



## Submission by Commercial Radio & Audio to Radio prominence on smart speakers Proposals paper

### 1. Introduction

CRA is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations and represents the entire Australian commercial radio industry.

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

CRA welcomes the opportunity to provide a submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts in response to the *Radio prominence on smart speakers Proposals paper* dated September 2024 (**Proposals Paper**).

The Australian commercial radio industry is facing challenges on many fronts, due in part to the dominance of global digital platforms in advertising markets and their expanding role as gatekeepers to audio content for Australians, with accompanying declining revenues and audience fragmentation. Urgent measures for the introduction of an effective and efficient radio prominence regime are required to ensure the sustainability of the Australian radio industry.

CRA therefore strongly supports the regime set out in the Proposals Paper, subject to the adjustments that are outlined in this submission.

#### RECOMMENDATIONS AT A GLANCE

- An overwhelming majority of Australians listen to the radio. This preference shows no signs of changing, with radio listener numbers remaining steady over recent years. As acknowledged in the Proposals Paper, the way Australians access radio services is changing. More Australians than ever before listen to the radio on smart speakers or other smart devices and when driving in connected cars.
- It is important, as the technology used by Australians to listen to their favourite radio broadcasters continues to evolve, that Australians remain able to easily access the audio content provided by Australian radio broadcasters. This outcome cannot be achieved without regulation due to the bargaining power mismatch between Australian radio broadcasters, on the one hand, and, on the other, the manufacturers and operating system

(OS) providers of the relevant devices (currently smart speakers, other smart devices and the systems in connected cars).

- A regulatory prominence framework for radio would require free, easy and universal access to radio not only on smart speakers and other smart devices but also, within the short term, in connected cars. Although the Proposals Paper refers only to smart speakers, the same reasoning for applying the prominence regime to those devices also extends to other smart devices and connected cars.
- The regime that is put in place should recognise that, over time, as technology and consumer preferences evolve, prominence should be applied to other devices and services as well. The criterion that should be applied to extend the regime to other devices or services is that a significant number of listeners use that type of device or services to access radio broadcaster services over the internet.
- Both Part 9E of the Broadcasting Services Act 1992 (**BSA**), which contains a prominence regime for connected televisions, and the UK's Media Act 2024 (**UK Media Act**) may be used as models for the Australian regime. While the UK Act is limited to smart speaker prominence, in future it may be extended to connected cars and other devices, applying the test that CRA has recommended is adopted in Australia.
- The regime should apply for the benefit of:
  - all radio broadcasters, that is, commercial, community and national;
  - all broadcast (AM, FM and DAB+) and online audio services offered by those radio broadcasters.
- The core requirements of a radio prominence regime are simple, with manufacturers of regulated devices, and the relevant OS providers (at no cost to radio broadcasters) being subject to the following obligations:
  - **consistent and reliable access:** regulated devices must provide consistent and reliable access to Australian radio broadcaster services, both broadcast (if possible) and internet access;
  - **control of broadcasters:** the radio broadcaster should be entitled to determine the access pathway to its services; and
  - **no interference:** manufacturers and OS providers should be prohibited without the consent of the radio broadcaster from adding their own broadcasting, advertising or other content.
- It is important that the Australian Government acts now, to ensure that Australians can continue to find the audio content of their favourite radio broadcasters, however they choose to access that audio content. Long transitional periods are not required.
- Attachment A to this submission sets out CRA's proposed drafting for an effective and appropriate radio prominence regime.

## **2. Commercial radio and audio is a key part of the Australian media landscape**

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

Commercial radio dominates commercial listening in Australia. The Infinite Dial 2024 Australia survey<sup>1</sup> found that:

- in any given week, 81% of the Australian population over the age of 12, comprising 18 million Australians, listened to the radio, either broadcast or streaming services. This compares favourably to the 77% of Australians that watch live free-to-air television each week;
- from a low base of almost zero in 2017, smart speaker ownership in the Australian population over the age of 12 has risen to 34% in 2024. Google Nest is the most popular smart speaker, followed by Amazon Alexa and Apple HomePod;
- 88% of Australians over the age of 18 listen to the radio in the car each week and there has been a 75% increase in the use of in-car streaming of radio in the past two years;
- listening to the radio is popular across all Australian age groups, with audiences of 82% of Australians aged 18 to 34; 84% aged between 25 to 54 and 79% aged 55 or older; and
- streaming is becoming increasingly popular, with 15% of Australians 12 and older streaming radio in 2022 rising to 27% streaming in 2024 (with 31% of adults in the 25 to 54 age bracket streaming radio online weekly in 2024).

The Deloitte Access Economics 2023 Connecting Communities Report<sup>2</sup> highlights the important economic and social contribution that commercial radio broadcasters make to Australia, through the provision of radio and audio services. Commercial radio broadcasters deliver trusted, local content to Australians all over the country.

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

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

---

<sup>1</sup> Available here: <https://www.edisonresearch.com/wp-content/uploads/2024/08/Infinite-Dial-2024-Australia-Presentation.pdf>

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

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

As set out in the 2023 Connecting Communities Report:

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

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

### **3. A prominence regime is required for radio**

Commercial radio is important because:

- Commercial radio is local. Commercial radio broadcasters are subject to a legislated Australian content framework, including 3 hours per day of local content for most regional stations, and Australian music obligations for all stations. Consequently, commercial radio is one of the most important sources of local news, Australian music and local content for Australians, particularly those in regional and remote areas.
- In regional and remote Australia, the local commercial radio station is often the only source of local news and content. For example, there are two commercial radio stations in Alice Springs – 8HA and Sun FM. Sun FM is located right in the middle of the country, which means that it is the only FM commercial station for around 1,200 kilometres.
- In emergency situations, radio that is freely and easily accessible saves lives. When Australians face natural disasters, radio is often the last communication channel still working and is essential for providing emergency information.
- Radio is the only technology that may be used for emergency “break-in” announcements in road tunnels, which occur via the radio retransmission installations installed in such tunnels. This again demonstrates that radio is an important channel for the provision of information in emergencies.
- Under the Commercial Radio Code of Practice, commercial radio stations are obliged to play Australian music, up to 25% of total music content in some cases. Providing access to this content allows Australian artists to reach a broad audience who might not otherwise hear their music. At a time when many Australian musicians struggle to gain visibility on international music streaming services, the benefit provided by Australian radio to Australian musicians should not be underestimated.

#### *Increasing use of connected technologies to access radio*

The way that Australians are accessing radio is evolving in a changed media environment, with many more Australians accessing radio through smart speakers and other smart devices (that is, any Internet-connected devices that are able to be voice activated and which provide access to audio entertainment services) and connected car entertainment systems. These trends will inevitably continue. For example, the most recent official metro radio survey undertaken by GfK on behalf of CRA shows that the total number of weekly streaming Australian listeners has increased to nearly 3.6 million.<sup>3</sup>

---

<sup>3</sup> CRA’s media release is available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2024/2024-10-01-Radio-Powers-On-%E2%80%93-Record-Growth-Signals>

As noted in the Proposals Paper, the smart speaker market in Australia is dominated by three players – Amazon, Google and Apple. Even where one of these three global technology companies is not the provider of the device (e.g. Sonos) it is the provider of the OS used for the device. Google and Apple are also the OS providers for almost all smart devices supplied in Australia, and the voice activated assistant software used in those smart devices is the same as that used in smart speakers.

New vehicles are increasingly connected to the internet, with connected car entertainment systems using either the Google or Apple OS:<sup>4</sup>

- 44% Australians have Android Auto/Apple CarPlay in their vehicles<sup>5</sup>;
- 89% of Australians with Android Auto / Apple Car Play listen to radio in their cars.

Vehicle manufacturers control how connected car entertainment systems operate, with Google often providing the OS. Some manufacturers are developing OS based on Android Automotive (a Google technology). Looking forward, Apple will also provide the OS for different vehicle manufacturers. There have been reports of proposals by several vehicle manufacturers to regain control of the OS by implementing their own systems<sup>6</sup>. Some such systems are reported to eavesdrop on audio<sup>7</sup> or hijack broadcast streams with additional messaging<sup>8</sup>. This would be likely to diminish broadcaster revenue in favour of manufacturers.

The key players, being Amazon, Google and Apple (as the OS providers and often manufacturers), as well as other manufacturers of smart devices and vehicle manufacturers, have the power to filter and control the audio content that Australians may access, acting as gatekeepers to this content. This is a power that manufacturers of traditional radio devices, with dedicated analogue or digital tuners, do not have. The power of these platforms (and manufacturers of smart speakers, other smart devices and connected vehicles) is not currently recognised in the BSA. The Proposals Paper correctly indicates that this should be an issue of concern to Australian lawmakers.

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

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

- These gatekeepers are incentivised to promote access to audio content providers that pay for that promotion (either through direct payment or for example through the

---

<sup>4</sup> See: <https://www.edisonresearch.com/wp-content/uploads/2024/08/Infinite-Dial-2024-Australia-Presentation.pdf>

<sup>5</sup> Android Auto and Apple CarPlay are mobile pairing solutions.

<sup>6</sup> GM's Baris Cetinok is committed to building a custom experience to rival that of Apple and Google: <https://www.theverge.com/24285581/gm-software-baris-cetinok-apple-carplay-android-auto-google-cars-evs-decoder-podcast>

<sup>7</sup> Ford Patents In-Car System That Eavesdrops So It Can Play You Ads: <https://www.motortrend.com/news/ford-in-vehicle-advertising-patent/>

<sup>8</sup> Google Wants Google Maps To Suggest Routes for the Places You Hear in Radio Ads: <https://www.autoevolution.com/news/google-wants-google-maps-to-suggest-routes-for-the-places-you-hear-in-radio-ads-237089.html>

platforms and manufacturers inserting advertising into that content) or, in cases where subscription payments are made, where a share of the payments is provided to those gatekeeper entities. Incentives are also provided through co-promotion of products.<sup>9</sup> Commercial radio broadcasters are not in a financial position to compete for promotion with the likes of, for example, Spotify or other international digital platforms.

- The Proposals Paper comments that a “high level of accuracy” has been achieved for voice activated services identifying radio stations over recent years. This is not correct and CRA and commercial radio broadcasters believe there remains a significant level of inaccuracy. For example, recent tests by one of our members using a well-known smart speaker returned the following results:
  - a command to play “KIX Country” returned KIX Country America, not Australia;
  - a command to play “KIIS 1065 on iHeart Radio” returned the US station KFI AM; and
  - a very different command to the one immediately above, being to play “ABC Sydney” also returned the US station KFI AM.

Again, the Proposals Paper correctly identified that this is a concern – Australians should be able to consistently and reliably access the audio content of their favourite radio broadcasters, however they access that content.

- Google, Amazon and Apple have their own audio content services and are able to preference those to the disadvantage of Australian radio services (including potentially by not making Australian radio services available at all).

As an example of our concerns, we raise the outage of Google Assistant’s radio integration. This commenced on 6 April 2023, took eight days to resolve and caused disruption for more than one million listeners who at that time used Google Nest devices to listen to radio (and noting that number has increased since April 2023).<sup>10</sup>

Where CRA differs from the conclusions of the Proposals Paper is that the concerns that are identified in this submission relating to unequal bargaining power and the difficulties of ensuring consistent and reliable access to the audio content provided by radio broadcasters, are not limited only to smart speakers. The same concerns apply to smart devices more broadly and also to connected vehicles.

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

---

<sup>9</sup> <https://newsroom.spotify.com/2019-03-08/5-fast-facts-about-spotify-and-samsungs-partnership-expansion/>

<sup>10</sup> CRA’s media release is available here: <https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2023/2023-04-14-Radio-services-back-on-air-on-Google-sp>.

many radio broadcasters also offer. Instead, the regime would provide a base level of protection for critical services for Australians.

The Australian radio sector - commercial radio broadcasters, the ABC, SBS and community radio - is united in its view that a radio prominence regime, applicable to smart speakers, other smart devices and connected car entertainment systems (with the potential to include other devices in future), is required to be legislated to provide the best opportunity for radio to have a sustainable future.

#### **4. The appropriate approach for a prominence regime for radio: supplementing the framework put forward in the Proposals Paper**

The proposed radio prominence regime is straight forward. The core requirements are that, at no cost to radio broadcasters, OS providers, predominantly Google, Apple and Amazon, as well as manufacturers of the regulated devices, should be required to ensure:

- consistent and reliable access to Australian radio is available on smart speakers and other smart devices, connected car entertainment systems and potentially other devices in future;
- Australian radio broadcasters should control how their audio content is accessed on these regulated devices, meaning that access should be through the apps nominated by the radio broadcasters; and
- no advertising or other content may be added to Australian radio content except with broadcaster consent.

The attachment to this submission sets out drafting of the key provisions for the new regime, and an explanation of those provisions is set out below.

The regime that has been suggested in this submission extends beyond that set out in the Proposals Paper in a number of important respects:

- the audio content to which the regime applies should not be limited to simulcast streaming of broadcast radio;
- the regime must allow the radio broadcasters to determine the access pathway to their audio content services. If this is not an integral component of the new provisions, the key players identified in the previous section of this submission will continue to have a gatekeeper role and little will be achieved by the new regime;
- from commencement, the regime should apply to all smart devices that incorporate voice assistants, not limited to smart speakers. The new provisions of the BSA should allow for connected cars to be added in the short term and other devices to be added in future, as the ways in which Australians access the audio content of Australian radio broadcasters evolve; and
- to ensure compliance with the new laws, both manufactures and OS providers should be regulated.

It will also be important to ensure that the role of the ACMA is limited and well defined to avoid uncertainty for both radio broadcasters and the regulated entities. Given the urgency in implementing the regime, transitional periods should be minimised.

### **Part 9E of the BSA and the UK Media Act provide guidance**

The BSA has recently been amended to incorporate a new Part 9E which sets out a television prominence regime. That Part 9E, together with the UK Media Act (which is discussed immediately below), provide guidance for a radio prominence regime.

The United Kingdom's Media Act 2024 (**UK Media Act**) incorporates a radio prominence framework that would be, as recognised in the Proposals Paper, a broadly appropriate model for the Australian legislation.

As set out in the explanatory notes for the UK Media Act:<sup>11</sup>

*With the rapid growth of listening via voice-activated connected audio devices over recent years, UK radio is increasingly operating within an environment which is occupied by larger platforms with competing services and the capability to drive audiences elsewhere. This Act ensures that UK radio stations are not charged by these platforms for the provision of their live services to listeners, that platforms cannot overlay content (such as advertising) over the top of those services, and that stations are reliably provided in response to listeners' voice commands. It also enables station providers to request a default route for their stations to be delivered to listeners.*

Importantly, while the UK Media Act initially applies only to smart speakers, it provides for the regime to be extended to connected cars and to other devices. This will allow the UK regime to respond to developments in technology and changes in consumer preferences. This is a key design element that CRA recommends is adopted in Australia.

Under the UK Media Act, the UK Secretary of State may make a new designation where the level of use of the relevant service (which would be defined as a device under the legislation proposed by CRA in this submission) is significant. To paraphrase the explanatory material for the UK Media Act,<sup>12</sup> this recognises that devices that are used by a significant number of listeners to access radio content should be designated.

### **Key concepts**

Below we have discussed the key concepts for inclusion in the new radio prominence law and, where relevant, the areas in which CRA's proposals differ from those in the Proposals Paper.

#### **(i) Regulated radio services**

CRA supports the Proposals Paper recommendation that the regime should apply not only to commercial radio broadcasters but also to national and community broadcasters. CRA recommends that regulated radio services would encompass both:

- (where a regulated audio device is capable of providing broadcasting services) the radio broadcasting services provided by commercial radio broadcasters, the national broadcasters and community radio broadcasters, whether AM, FM or DAB+ broadcasting; and
- audio content that is made available online on a free basis, whether directly by the broadcaster or through an aggregator app selected by the broadcaster (such as

---

<sup>11</sup> Available here: <https://www.legislation.gov.uk/ukpga/2024/15/notes/division/3/index.htm>

<sup>12</sup> Available here: [https://www.legislation.gov.uk/ukpga/2024/15/pdfs/ukpgaen\\_20240015\\_en.pdf](https://www.legislation.gov.uk/ukpga/2024/15/pdfs/ukpgaen_20240015_en.pdf), page 50.



RadioApp, LiSTNR, Nova Player or iHeart) and not limited to online simulcasts of broadcast radio. The content made available on broadcasters' apps is analogous to television broadcasters' BVOD apps.

CRA does not agree with the conclusion reached in the Proposals Paper that it would be unreasonable to require regulated entities to provide prominence for streaming and on-demand content. Such content may be accessed easily through an app nominated by a radio broadcaster by use of voice commands, in the same way that simulcast content is accessed. While CRA acknowledges that extending radio prominence beyond online simulcasts is a step beyond the UK Media Act, adopting that approach in Australia would reflect the popularity of this audio content, made available by radio broadcasters, free of charge, to Australian audiences.

It is also important to ensure that the radio broadcaster can select the app (potentially being an aggregator app) through which its audio content is provided, unless the listener nominates another app. This will ensure that charges or other restrictions cannot be imposed on radio broadcasters by gatekeepers determining that particular aggregator apps must be used.

The Proposals Paper suggests that it is unclear whether a regulated nomination process, where the radio broadcaster was able to select the app through which its audio content is surfaced, would provide any material enhancement for listeners. While that may be the case, not having the ability to select the access pathway will have a significant impact on radio broadcasters.

Without a regulated nomination process, regulated entities may require broadcasters to use an app that will impose unreasonable conditions, such as a requirement for payment or other restrictions that may adversely impact the user experience, such as unreasonable data collection practices. Broadcasters should have the ability to select their own apps, provided that (as applies under Part 9E of the BSA for television prominence and discussed in the next paragraph) the app is technically compatible with the OS of the relevant device or entertainment system.

This also links to the separate issue that is raised in the Proposals Paper regarding whether the regime should provide for "regulated standards" or "negotiated standards" regarding technical and other operational requirements.

CRA supports a regime that is consistent with Part 9E, which provides that the ACMA may determine in what circumstances a regulated radio service is offered. If that approach is adopted, then there would be no reason why radio broadcasters could not nominate the access pathway for their services – as the access pathway would need to be able to be integrated with the OS of the regulated audio device meaning that the regulated entities would not be negatively impacted by such nominations.

(ii) Regulated audio devices

CRA recommends that the radio prominence regime should be applied to a broader range of devices and services than is contemplated by the Proposals Paper.

The key devices to be regulated for a radio prominence regime would initially be smart speakers and other smart devices that are able to be voice activated and which provide access to audio entertainment services. The voice activated assistants that are used for smart

speakers incorporate the same software as is incorporated in other smart devices. There is therefore neither a technological nor policy reason to limit the regime to smart speakers.

In addition, for the reasons set out in this submission, the legislation should provide for connected car entertainment systems and other services and devices to be designated by the Minister as subject to the regime.

The primary criterion that the Minister should consider in making such a designation is the popularity of the use of the device by Australians for listening to radio using the internet. This reflects the underlying policy intent of the proposed laws, that is, to ensure that Australians are able to consistently and reliably access the audio content of their favourite radio broadcasters, however they chose to do this.

Connected car entertainment systems would need to meet this popularity criteria before designation. CRA recommends that an obligation is imposed on the Minister to consider this designation not later than 6 months after the regime is first implemented.

(iii) Regulated entities

CRA has described above both the nature of the radio broadcaster services that should benefit from the proposed new regulation and the types of devices that should be subject to the regulation, but there is also the question of which *class of entities* should be subject to obligations under the regime.

Under Part 9E of the BSA, the *manufacturers* of the regulated devices are required to comply with the legislative framework. This compares to the UK Media Act, which provides that it is the *provider of the radio selection service* (that is, the provider of the OS that allows the radio service to be played) that is subject to obligations.

In some cases, the manufacturer and the provider of the OS will be the same, which would be more likely in the case of the products offered directly by the larger platforms, such as Google Nest. But this will not always be the case. For example, in the case of smart speakers, many third party manufacturers (such as Sonos) use the OS provided by one or more of the larger platforms. And, of course, when the framework is expanded in the short term beyond smart speakers and other smart devices to connected cars, the manufacturers and providers of the OS will almost always be different.

The Proposals Paper suggests that obligations should only be imposed on the OS provider, instead of the device manufacturer on the basis of the nature of the underlying technology. However, irrespective of the underlying technology, the hardware manufacturer and the OS provider work together to determine what audio content may be accessed on the proposed regulated devices. Unless both the manufacturer and the OS provider are regulated, the regime will not be fully effective.

Therefore, CRA's recommendation is that the new framework imposes obligations on *both* the manufacturers and the providers of the OS. Only by extending the obligations to both these key entities, who are jointly responsible for providing regulated devices to Australians, will it be possible to ensure compliance with the new radio prominence framework.

(iv) Core obligation: “consistent and reliable access”

As the Proposals Paper acknowledges, to be effective, the radio prominence regime should incorporate an obligation for consistent and reliable access to the audio content of Australian radio broadcasters.

CRA agrees with the comments in the Proposals Paper that a high level of accuracy is required in accessing audio content provided by radio broadcasters and that this should be enshrined in the legislation. This should be in a similar form to sections 130ZZN(1) to (3) of the BSA, which are part of the television prominence regime. This would ensure, as contemplated in the Proposals Paper, that regulated entities would be required to ensure that regulated devices respond to a user request for a particular regulated radio service and to play the service consistently and reliably to the extent that this is reasonable in the circumstances.

The Proposals Paper contemplates that the ACMA would have the capacity to determine what constitutes “consistent and reliable” responses to user requests. This is not required – whether consistent and reliable responses are provided is capable of being objectively determined and such guidance would not be necessary. It is also CRA’s view that a technical exclusion from compliance with the requirement for “consistent and reliable” responses should not be incorporated into the regime. This would be too vague. The requirement for “consistent” responses addresses the issue of concern identified in the Proposals Paper, as very infrequent and limited service delivery problems would not result in a breach of this consistency requirement.

In addition, the new regime should impose a reasonable steps obligation on each regulated entity to ensure that the device continues to comply with those prominence requirements until updates of the software used in the device cease to be provided (whether by the manufacturer or the OS provider), the user takes action to disable the prominence requirements or regulated services are no longer provided by the relevant radio broadcaster.

This obligation for consistent and reliable access should not be qualified, as contemplated by the Proposals Paper, by being in a manner that is “reasonable in the circumstances”. The technology exists to ensure consistent and reliable access and there is no policy reason to qualify this requirement as it would undermine the efficacy of the new prominence regime.

When the framework is applied to connected car entertainment systems (and potentially other devices) in future, appropriate regulations will be able to be made to incorporate minimum prominence requirements for those devices. This approach for smart speakers would not interfere with the rights of other audio content providers whose services may be available through a regulated device, which may be promoted to users when they do not make a specific request for the audio content of a specific radio broadcaster. It would also give full effect to consumer choice – as it would only be where the user specifically asked for the regulated radio service that it would be required to be played through the smart speaker.

(v) Additional prominence requirement: no alterations

Reflecting both Part 9E of the BSA and the UK Media Act, and as recognised in the Proposals Paper, a key additional prominence requirement is that, other than for the purposes of identifying the relevant service immediately before it commences playing, manufacturers must ensure that no other content is provided before, or interrupts, the regulated radio service when it is provided through a regulated device. This will stop additional advertising or

other content being added to Australian radio content without the consent of the radio broadcaster.

(vi) A measured and staged approach

The radio prominence regime should be implemented in a measured manner and for this reason CRA recommends a staged approach:

- the prominence requirements for smart speakers and other smart devices are clear and straightforward and should be incorporated directly in the new legislative regime;
- CRA supports additional minimum prominence requirements being implemented via separate regulation made by the Minister for Communications.

This would allow prominence to be extended to connected cars following appropriate consultation, which as noted above CRA recommends occurs within six months of commencement of the new regime.

It is important that the door is not shut on bringing other types of device within the scope of the regime. If other types of devices in future are used by Australians to listen to radio, there should be the potential to bring them within this regime.

This staged approach will ensure that the delay in implementing the prominence regime for smart speakers and other smart devices is minimised and will provide necessary flexibility, particularly in light of ongoing technology advances.

When the framework is applied to connected car entertainment systems (and potentially other devices), appropriate regulations will be able to be made to incorporate minimum prominence requirements for those devices. It will be critical for car entertainment systems that have any form of primary user interface to provide on that interface, immediately on the interface being activated, a means to access radio broadcaster services. It should not be necessary to require scrolling to other pages of an interface, or navigating a hierarchical menu, to access those services.

(vii) Other provisions

CRA supports transparency for the new regime. Therefore, as applies under the UK Media Act, regulated entities should make publicly available their policy as to how they will comply with the radio prominence regime.

CRA also supports a complaints process being implemented for the new regime. Radio broadcasters must be able to easily raise their complaints with regulated device manufacturers so that these may be quickly responded to.

Finally, while the attached drafting for the key provisions of the legislative regime does not include all of the provisions from the television prominence regime now incorporated in Part 9E of the BSA, CRA supports the inclusion of those provisions in the radio prominence regime, particularly the ACMA's information gathering powers, the civil penalties regime and the review regime.

(viii) Transitional provisions should be minimised

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

CRA recommends that prompt action should be taken to introduce the necessary legislation to amend the BSA to incorporate the radio prominence requirements.

For the commencement of the regime for smart speakers and other smart devices, the transitional period for commencement should be short. For that regime, no hardware changes are required for smart speakers to implement the required changes to give effect to the proposed regime. Only software updates are required, which can be rapidly rolled out, as is the case in a multitude of other technologies (e.g. phones, satellite navigation systems etc). This means that, not only may the new rules apply very quickly after the legislative reforms commence, but the rules should apply to both existing smart speakers and smart devices and those regulated devices manufactured after the commencement of the new regime.

For the implementation of the regime for other devices, being in the short term connected cars, the transitional regime should be determined during the consultation period, however, the aim should be to ensure that the transitional provisions are as short as possible and that the new regime applies to both existing regulated devices and to new regulated devices first sold after the regime commences.

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

## **Commercial Radio & Audio**

November 2024

# ATTACHMENT: KEY LEGISLATIVE PROVISIONS

*These provisions are drafted on the assumption that they will be added as a new Part 9F of the Broadcasting Services Act 1992*

## Part 9F—Prominence framework for radio

### Division 1—Introduction

#### 130ZZY Simplified outline of this Part

The following is a simplified outline of this Part:

- This Part sets up a framework to regulate the accessibility of certain broadcasting services and streaming services (called **regulated radio services**) on devices designed for listening to audio content (called **regulated audio devices**).
- The main rules are that a person who is a manufacturer of a regulated audio device or the provider of the operating system for a regulated audio device, or a related body corporate of such a person:
  - (a) must not supply the device in Australia if the device does not comply with the minimum radio prominence requirements; and
  - (b) must ensure the device continues to comply with those requirements after the device is supplied; and
  - (c) must not charge a regulated radio service provider in relation to the device complying with those requirements; and
  - (d) must take reasonable steps to ensure that the audio content provided by a regulated radio service is not altered or interfered with.
- A person who contravenes these rules may be liable to a civil penalty.
- Regulated radio services include national radio broadcasting services, commercial radio broadcasting services, community radio broadcasting services and radio streaming services provided by the broadcasters of those services free to the public.
- Minimum radio prominence requirements for initial regulated audio devices include that regulated radio services must be consistently and reliably found through voice commands. The regulations may prescribe additional minimum radio prominence requirements for regulated audio devices and regulated radio services.
- The ACMA has information gathering and enforcement functions and powers in relation to this Part.
- There is to be a review of the operation of this Part.

## 130ZZZ Objects

The objects of this Part are to ensure that audiences throughout Australia are able to easily access free-to-air radio content and that providers of commercial radio broadcasting services, community radio broadcasting services or national radio broadcasting services may not be charged for the provision of their services to listeners, however those radio services are accessed, for the purposes of:

- (a) ensuring that audiences throughout Australia are able to access, at no cost, audio content that is of cultural significance to Australians; and
- (b) ensuring that audiences throughout Australia are able to access, at no cost, audio content that is of public significance at a local, regional or national level; and
- (c) contributing to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

## 130ZZZA Definitions

In this Part:

**Australia**, when used in a geographical sense, includes all the external Territories.

**listed carriage service** has the same meaning as in the *Telecommunications Act 1997*.

**manufacturer** has the same meaning as in the *Competition and Consumer Act 2010*.

**minimum radio prominence requirements**: see sections 130ZZZE and 130ZZZF.

**offered** has a meaning affected by subsection 130ZZZD(9).

**primary user interface** means, in respect of a regulated audio device, the interface of that device that:

- (a) is the home screen or main screen of the device that is visible to the user immediately on a device being activated for use; or
- (b) if a home screen or main screen cannot be determined in accordance with paragraph (a) of this definition, meets the description or requirements (if any) determined by the Minister in a determination in respect of that device made in accordance with subsection 130ZZZB(2).

**provider of a regulated audio device** means:

- (a) the manufacturer of that regulated audio device and each related body corporate of that manufacturer; and
- (b) the provider of the operating system for that regulated audio device and each related body corporate of that provider.

**regulated audio device** has the meaning given by section 130ZZZB.

**regulated radio service** has the meaning given by section 130ZZZC.

**regulated radio service provider** means a person that provides a regulated radio service.

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

**supply** has the same meaning as in the *Competition and Consumer Act 2010*.

### **130ZZZB Regulated audio devices**

#### *Meaning of **regulated audio device***

- (1) For the purposes of this Part, a **regulated audio device** means:
- (a) equipment that is capable of connecting to the internet which is able to be activated by spoken commands recorded by that equipment and that enables, or among other things enables, a user of the equipment to access audio content services that are made available to the general public; or
  - (b) specified equipment that is capable of connecting to the internet that the Minister determines, under subsection (2), is a regulated audio device;
- but does not include specified equipment that the Minister determines, under subsection (3), is not a regulated audio device.

#### *Minister may determine specified regulated audio devices*

- (2) For the purposes of paragraph (1)(b), the Minister may, by legislative instrument, determine that specified equipment that is capable of connecting to the internet is a **regulated audio device**. If the Minister makes a determination under this subsection (2) the determination must specify if the device has a primary user interface and, if it does, may also describe the requirements for that interface.
- (3) For the purposes of subsection (1), the Minister may, by legislative instrument, determine that specified equipment that is capable of connecting to the internet is not a **regulated audio device**.

#### *Conditions for determination*

- (4) The Minister may determine that specified equipment that is capable of connecting to the internet is a regulated audio device in accordance with subsection (2) only if the Minister considers that the level of use of the service in Australia to listen to services of the type referred to in subsection 130ZZZC(1)(b) is significant. For the avoidance of doubt, the Minister may consider the level of use to be significant if the Minister considers it to be significant in certain circumstances, such as while in a vehicle.
- (5) The Minister must consider, within the six month period starting on the first date of commencement of this Part, whether to make a determination that equipment included in vehicles offered for sale in Australia that is capable of connecting to the internet and providing access to audio content is a regulated audio device.
- (6) Before making a determination under subsection (2) or (3) the Minister may:
- (a) issue a public notice specifying the determination that the Minister proposes to make; and
  - (b) inviting public comment on the determination to the Minister within 30 days after the notice is published.
- (7) The Minister must have regard to any public comment received as contemplated by subsection (6) in determining to make a legislative instrument under subsection (2) or (3).



*ACMA may give advice*

- (8) The ACMA may provide advice to the Minister on any matter that is relevant to:
- (a) the determination, by the Minister, that specified equipment is a regulated audio device; or
  - (b) the determination, by the Minister, that specified equipment is not a regulated audio device.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

### **130ZZZC Regulated radio services**

#### *Meaning of regulated radio service*

- (1) For the purposes of this Part, a **regulated radio service** means:
- (a) the following broadcasting services:
    - (i) national radio broadcasting services provided by the Australian Broadcasting Corporation;
    - (ii) national radio broadcasting services provided by the Special Broadcasting Service Corporation;
    - (iii) commercial radio broadcasting services provided by a commercial radio broadcasting licensee (other than a licensee who holds a licence allocated under subsection 40(1)); or
    - (iv) community radio broadcasting services provided by a community radio broadcasting licensee; or
  - (b) a service that makes audio content available free to the general public using a listed carriage service where the service is provided by any of the following, using an application that is covered by subsection (5) of this section:
    - (i) the Australian Broadcasting Corporation;
    - (ii) the Special Broadcasting Service Corporation;
    - (iii) a commercial radio broadcasting licensee (other than a licensee who holds a licence allocated under subsection 40(1));
    - (iv) a community radio broadcasting licensee; or
    - (v) a related body corporate of a person referred to in subparagraph (b)(iii) or (b)(iv) of this subsection (1); or
  - (c) a specified service that the Minister determines, under subsection (2) of this section, is a regulated radio service where the service is provided using an application that is covered by subsection (5) of this section;

but does not include a specified service that the Minister determines, under subsection (3) of this section, is not a regulated radio service.

#### *Minister may determine specified regulated radio services*

- (2) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, determine that a specified service is a **regulated radio service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) For the purposes of subsection (1), the Minister may, by legislative instrument, determine that a specified service is not a **regulated radio service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

#### *ACMA may give advice*

- (4) The ACMA may provide advice to the Minister on any matter that is relevant to:
- (a) the determination, by the Minister, that a specified service is a regulated radio service; or
  - (b) the determination, by the Minister, that a specified service is not a regulated radio service.

#### *Radio service applications*

- (5) For the purposes of subsection (1), an application is covered by this subsection in relation to a service provided by a person listed in subsection (1) if the application is approved by that person for the purpose of providing access to the particular service. For the avoidance of doubt a service provider may approve more than one application under this paragraph (5)

## **Division 2—Minimum radio prominence requirements**

### **130ZZZD Regulated audio devices must comply with minimum radio prominence requirements**

#### *Consistent and reliable access*

- (1) Each provider of a regulated radio device must not supply that device, or supply or cause to be supplied any software update for that device, if:
- (a) the device has been, or is, supplied to a person in Australia; and
  - (b) the device does not comply with the minimum radio prominence requirements applicable to that regulated audio device for regulated radio services that are offered by regulated radio service providers.

Note 1: In relation to paragraph (b), supply does not include supply for use outside Australia (see the definition of **supply** and subsection 95A(2) of the *Competition and Consumer Act (2010)*).

Note 2: In relation to paragraph (c), see subsection (9) for when a service is or is not taken to be **offered**.

- (2) A person who is subject to a requirement under subsection (1) in relation to a regulated audio device must take reasonable steps to ensure that the device continues to comply with the minimum radio prominence requirements applicable to that regulated audio device for each regulated radio service that is offered by any regulated radio service provider during the period:

- (a) beginning immediately after the commencement of this section 130ZZZD or, if later, the time the device is supplied;
- (b) ending at the earliest of the following times:
  - (i) the time when an action by a user of the device results in the device not complying with those requirements;
  - (ii) the time when the software used on the device is no longer provided, updated or supported by the provider, or by another person on behalf of the provider;
  - (iii) the time when the regulated radio service is no longer offered by the regulated radio service provider.

Note: In relation to subparagraph (b)(iii), see subsection (9) for when a service is or is not taken to be **offered**.

- (3) A person who is subject to a requirement under subsection (1) or (2) must not require any regulated radio service provider to pay a fee, charge or any other consideration for, or in connection with, the device complying with those requirements.
- (4) A person who is subject to a requirement under subsection (1) or (2), must take reasonable steps to ensure that the audio content provided by any regulated radio service that is offered by any regulated radio service provider, including any advertising or sponsorship matter, is not altered or interfered with.

#### *Civil penalty provisions*

- (5) Subsections (1), (2), (3) and (4) are civil penalty provisions.

#### *Exception*

- (6) Subsection (1) or (2) does not apply to a person if:
  - (a) the person is subject to a requirement under that subsection; and
  - (b) the person fails to comply with that requirement; and
  - (c) that failure to comply is because of circumstances that are outside the control of the person.

#### *Warnings*

- (7) If the ACMA is satisfied that a person has contravened subsection (1), (2), (3) or (4), the ACMA may issue a formal warning to the person.
- (8) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subsection (7) is taken to be a notice under this Part.

#### *ACMA may prescribe when a regulated radio service is **offered***

- (9) For the purposes of this section, the ACMA may, by legislative instrument:
  - (a) determine circumstances in which a regulated radio service is or is not taken to be **offered**; and

- (b) without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, determine different circumstances in relation to different regulated radio services or kinds of regulated radio services;

and where a regulated audio device can receive regulated radio services referred to in 130ZZZC(1)(a) those services are deemed to be offered on that device.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

### **130ZZZE Minimum radio prominence requirements for devices referred to in paragraph 130ZZZB(1)(a)**

#### *Scope*

- (1) This section applies in relation to all regulated audio devices referred to in paragraph 130ZZZB(1)(a) of the Act.

#### *Minimum radio prominence requirements*

- (2) The device must comply with the minimum prominence requirements (***minimum radio prominence requirements***) set out in subsection (3) for, in respect of each regulated radio service, each application covered by paragraph 130ZZZC(5) of the Act in respect of that service.
- (3) The requirements are all of the following:
  - (a) the application must be installed on the device;
  - (b) the device must enable a user, at all times during which the application is made available, to:
    - (i) select the regulated radio service; and
    - (ii) cause, on a consistent and reliable basis, the regulated radio service to play through the application (or any other application covered by paragraph 130ZZZC(5) of the Act in respect of that service if there are more than one application) and not any other application unless the other application is specifically requested by the user,by giving spoken commands that are received by the device;
  - (c) where a regulated radio service is played through the device, no items are played before the selected regulated radio service, other than:
    - (i) a brief identification of the selected regulated radio service; and
    - (ii) if the regulated radio service provider agrees, one or more advertisements; and
  - (d) the application must be able to be updated when an update is made available by the provider of the application.
- (4) Subsections (2) and (3) are not to be taken to require any provider of a regulated audio device to override the preferences of a user of that device as to the way in which the service operates.

### **130ZZZF Regulations may prescribe additional minimum radio prominence requirements**

- (1) The regulations may prescribe additional requirements (*minimum radio prominence requirements*), with which a regulated audio device must comply, in relation to any or all of the following:
  - (a) access to regulated radio services on the device, including, where applicable, services of the type referred to in section 130ZZZC(1)(a);
  - (b) without limiting subparagraph (1)(a), how regulated radio services may be accessed by voice commands on the device;
  - (c) the display, location or positioning on the device or (if any) a primary user interface of the device of:
    - (i) regulated radio services; or
    - (ii) applications, covered by subsection 130ZZZC(5), that are used to access regulated radio services; or
    - (iii) any other thing used to access regulated radio services;
  - (d) installation on the device of applications, covered by subsection 130ZZZC(5), that are used to access regulated radio services;
  - (d) the availability for installation on the device of such applications;
  - (e) the updating of such applications that are installed on the device.
- (2) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the regulations may prescribe:
  - (a) different requirements in relation to different regulated audio devices or kinds of regulated audio devices; or
  - (b) different requirements in relation to different regulated radio services or kinds of regulated radio services; or
  - (c) different requirements in relation to different kinds of things or circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (4) If regulations under this section make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Minister must ensure that the text of the matter applied, adopted or incorporated is published on the Department's website.
- (5) Subsection (4) does not apply if the publication would infringe copyright.

### **130ZZZG ACMA may make technical guidelines about regulated audio devices**

- (1) The ACMA may make written guidelines to assist in determining technical requirements for compliance with the requirements by regulated audio devices with sections 130ZZZE and 130ZZZF.
- (2) The Minister may direct the ACMA to make guidelines under subsection (1).
- (3) Guidelines made under subsection (1) are not a legislative instrument.
- (4) Guidelines made under subsection (1) must be published on the ACMA's website.
- (5) Guidelines under subsection (1) that are inconsistent with this Act, the regulations or a legislative instrument made under subsection 130ZZZB(2) or (3) have no effect to the extent of the inconsistency.

### **130ZZZH Statement of compliance**

- (1) Each provider of a regulated audio device must prepare a statement as to how that provider intends to comply with the requirements of this Part 9F.
- (2) Each provider of a regulated audio device must keep that statement under review and, where appropriate, revise it.
- (3) Each provider of a regulated audio device must publish its statement and any revision of its statement.

Note: A provider of a regulated audio device will usually make its statement available on its website.

### **130ZZZI Complaints procedure**

- (1) Each provider of a regulated audio device must establish and maintain procedures for the handling and resolution of complaints made by regulated radio service providers that the provider is failing, or has failed, to comply with the requirements of this Part 9F.
- (2) Each provider of a regulated audio device must publish its complaints procedure.

Note: A provider of a regulated audio device will usually make its complaints procedure available on its website.