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Dear Ms Cvijanovic

Regulation Impact Statement – final assessment second pass

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for Reform of the Anti-Siphoning Scheme. The scheme is established by the Broadcasting Services Act 1992 (the Act) and regulates the acquisition of broadcast rights for sporting and other events of cultural significance or national importance.

The scheme's objective is to ensure events specified on the anti-siphoning list – a legislative instrument made by the Minister for Communications – remain freely available to Australian viewers. The scheme's main provision is a licence condition on subscription television broadcasting licensees preventing them from acquiring a right to televise an event on the list until a free-to-air broadcaster has a right.

I believe the RIS meets best practice requirements and is consistent with the Ten Principles for Australian Government policy makers stipulated in the Australian Government Guide to Regulation. In particular, the RIS addresses each of the seven RIS questions, as outlined below. It has also been amended to reflect comments provided by OBPR on the initial draft of the document and through the final assessment, first pass.

What is the problem?

Established in 1994, the scheme dates to an analogue era of media regulation and contains outdated and redundant provisions which serve little purpose in a contemporary media environment.

- *Multichannelling restriction* – this rule prevents events on the anti-siphoning list from being premiered on a free-to-air digital multichannel (i.e. ONE, GEM, 7mate) unless they have already been premiered (or shown simultaneously) on a primary (main) channel. The rule was introduced in 2006 to prevent consumers who had yet to make the switch to digital television, or for which digital television had yet to be rolled out in their area, from being disenfranchised by events being televised on digital-only channels. With the completion of digital switchover in 2013, this rule is now redundant. It effectively restricts the ability of free-to-air television broadcasters to optimally televise listed events without achieving any demonstrable consumer benefit.

- *Automatic delisting* – this rule permits subscription television broadcasting licensees to acquire the rights to events 12 weeks prior to their commencement to provide them with some opportunity to acquire the rights to events where free-to-air broadcasters have no interest in doing so. This doesn't align with the commercial reality of rights acquisition, where the majority of sports rights contracts are settled between six and 24 month from the commencement of the first event of the competition or tournament.
- *The list* – the list is long by any measure, covering between 1,200 and 1,300 events in any given year. While the broadcast rights to the majority of sports on the list continue to be acquired by free-to-air broadcasters and garner high audiences, this is not the case across the board. For some events, the broadcast rights have not been acquired by a free-to-air broadcaster over recent years (for example, the United States Open tennis tournament). For other events, the competition itself has not been held, as is the case with the Australian Masters golf tournament. Low audiences have also been evident for a number of competitions, particularly those events or parts of events played overseas where there is little or no involvement of Australian individuals or teams.

Why is government action needed?

Government action is needed to remove outdated or ineffective elements of the scheme, minimise the impact of the scheme where the inclusion of events under the scheme is no longer warranted, and ensure that Australians continue to have free access to nationally important and culturally significant events.

What policy options are you considering?

The following options have been considered in relation to the three problems noted above.

Issues	Options		
<ul style="list-style-type: none"> • The multichannelling rule 	1a – No change to current arrangements		1b – Remove the rule
<ul style="list-style-type: none"> • Automatic delisting 	2a – No change to current arrangements	2b – Extend the period to 26 weeks	2c – Extend the period to 52 weeks
<ul style="list-style-type: none"> • The list 	3a – Maintain the current list		3b – Implement targeted reductions

None of these options involve the imposition of any new regulations. In all cases, they entail either the maintenance of existing arrangements, or the scaling back of these regulations.

What is the likely impacts of each option?

It should be noted at the outset that the anti-siphoning scheme is not expected to impose any material regulatory costs on businesses, community groups or individuals. These groups are not required to make or keep records, notify the Government of activities, make applications or requests to Government, or procure permits or professional services. There are also no delay costs associated with applications to, or approvals from, Government.

Where the scheme is likely to have some impact on businesses, community groups and individuals is in terms of opportunity and indirect costs. These costs are excluded from the OBPR's Regulatory Burden Measurement framework and are generally only required to be considered in a qualitative sense in a standard form RIS, in large part because of the difficulty in quantifying their impact. Nonetheless, the RIS does describe these costs, the parties affected by them, and the ways in which the options being considered may alter their imposition.

Multichannelling restriction

	Options	
	1a – retaining the multichanneling restriction	1b – removing the multichannelling restriction
Regulatory costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Cost savings in the order of \$8,000 per annum for the free-to-air broadcasting sector as applications to Government for temporary delistings would no longer be required.¹
Other costs	<ul style="list-style-type: none"> • Likely to impose some level of opportunity costs: on free-to-air broadcasters, by restricting the degree to which they can fully utilise their digital multichannels; and on consumers, resulting from less comprehensive coverage of sporting events. 	<ul style="list-style-type: none"> • Expected reduction in opportunity costs imposed on free-to-air broadcasters and consumers.
Other benefits	<ul style="list-style-type: none"> • Little demonstrable benefit, other than that for subscription broadcasters who may face weakened competition for audiences with free-to-air broadcasters restricted in the way in which they can use their multichannels. 	<ul style="list-style-type: none"> • Possible reduction in competitive advantage for subscription broadcasters from free-to-air broadcasters no longer restricted in the way in which they can use their multichannels

Automatic delisting

	Options	
	2a – maintain the 12 week automatic delisting period	2b and 2c – extend the automatic delisting period to 26 or 52 weeks
Regulatory costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Nil
Other costs	<ul style="list-style-type: none"> • Sports bodies and subscription broadcasters may incur opportunity costs where compressed 	<ul style="list-style-type: none"> • Expected reduction in the opportunity costs imposed on sports bodies and subscription broadcasters from longer

¹ For free-to-air broadcasters to actually use their multichannels to provide first run or exclusive coverage of an anti-siphoning event it is necessary for the Minister for Communications to temporarily remove the event in question from the anti-siphoning list. Delistings of this nature have been common since 2010, although generally only at the request of the relevant broadcasters.

Options		
	contracting processes limit the extent to which rights can be acquired and promoted to audiences.	timeframes to consider and enter into rights agreements.
Other benefits	<ul style="list-style-type: none"> Provides some (albeit limited) opportunity for rights acquisition by subscription broadcasters 	<ul style="list-style-type: none"> Provides an enhanced opportunity for rights acquisition by subscription broadcasters.

The list

Options		
	3a – make no changes to the current list	3b – make target reductions to the list
Regulatory costs	<ul style="list-style-type: none"> Nil 	<ul style="list-style-type: none"> Nil
Other costs	<ul style="list-style-type: none"> The scheme is expected to impose some level of opportunity and indirect costs on subscription broadcasters by altering the timing and process for negotiating sports rights. 	<ul style="list-style-type: none"> Targeted reductions to the list (Attachment A) are expected to reduce opportunity and indirect costs incurred by subscription broadcasters and sports bodies, without having a material impact on the availability of affected sports to consumers.
Other benefits	<ul style="list-style-type: none"> Regulates a wide range of sports, although this is irrespective of whether rights acquisition, rights usage, audience numbers and national interest considerations warrant such protection. 	<ul style="list-style-type: none"> Regulates a range of sports where such protection is warranted on the grounds of rights acquisition, rights usage, audience numbers and national interest considerations.

Who will you consult and how will you consult them?

Extensive consultation has been undertaken with industry and other groups over recent years in relation to the three problems being addressed as part of this package of reforms, and on the scheme as a whole. Change in these areas is generally well anticipated, although stakeholders have (and will continue to have) differing views on any particular reforms.

The most recent consultations were undertaken in late 2016 and early 2017, with the Minister for Communications seeking the views of industry stakeholders, including regional and metropolitan free-to-air broadcasters and subscription television broadcasters, regarding the anti-siphoning scheme and list. This continued conversations initiated by the former Minister for Communications in 2014. Further consultation will be undertaken with stakeholders before the proposed measures are finalised, particularly the changes to the anti-siphoning list.

What is the best option from those you have considered?

Option 1b – removing the multichannelling restriction

This would remove an outdated and unnecessary regulation that serves little purpose in a contemporary media environment. This is expected to reduce regulatory costs incurred by free-to-air broadcasters and may also mitigate potential opportunity costs imposed on these business and on television audiences.

Option 2b – extending the automatic delisting period to 26 weeks

This would loosen the regulatory restrictions imposed on subscription television broadcasters and enable them to acquire rights at any time within six months of an anti-siphoning listed event taking place. This is expected to moderate any opportunity costs imposed on the sector and on sports bodies, enabling them to enter into rights agreement at an earlier point in time, bed down coverage and scheduling arrangements, and promote the events to audiences and subscribers. Although also delivering cost reductions, a 52 week automatic delisting period has the potential to undermine the main provision of the scheme by weakening protections for the acquisition of rights to events by free-to-air broadcasters. There are numerous examples over recent years of rights agreements not being settled and announced until between 6 and 12 months of the first event of a competition, tournament or series taking place.

Option 3b – make targeted reductions to the list

This would make a number of reductions to the list to remove events or parts of events that are no longer being held, that are not televised on free-to-air television, or that do not command audiences of any meaningful size. This option effectively reduces the breadth of the scheme and therefore its impact on subscription broadcasters and (in turn) sports organisations. This may mitigate opportunity costs imposed on these parties arising from the scheme's restrictions on the way in which they deal with broadcast rights.

How will you implement and evaluate your chosen option?

Legislative amendments would be required to repeal the multichannelling restriction (Part 4A of Schedule 4 to the BSA); extend the automatic delisting (subsection 115(1AA) of the BSA); and make a new anti-siphoning list, although the latter could also be achieved by the making of a legislative instrument. The impact of these changes, and the overall scheme, will be closely monitored by Government over time.

I submit the draft RIS to the Office of Best Practice Regulation for formal comment.

Yours sincerely



Cathy Rainsford
Assistant Secretary
Media Branch
Department of Communications and the Arts
10 April 2017

ATTACHMENT A – PROPOSED REDUCTIONS TO THE ANTI-SIPHONING LIST

SPORT	COMPETITION (& details of listing)	RECOMMENDED LISTING	EFFECTIVE REDUCTION
FOOTBALL			
Rugby League	International Tests (matches with Aus, played in Aus, NZ or UK)	Matches with Aus played in Aus or NZ	Matches with Aus played against the UK in the UK, or against other countries in the UK
	World Cup (matches with Australia)	Matches with Aus played in Aus, NZ or PNG	Matches with Aus played in countries other than Aus, NZ or PNG
Soccer	FIFA World Cup (each match of the finals tournament)	Matches with Australia and the final	Matches not involving Aus, other than the final
	FIFA World Cup Qualifiers (each match involving Aus)	Matches involving Aus played in Aus	Matches involving Aus, played outside of Aus
	English FA Cup Final	Remove	Each match
Rugby Union	International Tests (matches with Aus, played in Aus, NZ, South Africa or Europe)	Matches with Aus played in Aus or NZ	Matches with Aus, played in South Africa or Europe
	World Cup (matches with Aus, qtr-finals, semi-finals and final)	Matches with Aus and the final	Matches not involving Aus, qtr-finals and semi-finals
CRICKET			
Limited Overs	Cricket World Cup (matches with Aus, semi-finals and final)	Matches with Aus and final, played in Aus or NZ	Matches with Aus, semi-finals and final when played outside Aus and NZ Semi-finals not involving Aus, when played in Aus or NZ
	T20 World Cup (matches with Aus and the final)	Matches with Aus and final played in Aus or NZ	Matches with Aus and final when played outside Aus and NZ
Tests	International Tests (with Aus, played in Aus and UK)	Matches with Aus, played in Aus, and Ashes tests played in UK	Matches with Aus played in the UK, but not against the UK (against another side)
GOLF			
	Australian Masters (each round)	Remove	Each tournament
	Australian Open (each round)	Remove	Each tournament
	United States Masters (each round)	Remove	Each tournament
TENNIS			

	Wimbledon (men's and women's singles quarter-finals, semi-finals and finals)	Remove	Each tournament
	United States Open (men's and women's singles quarter-finals, semi-finals and finals)	Remove	Each tournament
	Davis Cup (each match of the World Group tournament involving Aus)	Matches involving Aus played in Aus, plus the final involving Aus	Matches involving Aus, played outside Aus
NETBALL			
	International Tests (matches with Aus played in Aus or NZ)	Remove	Each match
MOTORSPORTS			
	V8 Supercars (each race)	Bathurst 1000	All races (other than Bathurst)