

Explanatory Statement

Broadcasting Services Act 1992

Broadcasting Services (Minimum Prominence Requirements) Regulations 2024

Issued by the Authority of the Minister for Communications

Authority

The *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* (the Regulations) are made by the Governor-General, under section 130ZZO of the *Broadcasting Services Act 1992* (the Act).

Purpose

Section 217 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 130ZZO of the Act provides that regulations may prescribe the minimum prominence requirements with which a regulated television device must comply with under the prominence framework (the framework).

The Regulations prescribe the minimum prominence requirements for the framework that manufacturers of regulated television devices and their related bodies corporate must adhere to. These include, but are not restricted to, requirements in relation to:

- access to regulated television services on the device
- the display, location or positioning of regulated television services, or applications (apps) that are used to access regulated television services, on the device or the primary user interface of the device
- the installation and updating of apps on the device that are used to access regulated television services
- any electronic program guide on the device that provides information about, or access to, regulated television services.

The Regulations are intended to be adaptable and responsive to reflect market conditions and changes in technology.

The notes on the provisions of the Regulations are set out in **Attachment A**.

Background

In July 2024, the *Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024* (the Prominence and Anti-siphoning Act) was passed by the Parliament and received Royal Assent. Among other matters, the Prominence and Anti-siphoning Act amended the Act to introduce the framework that will enable all Australians to easily find and

access free-to-air television services on new internet connected television devices, such as smart televisions. The framework, as legislated, was informed by an extensive process of stakeholder and public engagement.

The framework prohibits manufacturers of internet connected television devices from supplying a device that does not comply with a set of minimum prominence requirements, and to take reasonable steps to ensure that compliance is maintained once the device is supplied. The framework also prohibits manufacturers from requiring payment or any other form of consideration from broadcasters in relation to the minimum prominence requirements, and requires manufacturers to take reasonable steps to ensure that the audiovisual content provided by a regulated television service is not altered or interfered with.

The framework will not prevent users at home from customising, or changing the display order, of apps on their screen. It will not prevent a user from removing an app they do not want on their device. The framework will also not prevent a device manufacturer from placing their own proprietary apps in a position on the PUI that they consider to be the most important spot, provided that the minimum prominence requirements are upheld.

This balanced approach ensures free-to-air broadcasting services continue to be available on internet connected television devices to consumers, without imposing significant burdens on manufacturers or distorting consumer choices.

Consultation

Extensive consultation was undertaken to support the design of the framework and the passage of the Bill containing the framework. As legislated, the framework incorporates and has been informed by the feedback and views put forward through these consultation processes.

Two consecutive consultation processes were undertaken in 2022 and 2023, providing all stakeholders and the public with the opportunity to contribute to the development of the framework.

- In August 2022, the Government engaged a wide range of stakeholders – including members of the Future of Broadcasting Working Group – to support the initial design and scoping work for the prominence framework. This was supported with the release of a background paper that sought submissions by October 2022.
- On 23 December 2022, a proposals paper was released, informed by the earlier stakeholder engagement seeking views on the television services to be afforded prominence, scope of devices to be regulated, entities responsible for compliance, regulatory models and legislative mechanisms. The consultation period for written submissions ran through to March 2023.

The Act provides that regulations can prescribe the minimum prominence requirements that internet connected television devices must comply with. An exposure draft of the regulations was released on 6 February 2024 to assist and inform Parliamentary consideration of the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023* (the Bill).

The development of Regulations has been informed by:

- the exposure draft released in February 2024;
- the issues and proposals raised through the inquiry conducted into the Bill by the Senate Environment and Communications Legislation Committee; and
- the views and perspectives raised by various stakeholders in the consultation initiated by the Australian Communications and Media Authority (the ACMA) in September 2024 with respect to potential legislative instruments that may be made under the framework.

Regulatory impact analysis

An Impact Analysis has been undertaken. The OIA reference number is OBPR23-03906.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment B**.

BROADCASTING SERVICES (MINIMUM PROMINENCE REQUIREMENTS) REGULATIONS 2024

NOTES ON CLAUSES

Part 1 – Preliminary

Section 1 – Name

Section 1 provides that the instrument, when enacted, may be cited as the *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024*.

Section 2 – Commencement

Item 1 of the table in subsection 2(1) provides for the instrument to commence on the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Broadcasting Services Act 1992* (the Act).

Section 4 – Definitions

Section 4 directs the reader to the Act for the definitions of the following terms: broadcasting services bands (section 6), broadcasting video on demand (BVOD) service (section 130ZZK), primary user interface (PUI) (section 130ZZL), regulated television device (section 130ZZI), regulated television service (section 130ZZJ).

The term ‘Act’ is defined to mean the *Broadcasting Services Act 1992*.

The term ‘electronic program guide’ has not been defined. For the purposes of the Regulations, and in line with other publicly available information, it is understood that electronic program guide means the function on a television device that operates to organise and deliver information regarding the availability of linear television broadcasting services on the device for access by users of the device.

Part 2 – Minimum Prominence Requirements

Section 5 – Purpose of this Part

Section 5 establishes that Part 2 is made for the purposes of section 130ZZO of the Act and that it prescribes the minimum prominence requirements that must be complied with by regulated television devices.

Note 1 to this section clarifies that, under subsections 130ZZN(1) and (2) of the Act, civil penalties may be imposed on device manufacturers and their related bodies corporate if they:

- supply a regulated television device to another person in Australia that does not comply with the minimum prominence requirements

- do not take reasonable steps to ensure that the device continues to comply with the minimum prominence requirements for a regulated television service during the period beginning immediately after the time the device is supplied.

Note 2 to this section clarifies that, under subsection 130ZZN(3) of the Act, there is a prohibition on manufacturers from requiring regulated television service providers to pay a fee, charge or any other consideration for, or in connection with, the device complying with the minimum prominence requirements. Note 2 also clarifies that manufacturers must take reasonable steps to ensure that the audiovisual content provided by a regulated television service is not altered or interfered with.

Section 6 – Minimum prominence requirements

Section 6 prescribes the minimum prominence requirements for BVOD applications (apps).

Subsections 6(1) and (2) provide that the minimum prominence requirements set out in this section apply to all regulated television devices, and apply to provide access to BVODs mentioned under paragraph 130ZZJ(1)(b) of the Act or prescribed by the Minister under subsection 130ZZJ(2) of the Act.

Subsection 6(3) sets out the requirements that apply to all regulated television devices.

Paragraph 6(3)(a) provides the requirement for the pre-installation of each BVOD app before the regulated television device is supplied, or auto installation of each app when the device is first connected to the internet after supply. This reflects the intention that such apps be installed on a device with minimal input, effort or capability on the part of the consumer.

Paragraph 6(3)(b) provides the requirement for each BVOD app to be able to be updated when an update is made available by, or on behalf of, the provider of the regulated television service. This reflects the intention for these apps to receive required improvements and ensure optimal performance, so that consumers can continue to access regulated television services.

Paragraph 6(3)(c) provides that each BVOD app must be visible on the PUI of the device without a user of the device being required to take any action (other than accessing the PUI of the device). This is intended to ensure that a user does not have to navigate on the PUI – through actions such as scrolling vertically or horizontally, or by clicking through folders from the PUI – in order for these apps to be visible.

Paragraphs 6(3)(d) and (e) provide requirements in relation to the appearance and proximate location of BVOD apps on the PUI. These BVOD apps must:

- be of a similar size and shape to other apps that are displayed on the PUI of the device and are designed for the purpose of providing access to a service (other than a regulated television service) that makes audiovisual content available using the internet
- be located in the same area of the PUI as those other apps.

This is intended to ensure that consumers are able to readily find and access regulated television services while providing no more than comparable prominence to other apps that provide access to subscription television services and international streaming services.

Section 7 – Additional minimum prominence requirements for certain devices

Section 7 prescribes the minimum prominence requirements for television broadcasting services and electronic program guide information. These requirements provide for manufacturers to maintain the existing functionality of linear television service provision and ensure the appropriate identification and accessibility of such services.

Subsection 7(1) provides that the additional minimum prominence requirements set out in this section apply to regulated television devices that are capable of receiving television broadcasting services that are regulated television services – under paragraph 130ZZJ(1)(a) of the Act, or prescribed by the Minister under subsection 130ZZJ(2) of the Act – using the broadcasting services bands.

Subsection 7(2) sets out the requirements for linear television services.

Paragraph 7(2)(a) provides that the user of a regulated television device specified in subsection 7(1) must be able to access television broadcasting services provided by:

- a national broadcaster (the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation)
- a commercial television broadcasting licensee, a community television broadcasting licensee, or a service prescribed by the Minister, where that service is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted.

This reflects the intention that the user of a regulated television device specified in subsection 7(1) should be able to access the regulated television services that are broadcast in the area in which the device is located. However, this would not require the device to be capable of providing access to ‘out of area’ services. For example, a device located in the Perth TV1 licence area would not be required to provide access to commercial or community television broadcasting services that are licensed and authorised to be provided in the Melbourne TV1 licence area.

Paragraph 7(2)(b) provides that each service should be identifiable using its logical channel number (LCN). This is intended to ensure that regulated television devices specified in subsection 7(1) identify and provide access to regulated television services broadcast in the relevant area using the established industry designation of LCNs. Subsection 7(5) provides an exception to this requirement for devices that are not capable of displaying a television program without being connected to other equipment, such as some devices that are used for the provision of subscription television broadcasting services. This is intended to avoid an unfair burden on parties such as Foxtel, that have a well-established numbering system used on plug-in devices.

Paragraph 7(2)(c) provides that the user of a device specified in subsection 7(1) must be able to access those services by selecting a single icon or visual representation, while paragraph 7(2)(d) provides that the single icon or representation must be visible on the PUI of the device without a user being required to take any action (other than accessing the PUI of the device). This is intended to ensure that a user does not have to navigate on the PUI – through

actions such as scrolling vertically or horizontally, or by clicking through folders from the PUI – in order for the icon or representation providing access to those services to be visible.

Paragraph 7(2)(e) provides that the single icon or visual representation must be of a similar size and shape to other apps that are displayed on the PUI of the device and that are designed for the purpose of providing access to a service (other than a regulated television service) that makes audiovisual content available using the internet. This is intended to ensure that consumers are able to readily find and access regulated television services on the PUI in a manner comparable with other apps providing audiovisual content.

Subsection 7(3) sets out the requirements for the electronic program guide (EPG) if an EPG is provided on given a device. These requirements provide for the information regarding the availability of linear television broadcasting services on the device to be readily available, organised and accessible by users of the device.

Paragraph 7(3)(a) provides that the EPG must be readily accessible on a device specified in subsection 7(3), while paragraph 7(3)(b) provides that a user of the device must be able to use the EPG to access television broadcasting services provided by:

- a national broadcaster (the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation)
- a commercial television broadcasting licensee, a community television broadcasting licensee, or a service prescribed by the Minister, where that service is transmitted in the licence area in which the device is located and is authorised by a licence to be so transmitted.

Similar to paragraph 7(2)(a), this reflects the intention that the user of a regulated television device specified in subsection 7(3) should be able to use the EPG to access the regulated television services that are broadcast in the area in which the device is located.

Paragraph 7(3)(c) provides that each of the services must be identified in the EPG using the service's LCN. Similar to paragraphs 7(2)(b), this is intended to ensure that EPGs identify and provide access to regulated television services broadcast in the relevant area using the established industry designation of LCNs. Subsection 7(5) provides an exception to this requirement for regulated television devices specified in subsection 7(3) that are not capable of displaying a television program without being connected to other equipment (comparable with the exception provided to the requirements specified in paragraph 7(2)(b)). This is intended to avoid an unfair burden on parties such as Foxtel, that have a well-established numbering system used on plug-in devices.

Paragraph 7(3)(d) provides that a user of a device specified in subsection 7(3) at a particular time must be able to view a live television program that is being broadcast in each service by selecting the program in the EPG, while paragraph 7(3)(e) provides that the EPG must be capable to accurately displaying, at a particular time, certain information regarding:

- the live television program broadcast in each such service at that time
- the television program that will be broadcast on each such service immediately after the live television program

- the television program that will be broadcast on each such services during the period of 7 days beginning from that time.

Subsection 7(4) sets out the particular information that the EPG must display, being:

- the name of the television program
- the start and finish time of the television program
- a brief description of the television program
- the classification information of the television program.

The requirements specified in paragraphs 7(3)(d) and 7(3)(e) replicate the existing industry-determined arrangements for the provision of information in EPGs.

Subsection 7(6) exempts advertising and sponsorship material from the EPG requirements. The term ‘program’ as defined in the Act includes advertising and sponsorship material. As such, this exception will avoid EPGs from otherwise being required to display information about advertising or sponsorship material shown during television programs. For services that are exclusively advertising material (i.e. home shopping channels), the EPG requirements must still be met.

Subsection 7(7) provides that any break during the transmission of a program for the purposes of the transmission of other matter is taken not to affect the continuity of the program item. This makes it clear, for example, that a program item that is interrupted by advertising or a news flash is nonetheless one program and subsequently does not require the display of separate EPG segments for each part of the program that is broadcast on either side of the break.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Broadcasting Services (Minimum Prominence Requirements) Regulations 2024

The *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Part 9E of the *Broadcasting Services Act 1992* (the Act) established the prominence framework, designed to regulate the accessibility and prominent display of certain linear television broadcasting services and broadcasting video on demand services on internet-connected television devices. Section 130ZZO of the Act provides that regulations may prescribe the minimum prominence requirements with which a regulated television device must comply with under the prominence framework.

The *Broadcasting Services (Minimum Prominence Requirements) Regulations 2024* (the Regulations) prescribe the minimum prominence requirements, ultimately giving effect to the framework, that manufacturers of regulated television devices and their related bodies corporate, must adhere to.

These include but are not restricted to requirements in relation to:

- access to regulated television services on the device
- the display, location or positioning of regulated television services on the device or the primary user interface of the device of regulated television services
- the installation and updating of applications on the device
- any electronic program guide on the device that provides information about or access to regulated television services.

The Regulations are intended to be adaptable and responsive to reflect market conditions and changes in technology.

Human Rights Implications

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The compatibility of the legislated prominence framework with human rights was comprehensively assessed through the Statement of Compatibility with Human Rights provided in the Explanatory Memorandum to the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2024*.

The statement provided that the framework contained in the Bill was compatible with human rights and freedoms by providing access to crucial information for democratic and social participation, as well as access to mass media and television services, relevant at a regional and national level, that reflect and promote local culture.

The Regulations are an inextricable element of this framework, and as such, the Regulations may engage with human rights to the same extent, resulting in the same impacts.

Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR) protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, through any medium, including written and oral communication, media and television broadcasting. Free-to-air television services provide local, national and international news, information during emergencies and natural disasters, sport, drama, and Australian content to all Australians, regardless of their location or income. By requiring these television services to be available and accessible on regulated television devices, the Regulations prescribing the requirements for this would increase public access to a range of information and ideas that are of public significance at a local, regional or national level.

At the core of the prominence framework, the Regulations are intended to provide regulated television services with no more than comparable prominence with other television services, such as subscription television services and international streaming services. In this way, the Regulations would not impede other television services from being displayed or accessed. The Regulations would not require regulated television services to be promoted above or ahead of these other services, nor would it require specific content to be given prominence or surfaced through search and recommendation tools.

Article 27 of the ICCPR, provides the right to enjoy and benefit from culture. Similarly, Article 15(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to take part in cultural life. The prominence regulations also support the right to culture by attaching minimum requirements for regulated television devices to comply with in order to enshrine easy access to local, free television services that assist with opening access to meaningful and locally relevant culture.

Conclusion

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. To the extent that it may engage Article 19 of the ICCPR, it provides access to crucial information for democratic and social participation. To the extent it may engage in Article 27 of the ICCPR and Article 15 of the ICESCR, it promotes access to television services that reflect and promote local culture.