ABC Submission to the review of the anti-siphoning scheme December 2022



Introduction

The ABC welcomes the opportunity to contribute to the review of the anti-siphoning scheme (**the scheme**).

The role of the ABC is to deliver valued services that reflect and contribute to Australian society, culture and identity, and to inform and entertain the Australian community. Sport is intrinsic to each of these responsibilities.

The ABC has a rich history of producing iconic, high-quality sporting coverage and content, dating back to the earliest days of television with the 1956 Melbourne Olympic Games and on radio test cricket during the 1930s. The ABC pioneered sports broadcasting, bringing all major sporting codes to Australian audiences.

The increased commercialisation of sport has seen live sport on the ABC diminish to a point where today the ABC is only able to broadcast major events on television sporadically. However, the ABC continues to engage audiences with audio content across ABC Radio and online platforms, providing Australians with thousands of hours of high-quality commentary for AFL, NRL, Cricket and other major sports in Australia and from overseas.

Nearly 70 per cent of Australians use ABC services each week. The ABC has Australia's largest broadcast footprint; its local radio services are accessible by 99.6 per cent of the population; ABC terrestrial television reaches 98.6 per cent of the population. ABC Sport digital services sit across ABC owned and third-party platforms. ABC Sport – across television, radio and online – engages millions of Australians each month.

Executive Summary

The ABC has a proven track record, the skills and capability to deliver high-quality sports broadcasting across a range of platforms. However, intense competition for sports rights means the ABC is significantly constrained in bidding for rights for sporting events on the anti-siphoning list (**the list**). The proliferation of streaming platforms vying for content has expanded markedly in recent years, fuelling increases in the cost of rights, and limiting the opportunity for sports to be broadcast on free-to-air television.

The ABC believes there are strong public policy reasons for maintaining the scheme and its original intent: significant sporting events should be freely available and accessible to Australian audiences. While there have been major improvements in internet services over the last decade, a substantial number of Australians still face issues related to access, affordability and digital ability. In 2021, the Australian Digital Inclusion Index (the ADII) found that 11 per cent of Australians were highly excluded from the benefits of Australia's digital transformation. In contrast, 99 per cent of Australians have access to free-to-air television services.

The ABC notes the dramatic changes to the media environment since the creation of the scheme, such as the emergence of streaming services and digital platforms. There is currently a weakness in the scheme which allows streaming services to obtain rights and potentially prevent listed

¹ Australian Digital Inclusion Index (2021), https://www.digitalinclusionindex.org.au/key-findings-and-next-steps/.



events from free-to-air broadcast. Allowing key sporting events to be exclusively behind a paywall unfairly limits Australians' access to significant moments in the life of the nation. This also has a detrimental impact on participation in sport by Australians – if you can't see it, you won't participate. Accordingly, the ABC would support changes to the scheme to close this loophole.

The ABC submits that any revision of the events on the list should consider the addition of the Summer and Winter Paralympic Games (the Paralympics). The addition of these events would be consistent with the policy and original intent of the scheme, particularly as Australia looks to host the 2032 Paralympics. The ABC also submits that there are a number of other sporting events that could be added to the list, particularly women's sporting events, the strength and popularity of which has grown since the last revision of the list. In addition, the list should include other events Australia will host in the next few years, such as 2027 Netball World Cup and 2029 Women's Rugby World Cup.

The ABC submits that any review of the scheme should consider extending rights beyond television to include audio coverage as well. Audio rights are not expressly covered by the scheme. However, just as there has been a proliferation of broadcast services, there has also been an increase in subscription audio services. Currently, there is nothing in the scheme precluding these subscription-based services from obtaining the audio broadcast rights to listed events and putting them behind a paywall. This would have detrimental impact on audiences who have long enjoyed these audio services free of charge. The ABC believes that the review provides a timely opportunity to future-proof the regulatory regime against such an outcome.

Background: ABC Sport and the Scheme

The ABC has been a key part of the Australian sporting landscape since the 1930s, when ABC Radio brought the confronting live commentary of the *Bodyline* series into the lounge rooms of Australian audiences. Nearly 90 years later, the ABC still provides audiences with a wide range of sports content to consume, from live content to digital content across a variety of platforms.

The ABC's commitment to sport reflects its Charter responsibility to broadcast:

programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community;²

Broadcasting sport allows the ABC to fulfil this function because sport is integral in shaping the Australian national identity and culture.³ The ABC's coverage of sports remains of high quality, with audiences giving ABC Sport a quality score of 88 per cent in 2022.⁴ The ABC continues to attract audiences across its coverage of various sporting fixtures, with ABC Grandstand's weekend coverage of AFL and NRL on ABC Local Radio reaching 886,000 listeners each week in 2021.⁵ Also in 2021, time spent listening across ABC Sport was 3 hours and 11 minutes each week – up from 2 hours and 49 minutes in 2020. In 2022 to date, ABC Sport DAB+ has achieved a record average weekly reach of 236,000 listeners – this is up from 138,000 on average in 2021.

⁵ Gfk data S3-7 2021.



² s6(1)(a)(i) Australian Broadcasting Corporation Act 1983 (Cth).

³ ABC (22 August 2016), <u>Australian identity and sport - ABC Radio National</u>.

⁴ Internal research.

The ABC continues to play an important role in broadcasting sport to Australians.⁶ However, due to budgetary constraints and the increased cost of production and rights, more recently the ABC has undertaken limited coverage of sporting events on television.

Notwithstanding this fact, the ABC continues to support the underlying principle of the anti-siphoning scheme, which is to ensure that the most significant sporting events are made available to Australian audiences on free-to-air television.

The ABC and its audiences have benefited from the scheme's prohibition on subscription broadcasters acquiring anti-siphoning events unless a free-to-air broadcaster has a right to televise. Most recently, the ABC was Soccer Australia's free-to-air partner for Socceroos and Matildas matches, and for the 2015 Asian Cup held in Australia. While Foxtel held subscription broadcast rights for these events, ABC coverage ensured that these events were freely available for all Australians.

Response to consultation topics

For the purposes of its response to this consultation paper, the ABC has responded to the consultation topics as opposed to the more specific consultation questions. It has chosen to respond to the topics in which it has a direct interest.

1. Policy objective of the scheme

The ABC continues to support the rationale behind the scheme. The ABC considers that ensuring Australians continue to have free access to nationally important and culturally significant events is still relevant and appropriate given the importance of sport to Australian life.

In the ABC's submission to the 2012 review of the scheme,⁷ it noted that the media industry was in a period of "significant structural change" and that the scheme remained a relevant mechanism to support "the free availability of significant sporting events". This is even more true a decade later. The ABC believes that while the policy objective of the scheme remains relevant, some adjustments are required to ensure that it remains effective in an evolving media landscape. These measures are canvassed in more detail below.

2. Application of the scheme to new media

Since the creation of the scheme, there have been significant changes to the media environment. A notable change has been the introduction and increase in platforms through which Australians can access sport, such as streaming services and digital platforms. These platforms include both free and subscription-based services. The scheme in its current form does not account for these changes and, as a result, a loophole exists through which listed events may be exclusively acquired by subscription streaming services. There may also be a shortfall whereby audiences may be required to pay more to access these events via a streaming service as opposed to the event being broadcast.

⁶ The ABC has audio broadcast rights for Cricket, AFL and NRL in Australia, as well as the ability to broadcast numerous other sports. ABC digital services provide a dedicated sports website, podcasts, and social media content.
⁷ ABC (3 April 2012), Submission to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012*.



Any consideration of the scheme must recognise the fact that a significant proportion of Australians do not have access to broadband, and many cannot afford subscription services. The ADII found that, in 2021, digital inclusion at the national level was given a score of 71.1.8 The ADII also found that, even in 2021, 11 per cent of Australians were highly excluded from the benefits of Australia's digital transformation. Although the ADII found that this number had decreased slightly, it still represents a significant portion of Australians who are not able to access digital services, much less access significant events streamed online. These Australians rely on free-to-air services, such as the ABC, that deliver news and entertainment via television, radio and other means which don't rely on access to the internet. The ADII also found that 14 per cent of Australians would need to pay more than 10 per cent of their household income to gain quality, reliable connectivity. This factor does not exist for free-to-air broadcasters.

The ABC notes that the original goal of the scheme was to prevent subscription television broadcasting licensees from acquiring rights to exclusively televise events on the list and thus to keep significant sporting events freely available and accessible to Australian audiences. Noting the limited access to broadband for some Australians, the ABC believes that the scheme should be designed to promote the broadcast of listed events on television, as opposed to merely screening on streaming services. Events acquired by a free-to-air broadcaster under the scheme and only streamed on a streaming service would subvert the underlying principle of the scheme as they would not be available and accessible to audiences unable to afford quality or reliable connectivity. Even if the streaming service is free to use, a significant proportion of Australians would still have to spend more of their income to watch the event through the service, ultimately resulting in the event not being freely available and accessible. Consequently, the ABC proposes that the scheme require free-to-air broadcasters to televise events acquired through the scheme via television. The scheme should not, however, restrict the simultaneous or subsequent streaming of the events on digital platforms.

In addition, there is currently a shortfall in the scheme whereby subscription streaming services could obtain the rights to and thus prevent a listed event from being broadcast free-to-air. Although the subscription streaming services have not exclusively acquired rights to any events on the list, the current scheme has no mechanism to prevent such acquisitions from occurring. Such an acquisition could adversely impact Australian audiences as they would be required to pay to watch an event that should be free if the scheme was to keep to its original intent. Noting that a significant proportion of Australians have limitations in being able to connect to streaming services, let alone pay for them, not rectifying this issue could further compound the disadvantages they face if significant sporting events were to be solely accessible via subscription streaming services.

Given the changes to the media landscape since the introduction of the scheme, the ABC submits that the scheme should be modified so that subscription streaming services are prohibited from acquiring rights to listed events in the same way as subscription television services.

3. Sports on the anti-siphoning list

The ABC notes that the current list does not appropriately recognise the increased support for events which are now significant sporting events. Many of these sports are women's sports which may not have been as popular when the list was last amended.

⁸ Australian Digital Inclusion Index (2021), https://www.digitalinclusionindex.org.au/key-findings-and-next-steps/.



Possible additions could be the Super Netball series, each match of the Australian Netball team in Australia, and the Women's Big Bash League (WBBL), the Australian Football League Women's Premiership (AFLW) and the National Rugby League Women's Premiership (NRLW). The ABC notes that, in the case of the AFL and NRL, the male versions of these competitions are currently on the list.

The ABC submits that free-to-air coverage of these events may increase the recognition of these sports and, subsequently, increase participation opportunities for women and girls. Other events that could be considered for addition to the list include the 2027 Netball World Cup and the 2029 Women's Rugby World Cup.

The ABC submits that any revision of events on the list should consider the addition of the Paralympics. The Paralympics are increasingly considered by Australian audiences to be significant sporting events and therefore are worthy of inclusion on the list in the same way that the Summer and Winter Olympic Games are.

This suggestion was included in the ABC's 2009 submission to the then-Department of Broadband, Communications and the Digital Economy's 'Sport on Television' Review,⁹ and again in 2012.¹⁰ As noted in its 2009 submission, the ABC believes "there would be considerable concern in the Australian community if the Paralympic[s] ... were no longer available to the free-to-air viewing audience".¹¹ The ABC considers that the popularity of the Paralympics has only risen since 2009.

Furthermore, in the lead up to the 2032 Olympic and Paralympics to be hosted in Brisbane, the ABC strongly believes the Paralympics should be freely available for Australian audiences.

4. Other policy considerations – audio rights

While the ABC may not broadcast sport and events currently on the list via its television services or streaming platforms, the ABC does provide popular audio commentary for sports including International Cricket played in Australia, NRL and AFL, and other major sporting events played in Australia.

The ABC notes that the scheme does not currently extend to the regulation of audio rights. As outlined above and in the consultation paper,¹² there has been a proliferation of audio-visual services in the Australian media landscape. In a similar manner, the ABC notes that there has been an increase in subscription audio streaming services, such as Spotify, Apple Music and TuneIn. Some of these services have free offerings but also offer subscription services.

The ABC considers that it may be possible for some sporting organisations to sell the live audio rights, including commentary rights, exclusively to subscription audio streamers, ultimately putting that content behind a paywall. Noting the large broadcast deals of late, many of which were noted in the consultation paper, ¹³ the ABC submits that the sale of audio rights to

¹³ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (October 2022) *Review of the anti-siphoning scheme: Consultation paper*, pg20-22.



⁹ ABC (23 October 2009) *2009 Review of the Anti-Siphoning Scheme*, pg2.

¹⁰ ABC (3 April 2012), Submission to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012.*

¹¹ ABC (23 October 2009) 2009 Review of the Anti-Siphoning Scheme, pg2.

¹² Department of Infrastructure, Transport, Regional Development, Communications and the Arts (October 2022) *Review of the anti-siphoning scheme: Consultation paper.*

subscription audio services – who may be able to pay more for those rights than other free audio broadcasters, such as the ABC – may become a reality in the coming years.

Accordingly, the ABC submits that any review of the scheme should consider extending rights from only televised coverage to include audio coverage.

Conclusion

The ABC continues to support the policy intent of the scheme which aims to ensure that significant events, such as sporting events, are freely available to Australian audiences.

The scheme supports the ABC's statutory requirement to broadcast "programs that contribute to a sense of national identity and inform and entertain the Australian community". ¹⁴ In fulfilling this role, the ABC has a strong record of bringing significant sporting events to Australian audiences through its extensive terrestrial footprint.

However, the ABC submits that there are parts of the scheme that are no longer fit for purpose, noting that significant changes to the media industry have occurred since previous revisions of the scheme.

Changes the ABC proposes include closing the loophole that would allow subscription streaming services to acquire broadcast rights to listed events – an outcome which would restrict a significant proportion of Australians from accessing such events given the digital exclusion that still exists.

The ABC notes the growing strength and popularity of women's sporting events, such as WBBL, NRLW, AFLW and Netball, and proposes that this rise in popularity would justify adding these events to the list. The ABC proposes that the Paralympics should also be added to the list. Noting that Australia is set to host several associated events in the coming decade, it would be appropriate to add such sporting events to the list to ensure that they are freely available for Australian audiences.

The ABC also proposes that the scheme extend to cover audio rights. This would seek to prevent audio rights of an event being acquired exclusively by a subscription audio streaming service which would undermine the policy intention of the scheme.

¹⁴ s6(1)(a)(i) Australian Broadcasting Corporation Act 1983(Cth).



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Recommendations

- Recognising significant changes in the media landscape, the scheme should be strengthened to ensure that the original policy intent and application of the scheme is met.
- 2. Current loopholes in the scheme such as streaming services obtaining rights and preventing listed events from free-to-air broadcast should be closed.
- 3. Any revision to the list should include the addition of the Summer and Winter Paralympic Games.
- 4. Other sporting events should be added to the list including women's sporting events such as the Super Netball series, the Women's Big Bash League, AFL and NRL Women's Premierships, the 2027 Netball World Cup and the 2029 Women's Rugby World Cup.
- 5. The scheme should extend rights beyond television to audio coverage which is not currently covered by the scheme. The loophole which enables subscription-based services from obtaining audio broadcast rights to listed events and putting them behind a paywall should be closed.

