

Feedback on Specific Proposals for Reforms to the Anti-siphoning Scheme and Updates to the Anti-siphoning List

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Introduction

Having made a submission to the *Review of the Anti-siphoning Scheme Consultation Paper*, we provide brief feedback on the specific reform proposals in the *Anti-siphoning Review Proposals Paper*. In doing so, we address the respective three preliminary findings, models and proposals, and relate them to the six proposals in our previous submission.

Preliminary finding 1: the core objective of the anti-siphoning scheme remains relevant

We strongly agree with this finding, which is consistent with our submission's **Proposal 1: 'Modernising' policy to meet the new challenges of the digital age means expanding and strengthening the anti-siphoning regulations, not reducing and weakening them.**

It is obvious that there has been considerable change to the media landscape since the passing into law of the *Broadcasting Services Act 1992*, but inequalities of access and, especially, availability and financial capacity, remain. Indeed, in the current inflationary environment, discretionary expenditure on communication and media services is under greater pressure than at the time that this *Review* was initiated. The emphasis that we placed on foundational social equity principles regarding events of national importance and cultural significance has been supported in these *Review Findings*, and we agree with the Government's position on maintaining and enhancing the anti-siphoning scheme.

Preliminary finding 2: the scheme has an ongoing role but needs to be broadened to incorporate online services

The aforementioned changes to the media environment, which include the advent of multi-channelling, streaming, broadcast video on demand, mobile and online services, demand a more all-encompassing regulatory regime. It is no longer tenable to focus policy on once-dominant broadcast television (as the name of the original Act signifies), despite the replacement of analogue by digital technology. This preliminary finding is consistent with our **Proposal 2: *The anti-siphoning laws should be extended to all potential sources of digital media.***

Preliminary finding 3: the composition of the anti-siphoning list needs to be reconsidered

It follows that, if the anti-siphoning list is to be maintained, it should also be reconsidered. There is unusual consensus among interested parties that the current list is outmoded, although disagreement about its new composition exists. The list is the product of a time when women's and disability sports (especially the Paralympics) were considered largely 'unsaleable'. The massive success of the 2023 FIFA Women's World Cup and the popularity of the Paralympics have dramatically demonstrated the shortcomings of historical media sport industry 'wisdom'.

This preliminary finding is also consistent with our **Proposal 5: *The anti-siphoning list should be maintained, and subject to regular reviews, with the reasons for decisions made as transparent as possible.***

Model 1: Free-to-view

We agree that this ‘technology-neutral’ framework is more vulnerable to social inequity than one that relies on broadcast television to maximise actual – as opposed to notional – reach under mid-term foreseeable circumstances.

We share the *Proposals Paper’s* lack of enthusiasm for this model because, if implemented, it would necessarily deny access to sport events of national importance and cultural significance to many members of the Australian public.

Model 2: Broadcasting safety net [Government preferred]

This is a relatively modest adjustment that is intended to protect events of national importance and cultural significance for substantial (especially socially disadvantaged and regionally isolated) segments of the Australian population, and to encompass online services for the first time. At the same time, it is intended to prevent free-to-air broadcasters gaining an unwarranted commercial advantage and, crucially, from shifting key sports onto their on-demand or other services, including with streaming partners.

As we pointed out in *Proposal 4: Rules should be enforced* in our submission to the *Discussion Paper*, any preference given to free-to-air broadcasters in this space must be accompanied by rigorous enforcement of the framework of rules. These should be unequivocal in the new legislation, closing the current on-selling loophole and properly penalising any breaches.

We note the longstanding complaints by sports bodies that models such as these constitute unwarranted interference in their commercial negotiations with media entities and with the exploitation of their media rights. The Coalition of Major Professional and Participation Sports (COMPPS) submission to the *Discussion Paper* indicates that it is opposed in principle to any form of anti-siphoning list and any control on its commercial deal-making.

It is our contention that, as has occurred regarding these sports’ exploitation of gambling revenue, the removal of a broadcasting safety net would be likely to see a degradation of social equity principles and the continued privileging of elite over community sport. We also draw attention to the fact that many major professional sports continue to enjoy favourable tax concessions and benefit from significant direct and indirect public funding to support their operations, stadia, and community engagement programs.

Model 3: Free-to-air first

We agree with the Government position that this model would confer unreasonably generous commercial advantages on free-to-air broadcasters, and that non-broadcast service provision should be contestable.

Option 1: The streamlined list

There is perhaps some exaggeration in the *Proposals Paper* that this list could only deliver a drastically reduced number of events (estimated at 330 – about 20 per cent of the current approximately 1,900 offerings). Nonetheless, we agree that, in the media sport environment for at least the next decade, a streamlined list of this kind would be socially inequitable.

Option 2: The modernised list [Government preferred]

A modernised list as proposed here would cover approximately 2,500 events, a 30 per cent increase that diverges sharply from the 80 per cent decrease noted for Option 1. Such numbers and percentages are not fixed – this model permits considerable flexibility in the volume and range of events covered, potentially in both directions. In our submission to the *Proposals Paper*, we criticised the under-representation of women’s and other sports on the list, and so support the increase signalled by Option 2. However, we note that it still favours the 11 sports already on the list, meaning that the commitment to modernisation will be overly restricted if it is not regularly reviewed.

Option 3: The expanded list

This descriptor is a little misleading because Option 2 also proposes – at least for now – an expanded list. Its estimated 50 per cent (approximate) increase on the current list to 2,800 events is, though, 20 per cent greater than Option 2 (2,500 events) and approaching nine times greater than Option 1’s reduced event number (330). The Government position is that this enlarged list would tip the balance too far towards free-to-air television broadcasters and away from sports bodies and other sports content providers and platforms. It is also concerned that free-to-air television broadcasters may not acquire listed events, leaving insufficient time for other media sport service providers to act during the post-delisting window of 26 weeks. A potential way of countering this problem might be to widen the window, perhaps to 39 or even 52 weeks, which would be feasible in many cases given the often-lengthy contractual lead-in times. A larger window might help deter commercial game playing among free-to-air television broadcasters in exploiting their primary access to listed events. By the same token, revisions to the list would need to be handled with care given any longer de-listing window.

In 2017, the Coalition Government reduced the list from about 1300 to 1200 events, raised the de-listing period from 12 to 26 weeks, and permitted listed events to be shown on digital multichannels. We supported the latter two changes, but not the reduction of the number of events. *Our preference is for the expanded list (Option 3) and we disagree with the Labor Government position that the case for it is unpersuasive.* It is probable that the Government’s preference for the modernised list (Option 2) is that it constitutes a compromise in the light of the drastic reductions made in the streamlined list (Option 1) and, indeed, of the possibility that there could be no list at all.

While *we favour Option 3* on the grounds that it brings in unlisted events of demonstrable national importance and cultural significance (for example, ‘Each international Netball match that involves the senior Australian representative team that is played in Australia’), *we accept that Option 2 improves the list and that Option 1 unacceptably degrades it.*

Conclusion

We are pleased to see that this *Proposals Paper* affirms the importance and relevance of the anti-siphoning scheme, supports its broadening to encompass non-broadcasting (especially online) services, and recommends a larger, more diverse ('modernised') list. We agree that the Government's preferred *Model 2: Broadcasting safety net* is the most effective of the three presented in recognition of its preliminary findings. We favour *Option 3: The expanded list*, reject *Option 1: The streamlined list*, but nonetheless regard the Government-preferred *Option 2: The modernised list* as an improvement on current arrangements.

To return to our submission to the *Discussion Paper*, we reiterate the following proposals, and maintain that any new legislation should be consistent with the following:

Proposal 3: The ability of FTA networks to secure broadcasting rights brings the responsibility to deliver them to enable the greatest public access.

Proposal 4: Rules should be enforced.

Proposal 5: The anti-siphoning list should be maintained, and subject to regular reviews, with the reasons for decisions made as transparent as possible.

Proposal 6: There should be a budget allocation for partnerships between particular sports, FTA networks and government.

These safeguards and initiatives are imperative because we do not wish to see any of the acknowledged flaws of the existing anti-siphoning scheme carried over into the revised one. As former Coalition Minister for Communications Fifield noted:

[the anti-siphoning list] does not mandate that free-to-air broadcasters have to purchase events. It does not mandate that if they do purchase, that they have to show them. And it does not mandate that if they do purchase events that they can't then on-sell them to other platforms. The list ... is there to increase the likelihood some of these significant events are on free TV.

We seek assurance that these loopholes, particularly those pertaining to on-selling (Proposal 3), are closed in the new legislation, and that it will be scrupulously enforced by the Australian Communications and Media Authority (ACMA) (Proposal 4). In terms of transparency (Proposal 5), an expert anti-siphoning advisory group might be constituted along the lines of the recently-announced *Play our Way* grants program, which could also make recommendations on a budget allocation for broadcasting some under-represented sports left off the revised list (Proposal 6) that can be accessed free by audiences.

Finally, the words 'public service broadcasting/media' appear in neither the *Discussions* nor *Proposals Papers*, although there are references to 'national broadcasters'. It is of concern that there is little apparent interest in the historical and potential roles of public service broadcasters (ABC and SBS) except in instances of hoarding. We contend that a more active role in media sport by public service media, especially given their contributions to developing sport broadcasting prior to its domination by commercial media organisations, could be proposed by the Government when considering additional funding support for under-represented sports in the media that would not, as occurred under the Coalition, be awarded to a subscription broadcaster.