objectives will be impaired, given the contribution that free-to-air services make to these objectives.

Some consumers find it difficult to access free-to-air services they want

Research commissioned by the Department found that access to free-to-air TV services remain important to Australian consumers, with some variation between age cohorts.

- The 2022 TV Consumer Survey found that for the majority of respondents having access to free-to-air TV was either a ‘somewhat’ (37 per cent) or ‘very important’ (31 per cent) factor in their choice of TV model or connected TV device.
- This increased with the age of the cohort surveyed, with the net ‘somewhat important’ and ‘very important’ being 70 per cent for the 35-54 years bracket and 73 per cent for the 55+ age bracket, while for the 18-34 years bracket it was less important (59 per cent).¹⁷

However, the same survey found that a proportion of the Australian population has difficulty in accessing free-to-air services online:

- 25 per cent of Australian adults who used a TV in 2022 indicated that they could not access any free-to-air BVOD apps on their device;¹⁸ and
- between 7 and 30 per cent of Australian adults indicated that they could not access free-to-air services on plug-in connected accessories, such as Google Chromecast and Amazon Fire TV.¹⁹

These findings may reflect services being unavailable on particular devices. However, they are also likely to reflect a lack of consumer skill and capability in navigating complex device interfaces. Through consultation, it was reported that there are more than 500 models of connected TV devices available for purchase by Australian consumers.²⁰ While many share similar interfaces, there are a large range of brands with different interfaces that consumers need to navigate to access free-to-air TV services.

¹⁶ Ibid., p. 18.

¹⁷ Social Research Centre (2023), [The 2022 Television Consumer Survey – Summary Report](#), reported to the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts, p.49.

¹⁸ Ibid, p.45.

¹⁹ Ibid, p.32.

²⁰ Consumer Electronics Suppliers Association (2023) [Smart TVs and local content prominence](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p.4.

This is supported by research conducted by RMIT, which found some that some segments of the Australian population have very low levels of digital skills when it comes to connected TVs:

- 33 per cent do not know how to download apps;
- 56 per cent do not know how to customise the order of apps; and
- 51 per cent do not know how to adjust privacy settings.²¹

Collectively, the research found that some 26 per cent of Australians do not know how to do any of the above. This cohort of low- and medium- agency users can be expected to be takers of the default experience set by device manufacturers, and are more likely to be older. These users are also more likely to be influenced by recommendations and prominently positioned content, with 30 per cent stating they never search for content. For these low- and medium-agency users, it may not be practical for them to access free-to-air services unless they are made readily available, as would be required by the prominence framework.

International approaches to safeguarding access to local TV services

A number of international jurisdictions have enacted, or are considering, prominence rules. The United Kingdom and Germany have focused on prominence of linear TV and BVOD applications on device home pages, while other frameworks target prominence and discoverability of domestic content within individual services (e.g. Netflix and Disney+).

United Kingdom

In November 2023, the UK Government introduced a bill into the UK Parliament to reform the regulation of public service broadcasters (PSBs)²² in the UK, including improving the prominence of PSBs. Pay-TV channels such as BT, Sky and Paramount are not considered PSBs and would not be covered by the proposed prominence regulation.

Part 2 of the Bill would amend the existing framework requiring prominence for linear FTA broadcasts in electronic program guides (EPGs). The new framework would support prominence for PSBs' video on demand services on 'Designated TV Platforms' (such as smart TVs, pay TV operators and global TV platform providers). The UK model is for a principles-based bargaining framework that would require PSBs and platforms to seek to pursue mutually beneficial commercial arrangements in the first instance, with regulatory intervention to resolve disputes and intervene in support of effective negotiations. The proposed framework would require PSBs to offer their on-demand services to Designated TV Platforms, which in turn must carry those services.²³

The UK communications regulator, Ofcom, would be required to publish a code of practice, in addition to intervening in bargaining where necessary.

²¹ Lobato, R., Scarlata, A. and Schivinski, B. (2023) [Smart TVs and local content prominence](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p.10.

²² These broadcasters are those that are considered to operate for public benefit rather than purely commercial interests: the BBC, ITV/STV, Channel 4, S4C and Channel 5. A number of these broadcasters are commercial, but are subject to certain public benefit requirements.

²³ UK Department for Digital, Culture, Media & Sport (2022), [Up Next: The Government's vision for the broadcasting sector](#), p 24

Prior to introduction, the House of Commons Culture Media and Sport Committee published its *Draft Media Bill: Final Report* in September 2023.²⁴ The Committee supported the aims of the bill, and recommended that it be prioritised for passage through Parliament.

Germany

Germany's Interstate Media Treaty (the Treaty)²⁵ adopts, and builds upon, the requirements set out in the European Union's Audiovisual Media Services Directive (AVMSD) – outlined in more detail below. Enacted in November 2020, the Treaty introduces prominence and findability rules for digital media platforms.

The prominence rules require that:

- Broadcast services (both public and private) that contribute to plurality must be directly accessible and easy to find in their entirety on the first level of a user interface.
- BVODs that make a significant contribution to plurality must be easy to find.

The treaty also mandates algorithmic transparency from those platforms regarding how content is aggregated, accessed, found and presented. Should unjustified discrimination of information occur, the provider of content is empowered to file a claim with the relevant broadcasting authority.

The regulation applies to both public and some private broadcasters that deliver content of public interest, such as news coverage of current affairs or regional information, German or European productions, and content that appeals to young target groups. Section V of the Treaty provides that such content is entitled to prominent positions within the operating system of the platform and that media platforms should ensure that:

- all content offerings must be searchable without discrimination using a search function;
- similar content must not be treated differently in relation to sorting, arrangement or presentation;
- content must be directly accessible and easy to find on the first selection level (e.g. through a dedicated button or a single action); and
- any programs that make a particular contribution to the diversity of opinions must be easy to find.

Following a public consultation process, Germany's state media authorities published a 'public value' list in October 2022. The 'public value' list contains 300 commercial media services which are considered to significantly contribute to media pluralism and a diversity of opinions. From April 2023, television and telemedia services must make media services of public value easy to find on their user interfaces of television.

European Union

In November 2018, the European Commission adopted new rules for the EU Audiovisual Media Services Directive (AVMSD) which seek to enhance the promotion of European content in 'on-demand audiovisual media services'.²⁶

²⁴ House of Commons Culture, Media and Sport Committee (2023), [Pre-legislative scrutiny of the Draft Media Bill \(parliament.uk\)](#).

²⁵ Institute of European Media Law (2021) [New German State Media Treaty enters into force](#)

²⁶ [EUR-Lex \(2019\), Audiovisual Media Services Directive \(AVMSD\)](#)

The AVMSD recommends that EU member states put in place obligations that on-demand services reserve a minimum 30 per cent share of European works in their catalogue and that this content be given adequate prominence.

The revised AVMSD includes the following recommendations for media services:

- indicating the country where a film or series comes from;
- providing a dedicated section for European works that is accessible from the service homepage;
- providing possibilities for searching for European works by means of a search tool made available as part of the service;
- placing information and materials promoting European works, including in the home/front page or when promoting trailers or visuals;
- using European works in promotional campaigns for the service; and
- promoting a minimum percentage of European works in the service's catalogue e.g. by means of banners or similar tools.²⁷

The EU maintains a relatively broad definition for prominence of “findability and accessibility of general interest content on significant audiovisual services,” though emphasising that it is of fundamental importance for a democratic society.²⁸ Further, as the Directive contains recommendations only, ensuring on-demand media services comply with these rules is matter for individual EU Member States. This has resulted in a heterogenous implementation across different member states.

Canada

The Canadian *Online Streaming Act*, also known as C-11, received Royal Assent on 27 April, 2023.

C-11 introduced requirements for online video streaming services relating to the discoverability and promotion of Canadian programming. These requirements are not specified in C-11, and are to be set out by Canada’s television and telecommunications regulator, the Canadian Radio-television and Telecommunications Commission (the CRTC).

C-11 gave the CRTC powers to impose conditions on services in relation to “the presentation of programs and programming services for selection by the public, including the showcasing and the discoverability of Canadian programs and programming services, such as original French language programs”.

The CRTC is currently undertaking a public consultation process and intends to implement its prominence framework in late 2024.²⁹

²⁷ European Commission (2018), [Digital Single Market: updated audiovisual rules](#).

²⁸ European Broadcasting Union (2020), [AVMSD: EBU Calls on Member States to Ensure Prominence of General Interest Content](#).

²⁹ CTRC (2023), Regulatory [Plan to modernize Canada’s broadcasting system](#).

2. Why is Government action needed and what is its objective?

The prominence framework is seeking to address the challenges identified in chapter 1 and enable Australians to easily access free-to-air TV services on connected TV platforms. By doing so, the framework is intended to support the achievement of the policy objectives of the BSA by providing a regulatory framework that promotes the availability of Australian TV broadcasting services to the Australian public.

As noted in chapter 1, the ‘interface’ for smart TVs and other connected devices is increasingly shaping how consumers access TV and TV-like content. For audiences, these interfaces are the gateway through which they navigate to an app and / or content ecosystem. In this environment, there are emerging risks that free-to-air TV services will not be easily available to Australian audiences, which in turn threaten the achievement of media policy objectives set out in the BSA. There are two aspects to this change in market dynamic:

- Access to connected TV devices is increasingly being monetised, with content services having to pay to receive prominent positioning on the user interfaces of devices. Australian free-to-air broadcasting services are unlikely to be able to compete for this ‘interface real estate’ with large, multi-national streaming services, or the content services owned and operated by the device manufacturers themselves. There are a number of factors that indicate that Australian free-to-air TV services face a bargaining imbalance in dealing with the leading manufacturers of connected TV devices.
 - The two leading TV manufacturers in Australia do not pre-install any BVOD apps (but do pre-install the apps of large, international streaming services). For some devices, the app tiles for these large international services are locked and unable to be reconfigured by Australian consumers.
 - The option for free-to-air broadcasters to ‘walk away’ from negotiations with the manufacturers of smart TVs (and pursue alternative means of reaching audiences) is unviable in a practical sense, as these connected devices are increasingly the key gateways for reaching audiences. In 2022, over 80 per cent of Australian adults with at least one TV in their home had a TV connected to the internet, and over a third of these Australians had 2 or more internet-connected TVs.³⁰
- There is a cohort of low- and medium- agency users of connected TV devices that are unable to download apps, customize the order of apps, or adjust privacy settings. These consumers are ‘takers’ of the default experience set by device manufacturers, and are more likely to be influenced by recommendations and prominently positioned content. For these Australians, who tend to be older, their ability to access free-to-air services is likely to be increasingly impaired if those services and apps are not prominently and easily accessible on the ‘default’ user interface of connected TV devices.

There is little to suggest that these market trends are abating. Rather, with respect to access arrangements, there appears to be a trend towards greater use of payments and revenue-share arrangements. For example, in June 2023, Amazon announced that from 30 September 2023, a 30 per cent advertising revenue sharing policy would come into effect for all revenue generated from advertising in the Fire TV Ad-Enabled App.

Market outcomes alone are unlikely to result in Australian consumers being able to easily and simply access the services and apps of free-to-air broadcasters. Government intervention is therefore warranted to support

³⁰ Social Research Centre (2023), [The 2022 Television Consumer Survey – Summary Report](#), reported to the Australian Government Department of Infrastructure, Regional Development, Communications and the Arts, p. 54.

the objective of enabling Australians to easily access free-to-air TV services and apps on connected TV devices with minimal effort, input or technical skills and knowledge on the part of the user.

However, achieving the objective of increased availability of, and easy access to, free-to-air TV services will depend on the legislative regime imposing the lowest cost, or burden, on the industries involved, with minimal negative impacts on consumers.

There are a number of risks in introducing what would be a novel regulatory framework, including the potential for the regulation being ineffective despite targeting an identifiable problem, or imposing negative flow-on effects for sectors that were expected to benefit from the regulation because it is overly proscriptive or burdensome. In the context of a prominence framework, such risks may manifest in the form of reduced choice of products for consumers as manufacturers seek to reduce the cost on compliance by limiting the number of models they produce for the Australian market, or free-to-air TV services and manufacturers having resources tied up in administrative processes to ensure their own respective participation in, and compliance with, the framework.

While the potential for unintended consequences of new legislation will always be a risk, the Government has sought to mitigate this risk through two phases of consultation — one targeted at relevant sectors prior to the development of a proposals paper, and the second, public consultation process based on proposals paper. In developing the recommended option for this IA, the views of all submissions have been considered and assessed against the objectives of enabling Australians to easily access free-to-air TV services and apps on connected TV devices and delivering a framework that minimises the potential costs on industry.

3. Policy options considered

The Albanese Government, in the context of the 2022 election, signaled its intent to legislate a prominence regime to ensure Australian TV services can easily be found on connected TV platforms.³¹

Australia’s media policy objectives, as discussed in Chapter 1, include maintaining a regulatory environment that facilitates an efficient and competitive broadcasting sector that is responsive to the Australian public’s needs; promoting the availability of a diverse range of TV broadcasting offerings that reflect a sense of Australia’s identity and diversity; and providing appropriate coverage of matters of local significance. In this context, this IA considers two options:

- Option 1: no intervention (status quo) – no change to current arrangements, and allow the device / content provider market to continue unchanged; and
- Option 2: implement a prominence framework.

In developing the prominence framework described in option 2, the Government has considered views and submissions received during two phases of consultation. The proposals paper released for the second phase of consultation set out proposals for the scope of the framework for:

- the types of services to be granted prominence;
- the types of devices on which prominence would be granted; and
- the entities that would be responsible for complying with the obligation to grant prominence.

The proposals paper also canvassed potential models for addressing the prominence issue that would achieve differing results — from gathering evidence to monitor the issues further, to leveling the playing field for negotiations between local TV services and device manufacturers, to guaranteeing the availability of local TV services on connected TV devices, to requiring the promotion of particular local TV services ahead of all other content service providers on connected TV devices. These models are described further in Chapter 5. Option 2 has been developed as a hybrid model containing elements from both the must-carry and must-promote models. This option seeks to support the availability of, and access to, free-to-air TV services for consumers, while minimising costs and burden to industry.

Option 1: No intervention

This option represents the status quo, as it is what would occur if no Government action is taken.

Under this option, the relationships between device manufacturers and Australian free-to-air TV services would continue to be determined by market forces and technological change. Under these conditions, the availability and positioning of apps, as well as the discoverability of content, would be determined by a combination of:

- commercial agreements between manufacturers and content service providers;
- explicit consumer choices regarding app placement and content consumption; and
- operating system algorithms that use consumer data to determine prominence.

³¹ Australian Government (2022), [Government Commitments - Review the Anti-Siphoning Scheme for Australian TV Services](#).

Option 2: Legislate a prominence framework

This option would implement a legislative framework in the BSA to require TV manufacturers to ensure free-to-air TV services (those regulated under the BSA) are made available on regulated TV devices. This is predominantly a ‘must-carry’ model, with the following key features:

1. An obligation on manufacturers of regulated TV devices to make free-to-air broadcasters’ linear TV and BVOD services available on those devices without fee, payment or other form of consideration, consistent with ‘minimum prominence requirements’ determined via regulations. Specifically, the minimum prominence requirements would include:
 - (a) no charges, such as a fee, share of TV services advertising revenue, or requirement to advertise for the device manufacturer for free, may be imposed on free-to-air TV services for any aspect of prominence covered by the framework;
 - (b) pre-installation or automatic installation of free-to-air TV service apps, rather than these apps only being available to download in the app store of the device;
 - (c) free-to-air TV services to be available on the ‘primary user interface’ of regulated TV devices as the default setting;
 - (d) electronic program guides to include linear free-to-air TV services offerings in logical channel number order; and
 - (e) device manufacturers and operating system providers to be prevented from altering the content of free-to-air TV services displayed on devices.
2. Compliance with the obligation to be subject to free-to-air broadcasters supplying apps (for their linear TV and BVOD services) that meet reasonable technical standards, with free-to-air broadcasters responsible for maintaining and updating the software for their respective apps and for handling any consumer complaints regarding the operation and functionality of those apps.
3. No restriction on the ability of the manufacturers of regulated TV devices to seek payment, fees or any other form of consideration for the promotion of apps or content on relevant devices from any party, provided that the minimum prominence requirements are upheld for free-to-air broadcasting services. Search functions or other features of regulated TV devices that operate in response to user input or requests would not be subject to the minimum prominence requirements.
4. The ability for the ACMA to obtain information, documents or evidence from regulated TV device manufacturers, regulated TV service providers, or other persons, where the information or documents are relevant to the oversight and administration of the framework. The Minister for Communications would also be able to request the ACMA to prepare and provide to the Minister particular information or reports in relation to regulated television devices and services, technological developments and user access to these devices and services, and developments in the broadcasting services and BVOD industry.
5. A requirement for the conduct of a review of the prominence framework once it has been in operation for three years, to assess whether it is working effectively and whether amendments may be required.

Regulated TV devices would be: devices that are capable of connecting to the internet and receiving BVODs, and are designed for the ‘primary purpose’ of facilitate the viewing of TV or TV-like content. In practice, the primary purpose approach would mean that smart TVs, third party set-top-boxes and certain plug in devices, such as Google Chromecast, Amazon Fire TV Stick and Apple TV, would be expected to be regulated by a prominence framework.

This definition would exclude from the framework:

- devices such as monitors and other displays that, while technically capable of being used to view TV content, are not configured to directly receive content and are not used to provide other types of TV-like content; and
- devices whose primary purpose is not to watch TV, such is generally the case today with personal computers, smartphones and tablets (consumption of audio-visual content can occur via these devices, but it is not generally the intended primary function of the device).

4. Impact Analysis

The options described above would have a range of impacts on industry, government and consumers. These impacts are described in this chapter. However, a quantitative estimate of costs and benefits has not been possible through this IA. The information made available through the two phases of consultation and through additional analysis was not of a nature that would enable this type of assessment.

- The successive consultations undertaken in 2022 and 2023, including the consideration of proposals, did not yield specific information on the potential financial impacts of the options canvassed (including the ‘must-carry’ model).
- In large part, this is due to the fact that revenue and cost information is highly sensitive from a commercial perspective, and relevant parties have been unable or unwilling to disclose such information.
- A prominence framework would also be a relatively novel regulatory intervention, and there is no existing data, including from overseas, available to provide an estimate of potential financial costs to the device manufacturing industry.
- As such, this IA provides a qualitative assessment, based on available information and submissions,³² of the likely benefits and costs of the options to industry, government and consumers. These estimates of likely impact have been supported with quantitative data gathered in independent reports and surveys of audiences’ preferences and behaviours in relation to TV consumption.

Option 1: No regulatory intervention

Regulatory implications

Nil.

Impacts on industry

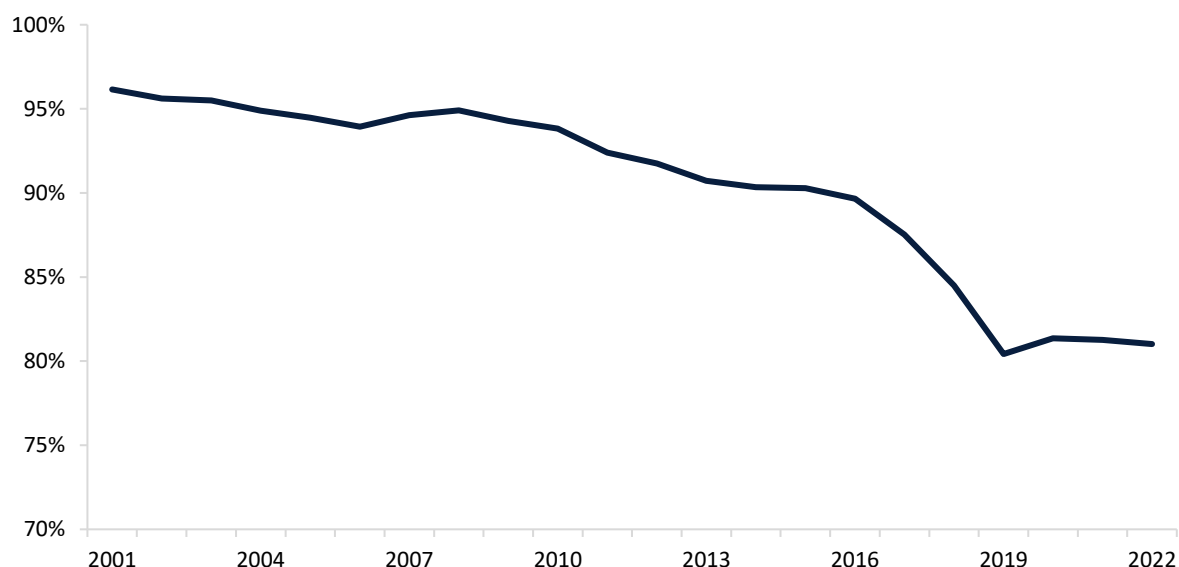
Impacts on the free-to-air sector

A failure to implement an enforceable prominence framework for connected TV devices is expected, in the long term, to have a negative impact on the free-to-air TV sector.

Advertising revenues and audience numbers for the commercial free-to-air TV sector are in long term decline. Figure 5 demonstrates the percentage of Australians watching commercial free-to-air TV has declined sharply since 2016, with only minimal improvement during the COVID-19 pandemic that does not appear to have been sustained.

This is comparable with the long-term decline in audience numbers described in Figure 1, and the discussion in chapter 1 about the problems facing free-to-air TV broadcasters as viewers switch from linear broadcasting to online viewing.

³² Public submissions to the 2022 Prominence Framework for Connected TV Proposals Paper are available on [the Department of Infrastructure, Transport, Regional Development, Communications and the Arts website](#)

Figure 5: Percentage of Australians who viewed free-to-air TV over a seven-day period

Source: Roy Morgan Single Source, Australians aged 14+, 2001 – 2022 (Calendar Years). Based on viewing last 7 days.

In 2019, the Australian Competition and Consumer Commission’s (ACCC) Digital Platforms Inquiry found that online advertising had progressively eroded broadcast TV revenues. The final report found that expenditure on online advertising in Australia had increased from less than \$1 billion in 2004 to \$8.8 billion in 2019, accounting for 53 per cent of total advertising expenditure in that year.³³ While the ACCC found that print media had seen the sharpest decrease in advertising revenue, expenditure on TV had fallen steadily since 2014.

As noted in Chapter 1, connected TV devices are increasingly the key ‘portals’ for access to audio-visual services, including TV content and apps. Maintaining the status quo is likely to see the continuation of the erosion of audience numbers for free-to-air TV services depicted in Figures 1 and 5, and lead to lower viewer awareness of, and accessibility to, free-to-air TV services, with a commensurate decline in advertising revenues. This would have a detrimental impact on the viability of commercial free-to-air TV services, and impede the ability of the national and community broadcasters to fulfil their respective remits.

To arrest these trends, free-to-air broadcasters may seek to maintain or increase their expenditure to secure a position on the interfaces on connected TV devices. This would, for commercial broadcasters, erode their profitability. For all free-to-air TV broadcasters – commercial, national and community – the requirement to pay for access to devices would impede their ability to invest in key content genres, such as local and Australian content.

Impacts on device manufacturers

Nil.

Impacts on international streaming services

Nil.

³³ ACCC (2019), Digital Platform Inquiry Final Report, p 121.

Impacts on consumers

RMIT research has found that only one of the five leading suppliers of connected TV devices in Australia, Sony, pre-installed 4 of the 5 existing Australian BVODs.³⁴ As such, Australian users need to download between one app and five apps for full access to the online content for free-to-air TV services. Given the inability of many Australians to navigate to, install and access BVODs, as outlined in Chapter 1, it is reasonable to expect that if no changes are made to the current regulatory framework, consumers are likely to have increasing difficulty accessing free-to-air TV services. As a result, the overall ability of consumers to access news, emergency information and Australian content would be impeded.

Impacts on government

Nil.

Overall assessment

Option 1 would make no changes to the existing regulatory framework and current market trends – outlined in chapters 1 and 2 – would be expected to continue. The availability of free-to-air broadcasting services would, over time, be diminished, with detrimental impacts for Australian free-to-air broadcasters and Australian audiences.

Option 2: Legislate a prominence framework

Regulatory implications

A legislated prominence framework would insert new provisions in the BSA, and empower the ACMA to administer the framework. This would modify and extend the remit of the ACMA under the BSA and the *Australian Communications and Media Authority Act 2005* (ACMA Act). The establishment of the framework, and its oversight by the ACMA, would also impose a compliance burden on some sectors of the media industry (discussed below). Providing additional functions for the ACMA in relation to the prominence framework would also have budgetary implications for the regulator.

Impacts on industry

Impacts on the free-to-air sector

A legislated prominence framework would have a positive impact on the free-to-air TV sector, and in particular to the broadcasting services that operate BVODs, including the national broadcasters (ABC and SBS) and the metropolitan commercial broadcasters (Seven, Nine and Network Ten). The commercial free-to-air TV sector is a significant one in terms of economic output, contributing an estimated \$2.5 billion to Australia's gross domestic product in 2021 according to Deloitte Access Economics.

A legislated prominence framework would guarantee that free-to-air TV services and apps could gain and maintain access to the primary user interface on regulated TV devices sold in Australia, without the need to enter into negotiations with the device manufacturers. This would help to support viewer awareness of, and

³⁴ Lobato, R., Scarlata, A. and Schivinski, B. (2023) [Smart TVs and local content prominence](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p.15

access to, free-to-air TV services and apps, with a commensurate flow on benefits in terms of audiences and advertising revenues.

A legislated prominence framework would also reduce the expenditure required by free-to-air TV broadcasters to secure access to connected TV devices (compared to what they would otherwise have to pay to some manufacturers of regulated TV devices in terms of direct fees or charges, or revenue or ad inventory share arrangements). This would, for commercial broadcasters, boost their overall profitability.

For all free-to-air TV broadcasters – commercial, national and community – this would enhance their ability to invest in key content genres, such as local and Australian content. These likely benefits are based on qualitative information by stakeholders through the consultation processes undertaken in 2022 and 2023. Submissions received from the free-to-air TV sector, and other stakeholders, did not provide quantitative data on the actual charges or outlays required to be paid by content services to secure access to the primary user interface, or other user interface levels, of a device. However, recent reports of Amazon’s global policy for advertising revenue sharing arrangements for content providers utilizing the Fire TV Ad-Enabled app would suggest these charges could be as high as 30 per cent of the advertising revenue generated on the device.³⁵

The framework may also impose compliance costs on free-to-air broadcasters, as they would need to develop and provide an app for each TV device that was compatible with the technical specification for the relevant operating system. These costs would include software development and maintenance costs, and resourcing costs for complaints handling. However, the costs would be avoidable, as free-to-air broadcasters would not be required to develop and provide device-compatible apps if they did not feel it was in their overall interests to do so. A free-to-air broadcaster may determine that the benefits of developing and maintaining an app for a particular regulated TV device do not exceed the costs. In this circumstance, they would incur no costs associated with the development and maintenance of the relevant app.

Impacts on device manufacturers

Any prominence framework is likely to increase costs on device manufacturers, as they would be required to ensure that regulated TV devices are compliant with the framework. Option 2 would implement a prominence framework that contains the minimum requirements considered necessary to achieve the Government’s stated outcomes.

The Consumer Electronics Suppliers Association (CESA) submission to the 2022 proposals paper provided estimates on the size of the Australian TV device market including:

- A total market of \$1.5 to \$1.8 billion per annum
- 15+ ‘alpha’ or leading brands in the market
- 5 manufacturers supply more than 60 per cent of the market
- 500+ models and variations sold by alpha brands in 2022
- More than 90 per cent of models sold in 2022 were alpha brand smart TVs.³⁶

Under this option — a must-carry model — manufacturers would incur additional expenses in building and maintaining Australia-specific software to ensure that free-to-air TV services are installed, available and updated when required, in compliance with the framework. On the basis of information provided through the

³⁵ Buckingham-Jones, S. (2023), [Amazon suddenly demands 30pc of ad revenue from TV networks](#), *Australian Financial Review*.

³⁶ Consumer Electronics Suppliers Association (2023) [Smart TVs and local content prominence](#), submission to the Prominence Framework for Connected TV Devices Proposals Paper, p. 4.

consultation processes undertaken in 2022 and 2023, it is expected that the required changes could predominantly be implemented through software updates alone. Where chipset modifications may be required, it is understood that these could be done through existing Australia-specific factory runs. Such factory runs are already required for modifications such as the inclusion of Australian standard power cables. Therefore, a majority of direct costs would be incurred in developing and maintaining Australia-specific operating software. While this is an ongoing cost, this is expected to be relatively modest compared to a framework that required physical modification of devices and remote controls (i.e. changes to hardware).

There are also expected to be indirect costs imposed on the manufacturers of regulated TV devices. The largest such cost would be revenue forgone as a result of the prohibition on charging free-to-air broadcasting services for access to regulated TV devices. The prohibition on 'payment' would not be limited to monetary fees, and would include any non-monetary charges such as share of TV advertising revenue. This would reduce the amount of revenue, or other benefits, that manufacturers are able to receive for their 'screen real estate'. It is not possible to quantify this opportunity cost, as little or no such information was provided through the 2022 and 2023 consultation processes.

The potential revenue impacts of a prominence framework would be mitigated by the fact that the must-carry model proposed would not prevent manufacturers from continuing to sell the highest profile tile and app positions on the primary user interface to international streaming services such as Netflix and Disney+. Rather, the must-carry model would only require the services and apps of Australia free-to-air TV broadcasters to be available on the 'home screen' of the device and to be pre-installed. The highly valuable existing and future commercial arrangements with these international firms could remain in place.

Impacts on international streaming services

The must-carry prominence model would not require free-to-air services and apps to be promoted above or ahead of competitor services, including the larger international streaming services. As such, the potential impacts of the framework on these international services are expected to be negligible.

Impacts on consumers

A prominence framework would be of direct benefit to Australian consumers, particularly those that are not technologically savvy and have difficulty in locating and installing free-to-air TV services from a device menu or app store. The framework would enhance their ability to readily access information essential to their safety, through local news and emergency information, as well as entertainment content that supports our sense of national identity, cultural diversity and social cohesion.

The framework would not prevent content services, such as Netflix and Disney+, from being displayed and accessed from the primary user interface. Nor would it prevent consumers from altering the position and display of content services on regulated TV devices. For example, consumers could choose to delete the apps of free-to-air broadcasting services from the 'home screen' of the regulated TV device.

In terms of indirect impacts, Australian consumers may incur additional costs if the manufacturers of regulated TV devices were to pass on any additional costs to consumers in the form of higher prices. It is not possible to quantify these potential costs at this time, as specific data was not supplied through the consultation processes undertaken to date.

Impacts on government

The oversight and administration of the new framework would have budgetary implications for the ACMA. This would need to be considered through normal Budget processes.

Overall assessment

Option 2 would impose a regulatory burden on regulated TV device manufacturers. However, the quantum of these costs is expected to be modest given the ability of manufacturers to implement the majority of the requisite changes via software updates. The largest cost to manufacturers associated with this option would be forgone revenue from charging free-to-air broadcasters for access to regulated TV devices, which would be prohibited under the framework. Option 2 would provide significant benefits to the free-to-air TV sector and to Australian audiences.

5. Consultation

Two phases of stakeholder and public consultation were undertaken to support the design of the prominence framework for connected TV devices. The initial phase involved targeted consultation with stakeholders in the broadcasting, TV manufacturing, online subscription service, and digital platform sectors. This consultation was conducted in the second half of 2022.

Feedback from this targeted consultation informed the development of specific design options for the prominence framework. A proposals paper³⁷ was prepared and released on 23 December 2022 and the submissions period closed on 24 February 2023.

The proposals paper canvassed four options that could be implemented through legislation. The legislative options proposed during the second consultation phase were:

- Reporting framework – requiring regulated parties to report on the systems and processes they have in place to ensure the prominence of local TV services. Information could be sought about availability, positioning and discoverability.
- Fair bargaining framework – requiring the technical and commercial terms of access to regulated TV devices to be ‘fair and reasonable’, and requiring all local TV services and the parties responsible for regulated TV devices to engage in ‘good faith’ negotiations.
- Must-carry (access) framework – requiring regulated TV devices to carry (make available) local TV services, with no fees, payments or other consideration payable to the provider of the local TV service to the entity responsible for the device for this basic level of access. The prominence framework proposed in this IA is a modified version of this model.
- Must-promote framework – requiring regulated TV devices to carry and promote local TV services at various points of interaction with users of the device, generally ahead of other content services.

Feedback was received from members of the public, academics, consumer-focused groups, the broadcasting sector, the manufacturing sector, and the online subscription service and digital platform sector.

- The free-to-air sector was supportive of a model of legislated framework that would result in the promotion of free-to-air services on TV devices above all other content (must-promote).
- The Consumer Electronics Suppliers Association (CESA), representing device manufacturers, opposed a prominence framework. However, they noted that if the Government was to legislate a prominence framework, a framework designed to ensure the availability of free-to-air TV services and a reporting scheme may be acceptable.
- Stakeholders from the online subscription service and digital platform sectors provided a range of views, with support for both the must-carry and reporting-based models.
- Consumer groups were largely supportive of a must-carry model that would also enhance disability access features.
- There was little or no support for a fair bargaining model.

³⁷ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2022), [Prominence Framework for Connected Television Devices – Proposals Paper](#).

Post-consultation analysis

Consultations highlighted the complexity of the Australian media market, and the extent of which there is interdependency between content service providers and the manufacturers and suppliers of devices and technologies that facilitate the display of TV content for consumers.

- Commercial television broadcasters strongly support a must-promote prominence model that would compel the manufacturers of regulated TV devices to prominently display free-to-air linear broadcast and BVOD services ahead of other services. They argue that it is essential for their viability.
- The national broadcasters recognise that a must-carry model would be an important foundational step for a prominence framework, but would prefer a less passive prominence intervention (i.e. a must-promote model).
- The Australian Children’s Television Foundation (ACTF) and Screen Producers Australia also supported versions of a must-promote model, with a preference for elements that would increase the discoverability of Australian content. ACTF also recommended the creation of an Australian children’s content app that would be granted prominence on regulated TV devices, and compatible with other devices used by children, including tablets and mobile phones.
- Device manufacturers, represented by the Consumer Electronics Suppliers Association, strongly opposed a must-promote model, instead providing caveated support for a version of a must-carry model³⁸ that would ensure the availability of local TV services. Device manufacturers claim that a must-promote model would increase costs (especially given the size of the Australian market), which would be passed on to consumers, and may limit the range of device models available in Australia. At a high level, and depending on the technical specifications of a given model, they argue that changes could be required to software, chip sets or hardware, or a combination of all three.
- The Interactive Games & Entertainment Association (IGEA), Foxtel and Google all supported a reporting framework. They argued that this would provide a stronger evidence base for future regulation and incentivise the parties to reach positive prominence outcomes.
- Support for a must-carry model was expressed by a range of other stakeholders, including consumers (represented by the Australian Communications Consumer Action Network), Commercial Radio & Audio, Telstra, Netflix and Fetch TV.

These views were carefully considered in developing the proposed must-carry model for the prominence framework. This option seeks to balance the Government’s objectives for a prominence framework against the needs and interests of the free-to-air TV sector and connected TV device manufacturers. However, it is acknowledged that the needs and interests of stakeholders are not aligned.

Although many submissions were forthright in their support for particular model, few provided any data to enable a quantitative assessment of relative benefits, costs and impacts of the various options. The information that was provided tended to support for the must-carry model.³⁹ However, data on consumer

³⁸ Manufacturers’ support was caveated, notably: limiting scope to ‘primary-use’ devices only; reciprocal obligations on BVOD providers to offer and maintain their apps; consolidation of BVOD apps within a single ‘Freeview’ tile / shortcut; and a minimum two-year implementation timeline.

³⁹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2022), [Prominence Framework for Connected Television Devices – Proposals Paper, p. 37.](#)

behaviours and capabilities (discussed in chapter 2) supported the addition of two particular elements of the 'must-promote' model:

- a) the pre-installation or automatic installation of free-to-air TV service apps, rather than these apps simply being available to download in the app store of the device (i.e. requiring deliberate action on the part of device users); and
- b) the requirement for free-to-air TV services and apps to be available on the 'primary user interface' as a default setting.

These two elements have been included in the proposed option for the prominence framework.

6. What is the best option?

The option that would best deliver on the Government's commitment for ensuring Australian TV services can easily be found on internet-connected TV platforms is option 2 — implement a prominence framework.

The Government's objective for a prominence framework is to enable Australian audiences to access free-to-air TV services on connected TV devices with minimal effort, input or technical skills and knowledge on the part of the user. Option 2 would deliver this outcome, with significant net benefits for Australian free-to-air broadcasters and Australian consumers.

Option 2 would, however, impose costs on the manufacturers of regulated TV devices: direct costs in terms of developing and maintaining systems to fulfil the minimum prominence requirements; and indirect costs in the form of foregone revenue from free-to-air TV broadcasters for access to regulated TV devices. However, as noted in chapter 3, these costs are expected to be mitigated by the following factors:

- there would be no requirement for manufacturers to alter or modify device hardware;
- there would be no constraint on the ability of manufacturers to maintain and expand commercial arrangements with international streaming services for 'premium' positions on their device interfaces;
- there would be no restriction on the ability of manufacturers to charge free-to-air broadcasters for access above and beyond the minimum prominence requirement; and
- the framework would have no application to search functions or other 'user-initiated' features.

Option 1 – the status quo – is not considered to be a viable alternative as it would not address the risks and issues identified in Chapters 1 and 2.

7. Implementation and evaluation

Implementation

Implementation of option 2 — a prominence framework — would be given effect through amendments to the BSA and consequential amendments to the ACMA Act. The BSA amendments would establish the key elements of the prominence framework. The use of secondary legislation, such as regulations, would enable the framework to be adjusted and amended over time to reflect changes in technology and consumption patterns and preferences in relation to TV services.

Under the preferred option, the prominence framework would provide the ACMA with the capacity to obtain information, documents or evidence from regulated TV device manufacturers, regulated TV service providers, or other persons, where these would be relevant to the oversight and administration of the framework. These powers would apply to the discharge of its functions broadly under the framework, as well as in the context of any investigation of a potential breach of the framework. The Minister for Communications would be able to direct the ACMA to prepare and provide to the Minister particular information or reports in relation to regulated television devices and services, technological developments and user access to these devices and services, and developments in the broadcasting services and BVOD industry.

Risks

Implementing any new legislative framework carries a number of intrinsic risks, including whether the framework is effective in meeting its intended objectives, places unintended burdens on stakeholders, and how technological advancements may require further adjustments.

Throughout the design and development phases of the prominence framework there has been extensive engagement with relevant stakeholders to identify potential issues and consequences of the framework. The consultation processes undertaken in 2022 and 2023 highlighted the difficulties in identifying data that would enable these potential impacts to be quantified. To address this risk, the preferred option for the framework includes a power for the ACMA to request the information that it considers necessary to provide oversight of, and administer, the framework. The Minister would also be given the power to request reports from the ACMA.

It is recognised that the prominence framework would impose new obligations on manufacturers of connected TV devices and that transitional arrangements will be required to provide time for these manufacturers to make necessary changes to their product offerings. For this reason, it is proposed that the prominence framework only applies to regulated TV devices that are manufactured on or after the day that is 18 months from commencement of the amending legislation.

Evaluation

The prominence framework would be a new legislative intervention in Australia. As such, it will be important for the operation and effectiveness of the new arrangements, once implemented, to be carefully assessed.

Under the recommended option, there is a requirement for the Minister to cause to be conducted a review of the prominence framework once it has been in operation for a period of three years. This review would be informed by data gathered by the ACMA in its oversight of the framework, as well as broad-based stakeholder and public engagement.

The review would consider the operation of the framework and the extent to which it has supported the overall objective of enabling Australian audiences to access free-to-air TV services on connected TV devices with minimal effort, input or technical skills and knowledge on the part of the user. This would include consideration of, but not be limited to, an assessment of the extent to which the framework has:

- maintained or increased in the availability of free-to-air TV services on connected TV devices; and
- imposed explicit or implicit costs on the manufacturers of connected TV devices or other entities in the TV market.