PROMINENCE FRAMEWORK FOR CONNECTED TV DEVICES - PROPOSALS PAPER

Commercial Radio & Audio Submission

February 2023

Commercial Radio and Audio (**CRA**) is the industry body representing the interests of commercial radio broadcasters throughout Australia. CRA represents the entire Australian commercial radio industry, with 260 member stations, of which 220 are in regional and remote areas.

CRA welcomes the opportunity to respond to the *Prominence framework for connected TV devices* proposals paper issued by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**Proposals Paper**).

Commercial radio plays a vital role in ensuring that Australian local communities have access to local news, community announcements and emergency event information, as well as news, Australian music and entertainment. No other platform offers such a range of live, local and Australian voices within such a diverse range of communities.

The Australian Government made an election commitment to legislate a prominence regime to ensure Australian TV services can easily be found on connected TV platforms. **That election commitment also included a pledge that the Australian Government would back our local media sector so that it can compete and thrive in the era of big tech, global streaming services**.

Australian free to air commercial radio services are a crucial component of the Australian media sector. Therefore, **to fulfil the Government's election promise, it is critical that the commitment to legislate a prominence regime is extended beyond Australian TV services to also include Australian radio services**.

CRA strongly supports the development of a prominence framework for free to air radio and television broadcasters which is founded on 'must carry' principles, with no fees, payments or other consideration payable by the provider of the radio or television service. A must carry framework is the only regulatory solution that will ensure equity of access for Australians, making radio and television content available to all Australians regardless of their financial means or location.

1. <u>Recommendations</u>

(i)   Any proposed prominence scheme for television should, from the outset, be extended to free to air radio broadcasters, including the commercial radio sector, the ABC, SBS and the community broadcast sector. The observations in the Proposals Paper regarding the important role of free to air services – public policy functions,

informing Australians, emergency information and Australian and local content – are directly applicable to radio broadcasting and support the inclusion of radio in any prominence regime from its inception.

(ii)   The prominence regime applicable to commercial radio must ensure free, easy and universal access to Australian free to air commercial radio stations on car entertainment systems, as well as through smart speakers and other connected devices that are capable of delivering radio. To maintain the current diversity and accessibility of radio content it is vital that any prominence regime applies equally to AM, FM and DAB radio. The new regulatory measures should provide that:

(a)   Australian commercial radio stations (on AM, FM and DAB) should be easily discoverable by users on car entertainment systems, smart speakers and other connected devices that are capable of delivering radio;

(b)   car entertainment, smart speaker and other connected device manufacturers must be prohibited from restricting access to Australian commercial radio stations; and

(c)   platform operators must not be able to mandate particular adtech solutions, nor insert advertising around Australian radio content, without consent of the relevant broadcaster.

(iii)   Government should implement a prominence framework for free to air radio and television founded upon 'must carry' principles, with no fees, payments or other consideration payable by the provider of the radio and television service (**Proposal 8.3**). This is the only regulatory solution that will ensure free, easy and equitable access to Australian radio and television services for all Australians.

(iv)   The prominence framework should be implemented and administered through an industry code under the *Competition and Consumer Act 2010* (**Proposal 9.1**). This would be efficient and capable of speedy implementation, as it would require no change to primary legislation. Importantly, it would be easy to amend over time and therefore could keep pace with technological changes.

2.   <u>The role of free to air broadcast radio is vital in supporting the Australian national identity, cultural diversity and social cohesion</u>

CRA strongly supports the observation in the Proposals Paper that:

FTA broadcasting remains 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. (Chapter 2).

This is especially true for radio broadcasting.

(a) Radio provides local content, news and emergency information to Australians who receive no other local free to air broadcast content

CRA's membership of 260 stations includes 220 stations in regional and remote regions of Australia. The local commercial radio station is often the only source of local news, content and emergency service information.

For example, there are two commercial radio stations in Alice Springs – 8HA and Sun FM. Sun FM is located right in the middle of the country, which means that it is the only AM commercial station for around 1,200 kilometres.

(b) Radio provides unique access to emergency information

The Proposals Paper notes that '*Radio and television are very effective methods of communicating important information to large groups of people before, during and after emergency situations*' (Chapter 2, page 15).

Over 80% of Australians (age 10+) listen to commercial radio. It is vital that access to such an important platform is maintained on connected devices, particularly given the significant role played by commercial radio in times of emergency.

Live and local broadcast radio is an essential service in times of emergency. Broadcast radio is often the last communication channel still working, especially in cars, where Australians are away from a TV screen and mobile networks are congested or have failed.

Commercial radio listenership in cars is significant and must be protected, as 78% of Australians listen to the radio in the car and 31% of all listening takes place in cars. When Australians are forced to leave their homes and communities due to natural disaster, they turn to radio in their cars. **Radio that is freely and easily accessible saves lives**.

The commercial radio industry has hundreds of examples of emergency service broadcasts across Australia, particularly in regional and remote areas. Here is a small selection of examples:

Triple M Mid North Coast (March 2021 floods):

- 24/7 broadcasting was maintained to ensure that the local community was updated with information they needed to stay safe – including notification of evacuation centres and information relay from the SES and other emergency services.

- Mayor of Port Macquarie-Hastings Council, Pita Pinson, said that

  Á familiar and friendly voice on the radio has helped keep some level of normality and calm during what has been such a difficult time for our region.

2ST and Power FM (2022 floods):

- In 2022, the Shoalhaven and Highlands had three separate flooding/wild weather events, which saw evacuations, low level flooding, significant road damage and road closures.

- During these events, 2ST and Power FM announcers kept listeners up to date with the latest weather conditions, road closures, river levels, and evacuation warnings/orders.

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

- Listeners became the station's eyes and ears as Council were unable to keep up with the closure of roads and the sheer inundation of water on roads around the area. Callers were urged to provide information while off air team members trawled through social media to get the most up to date info available. This required all staff to assist including sales and admin.

- The SES and Bureau of Meteorology were regular guests, as were local Councillors and MP's.

East Coast Radio (Black summer bushfires 2019/20)

- East Coast Radio commenced bushfire coverage from 11 November 2019, initially covering the Currowan and North Black Range bushfires.

- As the bushfires continued to grow, East Coast Radio continued to cover bushfires across the entire South Coast to the Victorian border through December 2019 and January 2020, then into February 2020 when the last of the fires was finally extinguished.

- East Coast Radio covered the multitude of bushfires at varying levels from Advice; Watch & Act and Emergency over 74 days, dropping formats to provide vital and useful information to the community it serves.

- East Coast Radio emergency broadcasting then transitioned to then covering the flood events of March 2020. All 12 staff, including the general manager, on-air, sales, admin and technician were actively involved in sourcing, coordinating and delivering information either on-air or via web and social media, at times while their families and properties were also at risk.

4TO Townsville (Cyclone Yasi 2011):

- During Cyclone Yasi, 4TO in Townsville continued to broadcast despite being located in an area where storm surge was predicted (Woolcock Street).

- When the evacuation order was given a skeleton staff moved to a makeshift home studio in Kirwan. They continued to broadcast throughout the night, until they were able to return to Woolcock Street at 11.00am the next day, sharing phone calls and SMS messages from locals, and broadcasting updates from the Premier and the Member for Thuringowa, Craig Wallace.

- Mr Wallace MP reported the following in Parliament:

I commend all the staff, reporters, editors at the Townsville Bulletin and our local radio station 4TO. They warned us constantly of the dangers and then broadcast right through the cyclone so that we knew what was going on. They were our only link to the outside world. In the lead up to the cyclone, the Bully and 4TO made a courageous decision to keep broadcasting.

That's no mean feat. You see, 4TO is in Woolcock Street and it was going to go under if we'd had the big storm surge the bureau was predicting.

When the evacuation order was given, they still didn't give up and moved into a makeshift home studio in Kirwan drawing on the resources of panel operators from Southern Cross media's hub on the Gold Coast.

Once that connection was established via a tie line to Daniel the manager's home – they were in business. There, they bunkered down and prepared for the worst - Daniel, Steve Price, Wayde, Blair, Minty from home with his kids, 2 cats, a cattle dog, family and friends.

They broadcast all through that dark night and shared phone calls and SMS messages from locals who were also bunkered down in their homes, in bathrooms, hallways and cupboards right across the north from Hinchinbrook to Bowen.

(c) Radio supports Australian stories and voices and promotes social cohesion

The Proposals Paper notes that '*Australian content is valuable to Australians, and important for cultural reasons*' (Chapter 2, page 16). It goes on to highlight '*social cohesion and community*' as a key outcome of content with a focus on Australian voices, stories and perspectives.

Radio plays a unique part in Australian local communities, shaping a sense of identity and social cohesion by broadcasting live, local, Australian voices. There is a genuine interest and focus on issues that affect local communities.

This is displayed not only by adherence to onerous local content and local presence obligations (see (d) below) but also by engagement with local communities as a core part of broadcast content. Without a legislated radio prominence regime, fewer Australians would have access to this radio content.

The socially inclusive role that radio plays in local communities is demonstrated by the following examples (and there are many more):

Triple M Brisbane (2019)

- $90,000 was raised through Rural Aid to assist Rural Queenslanders affected by the drought.

- Over 4 days, Triple M's Big Breakfast travelled through western QLD, visiting 3 rural towns broadcasting live from each and hosting a comedy show each night.

- The aim was to share stories of communities, farmers and locals with the people of Brisbane in a bid to help Rural Aid raise funds for drought relief.

3CS/Mixx FM

- In August 2020, Colac was going through a surge of COVID 19 cases, with 130 reported in a town of 10,000 (the highest per capita rate in regional Australia). 3CS/Mixx FM was able to rally Colac and its businesses to look after each other and bring the cases "Back to none".

- The radio station encouraged the community to wear masks and enforce the city's lockdown to curb the spread before the Premier even implemented state-wide lockdowns. The station worked closely with its local hospital and provided information to the community to keep them well-informed and calm.

2BS 95.1 & 99.3 B-ROCK FM - Anzac Day broadcasts (2021)

- David Mills, President of the Bathurst RSL Sub Branch said that

  These programs were a significant replacement of normal Anzac Day activities, were of benefit not only to the general community but also to veterans from a broad range of conflicts. The broadcasts sent a clear message to all veterans that they were appreciated, that their contribution was valued and that the spirit of Anzac was alive and in good hands.

3CS/Mixx FM

- During Covid lockdowns, the Colac RSL could not have their traditional ANZAC Day Dawn Service, so they reached out to 3CS and MIXX FM to put together a virtual service.

- 3CS/Mixx FM used an unused sales office (during the pandemic), they created a green room and in under a week put together and designed a half-hour service that included their local MP, priests, the RSL president and veterans.

- They then broadcast this across their social media channels and on-air (FM and AM) simultaneously.

(d) Local content

The Proposals Paper recognises that '*broadcasters also support access to local content for local communities. Local content includes material that is produced in a particular area, or that relates to events or people who live in that region or local area*' (Chapter 2, page 18).

Commercial radio has one of the most onerous legislated Australian content frameworks in Australia and consequently is one of the most important sources of local news and content, particularly in regional Australia. This content must be protected by a prominence regime applicable to radio.

News and local content

Regional stations must broadcast the following amount of local content between **5am and 8pm** on business days:

- **30 minutes** for small licences (licences that service licence areas with a population of less than 30,000 people; and

- **3 hours** for all other relevant licences (except section 40, remote area and racing stations who are exempt).[1]

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[1] Hours of Local Content Declaration.

Local content must be '**material of local significance'**. This is material that is hosted in, produced in or relating to the relevant licence area (including by having a direct and substantial relationship to the licence area).[2]

Regional stations affected by a 'trigger event' (broadly a change of control) must meet the following **minimum service standards** for **local news and information**, in perpetuity:

Local news

Local news bulletins must be the greater of:

- 1 eligible local news bulletin per business day, or

- the average business day number of eligible local news bulletins broadcast in the year before the trigger event occurred.

The total duration of eligible local news bulletins broadcast by the licensee must be at least **62.5 minutes**.[3]

An 'eligible local news bulletin'[4] must meet the following requirements:

- must be broadcast between 5 am and 8 pm

- must adequately reflect matters of local significance

- none of the bulletins may consist wholly of material that has previously been broadcast in the licence area.

Stations must also maintain **local staffing levels and facilities** from three months prior to the trigger event for a period of **24 months** starting from the date of the trigger event.[5]

Australian music

Commercial radio stations are obliged under the Commercial Radio Code of Practice to play mandated amounts of Australian music, up to 25% of total content, depending on format. A portion of that must be new Australian artists.

Radio is an important means for Australian artists to reach large audiences and become commercially viable. Prominence for radio will also assist the Australian music industry in obtaining prominence for Australian artists.

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[2] Section 6, Local Content Licence Condition.

[3] Section 61CE, BSA.

[4] Section 61CA, BSA.

[5] Section 7, Local Presence Licence Condition.

3. Changing Media Environment

The Proposals Paper acknowledges that '*developments in markets, technology, and consumer behaviour challenge the objectives of media policy, and the traditional business and operating models of FTA broadcasting*' (Chapter 3).

This is true of the environment in which radio broadcasting operates and is why radio must be included in any prominence regime.

Changing listening habits

Listening over connected devices represents an increasing portion of radio listenership. In the first half of 2020, 15.5% of all listening was on connected devices (smart speakers 4.6%; mobile phones 6.9%; PC/tablet 4%). This represents a huge increase from 2019, when the total listening on connected devices was around 8.9% (GfK Radio Audience Measurement surveys Jan-June 2022).

If radio is not afforded prominence on these devices, it may face significant challenges. Prompt action must be taken to protect Australian radio long term, given the rapid growth of connected devices, particularly in vehicles and smart speakers.

Access to radio is determined by car entertainment system manufacturers

Car entertainment systems and smart speakers direct how radio stations are found. This is similar to the 'filter bubble' that Google applies to online content searches, which was the subject of much discussion in the Digital Platforms Review. The dominance of a small number of global players in the car entertainment systems and smart speaker markets has a similar capacity to distort the content that is offered to Australian consumers.

Connected cars

A connected car allows users to access and stream online content on the dashboard via the car's own in-built internet connection. These cars will feature a large touch screen as the centre access point for the car's functions, with physical buttons for live radio removed.

The rapid growth of connected cars means that, without legislated prominence, finding free to air local broadcast radio easily and quickly on the primary screen of new cars will become more difficult, while global streaming giants such as Spotify are given a prime position but have very limited local presence and community involvement, and no current local content or Australian music requirements.

This has significant implications for radio:

- the ability to access live radio will be relegated to an option deep within a touch screen menu, the physical buttons are gone;

- car passengers may be encouraged to stream on demand audio, thus creating new consumer behaviour in which drivers forget how to access live radio, including live and local news and information;
- the removal of physical buttons to access live and local radio will make accessing radio difficult for the elderly or the visually impaired;
- lack of accessibility to radio via multiple fronts will interfere with the distribution of emergency information and local radio's role in the dissemination of information and discussion in a democratic society. Podcasts are not suitable for distributing live & breaking news and information, and streaming audio cannot be relied up on in an emergency due to mobile network reliability;
- many of these new car dashboards and touch screens will be designed by big tech companies such as Google and Apple, who have their own audio business as well. Unchecked, it may result in these big tech companies providing preference to their own audio streaming and on-demand products over live radio. These products have subscription elements as well; and
- the pushing of consumers to streaming audio instead of live radio will create extra demand and pressure on mobile networks, creating challenges for communication in times of emergency.

Role of vehicle manufacturers

Vehicle manufacturers control how in-car entertainment operates in car and the design of their dashboards. The challenge here is that:

- future car design and how radio sits in that environment may be subject to considerations such as aesthetics rather than practical utility; and
- vehicle manufacturers may receive payments from streaming audio businesses to place IP delivered content more prominently in the car at the expense of radio.

Role of Big Tech – Google and Apple

These companies are designing new interfaces for the car in which Google or Apple become the operating system for the car's touchscreens:

- the Google interface – 'Android Automotive' - is now available in Australia in the Polestar car with more to follow; and
- the Apple interface has only just been announced by Apple and is a few years away from being in cars in the Australian market. However, Apple has announced 12 manufacturers have signed on to use Apple, with the first cars being announced late next year.

Car manufacturers are likely to design vehicles with their own commercial imperatives in mind, rather than the practicalities of the importance of dissemination of live and local news and information in car. The preference may be given to audio products where consumers

pay ongoing subscriptions, or which the audio providers have commercial arrangements in place with Google or Apple.

As an additional pressure, Bluetooth in cars is being used increasingly by drivers to access audio via their phones. This is another disruptor for radio and works to further lessen radio's prominence in cars.

Smart Speakers

The audio search function on smart speakers has a similar capacity to distort the content that is offered to Australian consumers.

The smart speaker market is dominated by two players – Amazon and Google – who have the power to filter and control the content that Australians can access. Without an Australian prominence regime, this is likely to lead to a situation where content is being ranked by multinational companies, based on a commercial payment regime rather than the public good.

To address this changing media environment, listeners must have guaranteed access to Australian radio services on connected devices – particularly in cars and smart speakers - easily and without charge, through a legislated prominence framework.

4. <u>International approaches to prominence</u>

The UK Government has recognised, in its White Paper (2022) and in its Response to the Digital Radio and Audio Review, October 2021 that:

> '*The case has been made for taking action to protect radio's long term position in the context of the rapid growth in usage of smart speakers, and to ensure the continuation of the huge public value which radio provides*' (Response, Introduction).

> '*New measures may be necessary to ensure audiences are able to access radio services on new devices without undue interference to those services or access charges*' (White Paper, page 39).

> '*The Government intends to explore 'ways to support UK broadcasters through possible changes in the wider advertising ecosystem … we intend to consider how to create a more level playing field between broadcast and online advertising, including on the issue of platform liability, as we consider what measures could be introduced to improve accountability and transparency*' (White Paper, page 9).

The UK Government is currently considering the following regulatory solutions (Response, para 2.8):

- New legislation that makes it clear that platform operators must not limit or restrict access to services or charge for carriage of UK audio services.

- Regulatory changes to ensure platforms that carry UK radio and audio services cannot mandate their own ad tech solutions and must not overlay advertising without prior consent.
- Regulatory changes to ensure radio stations/radio/audio content can be easily found and is discoverable by users of voice assistant platforms, including smart speakers and in car entertainment systems.
- Regulatory changes to allow access to data generated by their presence on connected listening devices (this should deal with issues such as user consent that may be unduly used to justify withholding data on service usage).
- Providing Ofcom with new powers to regulate audio attribution and positioning of content to ensure UK broadcasters and audio news providers are able to set requirements for associations of their content when aggregated by a connected platform such as an audio streaming application, voice assistant or audio content directory.
- Providing regulators with powers to safeguard the findability, discoverability and prominence of third party radio stations and other audio content that offers public value on connected audio platforms.

5. CRA strongly supports the must carry (access) framework

CRA supports the development of a prominence framework for free to air radio and television founded upon 'must carry' principles, with no fees, payments or other consideration payable by the provider of the radio and television service (**Proposal 8.3**).

This is the only regulatory solution that will ensure equity of access to broadcast content for all Australians. The same regime should apply to radio and television and should be implemented at the same time. This is the most efficient way of approaching the implementation process, and reflects the urgent need for radio prominence.

CRA's firm view is that Proposal 8.1 (reporting framework) and Proposal 8.2 (fair bargaining framework) will not achieve the Government's pre-election commitment to back our local media sector so that it can compete and thrive in the era of big tech, global streaming services.

Reporting framework (8.1): a reporting framework is not a prominence regime and would not achieve Government's pre-election commitments. A reporting framework is a mechanism designed to ascertain whether content is prominent or not. This would be, at best, an information gathering exercise. It would not achieve prominence.

Fair bargaining framework (8.2): a stipulation that parties must be 'fair and reasonable' and engage in 'good faith' negotiation will not achieve prominence for radio and television broadcasters. Australian broadcasters are extremely unlikely to be able to bargain effectively with global device and car manufacturers. The bargaining power imbalance is too great. A mechanism that involves negotiation, mediation and arbitration will be unwieldy and time consuming, with Australian broadcasters potentially dealing with many different negotiations at the same time. A fair bargaining framework is not a workable framework through which to achieve universal, free and easy access to Australian television and radio services.

6. Framework Implementation

CRA strongly supports implementation of a prominence framework through an industry code under the *Competition and Consumer Act 2010* (**Proposal 9.1**).

The same regime should apply to radio and television and should be implemented at the same time. This is the most efficient way of approaching the implementation process, and reflects the urgent need for radio prominence

The most efficient and effective means by which the new regime could be enacted would involve a combination of the following:

1. **A mandatory code under Part IVB of the Competition and Consumer Act 2010 (CCA)**. CRA suggests that, in relation to radio, the mandatory code would apply to manufacturers of the relevant devices, on the basis that those manufacturers would then in turn be required to impose obligations on the providers of the operating systems used for the relevant devices in order to ensure compliance with the code.

2. **A combination of amendments to the Broadcasting Services Act 1992 (BSA) and to Schedule 1 of the Customs (Prohibited Imports) Regulations 1956 (Customs Regulations)** to implement a ban on the import of new cars with entertainment systems which do not meet the requirements of the mandatory code as well as a ban on the import of any connected devices which are capable of delivering radio, including not only smart speakers but also standalone car entertainment systems, which do not meet those requirements.

Adopting this approach would ensure that the new framework could be implemented quickly, to address the urgent need for a prominence framework.

Given that the mandatory code is needed to give effect to the Australian Government's election commitment to support the Australian media sector, CRA's view is that a simplified process for the development of the mandatory code may be adopted.

It would be unnecessary to run a public consultation process to understand the industry issues that give rise to the urgent need for the mandatory code. The Regulatory Impact Statement (**RIS**) process may also be streamlined, as there would be no need for an initial decision RIS. The RIS for the mandatory code itself would need to only consider the Government's election commitment to support the Australian media sector (with reference to the status quo), and the manner in which the commitment should be implemented.

CRA would be pleased to provide any additional information needed to assist this consultation. Please contact Ford Ennals (Chief Executive Officer) or Sarah Kruger (Head of Policy and Legal Affairs) with any questions.

Commercial Radio & Audio

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