



Submission by Free TV Australia

Review of the anti- siphoning scheme

Response to the Proposals Paper

September 2023

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1. Executive Summary

- Free TV welcomes the opportunity to provide feedback on the Government's anti-siphoning scheme proposals paper. While we support the expansion of the scheme to all online content service providers, the Government's preferred position fails to deliver on the audience expectation that live and free sport should be available to them from a free local TV network, regardless of the underlying delivery technology.
- Audiences continue to rely on the terrestrial platform for most of their sports viewing. However, audience expectations are evolving rapidly with a near 500% growth in broadcaster video on demand (BVOD) sports viewing hours between 2020 and 2023. The proportion of the sports audience tuning on BVOD has more than tripled in the last three years. This evolution is most pronounced in the younger demographics with over 15% of the audience 18-39 now choosing BVOD for their sports viewing.
- Clearly audiences expect to be able to choose the free local TV service option that is most convenient to them. The only reform option that meets the needs and expectations of the Australian audience is one that provides for live and free sport to be televised on both the terrestrial platform and live streamed in BVOD apps.
- There is also a direct relationship between the evolving nature of audiences and the achievement of the Government's broader communication policy objectives that rely on the sustainability of local TV services. These services, such as trusted local news, entertainment, drama, and free live sporting events, can only be sustained by advertising revenue that is increasingly driven by BVOD.
- In 2022, BVOD revenues already constituted approximately 10% of total free-to-air service revenue. Independent equity analyst research projects that within 10 years, half of total revenue will come from BVOD, demonstrating the importance of this platform to free local TV services.
- However, rather than providing for a gradual transition of sustainable free local TV services, the Government's preferred model would allow the most attractive live streaming rights to be cherry picked by online content service providers. This would cause the Government's 'broadcast safety net' intention to fail as local TV services would not be able to earn sufficient revenue to acquire the rights to any iconic sporting events included on the anti-siphoning list.
- It is therefore imperative that the anti-siphoning scheme provide for listed events to be televised on both the terrestrial and live streaming platforms of free local TV services. The scheme should also provide for audiences to take advantage of the capacity of the BVOD platform to provide coverage (including catch-up) of a broader range of sporting events than can be shown on the terrestrial platform alone.
- The 'free-to-view' model endorsed by subscription television providers would, if implemented, leave Australians to be reliant on their access to the internet to view a dramatically reduced list of live and free sports content. It is also important to consider the underlying business model of proponents of the free-to-view model. The approach of putting limited "teaser" content in front of paywalls is essentially a loss-leading strategy designed to eventually upsell subscriptions and grow advertising revenue at the expense of local TV services.
- By contrast, the business model of local TV services is to reach audiences at scale with genuinely free content. In turn, reaching these mass audiences drives grassroots engagement and ensures long-term viability of the sporting codes themselves.
- Free TV also supports the Government's intention to reform the listed events to ensure equitable and inclusive treatment of nationally significant events, irrespective of the gender or ability of the participating athletes.

2. Introduction

Free TV Australia is the peak industry body for Australia’s commercial television broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial FTA television makes to Australia’s culture and economy.



Australia’s commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

Free TV networks provide essential services that remain the centrepiece for the universal and free delivery of socially inclusive and culturally relevant programming, including live sport, local news and entertainment programming. The industry’s unique contribution to Australia’s shared culture and civic life cannot and should not be understated. Commercial television networks spend more than \$1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

At no cost to the public, our members currently broadcast 15 branded network channels in most markets with a further 4 channels provided alongside offering speciality services such as shopping and a racing channel. In addition to these rich broadcast offerings, Free TV metropolitan networks have invested heavily in meeting the needs of the modern audience through the development of class-leading BVOD services, encompassing both live streaming and catch-up content.

BVOD services play a crucial complementary role to terrestrial broadcast TV, both in terms of the content and functionality offered to viewers, and in terms of the viewer demographics that use each service. As we expand on throughout this submission, only through broadcast plus BVOD can Australians be assured of being able to watch iconic sporting moments, genuinely for free, regardless of where they live or work. As such, it is vital that the BVOD rights be included alongside broadcast rights as part of the modernisation of the anti-siphoning scheme.

Free TV welcomes the release of this Proposals Paper as part of the Government’s commitment to “review the anti-siphoning scheme and give working families the chance to watch, for free, events of national and cultural significance.” Working together with the Government’s commitment to legislating a prominence framework to ensure that Australians can find local TV services on modern TVs and related devices, the Government’s action in this area should lead to a modernised regulatory regime that guarantees the right of Australian audiences to be able to access live and free sport regardless of their means or where they live.

3. Achieving the public policy objectives in the modern media environment

3.1 Preliminary findings are welcome

The Government's Proposals Paper is based upon three appropriate preliminary findings:

1. that the core objective of the anti-siphoning scheme – to support free access to televised coverage of events of national importance and cultural significance – remains relevant and appropriate
2. there is a 'regulatory gap' in relation to online services and a case to broaden the remit of the regulatory framework to mitigate the attendant risks of nationally important and culturally significant events migrating behind paywalls
3. there is a case to consider the composition of the list with respect to women's sports events and Para-sports.

At a principle level, Free TV welcomes these findings. They are well supported by the evidence put forward to the Government in response to the discussion paper. In particular, the Government received evidence of:

- the continued strong popularity of live and free sport on television, reaffirming the continued importance of the free availability of sport to Australian viewers—evidence that has been resoundingly reinforced by the recent Matilda's FIFA Women's World Cup campaign
- consumer research that demonstrated that Australians agree that it is in the public interest that major sports be available free for all Australians and that commercial FTA television ensures that Australians can access iconic sporting events without having to pay
- the anti-siphoning list delivering strongly for Australian audiences with Free TV networks broadcast over 1,300 hours of live and free sport from events on the anti-siphoning list in 2021 alone
- continued growth in the returns that sporting bodies are able to earn on their rights, demonstrating that the anti-siphoning scheme appropriately balances returns to rights holders, with ensuring access to live and free sport for all Australians
- the demonstrable 'regulatory gap' that creates a real risk that streaming providers like Amazon Prime, Disney or Optus Sports could exclusively acquire rights to iconic sporting events that are currently on the anti-siphoning list.

Based on these preliminary findings and the evidence received through the consultation to date, the Government has formed a preferred option that would extend the current restrictions on the acquisition of the rights to provide coverage of listed events. This extension would restrict all *content service providers*¹ from acquiring listed events unless a free-to-air broadcaster has the rights to televise part or the whole event on any of its broadcasting services. A carve out from the broad restriction on acquisition by content service providers would apply for free-to-air broadcasters, but only in respect of their broadcasting services.

¹ Proposed definition: a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of a carriage service; or a service that allows end-users to access content using a carriage service.

Free TV strongly considers that this construction is too narrow in the modern media environment. Given that this option only expands to broadcasting services, the Government has referred to this option as the “broadcast safety net” option.

However, as we expand on below, any policy option that locks local TV services into a “broadcast only” future is not a sustainable business model. This will allow online content service providers to cherry pick the most profitable live streaming rights, fragment sports coverage, and lead to a significant loss of revenue for local TV services. This will ultimately result in free local TV services having insufficient revenue to acquire even the broadcast rights for sport, causing the failure of the intended “safety net” for Australian audiences.

3.2 Maintaining the social contract of free local TV services

Broadcasting Services Act 1992 (BSA) licensed TV networks provide a diverse range of programming to all Australians including free news and current affairs, live sport, entertainment, lifestyle and drama. They pay for access to spectrum, and are bound by accessibility requirements, local news service obligations, advertising restrictions and fairness and impartiality requirement for news broadcasts, to name just a few of the elements of the social contract that the Government holds on behalf of Australians with the licensed broadcasters.

The anti-siphoning scheme is a central element of the social contract.

A threshold question that the Government must now address is whether this social contract should endure throughout the gradual audience transition from reliance on the terrestrial platform, to a greater level of consumption of free local TV services through BVOD. Assuming that this is the Government’s objective, an anti-siphoning list that allows audiences to choose between accessing free sporting events on either the terrestrial or BVOD platform is the only viable reform option.

The Government has made the *Broadcasting Services (“Broadcasting Service” Definition—Exclusion) Determination 2022* (extending the ‘Alston Determination’) to allow a thorough policy review with the goal of achieving a modern and fit-for-purpose regulatory system suited to today’s media environment. In effect, this means deciding how the social contract and the Government’s communications policy objectives can be met in an era where local TV services are just as important as ever, but the delivery mechanism is evolving.

Given the trend towards sports rights deals being re-negotiated well ahead of the expiry of the current deals, this anti-siphoning reform process must provide for a future where local TV services are delivered over a mix of terrestrial and BVOD services. As technology and platforms evolve, waiting for the online regulatory environment to be resolved risks rights deals being struck that do not adequately cater for the modern TV audience, or the sustainability of the services that they rely on. It will likely not be possible to unwind such deals once the Alston Determination process has been completed.

That is why it is critical that this review process establish a future facing regulatory framework that ensures that listed events are available to audiences on either the terrestrial or BVOD platforms.

3.3 Delivering for modern Australian audiences

Live and free sport on television continues to resonate with the Australian community. There is no better example of the ability of live sport to capture the imagination of the nation and join us together in a shared experience than the recent Matilda’s World Cup campaign.

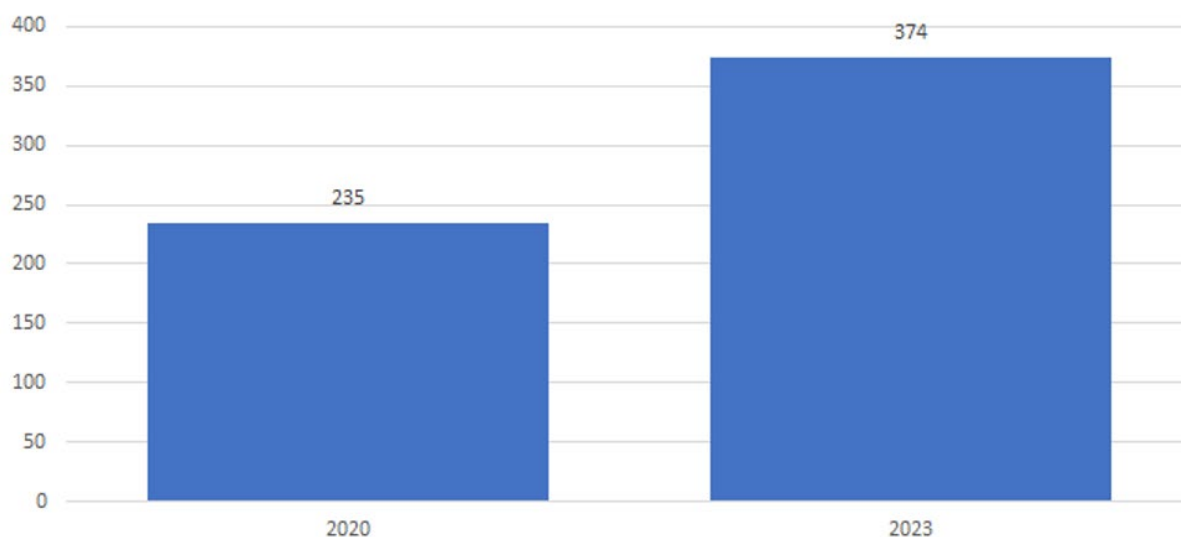
Through that campaign, the Matilda’s attracted unprecedented audiences on Channel 7, across both the terrestrial and live streaming options. In total, a staggering 18.6 million Australians tuned in across the tournament—a number that simply could not be reached behind paywalled subscription services or on broadcast alone. Of this 18.6 million, 14.8 million were reached on the terrestrial platform, with a further 3.8 million viewing on BVOD. That is, over 20 per cent of the audience for the Women’s World Cup chose to watch on the BVOD platform.

These numbers are a snapshot of the continued evolution of the expectations of the modern audience that we have seen over recent years. As noted in our submission to the discussion paper, the vast majority of Australians agree that commercial TV is needed now more than ever as it contributes to national unity by broadcasting major events like the Olympics.²

However, by voting with their remote controls, Australians are also telling us that they increasingly do not distinguish between delivery technologies. Today’s audience has come to expect the free local TV services can either be viewed via the aerial or live streamed. For some Australians this is not a choice but is a function of decisions of developers and construction companies that are increasingly building estates and apartment dwellings with no access to a terrestrial antenna. Whether through choice or lack of access to an antenna connection, there is a gradual shift towards consumption of free local TV services via the internet.

This is clear from an analysis of audience trends.

Growth in BVOD hours (m) consumed between 2020 and 2023 – 59%



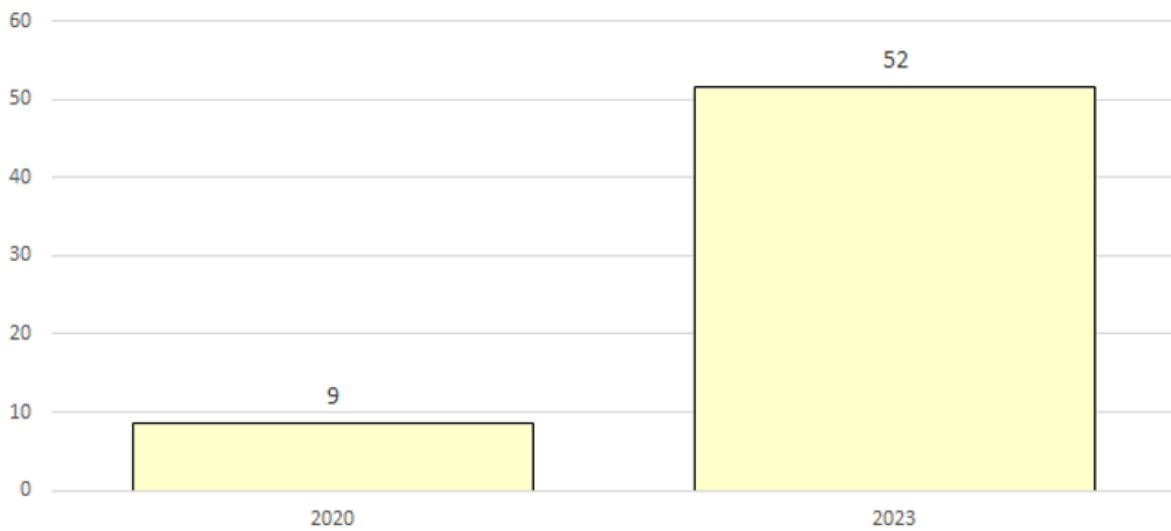
Source: *Milton Data, Jan-Aug 2020 vs Jan-Aug 2023, BVOD data for FreeTV networks only, all devices*

² Source: Crosby|Textor, October 2021, n=1492, max margin of error at 95% confidence level approximately +/- 3%;

As above, between 2020 and 2023 (year-to-date comparison), the number of hours of free local TV services consumed via BVOD apps increased by 59 per cent. Already in 2023, 374 million hours of BVOD content has been consumed by Australian audiences.

But it is in sports content that Free TV networks have seen the most significant growth on the BVOD apps. As shown below, between 2020 and 2023 there has been a 495 per cent growth in sports audiences on BVOD.

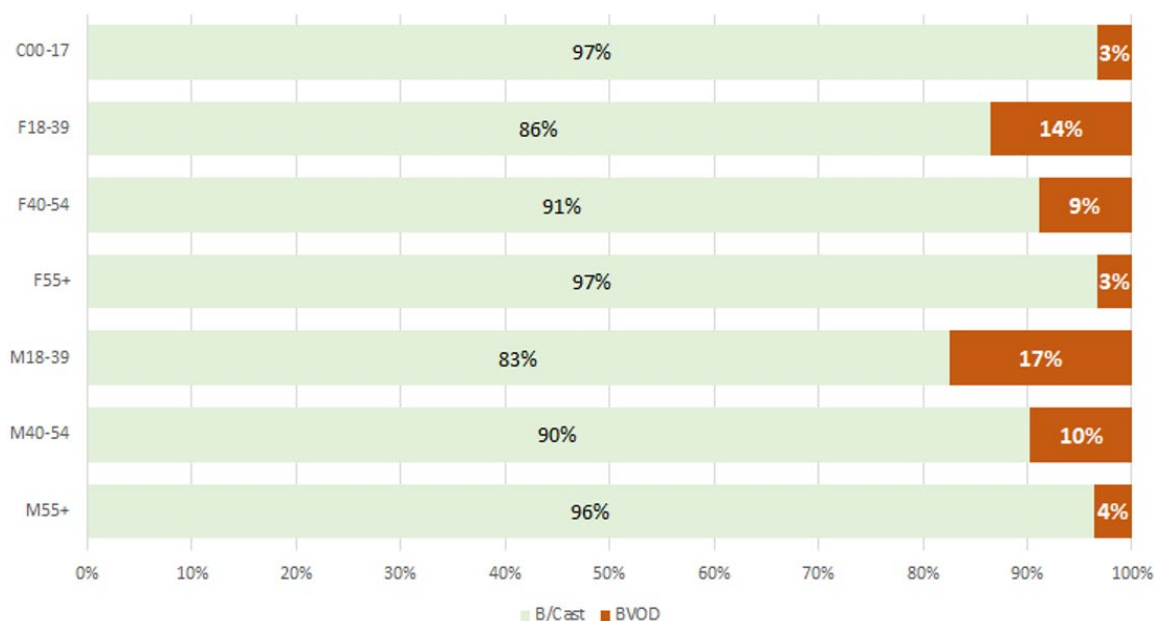
Explosion in sports viewing on BVOD: 495% growth between 2020 and 2023



Source: Milton Data, Jan-Aug 2020 vs Jan-Aug 2023, BVOD data for FreeTV networks only, Sports genre, all devices

This growth in sports viewing is most pronounced amongst the younger demographics. The graph below shows the proportion of Free TV audiences that are viewing sports content on the terrestrial and BVOD platforms so far in 2023. This highlights the importance of BVOD for the inclusion of younger people in shared iconic sporting events with around 15 per cent of the 18-39 year old demographic, choosing to access sporting content via a BVOD app.

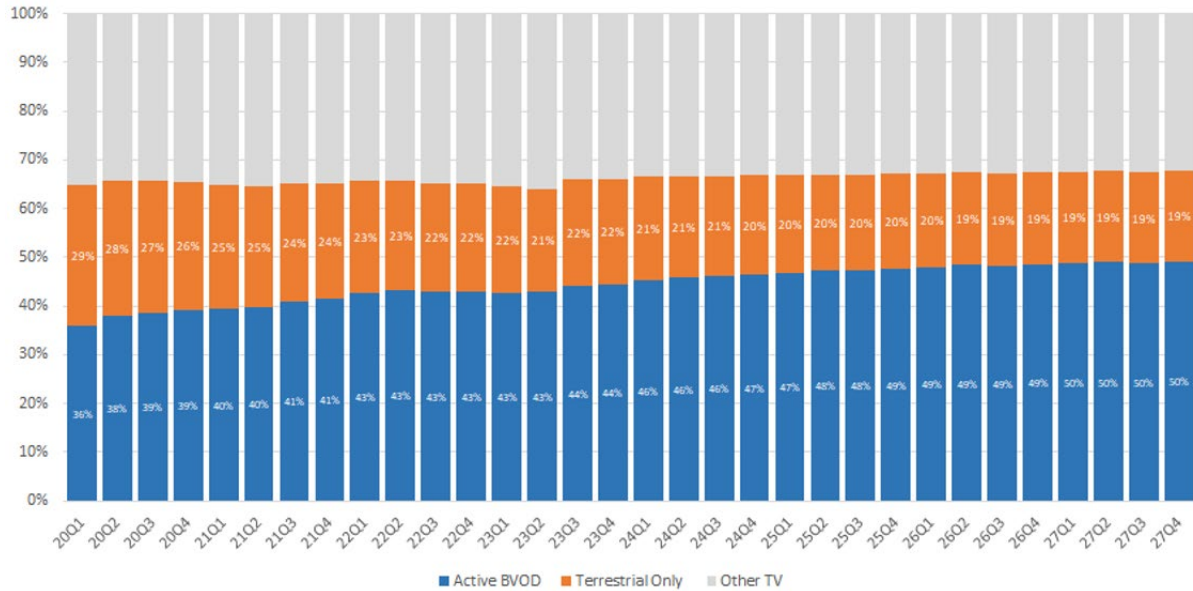
BVOD share of sports viewing by demographic (2023)



Source: Milton Data, Jan-Aug 2023, FreeTV BVOD as % of all FreeTV viewing on all devices

The importance of BVOD is expected to continue to grow over time. As shown in the graph below, independent modelling conducted by Milton Data has projected that by 2027, 50 per cent of households in Australia will be active users of BVOD apps.

Use of TV services trend – 50% of households expected to be active BVOD users by 2027



Source: Milton Data, Trends based on service usage over 4 week period

It is clear from this analysis that audiences expect that their Free TV services will provide them free sporting content on both terrestrial and BVOD services. They do not distinguish between free local TV services that are provided by differing delivery technologies.

The anti-siphoning scheme must deliver on the expectation that Australian audiences have—that if sports programming is available on either channels 7, 9 or 10, they should be able to access this content via 7Plus, 9Now or 10Play. From the audience perspective there is no difference between these services and the regulatory regime should evolve to support this expectation.

4. Economic sustainability of free local TV services

4.1 Sport is a key determinant of the sustainability of free local media

Under the BSA, commercial television broadcasters are expected to primarily generate their income from advertising.³ In turn, raising this advertising revenue is dependent on the free-to-air sector being able to reach audiences at scale. As shown in section 3, sport remains a key pillar in the service offering of free-to-air broadcasters driving these audiences and live sport is still the number one social connector of our times. Sport is also important in helping to build and maintain an audience in adjacent content. This 'halo' effect is important in attracting audiences to the other great local content on free local TV services like trusted news, entertainment and Australian drama.

As such, sport is critical for the sustainability of the wholly advertiser funded services provided by Free TV members and as a result the anti-siphoning scheme is a central plank of Australia's communication policy. As we set out in our submission to the discussion paper, it is the fact that live and free sport is so important to millions of Australians that makes it so vital to the sustainability of local media services. In this way it can be seen that not only does the anti-siphoning list ensure that Australians can continue to enjoy live and free sport on their TVs but it is also directly related to their access to all forms of Free TV content from news, entertainment and local drama.

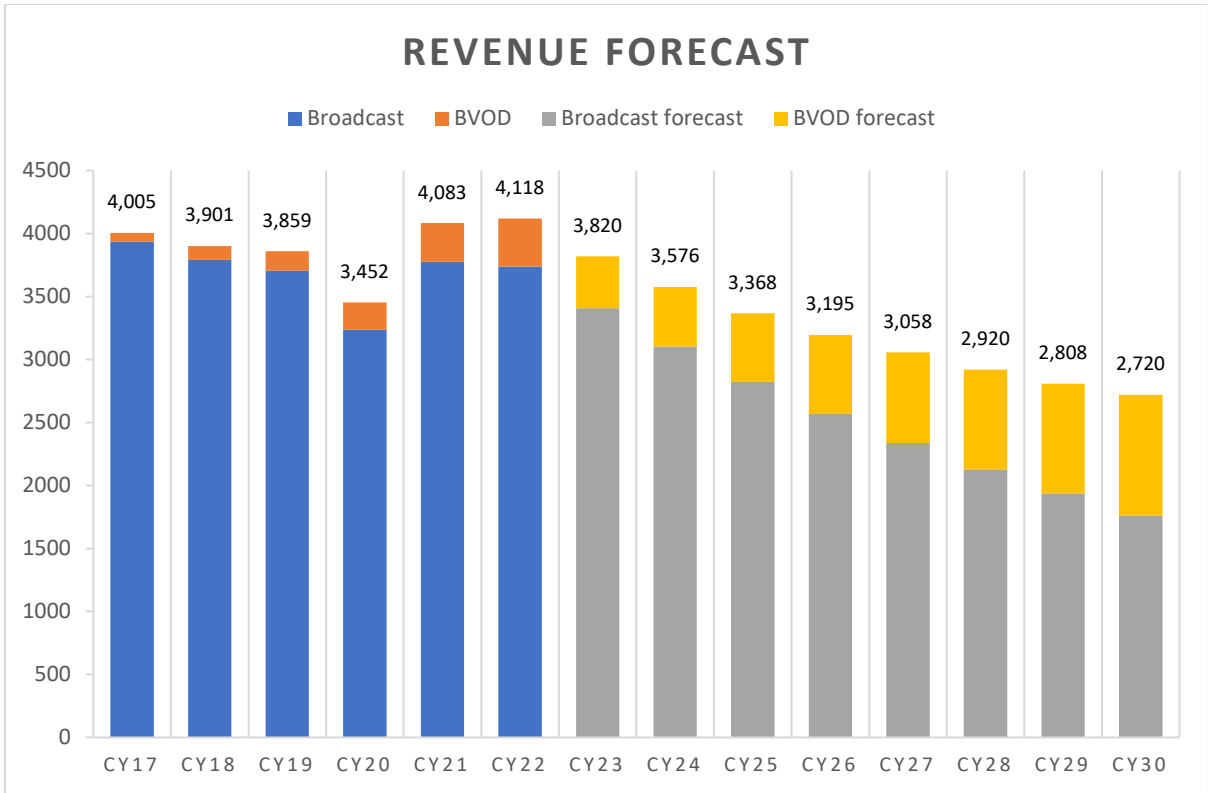
4.2 BVOD is already a material factor in the sustainability of local media

The free-to-air sector is operating in a challenging revenue environment, with economic headwinds impacting on the outlook for the broadcasting advertising market. However, our sector is highly dynamic, and we have been investing heavily to ensure that we meet the demands of the audience into the future. As shown in the audience numbers in section 3, this strategy is being embraced by Australians as they gradually shift their consumption to include a greater proportion of BVOD viewing. Unlike subscription services, Free TV networks cannot pass additional costs onto consumers and unlike the digital platforms, Free TV networks carry a large fixed-cost base for their news, sport and entertainment content.

As shown in the graph below, this transition is already driving a material change in the sources of revenue for the free-to-air sector. Independent analysts are expecting the strong growth in BVOD revenues to continue throughout the forecast period up to 2030. While analysts are expecting the advertising market for broadcast to continue to soften, as the audience transition continues, the growth in BVOD is expected to have stabilised total revenue by 2030.

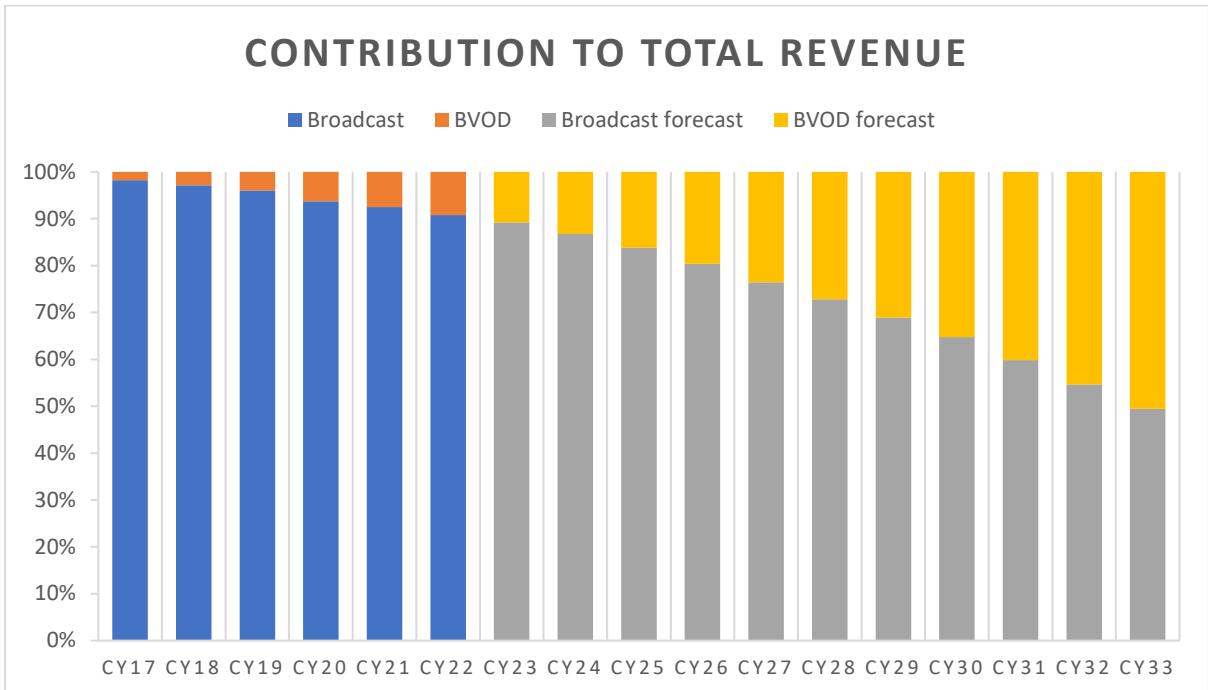
While revenue projections will always be contested and subject to a number of assumptions, they do serve as a useful independent source of evidence on the criticality of BVOD revenues to the future sustainability of the free-to-air sector.

³ See Section 14, *Broadcasting Services Act 1992*(Cth)



Source: Morgan Stanley

As shown below, in 2022, BVOD revenues already accounted for around 10% of total free-to-air service revenue. By 2027, it is projected that 25% of total revenue will come from BVOD services. That is, in less than 4 years, 25% of the revenue available to invest in local content such as the purchase of sports rights, production of trusted local news services and Australian entertainment program will come directly from BVOD revenue.



Source: Morgan Stanley | Free TV analysis

The forecast growth in expected BVOD revenue from 2023 to 2030 implies a compound annual growth rate (CAGR) of 11%. Holding the forecast CAGR of both broadcast and BVOD constant, Free TV has

modelled the expected contribution to total revenue from broadcast and BVOD over a 10-year time horizon. This analysis shows that by 2033, around 50% of total revenue will come from BVOD.

There is a very clear message from this analysis. If Australia wants a strong, viable and vibrant free local media industry that can deliver on the broad suite of communications policy objectives, public policy settings need to already be catering for the gradual transition to BVOD viewing.

Free TV rejects entirely the statement in the proposals paper that there is currently insufficient evidence to support the regulatory changes necessary to include BVOD rights in the anti-siphoning scheme, but that these changes “may be justified in the future”.⁴

It is already clear from the data presented in section 3 and the revenue analysis above that audiences are seeing BVOD as a natural extension of the broadcast service and the associated revenue is already a material component of the sustainability of these services. As sport continues to be a considerable driver of audiences and revenue, ultimately without the digital rights, the free-to-air sector will not be in a position to afford to buy any rights. This will mean that the anti-siphoning scheme will have fundamentally failed to provide any sort of safety-net for Australians’ access to live and free sport.

4.3 Investment required in BVOD platforms and content

Local Free TV networks have been investing heavily to meet the needs of the modern audiences. The investment required to develop and maintain the backend delivery and BVOD applications is significant. Unlike other online content service providers, these development costs cannot be globally amortised and must be recouped within Australia.

In effect, in order to meet the needs of the modern audience, Free TV networks have had to invest in the duplication of transmission infrastructure. In addition, to make the same content available on both terrestrial and BVOD, Free TV networks have to invest in both streaming and broadcast rights for content such as local drama and entertainment programming, as well as sports, to ensure that audiences’ expectations are met. An anti-siphoning model that locks Free TV networks into a ‘broadcast safety net’ would undermine these investments and threaten the sustainability of the services that Australians currently rely on.

⁴ Anti-siphoning review, Proposals Paper, August 2023, p.47.

5. Assessment of alternative reform options

5.1 Free-to-view (Foxtel) model locks Australians out of sport

The proposals paper includes consideration of a ‘free-to-view’ model proposed by subscription television providers. This is a radical option that is inconsistent with the fundamental principle explained in the previous sections that audiences now expect to be able to receive free iconic sporting events on either broadcast or BVOD platforms. The free-to-view model conflicts with this expectation and leaves Australians to be entirely reliant on their internet connection to access a drastically reduced list of live and free sport.

5.1.1 Cherry picking the growth opportunities and the failure of the broadcast safety net proposal

The free-to-view proposal would lead to the cherry picking of digital rights by online content service providers. Not only would this fragment sports viewing for consumers, but it would also threaten the long-term sustainability of Free TV services as sports is a key driver of the advertising revenue discussed in the previous section.

Given the bargaining power imbalance between Free TV networks and the well-funded online content service providers, local networks would be left to acquire whatever was left after the events on the anti-siphoning list had been picked by other providers. While the anti-siphoning list would require a limited number of individual events to be put in front of paywalls, to view the remainder of sports competitions Australians would certainly be required to purchase a subscription. As we discuss in the next section, this is the primary driver for subscription services to offer loss-leading free content in front of the paywall.

For a true safety-net to operate effectively, the rights to iconic sporting events must be offered together and acquired by a platform that is capable of meeting the full range of audience needs and expectations and achieving truly universal coverage. Only terrestrial plus live streaming on BVOD can offer this experience.

5.1.2 Service providers looking to up-sell off the back of Australian sport

It is also highly relevant to consider the business model behind the proponents of the free-to-view model. The ultimate purpose of offering “taster” content to audiences who register without requiring a credit card payment is to loss-lead with the intent to up-sell a subscription where the free content can be cross subsidised by subscriptions.

How do I upgrade to Kayo Full Access after registering to Kayo Freebies?

If you've registered to Kayo Freebies, you can upgrade to Full Access by selecting 'Get Full Access' in My Account. To upgrade now, [click here](#).

Alternatively, you can follow the steps below:

1. Visit kayosports.com.au/ and sign in to your Kayo Freebies account.
 2. In the top navigation bar, select *Get Full Access*.
 3. Choose a subscription type and select *Continue*.
 4. Your personal details will already be filled in from your Kayo Freebies registration - simply enter your payment details and select *Start Subscription Now*.
- Now you can enjoy access to Kayo's full entire content library!

Source: <https://help.kayosports.com.au/s/article/How-do-I-upgrade-to-Kayo-Full-Access-after-registering-to-Kayo-Freebies>

The same applies to other providers, such as a wagering companies, that offer free sports streaming as part of the in-app experience. Again, the business case for including such content is centred on building the value of the ecosystem, driving higher ‘time spent on platform’ metrics and ultimately increasing product and subscription sales.

Analogous to the current proposition by subscription television providers would be a hypothetical scenario from the 1990s if they were to have offered free set-top-boxes and satellite dishes to Australian households in order to provide access to a limited range of sporting events to try to convince the Government that the protections of the anti-siphoning list were no longer required. The Government of the day would certainly not have accepted this proposition as it would have been obvious that subscription television providers were seeking to loss lead with a limited amount of free content in order to upsell subscription services and undermine the integrity of free-to-air business model.

Similarly, the Government today should not accept a loss-leading marketing strategy as a replacement for good public policy.

This marketing strategy contrasts starkly to the business model of the commercial free-to-air networks where the business model revolves entirely around providing free content, funded through advertising revenue. As such, only broadcast plus BVOD gives Australian audiences a genuinely free service.

5.1.3 Massive diminution of genuinely free sport for Australians

As we expand on in section 6, the free-to-view model would necessarily result in the stripping back of the anti-siphoning list itself. This is due to the massive complexities that would be built into a coverage obligation for multi-round or multi-disciplinary events such as the Olympic Games.

This would result in a significant loss of access to live and free sports for Australians. Take for example the Olympic Games. Often the heats and semi-final rounds of competitions where Australians are competing to make it into the final draw the most public attention. For example, the ‘Flying Mullet’ Rohan Browning’s 100 metre semi-final attracted an audience of 3.1 million. Under the free-to-view model, that race could have been behind a paywall.

Emphasising the extreme levels of complexity, had Browning qualified, the final medal race would have been subject to the live coverage requirements under the proposed ‘streamlined list’. However, there was little more than 24 hours to market and publicise the fact that some Australians could now access the final for free because an Australian athlete had qualified. In practice, it is likely that the result would effectively be the same as if the entire event was delisted.

By contrast, the coverage that Australians enjoy of events like the Olympic Games and Australian Open across both terrestrial and BVOD is world leading—across multiple events and courts simultaneously. Under the subscription television model, most of these events would be behind the paywall, while a few events are dangled in front of the paywall to entice Australians to subscribe for what they currently get for free.

Iconic sporting moments that should be hugely significant and unifying moments for our nation cannot be left to the vagaries of a highly complex and uncertain regulatory framework. Only broadcast plus BVOD can provide Australia with those sporting moments that bring us together and create those “where were you when...” moments that define our sporting nation.

5.1.4 Sport as a public good with significant taxpayer investment

Through direct funding of sporting associations and funding of national institutions like the Australian Institute of Sport, all levels of Government invest heavily in sport. In turn, it is reasonable for Australian taxpayers to expect that the anti-siphoning scheme will allow them access to the iconic sporting events that stem from their investment in sport.

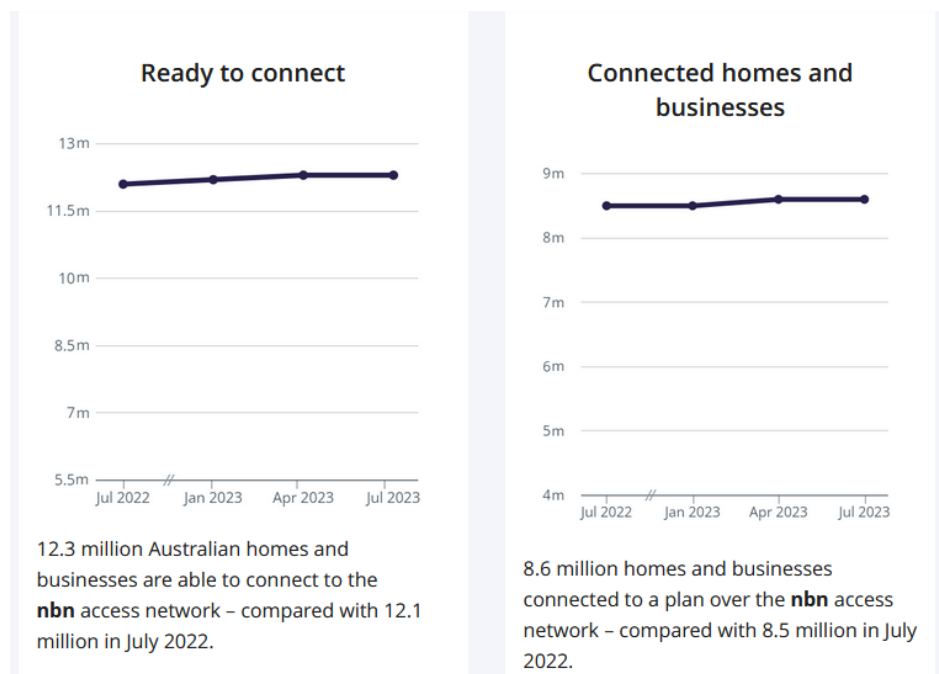
In this way, sport can be seen as a public good. Investment in sport by all levels of Government provides quality coaching and facilities. The coverage of sport is what drives grassroots participation as kids seek to emulate their heroes from the screen. As we set out in our response to the discussion paper, the UK experience of cricket being put behind a paywall provides a cautionary tale of what can happen when sports that are usually taken for granted in terms of broad appeal disappear from our screens.

5.1.5 Availability doesn't guarantee service take-up

Under the free-to-view option, a *content service* must provide coverage using a platform that is available to a minimum of 99 per cent of the Australian population. However, as the proposals paper correctly notes "availability doesn't equate to access by consumers." This is a critical distinction that goes directly to the material number of Australians that would be locked out of access to live and free sport from a total reliance on high-speed internet delivery.

Indeed, while the paper suggests that 99.3 per cent of premises could connect to the NBN in 2020, tracking data published by NBNCo demonstrates that by July 2023, less than 70 per cent of these premises had connected to an NBN plan (8.6m / 12.3m).

NBN Connections – Less than 70 per cent of homes and businesses have connected



Source: NBNCo, <https://www.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-july-2023>

The proposals paper also suggests that Telstra's 4G services are available to 99.4 per cent of Australians. However, a Telstra mobile plan that provides only 300GB of data currently retails for \$95 per month. Once that data allowance has been exhausted, speeds are capped at 1.5Mbps. This is less

than any of the recommended speeds for any of the streaming services noted in the proposals paper, including Kayo which recommends a speed of at least 7.5Mbps.⁵

While the Government is clearly working hard to address the current digital divide, the proposals paper makes plain the challenge that remains in ensuring that no Australians are left behind. With nearly 7 per cent of all Australians having no internet connection at home, it is clear that the free-to-view model would drive an unacceptable wedge through the Australian community.

Consistent with the conclusions in the proposals paper, work undertaken by Deloitte Access Economics in 2021 found that:

“While the internet is widely used in Australia, it is not universal, the quality and access varies significantly, and it is not free. Furthermore, internet connectivity tends to be less reliable and slower in regional and remote areas, compounding existing disadvantage faced by individuals in these areas, due to lack of access to infrastructure and essential services.”⁶

Deloitte Access economics found that in 2021, at least 5.6 million Australians (22 per cent) could not access live streaming or video on demand content.⁷

This stands in stark contrast to the ubiquitous and freely available broadcast platform, where 97 per cent of Australian households have an antenna to access TV. Viewer Access Satellite Television (VAST) provides services to viewers in remote areas of Australia, ensuring that 100% of Australians have access to free-to-air TV services.

Again, this reiterates that only a broadcast plus BVOD (Total TV) approach to anti-siphoning will ensure that no Australian is locked out of live and free sport. The free-to-view options takes choice away from Australian audiences and locks them into requiring an internet connection with no capacity to choose a genuinely free option.

5.2 Broadcast safety net risks future sustainability of free local media

As we have described in sections 3 and 4, Australian audiences and the future sustainability of free-to-air services that they rely on will be determined by the ability of policy makers to create regulatory frameworks that support the gradual adoption of free local media services on BVOD.

Throughout this submission, we have highlighted how only a ‘Total TV’ approach of broadcast plus BVOD can meet the needs of the modern audience and ensure the future sustainability of free local TV services. Indeed, increasingly audiences are coming to just expect that the same content is available on both broadcast and BVOD services.

In our submission to the discussion paper, we highlighted that audiences viewed it as an absurdity that they cannot access the same sporting content across broadcast and BVOD, when from their perspective it is the same network providing the coverage. This was clearly demonstrated in 2021, where the digital rights to the AFL Grand Final were not available to the FTA broadcaster, eliciting strong feedback from Australians regarding the lack of BVOD simulcast.

⁵ Anti-siphoning review, Proposals Paper, August 2023, p.35

⁶ Deloitte Access Economics 2022, Everyone Gets it: Revaluing the economic and social benefits of commercial television, pg 24

⁷ ibid

Free TV submits that the Government's preferred model that progresses for legislation must provide for audiences to have the choice between accessing over the terrestrial or BVOD platforms. Such a future-facing approach to regulation would allow the gradual transition of audiences to occur in an orderly manner, consistent with their expectations. This is particularly important for younger demographics and for viewers who do not have access to an antenna.

5.3 Broadcast + BVOD – delivering for audiences and Australia's media policy

The broadcast safety net will ultimately not be commercially sustainable unless terrestrial rights are tied to BVOD rights. If the anti-siphoning scheme was to only provide broadcast rights, there is a real risk that the broadcast rights will quickly become commercially unviable, and not acquired. This would lead to the failure of the public policy intention. The most effective public policy would be to tie the BVOD rights to the broadcast rights to ensure ongoing broadcast delivery and a profitable business model for ubiquitous free delivery of sports.

As such, Free TV submits that the Government should adopt a model that allows Australian audiences to have the option between accessing content on the broadcast or BVOD platforms. This is crucial to ensuring the sustainability of local TV services that underpin Australia's media policy, rather than allowing for profitable digital rights to be cherry picked by online content service providers.

As explained in section 3, from a consumer perspective, the delineation between the two platforms is becoming increasingly artificial, resulting in an expectation that live and free sport content should be available on either platform.

Much of the commentary and analysis of the 'free-to-air first' in the proposals paper appears to be premised on free-to-air networks providing access to sport on the BVOD platform only. For example, the proposals paper suggests that:

*"These concerns regarding the implicit costs for consumers in accessing televised coverage of listed events online undermine the argument that free-to-air broadcasters should be provided with preferential access to these rights through the scheme (as envisaged under this model)."*⁸

This argument would only be valid in cases where the rights to listed sporting events had been acquired by a free-to-air broadcaster, but the event was only made available on the BVOD platform. However, the changes to the anti-siphoning scheme proposed by Free TV, would simply meet the audience expectation of being able to view the same content from the same provider on the delivery platform of their choice. In effect, the rights to terrestrial and BVOD coverage would be tied.

There is, however, a strong case to be made to allow Australian audiences to benefit from the capacity of the BVOD platform to extend coverage of sporting events well beyond what is possible on the broadcast platform. Take for example the Olympic Games. While networks maximise the amount of broadcast coverage by using up to 3 terrestrial channels at a time, BVOD provides the opportunity to offer audiences an order of magnitude greater coverage by running several channels simultaneously across all sporting disciplines. In addition, the anti-siphoning scheme should provide for the BVOD rights to enable Australians audiences to access catch-up sporting content and highlights packages.

⁸ Ibid. p.46

Free TV proposes this model as a 'Total TV' approach to anti-siphoning that ensures that audiences will always have access to a genuinely free option for viewing iconic sporting events. Such an approach ensures that no Australian is locked into a particular delivery platform. This is future facing regulation that provides genuine choice for consumers, allows for shifts in audience preferences and allows the business models of commercial TV networks to continue to evolve, which is crucial for the sustainability of the services Australians rely on.

6. List reform options

The list that has recently been renewed by the Government is now a very tightly defined list of sports that is targeted on those key iconic sporting events. As noted in our submission to the discussion paper, while there have been a number of reviews and amendments made to the list over the years since 1994, on any objective measure the list has lived up to the initial policy intention of Government. That said, Free TV agrees with the Government that changes can be made to better reflect gender balance and ability diversity.

6.1 Unacceptable loss of live and free sport under option 1

The ‘streamlined list’ option outlined in the proposals paper represents a radical departure from the current list and the protections it affords Australians and their access to live and free sport. The deletions from the list are so significant that the scheme itself would fail to meet the overarching objective of ensuring live and free coverage of events of national importance and cultural significance.

To illustrate this point, Free TV has undertaken an analysis of the sports that would be removed from this the list and would likely disappear from the screens of Australians to being accessible only behind paywalls.

Sports that would be removed from the list include:

- Every event at the Summer and Winter Olympic and Commonwealth Games (unless an Australian makes the medal round, although this is likely unworkable given the limited time between heats and finals in many events)
- AFL – Friday Night Football, Saturday Night Football, and Sunday afternoon matches
- NRL – Thursday/Friday Night Football, Saturday Night Football, and Sunday afternoon matches
- Rugby League – Test matches in New Zealand and World Cup matches in PNG
- Rugby Union – Bledisloe Tests in New Zealand
- Rugby World Cup – all overseas matches
- Cricket – all short form cricket (apart from the final of the ODI/T20 World Cup if played in Australia)
- Soccer – All World Cup matches (unless played in Australia)
- Soccer – All World Cup qualifiers
- Tennis – all of the Australian Open apart from the Men’s and Women’s Finals (and evening singles matches played on RLA or Margaret Court Arena)
- Tennis – all of the Davis Cup
- Netball – Semis and Final of the World Cup unless involving Australia and played in Australia.

Free TV notes that the streamlined list is only intended to operate as part of the free-to-view scheme option and that the Government considers that the “technology and market conditions in Australia are not mature enough to enable the adoption of this model in the near- to medium-term and as such, the streamlined list is not the preferred option for the list at this time.”⁹ This conclusion is strongly supported. However, we also note that given the interrelationship between sport and the

⁹ Op cit. p.53

sustainability of free local media services, we do not consider that such a scheme and list combination could be adopted, regardless of future technology developments.

6.2 Removal of gender and ability bias is supported

Free TV supports the policy intent behind the proposed ‘modernised’ list option that seek to ensure a consistent and inclusive treatment of nationally important and culturally significant events regardless of the gender or ability of the athletes competing in them.¹⁰

Live and free coverage on free-to-air services has played an important part in the growth of new competitions such as the AFLW, NRLW and the A-League Women. It was also crucial in building the prominence and popularity of the Matildas in the lead-up to their World Cup success and astounding audience ratings. As noted in our response to the discussion paper, the success of these new competitions and the profile that they have achieved in the community demonstrates the importance of having FTA broadcast available for sporting events, driving engagement and participation rates.

Accordingly, as proposed by the Government we would welcome the inclusion on the list of sports such as:

- Summer Paralympic Games
- NRL Women’s State of Origin
- Rugby League Women’s Test and World Cup matches
- Rugby Union Women’s Test matches in Australia and New Zealand and the Final
- All Netball Tests involving Australia in Australia
- Cricket – all forms of women’s cricket that currently apply to the Australian Men’s team
- Soccer – Matilda’s World Cup matches (including qualifiers in Australia) and the Women’s FIFA World Cup Final (as the Government has now included).

Free TV considers that in order to achieve the stated policy aim of removing gender and ability bias from the list, further changes to the ‘modernised’ list should also be made. This would include:

- All matches in the AFLW and NRLW Premiership Seasons - rather than just the Final Series
- Each match in each tie of the International Tennis Federation Billie Jean Cup tennis tournament that involves an Australian representative team and is played in Australia and the final of the Billie Jean Cup if it involves Australia – this mirrors the listing of the male equivalent “Davis Cup” that is included on the existing list

In addition, there are a limited number of sports where changes to the format of competition in recent years have created new events that should be considered for inclusion in the list, in addition to other events where audience interest indicates that they should now be considered nationally and culturally important. These sports include:

- The finals of both the Super Rugby Pacific Series (men) and the Super W (women) – Super Rugby has evolved to become Super Rugby Pacific and now includes a female equivalent competition
- World Test Cricket Championship Final involving Australia – The ICC World Test Championship is a new competition with a standalone final played at the end of a Test cricket two-yearly cycle

¹⁰ Ibid p.56

- All FIFA World Cup matches – to reflect the growing popularity and participation in soccer in Australia, all FIFA Women’s and Men’s World Cup matches should be considered for inclusion.
- All Netball Tests involving Australia in Australia – current list is overly narrow and only consists of the semi-final and final of the Netball World Cup involving Australia, and as such inclusion of Tests involving Australia would appear to better reflect the community status of netball.

7. Other issues

7.1 Delisting period

Free TV welcomes the proposed retention of the current 26-week automatic delisting period. In practice, given that the proposed modernised list is still a tightly contained targeted list of sports, it remains highly likely that listed events will be acquired by a free-to-air network, so long as they have had a reasonable opportunity to do so.

The risk for Australian audiences remains that rights negotiations are delayed in order to trigger the automatic delisting so that the rights can be acquired by another content service provider. The 26-week period is the maximum that could be considered to address this risk, while balancing the interests of other content service providers in the time required to plan and execute coverage arrangements.

7.2 Anti-hoarding provisions unnecessary

The proposals paper notes that no evidence of hoarding of sports rights was received. This is unsurprising given the strong commercial imperative on free-to-air networks to ensure that all sports for which they have acquired the rights reach the greatest possible audience. Accordingly, the anti-hoarding provisions should now be removed from the BSA.