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Media Reform - Online Safety, Media and Platform Division
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

Submission of COMPPS to the review of the anti-siphoning scheme

The Coalition of Major Professional and Participation Sports (**COMPPS**) appreciates the opportunity to make a submission to the Australian Government's review of the anti-siphoning scheme.

1. INTRODUCTION

COMPPS consists of the seven major professional sporting organisations in Australia:

- Australian Football League;
- Cricket Australia;
- Football Australia;
- National Rugby League;
- Netball Australia;
- Rugby Australia; and
- Tennis Australia.

Each member of COMPPS is the governing body and custodian of a major professional sport in Australia. COMPPS members play a significant role in developing, promoting and presenting their sport from the grass roots through to the international level and, in some instances, rely on Commonwealth and State government funding in order to do so. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

COMPPS members provide a wide range of public benefits primarily through a self-funding business model. A large portion of the revenue of COMPPS members is generated from the sale of their sport's media rights, which is then reinvested into enhancing, promoting and developing their sport for all Australians.

One of COMPPS' roles is to assist with advocacy in relation to issues on behalf of its member sports. This submission is lodged on behalf of the following COMPPS members: Australian Football League, Cricket Australia, Football Australia, National Rugby League, Netball Australia, and Tennis Australia. Given the significance of this issue to each COMPPS member and the specific nature of some of the issues raised in the review, each COMPPS member



will make their own submission to the current review of the anti-siphoning scheme.

2. IMPORTANCE OF MEDIA RIGHTS

Each of the COMPPS members conducts or are involved in sporting events that are included on the current 'anti-siphoning list'.

The sale of the media rights to listed events is crucial to COMPPS members, their sporting events and competitions and their sports. The coverage and presentation of sporting matches and events across a range of media platforms allows supporters and viewers to connect with and follow the sports. Further, revenue from the sale of media rights is a major source of revenue for each of the COMPPS members. The sustainable growth of revenue from the sale of media rights is critical to COMPPS members undertaking their roles as the governing bodies for their respective sports.

Media rights are exploited by COMPPS members and/or their authorised media partners across a range of platforms including free to air broadcast television, subscription television and radio as well as streaming services, digital / mobile apps and social media, made available in a range of formats (such as SD, HD and UHD) and delivered via a range of technologies which are accessible across a range of devices.

The revenue derived from the sale of media rights is the single most important revenue stream for COMPPS members. The proprietary media rights of COMPPS members in respect of their sporting events and competitions are significant and highly valuable assets of each organisation. The commercialisation and sale of their media rights is critical to COMPPS members being able to invest in their sport from the grassroots to the elite level and underpins their operations as the not-for-profit custodians of their sports in Australia.

COMPPS members are innovative in exploiting their media rights. They have made, and wish to be able to continue making, significant investments to enable the presentation and coverage of their sports content and to enable Australians to access that content via their preferred medium, including on a live and free basis.

With the rapidly increasing consumption of content via online and digital streaming within Australia, the sale of online and digital rights has become a critically important revenue stream and component of the overall business strategies of COMPPS members. Distribution via online and digital streaming also enables COMPPS members to connect with and engage a younger and wider audience thereby further developing and growing their fan base and promoting greater participation in their sport. The importance of maximising revenue from the sale of online and digital rights as part of the overall media rights strategy of COMPPS members will continue to increase in the coming years in accordance with the changing preferences in the way in which sporting content is accessed and consumed by Australians.

Maintaining and growing media rights revenue is critical to the operation, survival and growth of COMPPS members and the sports they administer and allows COMPPS members in carrying out their objectives as not-for-profit custodians of their sports in Australia to:

- maintain and increase the funds which can be paid to athletes and distributed to other stakeholders, who have high levels of community support and interaction;
- invest in the development of their respective sports, including at grassroots level;
- provide all Australians with the opportunity to participate in sports;

- continue and increase support for important community and wellbeing, diversity and inclusion programs and initiatives;
- continue to invest in facility development, including for the wider community benefit;
- continue to invest in, and support the growth of, women's sport; and
- operate without significant reliance on Government funding.

3. REFORM OF ANTI-SIPHONING SCHEME

COMPPS and its members have consistently contended that the anti-siphoning regime is unfairly anti-competitive and not necessary to protect the interests of the Australian public having free access to iconic and nationally important and culturally significant sporting matches and events.

Put simply, the anti-siphoning scheme and associated process limits and restricts competition and innovation in a rapidly evolving media landscape.

The scheme and the associated list are out-dated and overdue for reform. Any reform should:

- not undermine the economic incentives and business models of COMPPS members and other rights holders to appropriately commercialise their proprietary assets through the sale of their media rights;
- not adversely and unfairly impact the interests of COMPPS members and in particular restrict the ability of COMPPS members to maximise the revenue from the sale and exploitation of their media rights and to control when their matches and events are scheduled to be conducted; and
- not increase the regulatory burdens that already restrict COMPPS members nor introduce additional or broader Ministerial discretions that increase uncertainty or complexity in relation to the operation and scope of the anti-siphoning scheme.

COMPPS members will address specific questions raised in the consultation paper in their separate submissions. In addition to the matters specifically raised by its members in those separate submissions, COMPPS believes any review of the scheme by the Government should be based on the principles and positions set out below.

- **Reform and narrowing of list**

If the anti-siphoning list is to remain in place, then it should be refined to only cover iconic events which are genuinely both nationally important **and** culturally significant. The present list is too broad and covers events which are not both nationally important and culturally significant. In its current form, the anti-siphoning list means that sports cannot optimise their investment in their sport, infrastructure and grass roots.

For example, to continue to include on the anti-siphoning list all matches of the annual competitions for the AFL and NRL is unreasonable and inappropriate. Further, to include all events of a competition or large event such as the Australian Open is inappropriate and unnecessarily restrictive. Not all of the matches and events which form part of these competitions and large events are nationally important and culturally significant. COMPPS members will comment on their particular sports in their own submissions.

In framing a refined anti-siphoning list the Government should ensure it sets the right balance to enable sporting organisations to maximise revenues (for the sale of their media rights) and provide appropriate access to content. The balancing of reach and return is something that sporting organisations always weigh up regardless of whether content is on the anti-siphoning list. This is something sporting organisations are best placed to consider and which they have successfully managed over many years. Australian sporting organisations are always conscious of the need to keep sufficient and appropriate content available on a free basis.

- **Iconic and nationally important and culturally significant**

If the anti-siphoning scheme is going to set out the criteria for listing an event then COMPPS believes that part of the criteria should be that the relevant event is iconic (as identified in the consultation paper) **and** nationally important **and** culturally significant.

- **Less regulation, not more**

Over regulation impacts the ability of sports to meet their constitutional and strategic objectives as the not-for-profit custodians of their sports in Australia. The anti-siphoning scheme restricts the ability of sporting organisations to conduct a truly competitive process for the sale of their media rights.

COMPPS strongly opposes any amendment of the scheme to introduce an offer or conferral based rule, impose regulatory burden on sporting organisations or to otherwise widen the scope of the scheme.

Any offer or conferral based mechanisms add complexity, are impracticable and unfairly seek to impose unnecessary regulatory burdens on sporting organisations rather than for-profit media companies. Sporting organisations have limited resources to deal with media regulation compared to media companies who have far greater resources to manage the complexities of ensuring regulatory compliance and it would be unfair to impose such regulatory burdens on the sports. It would increase the compliance costs for sporting organisations and would divert revenue away from being otherwise reinvested back into the sports, including at the grassroots community level.

As a general proposition COMPPS opposes any increase to regulation in this area, including extension of the scheme to restrict the ability of other services to acquire rights to sporting content or the introduction of a two tier system. In addition, the focus of any scheme should remain around the process for the acquisition of rights to listed events and which events are listed rather than prescribing where and when listed events can or must be broadcast.

- **Coverage of anti-siphoning listed events**

COMPPS does not support the introduction of coverage obligations for free-to-air broadcasters that acquire rights to anti-siphoning listed events.

COMPPS believes that its members are best placed to ensure that minimum coverage obligations are included in their contractual arrangements with their media partners to provide appropriate free access to the relevant events. This issue can be dealt with adequately when sports are unhindered from conducting a competitive process for the sale of their media rights in an open market and does not require any kind of

Government intervention. COMPPS members have an inherent interest in ensuring appropriate free access to their content, to help ensure the growth of their competitions and sports.

Any imposition of coverage obligations as part of the anti-siphoning scheme would only make it more difficult for sports to sell their media rights (and maximise revenue from the sale of those rights) and would be unlikely to result in any practical difference in the coverage of events.

If an event is truly of national importance and cultural significance then a free-to-air broadcaster will want to broadcast the event. If an event is not nationally important and culturally significant, a free-to-air broadcaster is unlikely to want to broadcast the event which means that the event should not be on the anti-siphoning list.

- **Women's sports**

Any event should only be included on the anti-siphoning list if that event is iconic and nationally important and culturally significant. This test should be applied to all events, regardless of whether that event is a women's or men's event.

As such, whether a women's event should be included on the anti-siphoning list needs to be considered on its own merits including but not limited to whether that event is in and of itself iconic and nationally important and culturally significant. A women's event should not be added to the anti-siphoning list automatically just because there is a men's version of the event which is on the anti-siphoning list. Similarly, a men's event should not be added to the anti-siphoning list just because there is a women's version of the event on the anti-siphoning list.

Including a women's event on the anti-siphoning list may not automatically assist in developing and growing that women's sport and could have counterproductive consequences if it means that the sporting organisation is not able to maximise its commercial revenue from the sale of its media rights to that particular women's sports event or competition. In addition, free access may dissuade people from attending the event when sports are seeking to maximise on site fan engagement, attract crowds and create atmosphere at women's sporting events.

Rather than adding women's sport to the anti-siphoning list, COMPPS submits that certain events need to be removed from the anti-siphoning list so the sports can maximise their commercial revenues which can be used to help develop and support the women's game. Many of the professional women's competitions conducted by COMPPS members are relatively new (such as AFLW and NRLW) and are still seeking to grow their commercial revenues streams. As a result, the revenue generated by the men's competitions contributes to the development and growth of the women's competitions. As such, the more that sports are able to maximise the revenue from the men's competition the more they can help to grow and support women's sport.

If sports are unable to maximise revenues from the sale of their media rights (for either women's or men's content), then they will need to seek alternative sources of funds, such as additional government funding.

Sporting organisations should not be restricted as they seek to grow and develop women's competitions, including as to where and how their content can be viewed.

Further, the sports organisations whose events are on the anti-siphoning list are best placed to ensure that the right balance of free access is achieved for women's sporting events. COMPPS believes that sufficient free access to women's sporting events of COMPPS members will still be provided even if those women's sporting events are not included on the anti-siphoning list, which reflects the desire of COMPPS members to grow women's sport in Australia by ensuring visibility of the sport. For example, notwithstanding AFLW matches, women's international cricket matches, Suncorp Super Netball Competition matches, certain Australian Diamonds netball matches and FIFA Women's World Cup matches are not on the anti-siphoning list:

- all AFLW matches are broadcast on free-to-air platforms on an equivalent basis to the AFL elite men's competition, as well as being simulcast on a free basis via the AFL website and app and made available via AFL's subscription partner Foxtel, which provides it with the widest media coverage on a per-match basis of any AFL elite competition;
- all women's international cricket matches conducted by Cricket Australia in Australia are transmitted on free-to-air television;
- two Suncorp Super Netball Competition matches per round, all finals matches of the Suncorp Super Netball Competition and all Australian Diamonds matches controlled by Netball Australia are currently transmitted live and free on Kayo's Freebies service; and
- FIFA Women's World Cup matches have been, or will be, broadcast on free-to-air television on either SBS or Seven.

- **A more realistic delisting period**

The current delisting period is too short. None of the COMPPS members have ever been able to utilise this automatic delisting mechanism in respect of their events.

This is due to the fact that sporting organisations seek to conduct a process for the sale of their media rights well in advance (and in some cases, years in advance) of the actual listed event taking place which makes it impractical to make use of the automatic delisting mechanism.

COMPPS believes an automatic delisting period of 104 weeks is appropriate and would allow for greater certainty for both sporting organisations and media companies.

Where a listed event (such as a competition) relates to multiple matches or games and that event is delisted, the automatic delisting should apply to all listed matches or games as part of that event for the relevant year and not just a specific match or game. In other words, the automatic delisting period should be tied to the start of the tournament or competition such as the opening match or event.

Additionally, where an event (such as a competition) is held in each year as part of a regular competition and the rights to that competition are being sold on a multi-year basis, any delisting should be applied from the start of the first year of that contractual period for all events in that competition during the relevant contractual period to reflect the fact that in practice any agreement in relation to the sale of a sport's media rights to that event are for a multi-year term.

- **Preserving existing arrangements**

Any changes to the anti-siphoning scheme must not apply retrospectively and impact existing agreements which sporting organisations have entered into (including any additions to the anti-siphoning list) prior to any change to the anti-siphoning scheme coming into effect.

Sporting organisations and their media partners (including in some instances free to air broadcasters) have entered significant and important multi-year agreements in good faith (often following extensive tendering processes) on the basis of the existing anti-siphoning scheme. If any changes to the anti-siphoning scheme were to apply to these existing arrangements, including by adding an event or competition or event that was not previously listed, it would severely impact and potentially frustrate these agreements and also have significant detrimental financial and resourcing impacts which could have wide-ranging consequences across investment in grass-roots, infrastructure and participation programs.

- **Information disclosure**

COMPPS does not support the introduction of any information disclosure obligations regarding the sale of rights to events on the anti-siphoning list. It is not clear why any such information needs to be disclosed and what public benefit is served by the disclosure of such information and would only serve to create extra regulatory burden and compliance costs for COMPPS members.

Most of the main details of the arrangements which COMPPS members have with respect to the sale of their media rights is already public. Any information which is not already public is likely to be commercially sensitive and confidential. Other organisations are not required to disclose commercially sensitive arrangements.

COMPPS would be concerned if its members had to disclose information about any arrangements they had with their media partners or any details around offers received for their media rights. Such information is commercially sensitive and highly confidential and its disclosure could impact the ability of the sports to conduct a competitive process for the sale of their media rights and maximise their media rights revenues.

- **Regular review of anti-siphoning list**

The existing scheme and the wide anti-siphoning list have not been materially changed for a long time. COMPPS supports regular reviews of the scheme to ensure that it is relevant, fit for purpose and operates fairly. COMPPS and its members should be involved in any such reviews.

- **Consultation prior to any change**

If, following this review, the Government intends to make changes to the anti-siphoning scheme (including the addition or removal of events from the list) then COMPPS and its members request that they be consulted as part of the process of formulating those changes.