

Submission to:

Inquiry: The Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 [Provisions]

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Introduction

We are senior academics with extensive research and scholarly records in the disciplines of Sociology and Political Science, and in interdisciplinary fields such as Communication, Media and Sport Studies. Unlike most of those who submitted responses to the *Review of the Anti-siphoning Scheme Consultation Paper* and the *Anti-siphoning Review Proposals Paper*, we have no financial interest in the media and sport industries. Instead, we offer international research-based perspectives that reflect our concerns with matters of social equity, public policy and cultural citizenship as they relate to the domain of screen sport of “national importance and cultural significance”.

Key Points

This is a short submission that, in most respects, reiterates the positions that we have adopted in our two previous ones:

- <https://www.infrastructure.gov.au/sites/default/files/documents/assr--r-tiffen-d-rowe-b-hutchins.pdf>
- <https://www.infrastructure.gov.au/sites/default/files/documents/aspp--r-tiffen-d-rowe-b-hutchens.pdf>

In summary, we maintain that retaining and enhancing anti-siphoning is a crucial element of contemporary communications policy. In the transition from “[analogue] broadcast rationing to digital plenitude” it is vital to modernise the legislation to accommodate technological change to “prevent media content services (including, but not limited to, streaming services) from acquiring a right to televise, or otherwise provide coverage of a listed event to audiences in Australia, until a free-to-air broadcaster has a right to televise the event on a broadcasting service”.

As some powerful forces in media sport would like nothing more than to abolish the anti-siphoning list in its entirety, we are reassured that it remains a key element of communications policy in Australia in the form of this proposed legislative amendment.

We have previously argued for a more diverse anti-siphoning list that is less wedded to male-dominated, ‘ableist’-oriented, Anglo-Celtic sport in Australia, and are pleased that the proposed legislation makes some advance in this regard via “modernisation”, especially with regard to women’s and Paralympic sports. However, we briefly restate the concerns in our response to the *Proposals* paper:

- We contend that the anti-siphoning list (now encompassing streaming and other media content services) should be maintained and expanded as appropriate, subject to regular reviews, and with the reasons for decisions made as transparent as possible.
- We reject the premature, inequitable and ahistorical claim that the availability of ‘freemium’ and ‘premium’ streamed live screen sport has rendered free-to-air broadcast television redundant. New technologies will undoubtedly render what we call ‘television’ today outmoded. But that moment is yet to arrive, and nothing can yet be known of the necessary public policy response to screen production, distribution and consumption arrangements that are yet to mature and, indeed, emerge.
- We caution against industry claims of equivalence between free-to-air broadcast television and subscription-driven ‘freemium’ live streaming services. Distinctions between these technologies and services continue to exist in terms of technology access and use, oblique terms of service for streaming services, data harvesting (including questions around privacy and on-selling of data to third parties), and the reliability and coverage of Internet coverage in rural and regional areas.
- We support a budget allocation for partnerships between particular sports with little current screen media coverage, free-to-air networks (especially public service, and not subscription-based, as has previously occurred) and government. Dedicated funding of public service media sport would assist in restoring its national cultural role while helping to diversify sport on screen and maintaining free access to it.

We also reiterate our closing remarks (adjusted a little here) regarding the *Proposals Paper*:

[These] safeguards and initiatives are imperative because we do not wish to see any of the acknowledged flaws of the existing anti-siphoning scheme carried over into the revised one. As former Coalition Minister for Communications Fifield [who was responsible for an earlier reduction of the anti-siphoning list] noted:

[the anti-siphoning list] does not mandate that free-to-air broadcasters have to purchase events. It does not mandate that if they do purchase, that they have to show them. And it does not mandate that if they do purchase events that they can’t then on-sell them to other platforms. The list ... is there to increase the likelihood some of these significant events are on free TV.

We seek assurance that these loopholes, particularly those pertaining to **on-selling of media sports rights** to less accessible platforms, are closed in the new legislation, and that it will be scrupulously enforced (which has not always been the case) by the Australian Communications and Media Authority (ACMA).

In terms of transparency, an expert anti-siphoning advisory group might be constituted and, along the lines of the *Play our Way* grants program, could also make recommendations on a budget allocation for broadcasting some under-represented sports left off the revised list that can be accessed free by audiences.

Recent Developments

Amazon Prime Video’s securing of rights to all International Cricket Council (ICC) global tournaments and Optus’s winning of the Australian rights to the 2023 FIFA Women’s World Cup need to be noted in this context.

The cricket case reveals that, while anti-siphoning applies to Senior Australian Representative Teams (SARTs) in a range of sports, they mainly concern matches played in Australia (and sometimes in Aotearoa New Zealand and other countries). This limitation makes various sport events involving Australian teams vulnerable to paywalls imposed by media content services, including subscription and streaming platforms.

Regarding the football case, that Optus was the primary rights holder in Australia of the 2023 FIFA Women's World Cup hosted in Australia and Aotearoa New Zealand, meaning that less than a quarter of the games could be watched for free, is in our view an affront to women's sport and to Australian multiculturalism.

The subsequent inclusion of the FIFA Women's World Cup on the list on the same basis as the Men's is insufficient as it perpetuates the inequality between the 'world game' and the Olympics (although as noted the Summer Paralympic Games is a welcome addition to the list) and, improbably, the Commonwealth Games. That SBS has the rights to the 2026 FIFA Men's World Cup is not an enduring solution to the problem for either men's or women's football, while the AFC Asian Cup for men and women (unless connected to World Cup qualification) remains absent from the modernised list.

Conclusion

While we have not previously addressed the issue of **Prominence** in this context, we broadly support the proposed legislation relating to it given that, in general terms, it is consistent with the aims of **Anti-siphoning**. This is because "to support the availability of free-to-air television services on internet-connected television devices" is, at the same time, to re-affirm the importance of the free-to-air television services that enable key sport events to be "available free to the general public".

Subscription television and major sports organisations have long opposed what they see as any interference in their capacity to extract, directly and indirectly, maximum revenue from sport viewers, fans and followers. Commercial free-to-air television is increasingly economically reliant on 'live' screen sport, sometimes to the detriment of the viewing experience (including its heavy promotion of sports gambling – a practice that it shares with SBS), and it has sought, so far without success, the extension of anti-siphoning protection to digital sports rights.

Anti-siphoning has unquestionably been of benefit to commercial free-to-air broadcasters, but it is intended and designed to support cultural citizenship in Australia, not the financial health of one component of the media industry. The 'bargain' over anti-siphoning requires its commercial beneficiaries to provide ready access to high-quality media sport culture.

The daunting scale of the media sport economy means that it is inevitably the focus of fierce contestation among commercial communication, media and sport entities. Intervention by government through a legislative instrument like anti-siphoning is not, as often loudly proposed, a distortion of a notional free market structure. It is the democratic state exercising its responsibility to safeguard the interests of the citizenry and civil society.

The Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 [Provisions] is not ideal from our perspective. We would prefer a bolder and more wide-ranging initiative, but acknowledge that it is the product of compromise, and that sport, while much prized by many Australians, is only one form of culture among many. Therefore, this Bill should be viewed alongside, for example, the 2023 *National Cultural Policy—Revive: a place for every story, a story for every place*, as a mechanism that functions to sustain social equity and cultural citizenship in an economic environment that often works to erode them through the aggressive assertion of the logic of market fundamentalism.

A Sample of Relevant Publications by the Authors of this Submission

- Rowe, D., Tiffen, R., and Hutchins, B. (2023) ‘Keeping it Free: Sport Television and Public Policy in Australia’, *Journal of Digital Media & Policy*, 14(1): 103-123.
- Rowe, D. and Gayo, M. (2021) ‘Contesting National Culture: The Sport Field’, in T. Bennett et al. (eds), *Fields, Capitals, Habitus: Australian Culture, Inequalities and Social Divisions*. London and New York: Routledge, 100-116.
- Hutchins, B., Li, B., and Rowe, D. (2019) ‘Over-the-Top Sport: Live Streaming Services, Changing Coverage Rights Markets, and the Growth of Media Sport Portals’, *Media, Culture and Society*, 41(7): 975–94.
- Rowe, D., Turner, G. and Waterton, E. (eds) (2018) *Making Culture: Commercialisation, Transnationalism, and the State of ‘Nationing’ in Contemporary Australia*. London and New York: Routledge.
- Gayo, M. and Rowe, D. (2018) ‘The Australian Sport Field: Moving and Watching’, *Media International Australia*, 167(1):162-80.
- Scherer, J. and Rowe, D. (eds) (2014) *Sport, Public Broadcasting, and Cultural Citizenship: Signal Lost?* London and New York: Routledge.
- Hutchins, B. and Rowe, D. (eds) (2013) *Digital Media Sport: Technology, Power and Culture in the Network Society*. New York: Routledge.
- Hutchins, B. and Rowe, D. (2012) *Sport Beyond Television: The Internet, Digital Media and the Rise of Networked Media Sport*. New York and London: Routledge. Chinese translation, Beijing: Zhong Guo Chuan Mei (2016).
- Hutchins, B. and Rowe, D. (2009) ‘From Broadcast Rationing to Digital Plenitude: The Changing Dynamics of the Media Sport Content Economy’, *Television & New Media*, 10(4): 354-70.