



12 December 2022

Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Review of the Anti-Siphoning Scheme – Response to Consultation Paper

Commonwealth Games Australia (CGA) is grateful for the opportunity to provide a response to the Anti-Siphoning Scheme Consultation Paper (“Paper”) published by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (“Department”).

We also appreciate the extension indulgence granted for the submission of this response, which has allowed us further time to confer with our colleagues at the Commonwealth Games Federation (“CGF”) and CGF Partnerships (CGFP).

Governance relationship between CGA, the CGF and CGFP

For your assistance, we have detailed below a brief explanation of the governance relationship as it exists between CGA, the CGF and CGFP.

CGA is a member-based organisation (our members are the National Sporting Organisations (NSO’s) representing the sports participating in or eligible to participate in Commonwealth Games), which receives no Federal Government funding and exists to administer, control and coordinate the participation of program sports and their respective athletes and officials in the Commonwealth Games.

CGA does much more than this, however, and we relish the role of being both a leader and collaborative delivery agency in the Australian and international Commonwealth Sport Movement and more generally the Australian sporting sector.

We see ourselves as an open, collaborative, supportive and high performing element of the Australian and International Commonwealth Sport Movement. Our DNA is based on being “first among equals” in everything we do.

CGA is committed to accurately identifying the specific needs of our members, partners and stakeholders and to developing/delivering systems, programs and support designed specifically to meet these needs.

Our Vision is - Pursuing sporting excellence | Connecting with communities.

The CGF is the global governing body for the Commonwealth Games (“Games”) and the owner of certain intellectual property relating to the Games and reserves the right to commercially exploit all broadcast and/or narrowcast and/or any other form of communication rights relating to the transmission of the Games to the public, including those related to television, radio, and internet on a worldwide basis.

CGF Partnerships (CGFP) is the CGF subsidiary responsible for, amongst other things, commercialisation of the broadcast rights to the Games in Australia (the “Rights”).

Responses to the Paper

In the Paper, the Games is an event listed on the Australian Anti-Siphoning List (“List”) and therefore subject to the Anti-Siphoning Scheme (“Scheme”) under the *Broadcasting Services Act 1992 (Cth)*.

As mentioned, CGA’s views in relation to the Paper should be read in conjunction with the responses from CGFP dated 5 December 2022 (which have been included with this correspondence).

Additional considerations

CGA highlights the need to recognise the distinction in the application of the Scheme to major international sporting events versus regular sporting competitions. Accordingly, CGA submits that this distinction must be recognised as a significant consideration in the review of the Scheme.

In addition, CGA has, like all interested stakeholders, had the opportunity to review a number of news articles published in the mainstream media and online setting out Foxtel’s views on the issues covered in the Paper.

We note and agree with the general consensus that improvements in digital technology platforms and their accessibility via a range of devices provides tremendous opportunities for sporting organisations, broadcasters and consumers of the streaming products.

That said, these opportunities do not present themselves uniformly across the supply chain from the actual sporting event or competition to the consumer as the end user. As such, CGA perceives a potential danger to the required flexibility and balance of the Scheme if any recalibration of the Scheme resulting from this review process were to be dominated by a view that the Scheme is “stuck in a time warp”. Any required changes should recognise that the sport industry is not homogenous and neither is the way consumers access media content. Accordingly, a more nuanced approach in seeking solutions is recommended.

In the article - ‘*Outdated, anti-competitive: TV’s anti-siphoning laws face overhaul*’ - published in The Australian on 5 December 2022, a number of outtakes are reported from Foxtel’s independent economist, Mr

Geoff Edwards from Charles River Associates. See link to article: <https://www.theaustralian.com.au/business/media/outdated-anticompetitive-tvs-antisiphoning-laws-face-overhaul/news-story/3afdcfe3f45f4e5b623212c7d36311b9>

While CGA has not had the opportunity to read Mr Edwards’ full ‘independent report’, we note Mr Edwards’ reported statement regarding “limiting the number of bidders for exclusive rights, the current scheme is likely to be limiting the revenues that sports bodies earn from rights to listed events.”

We also note the further reported comments in this article that sports should be allowed to access these revenues to support a range of other initiatives such as grassroots development, women's participation, mental health and Indigenous programs etc.

This is an interesting claim, which we submit should be viewed through the lens of the commercial and financial capacity and resources of individual sporting organisations.

For instance, CGA's Member Sports include top tier, highly sophisticated commercial sports with access to significant broadcast revenues, as well as second and third tier sports that are largely volunteer based. There is a dramatic distinction in the comparative financial capacity of sports across the different tiers.

Consideration should also be given to the fact that many high profile commercial sports have been the beneficial recipients of significant financial investment from taxpayers for sport infrastructure facilities from Local, State and Federal Government over many decades amounting to many hundreds of millions of dollars.

Equally, many of the grassroots developments in women's participation, mental health and Indigenous programs etc referred to are delivered by way of partnership and/or collaboration with one or more of the three tiers of government, again with significant financial contribution from taxpayers. In noting the magnitude of taxpayer investment in both in facilities and programs, it is difficult to embrace the contention that "development" activities of the top tier commercial sports should be supported by regulatory change putting access behind a pay wall.

In this context, many of CGA's second and third tier sports, which collectively provide a much greater diversity for participation in sport (which do not attract the attention of media rights deals are whose events are not currently on the list), are now also seeking to embrace innovation via digital streaming platforms to grow awareness and revenue streams for their sports. CGA submits that this emerging innovation for second and third tier sports should not be stifled given the disparity in financial capacity from the top tier commercial sports.

As such, in noting that the financial capacity and resources of sports across the different tiers is anything but a like-for-like comparison, CGA perceives some difficulties with a "technology-neutral" approach to anti-siphoning, where streaming and online services could acquire exclusive broadcast rights.

A further issue we feel must be properly acknowledged is the need to guard against a generic or uniform view regarding changed viewing habits.

It cannot be disputed that digital platforms allow for much greater access to broadcast and streaming content.

That said, the assumption cannot be made that consumers have either uniform access to digital platforms, or a uniform proficiency in their use. Any claim to this effect simply does not reflect reality and does not account for differences in the quality of internet services in geographical locations, or other issues such as the demographic differences between consumers – e.g., older Australians who may distrust or lack proficiency in the use of digital platforms, to a range of diverse attitudes across a broader cross-section of the community ranging from digital luddites, versus the digital nomads, versus the digital natives.

Finally, CGA acknowledges the view that some potential negative impacts of any limitation on competition include: less content innovation and development; reduced quality of sports and reduced viewer enjoyment of and engagement with sports. Claims of a resultant reduction of participation in sport, however, should be considered carefully noting significant trend data highlighting the fact that we are becoming a nation that watches sport as opposed to one that plays sport. This trend is ultimately harmful to the sport media industry

and is not sustainable. Accordingly, CGA submits that all stakeholders in the sport industry must come together to create the best environment that enables both innovation and participation.

Should you have any queries in relation to CGA's responses to the Paper, please do not hesitate to contact CGA's Government Relations Manager, Mr John Lamont on E: john.lamont@commonwealthgames.com.au.

CGA looks forward to playing an ongoing role in this review.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'CP' or similar initials, written in a cursive style.

CRAIG PHILLIPS AM
Chief Executive Officer

cc: Katie Sadleir - CEO, CGF
David Leather - CEO, CGFP