

OPTUS

Submission to Environment
and Communications
Legislation Committee

**Communications
Legislation Amendment
(Prominence and Anti-
siphoning) Bill 2023**

Public Version

January 2024

EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide a submission to the Environment and Communications Legislation Committee on the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 (the Bill).
2. The Bill proposes to introduce a prominence framework and retain the existing approach to anti-siphoning, by restricting acquisition of events on the anti-siphoning list by all media content service providers (including streaming services) except national and commercial broadcasters.
3. The objectives of the regime continue to be to promote free access to televised coverage of nationally important and culturally significant events.
4. Optus provided detailed submissions to the Anti-siphoning Review as to how the objectives of the anti-siphoning scheme could be better achieved by a regime that focussed on delivery obligations rather than restricting acquisitions.¹ Such a regime could achieve the overarching objectives of the anti-siphoning regime while realising the benefits of a competitive acquisition market.
5. Optus Sport's successful delivery of the 2023 FIFA Women's World Cup shows what is possible where rights acquisition is not restricted and what could easily be achieved under an outcomes-focussed model with delivery obligations, even with an expanded events list. This would deliver real benefits to all sports on the anti-siphoning list, including women's sports that have traditionally suffered under-investment.
6. However, if the existing approach to the anti-siphoning scheme continues, Optus considers there are compelling reasons to extend the delisting period to at least 15 months – 18 months (64 weeks – 78 weeks). This would ensure there is sufficient lead time to enable high-quality delivery of events not acquired by national/commercial broadcasters.
7. Extending the delisting period does not disadvantage those broadcasters as rights are negotiated well in advance of events, and other content service providers can provide a backup option to national/commercial broadcasters facing financial and technical constraints in an increasingly complex regime as more events are added to the anti-siphoning list.
8. Without an adequate delisting period and sufficient lead time to prepare and deliver high quality coverage, there remains a risk that the objectives of the regime could be undermined. It would be a deeply concerning unintended consequence of the regime if Australians miss out on quality coverage of events of national importance and cultural significance because of an inadequate delisting period.

¹ Optus, Submission in response to DITRDCA Consultation Paper, Review of the anti-siphoning scheme, December 2022. <https://www.infrastructure.gov.au/sites/default/files/documents/assr--optus.pdf>; Optus, Submission in response to DITRDCA, Anti-siphoning review - Proposals Paper, September 2023. <https://www.infrastructure.gov.au/sites/default/files/documents/aspp--optus.pdf>

THE DELISTING PERIOD SHOULD BE EXTENDED

9. As the Bill proposes retaining the same approach to restricting rights acquisition as the existing anti-siphoning scheme, Optus' submission focusses on the issue of the appropriate length of time for the delisting period under the regime. That is, the point in time prior to the event, at which the event on the anti-siphoning list is not subject to rights acquisition restrictions if not by that time purchased by a national/commercial broadcaster.
10. Optus welcomes the recognition that the existing delisting period should be extended beyond 26 weeks, but notes that a period of 52 weeks as proposed in the Bill is not sufficient lead time to prepare high quality coverage of international events featuring Australian teams.
11. Optus argued in its submission to the Anti-siphoning Review that the delisting period should be 18 months (78 weeks) to give sufficient lead time for planning and preparation to deliver high quality coverage. Optus continues to hold the view that the delisting period should be extended to 15 to 18 months (64 – 78 weeks or 10,752 hours – 13,104 hours), as:
 - (a) there will be no harm in extending the delisting period, given that rights negotiations occur years in advance of events;
 - (b) it is unlikely commercial and national broadcasters will be able to acquire and broadcast all events on an expanded anti-siphoning list; and
 - (c) substantial lead time is needed for financial and operational planning and preparation activities necessary to deliver high quality coverage.
12. The above points are discussed further below.

There is no disadvantage to national or commercial broadcasters from a longer delisting period

13. There is no harm in extending the proposed delisting period to 64 or 78 weeks (10,752 or 13,104 hours) because rights are negotiated well in advance of the events occurring.
14. For example, rights for international events that occur every few years (such as, World Cups and the Olympics) are negotiated at least 15 months (if not years) in advance and can be acquired for multiple years. For example, in February 2023 Channel 9 announced that it had acquired the rights to the Olympics in 2024, 2026, 2028, 2030 and 2032 more than 15 months ahead of the Paris 2024 Olympics.² Optus understands these negotiations for the Olympics took a longer period of time than usual.
15. There is simply no disadvantage to national/commercial broadcasters if the delisting period is extended to 64 or 78 weeks (10,752 or 13,104 hours) yet a longer delisting period better supports the objectives of the anti-siphoning scheme if national/commercial broadcasters are unable to acquire rights.

² Nine announces Olympic broadcast rights for five Games events, 8 February 2023, <https://www.nine.com.au/olympics/nine-broadcast-rights-olympic-games-2024-2028-2032-winter/fd437de2-a15c-4008-a7d0-f8ee9190c7ee>

National and commercial broadcasters may not be able to support an expanded events list

16. More events being included on the anti-siphoning list increases the complexity of the regime and may mean it is increasingly financially or technically difficult for commercial and national broadcasters to acquire and broadcast all events on the list.
17. Event rights are a significant financial investment and there have long been concerns from national/commercial broadcasters about the sustainability of ever-increasing rights costs as rights holders seek to maximise returns for their sport. Further, national and commercial broadcasters face technical difficulties with the limited number of linear channels available for broadcast (including if competing events occur simultaneously) and disruption to regular broadcasting when events are on.
18. While adding events to the anti-siphoning list acknowledges that these events currently hold national importance and cultural significance, the anti-siphoning regime does not guarantee that a national or commercial broadcaster will acquire those rights and broadcast the event. As such, there may be events that national/commercial broadcasters are simply unable to acquire given their financial and/or technical constraints.
19. In those instances, other media content service providers represent a backup option to ensure that coverage of those events is provided. However, there must be sufficient time for other providers to plan and prepare to deliver high-quality coverage of such events. Without sufficient lead time, coverage (let alone high-quality coverage) may not be possible, which would undermine the objectives of placing those events on the anti-siphoning list in the first place.

An insufficient delisting period could undermine overarching objectives

20. The objectives of the anti-siphoning scheme are to ensure Australians have access to events of national importance and cultural significance for free. However, if national/commercial broadcasters are unable to acquire rights, other media content providers need sufficient lead time to ensure high quality coverage can be provided or otherwise an event may not receive coverage at all. This would be a deeply concerning unintended consequence of the anti-siphoning regime.
21. The activities involved in financial planning, negotiating rights and providing coverage can vary depending on the nature and location of the event. In any case, significant lead time ahead of the event is necessary as:
 - (a) Financial planning and rights negotiations themselves can take some time depending on any conditions/requirements of the rights owners;
 - (b) Once rights are secured, preparatory activities for the coverage begin immediately. This includes:
 - (i) Planning programming and supporting content as this impacts all commercial discussions;
 - (ii) Securing and engaging talent (such as, commentators and hosts) as this can take up to 12 months, including onboarding and training;
 - (iii) Developing promotional plans/activities for the event, which may require further engagement with and approval from the rights owner prior to execution;

- (iv) Securing international feeds and negotiating and engaging with international host broadcasters;
 - (v) Reviewing/upgrading our own content distribution equipment and infrastructure (such as our own links);
 - (vi) Planning signal acquisition and distribution;
 - (vii) Working with technical partners to book dedicated paths and sufficient capacity, including ensuring there are redundancy options;
 - (viii) Estimating the potential viewing audience and ensuring there is sufficient capacity to meet demand;
 - (ix) Building and testing bespoke platforms to support online coverage;
 - (x) Preparing advertising and sponsorship packages, which need to be available as soon as possible to ensure advertisers can build these into their financial budgets and advertising plans and allow sufficient time for engagement and approval with the rights owners of any commercial packages; and
 - (xi) Negotiating any sub-licensing arrangements with other media providers / broadcasters which can assist in meeting any coverage obligations of the rights owners and supporting the financial investment in the rights.
22. The location and nature of the event will impact all of these preparatory activities and workflows for many of these activities impact the timing of other activities. For example, Optus Sport spent two years preparing for its successful coverage of the 2023 FIFA Women's World Cup, including with respect to its own delivery over the internet and its sub-licensing of rights to Channel 7). Optus Sport also faced additional challenges because Australia was the host nation, and required decisions about facilities and feeds that would not be needed for an international event. Optus Sport had to build additional capacity to the international broadcast centre and extend capacity for additional paths as well as upgrade links within its own content distribution network.
23. When events are held internationally, at least 64 weeks (10,752 hours) – 78 weeks (13,104 hours) is needed by rights bidders to allow sufficient lead time to work with international broadcast and technical partners in relation to the above activities to ensure there is sufficient capacity and paths for high quality coverage (not just of match feeds but also for any additional supplementary feeds).
24. A longer delisting period would also maximise the opportunity for a rights bidder to negotiate a sub-licence agreement with a national/commercial broadcaster (similar to what Optus Sport did with Channel 7 for the 2023 FIFA Women's World Cup). Optus Sport's negotiations with Channel 7 were finalised around 8 months prior to the event, which we understand from Channel 7 was a challenging timeframe in which to prepare their coverage.
25. A longer delisting period to negotiate sub-licensing arrangements would mean a national/commercial broadcaster would have more time to prepare its own coverage of a subset of matches. This may also be more financially attractive to a national/commercial broadcaster than acquiring rights to an entire event (as rights holders do not usually sell rights to just Australian matches) and would better support the objectives of the anti-siphoning scheme.

26. If there is insufficient time to execute activities and deliver coverage to a high standard or a provider is unable to maximise commercial opportunities related to an event (such as sub-licensing, sponsorship or advertising arrangements), coverage may be poor, or the event may not be covered at all in future. Such outcomes would completely undermine the reasons for having these events on the anti-siphoning list in the first place.
27. Without an adequate delisting period and sufficient lead time to plan for, prepare and deliver high quality coverage, there remains a risk that the objectives of the regime could be undermined. It would be a deeply concerning unintended consequence of the regime if Australians miss out on quality coverage of events of national importance and cultural significance because of an inadequate delisting period.
28. Therefore, to minimise this risk and ensure all aspects of the regime operate to benefit Australian viewers and support the industry, Optus submits the delisting period be extended to at least 15 months (64 weeks or 10,752 hours) or ideally 18 months (78 weeks or 13,104 hours).