



Submission by Free TV Australia

Review of the anti- siphoning scheme

Response to the Consultation Paper

December 2022

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1. Executive Summary

- Free sport on television is a fundamental part of the Australian way of life. As popular as ever, free sport on TV remains the great social connector of our times, allowing Australians from all walks of life to share in the same moments together regardless of their means or where they live.
- Free TV considers that the anti-siphoning mechanism is working effectively in ensuring that iconic sporting events are available live and free to all Australians, while providing generous returns to rights holders. Indeed, the anti-siphoning list and Free TV networks' role in providing live and free sport continue to enjoy widespread support in the community.
- However, as currently constructed as a licence condition on subscription TV only, it does not apply to any of the growing number of online content service providers. As a result, there is 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.
- If that occurs, Australians will not be able to continue viewing these events through ubiquitous, free and regulated services. Instead, at the same time as cost-of-living pressures are top of mind for Australians, their access to iconic sporting events would be determined by the subscriptions they could afford, their internet access and their data plan.
- Free TV recommends that the current anti-siphoning model should be modernised through minor amendments to the *Broadcasting Services Act 1992*, extending similar provisions as the existing licence condition to online content service providers.
- Further, in recognition that in the modern media environment Australians are increasingly expecting to be able to access their content from free-to-air (FTA) broadcasters on the device of their choice, the anti-siphoning scheme should allow for the acquisition of both terrestrial broadcast and Broadcaster video-on-demand (BVOD) rights. Only FTA networks can offer the Australian community the best of a ubiquitous terrestrial broadcast network and streamed content via our BVOD apps—providing a seamless experience as audience preferences evolve.
- There is a direct link between the availability of sports rights and the achievement of the Government's communication policy objectives through a sustainable Free TV sector that can continue to invest in trusted local news, entertainment and local drama, together with live and free sport. As viewer preferences continue to evolve it is important that the future sustainability of the Free TV sector be considered by including BVOD rights in the anti-siphoning framework.
- The current delisting period of six months should be retained. However, there is a need to ensure that FTA networks have a genuine opportunity to acquire rights to listed events, in the face of the arrival of streaming companies and other digital platforms of the size and scale not contemplated when the original scheme was enacted. The ACMA should be empowered to determine whether a reasonable opportunity has been afforded to FTA networks, with further guidance to be provided on what constitutes a reasonable opportunity including factors such as price, timeframe and the period of rights.
- The number of listed sports has progressively declined, including in the most recent set of major changes in 2017. The list as it stands today is the minimum viable, narrowly focussed on those sports of key national importance. Other than potential changes to ensure gender balance on the list, Free TV does not seek to add additional sporting events to the list at this time.
- In 2021 alone, Free TV networks provided the Australian public with over 1,300 hours of coverage of listed events, with extended coverage also available on BVOD services. Given this proud track record of providing extensive coverage of listed events and in recognition of the strong commercial incentives to provide extensive free coverage of listed events, neither the anti-hoarding list, nor any alternative coverage requirement, is required.

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 has welcomed the Albanese 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 review of anti-siphoning 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.

2.1 Free TV services – delivering great content to all Australians

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 provide a wide array of channels across a range of genres, as well as rich online and mobile offerings. We currently provide 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.

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. For sports viewing, BVOD is important for two reasons. Firstly, for multi-round and multi-disciplinary events such as the Australian Open tennis or the Olympic Games it offers the opportunity to provide additional coverage to that provided through the linear broadcast channels. Secondly, BVOD is a future facing product that is meeting the needs of the modern audience, both now and into the future. While for the foreseeable future most Free TV services will continue to be enjoyed via the terrestrial broadcast network, more Australians are choosing to receive this content via BVOD apps. As such, it is vital that the BVOD rights be considered as part of the modernisation of the anti-siphoning scheme, as we expand on in section 5.3.

2.2 Sport is a crucial pillar of Australia’s communications policy

The achievement of the social and cultural objectives enshrined in the *Broadcasting Services Act 1992* (BSA) relies on the services provided by a vibrant and sustainable FTA television sector. These objectives include the:

- availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information
- promotion of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity
- availability to audiences throughout Australia of television and radio programs about matters of local significance.¹

Free TV services supports Australia’s democracy by providing Australians with trusted sources of news and current affairs. We contribute to Australia’s sense of identity and culture through telling Australian stories, through both scripted and unscripted entertainment and drama programming, in addition to bringing all Australians together through our live and free coverage of iconic and culturally significant sporting events.

In turn, our ability to continue to deliver these services and meet the Government’s policy objectives relies on two interrelated factors, namely that:

- consumers can readily find FTA services on widely available consumer equipment; and
- commercial TV networks are able to raise and retain sufficient advertising revenue to fund the required investment in local content, including news, live sport, entertainment and scripted drama.

The first of these factors is being addressed through the Government’s commitment to legislate a prominence framework. The second factor is directly related to the ability of local broadcasters to continue to acquire broadcasting rights for socially and culturally significant sporting events.

Australians love sport on Free TV. As set out in the consultation paper, sport continues to be the highest rating genre on television. In turn, this enables us to generate revenue to continue to invest in acquiring sports rights, employing Australians and telling their stories. Under the BSA, commercial

¹ *Broadcasting Services Act 1992*, see 3(1)(a), 3(1)(e), 3(1)(ea)

television broadcasters are expected to primarily generate their income from advertising.² As such, sport is a significant driver of the sustainability of the services provided by Free TV members and as a result the anti-siphoning scheme is a central plank of Australia's communication policy.

Simply put, without sport, there would be no Free TV services. It is a mutually reinforcing relationship where audiences want, and have a right to, live and free sport and the Free TV sector relies on being able to meet this demand. The anti-siphoning scheme is the enabling mechanism for this relationship.

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.

2.3 Structure of this submission

Following the broad structure of the Consultation Paper, this submission is separated into the following sections:

- Section 3 – outlines the continuing public policy rationale for the anti-siphoning scheme
- Section 4 – describes the outcomes achieved for the community from the anti-siphoning list
- Section 5 – sets out the reforms that are necessary for a modern anti-siphoning scheme
- Section 6 – discusses the current events on the list and the potential for reform to address gender balance
- Section 7 – covers other matters raised in the consultation paper such as the delisting period and coverage obligations
- Section 8 – contains a table setting out responses to the specific questions raised in the consultation paper
- Appendices – timeline of anti-siphoning list changes, draft provisions to implement recommend reforms, broadcast coverage analysis, announcements of rights deals associated with listed events.

² See Section 14, *Broadcasting Services Act 1992*(Cth)

3. The public policy rationale for the anti-siphoning scheme

3.1 Australians have a right to see events of national and cultural significance

The anti-siphoning scheme remains as relevant today as when it was established in 1994.

The public policy principle underpinning the anti-siphoning list is that there is a public interest in ensuring that nationally significant sporting events remain available free of charge for all Australians to watch. This recognises that nationally significant sporting events play an important role in Australia's cultural and social life and that the access of Australians to these events must not be governed by how much they earn or where they live.

As the consultation paper accurately describes, the Explanatory Memorandum to the *Broadcasting Services Bill 1992*, states that the scheme was to “ensure, on equity grounds, that Australians will continue to have free access to important events.”³ In practice the operation of the scheme has successfully achieved this outcome. Australians have continued to have access to major sport on free to air television and complementary coverage is available to those who choose to supplement their coverage with subscription services.

These underlying principles remain sound. However, the list was originally designed to ensure that with the introduction of pay TV, major sporting events did not migrate exclusively to pay TV and that viewers would not be forced to pay for content they had always been provided for free. With the proliferation of streaming services, telecommunications providers and digital platforms that have an interest in acquiring sporting rights, there is an expanded public policy case for a strong and effective modern anti-siphoning scheme.

Today the public policy imperative goes beyond ensuring Australians are not forced to pay the high cost of subscription television. Instead, the aim of the BSA anti-siphoning provisions should be to ensure Australians are not required to pay for a myriad of subscription video on demand (SVOD) and/or bundled telecommunications services, together with a high-speed internet connection, in order to watch iconic sporting events.

3.2 Scheme enjoys strong community support

The popularity of live and free sport on television has not diminished, reaffirming the continued importance of the free availability of sport to Australian viewers. While audiences for individual matches will fluctuate depending on the teams playing and the intensity of the contest, as set out in the consultation paper, the evidence is that audiences continue to rely heavily on sport on Free TV.

For example, in the time since the consultation paper was released, around 3 million people watched the AFL and NRL Grand Finals, adding to the nearly four million people that watched the Tokyo Olympics Opening Ceremony and the 3.8 million people who watched Ash Barty's Australian Open triumph.

However, live and free sport on television is more than just the average audience for an individual event. Sport delivered through Free TV services drives deep community engagement with entire events in a way that no other platform can achieve.

As shown in the box below, sport on Free TV amplifies audience reach across entire events, reaching millions of Australians across both our terrestrial and BVOD services.

³ Explanatory Memorandum, *Broadcasting Services Bill 1992*, pg. 56

Sport on Free TV: Audience Amplification

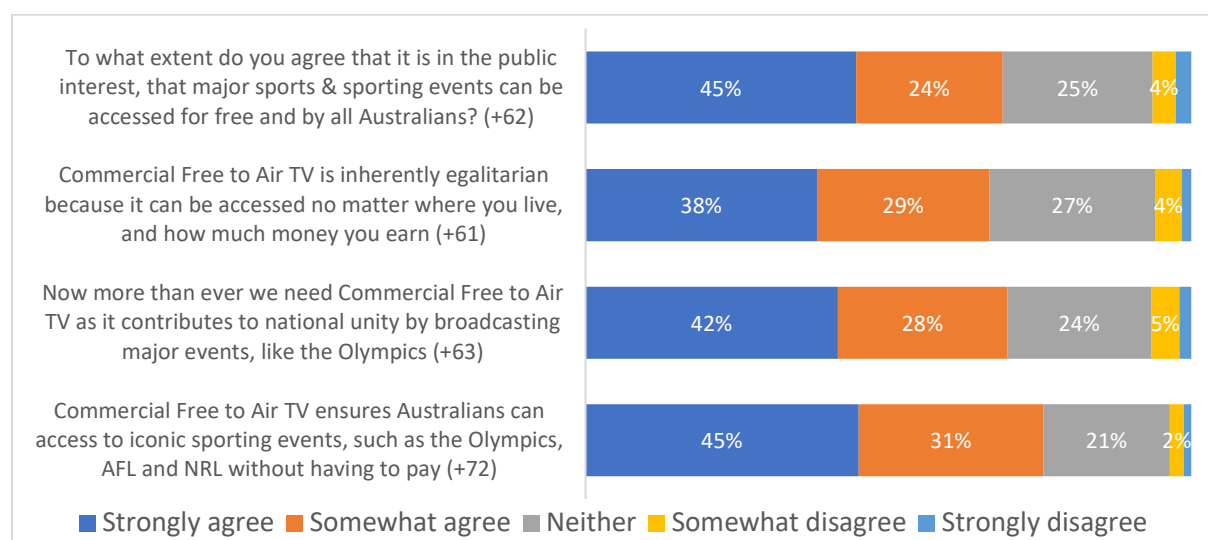
- **Tokyo Olympics** – 20.2 million Australians watched the coverage of the Olympics, across both broadcast and BVOD, amplifying an average audience for the Opening Ceremony of 3.85 million nationally
- **AFL** – The 2022 AFL Season reached 12.7 million Australians through FTA coverage, with an average audience for the Grand Final of 3.1 million
- **Australian Open Tennis** – The two weeks of coverage reached 14.15 million Australians on broadcast TV and BVOD, amplifying average audiences for the women's and men's finals of 3.82 million and 2.3 million nationally
- **NRL** – The 2022 NRL Season reached 15.5 million Australians through broadcast TV and BVOD, with an average audience for the Grand Final of 2.75 million people nationally
- **Melbourne Cup** – Coverage of Carnival week reached 3.5 million Australians, amplifying an average audience for the main race of 1.51 million viewers nationally
- **Soccer** – A-League, Socceroos and Matildas matches reached 9.2 million Australians over the last 12 months and in the first season alone of FTA coverage, average audiences for A-League matches increased by 391% compared to the previous audience behind a paywall.

Supporting the extensive evidence of the audience engagement with sport on Free TV are the results of consumer research undertaken by Crosby|Textor. As shown below, this research demonstrates that Australians see Free TV as the home of live and free sport. Overwhelmingly, Australians agreed that commercial FTA television ensures that Australians can access iconic sporting events without having to pay.

Australians also strongly support the proposition that it is in the public interest that major sports be available free for all Australians (net support 62%). Similarly, an overwhelming majority agreed with the proposition that now more than ever we need commercial FTA TV as it contributes to national unity by broadcasting major events.

These results highlight that Australians see the anti-siphoning list as still being highly relevant and an important piece of Australia's social and cultural policy.

Figure 1: Research shows strong community support for free sport on TV



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

4. Outcomes achieved for Australians from the anti-siphoning list

4.1 Extensive broadcast coverage

Since its introduction in 1994, the anti-siphoning scheme has consistently ensured that Australian viewers have access to high quality coverage of nationally significant sporting events for free. To demonstrate the extent of the coverage that the anti-siphoning list provides for Australian audiences, Free TV has undertaken a detailed analysis of the coverage of events on the anti-siphoning list for 2021.

A detailed breakdown of the broadcast minutes for each individual sporting event on the list is included with this submission at Appendix 3, with a summary table included below. In total in 2021, Free TV networks broadcast over 1,300 hours of live and free sport from events on the anti-siphoning list.

Events	Coverage
1 Tokyo Olympic Games	Extensive broadcast coverage over 4 FTA channels
2 Commonwealth Games	Not held in 2021
3 Melbourne cup	Full coverage of Melbourne Cup Carnival
4 Australian rules football	3-4 games a week on FTA and the Final Series
5 Rugby league football	3-4 games a week on FTA and the Final Series
6 Rugby union football	All 10 Wallabies Tests in 2021 on FTA
7 Cricket	All 5 Tests on FTA
8 Soccer	All Socceroos qualifiers
9 Tennis – Australian Open	Extensive broadcast coverage over 3 FTA channels
10 Netball	No World Cup in 2021
11 Motor sports	F1/MotoGP cancelled in 2021. Coverage resumed in 2022.

The anti-siphoning list is clearly achieving its aim of delivering live and free sport to all Australians. Through advances in technology such as MPEG-4 compression techniques and other spectral efficiency measures, networks are now able to provide multi-round and multi-disciplinary events in high-definition across two broadcast channels. In addition, networks flexibly utilised additional multi-channels to ensure that across the duration of major sporting events viewers were offered the choice of continuing to watch the sporting event, or catching up with the news of the day with one of our trusted and regular evening news and current affairs programs.

This is a world-class level of depth and choice in broadcast coverage provided live and free to Australian audiences that would not be possible without the anti-siphoning list. Increasingly this broadcast coverage is being significantly extended through the investment of our networks in BVOD services.

Where networks have been able to acquire the rights to transmit sporting events on their BVOD services, Australian audiences are offered unprecedented depth and quality of coverage of major sporting events. For example, while all key moments of Australians winning gold in Tokyo were available live and free in HD on Seven's terrestrial broadcast services, this coverage was extended through 7Plus, with that BVOD service offering up to 20 additional channels, covering every sport on offer at the Games, for free.

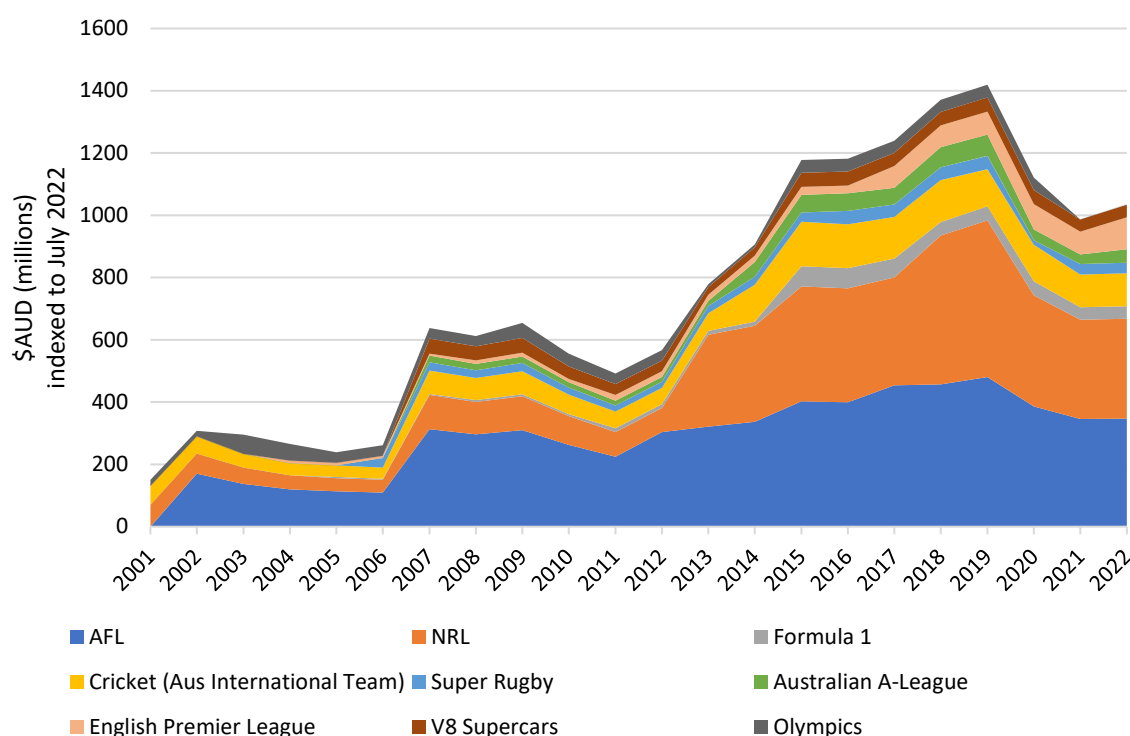
For tennis fans, the Australian Open HD broadcast service was complemented and extended by live and free BVOD coverage across a significant number of outside courts, giving Australians the chance to see all of their favourites in action. Similarly for soccer fans, while these soccer events are not on the anti-siphoning list, all Socceroos, Matildas and a significant number of A-League matches are available live and free on 10Play. In an effort to help further grow female participation in football and enhance the popularity of the Women's A-League competition the 22/23 season will see every match of every round streamed live and free on 10 Play.

BVOD services are meeting the needs of the modern audience by providing both a choice for consumers in how they view their content, as well as significantly more content than could be provided solely in the terrestrial broadcast environment. Increasingly, consumers are coming to expect to have this choice between whether to watch live and free sport across the terrestrial network, or streamed via a BVOD app. This was clearly demonstrated in 2021, where the digital rights to the AFL Grand Final were not available to the FTA broadcaster, causing significant concern for many Australians. As such, to be able to continue to deliver on the needs of the modern audience, it is vital that this reform process provide for the acquisition of BVOD rights alongside broadcast rights for nationally significant sporting events, as we discuss in section 5.3 below.

4.2 Increasing rights value

In previous reviews of the anti-siphoning list, concerns have been expressed about the potential for the operation of the scheme to depress the value of sporting rights. The consultation paper demonstrates the unfounded nature of such concerns by plotting the growth in the value of sports rights since 2001. In fact, since the last review in 2009, the value of rights has more than doubled, with the continued growth only impacted by the interrupted COVID-19 seasons.

Figure 2: Continued strong growth in the value of sports rights



Source: Anti-siphoning Consultation Paper, October 2022

In the time since the consultation paper was released, the AFL has announced a new rights deal that increases receipts from the current \$473 million per season to \$643 per season from 2024-2031.⁴

This again demonstrates that the anti-siphoning regulatory scheme does not have a chilling effect on the commercial returns that sports bodies are able to earn on their rights. On the contrary, there has never been more money available for re-investing in the games that Australians love courtesy of the rights fees paid by Free TV networks.

4.3 Complementary rights continue to be available

A further argument that has previously been made is that the anti-siphoning list threatens the viability of the subscription television sector. However, similar to arguments discussed above regarding the value of sports rights, the evidence available from the operation of the scheme since 1994 dispels this myth.

The Foxtel subscription television business, including its Kayo streaming platform, has recently announced that it achieved 4.41 million paid subscribers up to 30 June 2022, up 13 per cent on the previous year.⁵ Despite the tough economic conditions, Foxtel announced increasing revenues and declining customer churn.

The very strong financial results of these businesses underline the fact that the anti-siphoning rules, whilst preserving a core Australian value, have not prevented the growth of subscription TV or coverage of listed events on subscription TV.

Rather, the evidence is that the anti-siphoning scheme presents a well-functioning and mature model that has enabled the growth of a subscription television sector, provided for the acquisition of complementary subscription television rights, all while achieving the fundamental public policy imperative that sports of national, social and cultural significance are available to all Australians for free.

The anti-siphoning scheme is a world-leading model, that can readily be adjusted to take into account the new service offerings in the internet era, as we expand on in the next section.

⁴ <https://www.afl.com.au/news/837244/afl-reveals-new-broadcast-rights-deal-from-2025>

⁵ <https://foxtelgroup.com.au/newsroom/foxtel-group-q4-and-full-year-fiscal-2022-results>

5. Reforms required for a modern anti-siphoning scheme

5.1 Application to online content service providers

In this submission we have highlighted how the current anti-siphoning scheme has never been more relevant and is continuing to deliver on its core public policy objectives. There are, however, amendments that need to be made to ensure that the scheme continues to perform this function in the face of growing interest from SVOD and AVOD providers in acquiring exclusive sports rights.

Since the gazettal of the first list in 1994, the content landscape has changed considerably. Telecommunications companies, digital platforms and other online streaming providers, who all now provide a vast array of content services to Australians, have all demonstrated a growing interest in acquiring sports rights in Australia and internationally.

Some recent examples include:

- Amazon acquisitions of Thursday Night NFL, English Premier League and US Open Tennis
- Amazon acquisition of Australian Swimming Championships
- Disney bidding for Sunday Night NFL and reported to be spending 33% of content spend on sports rights
- Facebook's bid for Indian Premier League and its hire of former Eurosport executive to head sports business unit
- Telstra acquisition of AFL, NRL and netball rights
- Optus acquisition of FIFA World Cup and EPL rights
- Launch of Kayo (owned by Foxtel but arguably not subject to anti-siphoning rules)
- AFL visit to the US to meet Facebook and Amazon.



As currently constructed as a licence condition on subscription television, the anti-siphoning scheme does not apply to any streaming services. As a result, there is a real risk that subscription 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.

5.1.1 Proposed implementation model

Free TV has carefully considered the models in the consultation paper, together with variants of the models currently operating in the UK. Our assessment of these models is set out below. In terms of extending to online content service providers, we propose some straightforward amendments to the BSA that would replicate the current licence condition on subscription TV and extend this to a new category of “General Online Content Service Provider”. We propose using a definition of “General Online Content Service” which is consistent with the definition of online content service in Schedule 8 of the BSA:

General Online Content Service means a service provided to the public, whether on payment of a fee or otherwise, that:

- (a) delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or
- (b) allows end-users to access content using an internet carriage service,

where an ordinary reasonable person would conclude either that the service is targeted at individuals who are physically present in Australia or that any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia, other than BVOD Services, services listed in paragraphs (e) to (q) of section 3 of Schedule 8 or any other services determined by the ACMA.

To extend the anti-siphoning list to these services, the existing power for making Online Content Service Provider Rules could be amended to allow the ACMA to make rules in relation to the events specified in the anti-siphoning list. The ACMA would then make a rule effectively mirroring the existing subscription television licence condition, applicable only to General Online Content Service Providers. Alternatively, a prohibition could be inserted directly into the BSA on the following terms, which also extends to BVOD services, as discussed in more detail in section 5.3:

No General Online Content Service Provider will acquire the right to provide, by means of a General Online Content Service, an event that is specified in a notice under subsection 115(1) unless:

- (a) a national broadcaster has the right to televise the event on any of its broadcasting services and to make that event available on its BVOD Services; or
- (b) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) who have the right to televise the event cover a total of more than 50% of the Australian population, and those licensees also have the right to make that event available on their BVOD Services.

Full drafting for our proposed model is attached to this submission at Appendix 2.

5.1.2 Government cannot wait until after an exclusive streaming deal has been done

In practice, the anti-siphoning list ensures that Free TV networks must be a party to the negotiation for sports rights. That is, no deal between a sporting body and subscription TV can currently be entered into without an FTA broadcaster also acquiring rights to listed events, even if the deal does allow for complementary or shared rights with subscription TV.

However, given that no equivalent of the condition on subscription television licensees exists for online content service providers, there is no mechanism to ensure that FTA broadcasters must be a party to negotiations between sports bodies and streaming companies, telecommunications providers or other digital platforms. As such, nothing currently protects audiences from the exclusive purchase of rights to listed events by these online content service providers.

With the mounting evidence of both interest by sports bodies in selling rights to online content service providers and increasing demand for exclusive sports content from these providers, this is not a theoretical issue. Crucially, it is not an issue on which the Government can delay taking preventative action. Once exclusive coverage rights have been acquired by an online content service provider, they are lost to the Australian public for the duration of that contract.

The anti-siphoning list is a preventative proactive measure to protect audiences. It must be modernised now to include online content service providers. If we wait until after a contract for exclusive rights has been struck, it will be too late.

If that occurs, Australians will not be able to continue viewing these events through an accessible, free and regulated provider. Instead, whether Australians could watch iconic sporting events would be determined by their access to the internet, the speed and data allowance of their internet package and which streaming services they subscribe to.

The international evidence suggests that the online content service providers would be likely to attempt to cherry-pick the most commercially important matches and events from a schedule, rather than seeking the rights to the entire season (see Thursday night NFL for example). The most efficient and effective way to protect Australian audiences against this opportunistic cherry-picking is to extend the current acquisition model to online content service providers to ensure that FTA broadcasters are party to the negotiations for the entire rights package.

5.2 Only Free TV networks can provide free ubiquitous coverage for all Australians

Australians are world leaders in having access to a ubiquitous and freely available platform. In an average week, approximately 16 million Australians watch broadcast TV, while 97% 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. No other medium provides this level of reach.

This is particularly important for regional communities, where poor connectivity can limit viewers' access to internet-delivered entertainment services.⁶ In fact, modelling undertaken by Deloitte Access Economics found that at least 5.6 million Australians cannot access streamed video content. That is more than 1 in 5 Australians that cannot yet rely on the internet for video streaming due to lack of connectivity or restrictive data caps.⁷

This makes the terrestrial broadcast network and access to FTA rights crucial to ensure that all Australians can continue to access live and free sport.

⁶ RMIT University and Swinburne University of Technology, 'Measuring Australia's Digital Divide: The Australian Digital Inclusion Index' (report commissioned by Telstra), 2019.

⁷ Deloitte Access Economics 2022, *Everyone Gets it: Revaluing the economic and social benefits of commercial television*, pg 24

However, as the Government continues to invest in the national broadband network and internet connectivity continues to improve, it is expected that the current digital divide will continue to narrow. Indeed, for most Australians the internet is central to their everyday lives and is already integrated into their access to video content. As this continues, more and more viewers will not distinguish between content provided via an aerial and content delivered over IP.

In this changing media environment, only FTA networks are able to bridge this divide by offering all Australians the option of either accessing live and free sport via the broadcast network, or accessing it via the internet. It is therefore crucial that the anti-siphoning list be modernised to include the rights to provide the Australian public with live and free sport on both the broadcast and BVOD services provided by FTA networks.

5.3 Ensuring BVOD rights are included in broadcast deals

The current anti-siphoning scheme provides for the acquisition of rights for national and commercial broadcasters to televise listed events on their broadcast services. In the modern media environment, Australians are increasingly expecting to be able to access content from FTA broadcasts on the device of their choice and wherever they are. As demonstrated above, this expectation is being seen by the increasing numbers of Australians accessing live and free sport via a BVOD service when it is offered alongside the broadcast service. The current outdated anti-siphoning list does not support this expectation.

Further, as advertisers recognise this trend of audiences to also access FTA content via BVOD services, they are increasingly partnering with FTA networks to advertise in innovative ways across this platform. BVOD services are a vital part of the commercial proposition for networks and a key factor in the future sustainability of our sector. In turn, as we set out in section 2, the availability of BVOD rights for live and free sport is directly related to the achievement of the Government's broader communications policy.

BVOD rights also offer Free TV networks the opportunity to extend beyond the coverage that is possible on broadcast services. As has already been seen for events like the Olympics or Australian Open Tennis, BVOD coverage gives Australian audiences the ability to access a far greater depth of coverage than would otherwise be possible.

To reflect these realities, we propose further minor amendments to the existing subscription television licence condition (with the equivalent restriction applying for the new provisions relating to general online content service providers, as set out in section 5.1):

the licensee will not acquire the right to televise, on a subscription television broadcasting service, an event that is specified in a notice under subsection 115(1) unless:

- (i) a national broadcaster has the right to televise the event on any of its broadcasting services and to make that event available on its BVOD Services; or*
- (ii) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) who have the right to televise the event cover a total of more than 50% of the Australian population, and those licensees also have the right to make that event available on their BVOD Services;*

Full drafting for this proposal is included in Appendix 2.

For viewers this offers the best of both worlds—live and free iconic sports events on their choice of either broadcast or BVOD platforms. For Government, this approach provides for the future

sustainability of the FTA sector and the maintenance of a key pillar of Australia’s social and cultural policy. This approach also future proofs the anti-siphoning scheme to allow the continued gradual transition of consumers choosing to access FTA content via the internet, with no diminution in public policy protections irrespective of how content is accessed.

As set out in the box below, in the time since the Consultation Paper was released, the UK Government has also commenced a review, specifically focussing on the inclusion of digital rights.

UK Government Digital Rights Review

In November 2022, the UK Government commenced a review to consider whether digital rights should be brought within the scope of their listed events regime. The UK Government highlighted while FTA coverage was important to ensure that sporting events of national significance could be enjoyed by as wide an audience as possible, it recognised that the current framework was established at a time when only 4 per cent of UK households had access to the internet.

In the background section to the Terms of Reference for the review, the UK Government noted:

The current legal framework was established in 1996 at a time when just 4% of UK households had access to the internet – it is now 95%+. Consequently, although digital rights have now become an important element in the sale of sports rights, they are not covered by the listed events regime. This raises questions about whether the objectives of the existing regime are still being met and whether they will continue to be met in the future. If for example the Olympic 100 metre final were broadcast live in the middle of the night on the BBC, but all streaming and catch-up rights were sold to a different broadcaster and kept behind a paywall, then a culturally relevant event might not be available to a wide audience on a free-to-air basis. It is also important to recognise the changing audience expectations about the availability of live and secondary coverage of sporting events of national interest and therefore how the nation as a whole seeks to engage with them.⁸

Further, Digital Infrastructure Minister Julia Lopez said: “As viewing habits shift online, it is right that we review our rules and consider whether updates are needed to ensure our brilliant public service broadcasters can continue to bring major events to the public at no extra cost.”⁹

The UK Government has already committed to retaining the Listed Event scheme and has indicated that it “strikes an appropriate balance between retaining free-to-air sports events for the public while allowing rights holders to negotiate agreements in the best interests of their sport.”¹⁰

5.4 Strengthening the reasonable opportunity test

As we discuss in section 7.1 below, Free TV does not propose any amendment to the current six-month automatic delisting period. However, we do consider that enhancements can be made to the current “reasonable opportunity” test to ensure that it performs its intended function as a genuine check on whether a real opportunity to acquire rights has been afforded to FTA broadcasters.

Currently, if the rights to a listed event have not been acquired by an FTA network within 6 months of its commencement, the event is automatically removed from the anti-siphoning list. However, FTA networks may seek a determination from the Minister that a reasonable opportunity has not been afforded to FTA networks to acquire the rights and that automatic delisting should not occur. There is

⁸ <https://www.gov.uk/government/publications/listed-events-digital-rights-review/listed-events-digital-rights-review-terms-of-reference>

⁹ <https://www.gov.uk/government/news/review-of-broadcast-rules-around-major-sporting-events>

¹⁰ *ibid*

currently no guidance to the Minister on what matters should be taken into account in determining whether a reasonable opportunity has been afforded to an FTA network to acquire the rights. Free TV considers that the BSA should set out the criteria to guide this decision making process in order for the reasonable opportunity test to ensure that a genuine opportunity to acquire rights was afforded to FTA broadcasters—and as a consequence a real opportunity for the Australian public to be offered the event live and free.

Free TV considers that it will be increasingly necessary for a genuine check and balance to be in place for whether a reasonable opportunity has existed for an FTA broadcaster to acquire sports rights. It is expected that rights will continue to be hotly contested between FTA broadcasters into the future. However, the scale and market capitalisation of the online content service providers now vying for sports rights has the potential to distort the market by orders of magnitude more than when the anti-siphoning list only applied to one, admittedly well resourced, subscription TV incumbent. Given this change in dynamics, including the potential for new entrant online content service providers to use exclusive sports rights as a “loss leader” to drive and retain subscribers, Free TV submits that a more robust check and balance on what constitutes a reasonable opportunity is required.

In assessing what guidance could usefully be provided in forming this decision, Free TV has had regard to the model operating in the UK. Under the UK approach, before a contract for the exclusive right to broadcast an “A” listed event can be validly entered into, Ofcom must first form a view that broadcasters have had a “genuine opportunity to acquire the rights on fair and reasonable terms.”¹¹ Ofcom has provided guidance on the matters it would consider in making this determination.

Free TV submits that a similar framework should be applied in the context of the Australian anti-siphoning scheme, including empowering the ACMA to make the determination on whether a reasonable opportunity had been provided to FTA networks. In making this decision, we propose that the ACMA be required to have regard to:

- whether FTA broadcasters were invited to tender for the acquisition of the rights and the form of that invitation
- the timeframe allowed to respond to the invitation for tender
- whether the holder of the rights engaged in good faith negotiations
- whether the holder of the relevant rights offered a fair and reasonable price for the acquisition of the rights, having regard to:
 - previous fees for the event or similar events
 - time of day for live coverage of the event
 - the potential advertising revenue or potential audience associated with the broadcast and online delivery of the event
 - the duration of the rights contract being offered, and
 - competition in the market place for sports rights.

Full drafting for these criteria is included in Appendix 2.

¹¹ https://www.ofcom.org.uk/data/assets/pdf_file/0029/35948/ofcom_code_on_sport.pdf

5.5 Assessment of alternative anti-siphoning models

Free TV notes the alternative reform options included in the consultation paper. As set out above, we recommend that the Government retain the current acquisition-based model, with a straightforward extension to online content service providers. This model is well understood by key participants, that is, the rights holders and FTA broadcasters, STV licensees and online content service providers.

The conferral and offer models discussed in the consultation paper appear intended to transfer the compliance burden to rights holders. Unlike our proposed extension of the current licence condition to online content service providers, there is currently no regulatory framework that applies to sports rights holders, increasing the complexity of the legislative changes required. It is not apparent that there is material benefit in terms of efficiency or likely outcome from changing the regulatory burden in this fashion. In the absence of a demonstrable benefit from such a fundamental change to the approach to the regulation of sports rights acquisition, Free TV would not support a change to the current model.

Free TV notes that the conferral and offer models discussed in the consultation paper appear to differ from the UK conferral approach that governs the rights contracts between the content providers and rights holders but ultimately holds the licenced television program provider responsible for compliance.

The most significant difference between the model applying in Australia and the conferral-based UK model is that in the UK there is no automatic delisting period, and the regulator must grant approval for the exclusive coverage of listed events having regard to whether other broadcasters were given an opportunity to acquire the rights on fair and reasonable terms.¹²

As discussed in section 5.4 above, Free TV has considered this approach in forming its recommended reforms to the reasonable opportunity test that applies in the Australian context. We consider that our preferred model is measured as it retains the existing delisting period, while strengthening the reasonable opportunity test to enable it to perform its intended function.

An alternative approach would be to adopt the UK scheme more closely, with the removal of the automatic delisting period, with exclusive rights only available to subscription TV and online content service providers if the regulator approves the acquisition having regard to the fair and reasonable factors discussed above. While such a model would have some clear benefits for the power of the incentives to ensure fair and reasonable rights offers to FTA broadcasters, on balance Free TV has sought to propose a balanced package of measures that are the minimum required to modernise the current framework.

¹² See for example, Ofcom Code on Sports and Other Listed and Designated Events, clause 1.26

6. Events on the list

6.1 List now at minimum viable level

While there have been a number of reviews and amendments made to the scheme over the years since 1994, on any objective measure the scheme has lived up to the initial policy intention of Government. Iconic sporting events have continued to be broadcast for free to all Australians, while complementary rights partnerships have been able to develop between subscription television and all major sporting codes.

As depicted by the red arrows on the table in Appendix 1, the scope of the list has dramatically narrowed as successive Governments have reviewed the operation of the list. In particular, the 2017 changes were dramatic in rationalising the list to what it is today.

It is now a very tight list of sports that is targeted on those key iconic sporting events:

- Olympics and Commonwealth Games
- Melbourne Cup
- AFL Premiership Season and Finals Series
- Rugby League – NRL Premiership Season and Finals Series, State of Origin, International Tests*, World Cup*
- Rugby Union – International Tests*, Australian World Cup matches & World Cup Final
- Cricket – Tests* (and Ashes played in the UK), ODIs*, T20Is*, World Cup* (and local Final)
- Soccer – World Cup Final, Socceroos games (incl. local qualifiers)
- Tennis – all AO matches, local Davis Cup ties & Final involving Australia
- Netball – Semi-final/ Final World Cup involving Australia
- Motorsports – F1 Australian GP, Australian Moto-GP, V8 Supercars Bathurst 1000.

*(Involving Australia and played in Australia)

It would not be possible to credibly make a case for the further delisting of sports from the above list. While Free TV does not propose any wholesale additions to the list, as we discuss below, there is the potential for reform to ensure that women's sport is adequately represented on the list.

6.2 Two-tier list amounts to further delisting of events

In the UK the anti-siphoning list is structured in two tiers. For "A" list sports, a contract for the broadcast rights (including subscription rights) for live coverage of the event can only be valid if a FTA broadcaster with reach over 95 per cent of the population also has the rights. In practice, the "A" listed events operate very similarly to the Australian acquisition model, with the added protection in the UK of additional checks on fair and reasonable terms for rights (as we propose for our regime above).

For "B" listed events, rights to broadcast the event can be exclusively held by any broadcaster as long as a FTA broadcaster with 95 per cent population reach also holds the rights to provide edited highlights or delayed coverage of at least 10 per cent of the scheduled play.

The UK experience is that where sports are included on the B list, the audience has effectively lost access to these sports live and free. As noted in the consultation paper, English Test Match Cricket is

an example of how sports are treated once they are included only on the B list, with audiences largely missing out on meaningful live coverage of the event.

From this analysis there are two important points to make. First, given that the Australian anti-siphoning list is already at its minimum viable level, there is no scope for the demotion of any event to a “B” list. Secondly, there would appear to be limited utility for audiences in creating a B list to add additional sports, given the limited likelihood of meaningful coverage of those events.

Similarly, Free TV would not support the use of a two-tier list to require that certain matches must be shown on the broadcast service as canvassed in the consultation paper. This would be particularly problematic for multi-round or multi-disciplinary sports. Take for example the AFL, if a two-tier list was to be used to require that certain matches were shown on the broadcast service, the lists would need to be heavily prescriptive in specifying individual matches or matches that were played on a specific day of the week. Trying to predict and codify the ‘match of the round’ in regulatory instruments would be inflexible to the dynamic nature of sport and would risk unintended consequences, such as creating perverse incentives to structure draws to circumvent the anti-siphoning list. Accordingly, Free TV supports the continuation of homogenous treatment of all events on the anti-siphoning list.

6.3 List should be made gender neutral

Free TV networks are proud of their commitment to women’s sport and the role we have played in the success and growth of new competitions such as the AFLW, NRLW and the W-League. Without special grants from the Australian taxpayer, Free TV networks have invested heavily in broadcasting these new leagues live and free to all Australians. 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.

The growth of these competitions and their commercial success raises important questions for their treatment on the anti-siphoning list. More generally, for a number of sports on the anti-siphoning list, the relevant team is described as the “senior Australian representative team.” In the consultation paper it is noted that by naming convention or by absence of alternative wording this has been taken to refer to the men’s competition.

We acknowledge the concerns regarding the gender bias on the list. To address these concerns we would support the inclusion of a greater number of women’s sports, particularly for the final series of the peak competitions listed above. In addition, the inclusion of the Matilda’s World Cup qualifiers and all matches in the World Cup would be appropriate. We would be open to further discussions with the Government on further additions to the list, if further adjustments were deemed appropriate.

7. Other matters raised in the consultation paper

7.1 Delisting period

Free TV supports the retention of the current 26-week automatic delisting period. In practice, given that the current anti-siphoning list is so narrow, it will rarely be the case that rights to listed events have not been purchased by a FTA network, so long as they have had a reasonable opportunity to acquire these rights. This is supported by our analysis included below of rights deals being announced for every event on the list.

The biggest danger for Australian audiences is that rights negotiations are delayed in order to trigger the automatic delisting period so that the rights can be acquired exclusively by a subscription television or online content service provider. As such, it is vital that the delisting period is not extended as this would increase the risk to the viewing public of live and free sport disappearing from FTA broadcast services.

7.2 Coverage obligations potentially inflexible and unnecessary

This submission has highlighted the depth of coverage provided by FTA networks of listed events, with over 1,300 hours of coverage of listed events shown during 2021 alone. The evidence demonstrates that FTA networks are using the broadcast platform in a highly flexible fashion in order to maximise the coverage of listed events. This coverage is being extended (where rights allow) with BVOD services adding considerable breadth to the coverage available on the broadcast service.

Free TV would not support any regulation of coverage of listed events. There is no evidence of a public policy problem that requires any such measure. Further, the introduction of any coverage obligation risks introducing inflexibility into the regulatory regime that would limit the ability of FTA networks to respond to the dynamic nature of sports and the evolving demands of the audience.

It is important to recognise that commercial FTA networks are required under the BSA to be advertiser funded. Further, there is a commercial imperative that exists for commercial TV networks to maximise the reach of all programming, including live and free sport. As described in section 2, this creates a mutually reinforcing relationship between the right of Australian audiences to access live and free sport and the commercial incentives to achieve maximum reach. The strength of this incentive means that any further coverage obligation is unnecessary.

7.3 Anti-hoarding provisions unnecessary

As discussed above, commercial FTA networks have a strong incentive to ensure that all sports for which they have acquired the rights reach the greatest possible audience. It is therefore unsurprising to note that the anti-hoarding provisions have never been triggered, with only two events ever designated under the regime.

To the extent that the anti-hoarding rules were ever required or were ever relevant, they have now been made entirely redundant by the fact that the list is so narrow and that FTA networks are able (and do) use their multi-channels to broadcast live and free sport to all Australians. Free TV submits that the anti-hoarding provisions should be removed from legislation.

8. Responses to the consultation questions

Issue	Question	Free TV Response
Policy objective		
1	<p>Is the objective of ensuring that Australians continue to have free access to nationally important and culturally significant events still relevant and appropriate? What changes to this objective, if any, would you propose?</p> <ul style="list-style-type: none"> Should the scheme seek to define what constitutes ‘nationally important and culturally significant’? Is so, in what way? Is popularity a proxy for importance and significance, or are other inputs or variables relevant? Should other factors, in addition to free access to events, be considered for the objective? 	<p>The underlying public policy principles of the anti-siphoning list remain sound: all Australians should be able to see socially and culturally significant events for free.</p> <p>The current scheme works well and there is no identifiable need to change the listing criteria. The Explanatory Memorandum, <i>Broadcasting Services Bill 1992</i> refers to the policy objective of ensuring free access to events of ‘national importance’ and ‘cultural significance’, concepts which are not given legislative definition in the BSA. Concepts such as ‘national importance’ and ‘cultural significance’ are, by their nature, not conducive to quantitative measurement and any attempt to define them in legislation risks artificially limiting their meaning and would be unnecessary.</p> <p>Successive Ministers have exercised the powers in section 115 of the BSA with reference to the underlying policy objectives of the list, with the result that the Australian public has continued to enjoy coverage of iconic sporting events for free. The lack of any legislated definitions or criteria has not adversely impacted on the success of the scheme.</p>
2	<p>What does, or should, ‘free access’ to events mean?</p> <ul style="list-style-type: none"> Is an event ‘free’ only if it is shown on free-to-air television, or could availability via an online service without a direct access fee (such as a BVOD or streaming service) also satisfy this criterion? Does having to pay for internet access alter your perspective on whether these events are ‘free’ to access? 	<p>Attempting to define “free” in the context of content delivered over the internet is problematic. At the base level, the requirement to pay for an internet connection or purchase a bundled telecommunication service means that access to sports delivered by these services is not “free.” Actions by content service providers such as putting content in front of a paywall or not including content streaming in any monthly data allowance can give the appearance of a service being provided for free, while in fact the costs are still borne by the consumer indirectly. Further, analysis undertaken by Deloitte Access Economics demonstrates that over 1 in 5 Australians do not have the internet capability to rely on streamed video content. As such, considering only whether there is a requirement for</p>

Issue	Question	Free TV Response
		<p>direct payment (or lack thereof) by consumers is not a sufficient test to meet the public policy objective of the anti-siphoning scheme.</p> <p>In preference, Free TV recommends that the key public policy imperative that should be met by the anti-siphoning list is of ubiquity of coverage for Australian audiences for which no payment is required. This is consistent with the UK approach which refers to services for which no consideration is required and that reach 95% of the population. That level of reach can only be provided by broadcast TV.</p>
3	Should the policy objective be rationalised to focus on sporting events (which, in practical terms, is where the anti-siphoning scheme operates today), or remain broadly cast to include any events?	To date the list has only been used for sporting events. Other regular events of national and cultural significance, such as the Anzac Day commemorations, do not have rights available for purchase on an exclusive basis. While it is considered unlikely that the list would be used for non-sporting events in the future, the Government may consider that it is appropriate to retain the flexibility should events emerge in the future that have a national and cultural significance where there is the potential for exclusive rights to be awarded.
Policy mechanism		
4	Is the anti-siphoning scheme the right mechanism to support the achievement of the stated policy objective of ensuring access to important sporting events?	While the current anti-siphoning framework does require modernisation to ensure that it includes online content service providers, it remains a vital mechanism for ensuring that nationally significant sporting events that play an important role in Australia's cultural and social life are available live and free to the Australian community.
5	To what extent does the anti-siphoning scheme deliver on its stated objective, particularly for audiences?	<p>The existence of the anti-siphoning scheme has been vital in meeting the stated aim of ensuring live and free socially and culturally significant sport can be shared by everyone in the community. Free TV analysis has demonstrated that in 2021 alone, the list ensured that over 1,300 hours of listed content was broadcast to Australian audiences live and free.</p> <p>International experience has shown that where audiences are not protected by anti-siphoning style schemes, there is a continual diminution</p>

Issue	Question	Free TV Response
		in coverage and in some cases entire sports—like Test Cricket in the UK—disappear behind paywalls.
6	How does the anti-siphoning scheme alter decisions made in your industry regarding media rights to sporting events, both listed and unlisted? Does it make it easier or harder to sell and acquire such rights?	The anti-siphoning scheme ensures that FTA broadcasters are part of the negotiation for key sporting events. By requiring that subscription television (and online content service providers in our recommended model) can only buy rights once the FTA rights have been acquired, the model elegantly provides a reasonable opportunity for FTA coverage of key sporting events, while allowing the flexibility for other providers to purchase the rights to provide complementary and extended coverage.
7	Does the anti-siphoning scheme impose compliance cost on industry? Is it possible to quantify or estimate these costs? Would any changes to the operation of the scheme potentially alter these compliance costs?	Any true ‘compliance costs’ associated with the administration of the anti-siphoning scheme are negligible. If our recommended changes are made it is likely that costs will continue to be negligible.
Application of the scheme to new media		
8	Is the trend of exclusive rights acquisition by subscription-based online services evident in overseas markets likely to be replicated in Australia? If so, under what timeframes and circumstances?	See section 5.1 There is growing evidence of the extent of interest in Australian sporting events (both listed and unlisted) by online content service providers. Examples provided include: Amazon acquisition of Australian Swimming Championships, Telstra acquisition of AFL, NRL and netball rights and Optus acquisition of FIFA World Cup.
9	Should the anti-siphoning scheme be extended to cover online services and digital platforms and services? If so, should broadcasting and digital rights be treated in the same manner under the scheme (homogenous regulation), or should different restrictions and obligations apply to each?	<p>It is crucial that this review leads to a modernisation of the anti-siphoning scheme through the inclusion of online content service providers. As it stands today any of these providers could enter into an exclusive contract to transmit a sporting event, with no protections in place for Australian audiences.</p> <p>The amended anti-siphoning scheme should ensure that online content service providers (in addition to each STV licensee) cannot acquire the rights to transmit a listed event unless an FTA broadcaster has acquired both the FTA broadcast and BVOD rights.</p>
10	What impact would the potential extension of the scheme to online services have on industry? Is this potential impact able to be quantified or estimated?	The necessary extension of protections for audiences to online services would, by design, limit the ability of these services to purchase exclusive rights. However, the existing ability of these services to purchase complementary rights would not be impacted by our proposed model.

Issue	Question	Free TV Response
		Any negative impact that online content service providers may argue that the extension of the scheme would have will be fully offset by the benefits provided to the Australian community.
11	What are the potential positive and negative impacts of extending the scheme to online services for Australian viewers? Is this potential impact able to be quantified or estimated?	Our proposed reform model would ensure that the current protections that exist for audiences in relation to STV, extend equally to online services. In addition, our proposed inclusion of BVOD rights would extend these audience protections to Australian viewers prefer to stream their FTA content. Audience members that are prepared to subscribe to access complementary or extended coverage provided either by STV or an online service would have those services available.
Regulatory rule: acquisition, conferral or offer?		
12	<p>Do you consider that an offer- or conferral-based rule for the anti-siphoning scheme should be considered?</p> <ul style="list-style-type: none"> • If so, under what circumstances would either one or both of these alternatives provide advantages over an acquisition-based rule? • Should these alternatives seek to ensure that the offer or conferral has been made on reasonable terms? How would this be achieved? 	<p>The current acquisition-based model is preferred over alternative models. This model is well understood by key participants, that is, the rights holders and FTA broadcasters, STV and online content service providers.</p> <p>The conferral and offer models discussed in the consultation paper appear intended to transfer the compliance burden to rights holders. This differs from the UK conferral approach that governs the rights contracts between the content providers and rights holders but ultimately holds the licenced television program provider responsible for compliance.</p> <p>Rather than adopting a new model, the existing reasonable opportunity test in s115(1AB) should be enhanced (with the ACMA given the power to issue a notice for an event to remain on the list) with the legislation setting out criteria for what constitutes a reasonable opportunity, including cost and timeframe.</p> <p>The UK conferral model is not materially different from the acquisition model, particularly if the reasonable opportunity test is improved to better perform its role of ensuring that rights offers to FTA broadcasters are reasonable.</p>

Issue	Question	Free TV Response
		See section 5.4 for further details.
13	What impact on business would the move to an offer or conferral-based rule have? Are these potential impacts able to be quantified or estimated?	<p>As above, an appropriately designed acquisition model with an enhanced reasonable opportunity test would effectively have the same outcome as the UK-style conferral model.</p> <p>An offer-based approach would heavily depend on regulatory intervention and the ACMA's interpretation of fair and reasonable and would not guarantee the acquisition of rights by FTA broadcasters.</p>
14	What impact would the adoption of an offer- or conferral-based rule have for Australian viewers? Are these potential impacts able to be quantified or estimated?	A UK style conferral model would likely not result in a material difference in outcomes for viewers. An offer-based approach does not ensure that the rights would be conferred to an FTA broadcaster, causing uncertain outcomes for audiences.
Use and disposal of a right to televise an event		
15	<p>Is there evidence that the rights to anti-siphoning listed events are being acquired but not used by any party in the contemporary media environment?</p> <ul style="list-style-type: none"> • If so, in what circumstances is this taking place? • Is this resulting in a detrimental coverage outcome for Australian audiences? 	<p>There is no evidence that we are aware of where rights to sporting events have been acquired and not used by any FTA broadcaster.</p> <p>Sporting rights are very expensive. It does not make commercial sense for any acquirer, particularly not a commercial FTA network that is required to be advertiser funded, to purchase but not exploit sporting rights. To the contrary, evidence included in this submission demonstrates extensive coverage of listed sporting events by FTA broadcasters.</p>
16	<p>Is a regulatory mechanism necessary to prevent the hoarding of rights to anti-siphoning listed events?</p> <ul style="list-style-type: none"> • If so, should this be the anti-hoarding rule (in its current form), an amended anti-hoarding rule, or a new regulatory mechanism? • What impact would the mechanism have on free-to-air broadcasters, subscription broadcasters, online service providers, the relevant sports bodies, and audiences? Are you able to quantify or provide an estimate of these impacts? 	As above, the commercial incentives inherent in the purchase of sporting rights ensures that these rights are fully utilised. Further, for commercial FTA broadcasters there is a strong commercial imperative to ensure that high value sporting events are shown on the platform with the greatest reach and therefore revenue potential. In the face of these strong commercial incentives, further measures are unnecessary.

Issue	Question	Free TV Response
	<ul style="list-style-type: none"> How would the anti-hoarding mechanism be integrated with other potential changes to the scheme, including the potential extension to online services? 	
17	Are there other circumstances where contractual or other arrangements for the right to televise events on the anti-siphoning list are being used to subvert the intent of the scheme? Can you provide examples?	<p>The real and existential threat to the anti-siphoning scheme is the one posed by the non-inclusion of online content service providers. Closing this loophole is appropriately the focus of this review process.</p> <p>Claims by other stakeholders regarding the potential for sporting events to be purchased by vertically integrated FTA broadcasters and only shown on related subscription services is not supported by evidence and ignores the strong commercial incentives to ensure that these events are shown to as many Australians as possible by FTA broadcasters.</p>
Coverage of anti-siphoning listed events		
18	Are you concerned about broadcast coverage of events on the anti-siphoning list? Please provide specific examples.	In 2021, FTA broadcasters provided Australians with over 1,300 hours of live and free sporting coverage of listed events. With the advent of multi-channelling, audiences are enjoying more coverage of key sporting events than ever before, with networks providing coverage of some sporting events on up to three channels, providing a depth of live and free coverage never before offered to Australian audiences. In addition, FTA networks are complementing this extensive coverage with enhanced BVOD offerings.
19	<p>Is there a need for coverage obligations to be introduced for free-to-air broadcasters that acquire the rights to anti-siphoning listed events?</p> <ul style="list-style-type: none"> If so, what form should those obligations take? Should they be applied to specific events, or all events on the anti-siphoning list? How should coverage obligations be integrated with other reforms to the anti-siphoning scheme? 	As above, there is already extensive coverage of iconic sporting events for which FTA broadcasters hold the rights and no further regulations are warranted.
20	<p>Would the imposition of coverage obligations alter decisions made by industry regarding media rights to sporting events, both listed and unlisted?</p> <p>Would this make it easier or harder to sell and acquire such rights?</p>	FTA networks already optimise their coverage to reach the greatest possible audience. Further measures risk creating an inflexible regime, with the potential for unintended consequences.

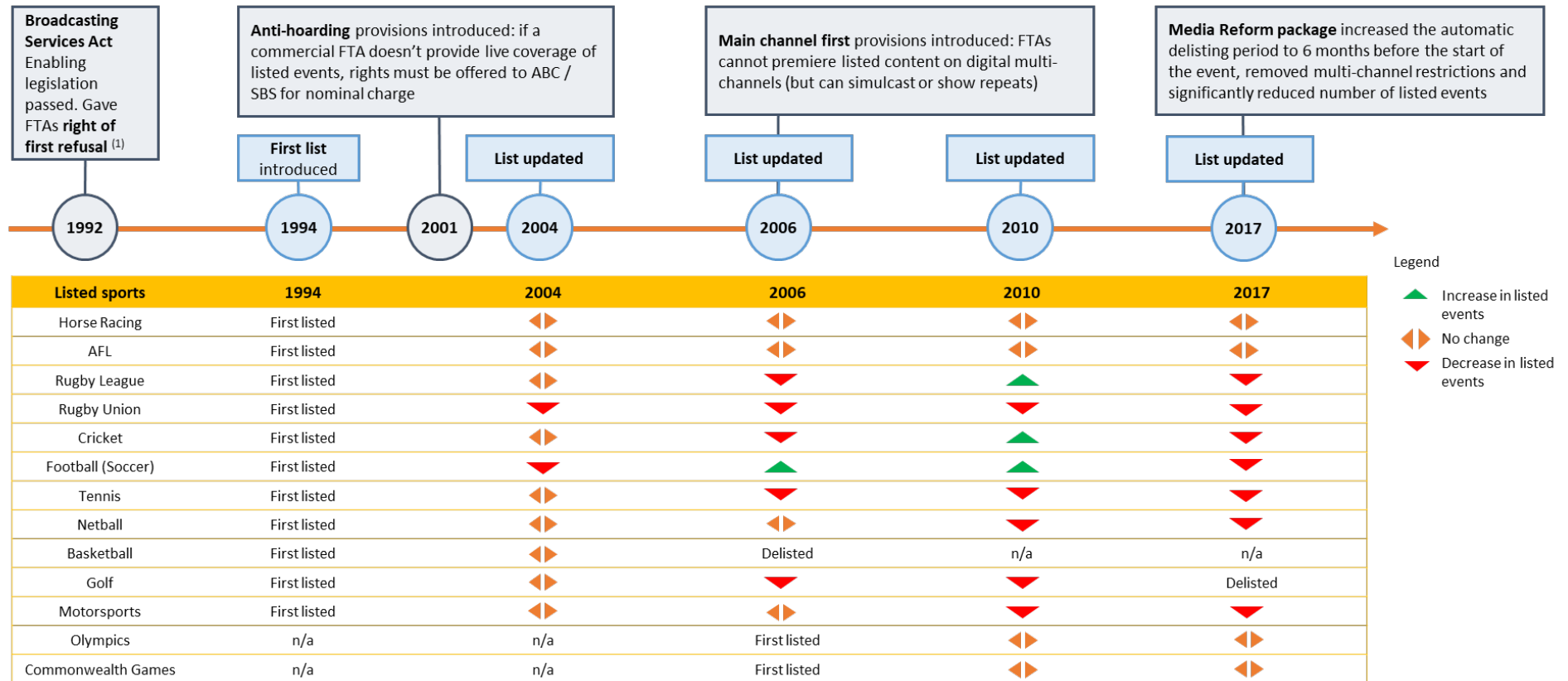
Issue	Question	Free TV Response
21	What practical changes would Australian viewers see from the imposition of coverage obligations?	Given the extensive coverage of listed events already offered to Australian audiences, it is unclear what benefit would be achieved from additional obligations.
Transparency: information disclosure and information gathering		
22	Is there a case for the imposition of an information disclosure requirement regarding the rights held to anti-siphoning listed events? What are the upfront and ongoing compliance costs for such an obligation likely to be? Are you able to quantify or provide estimates of any such costs? What may be some of the considerations relevant to the kinds of information that would be disclosed regarding these rights (e.g. any commercial sensitivities)?	Appendix 4 sets out Free TV's research on the information publicly available on rights deals. As shown, extensive information is already published by the rights holder/broadcaster, with these deals being widely reported. Information regularly included in these announcements includes the timeframe, cost and broadcast outcomes that audiences can expect. It is not clear what additional information could reasonably be expected to be disclosed.
23	Is there a case for the imposition of an information disclosure requirement regarding the coverage of events on the anti-siphoning list? What are the upfront and ongoing compliance costs for such an obligation likely to be? Are you able to quantify or provide estimates of any such costs?	The coverage outcomes associated with the rights deals discovered above are also publicly available. In addition to the broadcast outcomes being included in rights announcements, ex-post assessments are also possible by conducting straightforward desktop research of broadcast schedules. The ACMA already has the power to conduct investigations into these outcomes. Further measures in this area are unnecessary.
24	How should any information disclosure requirement – whether relating to rights of coverage – integrate with other changes to the scheme?	Further measures in this area are unnecessary.
25	Should a rights and / or coverage disclosure obligation be mandatory (enforceable through primary or subordinate legislation), or should any disclosure be voluntary?	As above, there is already extensive voluntary disclosure of all deals relating to listed events.
Sports on the anti-siphoning list		
26	Are any changes warranted to the sports on the anti-siphoning list? Should any sports be added? Should any be removed?	Since the commencement of the scheme in 1994, repeated reviews have dramatically cut the scope of the list. It is now a very tightly defined list that is at the bare minimum required to protect culturally and socially significant sport for Australian audiences. Subject to the comments below regarding gender balance, we do not seek any substantive changes to the scope of the list.
27	Should the anti-siphoning list include the comparable women's competitions of the events on the current list that, by naming convention or omission, only apply to the men's competitions?	The current framing of a number of sports on the list refers to the "senior representative team", with that team by implication being the male representative side. Free TV considers that there is merit in considering

Issue	Question	Free TV Response
		removing this inherent gender bias and that both representative teams should be covered by the anti-siphoning list. See section 6.3.
28	Are there other women's events — that don't have a comparable men's format — that should be added?	Free TV would be open to discussing with the Government changes to the list to ensure a greater degree of gender neutrality.
29	What impact would these possible inclusions or exclusions have on free-to-air broadcasters, subscription broadcasters, online service providers, the relevant sports bodies and Australian viewers? Are you able to quantify or estimate these impacts?	N/A
30	Should non-sporting events be included for consideration on the anti-siphoning list? If so, which events? Is television coverage of these events being siphoned behind a paywall and not freely available to Australians, or is there a risk of this occurring?	See answer to question 3.
Events on the anti-siphoning list		
31	What events should be added to or removed from the anti-siphoning list? Please provide specific recommendations.	Other than potential changes to ensure gender balance on the list, Free TV does not seek to add additional sporting events to the list at this time.
32	What factors or circumstances do you consider to be important in recommending the retention, inclusion or removal of particular events from the anti-siphoning list? <ul style="list-style-type: none"> To what extent do average audience numbers influence or inform your recommendation? 	As above, successive reviews have continually reduced the scope of the list to now being at the minimum required to protect audience access to the most socially and culturally significant sporting events. We are guided in this view by a number of factors including sustained high average audiences across sporting events on FTA (as noted in the consultation paper) and research that confirms ongoing high levels of support for the anti-siphoning list.
33	What impact would these possible inclusions or exclusions have on free-to-air broadcasters, subscription broadcasters, online service providers, sports bodies and Australian viewers? Are you able to quantify or estimate these impacts?	Other than potential changes to ensure gender balance on the list, Free TV does not seek to add additional sporting events to the list at this time.
Differentiated regulation – a two-tier list		
34	Is there merit in considering differentiated regulation for events on the anti-siphoning list, or should regulation remain homogenous for all listed events?	Free TV strongly opposes a differentiated or two-tier approach to anti-siphoning events. As above, the list is already at the bare minimum required to fulfil its public policy objective. Demoting any events to a second tier that only guaranteed delayed or highlights coverage for audiences would be tantamount to delisting the event as demonstrated by

Issue	Question	Free TV Response
		the outcomes for B listed sports in the UK. See section 6.2 for more information regarding the use of a two-tier list.
35	<p>If differentiated regulation is pursued, what form should this take?</p> <ul style="list-style-type: none"> Two or more tiers, or some other form of differentiating between events on the anti-siphoning list? How would this new arrangement be integrated with other amendments to the scheme? 	N/A – a two-tiered list is not supported.
36	What impact would a differentiated regulation have on decisions made by industry regarding media rights to sporting events, both listed and unlisted? Would this make it easier or harder to sell and acquire rights under this general model?	A two-tier design would add considerable complexity to the anti-siphoning scheme, without any corresponding benefit for Australian audiences. For example, if some AFL or NRL regular season matches were to be categorised as “B” to allow exclusivity to STV or online services, the list would need to be heavily prescriptive as to which matches were preserved for free broadcast. Currently these matters are determined through commercial negotiation allowing flexibility by market. Further, the UK experience demonstrates that designating a “B” list simply results in the events on the “B” list disappearing behind a paywall.
37	Would a differentiated regulatory framework have a positive or negative impact on Australian viewers?	The only certainty provided through such a model, based on the UK experience, is that Australian audiences would have access to less live and free sport.
Delisting arrangements		
38	<p>Are the current de-listing provisions appropriate and effective?</p> <ul style="list-style-type: none"> If not, what changes would you recommend? In what way would any such changes be integrated with other amendments to the scheme? 	As above, Free TV recommends that the current de-listing provisions be amended to ensure that the reasonable opportunity test functions as a genuine check and balance on the reasonableness of rights offers to FTA broadcasters. This should include requiring that the decision maker (the ACMA) considers the timeframe allowed for negotiation, the cost the rights were offered at (with reference to existing deals), the term of rights and the likely revenue.
39	Is the automatic de-listing period of 26 weeks too long, or too short, for rights arrangements to be settled and for relevant parties to effectively promote events to audiences?	Free TV does not propose any change to the current 6-month delisting window.

Appendix 1: Anti-siphoning regulations – timeline

The current anti-siphoning scheme has been streamlined over time, with events and even entire sports delisted when the list has been formally reviewed and amended three times since 1994



Note: ⁽¹⁾ Current right of first refusal allows Pay TV broadcasters to acquire rights: 1. if no FTA acquires rights 6 months before an event starts; 2. if rights held by FTA rights holder(s) who can broadcast to >50% of population; or 3. if rights are held by ABC or SBS

Source: Australian federal legislation database, press reports, ACMA

Appendix 2: Draft legislative amendments

The amendments set out below are required to be made to the BSA to:

- extend the anti-siphoning regime to online content service providers.
- expand the protections provided by the anti-siphoning scheme to BVOD services.
- provide for the ACMA to determine whether an event should remain on the anti-siphoning list after 4,368 hours before the start of the event and to specify criteria that the ACMA must take into consideration in making such a determination.

1. New definitions

The following definitions should be inserted in the BSA:

BVOD Service means a broadcaster video on demand (**BVOD**) service provided by a holder of a commercial television broadcasting licence or a national broadcaster to the public that:

- (a) delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or
- (b) allows end-users to access content using an internet carriage service.

General Online Content Service means a service provided to the public, whether on payment of a fee or otherwise, that:

- (a) delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or
- (b) allows end-users to access content using an internet carriage service,

where an ordinary reasonable person would conclude either that the service is targeted at individuals who are physically present in Australia or that any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia, other than:

- (c) a BVOD Service; or
- (d) a service to the extent to which it is a service listed in paragraphs (e) to (q) of section 3 of Schedule 8; or
- (e) a service determined by the ACMA, by legislative instrument, for the purposes of this definition.

General Online Content Service Provider means any person who provides a General Online Content Service.

Other definitions from Schedule 8 of the BSA would also need to be incorporated, including “access”, “provided on”, “provided to the public” and “service”.

2. Amendments to objects of the BSA

The following is a suggested new section 3(fb):

to promote the availability to audiences throughout Australia of events, or events of a kind, which are of significance to Australians, at no cost;

3. Amendments to section 115

Section 115 of the BSA should be amended as follows (amendments marked up):

115 Minister may protect the free availability of certain types of programs

- (1) The Minister may give notice, by legislative instrument, specifying an event, or events of a kind, the televising and online delivery of which should, in the opinion of the Minister, be available free to the general public.
- (1A) The Minister may give notice, by legislative instrument, amending a notice under subsection (1) to specify an additional event, or events of a kind, the televising and online delivery of which should, in the opinion of the Minister, be available free to the public.
- (1AA) Subject to subsection (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 4,368 hours before the start of the event, unless the ~~Minister~~ACMA, by legislative instrument registered under the Legislation Act 2003 before that time, declares that the event continues to be specified in the notice after that time.
- (1AB) The ~~Minister~~ACMA may make a declaration under subsection (1AA) only if the ~~Minister~~ACMA is satisfied that at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the rights to televise the event concerned and to deliver that event online. In determining whether at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the rights to both televise and deliver online the event concerned, the ACMA will take into consideration:
 - (a) whether any invitation to express interest, whether in the form of public advertisement or closed tender, in the acquisition of the relevant rights was communicated to all commercial television broadcasting licensees and national broadcasters;
 - (b) whether all commercial television broadcasting licensees and national broadcasters were given a reasonable period of time to consider any invitation referred to in paragraph (a);
 - (c) whether the holder of the rights engaged in good faith negotiations with each commercial television broadcasting licensee and national broadcaster that expressed interest in negotiating the acquisition of the relevant rights, including by making available all terms and conditions on which the rights were available; and

(d) whether the holder of the relevant rights offered a fair and reasonable price to commercial television broadcasting licensees and national broadcasters for the acquisition of the rights, having regard to:

- (i) previous fees for the event or similar events;
- (ii) time of day for live coverage of the event;
- (iii) the potential advertising revenue or potential audience associated with the broadcast and online delivery of the event;
- (iv) the duration of the rights contract being offered; and
- (v) competition in the market place for sports rights.

(1B) Subject to subsections (1AA) and (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 168 hours after the end of the event, unless the Minister, by legislative instrument registered under the Legislation Act 2003 before that time, declares that the event continues to be specified in the notice after that time.

(2) The Minister may give notice, by legislative instrument, amending a notice under subsection (1) to remove an event from the notice.

4. **Amend the standard conditions applicable to subscription television broadcasting licences**

Clause 10(1)(e) of Part 6, Schedule 2 should be amended as follows (amendments marked up):

- (e) the licensee will not acquire the right to televise, on a subscription television broadcasting service, an event that is specified in a notice under subsection 115(1) unless:
 - (i) a national broadcaster has the right to televise the event on any of its broadcasting services and to make that event available on its BVOD Services; or
 - (ii) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) who have the right to televise the event cover a total of more than 50% of the Australian population, and those licensees also have the right to make that event available on their BVOD Services;

5. **New provisions for extending obligations to online content service providers**

The following provision should be incorporated either directly in the BSA itself or a new power given to the ACMA to make online content service provider rules to give effect to an equivalent provision:

No General Online Content Service Provider will acquire the right to provide, by means of a General Online Content Service, an event that is specified in a notice under subsection 115(1) unless:

- (a) *a national broadcaster has the right to televise the event on any of its broadcasting services and to make that event available on its BVOD Services; or*
- (b) *the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) who have the right to televise the event cover a total of more*

than 50% of the Australian population, and those licensees also have the right to make that event available on their BVOD Services.

Civil penalty provisions for breach of this new provisions will need to be incorporated in the BSA.

Appendix 3: Broadcast coverage analysis

Events - 2021	Rights held by	Comments	Broadcast minutes
1 Olympic Games			
Each event held as part of the Summer Olympic Games, including the Opening Ceremony and the Closing Ceremony.	7	Extensive broadcast coverage over 4 FTA channels	33,425
Each event held as part of the Winter Olympic Games, including the Opening Ceremony and the Closing Ceremony.	7	Not held in 2021	-
2 Commonwealth Games			
Each event held as part of the Commonwealth Games, including the Opening Ceremony and the Closing Ceremony.	7	Not held in 2021	-
3 Horse racing			
Each running of the Melbourne Cup organised by the Victoria Racing Club.	10	Full coverage of the Melbourne cup carnival	3
4 Australian rules football			
Each match in the Australian Football League Premiership competition (including the Finals Series).	7	3-4 games a week on FTA	13,650
5 Rugby league football			
Each match in the National Rugby League Premiership competition (including the Finals Series).	9	3-4 games a week on FT	6,960
Each match in the National Rugby League State of Origin Series.	9	All matches on FTA	240
Each international rugby league test match that involves the senior Australian representative team; and is played in Australia or New Zealand.	9	No Tests in 2021	-

Each match of the Rugby League World Cup that involves the senior Australian representative team; and is played in Australia, New Zealand or Papua New Guinea.	9	Delayed until 2022	-
6 Rugby union football			
Each international test match that involves the senior Australian representative team selected by the Australian Rugby Union; and is played in Australia or New Zealand.	9	All 10 Wallabies Tests in 2021 on FTA	900
Each match of the Rugby World Cup tournament that involves the senior Australian representative team selected by the Australian Rugby Union.	9	Not held in 2021.	-
The final of the Rugby World Cup tournament.	9	Not held in 2021	-
7 Cricket			
Each test match that involves the senior Australian representative team selected by Cricket Australia and is played in Australia.	7	All 5 Tests on FTA	7,920
Each test match that involves both the senior Australian representative team selected by Cricket Australia and the senior English representative team and is played in the United Kingdom.	9	No away Ashes in 2021	
Each one day cricket match that involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.		ODI not available on FTA	-
Each Twenty20 cricket match that involves the senior Australian representative team selected by Cricket Australia; and is played in Australia.		No T20i in Australia in 2021	-
Each match of the International Cricket Council One Day International World Cup that involves the senior Australian representative team selected by Cricket Australia; and is played in Australia or New Zealand.		No ODI World Cup in 2021	-
The final of the International Cricket Council One Day International World Cup if the final is played in Australia or New Zealand.		No ODI World Cup in 2021	-
Each match of the International Cricket Council World Twenty20 tournament that involves the senior Australian representative team selected by Cricket Australia; and is played in Australia or New Zealand.		No T20 World Cup in 2021	-

8 Soccer			
Each match of the FIFA World Cup tournament that involves the senior Australian representative team selected by the Football Federation Australia.		No World Cup in 2021	-
The final of the FIFA World Cup tournament.		No World Cup in 2021	-
Each match in the FIFA World Cup Qualification tournament that involves the senior Australian representative team selected by the Football Federation Australia; and is played in Australia.	10	Only 2021 qualifier played in Australia on FTA	90
9 Tennis			
Each match in the Australian Open tennis tournament.	9	Extensive broadcast coverage over 3 FTA channels	15,091
Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that involves an Australian representative team; and is played in Australia.	9	No tie in Australia - Davis Cup format changed	-
The final of the International Tennis Federation Davis Cup World Group tennis tournament if the final involves an Australian representative team.		Australia did not qualify for Final	-
10 Netball			
A semi-final of the Netball World Cup if the semi-final involves the senior Australian representative team selected by the All Australian Netball Association.		No World Cup in 2021	-
The final of the Netball World Cup if the final involves the senior Australian representative team selected by the All Australian Netball Association.		No World Cup in 2021	-
11 Motor sports			
Each race in the Fédération Internationale de l'Automobile Formula One World Championship (Grand Prix) held in Australia.	10	F1 Melbourne GP cancelled in 2021	-
Each race in the Fédération Internationale de Motocyclisme Moto-GP held in Australia.		Phillip Island MotoGP cancelled in 2021	-

Each Bathurst 1000 race in the V8 Supercars Championship Series	7	Coverage across the race weekend	375
Total minutes			78,654
Hours			1,311

Appendix 4: Rights deals announcements

Event and announcement link
1 Olympic Games
https://olympics.com/ioc/news/ioc-awards-2016-2020-broadcast-rights-in-australia
https://olympics.com/ioc/news/ioc-awards-beijing-2022-broadcast-rights-in-australia
2 Commonwealth Games
https://thecgf.com/news/birmingham-2022-commonwealth-games-seven
3 Horse racing
https://www.paramountanz.com.au/news-and-insights/victoria-racing-club-and-network-ten-announce-landmark-rights-deal/
4 Australian Rules Football
https://www.afl.com.au/news/197767/afl-signs-new-six-year-25-billion-broadcast-rights-deal
5 Rugby league football
https://www.nrl.com/news/2020/05/28/broadcast-future-secured-for-rugby-league-fans/
https://www.sevenwestmedia.com.au/assets/pdfs/Seven-is-set-for-the-Rugby-League-World-Cup.pdf
6 Rugby union football
https://australia.rugby/news/2020/11/08/rugby-australia-unveils-landmark-broadcast-deal
https://www.paramountanz.com.au/news-and-insights/network-10-scores-with-the-2019-rugby-world-cup/
7 Cricket
https://www.cricket.com.au/news/cricket-australia-broadcast-deal-media-channel-seven-fox-sports-tv-guide-how-watch-bbl-television/2018-04-13
https://www.cricket.com.au/news/nine-to-show-2015-and-2019-uk-ashes/2013-11-13
https://www.nineforbrands.com.au/media-release/9network-announces-broadcast-of-2022-t20-world-cup-and-2023-one-day-world-cup/
8 Soccer
https://www.sbs.com.au/news/article/sbs-wins-fifa-world-cup-rights/u4nyymbs4
https://www.paramountanz.com.au/news-and-insights/10-viacomcbs-and-football-australia-announce-largest-socceroos-and-matildas-broadcast-deal-ever/
9 Tennis
https://ausopen.com/articles/news/tennis-australia-signs-landmark-rights-deal-nine-network
10 Netball
https://wwwos.nine.com.au/netball/nine-secures-exclusive-rights-to-netball-world-cup/df73caf5-3dd4-49be-97f0-00c80ee093b9
https://wwwos.nine.com.au/netball/nine-secures-exclusive-rights-to-netball-world-cup/df73caf5-3dd4-49be-97f0-00c80ee093b9
11 Motor sports
https://tvblackbox.com.au/page/2022/03/23/new-broadcast-deal-set-to-deliver-an-even-bigger-formula-1-experience-for-australian-fans/
https://www.paramountanz.com.au/news-and-insights/network-10-extends-motogp-agreement/
https://www.supercars.com/news/championship/supercars-new-broadcast-deal-locked-in/