

3.1 MEDIA REFORM

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The Australian Communications and Media Authority (ACMA) is working with the government to implement modernised media regulation.

KEY ISSUES

Government's plan to modernise media regulation

- In August 2022, the government initiated a program of work to modernise media regulation with the release of a consultation paper on the Broadcasting Services Exclusion Determination.
- The program of work includes a range of measures:
 - reviewing the anti-siphoning scheme
 - legislating a prominence regime to ensure Australian TV services can easily be found on connected TV platforms
 - safeguarding levels of Australian content (see **Executive Brief 1.8**)
 - other areas such as reform of the National Classification Scheme.
- The ACMA will continue to advise and work closely with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) on the implementation of these measures.

Reviewing the anti-siphoning scheme

- The government has committed to reviewing the anti-siphoning scheme by examining its role and impact in a contemporary media environment.
- The anti-siphoning scheme aims to give free-to-air broadcasters an initial opportunity to buy the television rights to events included on the anti-siphoning list. The ACMA administers the scheme through a license condition on subscription broadcasting television licensees.
- In October 2022, the government commenced a review of the anti-siphoning scheme, with the release of a consultation paper. Submissions closed on 6 December 2022. As part of the consultation process, the Department held roundtables with key industry stakeholders. The ACMA attended these roundtables as an observer.
- On 24 March 2023, the Minister for Communications, the Hon Michelle Rowland MP (the Minister), remade the legislative instrument known as the anti-siphoning list. The list was remade for an interim period of 3 years, to provide stability for industry and audiences while broader legislative reform to the scheme is considered.
- In August 2023, the government released a consultation paper setting out potential reform models for the anti-siphoning scheme. Consultation closed on 17 September 2023.
- The paper includes three preliminary findings of the review to date:
 - that the core objective of the anti-siphoning scheme – to promote free access to important events – remains relevant
 - the scheme needs to be modernised to incorporate online services

- the composition of the anti-siphoning list needs to be reconsidered, particularly with respect to women's and para-sports events.
- The ACMA will continue to advise and work closely with the Department as it works through submissions on the preferred reform model.
- On 12 September 2023, the Minister made the Broadcasting Services (Events) Amendment Notice 2023 with the effect of expanding the anti-siphoning list to include specific FIFA Women's World Cup qualifying and tournament matches. The amendment was made before the closing date for bids for the Australian media rights to the 2027 FIFA Women's World Cup.
- In the context of the 2023 FIFA Women's World Cup, provided by Optus Sport and Seven, the ACMA received 5 enquiries related to the lack of coverage of the tournament on free-to-air television. The enquiries did not raise any compliance concerns and the ACMA responded to each enquirer with information about the operation of the scheme.

Legislating a prominence regime

- The government has committed to legislate a prominence framework to ensure Australian TV services are available and can be easily found on connected TV platforms, like smart TVs.
- In December 2022, the government released a proposals paper for a prominence framework for connected TV devices. Submissions closed on 24 February 2023.
- The paper noted there are a range of ways in which a prominence framework could be implemented and administered. One proposal was that a prominence framework could be implemented through amendments to the *Broadcasting Services Act 1992* (the BSA) and overseen by the ACMA.
- The implementation of the framework via the BSA is contingent on several other policy matters. However, the paper noted BSA-implementation favours a reporting-based prominence framework, and /or a must carry / must promote framework design, potentially implemented using technical standards.
- The ACMA has previously made technical standards for domestic reception equipment capable of receiving television broadcasting services (for example, the parental lock standard). However, these standards-making powers relate to equipment capable of receiving a range of broadcasting services and would not currently apply to internet-only televisions.
- Informed by the views of stakeholders, the ACMA understands that government intends to make a final decision on the form and construction of a framework this year.

Government-led research to support television futures

- To support the consideration of television futures, a Television Research and Policy Development Program is conducting studies on:
 - the technical capability of Australia's television receiver fleet and how this is expected to change over time, managed by the Department
 - prominence issues associated with connected television devices, managed by the Department
 - the attitudes, preferences and habits of Australian television consumers and how they are likely to evolve over coming years, managed by the Department
 - complementary technical research by the ACMA to support possible future work on TV channel replanning and licensing.

- The ACMA's complementary technical research is investigating and developing tools, methodologies and planning approaches that may inform future channel planning. A decision to replan television can only be made by the government. ACMA channel planning would be informed by planning objectives set by the government.
- The ACMA has commenced work on all technical research program components.
- The TV viewer antenna survey has been completed. ACMA produced 5 reports about household TV antenna use covering Sydney, Melbourne, Brisbane, Adelaide, and Perth which were provided to the Future of Broadcasting Working Group in March 2023 and are published on our website.
- ACMA contracted with Free TV Australia to conduct work on TV receiver performance testing. A draft final report has been delivered and is under consideration.
- All the components of the ACMA's complementary technical research are currently scheduled to be finalised by the end of the 2023 calendar year, with some of the relevant outputs intended to be made available to industry.

Classification reform

- On 29 March 2023, the government released the Review of Australian Classification Regulation that was completed by Neville Stevens AO in 2020, and announced a staged approach to reform of the National Classification Scheme.
- On 4 September 2023, the Parliament passed a Bill to amend the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act) to expand options for industry self-classification, and to remove the need to re-classify content that has already been classified for television. This, along with changes to the Classification Guidelines for Computer Games recently agreed by the Standing Committee of Attorneys-General, represent stage 1 of the reforms.
- Changes to the Classification Guidelines for Computer Games involve a mandatory minimum classification of R 18+ for computer games which contain simulated gambling and M for computer games containing paid loot boxes.
- The Stevens report made a range of recommendations, including making the ACMA responsible for classification regulation and expanding industry classification of content.
- The ACMA has had preliminary discussions with the Department about stage 2 reforms, including governance and implementation considerations. We look forward to working with government on the proposed longer-term reforms to the classification framework.

Broadcasting Services Determination

- On 13 September 2022, the Minister made the Broadcasting Services ("Broadcasting services" Definition – Exclusion) Determination 2022 (the Determination). The Determination excludes online television simulcasts, online radio stations, and live-streaming on social media and other digital platforms from the operation of the BSA.
- The Determination effectively extends a previous determination for a further 5 years, to provide government time to consider and progress longer-term regulatory reform.
- On 27 October 2022, Senator Sarah Hanson-Young gave notice of a motion for disallowance of the determination. The notice of motion was subsequently withdrawn on 6 March 2023.
- We supported remaking the determination, as it provides certainty and stability in the interim period while a broader program of work on media regulation can be completed.

BACKGROUND

Anti-siphoning scheme

- The ACMA administers subscription broadcasting television licensees' compliance with anti-siphoning rules relating to the events listed on the anti-siphoning list.
- The licence condition prevents subscription broadcasting television licensees from acquiring the rights to televise an event on the anti-siphoning list unless:
 - A free-to-air television broadcaster (national or commercial) already has those rights, or;
 - the event has been delisted by the Minister (at least 26 weeks before the commencement of the listed event).
- The rules do not:
 - require free-to-air broadcasters to acquire the rights to a listed event
 - require free-to-air broadcasters to televise a listed event to which they have acquired the rights
 - prevent free-to-air broadcasters from selling some or all of the rights they have acquired for a listed event to a subscription television broadcasting licensee.

Legislating a prominence regime

- The government has committed to legislating a prominence framework to ensure local TV services are easy for Australian audiences to find on connected TV devices.
- The framework is intended to shape the way TV applications and content are presented to Australians. It would seek to make local TV services easily found on TV devices, so that they can continue to contribute to Australia's public and cultural life.
- The proposals paper sets out several of the key threshold policy matters that need to be resolved. This includes deciding:
 - the type of local TV services that will be made prominent
 - the types of TV devices where regulation will apply
 - who is the responsible party for regulation
 - the framework model and regulatory rules
 - the preferred implementation pathway.
- The preferred implementation pathway is dependent on other decisions. For example, a BSA-pathway is favoured for a reporting-based framework, and / or a must carry / must promote framework. Alternatively, a fair bargaining model is preferred through a code made by regulations under the *Competition and Consumer Act 2010* (CCA) and administered by the Australian Competition and Consumer Commission.
- The paper also proposes a combined model where a CCA code and amendments to the BSA, provide a broader reaching regulatory model.

Provision of Australian content

- The ACMA is continuing to work with government on potential reforms to the Australian content framework (see **Executive brief 1.8**).

National Classification Scheme

First stage reforms

- The Bill to amend the Classification Act to expand options for industry self-classification, extend certain exemptions from classification, and remove the need to re-classify content that has already been classified for television, passed on 4 September 2023 and will commence 6 months from Royal Assent.
- The ACMA was not involved in the development of the Bill. We have subsequently discussed implementation considerations with the Department, including complaints handling and the treatment of content ‘deemed’ to be classified (because it has already been classified for broadcast TV) where the ACMA subsequently finds that the broadcast content has been incorrectly classified.
- In addition to legislative reform, Ministers have agreed to amend the Classification Guidelines for Computer Games to introduce tighter restrictions on computer games which contain simulated gambling, paid loot boxes and other in-game purchases linked to elements of chance. Although the ACMA did not make a formal submission to the public consultation process that concluded in June 2023, we provided some implementation feedback including concerns about proposed definitions. We understand that the ACMA’s feedback was adopted post-consultation.

Second stage reforms

- In September 2023, the Department met with the ACMA to initiate discussions about broader reform of the classification regulatory framework. We understand that departmental officials intend to continue liaising with us and other key stakeholders in the coming months with a view to developing options for a discussion paper that they anticipate releasing for consultation in early 2024.

Steven’s review

- In February 2020, the ACMA made a joint submission to the online safety legislative reform consultation and Neville Steven’s review of Australia’s classification regulation. The submission supported the development of a single, federated classification framework for both online and offline content that is simple and consistently applied, and flexible in its delivery and oversight.
- This framework would see:
 - industry manage classification of content across platforms (similar to current broadcasting arrangements), including the ability to automate classification processes
 - the eSafety Commissioner continuing to assess and take specialised enforcement action in relation to illegal and harmful online content within the framework
 - another regulatory body, such as the ACMA having oversight of classification for all other content types. This would include monitoring and oversight of industry classification arrangements and could incorporate functions currently performed by the Classification Board and Classification Review Board. The ACMA would be well-placed to perform this role.
- A key recommendation of the Steven’s report is that the ACMA be the regulator of the classification system at the Australian Government level and perform a range of functions including:
 - training and accrediting industry classifiers
 - auditing decisions made by industry or classification tools

- making original classification decisions at the request of law enforcement agencies or content providers that do not want to self-classify or use a classification tool
- maintaining the National Classification Database and online portals for industry to register classification decisions
- reviewing classification decisions upon application
- conducting research with the Australian community and monitoring industry trends
- handling community complaints that are escalated if the consumer is not satisfied with the response from the content provider
- enforcement of classifiable content online.
- The ACMA has previously publicly advocated for the ACMA to oversee the classification of commercially provided content, including in our February 2020 submission to the review of Australian classification regulation.

Television technical research

- The ACMA has received \$2.190 million for its technical research program [REDACTED]
- Under the program the ACMA will:
 - undertake a consumer antenna survey and test the performance of TV receivers
 - develop new methodologies for TV channel planning and tools to assist with restack planning under new shared multiplex arrangements
 - assess possible parameters and solutions for channel planning relevant to new shared multiplex arrangements for television services
 - review licensing considerations and assess requirements for Television Licence Area Plans (TLAP) under shared multiplexing scenario.
- A breakdown of funding and expenditure for the research program is set out at Table 1
- Work has commenced on each project. As at end September 2023, the ACMA had:
 - published consumer antenna surveys in known reception and Single Frequency Network (SFN) 'hot spots'¹, in and around Perth, Adelaide, Melbourne, Sydney/Central Coast and Brisbane/Gold Coast:
 - the results data will inform future assessment of potential viewer impacts under different broadcast channel planning scenarios.
 - contracted consultancy services to test the performance of TV receivers in SFN reception environments, including potential 'wider area' SFN operations using DVB-T2 and the ability of receivers to cope with shared multiplex configurations:
 - this work will inform the consideration of potential viewer impacts under different planning scenarios as well as the channel planning parameters that are used for coverage and interference modelling in SFN planning.

¹ Due to limited spectrum availability in most metro areas, some repeaters operate in Single Frequency Networks (reusing the same channel). Planning for SFN in these densely populated areas is a rather complex exercise and it is important to understand viewer behaviour in terms of which TV transmitter they point their antennas to.

Table 1: Television technical research program funding and expenditure

Project element	Funding allocation	
1. Consumer antenna survey and TV receiver performance testing		
2. TV channel planning and tools		
3. Assessment of solutions for channel planning		
4. Licensing considerations and requirements for TLAP		
Total	\$2,190,000 ²	

ATTACHMENTS

Attachment A Media release: Broader reforms to be pursued as anti-siphoning list remade

Attachment B Media release: Albanese Government outlines key reforms to National Classification Scheme

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MEDIA RELEASE: BROADER REFORMS TO BE PURSUED AS ANTI-SIPHONING LIST REMADE

25 March 2023

The Albanese Government has remade the anti-siphoning list for a period of three years as it progresses the review of the anti-siphoning scheme as a priority in 2023.

The interim list – the Broadcasting Services (Events) Notice 2023 – makes no material changes to the previous list, providing stability for industry and audiences in terms of the regulation of sports broadcast rights.

The previous anti-siphoning list was set to expire on 1 April 2023, after its original sunset date of 1 April 2021 was deferred by the Coalition Government. The former Government never commenced a review of the anti-siphoning scheme to address the risk of iconic events going behind the paywalls of global subscription streaming services.

The ability to access free coverage of iconic sporting events is a defining feature of the Australian media landscape.

The anti-siphoning scheme is a key mechanism for achieving this outcome, providing free-to-air broadcasters with an initial opportunity to buy the television rights to major events included on the list. However, as technologies and consumer preferences evolve, so too must the scheme.

The Albanese Government initiated a review of the anti-siphoning rules and list in October 2022, giving effect to its election commitment to do so.

A wide range of views and perspectives were aired through the public consultation process, with the key theme being the growing coverage of sporting events online and the potential extension of the scheme to streaming services, such as Netflix or Amazon Prime.

The Government is now moving to the next phase of the review, informed by the views of those that contributed to the consultation process.

Submissions to this process made clear the desire of stakeholders to be engaged on any proposals for substantial reform to the anti-siphoning rules or list. The Government will honour that request and undertake further consultation on specific reform proposals mid-year.

Further information about the review of the anti-siphoning scheme can be found at: <https://www.infrastructure.gov.au/have-your-say/anti-siphoning-scheme-review>

The new list can be found at: <https://www.legislation.gov.au/Details/F2023L00332>

Quotes attributable to Minister for Communications, the Hon Michelle Rowland MP:

“Every Australian deserves the chance to enjoy live and free coverage of events of national significance, regardless of where they live or what they earn.

“The Albanese Government recognises the need for events of national importance and cultural significance to remain free of charge and accessible to the Australian public, as well as the need for certainty around the list while the review of the anti-siphoning scheme is undertaken in 2023.

“Last year, I stated that next steps in the review would be informed by the initial consultation process. It’s clear that stakeholders want and expect there to be further consultation on any specific reform proposals, so I’ll announce a further consultation round later this year.

“Review of the anti-siphoning scheme is a priority for the Government in 2023 and is being progressed as part of a broader package of reforms to support a strong and vibrant media sector.”

MEDIA RELEASE: ALBANESE GOVERNMENT OUTLINES KEY REFORMS TO NATIONAL CLASSIFICATION SCHEME

29 March 2023

The Albanese Government has today announced a number of proposed improvements to the National Classification Scheme (the Scheme) and released the Review of Australian Classification Regulation (the Stevens Review) as it considers further comprehensive reforms to classification.

The Commonwealth will seek the agreement of States and Territories to introduce a mandatory minimum classification of R 18+ (Restricted to 18 and over) for games which contain simulated gambling and M (Mature – not recommended for persons under 15 years) for computer games containing paid loot boxes.

These stronger measures, which are an immediate priority for the Government, will help to protect those most vulnerable in our community from gambling harms, and signal that such games are not appropriate for children.

Recent research published by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts reveals an association between both loot boxes and simulated gambling and harms such as problem gambling.

Other proposed improvements respond to the fact that current regulatory arrangements for classification, developed in a time when physical media was predominant, are incompatible with the increasingly digital media environment. As a result, a large volume of online content is not compliant with the current Scheme. The changes will ensure Australian families and consumers are able to benefit from trusted and reliable information to guide their media choices, across all platforms.

The Government intends to expand options for industry to self-classify content, making it simpler and more cost effective for the film, streaming video and games industries to classify their content in line with Australian classification guidelines. The Classification Board will still have an important role in supporting the consistency and accuracy of industry classification decisions.

Other changes include minor amendments to cut unnecessary regulation. These include exemptions from classification for foreign language films distributed by public libraries and routine exhibitions hosted by cultural institutions, and removing the need to re-classify content that has already been classified for television.

Minister for Communications, the Hon Michelle Rowland MP, will seek the agreement of state and territory Attorneys-General, as co-partners to the Scheme, to the proposed updates to address gambling-like content. The Government will also consult with industry and other key stakeholders on broader classification reforms.

The Stevens Review is available at <https://www.infrastructure.gov.au/have-your-say/review-australian-classification-regulation> and recent classification research is available at www.classification.gov.au/about-us/research-and-publications.

Quotes attributable to Minister for Communications, the Hon Michelle Rowland MP:

“The Stevens Review, which the Government has today released, reveals a Scheme in need of significant change.

“That is why I have asked my department to also consider options for more comprehensive reform, including recommendations from the Stevens Review and other previous reviews and prior work on these issues, recent research, and industry and community feedback.

“The changes we are proposing today will help set the Scheme on the right path forward and I look forward to hearing from the community, industry, and my counterparts in state and territory government to ensure we deliver a system that reflects modern Australia.”