

# Reform to the anti-siphoning scheme

## Second Pass Impact Analysis

November 2023



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# Summary

## Introduction

The objective of the anti-siphoning scheme (the scheme) is to promote free access to televised coverage of events of national importance and cultural significance. At present, the scheme seeks to further this objective by regulating the order in which the right to televise events on the *Broadcasting Services (Events) Notice 2023*<sup>1</sup> (the current anti-siphoning list) may be acquired by licensed television broadcasters. To date, the only programs included on the list – and therefore regulated under the scheme – have been sporting events.

While the scheme targets the traditional broadcasting sectors, the market in which sporting events are televised and consumed by audiences is rapidly evolving. It is a very different market today compared with the one in existence at the time the scheme was implemented. Two developments best represent this change:

- Australians' viewing options have broadened in the past decade to include online services, and viewers' habits are changing as a result.
- Sport remains a genre of live programming that continues to attract audiences in significant numbers, and the value of high-profile sports rights has grown exponentially over recent years.

These developments are impacting the ability of the scheme to deliver on its core objective.

## Public consultation

The Government has undertaken a review of the anti-siphoning scheme and anti-siphoning list, in line with its 2022 election commitment. This review has been supported by two phases of consultation in 2022 and 2023.

- The first phase involved the release of a public consultation paper<sup>2</sup> and targeted stakeholder roundtables in November 2022 with: free-to-air broadcasters; subscription television broadcasters and streaming services; and sporting organisations. The consultation paper was published on 11 October and the submission period closed on 6 December 2022. Stakeholder roundtables were held in November 2022.
- The second phase of consultation, informed by the views provided to the first consultation, involved the release of a proposals paper detailing three specific models for reform of the scheme and three options for reform of the list.<sup>3</sup> This paper was published on 19 August 2023 and the submissions period closed on 17 September 2023.

The review has considered a wide range of issues associated with the scheme and the regulation of television coverage of key sporting events, and this has informed the development of the models for reform of the scheme and the options for a remade list assessed in this Impact Analysis (IA).

## Post-consultation analysis

The review has found that the core objective of the anti-siphoning scheme – to promote free access to televised coverage of events of national importance and cultural significance – remains relevant and appropriate. The anti-siphoning scheme should continue to operate to further this objective. However, the scheme needs to be broadened to incorporate online services.

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<sup>1</sup> [Broadcasting Services \(Events\) Notice 2023](#).

<sup>2</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) (2022), [Review of the anti-siphoning scheme - Consultation Paper](#).

<sup>3</sup> DITRDCA (2023), [Anti-siphoning Review - Proposals Paper](#).

The risk that nationally important and culturally significant events migrate behind paywalls, and are no longer available for free to Australian audiences, remains in a contemporary media environment. There is a ‘regulatory gap’ in the scheme in relation to online services, and a case to broaden the remit of the framework to mitigate the attendant risks.

The review also found that the composition of the list needs to be reconsidered. To date, the list has not included sports that involve athletes with disabilities. To a lesser extent, it has also tended to involve competitions in which men compete. This is a product of history rather than deliberate design. Nonetheless, the review has found that there is a case to consider the composition of the list with respect to women’s sports events and Para-sports.

## Recommended options

The views of stakeholders and the analysis undertaken through the review process has informed the development of a proposed approach to reform of the scheme and list:

- a ‘broadcast safety net’ model for the anti-siphoning scheme, that expands the scheme to include online services while retaining ubiquitous broadcast services as the means through which the scheme’s objectives are achieved; and
- a ‘modernised’ list option that responds to the finding of the review that the current list is outdated.

### The ‘broadcasting safety net’ model for the scheme

Under this approach, the scheme would be expanded to prevent content services (other than free-to-air broadcasters) from acquiring a right to provide coverage<sup>4</sup> of a listed event to audiences in Australia until a free-to-air broadcaster has acquired a right to televise the event on a broadcasting service. This would extend the scope of the restriction on the acquisition of rights under the current scheme, which only applies to subscription television broadcasting licensees.

This model would affirm broadcasting services as the ‘safety net’ for free access to televised coverage of iconic sporting events for all Australians. To this end, it provides free-to-air broadcasters with preferential treatment in terms of acquiring the relevant rights. This addresses the risk of these events migrating to platforms that involve direct or indirect costs for Australian audiences.

However, this model doesn’t explicitly provide free-to-air broadcasters with preferential treatment in terms of their ‘non-broadcasting’ content services (i.e. broadcast video on demand or other online services). To do so would go beyond the aim of this particular model (which is founded on the accessibility of the stable and ubiquitous terrestrial free-to-air television broadcasting platform) and would provide free-to-air broadcasters with an additional commercial advantage over other providers of content services.

Once a right to televise a listed event had been acquired by a free-to-air broadcaster, or the event is automatically delisted 12 months (this period is 26 weeks under the current scheme) prior to its commencement, any party would be able to acquire rights to the event without restriction.

The expanded scheme would be legislated through the *Broadcasting Services Act 1992*.

### The ‘modernised’ list option

This list option is designed to better reflect the modern media landscape and moderately broaden the composition of nationally important and culturally significant events. In particular, this approach seeks to

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<sup>4</sup> Providing ‘coverage’ in this IA includes televised and online video coverage.

reflect the increased national prominence of women's sports events and Para-sports, which have traditionally not been listed under the scheme.

The modernised list would involve an increase in the number of events on the list compared with the current instrument, rising from approximately 1,900 events under the current list to around 2,500 events. The additional events on this list would include: all events held as part of the Paralympic Games; the finals matches of the Australian Football League (AFL) and National Rugby League (NRL) Women's Premierships; and the NRL Women's State of Origin Series.

The list would also include international rugby league, rugby union, cricket and soccer matches that involve a senior Australian representative team, irrespective of gender, and irrespective of whether these matches are standalone fixtures or played as part of a world cup tournament.

## The Impact Analysis process

This IA has been written in accordance with the Australian Government IA requirements. In the subsequent chapters, the seven assessment questions set out in the Australian Government Guide to Policy Impact Analysis (2023) have been addressed. These are:

1. What is the problem you are trying to solve and what data is available?
2. What are the objectives, why is government intervention needed to achieve them, and how will success be measured?
3. What policy options are you considering?
4. What is the likely net benefit of each option?
5. Who did you consult and how did you incorporate their feedback?
6. What is the best option from those you have considered and how will it be implemented?
7. How will you evaluate your chosen option against the success metrics?

# Background

The *Broadcasting Services Act 1992* (BSA) provides the legislative framework for the anti-siphoning scheme (the scheme). Legislated in 1992, and commencing in 1994 with the making of the anti-siphoning list, the scheme promotes free access to televised coverage of events of national importance and cultural significance.

## The scheme

The main elements of the anti-siphoning scheme are outlined in section 115 of the BSA, which includes a power for the Minister for Communications to list in a formal notice (known as the anti-siphoning list (the list)), events that should, in the opinion of the Minister, be available free to the general public.

The anti-siphoning scheme operates as a licence condition imposed under paragraph 10(1)(e) of Schedule 2 to the BSA on subscription television broadcasting licensees, preventing them from acquiring a right to televise an event on the anti-siphoning list unless a free-to-air television broadcaster (a national broadcaster or commercial television broadcasting licensee) has acquired a right. In this way, the scheme considers free-to-air broadcasting to be the medium by which listed events should be ‘freely available’, and provides free-to-air broadcasters the first opportunity to acquire rights to events on the list without competition from subscription television.

Under subsection 115(1AA) of the BSA, events are automatically removed (‘delisted’) 4,368 hours (26 weeks) before they commence to provide subscription television broadcasters with some opportunity to acquire the rights to events that free-to-air broadcasters have not acquired. However, the Minister can prevent automatic delisting and retain a particular event on the anti-siphoning list if they believe that a free-to-air broadcaster has not had a reasonable opportunity to acquire rights to the event in question. The Minister can also remove events from the list at any time.

The scheme does not force free-to-air broadcasters to acquire rights to televise events on the anti-siphoning list (this remains a decision for broadcasters). Nor does it oblige free-to-air broadcasters to provide any particular level or type of coverage of anti-siphoning events.

The scheme also does not apply to online media, including:

- subscription streaming services, such as Netflix and Amazon Prime Video
- dedicated sports streaming services, like Kayo Sports and Optus Sport
- broadcast video-on-demand (BVOD) services, such as 9Now and 7plus
- digital platforms, including Twitter and YouTube.

## The list

The anti-siphoning list is a legislative instrument made by the Minister specifying the events regulated under the scheme. The list has been amended at various points since it was first made in 1994, with events added and removed. To date, all events on the list have been sporting events. At present, the list includes events spanning 11 sports: Olympic and Commonwealth Games, horse racing, Australian Rules Football (AFL), rugby league, rugby union, cricket, soccer, tennis, netball, and motor sports.

The current list – the *Broadcasting Services (Events) Notice 2023* – was made in March 2023 as an interim arrangement to maintain the events on the list (and, in turn, the operation of the anti-siphoning scheme) while broader legislative reforms to the anti-siphoning scheme are considered.<sup>5</sup> A further amendment<sup>6</sup> to the

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<sup>5</sup> [Explanatory Statement](#) to the Broadcasting Services (Events) Notice 2023.

<sup>6</sup> [Broadcasting Services \(Events\) Amendment Notice 2023](#).

list was made in September 2023 to include select Fédération Internationale de Football Association (FIFA) Women's World Cup matches and qualifiers (the same as the men's matches on the list) ahead of the closing of bids media rights for the 2027 tournament.

## Televised coverage of sport is important to Australians

Most Australians hold the view that access to sport is an important public policy goal. A survey commissioned by Free TV in 2021 found that 70 per cent of respondents agreed that commercial television contributes to Australia's national unity by broadcasting major sporting events.<sup>7</sup> Australians also watch sport on a regular basis.

- In 2022, some 67 per cent of Australian adults had watched sport in the preceding six months, with 42 per cent watching live sport in the preceding week.
- 46 per cent indicated that they had consumed sport in the past 7 days.
- 17 per cent of Australian adults typically watched sports one to two days a week over the past 6 months.
- For sports viewers, 36 per cent considered the most important feature was that the content is freely available on broadcast television.<sup>8</sup>

## Sport remains an important program genre for broadcasters

Televised sports can attract large audiences for broadcasters. The popularity and immediacy of sport (watching it unfold live rather than on delay) make it an attractive proposition for live broadcasting. Live sporting events consistently dominate the most popular programs on both free-to-air and subscription television. In 2022, sport or sport-related programs accounted for 9 of the top 10 rating programs on free-to-air television, over half of the top 50 rated programs and a little under half of top 500 programs.

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<sup>7</sup> Deloitte Access Economics (2022), [Everybody Gets It](#), commissioned by Free TV, p. 47.

<sup>8</sup> Social Research Centre (2023), [The 2022 Television Consumer Survey – Summary Report](#), reported to DITRDCA, p. 18, 62.



**Table 1: Ten most popular programs on free-to-air television in 2022 (metro areas)**

Rank	Program	Audience
1	Tennis: 2022 Australian Open: Day 13 – Women's Final – Presentation	2,844,000
2	Tennis: 2022 Australian Open: Day 13 – Women's Final – Barty v Collins	2,591,000
3	AFL: Grand Final – Geelong v Sydney	2,186,000
4	State of Origin Rugby League: Queensland v New South Wales – third match	1,812,000
5	State of Origin Rugby League: Queensland v New South Wales – second match	1,806,000
6	State of Origin Rugby League: Queensland v New South Wales – first match	1,784,000
7	AFL: Grand Final – Presentations	1,776,000
8	The Block – Winner Announced	1,746,000
9	Tennis: 2022 Australian Open: Day 13 – Men's Doubles Final	1,735,000
10	AFL: Grand Final – On The Ground	1,697,000

Source: OzTAM 5 City Metro | Consolidated 7 | Total Audience | 2022. Data copyright © OzTAM 2023<sup>9</sup>

Sport or sport-related programs accounted for all of the top 50 rated programs and all but 7 of top 500 programs.

**Table 2: Ten most popular programs on subscription television in 2022 (national)**

Rank	Program	Audience
1	AFL: Preliminary Final – Sydney v Collingwood	469,000
2	Men's Cricket: Australia v South Africa – Second Test Day 2 – Session 3	433,000
3	NRL: Preliminary Final – Cowboys v Eels	426,000
4	Cricket: The Ashes: Australia v England – Fifth Test Day 3 – Session 3	416,000
5	Cricket: The Ashes: Australia v England – Fourth Test Day 5 – Rain Delay	412,000
6	Cricket: The Ashes: Australia v England – Fifth Test Day 3 – Session 2	405,000
7	Cricket: Australia v South Africa – Day 2 – Session 2	398,000
8	NRL: Preliminary Final – Panthers v Rabbitohs	398,000
9	Cricket: International Cricket Council Twenty20 (T20) World Cup: Final Pakistan v England	390,000
10	AFL: Preliminary Final – Geelong v Brisbane	388,000

Source: OzTAM National STV | Consolidated 7 | Total Audience | 2022. Data copyright © OzTAM 2023

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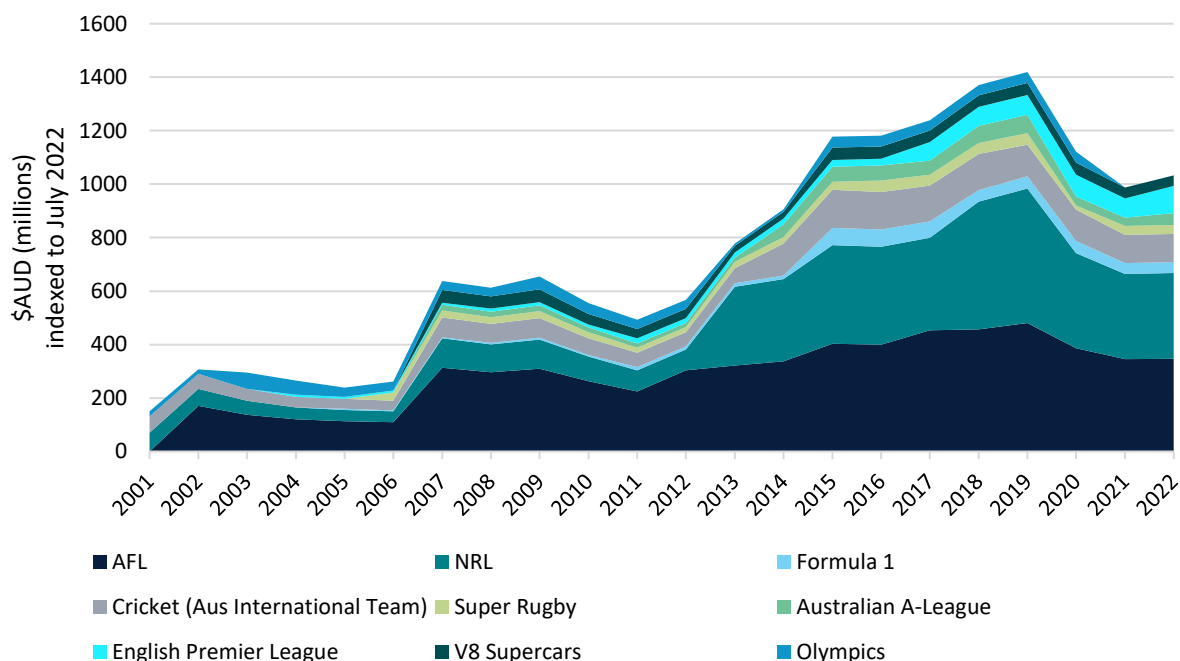
<sup>9</sup> All references to OzTAM data are copyright © OzTAM 2023. The data may not be reproduced, published or communicated (electronically or in hard copy) in whole or in part, without prior written consent of OzTAM.

## Media rights are a key source of revenue for sporting bodies

Media rights are also critical to the sporting bodies and codes themselves. For example, in 2021 over half of the AFL's total revenue of \$738.1 million was sourced from broadcasting and media agreements.<sup>10</sup> In the same year, the NRL returned revenues over \$550 million and secured agreements for broadcast investment increase to over \$400 million a year from 2023.<sup>11</sup>

In recent years, the willingness of broadcasters to invest significant sums to secure television rights has been increasing. Although the full details of these rights deals are not always public, given the commercial nature of the information, the available data suggests that this value is continuing to grow (see Figure 1).

**Figure 1: Value of select sports broadcasting rights in the Australian market**



Source: SportBusiness Rights Tracker. Includes available values of sports rights contracts for live and delayed free-to-air broadcast, pay TV, online/streaming, mobile, exclusive and non-exclusive. Available values of sports rights contracts have been annualised and summed by event. Converted from USD to AUD using average annual exchange rate, and indexed to 2022 dollars with CPI.

Notes: the reduction in value for sports rights in 2020 and 2021 reflects adjustments to contracting and other arrangements stemming from COVID-19.

## Review of the scheme and list

In the context of the 2022 Federal Election, the Albanese Government committed to undertake a review of the anti-siphoning scheme and give working families the chance to watch, for free, events of national and cultural significance. This review was initiated in October 2022 with the release of the *Review of the anti-siphoning scheme: consultation paper*.<sup>12</sup> That consultation paper sought comment from interested parties on a wide range of issues associated with the scheme and the regulation of television coverage of key sporting events.

Respondents generally recognised the continued importance of promoting free access to televised coverage of nationally important and culturally significant sporting events. They also provided comment on the growing coverage of sporting events online and the acquisition of media rights by streaming services and digital

<sup>10</sup> Australian Football League (2022), [2021 Annual Report](#), pp. 34 and 163.

<sup>11</sup> National Rugby League (28 February 2022), [2021 Financial Results](#), Media Release.

<sup>12</sup> DITRCA (2022), [Review of the anti-siphoning scheme: Consultation paper](#).

platforms. Respondents to this initial consultation process requested that they be afforded the opportunity to provide comment on any specific proposals to the scheme and list before they are introduced into the Parliament.

The second phase of the review was undertaken in August 2023 with the release of the *Anti-siphoning review: proposals paper*.<sup>13</sup> This paper identified the Government's preferred reform model and preferred list option, along with a range of alternative models and options. The potential impacts of these models and options are considered in this IA, informed by the successive consultation processes undertaken in 2022 and 2023.

The review is discussed in more detail in chapter 5.

# 1. What is the problem?

## The changing media environment

The ways in which Australians now consume media content, including sport content, has changed dramatically since the anti-siphoning scheme was introduced 1992. It is no longer a choice between free-to-air and subscription television services, and audiences are migrating from traditional broadcasts to online services.<sup>14</sup>

This is the case for a range of content consumption, including live sports. While free-to-air and subscription broadcasting remain key avenues by which Australians access coverage of sporting events, there has been a significant expansion in the range of television and television-like services capable of providing this coverage.

**Subscription streaming services**, such as Paramount+ and Amazon Prime Video, along with dedicated sports services, like Kayo Sports. The latter in particular provide extensive coverage of live sports content. Some sports bodies also provide direct streaming options.

**Broadcast video on demand (BVOD) services**, such as 9Now and 7plus, provide access to coverage of sporting content, often in conjunction with linear broadcasts. While users typically have to sign up to an account for these services, the service itself operates on a free-to-access, ad-supported basis.

**Mobile services** that are accessed through apps on portable devices, such as phones and tablets, can include subscription streaming services as well as free-to-air BVOD services. They may also have links to the provision of internet or phone services, such as with Optus Sport.

**Gambling apps and platforms**, such as Tabcorp and Bet365, provide limited access to live streaming of sports for their users. Although these activities can be limited as a result of the digital rights held by other media entities, it has a growing market and audience.

**Digital platforms**, such as YouTube, make large amounts of content available daily, including channels that offer highlights and replay content for the AFL, NRL and the Olympics, among other sports. YouTube has also recently secured rights to stream some NFL (American football) matches.<sup>15</sup>

<sup>13</sup> DITRDCA (2023), [Anti-siphoning Review - Proposals Paper](#).

<sup>14</sup> DITRDCA (2022), [Review of the anti-siphoning scheme: Consultation paper](#), p. 22.

<sup>15</sup> YouTube: [AFL](#) (official channel); [NRL - National Rugby League](#) (official channel); [Olympics](#) (official channel); [NFL Sunday Ticket +](#) (official channel).

Some of these services are supported by advertising and are ‘free’ in the sense of no explicit payment by viewers.<sup>16</sup> However, many are based on subscription models, including subscription models that offer some free programs, or ‘freebies’, and these services have been embraced by Australians.

- In the first quarter of 2023, Kantar found that 6.12 million Australian homes, or 61.5 per cent of households, are subscribed to at least one streaming service.<sup>17</sup>
- The number of Australian subscriptions to Subscription Video on Demand (SVOD) services increased from 12.3 million to 24.6 million between June 2019<sup>18</sup> and June 2023.<sup>19</sup>
- ACMA reported that in 2022-23, there were 6,021 hours of Australian sports content available across five SVOD services operating in Australia – almost double the figure from 2021-22 and representing more than half of all Australian content on these services.<sup>20</sup>

This trend is also reflected in sports-specific streaming services:

- In 2022, Deloitte found that 30 per cent of Australian households have at least one sports subscription service, largely driven by subscriptions to Kayo (owned by Foxtel) and Optus Sport.<sup>21</sup>
- In 2023, Foxtel reported that Kayo had 1.411 million active subscribers (1.401 million paid) for the quarter ending 30 June 2023.<sup>22</sup>
- SingTel, of which Optus is a subsidiary, reported that Optus Sport had 926,000 active subscriptions in the financial year ending 31 March 2023.<sup>23</sup>

These changes in the Australian media market have exposed gaps in the anti-siphoning scheme and imbalances in the composition of the anti-siphoning list.

## Gaps in the scheme

The review of the anti-siphoning scheme considered whether there is a material risk of nationally important and culturally significant sporting events migrating to online services and, in particular, to subscription-based platforms.

The review found that in a contemporary media environment this risk remains. The concern that key events would be siphoned behind paywalls when the scheme was first introduced is also present in a digital environment, albeit in a different form. The scheme needs to be broadened to incorporate online services, and there are a number of factors that support this preliminary finding.

In recent years, subscription and free-to-air broadcasters have increasingly acquired online rights as part of their media rights packages.

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<sup>16</sup> Explicit costs include subscription fees or pay-per-view charges, charged by the content service provider or an intermediary, to access the coverage of the event.

<sup>17</sup> Kantar (1 May 2023), [Australian streaming market stabilises despite 1.1 million cancellations](#).

<sup>18</sup> Telsyte (17 August 2020), [Subscription home entertainment soars in Australia](#).

<sup>19</sup> Telsyte (28 August 2023), [Australia's subscription entertainment market growth eases but remains vital](#).

<sup>20</sup> Australian Communications and Media Authority (2023), [Spending by subscription video on demand providers](#). The five SVOD services which reported data (Netflix, Stan, Amazon Prime Video, Paramount+ and Disney+), included. Services such as Kayo and Optus sport did not report data and are not included.

<sup>21</sup> Deloitte (2022), [Media Consumer Survey 2022](#), p. 35.

<sup>22</sup> Foxtel Group (2023), [Foxtel Group Fiscal 2023 Fourth Quarter and Full Year Earnings](#).

<sup>23</sup> Singtel (2023), [Singapore Telecommunications Limited and Subsidiary Companies: Management Discussion and Analysis of Financial Condition, Results of Operations and Cash Flows for the second half and financial year ended 31 March 2023](#), p. 43.

**Foxtel** has obtained online sports rights to a range of events and typically provides coverage to subscribers through its dedicated Kayo streaming service. A wide range of sports and competitions are available through the service, including the vast majority of AFL and NRL Premiership matches.

**Seven West Media** obtained the broadcast rights to the 2020 Tokyo Olympic Games, as well as the rights to stream the Games. Audiences were able to access coverage of events via 45 channels across Seven and 7plus.<sup>24</sup>

**Nine Entertainment Co** uses its BVOD platform 9Now to simulcast a range of sporting events, including NRL matches and the 2023 Ashes. It has also provided extensive coverage of matches of the Australian Open through 9Now.

Subscription-based streaming services that are not owned by broadcasting service providers have also made some forays into the sports rights market in Australia.

In February 2021, **Amazon Prime Video** secured a two-year exclusive agreement with Swimming Australia to stream several Australian swimming events not on the anti-siphoning list.<sup>25</sup> This included the Australian Swimming Trials in the lead up to the 2020 Tokyo Olympic and Paralympic Games and the qualifying events for the 2022 Birmingham Commonwealth Games.

In June 2023, **Tabcorp** secured the digital, free-to-air and subscription television rights to the Melbourne Cup.<sup>26</sup> Tabcorp is not a licensed broadcaster and the event was subsequently shown on Channel 10 and streamed on Kayo Sports and Racing.com.<sup>27</sup>

**Optus Sport** holds the exclusive rights to televise a range of European, Asian and international soccer matches in Australia. In 2021, Optus Sport acquired the right to stream all 64 matches of the 2023 FIFA Women's World Cup, hosted by Australia and New Zealand.<sup>28</sup> Fifteen matches were made available on the Seven Network,<sup>29</sup> and Optus Sport made eleven additional matches available for free on its platform. However, the remainder of the matches were available only to Optus Sport subscribers.

## International approaches and trends

Around the world, there has also been a trend towards exclusive online coverage of live sports, reflecting changes in viewer preferences as well as adjustments in the business strategies of streaming services.

- Forty per cent of global fans now opt to stream live sports events through digital platforms,<sup>30</sup> and subscription-based streaming services are prominent in a number of jurisdictions.
  - In 2021, around 25 per cent of the annual spend on sports coverage rights in Germany was derived from subscription streaming services and this figure was around 35 per cent in Italy.<sup>31</sup>
  - This number was estimated to rise to 53 per cent for the Italian market in 2022.<sup>32</sup>

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<sup>24</sup> Mediaweek (14 April 2021) [Seven reveals its digital product for 2020 Tokyo Olympics](#).

<sup>25</sup> Carp, S. (4 February 2021), [Amazon dips toe in Australian market with swimming streaming deal](#), Sports Pro Media.

<sup>26</sup> Meade, A. (23 June 2023), [Ten Network drops bid to secure Melbourne Cup rights over Tabcorp deal](#), The Guardian.

<sup>27</sup> News.com.au (7 November 2023), [How to watch and live stream the 2023 Melbourne Cup](#).

<sup>28</sup> Optus Sport (3 August 2021), [Optus Sport secures media rights to the FIFA Women's World Cup 2023](#).

<sup>29</sup> 7news.com.au (31 October 2022), [Women's World Cup live and free on Seven and 7plus in 2023, Matildas match times and venues revealed](#).

<sup>30</sup> Nielsen (2022), [Global Sports Marketing Report](#), p. 5.

<sup>31</sup> Ampere Analysis (2022), [Trends and Dynamics in the Sports Broadcasting Sector – Abridged Report for Ofcom Analysis](#), p. 23.

<sup>32</sup> Ibid.

- The global spend on sports rights by subscription streaming services is forecast to reach US\$8.5 billion in 2023, a 64 per cent increase from US\$5.2 billion in 2022 and up from US\$2.9 billion in 2021, with the majority of the spend coming from North America and Western Europe.<sup>33</sup>

The increasing consumer take-up of subscription-based services to access coverage of major sporting events is mirrored in some significant rights deals over recent years.

In the UK, **Amazon** acquired exclusive rights to televise 20 English Premier League games per season across three years, starting in 2019. Amazon shared the rights with two major pay TV broadcasters – Sky Sports and BT Sport. While Amazon did not disclose how much it paid for the rights, Sky is reported to have paid around GBP 3.58 billion, while BT Sports reportedly paid GBP 885 million.<sup>34</sup> The deal was renewed in 2021 to span the 2022 to 2025 seasons.<sup>35</sup>

In France, **Amazon** has recently extended its rights deal for the French Open tennis tournament, initially in place from 2019, and will provide exclusive coverage of the premier match each evening for the tournament’s initial 11 days for the period 2024 to 2027.<sup>36</sup> It will jointly provide coverage of all high profile matches from the semi-finals onwards along with broadcaster **France TV**.

In Italy, streaming service **DAZN** acquired the exclusive right to televise 7 out of 10 games per matchday in the Serie A soccer for three years from 2021.<sup>37</sup>

In the United States, the National Football League has agreed an 11-year deal, valued at over US\$100 billion, with all rights partners across digital and broadcast platforms.<sup>38</sup> **Amazon** is reported to be paying around US\$1 billion per year for the exclusive right to distribute the NFL’s Thursday night matches.<sup>39</sup> The NFL also provides a direct streaming option via NFL.com, including live video streaming and other streaming services. Through this direct service the NFL is able to manage global distribution of its events not already covered by other rights deals.

There are a range of factors that suggest that Australia will experience similar trends.

- Australia is one of the strongest adopters of new communications technologies in the world. In 2016, the World Bank’s Digital Adoption Index showed Australia’s digital adoption to be roughly 74 per cent higher than the global average.<sup>40</sup> This is reflected in research that found that Australians have been particularly enthusiastic adopters of smart phones compared with other countries.<sup>41</sup>
- Given the take up of communications technology, Australia is clearly an attractive market for subscription-based media. Netflix launched in Australia in 2015. Since this time, a significant number of new, online-only streaming services have come to Australia. These include Amazon Prime Video, Disney+, Apple TV+ and Paramount+. This is in addition to the domestic streaming offerings of Stan (launched in 2015), Optus Sport (in 2016), Kayo Sports (in 2018) and BINGE (in 2020).

<sup>33</sup> Ampere Analysis (2023), [Streaming services will spend over \\$8bn on sports](#), p. 1.

<sup>34</sup> PremierLeague.com, [Amazon become a Premier League partner for the first time ahead of the 2019/20 season](#)

<sup>35</sup> Sweney, M. (13 May 2021), [Premier League renews £4.8bn TV deal with extra £100m trickle-down funds](#), The Guardian.

<sup>36</sup> Cunningham, E. (31 March 2023), [France TV and Amazon extend domestic Roland Garros rights until 2027](#), Sportcal.

<sup>37</sup> Pollina, E. (27 March 2021), [DAZN grabs broadcast rights for Serie A in Italy](#), Reuters.

<sup>38</sup> Belson, K. and Draper, K. (18 March 2021), [N.F.L. Signs Media Deals Worth Over \\$100 Billion](#), The New York Times. Note: under the contract arrangement, matches will be broadcast on over-the-air stations in the cities of the participating teams.

<sup>39</sup> Palmer, A. (20 September 2022), [Amazon memo says ‘Thursday Night Football’ drew record number of Prime signups for a 3-hour period](#), CNBC.

<sup>40</sup> Departmental analysis of data available through: World Bank (2016) [Digital Adoption Index](#).

<sup>41</sup> Oviedo-Trespalacios, Nandavar S, Newton JDA, Demant D, Phillips JG (2019), [Problematic Use of Mobile Phones in Australia...Is It Getting Worse?](#).

- While the rate of new entrants to the Australian market is expected to moderate, the overall streaming market is forecast to continue to grow. The global video streaming market was valued at US\$89.03 billion in 2022 and is expected to grow at a compound annual growth rate of 21.5 per cent from 2023 to 2030.<sup>42</sup>
- As noted previously, sports bodies and broadcasters have indicated through the initial review consultation process that online rights are critical to their future, with consumers increasingly demanding online sporting coverage and the associated rights deals providing critical income for sports bodies.

In sum, there is a 'regulatory gap' in the anti-siphoning scheme in relation to online services, and a strong case to broaden the remit of the scheme to mitigate the attendant risks.

## Regulation

A number of overseas countries operate schemes that are similar to Australia's anti-siphoning scheme. These schemes are concerned with protecting free access to television coverage of sporting or cultural events of major importance to citizens in the relevant jurisdictions. While these schemes are similar in purpose to Australia's anti-siphoning scheme, the composition and rationale for listing certain events and the type of coverage expected on free-to-air television is different.

The UK listed events regime works by prohibiting the broadcast of exclusive rights of an event on the list without prior consent from the UK regulator, Office of Communications (Ofcom). The UK's current list is divided into two categories (Group A and Group B). Where rights holders make an event available, full live coverage must be offered for purchase first to free-to-air channels for events in Group A. Group B events may have live coverage on subscription television provided that secondary coverage or highlights are offered for purchase first to free-to-air broadcasters. The UK Government has released a draft legislation to clarify that only public service broadcasting (free-to-air) services will qualify to bid for the rights to show listed events.<sup>43</sup>

In the European Union, the Audiovisual Media Services Directive 2010, allows each member state to draw up a list of designated events to ensure that broadcasters under that state's jurisdiction do not broadcast on these events on an exclusive basis events. Member states may determine whether these events should be available by whole or partial live coverage, or partial deferred coverage.<sup>44</sup> Legislation has been enacted in a number of countries to implement this directive, including Austria, Belgium, Denmark, Finland, France, Germany, Ireland and Italy.

## Impact on Australian audiences

As the boundaries between broadcasting and new media are increasingly eroded, there is a risk that Australians may miss out on watching events of national importance and cultural significance. This impacts Australians a number of ways.

### Direct costs

As noted above, many online services operate on a subscription basis. While there are some free content offerings, most are based on monthly fees. For example, Kayo Sports charges \$25 to \$35 per month,<sup>45</sup> while Optus Sports charges \$6.99 per month for eligible Optus customers, or \$24.99 per month or \$199 per year for non-Optus customers.<sup>46</sup> Without regulatory intervention, there is a risk that Australians would have to pay to continue to watch the events that they have traditionally viewed without fees or explicit payment. Research has found that cost is the most common factor considered by consumers when determining whether to cancel an SVOD service.<sup>47</sup>

<sup>42</sup> Grand View Research, [Video Streaming Market Size, Share & Growth Report, 2030](#).

<sup>43</sup> UK Government (29 March 2023), [Media Bill impact assessment](#), pp. 9-10, 20-21.

<sup>44</sup> European Union, [Audiovisual Media Services Directive](#), Article 14.

<sup>45</sup> Kayo Sports, [How much does a Kayo subscription cost?](#)

<sup>46</sup> Optus Sport, [Sign-Up for a Free Optus Sport Account](#)

<sup>47</sup> Deloitte (2022), [Media Consumer Survey 2022](#), p. 9.

## Indirect costs

Accessing services online also involves additional, indirect costs associated with an internet connection, including fixed broadband services, mobile broadband services, mobile services, satellite or ADSL services. Each service will have costs, typically charged monthly, as well as upfront costs. While the majority of Australians can afford to meet these access costs, a small but significant proportion cannot. In 2022, 4 per cent of Australians needed to pay more than 10 per cent of their household income to gain quality, reliable internet connectivity, with this figure at 27 per cent of those in the lowest income quintile.<sup>48</sup> This research also found that, in 2022, 32 per cent of those in the lowest income quintile and 27 per cent of those in the second lowest income quintile expressed some level of concern over the cost of internet access.<sup>49</sup>

## Access

Take-up of broadband services is high at an aggregate level; as at June 2022, 99 per cent of Australian adults had some form of access to the internet.<sup>50</sup> However, many Australians have not taken up a home internet connection. In 2022, 6.82 per cent of Australian adults had no internet connection at home,<sup>51</sup> and lower take-up is more prevalent among particular groups:

- 8.51 per cent of regional Australian adults had no internet connection at home, compared with 5.93 per cent of those in metropolitan areas.<sup>52</sup>
- 11.71 per cent of Australian over the age of 75 had no internet connection at home.<sup>53</sup>

Other surveys have found that, although the divide between metropolitan and regional areas has narrowed in recent years, it remains marked, and that those aged over 75 continue to be left behind.<sup>54</sup> While the availability of internet services is close to universal, there are gaps and discrepancies in terms of take-up for certain groups within Australian society. For these Australians, there is a risk that a move away from free-to-air broadcasting services would result in a reduction of free access to televised coverage of nationally important and culturally significant events as they migrate to freely available, but inaccessible, online platforms.

## Impacts on industry

As demonstrated by Table 1, sport is critical for the sustainability of the advertising-funded services provided by commercial free-to-air broadcasters. This content genre also helps commercial broadcasters to attract audiences to other adjacent content offerings.<sup>55</sup> The review has found that without regulatory intervention, there is a risk of iconic sporting events migrating behind online paywalls. This, in turn, would impact the sustainability of the business model of commercial free-to-air broadcasting.<sup>56</sup>

Under the status quo, subscription television broadcasting licensees are affected by the scheme and are limited in terms of their acquisition of rights to events on the anti-siphoning list. Although not directly regulated, the scheme also impacts sports bodies as it affects the negotiation process and sequence of acquisition of rights to sporting events. Any extension of the current acquisition-based rule in the scheme to address the gap in regulation in relation to online media services is likely to further restrict these parties in terms of their negotiation over media rights.

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<sup>48</sup> Australian Digital Inclusion Index: [Affordability](#).

<sup>49</sup> Ibid.

<sup>50</sup> ACMA (December 2022), [Communications and media in Australia: How we use the internet](#), p. 3.

<sup>51</sup> ACMA (December 2022), [Communications and media in Australia: How we use the internet – data file](#).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Australian Digital Inclusion Index, [Key findings and next steps - Australian Digital Inclusion Index](#).

<sup>55</sup> Free TV Australia (2023), [Review of the anti-siphoning scheme: Response to the Proposals Paper](#), p. 10 notes that sport is critical for the sustainability of the wholly advertiser funded services provided by Free TV members.

<sup>56</sup> Ibid. p.3



## Imbalances in the list

The review of the scheme has also considered the anti-siphoning list, and found a case for its composition to be reconsidered.<sup>57</sup> To date, the list has tended to include sports that involve athletes without disabilities. To a lesser extent, it has also tended to involve competitions in which men compete. This isn't the product of conscious and deliberate discrimination. Rather, it reflects the fact that the coverage of sporting events that have been considered nationally important and culturally significant has historically tended to involve men and has historically tended to involve athletes without a disability. This is changing. The sports ecosystem in Australia is continuing to evolve as competitions develop and grow, and as audience attitudes and preferences change.

### Women's sports

Historically, the list has been skewed towards men's sports. In many cases, national women's competitions were either not in existence at the time that the last major changes to the list were considered (at or before 2017), or those competitions were relatively nascent in terms of their development and popularity.

Since that time, many competitions that involve women athletes have undergone significant growth and development. Participation rates for women and girls are at record levels for many sports, and many competitions have gone from strength the strength with growing club memberships and greater media coverage. In 2022, Fox Sports reported that roughly 70 per cent of Australians watched more women's sport than they did before 2020.<sup>58</sup>

The Australian Government has already acted to increase the inclusion of women's sport with the addition of select FIFA Women's World Cup matches and qualifiers to the list in September 2023 (ahead of the close of bids for media rights the 2027 tournament).<sup>59</sup> However, this is a first step. Without inclusion on the list, there is a risk events such as these would move behind paywalls.

It is important to acknowledge that this risk is not arising at present for all women's sports. The AFL, for example, has entered into a rights agreement between 2025 and 2031 that provides for the finals series and the Grand Final of the AFL Women's (AFLW) Premiership to be televised on the Seven Network and 7plus.<sup>60</sup> Similarly, for the 2023 season, all matches in NRL Women's (NRLW) Premiership and the NRLW State of Origin are being broadcast live on the Nine Network and 9Now.<sup>61</sup> However, given that media rights deals are often made years in advance (see Table 9), there is a risk that these events may not be available for free in the future. Including these events on the list will help promote the likelihood of these events being shown on free-to-air television.

### Paralympics

Unlike the Olympic Games and Commonwealth Games, the Paralympics are not included in the current list. While Australian Para-athletes have successfully competed in the Paralympics and world championships for many decades, their efforts have historically received relatively modest reporting and television coverage, particularly prior to the 2000 Summer Paralympics. This is changing. In 2023, Paralympics Australia announced that the Nine Entertainment Co. would be the broadcasting partner for the Para-Athletics World Championships in July 2023<sup>62</sup> and the 2024 Paralympics.<sup>63</sup> Nine intends to provide coverage of the event via

<sup>57</sup> DITRDCA (2023), [Anti-siphoning Review - Proposals Paper](#), p. 22.

<sup>58</sup> Fox Sports (7 March 2022), [Huge growth of Aussie love for women's sport revealed in new research](#).

<sup>59</sup> DITRDCA (14 September 2023), [Matildas FIFA World Cup matches added to anti-siphoning list](#) Media Release.

<sup>60</sup> AFL (2022), [Seven years, \\$4.5b: AFL reveals HUGE new broadcast rights deal](#).

<sup>61</sup> Hislop M (28 April 2023), [NRLW set for biggest season yet with expansion and new broadcast deal](#), Women's Agenda; See for example: NRL (2023), [NRLW 2023: When, where to watch Round 1 games](#).

<sup>62</sup> Paralympics Australia (3 July 2023), [Live Coverage To Feature Stars Of World Para-Athletics](#).

<sup>63</sup> Paralympics Australia (23 May 2023), [Paralympics Australia Secures Landmark Paris 2024 Media Rights Deal](#).

its free-to-air broadcasting services, its BVOD services, as well as via subscription streaming service Stan and commercial radio outlets. This rights agreement demonstrates the extent to which the position of Para-sports is changing in the Australian media landscape.

However, under the current scheme, there would be nothing to prevent future Paralympics from moving behind online paywalls. This would be a loss for Australians; 68 percent of whom watched some part of the Tokyo Paralympics.<sup>64</sup> The Australian Paralympic Team enjoys strong support, with a 2021 survey placing interest in the Australian Paralympic Team (28 percent) only marginally behind the Australian cricket team (32 percent).<sup>65</sup>

The review has found that there is a reasonable case to consider the composition of the list with respect to women's events and Para-sports.

## 2. Why is Government action needed?

The anti-siphoning scheme was introduced in 1992 to address the concern that nationally important and culturally significant events would be siphoned behind the paywalls of services to which most Australians didn't have access. This aligns with several of the objects contained in subsection 3(1) of the BSA, including:<sup>66</sup>

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information.
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs.
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.
- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance.
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services.
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need ... for an appropriate coverage of matters of local significance.

As noted in chapter 1, at the time, relevant paywalled services were limited to subscription television. Since this time, the risk of nationally important and culturally significant programs being siphoned hasn't abated or diminished, but has been altered and potentially amplified in a contemporary media environment. There is a latent, although material, risk of listed events migrating behind online paywalls in the coming years. International trends have seen the rights to single competitions or leagues being taken up by multiple providers, which can require consumers to pay for a number of services to gain access to the competition or league in question.

The status quo – the maintenance of the current scheme and the current list – will put at risk the achievement of the policy objective of free access to televised coverage of nationally important and culturally significant events. The review has affirmed that this core objective of the scheme remains relevant, and there was general agreement among stakeholders that providing Australians with free access to coverage of iconic sporting events remains an appropriate aim.

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<sup>64</sup> Paralympics Australia (24 August 2022), [One Year Since Tokyo, Analysis Shows A Resounding Success](#).

<sup>65</sup> Paralympics Australia (25 November 2021), [Report Finds Australian Paralympic Team Among Nation's Most Popular](#).

<sup>66</sup> Subsection 3(1) of the BSA contains 17 objects of the act. A limited selection of these are presented here, as they are most relevant to the anti-siphoning scheme and list.

There is a strong case to maintain regulatory intervention to support this objective, and to modernise the form of this intervention to accommodate changes in technology, consumption patterns and preferences for live sport. The impacts and net benefits of the alternative models and options for this reform are the subject of this IA.

## Objectives of reform

The proposed reforms to the anti-siphoning scheme seek to address the challenges identified above and align with the objects of the BSA to promote the continued free access to nationally important and culturally significant events by all Australians. Consistent with the objects of the BSA, Australians have come to expect to be able to freely access sporting content that develops and reflects the Australian identity, character and cultural diversity (object 3(e)), and that reflects matters of local significance (objects 3(1)(ea) and 3(1)(g)). The review has found a strong case to maintain and modernise regulatory interventions that promote free access to these events.

Any reforms will also need to consider the impact of the scheme on industry. Consistent with object 3(1)(b) of the BSA, reform should support the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs, building on the existing scheme. It should not unnecessarily interfere with the market or impose unnecessary costs. Any interference should support the objective of the scheme (as set out in the Explanatory Memorandum to the bill that introduced the scheme):

*“...on equity grounds, that Australians will continue to have free access to important events. It will, however, also allow subscription television broadcasters to negotiate subsequent rights to complementary, or more detailed, coverage of events.”<sup>67</sup>*

Reform should also seek to provide appropriate opportunity for subscription television broadcasting licensees and online services to acquire the rights to events on the list, provided that the overall objective of the scheme can be supported and the risk of events migrating behind paywalls can be mitigated.

The existing scheme and list are relatively simple in terms of their legislative design. They operate to restrict subscription television broadcasting licensees acquiring events on a list until free-to-air broadcasters have acquired a right (or the event is delisted). Any changes to the scheme and list should continue to be as simple and as uncomplicated as necessary in order to achieve its objectives.

## Risks

Extending the application of the scheme to online media creates the potential for it to become restrictive to the point where it limits the ability for sporting bodies to maximise their revenue. The Government has sought to mitigate this risk through two phases of consultation — a consultation paper that considered all issues relating to the scheme and the list, and a proposals paper that set out three models for reform of the scheme and three options for the remaking of the list. Feedback from these processes has informed consideration of the optimal way forward.

There is also a risk that by expanding the scheme to online services, this will capture intermediaries that hold the rights to events, such as sporting bodies or other parties, that are legitimately holding the rights. To mitigate this risk, legislation to implement reforms to the scheme will need to be carefully constructed with regard to concepts such as ‘content services’ and ‘content service providers’ (or similar constructions)<sup>68</sup> to avoid imposing regulations that are unreasonably broad.

Adding events to the list could create a risk that the rights to these events are not acquired by free-to-air broadcasters and remain unsold until they are automatically delisted. Market trends over the past decade suggest that this risk is negligible, as sports content is highly sought after by free-to-air broadcasters and critical to their overall service offering. However, any potential additions to the list will need to be carefully

<sup>67</sup> [Explanatory Memorandum to Broadcasting Services Bill 1992](#), p. 67.

<sup>68</sup> All references in this IA to ‘content service providers’ includes all online, broadcast and other media services.

considered. This consideration will be informed by the extensive engagement undertaken, and feedback received through, the consultation processes in 2022 and 2023.

### 3. Policy options considered

#### The scheme

The scheme does not currently apply to online media services, and three models for reform are proposed to address this gap. The status quo – maintaining the scheme as it currently stands – is also considered.

**Table 3: Summary of models to reform the anti-siphoning scheme**

	1. Free-to-view	2. Broadcasting safety net	3. Free-to-air first	4. Status quo
<b>Summary</b>	A new scheme (to replace the current scheme) that would impose regulatory obligations (free, live, in full, on a broadly available platform) on all content services (online, broadcast or any other media service) that provide coverage of iconic sporting events to Australian audiences.	An extension of the current scheme to prevent the acquisition of any type of right to provide coverage of an iconic sporting event to Australians by a content service provider until a free-to-air broadcaster has a right to televise the event on a broadcasting service, or the event is automatically delisted 12 months prior to commencement.	A significant extension of the current scheme to prevent the acquisition of any type of right to provide coverage of an iconic sporting event to Australians by a content service provider until a free-to-air broadcaster has both a right to televise the event on a broadcasting service <u>and</u> a right to provide coverage of the event on a content service, or the event is automatically delisted 26 weeks prior to commencement.	No change to the existing anti-siphoning scheme, with the current restriction preventing subscription television broadcasting licensees from acquiring events on the anti-siphoning list until a right is acquired by a free-to-air broadcaster or the events is automatically delisted 26 weeks prior to commencement to remain.
<b>Restriction on rights acquisition?</b>	No	Yes	Yes	Yes
<b>Free and broadly available obligations?</b>	Yes	No	No	No
<b>Live and in full obligations?</b>	Yes	No	No	No
<b>Reduction of the list?</b>	Yes	No	No	No

#### Model 1: ‘free-to-view’

Under this model, the current anti-siphoning scheme would be replaced by a new scheme. This new scheme would not impose any restrictions on the acquisition of media rights to listed events. However, if coverage of those events is made available to audiences in Australia, the relevant content service (any online,

broadcasting or other media service) would need to ensure that coverage complies with the following regulatory obligations in relation to the event:

- make it available to the Australian public for free and on a broadly available technology platform; and
- show it live and in full.

## Requirements of this model

### Free availability

The coverage of listed events would need to be 'free'. Coverage would be 'free' if viewers of the event are not required to explicitly pay to access coverage. In other words, there are no direct or explicit payments, such as subscription fees or pay-per-view charges, associated with the coverage of the event by the content service.

The free coverage obligation would not restrict the provision of advertising as part of the coverage. Nor would it extend to any 'implicit costs' associated with viewing the event, such as internet access charges, the costs of reception equipment or devices, or any requirement for users to have an account with the service.

### A broadly available technology platform

A content service provider would need to satisfy a requirement that the technology platform used to provide coverage of the event is 'broadly available' to the Australian population. If content services were able to use a technology platform available to only a subset or portion of the Australian population, it would be unlikely to align with the scheme's objective promoting free access to televised coverage of nationally important and culturally significant sporting events to all Australians. It is proposed that the content service must provide coverage using a platform that is available to a minimum of 99 per cent of the Australian population to satisfy this criterion.

### Live coverage

Events would be required to be shown 'live'. The term 'live' would refer to coverage of the event at the time that the event occurs. This definition would require coverage of events to occur as play takes place, recognising the primacy of sport being live as opposed to other genres of entertainment content.

However, exceptions would be permitted in particular circumstances, and this would include the circumstance where coverage was delayed due to:

- the technical parameters of the particular technology platform (for example, where coverage via a particular technology or combination of technologies unavoidably involves a 'lag' between play occurring and coverage being available to the user of the content service); and
- unforeseen technical or service outages, particularly those that are outside the control of the content service provider (for example, a network outage by a carriage service that impacts the ability of a content service provider to provide live coverage of the event).

### Coverage in full

Events will be required to be shown 'in full'. This obligation would be satisfied if the whole of an event is shown, apart from an insubstantial proportion of the event. For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event.

### Exceptions

#### Ancillary coverage

Ancillary coverage would be excluded where:

- it is not more than an insubstantial portion of the event (such as highlights provided in news bulletins); or
- coverage is secondary to the primary coverage of the event (such as a replay of the event).

This would avoid imposing the live and in full obligations on entities that are legitimately not providing, and are not authorised to provide, this type of coverage.

### Partial rights

Where only a portion of the rights or delayed coverage of the rights to a listed event are acquired, the live and in full requirements would be deemed to have been met, provided that the content service provider fully utilises the rights that they hold. This would prevent the situation of a party being in breach of the live and in full coverage obligation in the circumstances where they don't hold rights that are sufficient to enable them to fulfil that obligation.

### Application of this model

The above requirements would apply to any content service that makes coverage of the event available to audiences in Australia, irrespective of whether those rights are transferred from one content service provider to another. An alternative proposal would be for the requirements to only apply to the first acquirer, noting that this was preferred by Foxtel.<sup>69</sup> However, this would add complexity and uncertainty to the scheme by rendering the liability for certain actions under the scheme by one party contingent upon the actions of another.

The obligations under the free-to-view model would apply only to content services that actually provide coverage of a listed event to audiences in Australia. If a person holding a right to a listed event were to be subject to the obligations simply as a product of holding that right, then this could have a range of unintended consequences. For example, a sports body or a sports rights broker or intermediary may, depending on the circumstances, technically hold a right to a listed event. However, they may not actually be a content service provider or otherwise be capable of providing coverage of the event to Australian audiences. It would be unreasonable to impose the obligations in these circumstances.

### Addressing the problem and objective

The free-to-view model would address the problem set out in chapter 1 by replacing the existing scheme with a new set of regulatory obligations regarding the availability and coverage of anti-siphoning events, along with provisions to ensure the application of these obligations to content services that provide coverage of listed events to audiences in Australia.

For consumers, the free-to-view model would provide surety of free, live and in-full coverage (noting that indirect costs are discussed in chapter 4). However, this model can only achieve this aim via a significant reduction in the list. This is because live and in full coverage of every event on the current list is unlikely to be technically or financially feasible. For example, the Australian Open alone contains over 600 events, many of which occur concurrently (particularly in the early stages of the tournament). The reduction to the list required for this model would, in turn, potentially impact the ability of Australians to view events of national importance and cultural significance that they are accustomed to viewing for free.

This model would not impose any restrictions on the acquisition of rights to events on the list. As such, it would not impede the ability of sports bodies to negotiate agreements for the sale of rights to events on the list. This model is expected to be relatively complicated to implement and administer. In particular, the requirement for content services to provide coverage using 'broadly available technology platforms' adds a degree of uncertainty, as do the exemptions to prevent unintended impacts in relation to the proposed availability and coverage obligations. The introduction of regulatory requirements would also necessitate additional monitoring and oversight, which may be time consuming and costly.

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<sup>69</sup> Foxtel Group (2023), [Submission in response to the review of the anti-siphoning scheme – Proposals Paper](#), p. 10.

## Model 2: ‘broadcasting safety net’

Under this model, the current scheme would be expanded to prevent any content service provider (other than a free-to-air broadcaster) from acquiring a right to provide coverage of a listed event to audiences in Australia, until a free-to-air broadcaster has acquired a right to televise the event on a broadcasting service. This effectively extends the scope of the restriction on the acquisition of rights under the current scheme, which only applies to subscription television broadcasting licensees. This model would affirm broadcasting services as the ‘safety net’ for free access to televised coverage of iconic sporting events for all Australians.

Under the current scheme, once a right to televise a listed event has been acquired by a free-to-air broadcaster, or the event is automatically delisted 26 weeks prior to its commencement, any party is able to acquire rights to the event without restriction. The delisting period would be extended to 12 months under this model.

### Requirements of this model

#### Acquisition restriction

The sequence of acquisition of media rights to listed events would be regulated under the broadcasting safety net model, as it is under the current scheme.

The new acquisition restriction would prohibit a content service provider from acquiring a right to provide coverage of a part or the whole of an event on the anti-siphoning list to end-users in Australia unless:

- a national broadcaster has the right to televise a part or the whole of the event on any of its broadcasting services; or
- the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1) of the BSA) who have the right to televise a part or the whole of the event cover a total of more than 50 per cent of the Australian population.

#### Carve out

The acquisition restriction (above) would not apply to:

- the acquisition by a national broadcaster of the right to televise a part or the whole of the event on any of its broadcasting services; or
- the acquisition by a commercial television broadcasting licensee of the right to televise a part or the whole of the event on any of its commercial television broadcasting services.

This carve out would enable national and commercial broadcasters to acquire a right to televise a listed event on a broadcasting service without restriction under the scheme, as they would otherwise be prevented from doing so by the operation of the acquisition restriction and the broad definition of a content service.

However, this carve out would only apply to the broadcasting services provided by free-to-air broadcasters, and not to any other content services that they may provide to Australian audiences.

#### No further restrictions

Free-to-air services are by definition ‘free’ and ‘broadly available’. There was no evidence presented through the review to suggest that free-to-air broadcasters are ‘hoarding’ the rights to listed events (acquiring the rights and not providing coverage, or not otherwise making those rights available to other parties). This reflects the strong commercial incentive for broadcasters to fully exploit the rights they have acquired (typically at significant cost). For these reasons, a ‘live’ and ‘in full’ requirement is not proposed for this model.

## Addressing the problem and objective

The broadcasting safety net model would address the problems set out in chapter 1 by the expanding the scheme to cover content services. For consumers, this would increase the likelihood of being able to view listed events on free-to-air television, without a reduction in the number of events on the list. From an industry perspective, this model provides free-to-air broadcasters with the first opportunity to obtain television rights to events on the list. However, it would not provide free-to-air broadcasters with preferential treatment in relation to their acquisition of rights to provide coverage of events on their BVOD services. It thereby only impacts competition to the extent necessary to achieve the objective of the scheme. This model is expected to be relatively straight forward to implement and administer, as it represents continuation of the existing scheme.

### Model 3: ‘free-to-air first’

Under this model, the current scheme would be significantly expanded to prevent any content service provider (other than a free-to-air broadcaster) from acquiring a right to provide coverage of a listed event to audiences in Australia until free-to-air broadcasters have both a right to televise the event on a broadcasting service, and the right to provide coverage of the event to Australians on a content service.

As with the current scheme, once a free-to-air broadcaster had acquired both of the requisite types of rights, or the event is automatically delisted 26 weeks prior to its commencement, any other party would be able to acquire a right to the event without restriction.

## Requirements of this model

### Acquisition restriction

The sequence of acquisition of media rights to listed events would be regulated under the free-to-air first model, as it is under the current scheme.

The new acquisition restriction would prohibit a content service provider from acquiring a right to provide coverage of a part or the whole of an event on the anti-siphoning list to end-users in Australia unless:

- a national broadcaster has the right to televise a part or the whole of the event on any of its broadcasting services; or
- the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1) of the BSA) who have the right to televise a part or the whole of the event cover a total of more than 50 per cent of the Australian population;

and

- a national broadcaster has the right to provide coverage of a part or the whole of the event to end-users in Australia on a content service; or
- a commercial television broadcasting licensee has the right to provide coverage of a part or the whole of the event to end-users in Australia on a content service.

### Carve out

The acquisition restriction (above) would not apply to:

- the acquisition by a national broadcaster of:
  - the right to televise a part or the whole of the event on any of its broadcasting services; or
  - the right to provide coverage of a part or the whole of the event to end-users in Australia on a content service; or
- the acquisition by commercial television broadcasting licensee of:



- the right to televise a part or the whole of the event on any of its broadcasting services; or
- the right to provide coverage of a part or the whole of the event to end-users in Australia on a content service.

This carve out would enable national and commercial broadcasters to acquire a right to televise a listed event on a broadcasting service, and the right to provide coverage of the event to end-users in Australia on a content service, without restriction under the scheme.

A free-to-air broadcaster would need to have acquired both a broadcast right and an online right or other form of right before another party (i.e. any party other than a free-to-air broadcaster) could acquire a right to the event.

### **No further restrictions**

Free-to-air services are by definition ‘free’ and ‘broadly available’. The same applies to BVOD services (free to download and broadly available). There was no evidence presented through the review to suggest that free-to-air broadcasters were ‘hoarding’ the rights to listed events (whether broadcast or online rights). This reflects the strong commercial incentive for broadcasters to fully exploit the rights which they have acquired (typically at significant cost). For these reasons, a ‘live’ and ‘in full’ requirement is not proposed as part of this model.

### **Addressing the problem and objective**

The free-to-air first model would address the problems set out in chapter 1 by significantly expanding the scheme to cover online content services. For consumers, this would increase the likelihood of being able to view listed events on television and online services. However, from an industry perspective, it would provide free-to-air broadcasters with the first opportunity to obtain both the television rights and online rights to nationally important and culturally significant events. This would effectively exclude all other parties from obtaining broadcast or online rights until a free-to-air broadcaster obtained all of the rights, or the event is automatically delisted. This would impact competition to a greater extent than necessary to achieve the objective of the scheme. This model is expected to be relatively straightforward to implement and administer, as it represents a continuation of the existing scheme.

## **Model 4: ‘status quo’**

Under this approach, there would be no amendments to the existing scheme. It would continue to prevent subscription television broadcasting licensees from obtaining a right to a listed event before free-to-air broadcasters has a right (until the event is automatically delisted), but there would no impact on streaming services.

### **Addressing the problem and objective**

Under the status quo, the issues and risks set out in chapter 1 would not be addressed. There is a latent but material risk of consumers being unable to freely access nationally important and culturally significant events under this option. The impacts on industry would remain as per the current scheme, and there would be no change to the complexity of the regulation.

## **The list**

The composition of the proposed list options has been informed by the consecutive consultations undertaken in 2022 and 2023. Where relevant, all list options would clarify the gender of the events.

**Table 4: Summary of list options**

	1. Streamlined list	2. Modernised list	3. Expanded list	4. Status quo
<b>Summary</b>	A significant reduction of the current list.	An increase of the current list.	A significant expansion of the current list.	No change to the existing list
<b>Number of events<sup>70</sup></b>	~330	~2,500	~2,800	~1,900

## Option 1: ‘streamlined list’

The streamlined list would represent a reduction in the number of events on the list (by around 80 per cent) compared with the current instrument. This list option is detailed at **Table 5**.

The aims of the streamlined list are two-fold:

- To enable the list to operate effectively with the free-to-view model for the reform of the scheme (Model 1 – free-to-view).<sup>71</sup>
- To apply the scheme in more limited circumstances by taking a narrower view of what constitutes nationally important and culturally significant events.

### Relationship with the current list

The streamlined list contains events from the 11 sports represented on the current list, but reduces the number of events listed under each, with certain cricket matches, men’s and women’s FIFA World Cup qualifiers, and the Davis Cup completely removed. However, it adds the Ashes series matches played in the UK. The current list covers the entire men’s competition – which consists of test matches. The women’s tournament also include one day and T20 matches, which are currently not listed. Therefore, it is proposed that the list be amended to include all Ashes series matches played in the United Kingdom.

**Table 5: Proposed changes to the streamlined list**

AU = Australia

SART = Senior Australian Representative Team

Sport	Current listing inclusions	Streamlined list inclusion	Change
<b>Olympic Games</b>	Summer Olympic Games (entire event, including Opening and Closing Ceremonies)	Opening and Closing ceremonies. Final medal rounds of events involving AU athletes.	Removal: Non-final round events. Final medal round events not involving Australian athletes.
	Winter Olympic Games (entire event, including Opening and Closing Ceremonies)	Opening and Closing ceremonies. Final medal rounds of events involving AU athletes.	Removal: Non-final round events. Final medal round events not involving Australian athletes.
<b>Commonwealth Games</b>	Commonwealth Games (entire event, including Opening and Closing Ceremonies)	Opening and Closing ceremonies. Final medal rounds of events involving AU athletes.	Removal: Non-final round events. Final medal round events not involving Australian athletes.
<b>Horse racing</b>	Melbourne Cup	Melbourne Cup.	No change.

<sup>70</sup> Estimates in this row are indicative only and adopt the caveats and assumptions as the above estimate of the number events on the current list.

<sup>71</sup> The live and in full coverage requirement in Model 1 necessitates a truncated listing of certain events.

<b>Sport</b>	<b>Current listing inclusions</b>	<b>Streamlined list inclusion</b>	<b>Change</b>
<b>AFL</b>	AFL Premiership (entire event, including the Finals Series)	One match on the following days: ANZAC Day; Good Friday; Easter Monday; and the King's birthday public holiday in Melbourne. Each match in the Finals Series. Clarify men's event.	Removal: Non-finals series matches, other than one match played on each of these days: ANZAC Day; Good Friday; Easter Monday; and the King's birthday public holiday in Melbourne, Victoria.
<b>Rugby League</b>	NRL Premiership (entire event, including the Finals Series)	One match on the following days: ANZAC Day; and Good Friday. Each match in the Finals Series. Clarify men's event.	Removal: Non-finals series matches, other than one match played on: ANZAC Day; and Good Friday.
	State of Origin (entire event)	State of Origin (entire event). Clarify men's event.	No change.
	International test matches (each test match involving the SART played in AU or New Zealand)	Each test involving the SART and played in AU. Clarify men's and women's event.	Removal: Matches played in New Zealand.
	Rugby League World Cup (each match involving the SART played in AU, New Zealand or Papua New Guinea)	Each match involving the SART and played in AU. Clarify men's and women's event.	Removal: Matches played in New Zealand and Papua New Guinea.
<b>Rugby Union</b>	International test matches (test matches involving the SART; played in AU or New Zealand)	Each match involving the SART and played in AU. Clarify men's and women's event.	Removal: Matches played in New Zealand.
	World Cup (matches involving the SART)	Each match involving the SART and played in AU. Clarify men's and women's event.	Removal: Matches played outside AU.
	World Cup (final)	A final played in AU. Clarify men's and women's event.	Removal: Finals played outside AU.
<b>Cricket</b>	Test matches (each test match involving the SART played in AU)	Test matches (each test involving the SART played in AU). Clarify men's and women's event.	N/A
	Test matches (each test match involving both the SART and the senior English representative team; played in the UK)	The 'Ashes' series (each match involving both the SART and the senior English representative team; played in the UK). Clarify men's and women's event.	Addition: women's one day and T20 matches Ashes matches played in the UK.
	One day matches (matches involving the SART; played in AU).	No listing.	Full removal.
	T20 matches (matches involving the SART; played in AU).	No listing.	Full removal.
	One day World Cup (matches involving the SART; played in AU or New Zealand)	No listing.	Full removal.

Sport	Current listing inclusions	Streamlined list inclusion	Change
	One day World Cup (final played in AU or New Zealand)	A final played in Australia. Clarify men's and women's event.	Removal: Matches played in New Zealand.
	T20 World Cup (matches involving the SART; played in AU or New Zealand)	No listing.	Full removal.
	T20 World Cup (final played in AU or New Zealand)	A final played in Australia or New Zealand. Clarify men's and women's event.	Removal: Matches played in New Zealand.
<b>Soccer</b>	FIFA men's and women's World Cups (matches involving the SART)	Each match involving the SART and played in Australia.	Removal: Matches played outside AU.
	FIFA men's and women's World Cups (final)	Finals played in Australia.	Removal: Finals played outside AU.
	FIFA men's and women's World Cup Qualification tournament (matches involving the SART; played in AU)	No listing.	Full removal.
<b>Tennis</b>	Australian Open (entire event)	Men's and women's singles finals. Men's and women's singles matches played in the main two stadia of the tournament after 7:00 pm Australian Eastern Daylight Time (AEDT).	Removal: All matches other than men's and women's singles events. A men's or women's singles match other than: - a final - matches not played in the two main stadia after 7:00 pm AEDT.
	Davis Cup (each match in each tie involving the SART; played in AU)	No listing.	Full removal.
	Davis Cup (final involving the SART)	No listing.	Full removal.
<b>Netball</b>	Netball World Cup (semi-final involving the SART)	Semi-final involving the SART and played in AU.	Removal: Semi-finals played outside AU.
	Netball World Cup (a final involving the SART)	Final involving the SART and played in AU.	Removal: Finals played outside AU.
<b>Motor Sports</b>	Formula One World Championship – Grand Prix (held in AU)	Formula One World Championship – Grand Prix (held in AU)	No change.
	MotoGP World Championship - Grand Prix (held in Australia)	MotoGP World Championship (held in AU)	No change.
	Bathurst 1000	Bathurst 1000	No change.

## Relationship with proposed models

The streamlined list has been designed to operate in conjunction with the free-to-view model (Model 1). Elements of the free-to-view model will only work in a practical sense if they are coupled with a significant reduction in the number and range of events on the list.

The 'live' and 'in full' requirements are unlikely to be technically and financially feasible for competitions that involve multiple events that occur simultaneously. For example: the Australian Open tennis tournament, the Summer and Winter Olympic Games, and the Commonwealth Games. These competitions can involve dozens of events occurring simultaneously, and a content service provider (or even a combination of providers) is unlikely to be able to provide live and in full coverage of every single event.

The streamlined list may not be compatible with the broadcasting safety net model (Model 2) or the free-to-air first model (Model 3). Both of these models are constructed around a restriction on the acquisition of rights. To be compatible with either of these two reform models, the streamlined list would need to provide the parties involved (and the regulator) with certainty regarding the rights that can't be acquired until a free-to-air broadcaster has a relevant right or rights (depending on the scheme). In this regard, there may be limits on the ability of a list to characterise events based on factors that are unclear or unquantifiable at the time of acquisition.

## Option 2: 'modernised' list

The modernised list would represent an increase in the number of events on the list compared with the current instrument (by about 30 per cent). This list option is detailed in **Table 6**.

The aims of the modernised list are two-fold:

- To enable the list to operate effectively with the broadcasting safety net and free-to-air first models for the reform of the scheme (Models 2 and 3 respectively).
- To apply the scheme in a way that better reflects the contemporary media landscape and moderately broadens the construction of nationally important and culturally significant events.

## Relationship with the current list

The modernised list continues to include events and competitions from the same 11 sports included in the current list. However, this list option would increase the number of listed events under certain sports, adding:

- all events held as part of the Summer Paralympic Games;
- the finals series matches of the AFL Women's Premiership;
- the finals series matches of the NRL Women's Premiership;
- the NRL Women's State of Origin Series; and
- the complete Women's Ashes series played in the United Kingdom (currently only test matches are listed, but the series currently includes 'one day' and T20 matches).

**Table 6: Proposed changes to the modernised list**

AU = Australia

SART = Senior Australian Representative Team

Sport	Current listing inclusions	Modernised list
Olympic Games	Summer Olympic Games (entire event, including Opening and Closing Ceremonies)	No change.
	Winter Olympic Games (entire event, including Opening and Closing Ceremonies)	No change.

<b>Sport</b>	<b>Current listing inclusions</b>	<b>Modernised list</b>
	No listing.	Summer Paralympic Games (entire event, including Opening and Closing Ceremonies)
<b>Commonwealth Games</b>	Commonwealth Games (entire event, including Opening and Closing Ceremonies)	No change.
<b>Horse racing</b>	Melbourne Cup	No change.
<b>AFL</b>	AFL Premiership (entire event, including the Finals Series).	No change. Clarify men's event.
	No listing.	Women's AFL Premiership (Finals Series)
<b>Rugby League</b>	NRL Premiership (entire event, including the Finals Series)	No change. Clarify men's event.
	No listing.	Women's NRL Premiership (Finals Series)
	State of Origin (entire event)	No change. Clarify men's event.
	No listing.	Women's State of Origin (entire event)
	International test matches (each test match involving the SART played in AU or New Zealand)	No change. Clarify men's and women's event.
	Rugby League World Cup (each match involving the SART played in AU, New Zealand or Papua New Guinea)	No change. Clarify men's and women's event.
<b>Rugby Union</b>	International test matches (test matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	World Cup matches (matches involving the SART)	No change. Clarify men's and women's event.
	World Cup matches (final)	No change. Clarify men's and women's event.
<b>Cricket</b>	Test matches (each test match involving the SART played in AU)	No change. Clarify men's and women's event.
	Test matches (each test match involving both the SART and the senior English representative team; played in the UK)	The 'Ashes' series (each match involving both the SART and the senior English representative team; played in the UK)
	One day matches (matches involving the SART; played in AU).	No change. Clarify men's and women's event.
	T20 matches (matches involving the SART; played in AU).	No change. Clarify men's and women's event.
	One day World Cup (matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	One day World Cup (final played in AU or New Zealand)	No change. Clarify men's and women's event.

Sport	Current listing inclusions	Modernised list
	T20 World Cup (matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	T20 World Cup (final played in AU or New Zealand)	No change. Clarify men's and women's event.
Soccer	FIFA men's and women's World Cups (matches involving the SART)	No change.
	FIFA men's and women's World Cups (final)	No change.
	FIFA men's and women's World Cup Qualification tournament (matches involving the SART; played in AU)	No change.
Tennis	Australian Open (entire event)	No change.
	Davis Cup (each match in each tie involving the SART; played in AU)	No change.
	Davis Cup (final involving the SART)	No change.
Netball	Netball World Cup (semi-final involving the SART)	No change.
	Netball World Cup (a final involving the SART)	No change.
Motor Sports	Formula One World Championship – Grand Prix (held in AU)	No change.
	MotoGP World Championship - Grand Prix (held in AU)	No change.
	Bathurst 1000	No change.

## Relationship with proposed models

The modernised list has been designed to operate in conjunction with the broadcasting safety net and free-to-air first models for the reform of the scheme (Models 2 and 3 respectively).

The modernised list is not designed to be compatible with the free-to-view model (Model 1). That model is constructed around coverage obligations which require all events on the list to be shown live and in full. It would not be technically or financially feasible for content services to provide live and in full coverage of competitions that involve dozens of events occurring simultaneously. In terms of the current list, this includes the Australian Open tennis tournament, the Summer and Winter Olympic Games, and the Commonwealth Games.

## Option 3: 'expanded' list

The expanded list would represent a significant increase in the number of events on the list compared with the current instrument. This list option is detailed at **Table 7**.

The aims of the expanded list are two-fold:

- To enable the list to operate effectively with the broadcasting safety net and free-to-air first models for the reform of the scheme (Models 2 and 3 respectively).

- To apply the scheme in a way that better reflects the contemporary media landscape and significantly broadens the construction of nationally important and culturally significant events.

### Comparison with the current list

The expanded list continues to include events and competitions from the same 11 sports included in the current list. However, this list option would significantly increase the number of listed events with respect to certain of sports, adding:

- all events held as part of the Summer Paralympic Games;
- all matches of the AFL Women’s Premiership, including the finals series;
- all matches of the NRL Women’s Premiership, including the finals series;
- the NRL Women’s State of Origin Series;
- each match of the Super Rugby Pacific and Super W finals series that involves at least one Australian team;
- all matches of the FIFA World Cup (men’s) and the FIFA Women’s World Cup;
- the complete Women’s Ashes series played in the United Kingdom (currently only test matches are listed, but the series currently includes ‘one day’ and T20 matches);
- each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that involves an Australian representative team (currently the match must be played in Australia);
- each match in each tie and the final of the International Tennis Federation Billie Jean Cup tennis tournament that involves an Australian representative team; and
- all international Netball matches that involve the senior Australian women’s representative team that are played in Australia.

**Table 7: Proposed changes to the expanded list**

AU = Australia

SART = Senior Australian Representative Team

Sport	Current listing inclusions	Expanded list
<b>Olympic Games</b>	Summer Olympic Games (entire event, including Opening and Closing Ceremonies)	No change.
	Winter Olympic Games (entire event, including Opening and Closing Ceremonies)	No change.
	No listing.	Summer Paralympic Games (entire event, including Opening and Closing Ceremonies)
<b>Commonwealth Games</b>	Commonwealth Games (entire event, including Opening and Closing Ceremonies)	No change.
<b>Horse racing</b>	Melbourne Cup	No change.
<b>AFL</b>	AFL Premiership (entire event, including the Finals Series)	No change. Clarify men’s event.
	No listing.	Women’s AFL Premiership (entire event, including the Finals Series).
<b>Rugby League</b>	NRL Premiership (entire event, including the Finals Series)	No change. Clarify men’s event.



Sport	Current listing inclusions	Expanded list
	No listing.	Women's NRL Premiership (entire event, including the Finals Series)
	State of Origin (entire event)	No change. Clarify men's event.
	No listing.	Women's State of Origin (entire event)
	International test matches (each test match involving the SART played in AU or New Zealand)	No change. Clarify men's and women's event.
	Rugby League World Cup (each match involving the SART played in AU, New Zealand or Papua New Guinea)	No change. Clarify men's and women's event.
<b>Rugby Union</b>	International test matches (test matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	World Cup matches (matches involving the SART)	No change. Clarify men's and women's event.
	World Cup matches (final)	No change. Clarify men's and women's event.
	No listing.	Super Rugby Pacific finals series (matches involving an Australian team)
	No listing.	Super W finals series (matches involving an Australian team)
<b>Cricket</b>	Test matches (each test match involving the SART played in AU)	No change. Clarify men's and women's event.
	Test matches (each test match involving both the SART and the senior English representative team; played in the UK)	The 'Ashes' series (each match involving both the SART and the senior English representative team; played in the UK)
	One day matches (matches involving the SART; played in AU).	No change. Clarify men's and women's event.
	T20 matches (matches involving the SART; played in AU).	No change. Clarify men's and women's event.
	One day World Cup matches (matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	One day World Cup (final played in AU or New Zealand)	No change. Clarify men's and women's event.
	T20 World Cup (matches involving the SART; played in AU or New Zealand)	No change. Clarify men's and women's event.
	T20 World Cup (final played in AU or New Zealand)	No change. Clarify men's and women's event.
<b>Soccer</b>	FIFA men's and women's World Cups (matches involving the SART)	FIFA men's and women's World Cups (entire tournament)

Sport	Current listing inclusions	Expanded list
	FIFA men's and women's World Cups (final)	FIFA men's and women's World Cups (entire tournament).
	FIFA men's and women's World Cup Qualification tournament (matches involving the SART; played in AU)	No change.
<b>Tennis</b>	Australian Open (entire event)	No change.
	Davis Cup (each match in each tie involving the SART; played in AU)	Davis Cup (each match in each tie involving the SART).
	Davis Cup (final involving the SART)	No change.
	No listing.	Billie Jean Cup (each match in each tie involving the SART).
	No listing.	Billie Jean Cup (final involving the SART).
<b>Netball</b>	Netball World Cup (semi-final involving the SART)	No change.
	Netball World Cup (a final involving the SART)	No change.
	No listing.	International Netball (matches involving the SART; played in AU).
<b>Motor Sports</b>	Formula One World Championship – Grand Prix (held in AU)	No change.
	MotoGP World Championship (held in AU) - Grand Prix	No change.
	Bathurst 1000	No change.

## Relationship with proposed models

The expanded list has been designed to operate in conjunction with the broadcasting safety net and free-to-air first models for the reform of the scheme (Models 2 and 3 respectively).

The expanded list is not designed to be compatible with the free-to-view model (Model 1). That model is constructed around coverage obligations which require all events on the list to be shown live and in full. It would not be technically or financially feasible for content services to provide live and in full coverage of competitions that involve dozens of events occurring simultaneously. In terms of the current list, this includes the Australian Open tennis tournament, the Summer and Winter Olympic Games, and the Commonwealth Games.

## Option 4: 'status quo'

The existing list would be retained without amendment under this option. The current events on the list would continue to be subject to the scheme, and the list would remain in place until it sunsets on 25 March 2026.

# 4. Impact Analysis

## Data assessment

Under the IA framework, there is a preference for IAs to be undertaken with a quantitative assessment utilising a *Cost-Benefit Analysis* (CBA), *Cost Effectiveness Analysis* (CEA), or a *Multi-criteria Analysis* (MCA). However, for a range of reasons outlined below, quantitative data to support such analysis methods is not available or applicable to the consideration of reforms to the anti-siphoning scheme and list.

This IA provides an assessment of the likely regulatory costs and impacts associated with the four models for the scheme and the four options for the list. This has been informed by the consecutive consultations undertaken in 2022 and 2023 as part of the review of the scheme. It also draws on previous reviews of the scheme that have been undertaken over the past two decades.

- In 2000, the Productivity Commission’s (PC) review of broadcasting considered, among a range of matters, the anti-siphoning scheme. The PC concluded that the scheme was exclusionary<sup>72</sup> and gave free-to-air broadcasters a competitive advantage over subscription television broadcasters and increased their revenue. Additionally, the scheme disadvantaged sport organisations by decreasing their negotiating power in marketing their products.<sup>73</sup>
- The PC came to a similar conclusion in 2009, as part of its annual review of regulatory burdens on business. The PC found the scheme to be anti-competitive, imposing a protracted negotiation process on subscription television broadcasters and reducing the bargaining power and potential revenue of sports bodies.<sup>74</sup>
- Anti-siphoning was also discussed in the report of the Independent Sports Panel in 2009. This report (the Crawford Report) argued that scheme limited the earning potential for sports and reduced the quantity and quality of sports coverage on television by incentivising free-to-air broadcasters to acquire rights to popular sports (to the exclusion of less popular sports).<sup>75</sup>

However, none of these reviews and assessments attempted to quantify these impacts on businesses (or community groups and individuals). It is very difficult and, in many cases, impossible to quantify opportunity costs due to the complexity of accurately predicting what a business would do in response to the lessening or modification of a regulation. This was reflected the submissions to the anti-siphoning review, which did not attempt to quantify the impacts of the scheme.

Anti-siphoning regulation in Australia restricts the sequence and timing of the acquisition of sports rights. However, it doesn’t prohibit the acquisition of such rights. At present, the scheme prevents the acquisition of a right to televise an event on the list until a free-to-air broadcaster has acquired a right. It is therefore not possible to isolate and quantify the impact that this regulation of the sequence and timing of the acquisition of sports rights has on particularly parties, nor any potential changes to those regulations. The inability to quantify impacts of the regulation of sports rights is not unique to Australia. The Impact Assessment for legislation to amend the UK scheme does not attempt to do so.<sup>76</sup> It is therefore not possible to quantify those impacts or to precisely predict how changes in regulation may or may not alter those impacts.

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<sup>72</sup> Productivity Commission (3 March 2000), [Broadcasting Inquiry Report](#), p. 444.

<sup>73</sup> *Ibid.*, p. 434–35.

<sup>74</sup> Productivity Commission (15 September 2009), [Annual review of regulatory burdens on business: social and economic infrastructure services, Research Report](#), p. 157-164.

<sup>75</sup> Independent Sports Panel (2009), [The future of sport in Australia, \(the Crawford Report\)](#), Commonwealth of Australia, p. 136.

<sup>76</sup> UK Government, (29 March 2023) [Media Bill impact assessment](#), p. 1, 21-22.

It is also important to acknowledge that decisions to acquire sports rights, and the nature of those rights, are driven by a wide range of commercial and other factors, and are not solely those related to regulations imposed under the BSA. Factors that might impact these decisions include:

- the type of right being offered (for example, exclusive rights, bundling with non-listed events, bundling platforms, pre-packaged products);
- the attractiveness of other competing content being offered at the time;
- the length of the rights deal;
- the popularity of the event;
- the relevant sports body's preference for a particular medium;
- the time zone in which the event is being played, and the time zone in which it is being viewed;
- previous negotiations and the relationship between the parties;
- competition from other parties;
- openness to joint bids; and
- external factors (for example, the Covid-19 pandemic).

Financial data relating to the coverage of sporting events is also highly sensitive for the relevant parties and is generally not publicly disclosed. For example, media reports speculate that Optus paid anywhere from \$10 million and \$60 million dollars for the 2023 FIFA Women's World Cup, and that the Seven Network paid Optus was between \$4 and 5 million.<sup>77</sup>

Even where figures may be known, it is also not possible to quantify what may be paid in the future based on previous deals. For example, the AFL signed a deal covering free-to-air, subscription television, and online streaming in 2015 for \$2.5 billion from 2017-22. The deal was revised and extended in 2020 due to the Covid-19 pandemic until 2024 for \$946 million. In 2022, a new deal was negotiated for \$4.5 billion from 2025 to 2031. The new deal is worth \$643 million per season – a significant increase on the \$473 million per season under the preceding arrangements.<sup>78</sup> It is not possible to determine how the scheme impacted on the current or future rights arrangements and the value ascribed to them.

Moreover, previous data is not a reliable indicator of what is likely to occur in the future. This is demonstrated by the FIFA Women's World Cup. The average audience for matches involving Australia was 119,000 in 2015 and 193,000 in 2019.<sup>79</sup> In 2023, Seven Network indicated that an average of 6.24 million viewers tuned in watch the semi-final between Australia and England for the 2023 FIFA Women's World Cup on television.<sup>80</sup> The increase is likely to be attributable, at least in part, to the tournament being held in Australia. Although future tournament locations are not known, it is reasonable to expect that future tournaments will generate higher audiences than have historically been seen over the past decade.<sup>81</sup>

Noting the above, a CBA, CEA, nor MCA are not feasible methods to ascertain the impacts of the scheme and list or any changes to them. This IA has therefore been supported by a qualitative assessment of the impacts of the potential models and options. These qualitative assessments have, where possible, been supported with quantitative data sources, as outlined in Table 8.

#### **Table 8: Assessment of available data for quantitative Impact Analysis**

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<sup>77</sup> James Manning (14 August 2023), [Seven's best buy Women's World Cup: Matildas made it a bargain](#).

<sup>78</sup> AFL (2022), [Seven years, \\$4.5b: AFL reveals HUGE new broadcast rights deal](#).

<sup>79</sup> DITRDCA (2022), [Review of the anti-siphoning scheme: Consultation paper](#), p. 52.

<sup>80</sup> Seven West Media (21 August 2023), [Media release, FIFA Women's World Cup 2023™ draws 18.6m](#).

<sup>81</sup> Calum Jaspan (13 August 2023), [FIFA looks to cash in on Matildas' success as 2026 men's rights battle kicks off](#), Sydney Morning Herald.

Data	Sources	Assessment
<b>Sports rights deals</b>	News media, Ampere, Sportbusiness, and consultation submissions	The volume and nature of sports rights deals (i.e. which competitions are picked up by which broadcaster or content service provider) provide insight into the sports being made available to consumers. However, commercial deals are informed by a range of factors, many of which are independent from the anti-siphoning scheme. It is not possible to quantify the interplay between the anti-siphoning scheme and other market forces to effectively assess the impacts of potential options.
<b>Value of sports rights purchased</b>	News media, Ampere, Sportbusiness, annual reports, and consultation submissions	Because the dollar value of sports rights deals – particularly multi-party deals where a number of buyers have made a joint bid for rights – is commercially sensitive, information about the value of these deals is not consistent or comprehensive. There is also a lack of transparency about the nature of the deals in many cases. Therefore, the value of sports rights purchased is presented in aggregate, or as evidence to support the qualitative assessment in this IA.
<b>Sports participation rates</b>	Annual reports of sporting bodies	Sports participation rates are related but not integral to the objectives of the anti-siphoning scheme. It would be inappropriate to attempt to quantify the impact of the scheme in terms of sports participation. For example, Golf Australia’s 2021/22 Participation Report has indicated that more than 2.7 million Australians play golf. <sup>82</sup> Yet, golfing events have in the past been removed from the list in part due to the relatively low television ratings. <sup>83</sup>
<b>Number of events</b>	Public sources, consultation submissions, and websites of sporting bodies	The number of events has been used in this IA as a proxy to communicate the scope of the proposed changes to the anti-siphoning list. However, it is important to note that this figure is not generally comparable between different types of sports, as the competition structure and the meaning of ‘event’ varies widely. It would be inappropriate to use these figures as a metric of impact of the scheme given the schism between the numbers and real-world impact.
<b>Hours of sports made available</b>	ACMA, Ampere, TV Guides, and Online content libraries	<p>Comprehensive assessment of the number of hours of sport available on broadcast television and online services has not been undertaken. There is, therefore, no extant data source that can provide a complete understanding of hours of sport available to consumers that may be used to quantify the impacts of the scheme.</p> <p>As a metric for impact analysis, hours available would be inappropriate, as there is an upper limit to the feasible and commercially viable number of hours of sport that a linear channel may broadcast. Additionally, broadcasters must abide by other regulations, such as the Australian Content and Children’s Television Standards (ACCTS) for commercial broadcasters, which mandate that certain genres of content that are not sport be provided at some level on linear channels.</p>

<sup>82</sup> Golf Australia (24 May 2023), [The golf boom continues in Australia](#).

<sup>83</sup> [Explanatory Memorandum to the Broadcasting Legislation Amendment \(Broadcasting Reform\) Bill 2017](#), pp. 71-72

Data	Sources	Assessment
<b>Television ratings of key competitions</b>	News media, consultation submissions, and OzTAM	The television audience for sports on free-to-air and subscription broadcasters provides important context for the business imperative for various sectors in obtaining rights to major sporting events. However, audience measures are impacted by a wide range of factors beyond the scope of the anti-siphoning scheme, including the type of sport; the existing fanbase; live attendance; the competition structure; the time of broadcast; the teams or individuals playing, among other matters. It would be inappropriate to rely on television audience measure for a quantitative assessment of impacts.
<b>Consumption patterns &amp; Consumer attitudes</b>	News media, Research reports, and Department-commissioned surveys	Consumer behavior is an important consideration for the suitability of reform options to ensure the efficacy of the scheme. Where possible, information about peoples' use of media and attitudes towards various platforms, sporting events, and sports broadcasting has been used to support the qualitative assessment in this IA. However, as reform to the scheme will primarily have direct impact on the way that industry entities (sports bodies and content platforms) negotiate rights deals, it would be inappropriate to rely on consumer behavior as the only quantitative measure of impact.

## The scheme

### Model 1: 'free-to-view'

#### Impact on industry

##### Free-to-air broadcasters

The free-to-view model would negatively impact the free-to-air television sector, as these broadcasters would no longer have the first opportunity to acquire rights to listed events. This would be a significant impact on commercial free-to-air broadcasters, for whom the rights to televise sporting events are critical to their respective businesses. The free-to-view model would negatively impact their bargaining position in relation to sporting bodies. This may, in turn, limit their ability to acquire listed events.

National broadcasters are expected to be impacted to a lesser extent, as they have not historically tended to acquire rights to listed events at the same rate as their commercial counterparts (with limited exceptions like SBS's acquisition of the FIFA World Cup (men's) rights). However, under the current scheme, national broadcasters were afforded a degree of advantage due to subscription broadcasters being unable to acquire events while they are on the list. This, combined with their ability to provide extensive exposure, would advantage their negotiating position should they seek to acquire rights. National broadcasters would lose these advantages under the free-to-view model. Because of the commercial sensitivities of negotiating rights deals, these opportunity costs cannot be quantified.

Due to the imposition of requirements to show listed events live, in full, free, and on a broadly available platform, free-to-air broadcasters would also be subject to new and novel obligations under the scheme. The free-to-air business model is, by definition, free, and their broadcasting services and BVOD apps are already broadly available. However, they would be subject to the 'live' and 'in full' requirements. There was no evidence presented through the review of the anti-siphoning scheme to suggest that free-to-air broadcasters were 'hoarding' the rights to listed events. This reflects the strong commercial incentive for broadcasters to fully exploit the rights that they have acquired (typically at significant cost). Therefore, the impact of the regulatory obligations, including compliance costs, would not be expected to be substantial.

Conversely, the effective removal of the regulation of the acquisition of the rights to listed events under this model could be expected to have an impact on free-to-air broadcasters, although the quantum of this impact is difficult to discern. Through the review process, free-to-air broadcasters argued that the effective removal of the current scheme would lead to the ‘cherry picking’ of digital rights by online content services, which would threaten the long-term sustainability of free-to-air services given the importance of sports rights to the free-to-air business model. They argued that there is a power imbalance between the free-to-air networks and “well-funded” online content service providers, which would leave free-to-air broadcasters to acquire what is left after the events on the list have been picked by other providers.<sup>84</sup>

By contrast, the 2009 PC report found that for events that are likely to attract large audiences, free-to-air broadcasters would be in a strong position to acquire rights, even without the protection of the scheme.<sup>85</sup> While this model would also require entities to adhere to coverage and availability obligations, this analysis is likely to carry some weight even if the acquisition rule were to be removed.

### **Subscription television and streaming services**

Subscription television services would benefit from the adoption of the free-to-view model. Currently, subscription television broadcasting licensees are restricted from acquiring listed events (until they are delisted). The removal of any acquisition restriction, combined with the streamlined list (Option 1), would allow them to acquire rights to televise listed events at any time. This would be expected to have provide a significant commercial benefit for subscription television broadcasters.

However, this model also imposes regulatory obligations on subscription television broadcasting services as they would have to comply with live, in full, and free obligations for their online services for the first time. This is not expected to be onerous, as subscription broadcasters also have an incentive to fully exploit the rights that they have acquired at significant expense.

The free-to-view model would extend regulatory obligations to content service providers that are not currently subject to the scheme, such as streaming services. For these firms, complying with the regulatory obligations would have a significant impost, particularly the requirement for ‘free’. However, some online subscription service providers do provide free content as part of their business model.<sup>86</sup> For example, Kayo offers free content on ‘Kayo Freebies’<sup>87</sup>, and Optus Sport provided free coverage of 11 matches of the 2023 FIFA Women’s World Cup.<sup>88</sup> These providers would be expected to receive a significant benefit from being able to acquire coverage rights to listed events without restriction under the scheme, should they succeed in acquiring them.

While these variables are not possible to quantify, this model is likely to impose less burden on subscription television and streaming services than the broadcasting safety net and free-to-air first models (Models 2 and 3), provided it is coupled with a reduction in the list. This is demonstrated by the submissions from Foxtel and Optus to the proposals paper which flagged the free-to-view model as their preferred option. The Optus submission argued that the free-to-view model achieves the benefits of a competitive open market rights process.<sup>89</sup>

### **Sporting bodies**

Sporting bodies would benefit from this model (in comparison to the existing scheme). By targeting the coverage outcome, rather than the preceding acquisition of rights, this model would place no restrictions on the ability of sports bodies to sell their media rights.

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<sup>84</sup> Free TV Australia (2023), [Submission to the anti-siphoning scheme proposals paper](#), p. 13.

<sup>85</sup> Productivity Commission (15 September 2009), [Annual review of regulatory burdens on business: social and economic infrastructure services, Research Report](#), p.160.

<sup>86</sup> Foxtel Group (2023), [Submission to the anti-siphoning scheme proposals paper](#), p. 2; Optus (2023) [Submission to the anti-siphoning scheme proposals paper](#), p. 8.

<sup>87</sup> Kayo (2023), [What is Kayo Freebies?](#).

<sup>88</sup> Optus Sport (2023), [How to watch the FIFA Women's World Cup 2023™ live in Australia on Optus Sport](#).

<sup>89</sup> Foxtel Group, [Submission to the anti-siphoning scheme proposals paper](#), p. 2; Optus (2023) [Submission to the anti-siphoning scheme proposals paper](#), p. 8.

However, the limitations imposed by this model on the acquiring content service providers (live, in full, free, via a broadly available platform), may impact sporting bodies to the extent that it may require them to make certain rights available to content service providers. This is likely to be the case for streaming services that predominantly operate on a subscription-based business model, rather than advertising-based. To the extent that the ‘free’ requirement impacts on the demand for rights by pay-based streaming services, this may impact on the ability of sports bodies to maximise the revenue from the sale of rights.

As with subscription television and streaming services, this option is likely to impose the least burden on these sporting bodies – provided it is coupled with a reduction in the list. The Coalition of Major Professional and Participation Sports (COMPPS) submission to the proposals paper argued that the scheme is anti-competitive and not necessary to protect the interests of the Australian public, but goes on to state that the free-to-view model was their preferred option, contingent upon a reduced list.<sup>90</sup>

## Impact on Australian consumers

### Coverage

This is the only model, of those considered in this IA, that incorporates a mandatory set of coverage obligations (live and in full). In theory, this would operate to enhance the outcome for consumers. However, as noted above, there is little to suggest that broadcasters and other online service providers are not already providing live and in full coverage of major sporting events, given the significant sums that are required to be paid to secure media rights. As such, the overall benefit to consumers may be minimal.

In addition, the free-to-view model is dependent upon being implemented with the streamlined list (Option 1). This would necessarily reduce the number of events that are subject to the scheme and therefore subject to the coverage requirements. The overall consumer benefit is likely to be negative in this circumstance.

### Access

Access to listed events would require those events to be shown on a ‘broadly available’ technology platform. It is proposed that the relevant threshold would be a content service that is available to a minimum of 99 per cent of the Australian population. However, availability doesn’t equal access, and the practical realities of providing coverage of listed events via a given technology or technologies are relevant to the fulfilment of the overall objective of the scheme. The free-to-view model relies on consumers having adequate access to the internet to ensure that listed events can be viewed for free, by all Australians.

### Availability

In a contemporary environment, the internet is widely available to Australians. As at September 2020, 99.3 per cent of premises could connect to the NBN.<sup>91</sup> Mobile internet coverage is also high, with 99.5 per cent of the population able to access Telstra’s 4G services<sup>92</sup> and 85 per cent able to access its 5G services.<sup>93</sup> However, with respect to mobile coverage, there are discrepancies in availability depending on which network a consumer uses.

- The Optus 4G network reaches some 97.3 per cent of the Australian population.<sup>94</sup>

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<sup>90</sup> Coalition of Major Professional and Participation Sports (2023), [Submission to the anti-siphoning scheme proposals paper](#), p. 2-3.

<sup>91</sup> DITRDCA (2020), [International comparison of fixed broadband performance – coverage and minimum speeds](#), p. 1. DITRDCA (2020), [International comparison of fixed broadband performance – coverage and minimum speeds](#).

<sup>92</sup> Telstra, [Our Network](#)

<sup>93</sup> Telstra, [Australia's Largest 5G Network](#).

<sup>94</sup> Optus, [Prepaid Mobile](#).



- TPG's (Vodafone's) business model focuses on metropolitan areas, with its 5G network covering more than 96 per cent of the population in Australia's ten largest cities.<sup>95</sup>

Mobile-only users of the internet are a minor but significant portion of the Australian population.

- In the 12 months to June 2020, 16 per cent of Australian adults were mobile-only users of the internet at home (mobile broadband or mobile phone), including 21 per cent of those aged 18 to 24.<sup>96</sup>
- A separate study found that certain groups, including First Nations people and those on the lowest incomes, tend to be overrepresented in this cohort of mobile-only users of the internet.<sup>97</sup>

This is relevant to the question of whether the free-to-view model can deliver on the objective of the scheme, given the variance in population coverage across mobile networks.

### Take-up

The take-up of broadband services is also high at an aggregate level.

- 99 per cent of Australian adults accessed the internet (and 93 per cent had a home internet connection) as at June 2022.<sup>98</sup>
- As at 30 December 2022, analysis of 13 leading retailers revealed there were 7.9 million retail broadband internet services in operation (7.5 million of which were NBN).<sup>99</sup>
- As at 31 December 2022, there were approximately 28.7 million mobile services and some 4.4 million mobile broadband services.<sup>100</sup>

However, many Australians have not taken up a home internet connection. In 2022, some 6.82 per cent of Australians had no internet connection at home,<sup>101</sup> and lower take-up is more prevalent among particular groups:

- 8.51 per cent of regional Australians had no internet connection at home, compared with 5.93 per cent of those in metropolitan areas.<sup>102</sup>
- 11.71 per cent of Australians over the age of 75 had no internet connection at home.<sup>103</sup>

Other surveys have found that, although the divide between metropolitan and regional areas has narrowed in recent years, it remains marked, and that those aged over 75 continue to be left behind.<sup>104</sup>

While the availability of internet services is close to universal, there are gaps and discrepancies in terms of take-up for certain groups within Australian society. For these Australians, it is possible that the free-to-view model would result in a reduction of free access to televised coverage of nationally important and culturally significant events as they migrate to freely available, but inaccessible, online platforms.

### Indirect costs

The free-to-view model would require coverage of listed events to end-users in Australia to be free (with no direct or explicit payments, such as subscription fees or pay-per-view charges). However, accessing services

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<sup>95</sup> Vodafone Australia (15 February 2023), [Vodafone sets a new 5G high-speed score at the SCG](#).

<sup>96</sup> ACMA (2020), [Mobile-only Australia: living without a fixed line at home | ACMA](#).

<sup>97</sup> Australian Digital Inclusion Index, [Key findings and next steps - Australian Digital Inclusion Index](#).

<sup>98</sup> ACMA (December 2022), [Communications and media in Australia: How we use the internet](#), p. 3.

<sup>99</sup> ACCC (June 2023), [Internet activity report – For the period ending 31 December 2022](#), p 8. It is unclear how many of these services included broadband, p. 7.

<sup>100</sup> ACCC (June 2023), [Internet activity report – For the period ending 31 December 2022](#), p. 8.

<sup>101</sup> ACMA (December 2022), [Communications and media in Australia: How we use the internet – data file](#).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Australian Digital Inclusion Index, [Key findings and next steps - Australian Digital Inclusion Index](#).

online involves additional, indirect costs associated with an internet connection. This requires a fixed broadband service, mobile broadband service, mobile service, satellite or ADSL service. Each will have costs, typically charged monthly, as well as upfront costs.

The take-up of internet services (above) demonstrates that the majority of Australians can afford to meet these access costs. However, this doesn't include all Australians.

- In 2022, 4 per cent of Australians needed to pay more than 10 per cent of their household income to gain quality, reliable internet connectivity, with this figure at 27 per cent of those in the lowest income quintile.<sup>105</sup>
- This research also found that, in 2022, 32 per cent of those in the lowest income quintile, and 27 per cent of those in the second lowest income quintile, expressed some level of concern over the cost of internet access.<sup>106</sup>

Cost is also a factor relevant to the level of take up of streaming and other online services.

- In June 2022, research found that 19 per cent of Australians did not watch any online services in the previous 7 days, up from just over 12 per cent in the year prior.<sup>107</sup>
- Cost was the most common factor for consumers when determining whether to cancel an SVOD service.<sup>108</sup>

### Service capabilities

The value of sport lies in the moment that the competition occurs, and the events included on the anti-siphoning list are typically viewed by millions of Australians simultaneously.

In this regard, Kayo Sports recommends an internet connection of at least 7.5 Mbps to stream its service in full High Definition (HD 1080p), noting that an internet connection of below 4 Mbps would only allow for Standard Definition streaming.<sup>109</sup> Similarly, for standard definition streaming, while 7plus and Stan recommend 3 Mbps.<sup>110</sup> The Australian Competition and Consumer Commission (ACCC) reports that a high definition Netflix stream requires around 2.2 Mbps.<sup>111</sup> While it is possible to watch these services with lower speeds, this would be unlikely to provide an equivalent quality to the High Definition sports coverage provided through free-to-air broadcasts.

There have been instances in the past where online services have not been able to accommodate audience demand. Australian consumers experienced poor quality streams on Optus Sport of matches played as part of the 2018 FIFA World Cup. Optus eventually allowed SBS to simulcast the remaining matches of the tournament.<sup>112</sup> However, Optus was subsequently able to provide high quality coverage of the 2023 FIFA Women's World Cup following significant investment in upgrading its content distribution infrastructure and scaling up capabilities in the lead up to the event.<sup>113</sup>

These types of congestion issues could arise again if coverage of significant events were to be provided solely via an online platform, although this risk will moderate as the capacity of networks improves.

The free-to-view model is therefore likely to have a negative impact of some consumers, as Australians on lower incomes may get left behind if coverage of iconic sporting events were to migrate exclusively to online platforms.

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<sup>105</sup> Australian Digital Inclusion Index: [Affordability](#).

<sup>106</sup> Ibid.

<sup>107</sup> ACMA (July 2023) [Communications and media in Australia: Trends and developments in viewing and listening](#), 2021–22, p. 10.

<sup>108</sup> Deloitte (2022), [Media Consumer Survey 2022](#), p. 9.

<sup>109</sup> Kayo Sports, [What internet speed do I need to use Kayo?](#).

<sup>110</sup> See: 7plus, [Frequently Asked Questions](#); Stan, [Minimum Internet Requirements](#).

<sup>111</sup> ACCC, (August 2022), [Measuring Broadband Australia: Report 18, Appendix](#), p. 2.

<sup>112</sup> Duke J (28 June 2018), [World Cup: Optus surrenders final games to SBS after streaming fail](#), The Sydney Morning Herald.

<sup>113</sup> Optus (2023), [Submission to the Anti-siphoning review – proposals paper](#), p. 7.

## Impact on government

This model is expected to have a moderate budgetary impact on the ACMA, which would be required to oversee and administer a complex framework to give effect to the regulatory requirements (free, live, in full, on a broadly available platform). To ensure parties with the rights to listed events are complying with these requirements, the ACMA would need to increase its monitoring functions. There may also be a need for additional reporting requirements for rights owners which the ACMA would have to enforce. As the quantum of requirements would increase under this model, so could the number of potential compliance issues. This could increase the time the ACMA spends on its enforcement functions. The ACMA would require increased resources to fulfil this function.

## Overall assessment

The free-to-view model would be a technology-neutral approach to regulating the coverage of nationally important and culturally significant sporting events. It would seek to ensure that all Australians are able to access free, live and in full coverage of these events where coverage is provided in Australia.

By targeting the coverage outcome, rather than the preceding acquisition of rights, this model would avoid a number of the acknowledged concerns with the scheme. Sports bodies would have greater freedom to negotiate with content services regarding their rights. Subscription television broadcasting licensees would not be restricted in terms of their acquisition of rights in the same way as they are under the current scheme. The free-to-view model would also draw into the scheme content service providers that are not currently subject to any regulatory obligations, such as Amazon Prime Video, Disney+ and YouTube (among others).

However, the ability of this model to deliver on the overall objective of the scheme – free access to televised coverage of nationally important and culturally significant events – is technology-dependent, with implicit costs. Availability doesn't equal access. Although 99 per cent of Australians can theoretically connect to high quality internet services, take-up of these services is inconsistent across the country. Without adequate internet, audiences would not be able to access coverage of sport via online services, even without an explicit charge for those services. Model 1 will also only work with Option 1 for the list (a streamlined list). As noted in chapter 3, this would see a reduction in the events on the list of around 80 per cent, compared with the current list.

## Model 2: 'broadcasting safety net'

### Impact on industry

#### Free-to-air broadcasters

The broadcasting safety net model would extend the commercial advantages afforded to free-to-air broadcasters under the current scheme, and is likely to advance their negotiating position with regard to sports rights compared with their competitors. This is a product of the requirement for a free-to-air broadcaster to have acquired a right to televise the event on a broadcasting service before another party can acquire a right to the event.

These benefits are likely to primarily accrue to commercial free-to-air broadcasters, as opposed to the national broadcasters, given the importance of the sports content genre to their businesses. Historically, commercial free-to-air broadcasters have expended more on major sports rights deals than their national counterparts. Between 2015 and 2022, commercial free-to-air broadcasters are estimated to have spent around \$1.3 billion each on sports rights compared to just under \$250 million each for the national broadcasters.<sup>114</sup>

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<sup>114</sup> Ampere Analysis, Sports – Media Rights (2022); Departmental analysis based on available aggregated data on the value of sports media rights. Aggregated figures have been averaged by categories of broadcaster.

In 2022, sport or sport-related programs accounted for 9 of the top 10 rating programs on free-to-air television, over half of the top 50 rated programs and a little under half of top 500 programs. This supports the argument made by the commercial free-to-air broadcasters that sport is critical for the sustainability of wholly advertiser funded services. Commercial free-to-air broadcasters have also noted that sport is important in helping to build and maintain an audience for adjacent content like news, entertainment and Australian drama.<sup>115</sup>

While the benefit to free-to-air broadcasters is not possible to quantify, it is anticipated to be material. Foxtel indicates that the broadcasting safety net model would distort the playing field more than the current scheme and provide free-to-air broadcasters with even greater freedom from competition.<sup>116</sup>

“It will also increase the FTAs' already substantial advantage in relation to the acquisition of other kinds of coverage rights, notably streaming rights. It is currently common for sporting bodies to bundle their broadcast rights and streaming rights together, often for both listed and unlisted events, to secure the highest cumulative price for those rights.”<sup>117</sup>

However, this potential competitive advantage is mitigated by a number of factors. The model would not extend to BVOD services in that it wouldn't require a free-to-air broadcaster to have acquired a right to provide coverage of a listed event on a content service (such as a BVOD) before another party can acquire a right. Free TV has indicated that the broadcast safety net model puts at risk the future sustainability of free local media, as these services rely on policy makers to create regulatory frameworks that support the gradual adoption of free local media services on their BVODs.<sup>118</sup> Free TV's cites data that indicates that BVOD revenues accounted for around 10 per cent of total free-to-air service revenue in 2022, and projects that this medium will account for 25 per cent of revenue by 2027, and 50 per cent by 2033.<sup>119</sup>

Additionally, the automatic delisting period will be extended from 26 weeks to 12 months under this option. This would provide an opportunity for parties other than free-to-air broadcasters to acquire the rights to events on the list at an earlier point, compared with the current 26-week delisting arrangements. This may also mitigate any potential competitive advantage conferred on free-to-air broadcasters under this option.

### **Subscription television and streaming services**

This model would adversely impact subscription television broadcasting services to the extent that they are also online providers. The proposed acquisition restriction under this model would increase the burden on these services by constraining their ability to acquire the online rights to listed events, and presumably impact their negotiating position.

‘Standalone’ online service providers (those not associated with or part of a broadcasting enterprise) would be negatively impacted by this model as they would be drawn into the scheme and would be subject to acquisition restrictions. This may constrain their negotiating position, particularly if media rights to particular events are sold as a ‘bundle’ (broadcasting and online rights sold together).

In its 2009, the PC found that the scheme imposes considerable anti-competitive distortions and additional burdens on subscription broadcasters in acquiring those rights. While not attempting to quantify this impact, the PC stated that:

“The anti-siphoning provisions directly limit competition between subscription and free-to-air networks. While subscription television providers regularly gain access to listed events, the regime

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<sup>115</sup> Free TV Australia (2023), [Review of the anti-siphoning scheme: Response to the Proposals Paper](#), p. 10.

<sup>116</sup> Foxtel Group (2023), [Submission in response to the review of the anti-siphoning scheme – Proposals Paper](#), p. 2.

<sup>117</sup> Ibid, p. 4.

<sup>118</sup> Free TV Australia (2023), [Review of the anti-siphoning scheme: Response to the Proposals Paper](#), p. 10, 16.

<sup>119</sup> Ibid, pp. 11-12.

shifts the balance of negotiating power in favour of free-to-air networks, as subscription television broadcasters are unable to compete for exclusive broadcast rights for listed events.”<sup>120</sup>

In criticising the scheme, the PC noted that sport is typically the most popular viewing option of those consumers that subscribe to subscription television, suggesting that it is those viewers particularly interested in watching sport that are most likely to subscribe.<sup>121</sup> It is arguable that the scheme would have a similar impact on online services if expanded to them. The impact of this effect is difficult to quantify, but it is expected to be material. However, it is anticipated to be moderated by the fact that the market has adjusted to the existing scheme, which has been in place now for close to close to 30 years. Rights deals are typically negotiated and settled with all forms of media provider (free-to-air broadcasters, subscription broadcasters and online service providers). This has been the case with AFL, NRL and cricket over recent years.<sup>122</sup> The potential impact of the revised acquisition rule may be more muted to the extent that similar rights negotiation arrangements are pursued in in future years. It is also notable that preventing paywalled services from acquiring the rights to nationally important and culturally significant events ahead of a free service (free-to-air broadcasters), but still providing a reasonable opportunity to acquire such rights, is the balance that the scheme is seeking to achieve.

The extension of the automatic delisting period from 6 to 12 months may would also provide content service providers other than free-to-air broadcasters – including subscription broadcasters – with an opportunity to acquire rights to events an earlier point. As noted in the Optus submission – which advocated for an 18-month delisting period – an extended delisting period could help provide additional time for budgeting, planning, investment and preparation.<sup>123</sup>

In terms of the costs for compliance with the scheme under this option, the burden on both subscription television and streaming services is expected to be negligible. This is because the scheme does not include any regulatory compliance measures, but simply governs the sequence and timing of the acquisition of rights to events on the list. Businesses involved in these negotiations are expected to have legal functions that would ensure compliance with the scheme as a matter of usual practice.

### **Sporting bodies**

Sporting bodies would be negatively impacted by this model (in comparison to the existing scheme) to the extent that it further constrains their ability to negotiate with content services regarding their rights.

The PC noted that negotiations are more complex, drawn out and burdensome than if subscription broadcasters could negotiate directly with the underlying rights holder. It concluded that the anti-siphoning regime is likely to distort the relative prices of broadcast rights of listed events relative to non-listed events, potentially reducing the price received by sporting organisations for listed events.<sup>124</sup> Restricting acquisition by additional parties is likely to exacerbate this effect.

However, as noted above, rights deals are typically negotiated and settled with all forms of media provider, so the potential impact of the revised acquisition rule may be more muted. Nevertheless, the impact is still anticipated to be material. As noted in Table 9, many sports deals are often made years in advance. This means that sports rights owners are effectively required to make their rights available to free-to-air broadcasters, or wait until events are delisted. This may decrease the value of those rights for sporting bodies. Extending the automatic delisting period from 6 to 12 months may mitigate this impact.

### **Table 9: Selected sports rights deals**

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<sup>120</sup> Productivity Commission (15 September 2009), [Annual review of regulatory burdens on business: social and economic infrastructure services, Research Report](#), p. 157.

<sup>121</sup> Ibid, 158.

<sup>122</sup> DITRDCA (2022), [Review of the anti-siphoning scheme: Consultation paper](#), pp. 23-24; [AFL, Media Release: Seven years, \\$4.5b: AFL reveals HUGE new broadcast rights deal](#).

<sup>123</sup> Optus (2023), [Submission to the Anti-siphoning review – proposals paper](#), p. 10.

<sup>124</sup> Productivity Commission (15 September 2009), [Annual review of regulatory burdens on business: social and economic infrastructure services, Research Report](#), pp. 157-158.

Sport	Events in deal	Rights Period	Deal announced
AFL	AFL Premiership, AFLW Matches	2025-2031	6 September 2022
	AFL Premiership, AFLW Matches	2023-2024	12 June 2020
NRL	NRL Premiership, NRL Women's Premiership	2023-2027	20 December 2021
Cricket	Australian National Cricket Team/Australian Women National Cricket Team	2024-2031	3 January 2023
	Australian National Cricket Team/Australian Women National Cricket Team	2018-2024	13 April 2018
Tennis	Australian Open	2025-2029	11 November 2022
	Australian Open	2020-2024	29 March 2018

As with subscription broadcasters and streaming services, compliance costs for sporting bodies are expected to be negligible under this option.

### Impact on Australian consumers

The broadcasting safety net model is expected to provide a high likelihood of live and free coverage of listed events, and hence a benefit for consumers, given the preferential treatment afforded to broadcasters through the scheme and the strong commercial incentives to fully utilise any rights acquired to listed events.

While this model would not provide the same level of surety of a free, live and in full outcome as the free-to-view model (Model 1), it would potentially apply to a broader range of events (given the necessity for a relatively short list with Model 1). This model doesn't include coverage or availability obligations, as free-to-air broadcasting services are, by definition, 'free' and 'broadly available'.

The extension of the automatic delisting period from 6 to 12 months creates a risk that listed events may be bought by parties other than free-to-air broadcasters and provided behind paywalls. However, as noted above, most sports rights deals are settled well in advance of 12 months from the commencement of the relevant events.

### Impact on government

The broadcasting safety net model is expected to have a minor budgetary impact on the ACMA, who would be required to oversee and administer a framework that effectively extends the current regulatory arrangements. However, this is not expected to be as complex and resource-intensive as the oversight of the free-to-view model (Model 1).

### Overall assessment

The broadcasting safety net model adopts the basic architecture of the current scheme, but modifies and extends it to capture online and other services. It would continue to prefer and prioritise free-to-air broadcasting services as the key means to promote the achievement of the scheme's objective (free access to televised coverage of iconic sporting events), and provide all other parties with the opportunity to acquire rights once a right to televise a listed event is acquired by a free-to-air broadcaster.

It would enhance the likelihood of these events being freely available to all Australians, and mitigate the risk of audiences being subject to additional costs to access this content. These potential costs would be both direct (subscription or other fees or charges imposed on end-users to access coverage), or implicit (associated with the cost of assessing content online). To this end, this model would provide significant benefits for Australian consumers.

This model would exacerbate a number of the acknowledged concerns and risks with the current scheme. It would broaden the effective restriction on sports bodies in terms of their ability to negotiate with content services regarding their rights. It would also draw into the scheme content service providers that are not

currently subject to any restrictions in terms of rights acquisition. Services such as Amazon Prime, Disney+ and YouTube (among others) would not be able to acquire a right to provide coverage of events on their services until a free-to-air broadcaster had acquired a right to televise the event, or the event is automatically delisted.

However, this model would provide relatively unimpeded access to rights by content service providers once a right to televise an event has been acquired by a broadcaster, or it has been automatically delisted.

## Model 3: 'free-to-air first'

### Impact on industry

#### Free-to-air broadcasters

The free-to-air first model would significantly extend the commercial advantages afforded to free-to-air broadcasters and materially advance their negotiating position with regard to sports rights compared with their competitors. This is a product of the requirement for a free-to-air broadcaster to have acquired a right to televise the event on a broadcasting service and a right to provide coverage of an event on an online service before another content service provider could acquire a right to the event. They would also be able to acquire broadcast rights or online rights without the acquisition restriction lifting.

The benefits would be particularly significant for commercial free-to-air broadcasters, for whom sporting rights are critical. The national broadcasters would also experience the benefits, although to a lesser extent, as they have not historically secured rights to major sporting events to the same extent as their commercial counterparts.

Free TV has argued that extending the scheme to the online services provided by free-to-air broadcasters will help to secure the sustainability of the sector,<sup>125</sup> noting that its BVOD revenues are expected to increase from around 10 per cent in 2022 and 50 per cent in 2033.<sup>126</sup> While the benefit to free-to-air broadcasters is not possible to quantify, it is anticipated to be more significant than the broadcasting safety net model. Free-to-air broadcasters would be afforded significant power during the negotiating process under this option.

#### Subscription television and streaming services

This model would negatively impact subscription television broadcasting services to the extent that they are also online providers. 'Standalone' online service providers (those not associated with or part of a broadcasting enterprise) would also be negatively impacted by this model as they would be drawn into the scheme and would be subject to acquisition restrictions.

For both sectors, the requirement for a free-to-air broadcaster to have acquired both a broadcasting right and an online right before they can acquire any form of right is expected to have a significant impact on their negotiating position. This marks a point of difference with the broadcasting safety net model. As noted above, PC found that the scheme imposes considerable anti-competitive distortions and additional burdens on subscription broadcasters in acquiring those rights. The limit to competition is difficult to quantify, but would be greater than the broadcasting safety net model (Model 2).

#### Sporting bodies

Sporting bodies would be negatively impacted by this model (more so than the broadcasting safety net model (Model 2)). The free-to-air first model would broaden the effective restriction on sports bodies in terms of their ability to negotiate with all content services regarding all forms of media rights. As noted in Table 9, sports deals are often made years in advance. This means that sports rights owners are effectively required to

<sup>125</sup> Free TV Australia (2023), [Review of the anti-siphoning scheme: Response to the Proposals Paper](#), p. 16.

<sup>126</sup> *Ibid*, pp. 11-12.

make all major media rights available to free-to-air broadcasters ahead of any other parties. This may erode the value of those and result in protracted rights negotiations.

As noted above, the PC raised concerns about the scheme distorting the relative prices of broadcast rights of listed events.<sup>127</sup> The bargaining power that free-to-air broadcasters are likely to have under this model would create the potential for a reduction in the prices of online rights and a lowering of their cumulative value. While difficult to quantify, the impact would be more significant than the broadcasting safety net model.

### Impact on Australian consumers

For consumers, the free-to-air first model would provide a high likelihood of live and free coverage listed events on both broadcasting services and online, given the preferential treatment afforded to broadcasters through the scheme and the strong commercial incentives to fully utilise any rights acquired to listed events.

While this model would not provide the same level of surety of a free, live and in full outcome as the free-to-view model (Model 1), it would potentially apply to a broader range of events (given the necessity for a relatively short list with Model 1). Compared with Model 2, the free-to-air first model would enhance the likelihood of the coverage of events being provided via the online services of free-to-air broadcasters. However, from a consumer perspective, this may involve additional 'indirect' or 'implicit' costs in terms of accessing content online. This model doesn't include coverage or availability obligations, as free-to-air broadcasting services are, by definition, 'free' and 'broadly available'.

There is a risk under this model that events will not be shown at all if they are not picked up by a free-to-air broadcaster, as other content service providers would not have an opportunity to acquire them until delisting.

### Impact on government

The free-to-air first model is expected to have a minor budgetary impact on the ACMA, who would be required to oversee and administer a framework that effectively extends the current regulatory arrangements. However, this is not expected to be as complex and resource-intensive as the oversight of the free-to-view model (Model 1).

### Overall assessment

The free-to-air first model would impede access to both the broadcast and online rights to events by parties other than free-to-air broadcasters, and adversely impact sports bodies and a relatively broad set of media entities. It would also seek to treat the content services provided by free-to-air services (i.e. BVOD services) differently to content services provided by other parties where there is no subscription or other explicit fee imposed – although to the consumer there is likely to be little practical difference.

The broadcasting safety net model adopts the basic architecture of the current scheme, but modifies and extends it to capture online and other services. It would provide free-to-air broadcasters with significant commercial advantage and would place free-to-air broadcasters – rather than free-to-air broadcasting services – as the key mechanism to support the achievement of the scheme's objective of free access to televised coverage of iconic events.

This is likely to deliver benefits to Australian consumers and mitigate the risk of audiences being subject to direct costs to access this content (subscription or other fees or charges imposed on end-users to access coverage). However, audiences may be subject to implicit costs (associated with the cost of assessing content online) if broadcasters opted to provide exclusive coverage of listed events on their BVOD services.

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<sup>127</sup> Productivity Commission (15 September 2009), [Annual review of regulatory burdens on business: social and economic infrastructure services, Research Report](#), pp. 157-158.



This model would exacerbate a number of the acknowledged concerns and risks with the current scheme. It would substantially broaden the effective restriction on sports bodies in terms of their ability to negotiate with content services regarding their rights. It would significantly extend the commercial advantages afforded to free-to-air broadcasters – more so than the broadcasting safety net (Model 2) – and advance their negotiating position with regard to sports rights compared with their competitors. It would also draw into the scheme content service providers that are not currently subject to any restrictions in terms of rights acquisition such as Amazon Prime Video, Disney+ and YouTube (among others).

## Model 4: ‘status quo’

### Impact on industry

#### Free-to-air broadcasters

Under this model, the anti-siphoning scheme would remain unchanged. The scheme would continue to provide a benefit to the free-to-air sector, although this benefit may be eroded over time if streaming or other online services seek to acquire additional rights to listed events.

#### Subscription television and streaming services

Subscription television broadcasters would continue to be subject to the scheme. These adverse impacts (in terms of their ability to seek and secure the rights to listed events) may be magnified if their competitors (‘standalone’ online streaming services) are not subject to regulation, and are free to acquire the rights to listed events ahead of them. In turn, these online streaming services would benefit from the status quo, as they would not be subject to any regulation under the scheme.

#### Impact on sporting bodies

Sporting bodies would continue to be able to sell their rights to free-to-air broadcasters and online services without restriction, with the only restriction being their ability to sell rights to subscription television broadcasting licensees. There would be little change from the current arrangement, which has been in place for around three decades.

### Impact on Australian consumers

The status quo would be expected to result in a detrimental impact on Australian consumers over time, to the extent that the rights to listed events migrate behind online paywalls (a trend seen in overseas markets over the past decade).

### Impact on government

The ACMA would continue to be responsible for the oversight and enforcement of the current scheme, with no material change in resource demands.

### Overall assessment

The status quo model would do nothing to address the regulatory gap identified in the review of the scheme undertaken in 2022 and 2023. The risk of the coverage of nationally important and culturally significant events migrating behind online paywalls would grow, to the detriment of Australian consumers.

# The list

## Option 1: 'streamlined list'

### Impact on industry

#### Free-to-air broadcasters

This list option would see a reduction of around 80 per cent in the number of events on the list, from approximately 1,900 events to approximately 330 events. Close to half of this reduction in the estimated number of events on the list is attributable to the removal of the bulk of the Summer Olympic Games, the Winter Olympic Games and the Commonwealth Games.

As such, this would detrimentally affect free-to-air broadcasters as they would no longer be afforded preferential treatment in the acquisition of the rights to approximately 1,600 events. If coupled with the free-to-view model (as intended), the streamlined list would require free-to-air broadcasters to provide live, in full and free coverage of any events to which they acquired the rights. However, this is unlikely to have a material impact, as they provide coverage of this nature.

#### Subscription television and streaming services

Subscription television services would significantly benefit from the changes. This list would be considerably reduced and – coupled with the adoption of the free-to-view model – they would no longer be restricted in terms of the acquisition of listed events.

Standalone online streaming services would be brought into the scheme for the first time if they opted to acquire the rights to provide coverage of events on the streamlined list. However, this impact may be relatively modest, given the narrow range of events on the list.

#### Sporting bodies

The streamlined list would provide sporting bodies with a greater opportunity to negotiate deals for rights without restriction under the scheme, given the significant reduction in the number of events included under this list option. There would be no limitations on the negotiation process for sporting competitions that are removed from the list. Where competitions remain on the list, but are reduced, the possible parties that could acquire the right without restriction would be broadened.

### Impact on consumers

For the relatively small number of events that would remain on the streamlined list, this option (in conjunction with the free-to-view model) would provide Australian audiences with a guarantee of live and in full coverage. Importantly, this guarantee would be in place regardless of whether the coverage was provided via a free-to-air broadcasting service, or via an online streaming service (or any other form of content service).

However, there are differences between access and availability. The provision of coverage of events online does not, at present, mean that all Australians would necessarily have free access to this coverage. Variations in consumer take-up of broadband or mobile services, and the impact of factors such as indirect costs and service capabilities, mean that the objective of the scheme of promoting free access to televised coverage of these events by all Australians may not be fully realised.

The guarantee of live and in full coverage of these events is also likely to be little different to current consumer outcomes. While the current scheme (and the two alternative reform models proposed in this paper) do not contain mandatory coverage requirements, the high profile and iconic events proposed for inclusion on the streamlined list have historically received live and in full coverage via free-to-air television services. This is unlikely to change over the near- to medium-term, given this high profile and popularity of these events.

For the range of events effectively removed from the list under the streamlined list option – around 1,600 events – there is a risk that these events will not receive live, in full and free coverage. The anti-siphoning scheme would have no application to these events, and content service providers – including traditional subscription television broadcasting services and newer, subscription-based streaming services – could opt to provide coverage of these events on subscription-based platforms. They could also opt to provide partial coverage of these events.

This outcome is by no means certain. Content service providers (including broadcasters) may continue to seek to acquire rights of events removed from the list and provide coverage of these events live and in full and on ‘free’ platforms. However, under the streamlined list option, there is an increased risk of these events being siphoned to paywalled services. Whether this is an acceptable risk ultimately depends on the importance of providing free access to coverage of these approximately 1,600 events.

## Impact on government

Assuming the streamlined list is implemented in conjunction with the free-to-view model (Model 1), this is expected to have a moderate budgetary impact on the ACMA, who would be required to oversee and administer a complex framework to give effect to the coverage and availability requirements.

## Overall assessment

The streamlined list would significantly pare back the reach and scope of the anti-siphoning scheme. It is also the only list option of those considered in this IA that is likely to be compatible with the free-to-view model. The reduction in events would benefit subscription television broadcasting licensees and would be detrimental to free-to-air broadcasters. However, key impacts associated with this list option (when coupled with the free-to-view model) also arise for consumers.

For the approximately 330 events that remain on the list, the outcome for consumers is likely to be little different from current arrangements, given the high profile of these particular events. However, for the range of events effectively removed from the list under the streamlined list option – around 1,600 events – there is a risk that these events will not receive live, in full and free coverage. The anti-siphoning scheme would have no application to these events, and content service providers – including traditional subscription television broadcasting services and newer, subscription-based streaming services – could opt to provide coverage of these events on subscription-based platforms. They could also opt to provide partial coverage of these events.

## Option 2: ‘modernised list’

### Impact on industry

#### Free-to-air broadcasters

By increasing the number of events regulated under the scheme by approximately 30 per cent (from around 1,900 events to around 2,500 events), the modernised list would afford free-to-air broadcasters preferential treatment in terms of the acquisition of rights to these events (assuming that the modernised list is coupled with either Models 2, 3 or 4). This should provide free-to-air broadcasters with a moderate benefit, noting that more than 500 of these additional events are part of the Summer Paralympics.

#### Subscription television and streaming services

By expanding the list – compared with the current list – subscription television broadcasting licensees would face additional restrictions on their ability to purchase and monetise the additional events proposed to be included on the modernised list (until the events are delisted). However, the impact would vary, given that the rights for these events are secured for the medium term (for example, the AFLW rights are settled through until 2031).

Under Models 2 and 3, streaming and other content services would be brought into the scheme for the first time. These entities would face the same restrictions on the acquisition of right to listed event as subscription broadcasters under this scenario. In other words, they would lose the opportunity to secure the rights to event that were (in terms of their own operations) previously unrestricted.

### Sporting bodies

The additions to the list under this option would negatively affect the relevant sporting bodies, as they would be restricted in terms of the allocation of the rights to these additional events. These bodies would effectively be required to allocate rights to free-to-air broadcasters before allocating rights to other parties. However, as noted above, rights deals are typically negotiated and settled with all forms of media provider.

### Impact on Australian consumers

The modernised list would constitute an increase of around 30 per cent compared with the current list, from approximately 1,900 events to approximately 2,500 events. This increase in events in the modernised list could help support the ability of Australians to view those sporting events (by restricting the ability of parties other than free-to-air broadcasters to buy those events). Without being listed, any party would be able to acquire the rights to an event at any time and place them behind a paywall.

Currently, the entire men’s AFL and NRL Premierships are included on the list, but there are no AFLW Premiership or NRLW matches included on the list. Similarly, the rugby State of Origin is on the list, but its women’s counterpart is not. This does not reflect the growing role of women’s sport in Australian society.

Being on the list supports free availability of the listed Australian sports. This is particularly significant for women and girls given the ‘you can’t be what you can’t see’ effect. Research commissioned by Fox Sports in 2022 found that two-in-five adult viewers of women’s sport say they have been inspired or considered playing the sport themselves after watching on television.<sup>128</sup>

While it is not guaranteed that free-to-air broadcasters would seek to acquire the relevant rights to these additional events, recent rights deals suggest that these broadcasters have a strong interest in providing coverage of these events.

- The 2024 Paris Paralympic Games are to be televised by Nine Entertainment across the Nine Network, 9Now and Stan.<sup>129</sup>
- At least 30 AFLW Premiership home-and-away matches, the finals series and the Grand Final will be televised on the Seven Network and 7plus under the recently agreed 2025-31 rights agreement.<sup>130</sup>
- For the 2023 and 2024 seasons, all matches in NRLW Premiership and the NRLW State of Origin are being broadcast live on the Nine Network and 9Now.<sup>131</sup>
- NRLW State of Origin series will on the Nine Network until 2027<sup>132</sup>

Each of the proposed additions to the list is considered below.

<b>Proposed addition</b>	All events held as part of the Summer Paralympic Games
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Over the past two decades the Paralympics have grown significantly in terms of events and media coverage.

<sup>128</sup> Fox Sports (7 March 2022), [‘Huge growth of Aussie love for women’s sports revealed in new research’](#).

<sup>129</sup> Paralympics Australia (2023), [Nine Seals Exclusive Rights For Paris 2024 Paralympic Games](#).

<sup>130</sup> AFL (2022), [Seven years, \\$4.5b: AFL reveals HUGE new broadcast rights deal](#).

<sup>131</sup> Nine for Brands (27 April 2023), [Nine to broadcast every NRLW game live and free in 2023](#); Nine for Brands (13 November 2023), [Nine is the home of women’s rugby league from 2024](#).

<sup>132</sup> Nine for Brands (29 May 2023), [Women’s State of Origin live and free on Channel 9HD](#); Nine for Brands (13 November 2023), [Nine is the home of women’s rugby league from 2024](#).

- In 2021, the Australian audiences for the 2020 Tokyo Summer Paralympics were significant.<sup>133</sup> The Opening Ceremony attracted an average national audience of 667,000, across the Seven Network.<sup>134</sup>
- The five-city average primetime free-to-air audience for the Tokyo Summer Paralympics was 242,000<sup>135</sup>, with a daily average reach of more than two million and nearly one million utilising Seven’s streaming platform 7plus.<sup>136</sup>

The benefits of including the Paralympics go beyond direct audience numbers. Paralympics Australia notes that:

**68 percent of all Australians watched some part of the Tokyo Paralympics**  
**58 percent said the Australian athletes made them feel proud to be Australian**  
**96 percent said they felt inspired by the athletes**  
**91 percent described them as wonderful role models**  
**82 percent said the Paralympics change negative perceptions of people with a disability.**<sup>137</sup>

This is likely to be particularly relevant in the lead up to the 2032 Summer Paralympics in Brisbane.

<b>Proposed additions</b>	<p>The finals series matches of the AFLW Premiership</p> <p>The finals series matches of the NRLW Premiership</p> <p>The NRLW State of Origin Series</p>
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The participation of women in the AFL and NRL is high.

- The AFL reported in 2022 that nearly 600,000 women and girls participate in the AFL and there are more than 2,500 community football teams around the country, compared to around 600 in 2015.<sup>138</sup>
- In early 2023, the NRL announced that female participation was up 22 per cent from the same time in 2022, with an estimated 33,000 women and girl players.<sup>139</sup>

The AFL and NRL introduced women’s leagues in 2017 and 2018 respectively. This was concurrent with, or after, the last major changes to the list were made in 2017, and these competitions have grown significantly since their inception.

- The 2022 AFLW grand final was viewed by 213,000 (5 city metro average) and 288,000 (5 city metro average) in 2021.<sup>140</sup> The 2022 AFLW finals series was watched by a 5 city metro average of 82,000 and by 90,000 in 2021.<sup>141</sup> These figures show a small decline in average viewing figures between the 2021 and 2022 seasons. However, this does not take into account the fact that two AFLW seasons were played in 2022. The later saw an increase in the number of clubs from 14 to 18, and an increase in the number of matches played.<sup>142</sup> It is clear that the AFLW is attracting an increase in the number of viewers overall. The

<sup>133</sup> The 2020 Tokyo Summer Paralympics was postponed to 2021 due to the COVID-19 Pandemic.

<sup>134</sup> OzTAM 5 City Metro | Consolidated 7 | Audience Measures for Paralympics | 2021.

<sup>135</sup> Ibid.

<sup>136</sup> Paralympics Australia (24 August 2022), [One Year Since Tokyo, Analysis Shows A Resounding Success](#).

<sup>137</sup> Ibid.

<sup>138</sup> AFL.com (12 June 2022), [AFL sets out plan to drive women and girls participation](#).

<sup>139</sup> Edward, Colleen (19 April 2023), [Rugby league celebrates club participation growth across the nation](#).

<sup>140</sup> OzTAM 5 City Metro | Consolidated 7 | Audience Measures for AFL Women’s | 2022.

<sup>141</sup> Ibid – Finals series figures are not reported separately. This figure is taken from the average of the Qualifying and Preliminary Finals matches.

<sup>142</sup> AFL.com, [2022 Annual Report](#), p. 29.

second 2022 AFLW finals series garnered a total gross audience of 463,000 viewers (up from 374,000 in 2021).<sup>143</sup>

- The 2023 NRLW grand final was watched by 422,000 viewers (5 city metro average), an increase of over 250 percent on the previous year’s Grand Final viewership of 117,000 (5 city metro average). The NRLW finals series had a total gross audience of 226,000 viewers in 2023,<sup>144</sup> a 70 per cent increase on the previous year’s finals series viewership (153,000 – 5 city metro average, 2022).<sup>145</sup> This demonstrates how quickly the NRLW is growing.
- The NRLW State of Origin attracted an average (5 city metro) audience of 255,000 in 2022.<sup>146</sup> Media reports indicate the audience numbers for 2023 have increased.<sup>147</sup>

This demonstrates that Australians are tuning into women’s sports. While these numbers are not yet exceedingly high, this reflects the fact that these competitions are relatively nascent compared to their male counterparts. However, there has been a significant growth in these competitions over the past few years. These proposed listings seek to balance the benefits to Australians of promoting the free access to televised coverage of AFLW and NRLW matches, against the burdens that sporting bodies may encounter (discussed in List 3 below).

<b>Proposed Change</b>	All Ashes series matches played in the United Kingdom (currently only Ashes test matches are included)
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This current list includes any test matches played by the senior Australian representative team and the English senior representative team) played in the UK listed. This includes the entire men’s Ashes, but does not cover the women’s ‘one day’ and T20 matches played as part of the Ashes. The ‘modernised list’ would include all Ashes matches played in the UK.

The amendment would ensure that both the complete men’s and women’s Ashes series are on the list. This would provide for a more consistent and equitable listing of Ashes matches involving the senior Australian representative sides.

### Impact on government

Assuming the modernised list is implemented in conjunction with either the broadcasting safety net or free-to-air first models (Models 2 and 3 respectively), this is expected to have a minor budgetary impact on the ACMA, who would be required to oversee and administer a framework that effectively extends the current regulatory arrangements.

### Overall assessment

The modernised list would involve an increase in the scope and application of the scheme compared with the current list, although this is relatively modest in terms of the competitions involved (given that the bulk of this increase is attributable to the addition of the Summer Paralympic Games, which take place every four years).

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<sup>143</sup> OzTAM 5 City Metro | Consolidated 7 | Audience Measures for AFL Women’s | 2021-2022 | Sum total of network audience for each finals series game (excluding Grand Final).

<sup>144</sup> OzTAM 5 City Metro | Consolidated 7 | Audience Measures for NRLW | 2022-2023.

<sup>145</sup> OzTAM 5 City Metro | Consolidated 7 | Audience Measures for NRLW | 2022-2023 | sum total of network audience for each finals series game (excluding Grand Final).

<sup>146</sup> Ibid.

<sup>147</sup> Sports Industry AU (2 June 2023), [A record crowd and 919,000 tune in for Womens State of Origin](#); Media Week (23 June 2023) [TV Ratings June 22, 2023: Game II of Women’s State of Origin saw NSW win, but QLD take the shield](#).

As with each of the list options, this proposal takes an inclusive approach to international matches that involve a senior Australian representative team, and include standalone fixtures and world cup matches that involve a men's or women's senior representative side.

It would also include a limited number of AFL and NRL matches, and minor adjustments in terms of cricket and rugby union.

From an industry perspective, this option would continue to limit the ability of sports bodies to negotiate openly with respect to their rights, and modestly increase this level of restriction. This would be beneficial to free-to-air broadcasters, and detrimental to subscription television broadcasting licensees and online streaming services (although the overall increase in restrictions would be relatively modest).

For consumers, this list option would increase the likelihood of free access to televised coverage of these additional events for Australian audiences and, commensurately, would mitigate the risk of these events being placed behind a paywall.

## Option 3: 'expanded List'

### Impact on industry

#### Free-to-air broadcasters

The expanded list would significantly increase the scope of the anti-siphoning scheme, increasing the number listed events by close to 50 per cent compared with the current list, although the bulk of this increase is attributable to the inclusion of the Paralympic Games and the AFL and NRL Women's Premiership competitions. This would provide free-to-air broadcasters with a significant commercial advantage as it would advance their negotiating position with regard to the relevant rights (assuming that the modernised list is coupled with either Models 2, 3 or 4).

#### Subscription television and streaming services

By substantially expanding the list – compared with the current instrument – subscription television broadcasting licensees would face additional restrictions on their ability to purchase and monetise the additional events proposed to be included on the modernised list (until the events are delisted).

Under Models 2 and 3, streaming and other content services would be brought into the scheme for the first time. These entities would face the same restrictions on the acquisition of right to listed event as subscription television broadcasters under this scenario. In other words, they would lose the opportunity to secure the rights to event that were (in terms of their own operations) previously unrestricted.

#### Sporting bodies

The expanded list option would continue to limit the ability of sports bodies to negotiate openly with respect to their rights, and to a greater degree than the other list options. The additions to the list would impact the negotiation process for the sporting bodies offering the rights to those events, with these bodies having fewer parties to engage with for the acquisition of rights without regulatory restriction. This may hinder the ability of sports bodies to maximise their rights and invest back in their sport, particularly given the breadth of listings proposed under this list option.

### Impact on Australian consumers

The significant increase in events in the expanded list could help support the ability of Australians to view those sporting events for free (by restricting the ability of parties other than free-to-air broadcasters to acquire the rights to those events). Without being listed, any party would be able to acquire the rights to an event at any time and place them behind a paywall.

This would be done with the aim of increasing the likelihood of free access to televised coverage of these events for Australian audiences and, commensurately, seek to mitigate the risk of these events being placed behind a paywall. However, this outcome would be dependent on free-to-air broadcasters opting to acquire the relevant rights to these events.

<b>Proposed additions</b>	All events held as part of the Summer Paralympic Games
	The NRLW State of Origin Series
	All women’s ‘Ashes’ played in the United Kingdom (currently ‘one day’ and T20 ‘Ashes’ matches are not on the list)

These proposed additions mirror those advanced in the modernised list. Please refer to that section for an assessment of the potential consumer impacts.

<b>Proposed additions</b>	The entire AFLW Premiership
	The entire NRLW Premiership

Listing the AFLW Premiership and the NRLW Premiership competitions in their entirety may lead to an outcome where the coverage of these matches is provided to Australian audiences for free.

- The 2023 NRLW Premiership season had an average audience of 63,000<sup>148</sup> and an average viewership of 72,000 in 2022.<sup>149</sup>
- The 2022 AFLW Premiership season had an average viewership of 56,000 (Saturday afternoon games) and an average viewership of 82,000 (Sunday afternoon games) in 2021.<sup>150</sup>

Although coverage of these relatively new competitions on free-to-air television has historically been modest, recent rights agreements have enhanced the level of coverage. The 2025 to 2031 AFL media rights deal includes at least 30 AFLW home and away games, AFLW finals and the AFLW Grand Final on Seven and 7plus.<sup>151</sup> Likewise, Nine has indicated that its 2023 to 2027 NRL media rights deal would expand its broadcast coverage<sup>152</sup> and committed to broadcast every NRLW game live and free in 2023 and 2024.<sup>153</sup>

<b>Proposed additions</b>	The entire FIFA World Cup
	The entire FIFA Women’s World Cup

Listing the FIFA men’s and women’s tournaments in their entirety may lead to an outcome where the coverage of these matches is provided to Australian audiences for free. These tournaments have consistently drawn high ratings.

- The 2022 men’s tournament (held in Qatar) had an average audience of 733,000 for matches involving Australia, while the grand final attracted 447,000 viewers. This was down from the 2018 tournament (held in Russia), where 1,391,000 viewers tuned into matches involving Australia and 538,000 to the grand final.

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<sup>148</sup> NRLW viewership reflects the average viewership across all matches in that year – Source: OzTAM 5 City Metro | Consolidated 7 | Audience Measures for NRLW | 2023.

<sup>149</sup> Ibid.

<sup>150</sup> AFLW Premiership viewership average reflects the average audience for all games played in a single timeslot that had the most games played in that year – Source: OzTAM 5 City Metro | Consolidated 7 | Audience Measures for AFLW | 2022.

<sup>151</sup> AFL (2022), [Seven years, \\$4.5b: AFL reveals HUGE new broadcast rights deal](#).

<sup>152</sup> NRL (2022), [Explainer: What broadcast deal means for the game](#).

<sup>153</sup> Nine for Brands (27 April 2023), [Nine to broadcast every NRLW game live and free in 2023](#); Nine for Brands (13 November 2023), [Nine is the home of women’s rugby league from 2024](#).



- The 2019 women’s tournament held in France had an average audience of 193,000 for matches involving Australia, while 58,000 viewers watched the grand final.

The 2023 tournament held in Australia was one of the highest rating events on television. The Seven Network indicated that an average of 6.24 million viewers tuned in watch the semi-final between Australia and England for the 2023 FIFA Women’s World Cup, adding that the tournament was viewed by 14.76 million on television.<sup>154</sup>

SBS has secured the rights to the 2026 men’s tournament.<sup>155</sup> It previously held the rights of the 2022 tournament. It is not clear who will host the women’s tournament in 2027, but Optus Sport held the rights to 2023 tournament and made<sup>156</sup> 15 matches were made available on the Seven Network.<sup>157</sup>

<b>Proposed Additions</b>	<p>Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that involves an Australian representative team (currently the match must be played in Australia)</p> <p>Each match in each tie and the final of the International Tennis Federation Billie Jean Cup tennis tournament that involves an Australian representative team</p> <p>All international Netball matches that involve the senior Australian women’s representative team that are played in Australia</p> <p>Each match of the Super Rugby Pacific and Super W finals series that involves at least one Australian team.</p>
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The listing of these events may enhance the likelihood of them receiving coverage on free-to-air television. However, this will depend on the willingness of free-to-air broadcasters to acquire the rights and provide any such coverage. Broadcasters would consider a range of factors when making these decisions, including audience numbers. Historically, the audience numbers for these events have relatively modest.

The highest average audience figures for matches involving Australia in the 2021 Billie Jean King Cup was 21,000.<sup>158</sup> The Super Rugby Pacific and Super W have seldom been on free-to-air television in recent years, and when they have, their ratings have been low. For example, Super W had an average audience of 16,000 per match in 2022.<sup>159</sup>

If these events are listed and free-to-air broadcasters do not buy their rights, all other parties will be prevented from buying the rights to these events until they are delisted, which may have a negative impact for consumers that do wish to watch them.

## Impact on government

Assuming the expanded list is implemented in conjunction with either the broadcasting safety net or free-to-air first models (Models 2 and 3 respectively), this is expected to have a minor budgetary impact on the ACMA, who would be required to oversee and administer a framework that effectively extends the current regulatory arrangements.

<sup>154</sup> Seven West Media (21 August 2023), [Media release, FIFA Women’s World Cup 2023™ draws 18.6m.](#)

<sup>155</sup> SBS (10 November 2023), [Everything you need to know about the FIFA World Cup 2026™ LIVE and FREE on SBS.](#)

<sup>156</sup> Optus Sport (3 August 2021), [Optus Sport secures media rights to the FIFA Women’s World Cup 2023.](#)

<sup>157</sup> 7news.com.au (31 October 2022), [Women’s World Cup live and free on Seven and 7plus in 2023, Matildas match times and venues revealed.](#)

<sup>158</sup> Source: OzTAM 5 City Metro | Consolidated 7 | Audience Measures for Billie Jean King Cup Tennis | 2021.

<sup>159</sup> Source: OzTAM 5 City Metro | Consolidated 7 | Audience Measures for Super W | 2022.

## Overall assessment

The expanded list would significantly increase the scope of the anti-siphoning scheme. As noted above, this would see an increase in the number of events of the list of close to 50 per cent compared with the current list, although the bulk of this increase is attributable to the inclusion of the Paralympic Games and the AFL and NRL Women's Premiership competitions.

This would be done with the aim of increasing the likelihood of free access to televised coverage of these events for Australian audiences and, commensurately, seek to mitigate the of these events being placed behind a paywall. However, this outcome is would be dependent on free-to-air broadcasters opting to acquire the relevant rights to these events under either the broadcasting safety net or free-to-air first models for the scheme (Models 2 and 3 respectively).

There is a risk that free-to-air broadcasters may not seek to do so, resulting in little net benefit for audiences compared with current listing arrangements if coverage is ultimately provided on subscription-based platforms (i.e. the rights to these additional events continue to be acquired by entities other than free-to-air broadcasters). Previous rights deals suggest this has been the case for some events included on the expanded list.

If the rights to these additional events are not acquired by free-to-air broadcasters, all other parties would be prohibited from acquiring any rights until the event is delisted (26 weeks or 12 months prior to commencement, depending on the model adopted). If this were to disincentivise entities other than free-to-air broadcasters from seeking to take up those rights, then there may be an erosion in overall benefits for audiences (i.e. if there were to be reduced or no coverage of the additional events).

From an industry perspective, the expanded list option would continue to limit the ability of sports bodies to negotiate openly with respect to their rights, and to a greater degree than the other list options. Free-to-air broadcasters would benefit from the expanded list as it would maintain and, in some respects, advance their negotiating position with regard to sporting rights.

Conversely, subscription television broadcasting licensees would face restrictions on their ability to purchase and monetise the additional events proposed to be included on the expanded list (until the events are delisted).

Online streaming services and other content services would be brought into the scheme for the first time if they opted to acquire the rights to provide coverage of events on the expanded list. The number of events they would lose the opportunity to obtain without restriction under the expanded list would be greater than the streamlined and modernised list options.

As with the other list options, this proposal would take an inclusive approach to international matches that involve a senior Australian representative team, including standalone fixtures and world cup matches that involve a men's or women's senior representative side.

## Option 4: 'status quo'

Maintaining the current list would effectively involve no change to the *Broadcasting Services (Events) Notice 2023*, which covers approximately 1,900 events. As such, the impact of the rule on industry, consumers and government is likely to be maintained, pending decisions regarding the reform of the scheme itself.

### Impact on industry

#### Free-to-air broadcasters

Free-to-air broadcasters would continue to benefit from the current scheme, more so if Model 3 and (to a lesser extent) Model 2 were implemented. This option for the list is unlikely to be workable for the free-to-view model for reform of the scheme (Model 1), for the reasons noted above, and isn't considered

further for this reason. The status quo option for the scheme (Model 4) would mean the scheme would continue to have the same impact as it currently does, applying to the same events.

### **Subscription television and streaming services**

Subscription television broadcasting licensees would continue to face restrictions on their ability to acquire the rights to events on the list, albeit the same set of events as currently included in the *Broadcasting Services (Events) Notice 2023*. The adverse impact on subscription broadcasters would be amplified if the broadcasting safety net model (Model 2) and (to a greater extent) the free-to-air first model (Model 3) were adopted. This option for the list is unlikely to be workable for the free-to-view model for reform of the scheme (Model 1), for the reasons noted above, and isn't considered further for this reason.

The impact of this list option for online streaming services will also depend on the model for reform. Under the status quo model (Model 4), the anti-siphoning scheme would continue to not apply to these services, and hence there would be no particular impact. Models 1, 2 and 3 would each draw in online streaming services, although Model 1 isn't compatible with this list option and isn't considered further. Model 2 (broadcasting safety net) and Model 3 (free-to-air first) would have a more significant detrimental impact on online streaming services.

### **Sporting bodies**

Sports bodies would continue to face restrictions in terms of the sequence of acquisition of their rights under Models 2, 3 and 4. Model 3 would have the greatest adverse impact on sports bodies as it would require a free-to-air broadcaster to have acquired both a right to televise a listed event on a broadcasting service and an online right to the event before a right could be acquired by any other party. Model 1 is not relevant to this consideration as it is likely to be incompatible with this list option.

### **Impact on Australian consumers**

Under the status quo list option, the imbalances in the current list identified through the review of the scheme – particularly in relation to women's and Para-sports – would be maintained. The scheme would continue to regulate sports that are predominantly played by men and athletes without a disability. Australian consumers may have more limited opportunities to view additional women's and Para-sports for free under this list option, depending on the choices made by sports bodies and media entities in terms of the acquisition of rights and coverage of relevant events.

### **Impact on government**

The ACMA would continue to have responsibility for oversight and administration of the scheme. Under this list option, the scope of that work would remain unchanged (pending decisions regarding the model for reform).

### **Overall assessment**

The status quo list would maintain the current scope of the *Broadcasting Services (Events) Notice 2023*. The imbalances in the current list identified through the review of the scheme – particularly in relation to women's and Para-sports – would be maintained. More broadly, the impact of this list option on consumers will depend on the model for reform of the scheme.

## **5. Consultation**

The Government has undertaken a review of the anti-siphoning scheme and anti-siphoning list, in line with its 2022 election commitment. This review has consisted of two phases of consultation, as outlined below.

## Public consultation

The first phase of public consultation occurred in the fourth quarter of 2022 with the release of a public consultation paper: *Review of the anti-siphoning scheme - consultation paper*.<sup>160</sup> The consultation paper sought views on:

- the policy objective of providing free access to televised coverage of important events and the mechanism to achieve it (currently the scheme and the list);
- the potential application of the scheme to new media, such as streaming services;
- the use and disposal of rights to televise events on the list, including transparency and information disclosure; and
- the composition of the list — sports and events that should be included on the list and arrangements to remove events from the list.

Twenty-five submissions were received during this first tranche of consultation. Three stakeholder roundtables were also convened in November 2022 with: free-to-air broadcasters; subscription television broadcasters and streaming services; and with sporting organisations.

Submissions to this consultation paper, and views expressed at the roundtables, informed the development of a set of specific proposals for reform of the scheme and list. These proposals were included in the *Review of the anti-siphoning scheme – proposals paper*<sup>161</sup>, which was released for public consultation between 19 August 2023 and 17 September 2023.

The proposals paper outlined a number of preliminary findings of the review to date:

- the core objective of the anti-siphoning scheme remains relevant;
- the scheme has an on-going role but needs to be broadened to incorporate online services; and
- the composition of the anti-siphoning list needs to be reconsidered.

The proposals paper also outlined three models for reform the scheme and three options for reform of the list. The free-to-view model (Model 1) and streamlined list (List 1) were closely aligned with the views and concerns of subscription television broadcasting services, streaming services and sporting bodies. The free-to-air first model (Model 3) and the expanded list (List 3) endeavoured to address the views and concerns of free-to-air broadcasters.

The broadcasting safety net model (Model 2) was put forward as the Government's preferred approach to reform of the scheme. It would affirm broadcasting services as the 'safety net' for free access to televised coverage of iconic sporting events for all Australians. It would address the risk of iconic sporting events migrating to platforms that involve direct or indirect costs for Australian audiences (benefiting consumers), but would enable other providers to acquire non-broadcasting rights once a right to televise an event had been acquired by a free-to-air broadcaster, or it had been automatically delisted.

The modernised list (List 2) was put forward as the Government's preferred list as it moderately broadens the construction of nationally important and culturally significant events to better reflect the contemporary media landscape.

These models and options have been the subject of the assessment undertaken through this IA, in addition to the status quo for both the scheme and list.

Seventeen submissions were received in response to the proposals paper.

<sup>160</sup> DITRDCA (2022), [Review of the anti-siphoning scheme: Consultation paper](#).

<sup>161</sup> DITRDCA (2023), [Anti-siphoning Review - Proposals Paper](#).

## Post-consultation analysis

The views and positions of stakeholders were carefully assessed in the development of the proposals paper and in the subsequent consideration and refinement of various models and options. This assessment was augmented by analysis of available information and reports regarding sports broadcasting in Australia and developments and trends in comparable overseas jurisdictions.

Free-to-air broadcasters strongly supported the extension of the current scheme to online services. With respect to the reform models outlined in the proposals paper, the sector generally argued that the free-to-air first (Model 3) and the expanded list (Option 3) should be adopted, with some adjustments and qualifications. It was argued this would provide access to live and free sports coverage regardless of technology, would sustain free-to-air broadcasters, and is consistent with audience expectations of free access. The Australian Broadcasting Corporation (ABC) noted that this risks the broadcasters only providing streaming coverage of listed events and supported broadcasting safety net model (Model 2), as it would best support the likelihood of listed events being freely available.<sup>162</sup>

Subscription television and streaming services supported the free-to-view model (Model 1), and argued that the broadcasting safety net model (Model 2) and (to a greater extent) the free-to-air first model (Model 3) would exacerbate the anti-competitive impacts of the scheme by further favouring free-to-air broadcasters. These entities generally argued that online services are capable of promoting the outcome of free access to iconic sporting events, and that Model 1 would best align with sporting bodies' ability to maximise their revenue. The streamlined list (Option 1) was the preferred list option. It was suggested that it would help to maximise investment in sport and was the only list consistent with the concept of "nationally important and culturally significant".

Sporting bodies supported the free-to-view model (Model 1) and the streamlined list (Option 1), emphasising the importance of being able to maximise the commercial value of their media rights. There was some acceptance of broadcasting safety net (Model 2) as an interim measure if coupled with the streamlined list (Option 1), contingent on concrete steps being undertaken to implement Model 1 in the near term. It was argued that media rights are critical to sporting bodies, and this approach helped support competition and increased the negotiating position of sporting bodies.

Other industry, academics, and the general public had a range of views. The broadcast safety net model (Model 2) was supported by some, as a relatively modest adjustment intended to protect segments of the population. There was some support for the free-to-view model (Model 1) and the streamlined list (Option 1) as the internet is affordable, capable and not limited by channels. Feedback on the list was varied and there was some support for all the lists for similar reasons outlined by the stakeholders above. Comments from the public generally supported additions to the list, with some variation.

These views and perspectives have informed the final design of the model to reform the scheme and the composition of a new anti-siphoning list.

## 6. What is the best option?

The broadcasting safety net model (Model 2) and the modernised list (Option 2) are considered to be the optimal combination of reforms to further the objective of promoting free access to televised coverage of events of national importance and cultural significance, in line with the Government's 2022 election commitment.

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<sup>162</sup> Australian Broadcasting Corporation (2023), [Submission to the Anti-siphoning review – proposals paper](#), p. 3.

## The scheme

The broadcasting safety net model is considered to be the optimal model for reform of the scheme. This approach would affirm free-to-air broadcasting services as the 'safety net' for free access to televised coverage of nationally important and culturally significant sporting events for all Australians. To this end, it would provide free-to-air broadcasters with preferential treatment in terms of acquiring the relevant rights, and address the risk of these events migrating to online platforms that involve direct or indirect costs for Australian audiences. This approach would provide net benefits to Australian consumers.

The broadcasting safety net model would adversely impact sports bodies and a broader set of media entities (including online streaming services). However, it would provide relatively unimpeded access to rights for content service providers once a right to televise an event has been acquired by a broadcaster, or it has been automatically delisted. It would also provide free-to-air broadcasters with only modest advantage in relation to the acquisition of those non-broadcasting rights.

On balance, the broadcasting safety net model would bring online services into the scheme and mitigate the risks of the coverage of listed events migrating behind a paywall, or consumers otherwise facing additional costs to access this content. Although this model would adversely impact sports bodies and a broader set of media entities (including online streaming services), the additional impositions are outweighed by the relative benefits of the model in supporting the objective of the scheme. It is also a model that is well-calibrated to the technology landscape for the next 5 to 10 years.

To this end, the model best achieves the objectives for reform highlighted in chapter 2. The changes would promote the continued free access to televised coverage of nationally important and culturally significant events by all Australians, while maintaining and modernising the regulatory interventions to achieve this. This model would not be contingent on a reduction in events, and would promote Australians' continuing access to free sport. The reforms would also support the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs, building on the existing scheme. This option supports Australian consumers being able to access sport for free without unduly restricting other content services from subsequently acquiring online rights.

The broadcasting safety net model is also relatively simple in terms of its legislative design. It extends the acquisition restriction under the current scheme to prevent content service providers, other than free-to-air broadcasters, from acquiring events on a list until a free-to-air broadcaster has a right to televise the event (or the event is delisted).

The free-to-view model (Model 1) is likely to be a suitable and appropriate model for the anti-siphoning scheme in the longer-term. It would represent a technology-neutral approach to the regulation of the coverage of nationally important and culturally significant sports events as it would directly target the consumer outcome – the availability and coverage of these sports – rather than the preceding acquisition of rights. However, technology and market conditions in Australia are not mature enough to enable the adoption of this model in the near- to medium-term. The adverse impacts on consumers would outweigh the potential benefits of this approach for at least the next 5 to 10 years. The free-to-view model could be considered once online services are able to promote free access to televised coverage of nationally important and culturally significant sporting events for all Australians, regardless of their financial means, location or other factors.

The free-to-air first model (Model 3) would mitigate against the risks of coverage of nationally important and culturally significant sporting events migrating behind a paywall, or consumers otherwise facing additional costs to access this content. In this regard, this model is similar to the broadcasting safety net approach (Model 2). However, the free-to-air first model would provide free-to-air broadcasters with significant commercial advantage and would place free-to-air broadcasters – rather than free-to-air broadcasting services – as the key mechanism to support the achievement of the scheme's objective of free access to televised coverage of iconic events.

It would impede access to both the broadcast and online rights to events by parties other than free-to-air broadcasters, and adversely impact sports bodies and a relatively broad set of media entities. It would also

seek to treat the content services provided by free-to-air services (i.e. streaming services) differently to content services provided by other parties, although to the consumer there is likely to be little practical difference.

The level of regulatory intervention envisaged under the free-to-air first model may be justified in the future, depending on technology and market developments. However, at this point, the net benefits of this model do not outweigh the recommended reform model (broadcasting safety net).

The status quo (Model 4) would do nothing to address the regulatory gap identified in the review of the scheme undertaken in 2022 and 2023. The risk of the coverage of nationally important and culturally significant events migrating behind online paywalls would grow, to the detriment of Australian consumers. This model is not considered to be sustainable.

## The list

The modernised list (Option 2) is considered to be the best option for reform of the list. This approach would involve an increase in the scope and application of the scheme compared with the current list, although this is relatively modest in terms of the number of competitions involved (given that the bulk of this increase is attributable to the addition of the Summer Paralympic Games, which take place every four years). Under this approach, the number of events on the list would increase from approximately 1,900 events to approximately 2,500 events. Importantly, the additional inclusions proposed for the modernised list would seek to ensure a consistent and inclusive treatment of nationally important and culturally significant events regardless of the gender or the disability status of the athletes competing in them.

The modernised list supports the continued free access to televised coverage of nationally important and culturally significant by retaining the events on the existing list that Australians are accustomed to viewing for free, and making measured additions to include women's and Para-sports. The proposal does not materially add to the complexity of the list as its construction and operation would be very similar to the current instrument.

The streamlined list (Option 1) would significantly pare back the reach and scope of the scheme – from around 1,900 events to around 330. It is also the only list option of those considered in this IA that is likely to be compatible with the free-to-view model (Model 1). This reduction in events would benefit subscription television broadcasting licensees, but would be detrimental to free-to-air broadcasters. However, the key impacts arising with this list option (when coupled with the free-to-view model), affect consumers. For the range of events effectively removed from the list under this option – around 1,600 events – there is a risk that these events will not receive live, in full and free coverage. The anti-siphoning scheme would have no application to these events, and content service providers – including traditional subscription television broadcasting services and newer, subscription-based streaming services – could opt to provide coverage of these events on subscription-based platforms. They could also opt to provide partial coverage of these events.

The expanded list (Option 3) would significantly increase the scope and application of the scheme compared with the current list, from around 1,900 events to around 2,800. The additional inclusions would seek to ensure a consistent and inclusive treatment of nationally important and culturally significant events regardless of the gender or the disability status of the athletes competing in them. While this may enhance the overall outcome for Australian audiences (and support the objective of the scheme of free access to televised coverage of iconic events), this outcome is not assured. Ultimately this would depend on whether broadcasters opt to provide coverage of the range of additional events. This list option would also have the greatest detrimental impact on sports bodies, subscription television broadcasters and online streaming services, significantly impairing their ability to negotiate for the acquisition of rights to the additional events (assuming the adoption of either Model 2 or 3).

The status quo list (Option 4) would maintain the current scope of the list (around 1,900 events). However, the imbalances in the current list identified through the review of the scheme – particularly in relation to women's and Para-sports – would be maintained. It is not considered to be an appropriate approach to the future list for this reason.

## 7. Implementation and evaluation

Implementation of Model 2 and Option 2 would be given effect through amendments to the BSA (with respect to the scheme) and the making of a legislative instrument (with respect to the list).

In order to provide industry with sufficient time to prepare for the new arrangements, the new scheme will commence via proclamation. The new list would also commence on the same day as the reforms to the scheme to support a smooth transition to the new arrangements. Industry have been made aware of the Government's preferred reform options through the proposals paper process.

The ACMA would have oversight of the scheme (as it currently does) and would have powers to gather information about compliance with the scheme. This would allow for ongoing assessment of the operation of the scheme and the identification of any particular issues or concerns. However, the scheme would not include periodic or ex ante reporting by relevant parties as this would impose an unreasonable burden on these entities.

### Risks

As noted in chapter 2, extending the application of the scheme to online media creates the potential for it to become restrictive to the point where it impairs the ability for sporting bodies to maximise their revenue. The Government has sought to assess and mitigate this risk through two phases of consultation. Feedback from these processes has informed the evaluation of options and the identification of the preferred approach.

However, there is a risk that that the scheme may apply to entities that it was not intended to capture. This risk will be mitigated through the construction of the legislation in a way that enables exceptions to the scheme to be provided in specific circumstances.

There is also a risk that – notwithstanding the inclusion of an event on the list – that a free-to-air broadcaster does not acquire the right to the event and that televised coverage of the event is not freely available to Australian audiences. This has always been a risk in the scheme, and is not new. However, the history of rights acquisition and coverage arrangements for listed events over the past decade has highlighted that this risk is negligible. Free-to-air broadcasters have a strong commercial incentive to acquire and fully utilise the rights to events on the list, and this is expected to continue into the future.

### Evaluation

The reforms to the scheme would require the conduct of a review of the scheme and list to be undertaken once the new arrangements had been operating for a period of five years. The review would enable the impacts and outcomes of the reforms to be thoroughly assessed and to consider the need for any changes to scheme. This review would be informed by information gathered by the ACMA in its oversight of the scheme, as well as broad-based stakeholder and public engagement.

Specifically, the review would assess the extent to which it has supported the overall objective of promoting the free availability to audiences throughout Australia of television coverage of events of national importance and cultural significance. This would include consideration of, but would not be limited to, as assessment of the extent to which the scheme:

- has supported the ability of Australians to watch events of national importance and cultural significance for free;
- has imposed unreasonable or unanticipated costs or burdens on affected parties; and
- whether the model for the regulation of sports rights remains appropriate for the contemporary media environment, taking into account changes in technology, consumer preferences and the overall market for sports rights.